LOAN NUMBER 2982-VIE (SF)

TECHNICAL ASSISTANCE LOAN AGREEMENT
(Special Operations)

(Project Preparation and Startup Support Facility)

between

SOCIALIST REPUBLIC OF VIET NAM

and

ASIAN DEVELOPMENT BANK

DATED 7 MARCH 2013

TECHNICAL ASSISTANCE LOAN AGREEMENT
(Special Operations)

TECHNICAL ASSISTANCE LOAN AGREEMENT dated 7 March 2013 between SOCIALIST REPUBLIC OF VIET NAM ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) the Borrower has applied to ADB for a loan for the purposes of the Project described in Schedule 1 to this Technical Assistance Loan Agreement ("Loan Agreement"); and

(B) ADB has agreed to make a loan to the Borrower from ADB's Special Funds resources upon the terms and conditions set forth herein;

NOW THEREFORE the parties agree as follows:

ARTICLE I

Loan Regulations; Definitions

Section 1.01. All provisions of the Special Operations Loan Regulations of ADB, dated 1 January 2006 ("Loan Regulations"), are hereby made applicable to this Loan Agreement with the same force and effect as if they were fully set forth herein.

Section 1.02. Wherever used in this Loan Agreement, the several terms defined in the Loan Regulations have the respective meanings therein set forth unless modified herein or the context otherwise requires. Additional terms used in this Loan Agreement have the following meanings:

(a) "Consulting Guidelines" means the Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers (2010, as amended from time to time);

(b) "Consulting Services" means the services to be financed out of the proceeds of the Loan as described in paragraph 3 of Schedule 1 to this Loan Agreement;

(c) "Goods" means equipment and materials to be financed out of the proceeds of the Loan, including related services such as transportation, insurance, installation, commissioning, training, and initial maintenance, but excluding Consulting Services;

(d) "Implementing Agencies" means the selected ministries and local governments (provincial and city people's committees) or any successors thereto acceptable to ADB, which are responsible for the carrying out of the Subprojects;

(e) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2012, as amended from time to time);

(f) "MPI" means the Ministry of Planning and Investment of the Borrower, or any successor thereto;

(g) "ODA" means official development assistance;

(h) "PAM" means the project administration manual for the Project dated 6 November 2012 and agreed between the Borrower and ADB, as updated from time to time in accordance with the respective administrative procedures of the Borrower and ADB;

(i) "PCU" means the project coordination unit to be established at MPI, which shall be responsible for the day to day activities of the Project;

(j) "Procurement Guidelines" means ADB's Procurement Guidelines (2010, as amended from time to time);

(k) "Procurement Plan" means the procurement plan for the Project dated 6 November 2012 and agreed between the Borrower through the Project Executing Agency and ADB, as updated from time to time in accordance with the Procurement Guidelines, the Consulting Guidelines, and other arrangements agreed with ADB;

(l) "Project Executing Agency" for the purposes of, and within the meaning of, the Loan Regulations means MPI or any successor thereto acceptable to ADB, which is responsible for the carrying out of the Project;

(m) "Safeguard Policy Statement" means ADB's Safeguard Policy Statement (2009); and

(n) "Subproject" means a project which meets the eligibility criteria set out in paragraph 9 of Schedule 5 to this Loan Agreement, and for which any preparatory, startup or implementation activities shall be carried out under the Project utilizing the proceeds of the Loan.

ARTICLE II

The Loan

Section 2.01. ADB agrees to lend to the Borrower from ADB's Special Funds resources an amount in various currencies equivalent to twenty-four million six hundred twenty-six thousand Special Drawing Rights (SDR24,626,000).

Section 2.02. (a) The Borrower shall pay to ADB an interest charge at the rate of 1% per annum during the grace period, and 1.5% per annum thereafter, on the amount of the Loan withdrawn from the Loan Account and outstanding from time to time.

(b) The term "grace period" as used in subsection (a) hereinabove means the period prior to the first Principal Payment Date in accordance with the amortization schedule set forth in Schedule 2 to this Loan Agreement.

