
LOAN NUMBER 2392-VIE(SF)

LOAN AGREEMENT
(Special Operations)

(Greater Mekong Subregion: Kunming-Hai Phong
Transport Corridor – Noi Bai-Lao Cai Highway Project)

between

SOCIALIST REPUBLIC OF VIET NAM

and

ASIAN DEVELOPMENT BANK

DATED 26 SEPTEMBER 2008

LAS:VIE 33307

**LOAN AGREEMENT
(Special Operations)**

LOAN AGREEMENT dated 26 September 2008 between the SOCIALIST REPUBLIC OF VIET NAM (“the Borrower”) and ASIAN DEVELOPMENT BANK (“ADB”).

WHEREAS

(A) the Borrower has applied to ADB for a loan for the purposes of the Project described in Schedule 1 to this Loan Agreement;

(B) by an agreement of even date herewith between the Borrower and ADB (hereinafter called the Ordinary Operations Loan Agreement), ADB has agreed to lend to the Borrower from ADB's ordinary capital resources the amount of eight hundred and ninety-six million dollars (\$896,000,000) for the purposes of the Project (hereinafter called the Ordinary Operations Loan);

(C) the Project will be carried out by Vietnam Expressway Corporation (hereinafter called VEC), and for this purpose the Borrower will make available to VEC the entire proceeds of the Loan provided for herein upon terms and conditions satisfactory to ADB; and

(D) ADB has agreed to make a loan to the Borrower from ADB's Special Funds resources upon the terms and conditions set forth herein and in the Project Agreement of even date herewith between ADB and VEC;

NOW THEREFORE the parties agree as follows:

ARTICLE I

Loan Regulations; Definitions

Section 1.01. All the provisions of the Special Operations Loan Regulations of ADB, dated 1 January 2006 (the “Loan Regulations”), are hereby made applicable to this Loan Agreement with the same force and effect as if they were fully set forth herein.

Section 1.02. The definitions set forth in the Loan Regulations are applicable to this Loan Agreement, unless the context requires otherwise. In addition, the following terms have the following meanings:

(a) “affected persons” means any person whose living environment and/or livelihood activities have been or will be adversely affected by the resettlement activities undertaken or proposed to be undertaken by the Project and specifically including the holders of existing structures within the corridors of influence whose structures will need to be cleared;

(b) "CARB" means the district level Compensation and Assistance Resettlement Board and the provincial level Resettlement Steering Committee;

(c) "Consulting Guidelines" means ADB's Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers (2007, as amended from time to time);

(d) "EIA" means environmental impact assessment;

(e) "EMA" means external monitoring agency;

(f) "EMP" means Environmental Management Plan;

(g) "EU" means Environmental Unit;

(h) "Goods" means equipment and materials to be financed out of the proceeds of the Loan and including related services such as transportation, insurance, installation, commissioning, training, and initial maintenance, but excluding consulting services;

(i) "Governing Regulations" means Decision of the Minister of Transport re Incorporation of Vietnam Expressway Corporation (VEC) under the Ministry of Transport, No. 3033/QD-BGTVT, dated 6 October 2004, Decision of the Minister of Transport on Promulgating the Provisional Charter on Organization and Operation of Vietnam Expressway Corporation, dated 12 October 2004, and the Decision of the Prime Minister on Piloting some Mechanisms, Policies to Highway Investment and Operation Projects of the Employer – Vietnam Expressway Corporation, No. 1202/QD-TTg, dated 10 September 2007;

(j) "HIV" means human immunodeficiency virus;

(k) "MOT" means the Borrower's Ministry of Transport and any successor thereto;

(l) "PMT" means the Project management team;

(m) "Procurement Guidelines" means ADB's Procurement Guidelines (2007, as amended from time to time);

(n) "Procurement Plan" means the procurement plan for the Project dated 7 November 2007 and agreed between the Borrower and ADB, as updated from time to time in accordance with Procurement Guidelines, Consulting Guidelines, and other arrangements agreed with ADB;

