

PROJECT AGREEMENT

(Viet Nam Water Sector Investment Program – Project 3)

between

ASIAN DEVELOPMENT BANK

and

BAC GIANG WATER SUPPLY AND SEWERAGE ONE MEMBER LIMITED COMPANY
CUA LO WATER SUPPLY ONE MEMBER LIMITED COMPANY
NGHE AN WATER SUPPLY ONE MEMBER LIMITED COMPANY
QUANG NAM WATER SUPPLY AND DRAINAGE JOINT STOCK COMPANY
SONG CHU ONE MEMBER LIMITED COMPANY
THAI HOA WATER SUPPLY ONE MEMBER LIMITED COMPANY
THAI NGUYEN WATER JOINT STOCK COMPANY

DATED 19 NOVEMBER 2015

PROJECT AGREEMENT

PROJECT AGREEMENT dated 19 November 2015 between ASIAN DEVELOPMENT BANK ("ADB") on the one part and BAC GIANG WATER SUPPLY AND SEWERAGE ONE MEMBER LIMITED COMPANY; CUA LO WATER SUPPLY ONE MEMBER LIMITED COMPANY; NGHE AN WATER SUPPLY ONE MEMBER LIMITED COMPANY; QUANG NAM WATER SUPPLY AND DRAINAGE JOINT STOCK COMPANY; SONG CHU ONE MEMBER LIMITED COMPANY; THAI HOA WATER SUPPLY ONE MEMBER LIMITED COMPANY; and THAI NGUYEN WATER JOINT STOCK COMPANY; ("WSCs") on the other part.

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 of one hundred forty-two million five hundred thousand Dollars (\$142,500,000) on the terms and conditions set forth in the Loan Agreement, but only on the condition that a portion of the proceeds of the loan be made available to the WSCs and that WSCs agree to undertake certain obligations towards ADB set forth herein; and

(B) the WSCs, 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 WSCs 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, the WSCs shall perform all obligations set forth in the Loan Agreement to the extent that they are applicable to the WSCs, and all obligations set forth in this Project Agreement.

Section 2.02. The WSCs 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 Loan, for the carrying out of the Project.

Section 2.03. (a) In the carrying out of the Project, the WSCs 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 WSCs 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 WSCs shall carry out the Project in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to ADB. The WSCs 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 WSCs shall take out and maintain with responsible insurers, or make other arrangements satisfactory to ADB for, insurance of 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, the WSCs 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. The WSCs shall maintain, or cause to be maintained, 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 WSCs shall cooperate fully to ensure that the purposes of the Loan will be accomplished.

(b) The WSCs 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 their Subsidiary Loan Agreements, or the accomplishment of the purposes of the Loan.

(c) ADB and the WSCs 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, the WSCs and the Loan.

Section 2.08. (a) The WSCs 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 the WSCs; and (v) any other matters relating to the purposes of the Loan.

(b) Without limiting the generality of the foregoing, the WSCs 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 WSCs 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 WSCs of their obligations under this Project Agreement and the accomplishment of the purposes of the Loan.

Section 2.09. (a) The WSCs 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 subsection (a) hereinabove, the WSCs shall (i) provide their annual financial statements prepared in accordance with national accrual-based financing reporting standards acceptable

to ADB; (ii) have their financial statements audited annually by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with international standards on 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) the WSCs shall enable ADB, upon ADB's request, to discuss the financial statements for the Project and the WSCs and their financial affairs where they relate to the Project with the auditors appointed by the WSCs 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 the WSCs, unless the WSCs shall otherwise agree.

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

Section 2.11. (a) The WSCs shall, 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) The WSCs shall at all times 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) The WSCs shall at all times 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, the WSCs shall not sell, lease or otherwise dispose of any of their main assets which shall be required for the efficient carrying on of their water supply 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 WSCs 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.

Section 2.14. Except as ADB may otherwise agree, the WSCs shall duly perform all their obligations under their respective Subsidiary Loan Agreements, 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 their respective Subsidiary Loan Agreements.

Section 2.15. The WSCs shall 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. The WSCs shall 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 Agreement comes into force and effect. ADB shall promptly notify the WSCs 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 Agreement shall terminate 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 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) 636-2336

For Bac Giang Water Supply and Sewerage One Member Limited Company

No. 386 Xuong Giang Street
Bac Giang City
Bac Giang Province
Viet Nam

Facsimile Number:

(84-240) 3554717

For Cua Lo Water Supply One Member Limited Company

Block 1 Nghi Tan Ward
Cua Lo Town
Nghe An Province
Viet Nam

Facsimile Number:

(84-38) 3943177

For Nghe An Water Supply One Member Limited Company

No. 32 Phan Dang Luu Street
Vinh City
Nghe An Province
Viet Nam

Facsimile Number:

(84-38) 3842208

For Quang Nam Water Supply and Drainage Joint Stock Company

No 86-88 Phan Boi Chau Street
Tan Thanh Ward
Tam Ky City
Quang Nam Province
Viet Nam

Facsimile Number:

(84-510) 3810549

For Song Chu One Member Limited Company

24 Pham Banh Street

Ngoc Trao Ward
Thanh Hoa City
Thanh Hoa Province
Viet Nam

Facsimile Number:

(84-37) 3750390

For Thai Hoa Water Supply One Member Limited Company

15 Lien Thang
Hoa Hieu Ward
Thai Hoa Town
Nghe An Province
Viet Nam

Facsimile Number:

(84-38) 3811163

For Thai Nguyen Water Joint Stock Company

Ben Oanh Street
Trung Vuong Ward
Thai Nguyen City
Thai Nguyen Province
Viet Nam

Facsimile Number:

(84-280) 3857272.

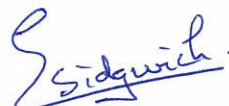
Section 4.02. (a) Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Project Agreement or under Section 7.01 of the Loan Agreement by or on behalf of the WSCs may be taken or executed by their respective Chairman or General Director (as applicable) or by such other person or persons as he or she shall so designate in writing notified to ADB.

(b) The WSCs 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 
ERIC SIDGWICK
Country Director
Viet Nam Resident Mission

BAC GIANG WATER SUPPLY AND SEWERAGE ONE MEMBER LIMITED COMPANY

By 
HUONG XUAN CONG
Chairman - Director


CUA LO WATER SUPPLY ONE MEMBER LIMITED COMPANY

By 
NGUYEN HUU LUAN
Chairman - Director

NGHE AN WATER SUPPLY ONE MEMBER LIMITED COMPANY

By 
NGUYEN XUAN THANG
Chairman - Director

QUANG NAM WATER SUPPLY AND
DRAINAGE JOINT STOCK COMPANY

By 

NGO DUC TRUNG
Chairman of the Board - General Director

SONG CHU ONE MEMBER LIMITED
COMPANY

By 

LE VAN NHI
Chairman of the Board

THAI HOA WATER SUPPLY ONE
MEMBER LIMITED COMPANY

By 

PHAM VAN VIET
Chairman - Director

THAI NGUYEN WATER JOINT STOCK
COMPANY

By 

NGUYEN QUANG MAI
Chairman of the Board