LOAN NUMBER 2920-VIE(SF)

LOAN AGREEMENT
(Special Operations)

(Public-Private Partnership Support Project)

between

SOCIALIST REPUBLIC OF VIET NAM

and

ASIAN DEVELOPMENT BANK

DATED 17 JANUARY 2013

LOAN AGREEMENT
(Special Operations)

LOAN AGREEMENT dated 17 January 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 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) "Authorized State Agency" means a state agency authorized to implement PPP project under Decision 71/2010;

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

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

(d) "Decision 71/2010" means Decision No. 71/2010/QD-TTg, dated 9 November 2010, issued by the Prime Minister of the Borrower on pilot investment in the form of PPP, which may be amended from time to time;

(e) "IMTF" means the inter-ministerial task force established by the Borrower to coordinate PPP activities within the territory of the Borrower;

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

(g) "MOF" means the Ministry of Finance of the Borrower or any successor thereto;

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

(i) "PAM" means the project administration manual for the Project dated 31 August 2012 and agreed between the Borrower through the Project Executing Agency and ADB, as updated from time to time in accordance with the respective administrative procedures of the Borrower and ADB;

(j) "Parts" means part of the Project as further described in paragraph 2 of Schedule 1 to the Loan Agreement;

(k) "PDF" means the Project Development Facility to be established under the Project;

(l) "PMU" means the Project Management Unit to be established by the Project Executing Agency, which shall be responsible for the operation and management of the PDF;

(m) "PPP" means public private partnership;

(n) "PPP Office" means a unit established within MPI that will act as the focal point for PPP activities;

(o) "Procurement Plan" means the procurement plan for the Project dated 31 August 2012 and agreed between the Borrower through the Project Executing Agency and ADB, as updated from time to time in accordance with the Consulting Guidelines, and other arrangements agreed with ADB;

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

(q) "Reflow Account" means a separate and dedicated account to be established by the PMU to be used for the purposes described in paragraphs 11 and 12 of Schedule 5 to the Loan Agreement.

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 thirteen million one hundred seventy-one thousand Special Drawing Rights (SDR 13,171,000).

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 15 April and 15 October 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 cause the proceeds of the Loan to be applied 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 Consulting Services shall be made only on account of expenditures relating to:

(a) 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) 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 2019 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, including on the procedures for the imprest account 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 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 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 of the Borrower 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) 636-2331.

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 impact of the Project shall be increased private sector investment in infrastructure. The outcome of the Project shall be an improved capacity of the Borrower to catalyze PPPs and infrastructure investments.

2. The Project shall comprise of the following Parts:

Part 1: Strengthened PPP Enabling Framework and Institutional Capacity

Under this Part, the Project shall facilitate the establishment of a central PPP unit that shall act as the focal point for the PPP activities of the Borrower, including the issuance of implementing rules and regulations for PPP and building institutional capacity.

Part 2: Institutional Mechanism for Bankable PPP projects

Under this Part, the Project shall establish PDF that shall fund the preparation of well-structured PPP projects.

3. The Project includes the provision of consulting services. The Project is expected to be completed by 31 December 2018.

SCHEDULE 2

Amortization Schedule

(Public-Private Partnership Support Project)

Date Payment Due	Payment of Principal (expressed in Special Drawing Rights)*
15-Apr-2021	274,396
15-Oct-2021	274,396
15-Apr-2022	274,396
15-Oct-2022	274,396
15-Apr-2023	274,396
15-Oct-2023	274,396
15-Apr-2024	274,396
15-Oct-2024	274,396
15-Apr-2025	274,396
15-Oct-2025	274,396
15-Apr-2026	274,396
15-Oct-2026	274,396
15-Apr-2027	274,396
15-Oct-2027	274,396
15-Apr-2028	274,396
15-Oct-2028	274,396
15-Apr-2029	274,396
15-Oct-2029	274,396
15-Apr-2030	274,396
15-Oct-2030	274,396
15-Apr-2031	274,396
15-Oct-2031	274,396
15-Apr-2032	274,396
15-Oct-2032	274,396
15-Apr-2033	274,396
15-Oct-2033	274,396
15-Apr-2034	274,396
15-Oct-2034	274,396
15-Apr-2035	274,396
15-Oct-2035	274,396
15-Apr-2036	274,396
15-Oct-2036	274,396
15-Apr-2037	274,396
15-Oct-2037	274,396
15-Apr-2038	274,396
15-Oct-2038	274,396
15-Apr-2039	274,396
15-Oct-2039	274,396

Schedule 2

15-Apr-2040	274,396
15-Oct-2040	274,396
15-Apr-2041	274,396
15-Oct-2041	274,396
15-Apr-2042	274,396
15-Oct-2042	274,396
15-Apr-2043	274,396
15-Oct-2043	274,396
15-Apr-2044	274,396
15-Oct-2044	274,388
TOTAL	**13,171,000**

* 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.)

Percentages of ADB Financing

2. Except as ADB may otherwise agree, each item of expenditure shall be financed out of the proceeds of the Loan on the basis of the percentages 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.

Retroactive Financing

5. Withdrawals from the Loan Account may be made for reimbursement of eligible expenditures incurred under the Project before the Effective Date, but not earlier than 12 months before the date of this Loan Agreement in connection with consulting services for the preparation of pre-feasibility study, full feasibility study and transaction advisory services, subject to a maximum amount equivalent to 20% of the Loan amount.