(o) "Project Executing Agency" for the purposes of, and within the meaning of, the Loan Regulations, means VEC or any legal successor thereto acceptable to ADB, which is responsible for the carrying out of the Project;

(p) "Project facilities" means the roads, drainage, underpasses, bridges, buildings, service areas and tunnels to be constructed, slope protection structures, and the equipment purchased pursuant to this Loan Agreement and the Ordinary Operations Loan Agreement;

(q) "Project Provinces" means Hanoi City, Vinh Phuc, Phu Tho, Yen Bai and Lao Cai Provinces;

(r) "REMDP" means the Resettlement and Ethnic Minority Development Plan prepared for the Project and endorsed by the Borrower on 27 August 2007;

(s) "Section" means one or more portions of the Project highway as described in the bidding documents for the Works contract for that portion or portions;

(t) "SRU" means Social and Resettlement Unit;

(u) "Subsidiary Loan Agreement" means the agreement between the Borrower and VEC referred to in Section 3.01 of this Loan Agreement; and

(v) "Works" means construction or civil works to be financed out of the proceeds of the Loan, including services such as drilling or mapping, and Project related services that are provided as part of a single responsibility or turnkey contract, but excluding consulting services.

ARTICLE II

The Loan

Section 2.01. ADB agrees to lend to the Borrower from ADB's Special Funds resources an amount in various currencies equivalent to one hundred twenty-seven million, three hundred and seventy-three thousand Special Drawing Rights (SDR 127,373,0000).

Section 2.02. (a) The Borrower shall pay to ADB an interest charge at the rate of one percent (1%) per annum during the grace period, and one and one-half percent (1.5%) per annum thereafter, on the amount of the Loan withdrawn from the Loan Account and outstanding from time to time.

(b) The term "grace period" as used in paragraph (a) of this Section means the period prior to payment of the first principal amount of the Loan on the payment date in accordance with the amortization schedule set forth in Schedule 2 to this Loan Agreement.

Section 2.03. The interest charge and any other charge on the Loan shall be payable semiannually on 1 June and 1 December in each year.

Section 2.04. The Borrower shall repay the principal amount of the Loan withdrawn from the Loan Account in accordance with the amortization schedule set forth in Schedule 2 to this Loan Agreement.

Section 2.05. The currency of repayment of the principal of the Loan and the currency of payment of the interest charge for the purposes of Sections 4.03(a) and 4.04 of the Loan Regulations shall be Dollar.

ARTICLE III

Use of Proceeds of the Loan

Section 3.01. (a) The Borrower shall relend the proceeds of the Loan to VEC under a Subsidiary Loan Agreement upon terms and conditions satisfactory to ADB. Except as ADB shall otherwise agree, the terms for relending the proceeds of the Loan shall include interest at the rate equal to the sum of (i) the rate specified in Section 2.02 of this Loan Agreement and (ii) an on-lending fee pursuant to the Borrower's regulations.

(b) The Borrower shall cause VEC to apply the proceeds of the Loan to the financing of expenditures on the Project in accordance with the provisions of this Loan Agreement and the Project Agreement.

Section 3.02. The Goods, Works and consulting services and other items of expenditure to be financed out of the proceeds of the Loan and the allocation of amounts of the Loan among different categories of such Goods, Works and consulting services and other items of expenditure shall be in accordance with the provisions of Schedule 3 to this Loan Agreement, as such Schedule may be amended from time to time by agreement between the Borrower and ADB.

Section 3.03. Withdrawals from the Loan Account in respect of Goods, Works and consulting services shall be made only on account of expenditures relating to

- (a) Goods which are produced in and supplied from and services which are supplied from such member countries of ADB as shall have been specified by ADB from time to time as eligible sources for procurement, and
- (b) Goods, Works and consulting services which meet such other eligibility requirements as shall have been specified by ADB from time to time.

Section 3.04. Except as ADB may otherwise agree, all Goods, Works and consulting services to be financed out of the proceeds of the Loan shall be procured in accordance with the provisions of Schedule 4 to this Loan Agreement.

