MINISTRY OF FINANCE

THE SOCIALIST REPUBLIC OF VIETNAM

Tokyo, December 16, 2023

Excellency,

I have the honour to acknowledge the receipt of Your Excellency's Note of today's date, which reads as follows:

"I have the honour to confirm the following understanding recently reached between the representatives of the Government of Japan and of the Government of the Socialist Republic of Viet Nam concerning a Japanese loan to be extended with a view to promoting the economic stabilisation and development efforts of the Socialist Republic of Viet Nam:

1. A loan in Japanese yen up to the amount of forty-one billion two hundred twenty-three million seven hundred thousand yen (¥41,223,700,000) (hereinafter referred to as "the Loan") will be extended, in accordance with the relevant laws and regulations of Japan, to the Government of the Socialist Republic of Viet Nam represented by the Ministry of Finance of the Socialist Republic of Viet Nam by the Japan International Cooperation Agency (hereinafter referred to as "JICA") for the purpose of implementing the Ho Chi Minh City Urban Railway Construction Project (Ben Thanh-Suoi Tien Section(Line 1))(IV) (hereinafter referred to as "the Project").

2. (1) The Loan will be made available by a loan agreement to be concluded between the Government of the Socialist Republic of Viet Nam represented by the Ministry of Finance of the Socialist Republic of Viet Nam and JICA. The terms and conditions of the Loan as well as the procedures for its utilization will be governed by the said loan agreement, within the scope of the present understanding, which will contain, inter alia, the following principles:

(a) The repayment period will be thirty (30) years after the grace period of ten (10) years;

(b) The rate of interest will be nought point one per cent (0.1%) per annum;

His Excellency
Mr. YAMADA Takio
Ambassador Extraordinary and Plenipotentiary of Japan
to the Socialist Republic of Viet Nam

(c) Notwithstanding sub-paragraph (b) above, where a part of the Loan is made available to cover payments to consultants of the Project, then the rate of interest of the said part will be nought point nought one per cent (0.01%) per annum; and

(d) The disbursement period will be ten (10) years after the date of coming into force of the said loan agreement.

(2) The loan agreement mentioned in sub-paragraph (1) above will be concluded after JICA is satisfied with the feasibility of the Project, including environmental and social considerations.

(3) The disbursement period mentioned in sub-paragraph (1)(d) above may be extended with the consent of the authorities concerned of the two Governments.

3. (1) The Loan will be made available to cover payments already made and/or to be made by the Vietnamese executing agency to suppliers, contractors and/or consultants of eligible source countries under such contracts as may be entered into between them for purchases of products and/or services required for the implementation of the Project, provided that such purchases are made in such eligible source countries for products produced in and/or services supplied from those countries.

(2) The scope of eligible source countries mentioned in sub-paragraph (1) above shall be agreed upon between the authorities concerned of the two Governments.

(3) A part of the Loan may be used to cover eligible local currency requirements for the implementation of the Project.

4. The Government of the Socialist Republic of Viet Nam shall ensure that the products and/or services mentioned in sub-paragraph (1) of paragraph 3 are procured in accordance with the guidelines for procurement of JICA, which set forth, inter alia, the procedures of international competitive bidding to be followed except where such procedures are inapplicable or inappropriate.

5. With regard to the shipping and marine insurance of the products purchased under the Loan, the Government of the Socialist Republic of Viet Nam shall refrain from imposing any restrictions that may hinder

fair and free competition among the shipping and marine insurance companies.

6. Japanese nationals whose services may be required in the Socialist Republic of Viet Nam in connection with the supply of the products and/or services mentioned in sub-paragraph (1) of paragraph 3 shall be accorded, in accordance with the relevant laws of the Socialist Republic of Viet Nam, such facilities as may be necessary for their entry into the Socialist Republic of Viet Nam and stay therein for the performance of their work.

7. (1) The Government of the Socialist Republic of Viet Nam shall exempt JICA from all fiscal levies and taxes imposed in the Socialist Republic of Viet Nam on and/or in connection with the Loan as well as interest accruing therefrom.

(2) The Government of the Socialist Republic of Viet Nam shall ensure that import tax, value added tax, environmental protection tax and special consumption tax imposed in the Socialist Republic of Viet Nam with respect to the import of materials and equipment procured for the Project by the Vietnamese executing agency to duly constitute the value of the Project, are borne by the said agency, except for the case of materials and equipment imported by suppliers, contractors and/or consultants to implement the Project.