Section 2.03. The interest charge and any other charge on the Loan shall be payable semiannually on 1 June and 1 December in each year.

Section 2.04. The Borrower shall repay the principal amount of the Loan withdrawn from the Loan Account in accordance with the amortization schedule set forth in Schedule 2 to this Loan Agreement.

Section 2.05. The currency of repayment of the principal amount of the Loan and the currency of payment of the interest charge for the purposes of Sections 4.03(a) and 4.04 of the Loan Regulations shall be the Dollar.

ARTICLE III

Use of Proceeds of the Loan

Section 3.01. The Borrower shall make the proceeds of the Loan available to the Project Executing Agency and the Implementing Agencies upon terms and conditions acceptable to ADB and shall cause the Project Executing Agency and the Implementing Agencies to apply the proceeds of the Loan to the financing of expenditures on the Project in accordance with the provisions of this Loan Agreement.

Section 3.02. The proceeds of the Loan shall be allocated and withdrawn in accordance with the provisions of Schedule 3 to this Loan Agreement, as such Schedule may be amended from time to time by agreement between the Borrower and ADB.

Section 3.03. Except as ADB may otherwise agree, the Borrower shall procure, or cause to be procured, the items of expenditure to be financed out of the proceeds of the Loan in accordance with the provisions of Schedule 4 to this Loan Agreement.

Section 3.04. Except as ADB may otherwise agree, the Borrower shall cause all items of expenditure financed out of the proceeds of the Loan to be used exclusively in the carrying out of the Project.

Section 3.05. Withdrawals from the Loan Account in respect of Goods and Consulting Services shall be made only on account of expenditures relating to:

(a) Goods which are produced in and supplied from and Consulting Services which are supplied from such member countries of ADB as shall have been specified by ADB from time to time as eligible sources for procurement; and

(b) Goods and Consulting Services which meet such other eligibility requirements as shall have been specified by ADB from time to time.

Section 3.06. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations shall be 30 June 2020 or such other date as may from time to time be agreed between the Borrower and ADB.

ARTICLE IV

Particular Covenants

Section 4.01. In the carrying out of the Project and operation of the Project facilities, the Borrower shall perform, or cause to be performed, all obligations set forth in Schedule 5 to this Loan Agreement.

Section 4.02. (a) The Borrower shall (i) maintain separate accounts and records for the Project; (ii) prepare annual financial statements for the Project in accordance with accounting principles acceptable to ADB; (iii) have such financial statements audited annually by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with international standards for auditing or the national equivalent acceptable to ADB; (iv) as part of each such audit, have the auditors prepare a report (which includes the auditors' opinion on the use of the Loan proceeds and compliance with the financial covenants of this Loan Agreement as well as on the use of the procedures for the imprest fund and statement of expenditures) and a management letter (which sets out the deficiencies in the internal control of the Project that were identified in the course of the audit, if any); and (v) furnish to ADB, no later than 6 months after the end of each related fiscal year, copies of such audited financial statements, audit report and management letter, all in the English language, and such other information concerning these documents and the audit thereof as ADB shall from time to time reasonably request.

(b) ADB shall disclose the annual audited financial statements for the Project and the opinion of the auditors on the financial statements within 30 days of the date of their receipt by posting them on ADB's website.

(c) The Borrower shall enable ADB, upon ADB's request, to discuss the financial statements for the Project and the Borrower's financial affairs where they relate to the Project with the auditors appointed pursuant to subsection (a)(iii) hereinabove, and shall authorize and require any representative of such auditors to participate in any such discussions requested by ADB. This is provided that such discussions shall be conducted only in the presence of an authorized officer of the Borrower, unless the Borrower shall otherwise agree.

Section 4.03. The Borrower shall enable ADB's representatives to inspect the Project, the Goods, and any relevant records and documents.

ARTICLE V

Effectiveness

Section 5.01. A date 90 days after the date of this Loan Agreement is specified for the effectiveness of this Loan Agreement for the purposes of Section 9.04 of the Loan Regulations.

