
GRANT NUMBER 0365-VIE (EF)

PROJECT AGREEMENT
(Asian Clean Energy Fund)

(Energy Efficiency for Ho Chi Minh City Water Supply Project)

between

ASIAN DEVELOPMENT BANK

and

SAIGON WATER CORPORATION

DATED 26 MAY 2014

VIE 46265

PROJECT AGREEMENT

PROJECT AGREEMENT dated 26 May 2014 between ASIAN DEVELOPMENT BANK (“ADB”) and SAIGON WATER CORPORATION (“SAWACO”).

WHEREAS

(A) by a Grant Agreement of even date herewith between the Socialist Republic of Viet Nam (“Recipient”) and ADB, ADB has agreed to administer a grant of two million Dollars (\$2,000,000) from the Asian Clean Energy Fund under the Clean Energy Financing Partnership Facility (“Grant Agreement”), on the terms and conditions set forth in the Grant Agreement, but only on the condition that the proceeds of the Grant be made available to SAWACO and that SAWACO agrees to undertake certain obligations towards ADB as set forth in this Project Agreement; and

(B) SAWACO, in consideration of ADB entering into the Grant Agreement with the Recipient, has agreed to undertake the obligations set forth in this Project Agreement;

NOW THEREFORE the parties agree as follows:

ARTICLE I

Definitions

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

ARTICLE II

Particular Covenants

Section 2.01. (a) SAWACO shall carry out the Project with due diligence and efficiency, and in conformity with sound administrative, financial, engineering, environmental, social safeguards and energy practices.

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

Section 2.02. SAWACO shall make available, promptly as needed, the funds, facilities, services equipment, land and other resources which are required, in addition to the proceeds of the Grant, for the carrying out of the Project.

Section 2.03. (a) In the carrying out of the Project, SAWACO 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, all Goods and Consulting Services to be financed out of the proceeds of the Grant shall be procured in accordance with the provisions of Schedule 3 to the Grant Agreement. ADB may refuse to finance a contract where Goods or Consulting Services have not been procured under procedures substantially in accordance with those agreed between the Recipient and ADB or where the terms and conditions of the contract are not satisfactory to ADB.

Section 2.04. SAWACO shall carry out the Project in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to ADB. SAWACO 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) SAWACO shall take out and maintain with responsible insurers, or make other arrangements satisfactory to ADB, for insurance of the Project facilities to such extent and against such risks and in such amounts as shall be consistent with sound practice.

(b) Without limiting the generality of the foregoing, SAWACO undertakes to insure, or cause to be insured, the Goods and Consulting Services to be imported for the Project and to be financed out of the proceeds of the Grant 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 and Consulting Services.

Section 2.06. SAWACO shall maintain, or cause to be maintained, records and accounts adequate to identify the Goods and Consulting Services financed out of the proceeds of the Grant, to disclose the use thereof in the Project, to record the progress of the Project and to reflect, in accordance with consistently maintained sound accounting principles, its operations and financial condition.

Section 2.07. (a) ADB and SAWACO shall cooperate fully to ensure that the purposes of the Grant will be accomplished.

(b) SAWACO shall promptly inform ADB of any condition which interferes with, or threatens to interfere with, the progress of the Project, the performance of its obligations under this Project Agreement or the Subsidiary Grant Agreement, or the accomplishment of the purposes of the Grant.

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

Section 2.08. (a) SAWACO shall furnish to ADB all such reports and information as ADB shall reasonably request concerning: (i) the Grant and the expenditure of the proceeds thereof; (ii) the Goods and Consulting Services financed out of such proceeds; (iii)

the Project; (iv) the administration, operations and financial condition of SAWACO; and (v) any other matters relating to the purposes of the Grant.

(b) Without limiting the generality of the foregoing, SAWACO shall furnish to ADB quarterly 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 quarter under review, steps taken or proposed to be taken to remedy these problems, and proposed program of activities and expected progress during the following quarter.

(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, SAWACO 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 SAWACO of its obligations under this Project Agreement and the accomplishment of the purposes of the Grant.

Section 2.09. (a) SAWACO 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 for the Project 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 financial statements, use of the Loan proceeds and compliance with the financial covenants of the Loan Agreement as well as on the use of the procedures for imprest fund(s) 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 close of the fiscal year to which they relate, 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) In addition to annual audited financial statements referred to in paragraph (a) of this Section, SAWACO shall (i) provide its annual financial statements prepared in accordance with national accrual-based financing reporting standards acceptable to ADB; (ii) have its 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; and (iii) furnish to ADB, no later than 1 month after approval by the relevant authority, copies of such audited financial statements in the English language and such other information concerning these documents and the audit thereof as ADB shall from time to time reasonably request.

(d) SAWACO shall enable ADB, upon ADB's request, to discuss the financial statements for the Project and its financial affairs where they relate to the Project with the auditors appointed by SAWACO pursuant to subsections (a)(iii) and (c) 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 SAWACO, unless SAWACO shall otherwise agree.

Section 2.10. SAWACO shall enable ADB's representatives to inspect the Project, the Goods and Consulting Services financed out of the proceeds of the Grant all other plants, sites, properties and equipment of SAWACO, and any relevant records and documents.

Section 2.11. (a) SAWACO 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 business.

(b) SAWACO shall at all times conduct its business in accordance with sound administrative, financial, environmental, social safeguards and energy practices, and under the supervision of competent and experienced management and personnel.

(c) SAWACO 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 administrative, financial, engineering, environmental, social safeguards, energy, and maintenance and operational practices.

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

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

Section 2.14. SAWACO shall promptly notify ADB of any proposal to amend, suspend or repeal any provision of its Charter and shall afford ADB an adequate opportunity to comment on such proposal prior to taking any action thereon.

ARTICLE III

Effective Date; Termination

Section 3.01. This Project Agreement shall come into force and effect on the date on which the Grant Agreement shall come into force and effect. ADB shall promptly notify SAWACO of such date.

Section 3.02. This Project Agreement and all obligations of the parties hereunder shall terminate on a date 15 years after the date of this Project Agreement.

Section 3.03. All the provisions of this Project Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the Grant 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 or by mail, telegram, cable, telex, facsimile or radiogram 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

6 ADB Avenue
Mandaluyong City
1550 Metro Manila
Philippines

Facsimile Numbers:

+63 2 636-2444
+63 2 636-2336.

For SAWACO

No 1 Cong Truong Quoc Te, Ward 6, District 3
Ho Chi Minh City
Viet Nam

Facsimile Number:

+84 8 3 8 241644.

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 7.01 of the Grant Agreement by or on behalf of SAWACO may be taken or executed by its Managing Director or by such other person or persons as he shall so designate in writing notified to ADB.

(b) SAWACO shall furnish to ADB sufficient evidence of the authority of each person who will act under paragraph (a) of this Section, 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 either 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 and to be delivered at the principal office of ADB, as of the day and year first above written.

ASIAN DEVELOPMENT BANK



By _____
TOMOYUKI KIMURA
Country Director
Viet Nam Resident Mission

SAIGON WATER CORPORATION



By _____
TRAN DINH PHU
General Director