8. The Government of the Socialist Republic of Viet Nam shall take necessary measures:

(a) to ensure that the Loan is used properly and exclusively for the Project, and is not used for military purposes;

(b) to ensure and maintain the safety of persons engaged in the implementation of the Project and of the general public of the Socialist Republic of Viet Nam in constructing the facilities under the Loan and in using such facilities; and

(c) to ensure that the facilities constructed under the Loan are maintained and used properly and effectively for the purpose prescribed in the present understanding, and are not used for military purposes.

9. While ensuring fair treatment of sources of information and data, the Government of the Socialist Republic of Viet Nam shall, upon request, furnish the

Government of Japan and JICA with:

(a) information and data concerning the progress of the implementation of the Project; and

(b) any other information, including information on corrupt practice, related to the Project.

10. The two Governments shall consult with each other with respect to any matter that may arise from or in connection with the present understanding.

I have further the honour to propose that this Note and your Note in reply confirming on behalf of the Government of the Socialist Republic of Viet Nam the foregoing understanding shall constitute an agreement between the two Governments, which shall enter into force on the date of your Note in reply."

I have further the honour to confirm on behalf of the Government of the Socialist Republic of Viet Nam the foregoing understanding and to agree that Your Excellency's Note and this Note in reply shall constitute an agreement between the two Governments, which shall enter into force on the date of this Note in reply.

I avail myself of this opportunity to extend to Your Excellency the assurance of my highest consideration.

Le Tan Can
Deputy Minister of Finance
of the Socialist Republic
of Viet Nam

Tokyo, December 16, 2023

Sir,

I have the honour to confirm the following understanding recently reached between the representatives of the Government of Japan and of the Government of the Socialist Republic of Viet Nam concerning a Japanese loan to be extended with a view to promoting the economic stabilisation and development efforts of the Socialist Republic of Viet Nam:

1. A loan in Japanese yen up to the amount of forty-one billion two hundred twenty-three million seven hundred thousand yen (¥41,223,700,000) (hereinafter referred to as "the Loan") will be extended, in accordance with the relevant laws and regulations of Japan, to the Government of the Socialist Republic of Viet Nam represented by the Ministry of Finance of the Socialist Republic of Viet Nam by the Japan International Cooperation Agency (hereinafter referred to as "JICA") for the purpose of implementing the Ho Chi Minh City Urban Railway Construction Project (Ben Thanh-Suoi Tien Section(Line 1))(IV) (hereinafter referred to as "the Project").

2. (1) The Loan will be made available by a loan agreement to be concluded between the Government of the Socialist Republic of Viet Nam represented by the Ministry of Finance of the Socialist Republic of Viet Nam and JICA. The terms and conditions of the Loan as well as the procedures for its utilization will be governed by the said loan agreement, within the scope of the present understanding, which will contain, inter alia, the following principles:

(a) The repayment period will be thirty (30) years after the grace period of ten (10) years;

(b) The rate of interest will be nought point one per cent (0.1%) per annum;

Mr. Le Tan Can
Deputy Minister of Finance of
the Socialist Republic of Viet Nam

(c) Notwithstanding sub-paragraph (b) above, where a part of the Loan is made available to cover payments to consultants of the Project, then the rate of interest of the said part will be nought point nought one per cent (0.01%) per annum; and

(d) The disbursement period will be ten (10) years after the date of coming into force of the said loan agreement.

(2) The loan agreement mentioned in sub-paragraph (1) above will be concluded after JICA is satisfied with the feasibility of the Project, including environmental and social considerations.

(3) The disbursement period mentioned in sub-paragraph (1)(d) above may be extended with the consent of the authorities concerned of the two Governments.

3. (1) The Loan will be made available to cover payments already made and/or to be made by the Vietnamese executing agency to suppliers, contractors and/or consultants of eligible source countries under such contracts as may be entered into between them for purchases of products and/or services required for the implementation of the Project, provided that such purchases are made in such eligible source countries for products produced in and/or services supplied from those countries.

(2) The scope of eligible source countries mentioned in sub-paragraph (1) above shall be agreed upon between the authorities concerned of the two Governments.

(3) A part of the Loan may be used to cover eligible local currency requirements for the implementation of the Project.

4. The Government of the Socialist Republic of Viet Nam shall ensure that the products and/or services mentioned in sub-paragraph (1) of paragraph 3 are procured in accordance with the guidelines for procurement of JICA, which set forth, inter alia, the procedures of international competitive bidding to be followed except where such procedures are inapplicable or inappropriate.

5. With regard to the shipping and marine insurance of the products purchased under the Loan, the Government of the Socialist Republic of Viet Nam shall refrain from imposing any restrictions that may hinder fair and free competition among the shipping and marine insurance companies.