ARTICLE VI

Miscellaneous

Section 6.01. The Governor of the State Bank of Vietnam is designated as representative of the Borrower for the purposes of Section 11.02 of the Loan Regulations.

Section 6.02. The following addresses are specified for the purposes of Section 11.01 of the Loan Regulations:

For the Borrower

State Bank of Vietnam
47-49 Ly Thai To
Hanoi, Viet Nam

Facsimile Numbers:

(84-4) 38250-612
(84-4) 38258-385.

For ADB

Asian Development Bank
6 ADB Avenue
Mandaluyong City
1550 Metro Manila
Philippines

Facsimile Numbers:

(632) 636-2444
(632) 636-2336.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Loan Agreement to be signed in their respective names as of the day and year first above written and to be delivered at the principal office of ADB.

SOCIALIST REPUBLIC OF VIET NAM

By _____

NGUYEN VAN BINH
Governor
State Bank of Vietnam

ASIAN DEVELOPMENT BANK

By _____

TOMOYUKI KIMURA
Country Director
Viet Nam Resident Mission

SCHEDULE 1

Description of the Project

1. The objective of the Project is to strengthen the Borrower's capacity to fast-track the preparation, startup and implementation of the Subprojects.

2. The Project shall comprise the following outputs:

(a) provision of financing for the preparation, startup and implementation activities of the Subprojects including (i) preparation of quality project documents including feasibility studies, detailed engineering designs and bidding documents; (ii) activities to facilitate advance contracting; and (iii) other activities to enable quick startup of the Subprojects; and

(b) Project management support and capacity building activities to enable (i) the Project Executing Agency to screen, identify, review and appraise Subproject proposals; (ii) the Implementing Agencies to improve the quality of proposals and applications for the Subprojects and carry out Subproject preparatory activities including advance contracting in a timely and efficient manner; and (iii) the Project Executing Agency to purchase office equipment for PCU.

3. The Project includes the provision of Consulting Services for Project outputs described in paragraph 2 above.

4. The Project is expected to be completed by 31 December 2019.

SCHEDULE 2

Amortization Schedule

(Project Preparation and Startup Support Facility)

Date Payment Due	Payment of Principal (expressed in Special Drawing Rights)*
1 June 2021	513,042
1 December 2021	513,042
1 June 2022	513,042
1 December 2022	513,042
1 June 2023	513,042
1 December 2023	513,042
1 June 2024	513,042
1 December 2024	513,042
1 June 2025	513,042
1 December 2025	513,042
1 June 2026	513,042
1 December 2026	513,042
1 June 2027	513,042
1 December 2027	513,042
1 June 2028	513,042
1 December 2028	513,042
1 June 2029	513,042
1 December 2029	513,042
1 June 2030	513,042
1 December 2030	513,042
1 June 2031	513,042
1 December 2031	513,042
1 June 2032	513,042
1 December 2032	513,042
1 June 2033	513,042
1 December 2033	513,042
1 June 2034	513,042
1 December 2034	513,042
1 June 2035	513,042
1 December 2035	513,042
1 June 2036	513,042
1 December 2036	513,042
1 June 2037	513,042
1 December 2037	513,042
1 June 2038	513,042
1 December 2038	513,042
1 June 2039	513,042
1 December 2039	513,042
1 June 2040	513,042
1 December 2040	513,042

Schedule 2

Date Payment Due	Payment of Principal (expressed in Special Drawing Rights)*
1 June 2041	513,042
1 December 2041	513,042
1 June 2042	513,042
1 December 2042	513,042
1 June 2043	513,042
1 December 2043	513,042
1 June 2044	513,042
1 December 2044	513,026
TOTAL	24,626,000

* The arrangements for payment are subject to the provisions of Sections 3.04 and 4.03 of the Loan Regulations.

SCHEDULE 3

Allocation and Withdrawal of Loan Proceeds

General

1. The table attached to this Schedule sets forth the Categories of items of expenditure to be financed out of the proceeds of the Loan and the allocation of the Loan proceeds to each such Category ("Table"). (Reference to "Category" in this Schedule is to a Category or Subcategory of the Table.)