Section 3.05. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations shall be 31 December 2012 or such other date as may from time to time be agreed between the Borrower and ADB.

ARTICLE IV

Particular Covenants

Section 4.01. In the carrying out of the Project and operation of the Project facilities, the Borrower shall perform, or cause to be performed, all obligations set forth in Schedule 5 to this Loan Agreement.

Section 4.02. The Borrower shall enable ADB's representatives to inspect the Project, the Goods and Works financed out of the proceeds of the Loan, and any relevant records and documents.

Section 4.03. The Borrower shall take all action which shall be necessary on its part to enable VEC to perform its obligations under the Project Agreement, including the establishment and maintenance of toll rates as stipulated in paragraph 10 of Schedule 5 to this Loan Agreement, and shall not take or permit any action which would interfere with the performance of such obligations.

Section 4.04. (a) The Borrower shall exercise its rights under the Subsidiary Loan Agreement in such a manner as to protect the interests of the Borrower and ADB and to accomplish the purposes of the Loan.

(b) No rights or obligations under the Subsidiary Loan Agreement shall be assigned, amended, or waived without the prior concurrence of ADB.

ARTICLE V

Suspension; Cancellation; Acceleration of Maturity

Section 5.01. The following are specified as additional events for suspension of the right of the Borrower to make withdrawals from the Loan Account for the purposes of Section 8.01(m) of the Loan Regulations:

(a) the Borrower or VEC shall have failed to perform any of its obligations under the Ordinary Operations Loan Agreement; or

(b) the Governing Regulations or any provision thereof shall have been repealed, suspended or amended in any manner which in the reasonable opinion of ADB will or may adversely affect the carrying out of the Project or the operation of the Project facilities.

Section 5.02. The following are specified as additional events for acceleration of maturity for the purposes of Section 8.07(d) of the Loan Regulations: either of the events specified in Section 5.01 of this Loan Agreement shall have occurred.

ARTICLE VI

Effectiveness

Section 6.01. The following are specified as additional conditions to the effectiveness of this Loan Agreement for the purposes of Section 9.01(f) of the Loan Regulations:

(a) the PMT consisting of a headquarters and the four field offices in the Project Provinces (except Hanoi City) shall have been established, as provided in paragraphs 2 and 3 of Schedule 5 to this Loan Agreement;

(b) the EU shall have been strengthened with additional staff, as provided in paragraph 4 of Schedule 5 to this Loan Agreement and an SRU shall have been created, as provided in paragraph 5 of Schedule 5 to this Loan Agreement;

(c) the Subsidiary Loan Agreement, in form and substance satisfactory to ADB, shall have been duly executed and delivered on behalf of VEC and shall have become fully effective and binding upon VEC in accordance with its terms; and

(d) the Ordinary Operations Loan Agreement, in form and substance satisfactory to ADB, shall have been duly executed and delivered on behalf of the Borrower and all conditions to its effectiveness (other than a condition requiring effectiveness of this Loan Agreement) shall have been fulfilled.

Section 6.02. The following is specified as an additional matter, for the purposes of Section 9.02(d) of the Loan Regulations, to be included in the opinions to be furnished to ADB: that the Subsidiary Loan Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, the Borrower and VEC and is legally binding upon the Borrower and VEC in accordance with its terms.

Section 6.03. A date ninety (90) days after the date of this Loan Agreement is specified for the effectiveness of the Loan Agreement for the purposes of Section 9.04 of the Loan Regulations.

ARTICLE VII

Delegation of Authority

Section 7.01. The Borrower hereby designates VEC as its agent for the purposes of taking any action or entering into any agreement required or permitted under Sections 3.02, 3.03 and 3.04 of this Loan Agreement and under Sections 5.01, 5.02 and 5.03 of the Loan Regulations.

Section 7.02. Any action taken or any agreement entered into by VEC pursuant to the authority conferred under Section 7.01 of this Loan Agreement shall be fully binding on the Borrower and shall have the same force and effect as if taken by the Borrower.