6. Japanese nationals whose services may be required in the Socialist Republic of Viet Nam in connection with the supply of the products and/or services mentioned in sub-paragraph (1) of paragraph 3 shall be accorded, in accordance with the relevant laws of the Socialist Republic of Viet Nam, such facilities as may be necessary for their entry into the Socialist Republic of Viet Nam and stay therein for the performance of their work.

7. (1) The Government of the Socialist Republic of Viet Nam shall exempt JICA from all fiscal levies and taxes imposed in the Socialist Republic of Viet Nam on and/or in connection with the Loan as well as interest accruing therefrom.

(2) The Government of the Socialist Republic of Viet Nam shall ensure that import tax, value added tax, environmental protection tax and special consumption tax imposed in the Socialist Republic of Viet Nam with respect to the import of materials and equipment procured for the Project by the Vietnamese executing agency to duly constitute the value of the Project, are borne by the said agency, except for the case of materials and equipment imported by suppliers, contractors and/or consultants to implement the Project.

8. The Government of the Socialist Republic of Viet Nam shall take necessary measures:

(a) to ensure that the Loan is used properly and exclusively for the Project, and is not used for military purposes;

(b) to ensure and maintain the safety of persons engaged in the implementation of the Project and of the general public of the Socialist Republic of Viet Nam in constructing the facilities under the Loan and in using such facilities; and

(c) to ensure that the facilities constructed under the Loan are maintained and used properly and effectively for the purpose prescribed in the present understanding, and are not used for military purposes.

9. While ensuring fair treatment of sources of information and data, the Government of the Socialist Republic of Viet Nam shall, upon request, furnish the Government of Japan and JICA with:

(a) information and data concerning the progress of the implementation of the Project; and

(b) any other information, including information on corrupt practice, related to the Project.

10. The two Governments shall consult with each other with respect to any matter that may arise from or in connection with the present understanding.

I have further the honour to propose that this Note and your Note in reply confirming on behalf of the Government of the Socialist Republic of Viet Nam the foregoing understanding shall constitute an agreement between the two Governments, which shall enter into force on the date of your Note in reply.

I avail myself of this opportunity to extend to you the assurance of my high consideration.

小田滝雄

YAMADA Takio
Ambassador Extraordinary and
Plenipotentiary of Japan
to the Socialist Republic
of Viet Nam

Record of Discussions

In connection with the Exchange of Notes exchanged between the Government of the Socialist Republic of Viet Nam and the Government of Japan dated December 16, 2023, concerning a Japanese loan to be extended for the purpose of contributing to the implementation of the Ho Chi Minh City Urban Railway Construction Project (Ben Thanh-Suoi Tien Section(Line 1))(IV) (hereinafter referred to as "the Exchange of Notes"), the representatives of the Vietnamese Delegation and of the Japanese Delegation wish to record the following:

1. With regard to sub-paragraph (1) of paragraph 3 of the Exchange of Notes, paragraph 1 of the Japanese Note Verbale No.JD:136/2023 dated December 21, 2023, and the Vietnamese Note Verbale No.83/BTC-QLN dated December 25, 2023, it was a shared view of the two Delegations that:

(a) Japanese suppliers and contractors mean Japanese nationals or juridical persons incorporated and registered in Japan, and which have their appropriate facilities for producing or providing goods and services in Japan and actually conduct their business there;

(b) Japanese consultants mean Japanese nationals or juridical persons controlled by Japanese nationals;

(c) notwithstanding sub-paragraphs (a) and (b) above, in cases where one or more suppliers, contractors or consultants of the Socialist Republic of Viet Nam form a joint venture with Japanese ones, such a joint venture will be regarded as a Japanese supplier, contractor or consultant provided that the lead partner of the said joint venture is a Japanese supplier, contractor or consultant and that the total share of work of Japanese ones in the said joint venture is more than fifty per cent (50%);

(d) notwithstanding sub-paragraph (a) above, in cases where a subsidiary incorporated in a country or region other than Japan is included in the scope of consolidation and factored into the aggregated accounting figure of a consolidated financial statement of a Japanese company made in accordance with the Financial Instruments and Exchange Law (Law No. 25 of 1948) of Japan and the related ministerial ordinances, such a subsidiary will be regarded as a Japanese supplier or contractor; and

(e) notwithstanding sub-paragraph (a) above, in cases where a Japanese company forms a joint venture as the lead partner with one or more companies affiliated with other Japanese companies and registered in a country or region other than Japan, such a joint venture will be regarded as a Japanese supplier or contractor, in cases:

(i) it is foreseen that there will be no potential bidder before the publication of the bid;

(ii) no bidder passes to the technical or financial evaluation of the bid; or

(iii) the contract is not signed with the bidder in the end of the contract negotiations, and the Government of Japan confirms the relaxation of the terms of the STEP.

