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LOAN NUMBER 8279-VIE (CTF)

LOAN NUMBER 3113-VIE (SF)

PROJECT AGREEMENT

(Sustainable Urban Transport for Ho Chi Minh City Mass Rapid Transit Line 2 Project)

between

ASIAN DEVELOPMENT BANK

and

HO CHI MINH CITY PEOPLE'S COMMITTEE

DATED 18 JULY 2014

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VIE 45200

## **PROJECT AGREEMENT**

PROJECT AGREEMENT dated 18 July 2014 between ASIAN DEVELOPMENT BANK (“ADB”) and HO CHI MINH CITY PEOPLE’S COMMITTEE (“HCMC PC”).

### **WHEREAS**

(A) by a Loan Agreement of even date herewith between Socialist Republic of Viet Nam (“Borrower”) and ADB (“Special Operations Loan Agreement”), ADB has agreed to make to the Borrower a loan (“Special Operations Loan”) of six million five hundred thirty thousand Special Drawing Rights (SDR6,530,000) on the terms and conditions set forth in the Special Operations Loan Agreement;

(B) by a Loan Agreement of an even date herewith between the Borrower and ADB (“CTF Loan Agreement”, and together with the Special Operations Loan Agreement, “Loan Agreements”), ADB, acting in its capacity as an implementing entity of CTF, has agreed to make to the Borrower a loan from the ADB Clean Technology Fund (“CTF Loan”, and together with the Special Operations Loan, “Loans”) of forty-eight million nine hundred fifty thousand Dollars (\$48,950,000) on the terms and conditions set forth in the CTF Loan Agreement;

(C) ADB has agreed to make the Loans only on the condition that the proceeds of the Loans be made available to HCMC PC and that HCMC PC agrees to undertake certain obligations towards ADB set forth herein; and

(D) HCMC PC, in consideration of ADB entering into the Loan Agreements with the Borrower, has agreed to undertake the obligations hereinafter set forth;

NOW THEREFORE the parties hereto agree as follows:

## **ARTICLE I**

### **Definitions**

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

(b) In addition to the terms referred to in subsection (a) hereinabove, the following term, wherever used in this Project Agreement, unless the context otherwise requires, have the following meaning: the expression “HCMC PC shall” means that HCMC PC shall act through UTMD1 to, or cause UTMD1 to, or ensure that UTMD1, undertake required responsibilities or perform specified obligations in this Project Agreement.

## ARTICLE II

### Particular Covenants

Section 2.01. (a) HCMC PC shall carry out the Project with due diligence and efficiency, and in conformity with sound applicable technical, financial, business, and development practices.

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

Section 2.02. HCMC PC shall make available, promptly as needed, and on terms and conditions acceptable to ADB, the funds, facilities, services, land and other resources as required, in addition to the proceeds of the Loans, for the carrying out of the Project.

Section 2.03. (a) In the carrying out of the Project, HCMC PC 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, HCMC PC shall procure all items of expenditures to be financed out of the proceeds of the Loans in accordance with the provisions of Schedule 4 to the Special Operations Loan Agreement and Schedule 5 to the CTF 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. HCMC PC shall carry out the Project in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to ADB. HCMC PC 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) HCMC PC 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, HCMC PC undertakes 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. HCMC PC shall maintain, or cause to be maintained, records and accounts adequate to identify the items of expenditure financed out of the proceeds of the Loans, 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, its operations and financial condition.

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

(b) HCMC PC 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, the Subsidiary Loan Agreement, the Loan Agreements, or the accomplishment of the purposes of the Loans.

(c) ADB and HCMC PC 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, HCMC PC and the Loans.

Section 2.08. (a) HCMC PC shall furnish to ADB all such reports and information as ADB shall reasonably request concerning (i) the Loans 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 HCMC PC; and (v) any other matters relating to the purposes of the Loans.

(b) Without limiting the generality of the foregoing, HCMC PC 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, HCMC PC 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 HCMC PC of its obligations under this Project Agreement, the Loan Agreements and the accomplishment of the purposes of the Loans.

Section 2.09. (a) HCMC PC shall cause UTMD1 to (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 for both Loans (which includes the auditors' opinion on the financial statements, use of the Loans proceeds and compliance with the financial covenants of the Loan Agreements as well as on the use of the procedures for imprest fund(s) and statement of expenditures, if such procedures are used) and management letters (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 reports and management letters, 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 opinions of the auditors on the financial statements within 30 days of the date of their receipt by posting them on ADB's website.

(c) HCMC PC shall and shall cause UTMD1 to enable ADB, upon ADB's request, to discuss the financial statements for the Project, HCMC PC, UTMD1 and their financial affairs where they relate to the Project with the auditors appointed by HCMC PC or UTMD1 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 HCMC PC or UTMD1, unless HCMC PC or UTMD1 shall otherwise agree.

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

Section 2.11. (a) HCMC PC shall and shall cause UTMD1 to, promptly as required, take all action within their powers to maintain their corporate existence, to carry on their 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 their operations.

(b) HCMC PC shall and shall cause UTMD1 at all times to conduct their operations in accordance with sound applicable technical, financial, business, development and operational practices, and under the supervision of competent and experienced management and personnel.

(c) HCMC PC shall and shall cause UTMD1 at all times to operate and maintain their 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, development, operational and maintenance practices.

Section 2.12. Except as ADB may otherwise agree, HCMC PC shall and shall cause UTMD1 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 or the Loan Agreements.

Section 2.13. Except as ADB may otherwise agree, HCMC PC shall apply the proceeds of the Loans to the financing of expenditures on the Project in accordance with the provisions of the Loan Agreements 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.

Section 2.14. Except as ADB may otherwise agree, HCMC PC shall duly perform all its obligations under the Subsidiary Loan Agreement, and shall not take, or concur in, any action which would have the effect of assigning, amending, abrogating or waiving any rights or obligations of the parties under the Subsidiary Loan Agreement.

Section 2.15. HCMC PC shall and shall cause UTMD1 to promptly notify ADB of any proposal to amend, suspend or repeal any provision of their constitutional documents, which, if implemented, could adversely affect the carrying out of the Project or the operation of the Project facilities. HCMC PC shall and shall cause UTMD1 to afford ADB an adequate opportunity to comment on such proposal prior to taking any affirmative 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 Loan Agreements have come into force and effect. ADB shall promptly notify HCMC PC of such date.

Section 3.02. This Project Agreement and all obligations of the parties hereunder shall terminate on the date on which the Loan Agreements shall have terminated in accordance with its terms.

Section 3.03. All the provisions of this Project Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the Loan Agreements.

### **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:

(63 2) 636-2444  
(63 2) 636- 2015.

For HCMC PC

Ho Chi Minh People's Committee  
86 Le Thanh Ton Street,  
District 1, HCMC

Facsimile Numbers:

(84 8) 382-96988  
(84 8) 382-95675

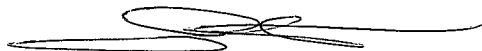
Section 4.02. (a) Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Project Agreement by or on behalf of HCMC PC may be taken or executed by its Chairperson or by such other person or persons as s/he shall so designate in writing notified to ADB.

(b) HCMC PC 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 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 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



HO CHI MINH CITY PEOPLE'S

  
\_\_\_\_\_  
NGUYEN HUU TIN  
Vice Chairman

Ho Chi Minh City People's Committee