Section 7.03. The authority conferred on VEC under Section 7.01 of this Loan Agreement may be revoked or modified by agreement between the Borrower and ADB.

ARTICLE VIII

Miscellaneous

Section 8.01. The Governor of the State Bank of Viet Nam of the Borrower is designated as representative of the Borrower for the purposes of Section 11.02 of the Loan Regulations.

Section 8.02. The following addresses are specified for the purposes of Section 11.01 of the Loan Regulations:

For the Borrower

State Bank of Viet Nam
47 - 49 Ly Thai To
Hanoi, Viet Nam

Facsimile Numbers:

(84-4) 8250-612
(84-4) 8258-385.

For ADB


Asian Development Bank
P.O. Box 789
0980 Manila, Philippines

Facsimile Numbers:

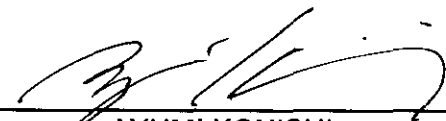
(632) 636-2444
(632) 636-2336.

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

SOCIALIST REPUBLIC OF VIET NAM

By 
NGUYEN VAN GIAU
Governor
State Bank of Viet Nam

ASIAN DEVELOPMENT BANK

By 
AYUMI KONISHI
Country Director
Viet Nam Resident Mission

SCHEDULE 1

Description of the Project

1. The impact of the Project is to achieve sustainable economic growth and strengthen connectivity with Yunnan Province in the People's Republic of China and along the Kunming – Hai Phong corridor. The Project will (i) construct an efficient, safe and reliable high standard road from Noi Bai near Hanoi to Lao Cai near the border with the People's Republic of China, (ii) permit operation of long distance bus transportation services linked with local public transportation services connecting bus stops on the Project highway to local communities, (iii) provide better access to social services and to employment in cities and towns, (iv) raise per capita income in the Project Provinces, (v) increase annual border trade volume at Lao Cai, and (vi) improve awareness of HIV, AIDS (acquired immune deficiency syndrome), sexually transmitted infections, illicit drugs and human trafficking.

2. The Project will have the following components:

Component A: Highway Construction

Construction of an approximately 244 kilometer grade-separated and access-controlled highway, including an anticipated ten (10) interchanges with toll booths and five (5) services areas, starting at Noi Bai in the suburbs of Hanoi and ending at Lao Cai in the northwest of Viet Nam, on the border with Yunnan Province in the People's Republic of China.

Component B: Equipment

Provision of (i) operations and maintenance equipment and vehicles, (ii) electric, communications and tolling systems, and (iii) associated facilities, to VEC.

Component C: Capacity Development

Provision of assistance to the VEC with management of Project implementation, corporate financing management, highway operations and maintenance planning and implementation, and safeguard planning and implementation.