2. With regard to sub-paragraph (1) of paragraph 3 of the Exchange of Notes, the representative of the Japanese Delegation stated that:

(1) products procured from a Vietnamese manufacturing company invested in by one or more Japanese companies will be regarded as products procured from Japan, if they meet the following:

(a) not less than ten per cent (10%) of the shares of the Vietnamese manufacturing company are held by a Japanese company; and

(b) the proportion of the shares held by the Japanese company mentioned in (a) above (or the company having the largest share among Japanese companies if more than one Japanese company meets the condition stated in (a) above) is the same as or greater than that of the shares held by any company of a third country or region.

(2) products procured from a manufacturing company invested in by one or more Japanese companies and located in one of the developing countries and territories listed in the List of Recipients of Official Development Assistance approved by the Development Assistance Committee of the Organization for Economic Co-operation and Development other than the Socialist Republic of Viet Nam, will be regarded as products procured from Japan, if they meet the following:

(a) not less than one third (1/3) of the shares of the manufacturing company are held by a Japanese company; and

(b) the proportion of the shares held by the Japanese company mentioned in (a) above is the same as or greater than that of the shares held by any company of a country or region other than Japan and the country or the territory where the manufacturing company is located.

(3) products procured from a manufacturing company in a developed country or region other than Japan will be regarded as products procured from Japan if it is a subsidiary included in the scope of consolidation and factored into the aggregated accounting figure of a consolidated financial statement of a Japanese company made in accordance with the Financial Instruments and Exchange Law (Law No. 25 of 1948) of Japan and the related ministerial ordinances.

(4) major component(s) of products for ultimate use manufactured in Japan or by a consolidated subsidiary of Japanese companies in a country or region other than Japan, will be regarded as products procured from Japan, regardless of the nationality of the companies which carry out final assembly or final refinement/processing, in case:

(a) it is foreseen that there will be no or one potential bidder before the publication of the bid;

(b) no bidder passes to the technical or financial evaluation of the bid; or

(c) the contract is not signed with the bidder in the end of the contract negotiations.

3. With regard to paragraph 2 of the Japanese Note Verbale mentioned in paragraph 1 above, it was a shared view of the two Delegations that:

(a) any services provided by a company of a country or region other than Japan which forms a joint venture with a Japanese company will not be regarded as services provided by a Japanese company; and

(b) services provided by a subsidiary in a country or region other than Japan included in the scope of consolidation and factored into the aggregated accounting figure of a consolidated financial statement of a Japanese company made in accordance with the Financial Instruments and Exchange Law (Law No. 25 of 1948) of Japan and the related ministerial ordinances will be regarded as services provided by a Japanese company.

4. With regard to sub-paragraph (1) of paragraph 3 of the Exchange of Notes, the representative of the Japanese Delegation stated that the loan mentioned in paragraph 1 of the Exchange of Notes (hereinafter referred to as "the Loan") may be made available to cover payments already made and/or to be made since May 28, 2016, for purchase of the products and/or services referred to in the said sub-paragraph (1) of paragraph 3.

5. With regard to sub-paragraph (3) of paragraph 3 of the Exchange of Notes concerning the financing of eligible local currency requirements for the implementation of the project mentioned in paragraph 1 of the Exchange of Notes (hereinafter referred to as "the Project"), the representative of the Japanese Delegation stated that:

(a) such local currency requirements as general administrative expenses, interest during construction, taxes and duties, expenses connected to offices, remuneration to employees of the executing agency and housing, not directly related to the implementation of the Project, as well as purchase of land properties, compensation and the like, however, will not be considered as eligible for financing under the Loan; and

(b) the procurement of products and/or services will be made in accordance with the procedures of competitive bidding except where such procedures are inapplicable or inappropriate.

6. With regard to the Loan, the representative of the Japanese Delegation stated that any financial requirements of the Project exceeding the amount of the Loan under the loan agreement mentioned in sub-paragraph (1) of paragraph 2 of the Exchange of Notes will be duly met by the Government of the Socialist Republic of Viet Nam to assure the smooth implementation of the Project.

7. With regard to sub-paragraph (3) of paragraph 2 of the Exchange of Notes, the representative of the Vietnamese Delegation stated that prior to exchanging notes verbales on extending the disbursement period with the Japanese side, the authorities concerned of the Vietnamese side will obtain approval from the Government of the Socialist Republic of Viet Nam.