Basis for Withdrawal from the Loan Account

2. Except as ADB may otherwise agree, the proceeds of the Loan shall be disbursed on the basis of the withdrawal percentage for each item of expenditure set forth in the Table.

Reallocation

3. Notwithstanding the allocation of Loan proceeds and the withdrawal percentages set forth in the Table,

(a) if the amount of the Loan allocated to any Category appears to be insufficient to finance all agreed expenditures in that Category, ADB may, by notice to the Borrower, (i) reallocate to such Category, to the extent required to meet the estimated shortfall, amounts of the Loan which have been allocated to another Category but, in the opinion of ADB, are not needed to meet other expenditures, and (ii) if such reallocation cannot fully meet the estimated shortfall, reduce the withdrawal percentage applicable to such expenditures in order that further withdrawals under such Category may continue until all expenditures thereunder shall have been made; and

(b) if the amount of the Loan allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, by notice to the Borrower, reallocate such excess amount to any other Category.

Disbursement Procedures

4. Except as ADB may otherwise agree, the Loan proceeds shall be disbursed in accordance with the Loan Disbursement Handbook.

Attachment to Schedule 3

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Project Preparation and Startup Support Facility)			
Number	**Item**	**Total Amount Allocated for ADB Financing (SDR) Category**	**Basis for Withdrawal from the Loan Account**
1	Consulting Services	22,494,000	100% of total expenditure claimed*
2	Incremental Administration	494,000	100% of total expenditure claimed*
3	Office Equipment and Furniture	13,000	100% of total expenditure claimed*
4	Unallocated	1,625,000	
	Total	24,626,000	

* Exclusive of taxes and duties imposed within the territory of the Borrower.

SCHEDULE 4

Procurement of Goods and Consulting Services

General

1. The procurement of Goods and Consulting Services shall be subject to and governed by the Procurement Guidelines, and the Consulting Guidelines, respectively.

2. All terms used in this Schedule and not otherwise defined in this Loan Agreement have the meanings provided in the Procurement Guidelines and/or the Consulting Guidelines, as applicable.

Goods

3. Except as ADB may otherwise agree, Goods shall only be procured on the basis of the method of procurement set forth below:

Shopping.

4. The method of procurement is subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Borrower may only modify the method of procurement or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.

Consulting Services

5. Except as ADB may otherwise agree, and except as set forth in the paragraph below, the Borrower shall apply quality- and cost-based selection for selecting and engaging Consulting Services.

6. The Borrower shall apply the following methods for selecting and engaging the specified Consulting Services, in accordance with, among other things, the procedures set forth in the Procurement Plan:

(a) Fixed Budget Selection;
(b) Least-Cost Selection;
(c) Consultants' Qualifications Selection; and
(d) Quality-Based Selection.

7. The Borrower shall recruit the individual consultants for preparation of Subprojects and capacity development in accordance with procedures acceptable to ADB for recruiting individual consultants.

Industrial or Intellectual Property Rights

8. (a) The Borrower shall ensure that all Goods procured (including without limitation all computer hardware, software and systems, whether separately procured or incorporated within other goods and services procured) do not violate or infringe any industrial property or intellectual property right or claim of any third party.

(b) The Borrower shall ensure that all contracts for the procurement of Goods contain appropriate representations, warranties and, if appropriate, indemnities from the contractor or supplier with respect to the matters referred to in subparagraph (a) of this paragraph.

9. The Borrower shall ensure that all ADB-financed contracts with consultants contain appropriate representations, warranties and, if appropriate, indemnities from the consultants to ensure that the Consulting Services provided do not violate or infringe any industrial property or intellectual property right or claim of any third party.

ADB's Review of Procurement Decisions

10. Contracts for Consulting Services shall be subject to prior review by ADB, unless otherwise agreed between the Borrower and ADB and set forth in the Procurement Plan.