3. The Project will utilize consulting services.

4. The Project is expected to be completed by 30 June 2012.

SCHEDULE 2**Amortization Schedule**

**(Greater Mekong Subregion: Kunming-Hai Phong
Transport Corridor – Noi Bai-Lao Cai Highway Project)**

Date Payment Due	Payment of Principal (expressed in SDR)*
01-Jun-2016	2,653,604.00
01-Dec-2016	2,653,604.00
01-Jun-2017	2,653,604.00
01-Dec-2017	2,653,604.00
01-Jun-2018	2,653,604.00
01-Dec-2018	2,653,604.00
01-Jun-2019	2,653,604.00
01-Dec-2019	2,653,604.00
01-Jun-2020	2,653,604.00
01-Dec-2020	2,653,604.00
01-Jun-2021	2,653,604.00
01-Dec-2021	2,653,604.00
01-Jun-2022	2,653,604.00
01-Dec-2022	2,653,604.00
01-Jun-2023	2,653,604.00
01-Dec-2023	2,653,604.00
01-Jun-2024	2,653,604.00
01-Dec-2024	2,653,604.00
01-Jun-2025	2,653,604.00
01-Dec-2025	2,653,604.00
01-Jun-2026	2,653,604.00
01-Dec-2026	2,653,604.00
01-Jun-2027	2,653,604.00
01-Dec-2027	2,653,604.00
01-Jun-2028	2,653,604.00
01-Dec-2028	2,653,604.00
01-Jun-2029	2,653,604.00
01-Dec-2029	2,653,604.00
01-Jun-2030	2,653,604.00
01-Dec-2030	2,653,604.00
01-Jun-2031	2,653,604.00
01-Dec-2031	2,653,604.00
01-Jun-2032	2,653,604.00
01-Dec-2032	2,653,604.00
01-Jun-2033	2,653,604.00
01-Dec-2033	2,653,604.00
01-Jun-2034	2,653,604.00
01-Dec-2034	2,653,604.00
01-Jun-2035	2,653,604.00

Date Payment Due	Payment of Principal (expressed in SDR)*
01-Dec-2035	2,653,604.00
01-Jun-2036	2,653,604.00
01-Dec-2036	2,653,604.00
01-Jun-2037	2,653,604.00
01-Dec-2037	2,653,604.00
01-Jun-2038	2,653,604.00
01-Dec-2038	2,653,604.00
01-Jun-2039	2,653,604.00
01-Dec-2039	2,653,612.00
Total	127,373,000.00

* The figures in this column represent SDR equivalents determined as of the respective dates of withdrawal. The arrangements for payment of each maturity are subject to the provisions of Sections 3.04 and 4.03 of the Loan Regulations.

SCHEDULE 3**Allocation and Withdrawal of Loan Proceeds**General

1. The table attached to this Schedule sets forth the Categories of Goods, Works, services and other items to be financed out of the proceeds of the Loan and the allocation of amounts of the Loan to each such Category (hereinafter called the Table). (Reference to "Category" or "Categories" in this Schedule is to a Category or Categories of the Table.)

Percentages of ADB Financing

2. Except as ADB may otherwise agree, the items of the Categories listed in the Table shall be financed out of the proceeds of the Loan on the basis of the percentages set forth in the Table.

Interest Charge

3. The amount allocated to Category 4 is for financing the interest charge on the Loan during the implementation period of the Project.

Reallocation

4. Notwithstanding the allocation of Loan proceeds and the withdrawal percentages set forth in the Table,

(a) if the amount of the Loan allocated to any Category appears to be insufficient to finance all agreed expenditures in that Category, ADB may, by notice to the Borrower, (i) reallocate to such Category, to the extent required to meet the estimated shortfall, amounts of the Loan which have been allocated to another Category but, in the opinion of ADB, are not needed to meet other expenditures, and (ii) if such reallocation cannot fully meet the estimated shortfall, reduce the withdrawal percentage applicable to such expenditures in order that further withdrawals under such Category may continue until all expenditures thereunder shall have been made; and

(b) if the amount of the Loan then allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, by notice to the Borrower, reallocate such excess amount to any other Category.

Disbursement Procedures

5. Except as ADB may otherwise agree, the Loan proceeds for financing Goods, Works, and consulting services and other items shall be disbursed in accordance with ADB's "Loan Disbursement Handbook" dated January 2007 (ADB's Loan Disbursement Handbook), as amended from time to time.

Imprest Account; Statement of Expenditures

6. (a) Except as ADB may otherwise agree, the Borrower shall establish immediately after the Effective Date, an imprest account at a commercial bank acceptable to ADB. The imprest account shall be established, managed, replenished and liquidated in accordance with ADB's Loan Disbursement Handbook, and detailed arrangements agreed upon between the Borrower and ADB. The currency of the imprest account shall be dollar. The initial amount to be deposited into the imprest account shall not exceed the lower of (i) the estimated expenditure for the first six months of Project implementation, or (ii) \$300,000.