8. With regard to sub-paragraph (2) of paragraph 7 of the Exchange of Notes, the representative of the Vietnamese Delegation stated that the materials and equipment are procured by the Vietnamese executing agency to duly constitute the value of the Project based on technology design, construction design, construction cost estimate and project investment decision approved by the competent authority of the Vietnamese side.

9. With regard to paragraph 8 of the Exchange of Notes, the representative of the Japanese Delegation stated that:

(a) the necessary measures referred to in the said paragraph include measures preventing any offer, gift or payment, consideration or benefit which would be construed as a corrupt practice in the Socialist Republic of Viet Nam from being made as an inducement to or reward for the award of the contracts referred to in sub-paragraph (1) of paragraph 3 of the Exchange of Notes; and

(b) the Government of the Socialist Republic of Viet Nam will take all necessary measures to enable and facilitate ex-post procurement audit to be carried out by independent auditors which the Japan International Cooperation Agency (hereinafter referred to as "JICA") will designate and to be paid at JICA's expense, in order to ensure fairness and competitiveness of the procurement process.

10. With regard to paragraph 9 of the Exchange of Notes, the representative of the Vietnamese Delegation stated that in the case that the Japanese side requests the Vietnamese side to furnish information that is within the scope of state secrets according to the Law on Protection of State Secrets, the Vietnamese side may provide such information to the Japanese side based on approval from the competent authority of the Vietnamese side.

11. With regard to paragraph 9 of the Exchange of Notes, the representative of the Japanese Delegation stated that the Government of Japan will, in accordance with its laws and regulations, maintain the confidentiality of information and data provided in confidence by the Government of the Socialist Republic of Viet Nam in accordance with the Exchange of Notes.

12. The representative of the Vietnamese Delegation stated that the Vietnamese Delegation had no objection to the above-mentioned statements by the representative of the Japanese Delegation.

Hanoi, December 25, 2023

Hoang Hai
Deputy General Director,
Department of Debt Management
and External Finance
Ministry of Finance of the
Socialist Republic of Viet Nam

WATANABE Shige
Deputy Chief of Mission,
Minister,
Embassy of Japan
in Viet Nam

MINISTRY OF FINANCE

SOCIALIST REPUBLIC OF VIETNAM

No: 83 /BTC-QLN

The Ministry of Finance of the Socialist Republic of Viet Nam presents its compliments to the Embassy of Japan in the Socialist Republic of Viet Nam and has the honour to acknowledge the receipt of the latter's Note Verbale No.JD:136/2023 dated December 21, 2023.

The Ministry of Finance has further the honour to inform the Embassy that the proposal set forth in the said Note Verbale is acceptable to the Government of the Socialist Republic of Viet Nam.

The Ministry of Finance of the Socialist Republic of Viet Nam avails itself of this opportunity to renew to the Embassy of Japan in the Socialist Republic of Viet Nam the assurance of its highest consideration./.

Ha Noi, December 25th, 2023

To: **Embassy of Japan in Viet Nam**

EMBASSY OF JAPAN
HANOI
No.JD:136/2023

The Embassy of Japan in the Socialist Republic of Viet Nam presents its compliments to the Ministry of Finance of the Socialist Republic of Viet Nam and has the honour to refer to sub-paragraph (2) of paragraph 3 of the Exchange of Notes between the Government of Japan and the Government of the Socialist Republic of Viet Nam dated December 16, 2023, concerning a Japanese loan to be extended for the purpose of contributing to the implementation of the Ho Chi Minh City Urban Railway Construction Project (Ben Thanh-Suoi Tien Section(Line 1))(IV).

The Embassy has further the honour to propose that the scope of eligible source countries mentioned in the said sub-paragraph of the said Exchange of Notes will be as follows:

1. The eligible source country is Japan.

2. Notwithstanding paragraph 1 above, products and/or services excluding consulting services procured from countries other than Japan will be eligible for financing under the Loan for the project mentioned in paragraph 1 of the said Exchange of Notes (hereinafter referred to as "the Loan"), if the combined costs of products procured from Japan and services supplied by Japanese companies excluding consulting services are not less than thirty per cent (30%) of the total price of the contract(s) of products and services excluding consulting services required for the implementation of the project mentioned in paragraph 1 of the said Exchange of Notes.

3. Notwithstanding paragraph 1 above, consulting services partly supplied by consultants of countries other than Japan will be eligible for financing under the Loan if the nationality of the prime contractor(s) of the said consulting services is Japanese.

The Embassy of Japan in the Socialist Republic of Viet Nam avails itself of this opportunity to renew to the Ministry of Finance of the Socialist Republic of Viet Nam the assurance of its highest consideration.

Hanoi, December 21, 2023



To: Ministry of Finance,
The Socialist Republic of Viet Nam