SCHEDULE 5

Execution of Project

Implementation Arrangements

1. The Borrower and the Project Executing Agency shall ensure that the Project is implemented in accordance with the detailed arrangements set forth in the PAM. Any subsequent change to the PAM shall become effective only after approval of such change by the Borrower and ADB. In the event of any discrepancy between the PAM and this Loan Agreement, the provisions of this Loan Agreement shall prevail.

Safeguards

2. The Borrower shall ensure that the Project does not have any environmental, indigenous peoples or involuntary resettlement impacts, all within the meaning of the Safeguard Policy Statement. In the event that the Project does have any such impact, the Borrower shall take all steps required to ensure that the Project complies with the applicable laws and regulations of the Borrower and with the Safeguard Policy Statement.

Environment

3. The Borrower shall cause the Project Executing Agency to ensure that all Subprojects shall be prepared in accordance with (a) all applicable laws and regulations of the Borrower relating to environment, health and safety; and (b) the Safeguard Policy Statement.

4. The Borrower shall cause the Project Executing Agency to ensure that adequate environmental measures in accordance with (a) all applicable laws and regulations of the Borrower relating to environment, health and safety; and (b) the Safeguard Policy Statement are incorporated into all Subproject designs.

Land Acquisition and Involuntary Resettlement

5. The Borrower shall cause the Project Executing Agency to ensure that for Subprojects entailing land acquisition and involuntary resettlement, resettlement plans in accordance with (a) all applicable laws and regulations of the Borrower relating to land acquisition and involuntary resettlement; and (b) the Safeguard Policy Statement are prepared. The Borrower shall cause the Project Executing Agency to ensure that adequate measures to avoid or minimize land acquisition and involuntary resettlement are incorporated into all Subproject designs.

Indigenous Peoples

6. The Borrower shall cause the Project Executing Agency to ensure that for Subprojects involving indigenous peoples, indigenous peoples plans in accordance with (a) all applicable laws and regulations of the Borrower relating to indigenous peoples; and (b) the Safeguard Policy Statement are prepared. The Borrower shall cause the Project Executing Agency to ensure that adequate measures to protect indigenous peoples are incorporated into all Subproject designs.

Schedule 5

Gender and Development

7. The Borrower shall cause the Project Executing Agency to ensure that measures in accordance with (a) all applicable laws and regulations of the Borrower relating to gender; and (b) ADB's Policy on Gender and Development (1998) are incorporated into all Subproject designs.

Labor Standards; Health

8. The Borrower shall cause the Project Executing Agency to ensure that, for each Subproject, bidding documents under such Subproject shall include specific provisions to comply with (a) all applicable labor laws and core labor standards of the Borrower relating to (i) prohibition of child labor; (ii) equal pay for equal work of equal value regardless of gender, ethnicity or caste; and (iii) elimination of forced labor; and (b) the requirement to disseminate information on sexually transmitted diseases including HIV/AIDS to employees and local communities surrounding the Subproject civil works sites.

Eligibility Criteria for Subprojects

9. To be eligible for financing under the Project, a Subproject must meet one of the following criteria:

(a) it must be included in the project pipeline in ADB's country partnership strategy/country operations and business plan;
(b) it must be considered by the Borrower as high priority; or
(c) it must be agreed upon by MPI and ADB at the country programming mission, the country programming confirmation mission or the country portfolio review mission.

Governance and Anticorruption

10. The Borrower shall and shall cause the Project Executing Agency and the Implementing Agencies to (a) comply with ADB's Anticorruption Policy (1998, as amended to date) and acknowledge that ADB reserves the right to investigate directly, or through its agents, any alleged corrupt, fraudulent, collusive or coercive practice relating to the Project; and (b) cooperate with any such investigation and extend all necessary assistance for satisfactory completion of such investigation.

11. The Borrower shall and shall cause the Project Executing Agency and the Implementing Agencies to ensure that the anticorruption provisions acceptable to ADB are included in all bidding documents and contracts, including provisions specifying the right of ADB to audit and examine the records and accounts of the Project Executing Agency and the Implementing Agencies and all contractors, suppliers, consultants, and other service providers as they relate to the Project.