Attachment to Schedule 3

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Public-Private Partnership Support Project)				
CATEGORY				**ADB FINANCING**
Number	**Item**	**Total Amount Allocated for ADB Financing (SDR)**		**Percentage and Basis for Withdrawal from the Loan Account**
		Category	**Subcategory**	
1	Consulting Services	13,171,000		
1A	PDF Technical Team – International Consultants		1,317,000	100% of total expenditure claimed
1B	Project Development		11,854,000	100% of total expenditure claimed
	Total	13,171,000		

SCHEDULE 4

Procurement of Consulting Services

General

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

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

Consulting Services

3. 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.

4. 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: Consultants' Qualifications Selection for (a) prequalification of firms for feasibility study and transaction advisory; and (b) pre-feasibility studies.

Industrial or Intellectual Property Rights

5. 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

6. 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; Financial Matters

Implementation Arrangements

1. The Borrower 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 through the Project Executing Agency and ADB. In the event of any discrepancy between the PAM and this Loan Agreement, the provisions of this Loan Agreement shall prevail.

Inter-Ministerial Task Force

2. Within 1 month of the Effective Date, the Borrower shall restructure the existing IMTF, which shall require (a) the members to be at least the rank of a director general; and (b) the chair to be at least the rank of a vice minister.

Selection Criteria

3. Within 3 months of the Effective Date, the Borrower and ADB shall have agreed on the selection criteria for PPP investment projects to be eligible for funding under the PDF.

PPP Office

4. The Borrower shall allocate the necessary budget to support the establishment and operation of a PPP Office.

PDF Operations

5. The Borrower shall allocate budget in the amount of $2,000,000 to be disbursed over a period of 5 years to support the establishment and operation of the PDF and capacity building on PPP.

6. Within 12 months of the Effective Date, the Borrower shall have issued, to the satisfaction of ADB, the standard operating procedures for the utilization of funds through the PDF.

7. Within 18 months of the Effective Date, the Borrower shall have issued, in consultation with ADB, the guidelines on the implementation of PPP pilot projects.

8. The Borrower shall ensure that any request for funding under the PDF shall be submitted by an Authorized State Agency to MPI.

9. The Borrower shall ensure that the proceeds under the PDF shall only be utilized to (a) finance pre-feasibility studies of PPP investment projects that are at the initial stage of preparation; (b) finance feasibility studies and transaction advisory services for PPP investment projects that have been categorized as potential PPP projects that meet the selection criteria for funding under the PDF; (c) reimburse expenses that have been incurred

for the preparation of pre-feasibility studies, feasibility studies and engagement of transaction advisory services of PPP investment projects that (i) have been categorized as potential PPP projects; and (ii) have been approved by the Borrower as PPP investment projects eligible for reimbursement by the PDF; and (d) finance the consulting services that support the operations of the PDF.

10. The Borrower, through the PMU and the restructured IMTF, shall (a) undertake best efforts to promote the use of the PDF within the territory of the Borrower, through awareness raising among the donors and external parties on that provide funding for project preparation activities for PPP projects on the PDF structure and operations; and (b) ensure that during Project implementation period any changes to the financing arrangement under the PDF shall be agreed in prior by ADB.

Reflow Account

11. The Borrower shall ensure that upon successful bidding of a PPP project, the winning bidder shall (a) reimburse PDF for the expenses incurred in conducting, as applicable, the pre-feasibility studies, feasibility studies and transaction advisory services; and (b) pay a success fee in accordance with the standard operating procedures for the utilization of funds through the PDF to be agreed with ADB. The Borrower shall further ensure that the funds received from the winning bidder shall be deposited immediately and directly into the Reflow Account. The Borrower shall also ensure that any funds received from the Authorized State Agency to reimburse the PDF for expenses incurred in conducting, as applicable, the pre-feasibility studies, feasibility studies and transaction advisory services, shall be deposited immediately and directly into the Reflow Account.

12. The Borrower shall ensure that the proceeds in the Reflow Account shall be used to finance project preparation expenses of PPP projects.

PPP Framework

13. The Borrower shall undertake best efforts throughout Project implementation period to: (a) establish and strengthen the legal and regulatory framework for PPPs through the implementation of the PPP pilot program mandated under Decision 71/2010; (b) remove any inconsistencies under the prevailing laws and regulations related to the development of PPP projects; and (c) ensure that any PPP project tendered by an Authorized State Agency shall preclude any state owned enterprise owned by such agency from bidding for the project.

14. Within 4 months of the Effective Date, the Borrower shall have prepared, in consultation with ADB, a medium term institutional capacity building plan for PPP, in which the training process will include environmental and social safeguards and gender assessments.

PPP Incentives

15. The Borrower shall ensure that the bidding documents of a PPP project financed under the PDF and issued by the Authorized State Agency shall include information for the potential bidders on the incentives and support to be provided for the project in

accordance with Decision 71/2010, which may include but not limited to viability gap funding, tax incentives, tariff reductions, and guarantees.

Gender

16. The Borrower shall ensure that (a) the due diligence to be undertaken for the preparation of PPP projects funded under the PDF include gender and social analyses; and (b) the ensuing infrastructure PPP investment or project identifies corresponding actions to maximize gender benefits and mitigate any potential adverse gender and social impacts.

Safeguards

17. The Borrower shall ensure that the Project does not have any environmental, indigenous peoples or involuntary resettlement impacts, all within the meaning of ADB's Safeguard Policy Statement (2009). 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 ADB's Safeguard Policy Statement.

Governance and Anticorruption

18. The Borrower shall (i) 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 (ii) cooperate with any such investigation and extend all necessary assistance for satisfactory completion of such investigation.

19. The Borrower shall 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 executing and implementing agencies and all contractors, suppliers, consultants, and other service providers as they relate to the Project.