

PROJECT AGREEMENT

(Comprehensive Socioeconomic Urban Development Project in
Viet Tri, Hung Yen, and Dong Dang)

between

ASIAN DEVELOPMENT BANK

and

PHU THO PROVINCIAL PEOPLE'S COMMITTEE
HUNG YEN PROVINCIAL PEOPLE'S COMMITTEE
LANG SON PROVINCIAL PEOPLE'S COMMITTEE

DATED 9 March 2012

PROJECT AGREEMENT

PROJECT AGREEMENT dated 9 March 2012 among ASIAN DEVELOPMENT BANK ("ADB") and PHU THO PROVINCIAL PEOPLE'S COMMITTEE, HUNG YEN PROVINCIAL PEOPLE'S COMMITTEE and LANG SON PROVINCIAL PEOPLE'S COMMITTEE ("Project Executing Agencies").

WHEREAS

(A) by a Loan Agreement of even date herewith between the Socialist Republic of Viet Nam ("Borrower") and ADB, ADB has agreed to make to the Borrower a loan in various currencies equivalent to forty five million seventeen thousand Special Drawing Rights (SDR 45,017,000) on the terms and conditions set forth in the Loan Agreement, but only on the condition that the proceeds of the loan be made available, as a grant, to the Project Executing Agencies and that the Project Executing Agencies agree to undertake certain obligations towards ADB set forth herein; and

(B) The Project Executing Agencies, in consideration of ADB entering into the Loan Agreement with the Borrower, have agreed to undertake the obligations set forth herein;

NOW THEREFORE the parties hereto agree as follows:

ARTICLE I

Definitions

Section 1.01. Wherever used in this Project Agreement, unless the context otherwise requires, the several terms defined in the Loan Agreement and in the Loan Regulations (as so defined) have the respective meanings therein set forth.

ARTICLE II

Particular Covenants

Section 2.01. (a) The Project Executing Agencies shall carry out the Project with due diligence and efficiency, and in conformity with sound applicable technical, financial, business, environmental, and socioeconomic urban development practices.

(b) In the carrying out of the Project and operation of the Project facilities, the Project Executing Agencies shall perform all obligations set forth in the Loan Agreement to the extent that they are applicable to the Project Executing Agencies.

Section 2.02. The Project Executing Agencies shall make available, promptly as needed, the funds, facilities, services, land and other resources as required, in addition to the proceeds of the Loan, for the carrying out of the Project.

Section 2.03. (a) In the carrying out of the Project, the Project Executing Agencies shall employ competent and qualified consultants and contractors, acceptable to ADB, to an extent and upon terms and conditions satisfactory to ADB.

(b) Except as ADB may otherwise agree, the Project Executing Agencies shall procure all items of expenditures to be financed out of the proceeds of the Loan in accordance with the provisions of Schedule 4 to the Loan Agreement. ADB may refuse to finance a contract where any such item has not been procured under procedures substantially in accordance with those agreed between the Borrower and ADB or where the terms and conditions of the contract are not satisfactory to ADB.

Section 2.04. The Project Executing Agencies shall carry out the Project in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to ADB. The Project Executing Agencies shall furnish, or cause to be furnished, to ADB, promptly after their preparation, such plans, design standards, specifications and work schedules, and any material modifications subsequently made therein, in such detail as ADB shall reasonably request.

Section 2.05. (a) The Project Executing Agencies shall take out and maintain with responsible insurers, or make other arrangements satisfactory to ADB for, insurance against such risks and in such amounts as shall be consistent with sound practice.

(b) Without limiting the generality of the foregoing, the Project Executing Agencies undertake to insure, or cause to be insured, the Goods to be imported for the Project against hazards incident to the acquisition, transportation and delivery thereof to the place of use or installation, and for such insurance any indemnity shall be payable in a currency freely usable to replace or repair such Goods.