(b) The statement of expenditures (SOE) procedure may be used for reimbursement of eligible expenditures and to liquidate advances provided into the imprest account, in accordance with ADB's Loan Disbursement Handbook and detailed arrangements agreed upon between the Borrower and ADB. Any individual payment to be reimbursed or liquidated under the SOE procedure shall not exceed the equivalent of \$50,000.

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Greater Mekong Subregion: Kunming-Hai Phong Transport Corridor – Noi Bai-Lao Cai Highway Project)			
CATEGORY			ADB FINANCING
Number	Item	Amount Allocated SDR Category	Percentage and Basis for Withdrawal from the Loan Account
1	Works	89,161,000	20 percent of total expenditure
2	Consulting Services	15,922,000	100 percent of total expenditure
3	Incremental Administration Costs	892,000	20 percent of total expenditure
4	Interest Charge	7,005,000	100 percent of amount due
5	Unallocated	14,393,000	
	Total	127,373,000	

SCHEDULE 4

Procurement of Goods and Works, and Consulting Services

A. General

1. All Goods and Works, and consulting services, to be financed out of the proceeds of the Loan shall be subject to and governed by the Procurement Guidelines, and the Consulting Guidelines, respectively.

2. All terms used and not otherwise defined in this Loan Agreement have the meanings provided in the Procurement Guidelines and/or the Consulting Guidelines, as applicable.

B. Procurement for Goods and Works

3. Except as ADB may otherwise agree, Goods and Works shall only be procured on the basis of the methods of procurement set forth below:

International Competitive Bidding

The methods of procurement are subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Borrower may only modify the methods of procurement or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.

4. Domestic Preference. The Borrower may grant a margin of preference in the evaluation of bids under international competitive bidding in accordance with paragraphs 2.55(a) and 2.56 of the Procurement Guidelines for domestically manufactured Goods and paragraphs 2.55(b) and 2.56 of the Procurement Guidelines for domestic Works.

C. Selection of Consulting Services

5. Quality- and Cost-Based Selection. Except as ADB may otherwise agree, the Borrower shall apply quality- and cost-based selection for selecting and engaging consulting services.

D. Industrial or Intellectual Property Rights

6. (a) The Borrower shall ensure that all Goods and Works procured (including without limitation all computer hardware, software and systems, whether separately procured or incorporated within other goods and services procured) do not violate or infringe any industrial property or intellectual property right or claim of any third party.

(b) The Borrower shall ensure that all contracts for the procurement of Goods and Works contain appropriate representations, warranties and, if appropriate, indemnities from the contractor or supplier with respect to the matters referred to in subparagraph (a) of this paragraph.

7. The Borrower shall ensure that all ADB-financed contracts with consultants contain appropriate representations, warranties and, if appropriate, indemnities from the

consultants to ensure that the consulting services provided do not violate or infringe any industrial property or intellectual property right or claim of any third party.

E. ADB's Review of Procurement Decisions

8. All contracts procured under international competitive bidding procedures and contracts for consulting services shall be subject to prior review by ADB, unless otherwise agreed between the Borrower and ADB and set forth in the Procurement Plan.

SCHEDULE 5

Execution of Project and Operation of Project Facilities; Financial Matters

Project Implementation and Coordination

1. VEC shall be the Executing Agency for the Project with overall responsibility for Project implementation and liaison with line ministries, provincial authorities in the Project Provinces and ADB.
2. The Borrower shall cause the VEC to establish the PMT to manage and be responsible for Project implementation. VEC shall establish PMT's headquarters in Hanoi. PMT headquarters shall include staff from the VEC's Project Implementation Unit 2, and specialists from the Environmental Unit (EU) and the Social and Resettlement Unit under the Technical Department within VEC, including one environmental specialist and one social/resettlement specialist.
3. The Borrower shall cause the VEC to establish four (4) field offices in each Project Province (except Hanoi City), each office staffed with a director and appropriate staff including engineers, accountants, and social and environmental specialists. The field offices shall coordinate with the Provincial People's Committees and District People's Committees on civil works, environmental management, and implementation of land acquisition, resettlement, livelihood development and income restoration activities.
4. The Borrower shall ensure that VEC strengthens its EU within its Technical Department by increasing its environmental specialist staff by at least five additional persons, with one specialist based at the PMT's headquarters in Hanoi and one specialist at each of the four field offices established under this Project. By the end of 2009 VEC shall have completed an institutional development plan for the EU to secure proper capacity for environment safeguards in Project implementation.
5. The Borrower shall ensure that VEC creates, within its Technical Department, an SRU responsible for providing overall guidance for resettlement and social safeguards and close coordination with MOT and local authorities in the Project Provinces. This SRU shall be headed by a senior social development/resettlement officer and have six (6) social development and resettlement specialist staff. The SRU shall coordinate with the applicable Provincial and District People's Committees and staff of the field offices. A social development/resettlement specialist staff member shall be assigned to each field office on a full-time basis, representing VEC in the provincial Resettlement Steering Committees and acting as a conduit between VEC, Project consultants, and Provincial and District People's Committees.
6. The Borrower shall ensure that CARBs are established at the provincial and district levels in the Project Provinces with responsibility for resettlement planning, updating and implementation within their administrative jurisdiction. Each CARB shall be headed by the Vice Chairman of the Provincial and the District People's Committee, respectively, and shall include members from VEC, concerned departments, including the Departments of Finance, Natural Resource and Environment, Transport, and Agriculture, and representatives from local organizations and affected persons.

Operations and Maintenance

7. The Borrower shall ensure that, at least six (6) months prior to the transfer of the first Project highway Section to VEC from a Works contractor, VEC shall have developed an internal department responsible for the Project highway's operations and maintenance management, and may select an appropriately experienced entity to thereafter carry out operations and maintenance works on the Project highway in an appropriate manner.

Financial Matters

8. For the purposes of this paragraph, all financial calculations, ratios, and financial covenants shall be applied in respect of VEC's Operations only.

(a) Except as ADB shall otherwise agree, VEC shall not incur any Debt unless a Reasonable Forecast of the revenues and expenditures of VEC shows that the estimated Net Revenues of VEC for each Fiscal Year during the term of the Debt to be incurred shall be at least 1.2 times the estimated Debt Service Requirements of VEC in such year on all Debt of VEC including the debt to be incurred and no event has occurred since the date of the forecast which has, or may reasonably be expected in the future to have, a material adverse effect on the financial condition of future operating results of VEC.

(b) For the purposes of this paragraph:

(i) The term "VEC's Operations" refers to the operations of VEC.

(ii) The term "Debt" means any indebtedness of VEC maturing by its terms more than one year after the date on which it is originally incurred.

(iii) Debt shall be deemed to be incurred: (a) under a loan contract or agreement or other instrument providing for such Debt or for the modification of its terms of payment on the date of such contract, agreement or instrument; and (b) under a guarantee agreement, on the date the agreement providing for such guarantee has been entered into.

(iv) "Net Revenues" means the difference between:

(A) the sum of revenues from all sources related to Operations and Net Non-operating Income, after making adequate provisions for uncollectible Debts; and

(B) the sum of all expenses related to Operations including administration, maintenance, taxes and payments in lieu of taxes, but excluding provision for depreciation, other non-cash operating charges, movements in Working Capital, and interest and other charges on debt.

(v) "Net Non-operating Income" means the difference between:

(A) revenues from all sources, including extraordinary gains, other than those related to operations; and receipts relating to the disposal of physical assets; and

(B) expenses including taxes and payments in lieu of taxes, and including extraordinary losses, incurred in the generation of revenues in (v)(A) above; and payments for the purchase of physical assets, whether or not actually paid.

(vi) The term "Working Capital" means the difference between Current Assets and Current Liabilities at the end of each Fiscal Year.

(vii) The term "Current Assets" means all assets which could in the ordinary course of business be converted into cash within twelve months, including accounts receivable, marketable securities, inventories and prepaid expenses properly chargeable to operating expenses within the next Fiscal Year.