Section 2.06. The Project Executing Agencies shall maintain, or cause to be maintained by their respective PIUs, records and accounts adequate to identify the items of expenditure financed out of the proceeds of the Loan, to disclose the use thereof in the Project, to record the progress of the Project (including the cost thereof) and to reflect, in accordance with consistently maintained sound accounting principles, their operations and financial condition.

Section 2.07. (a) ADB and the Project Executing Agencies shall cooperate fully to ensure that the purposes of the Loan will be accomplished.

(b) The Project Executing Agencies shall promptly inform ADB of any condition which interferes with, or threatens to interfere with, the progress of the Project, the performance of their obligations under this Project Agreement, or the accomplishment of the purposes of the Loan.

(c) ADB and the Project Executing Agencies shall from time to time, at the request of any party, exchange views through their representatives with regard to any matters relating to the Project, the Project Executing Agencies and the Loan.

Section 2.08. (a) The Project Executing Agencies shall furnish to ADB all such reports and information as ADB shall reasonably request concerning (i) the Loan and the expenditure of the proceeds thereof; (ii) the items of expenditure financed out of such proceeds; (iii) the Project; (iv) the administration, operations and financial condition of each Project Executing Agency; and (v) any other matters relating to the purposes of the Loan.

(b) Without limiting the generality of the foregoing, the Project Executing Agencies shall furnish to ADB periodic reports on the execution of the Project and on the operation and management of the Project facilities. Such reports shall be submitted in such form and in such detail and within such a period as ADB shall reasonably request, and shall indicate, among other things, progress made and problems encountered during the period under review, steps taken or proposed to be taken to remedy these problems, and proposed program of activities and expected progress during the following period.

(c) Promptly after physical completion of the Project, but in any event not later than 3 months thereafter or such later date as ADB may agree for this purpose, the Project Executing Agencies shall prepare and furnish to ADB a report, in such form and in such detail as ADB shall reasonably request, on the execution and initial operation of the Project, including its cost, the performance by the Project Executing Agencies of their obligations under this Project Agreement and the accomplishment of the purposes of the Loan.

Section 2.09. (a) Each Project Executing Agency shall cause their respective PIUs (as described in paragraph 6 (a) of Schedule 3 to the Loan Agreement) to (i) maintain separate accounts for the Project and for its overall operations; (ii) have such accounts and related financial statements (balance sheet, statement of income and expenses, and related statements) consolidated and audited annually, in accordance with appropriate auditing standards consistently applied, by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB; and (iii) furnish to ADB, promptly after their preparation but in any event not later than 6 months after the close of the fiscal year to which they relate, certified copies of such audited accounts and financial statements and the report of the auditors relating thereto (including the auditors' opinion on the use of the Loan proceeds and compliance with the financial covenants of the Loan Agreement and the Project Agreement as well as on the use of the procedures for imprest account(s) and statement of expenditures), all in the English language. Each Project Executing Agency shall cause their respective PIUs to furnish to ADB such further information concerning such accounts and financial statements and the audit thereof as ADB shall from time to time reasonably request.

(b) Each Project Executing Agency shall cause their respective PIUs to enable ADB, upon ADB's request, to discuss their financial statements and financial affairs from time to time with the auditors appointed by such PIU pursuant to subsection (a) hereinabove, and shall authorize and require any representative of such auditors to participate in any such discussions requested by ADB, provided that any such discussion shall be conducted only in the presence of an authorized officer of such PIU unless such PIU shall otherwise agree.

(c) The Borrower shall cause the Project Executing Agencies to ensure that (i) their respective PIUs maintain separate accounts for the Project; and (ii) SGIA holders submit to the relevant FGIA holder: (1) full supporting documents for liquidation and

replenishment of the SGIAs; and (2) annual financial statements (balance sheet, statement of income and expenses, and related statements) for consolidated audit and further submission to ADB.

Section 2.10. The Project Executing Agencies shall enable ADB's representatives to inspect the Project, the Goods and Works and any relevant records and documents.

Section 2.11. (a) Each Project Executing Agency shall, promptly as required, take all action within its powers to maintain its corporate existence, to carry on its operations, and to acquire, maintain and renew all rights, properties, powers, privileges and franchises which are necessary in the carrying out of the Project or in the conduct of its operations.

(b) Each Project Executing Agency shall at all times conduct its operations in accordance with sound applicable technical, financial, business, environmental, socioeconomic urban development and operational practices, and under the supervision of competent and experienced management and personnel.

(c) Each Project Executing Agency shall at all times operate and maintain its plants, equipment and other property, and from time to time, promptly as needed, make all necessary repairs and renewals thereof, all in accordance with sound applicable technical, financial, business, environmental, socioeconomic urban development, operational and maintenance practices.

Section 2.12. Except as ADB may otherwise agree, the Project Executing Agencies shall not sell, lease or otherwise dispose of any of their assets which shall be required for the efficient carrying on of their operations or the disposal of which may prejudice their ability to perform satisfactorily any of their obligations under this Project Agreement.

Section 2.13. Except as ADB may otherwise agree, the Project Executing Agencies shall apply the proceeds of the Loan to the financing of expenditures on the Project in accordance with the provisions of the Loan Agreement and this Project Agreement, and shall ensure that all items of expenditures financed out of such proceeds are used exclusively in the carrying out of the Project.

ARTICLE III

Effective Date

Section 3.01. This Project Agreement shall come into force and effect on the date on which the Loan Agreement comes into force and effect. ADB shall promptly notify the Project Executing Agencies of such date.

Section 3.02. All the provisions of this Project Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the Loan Agreement.

ARTICLE IV**Miscellaneous**

Section 4.01. Any notice or request required or permitted to be given or made under this Project Agreement and any agreement between the parties contemplated by this Project Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand, mail or facsimile to the party to which it is required or permitted to be given or made at its address hereinafter specified, or at such other address as such party shall have designated by notice to the party giving such notice or making such request. The addresses so specified are:

For ADB

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

Facsimile Numbers:

(632) 636-2444
(632) 636-2018.

For the Project Executing Agencies

Phu Tho Provincial People's Committee
Tran Phu Road, Viet Tri City,
Phu Tho Province
Viet Nam

Facsimile Number:

(84-210) 3846816.

Hung Yen Provincial People's Committee
10 Chua Chuong Road,
Hung Yen City,
Hung Yen Province
Viet Nam

Facsimile Number:

(84-321) 3863932.

Lang Son Provincial People's Committee
2 Hung Vuong Road,
Chi Lang Ward, Lang Son City,
Lang Son Province
Viet Nam

Facsimile Number:

(84-25) 3812336.

Section 4.02. (a) Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Project Agreement or under Section 6.01 of the Loan Agreement by or on behalf of each Project Executing Agency may be taken or executed by its chairman or by such other person or persons as he or she shall so designate in writing notified to ADB.

(b) Each Project Executing Agency shall furnish to ADB sufficient evidence of the authority of each person who will act under subsection (a) hereinabove, together with the authenticated specimen signature of each such person.

Section 4.03. No delay in exercising, or omission to exercise, any right, power or remedy accruing to any party under this Project Agreement upon any default shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence in such default; nor shall the action of such party in respect of any default, or any acquiescence in any default, affect or impair any right, power or remedy of such party in respect of any other or subsequent default.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Project 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.

ASIAN DEVELOPMENT BANK

By 

TOMOYUKI KIMURA
Country Director
Viet Nam Resident Mission

PHU THO PROVINCIAL PEOPLE'S COMMITTEE

By 

HOANG DAN MAC
Chairman

HUNG YEN PROVINCIAL PEOPLE'S COMMITTEE

By 

DANG MINH NGOC
Vice Chairman

LANG SON PROVINCIAL PEOPLE'S COMMITTEE

By 

NGUYEN VAN BINH
Vice Chairman