(viii) The term "Current Liabilities" means all liabilities which will become due and payable or could under circumstances then existing be called for payment within twelve months, including accounts payable, customer advances, debt service requirements, taxes and payments in lieu of taxes, and dividends.

(ix) The term "Debt Service Requirements" means the aggregate amount of repayments (including sinking fund payments, if any) of, and interest and other charges on Debt.

(x) The term "Reasonable Forecast" means a forecast prepared by the Borrower and submitted to ADB in accordance with the requirements of paragraph 33 to this Schedule and which both ADB and the Borrower accept as reasonable.

(xi) Whenever for the purposes of this Section it shall be necessary to value Debt payable in another currency, such valuation shall be made on the basis of the prevailing lawful rate of exchange at which such other currency is at the time of such valuation obtainable for the purposes of servicing such Debt, or, in the absence of such rate, on the basis of a rate of exchange acceptable to ADB.

9. (a) For the purposes of this paragraph, all financial calculations, ratios and financial covenants shall be applied in respect of VEC's Operations only.

(b) The Borrower shall ensure that, except as ADB shall otherwise agree, VEC does not incur any debt, if after the incurrence of such debt a Reasonable Forecast (as defined in paragraph 8 of this Schedule) of the VEC balance sheet shows that the estimated ratio of debt to equity shall be greater than 90 to 10 beginning with Fiscal Year 2020.

(c) For purposes of this paragraph:

(i) The term “debt” means any indebtedness of VEC maturing by its terms more than one year after the date on which it is originally incurred.

(ii) Debt shall be deemed to be incurred: (a) under a loan contract or agreement, or conditional sale or transfer or financing lease agreement or other instrument providing for such debt or for the modification of its terms of payment on the date of such contract, agreement or instrument; and (b) under a guarantee agreement, on the date the agreement providing for such guarantee has been entered into. Financial liabilities incurred by a borrower who is a lessee under finance leasing agreements may also be included as debt.

(iii) The term “equity” means the sum of the total unimpaired paid-up capital, retained earnings and reserves of VEC not allocated to cover specific liabilities.

(iv) Whenever for purposes of this paragraph it shall be necessary to value, debt payable in another currency, such valuation shall be made on the basis of the prevailing lawful rate of exchange at which such currency is, at the time of valuation, obtainable for the purposes of servicing such debt, or, in the absence of such rate, on the basis of a rate of exchange acceptable to ADB.

10. The Borrower shall ensure that VEC, when establishing the toll rates, ensures that they are sufficient to satisfy VEC’s minimum debt service coverage ratio and debt to equity ratio as described in paragraphs 8 and 9 of this Schedule while also taking into account the Project’s social objectives. The Borrower shall cause VEC to carry out periodic reviews (every three to five years as deemed appropriate) of the toll structure (i.e., vehicle classifications) and toll levels (i.e., amounts) to adjust for inflation or unanticipated costs.

11. The Borrower shall ensure that, by the end of 2008, VEC has established an internal financial information and management system which enables VEC to produce a financially sustainable expressway investment plan utilizing monitoring and planning, cost recovery tariff levels, traffic forecast planning, and preparing projected financial statements and debt management strategies.

Environment

12. The Borrower shall ensure that its laws and regulations governing environmental impact assessments, as well as ADB’s *Environment Policy* (2002) are followed. If there is any discrepancy between the Government’s laws and regulations, and ADB’s *Policy*, the ADB *Policy* requirements shall apply.

13. The Borrower shall cause VEC to ensure that the EIA for the Project is approved by Ministry of Natural Resources and Environment prior to issuance of the bidding documents for the Works and the required environmental measures are appropriately incorporated in such bidding documents. The Borrower shall ensure that the measures indicated in the EMP are

included by VEC in the bidding documents as a basis for Works contractors to prepare site-specific EMPs.

14. The Borrower shall cause VEC to ensure that (i) it allocates sufficient budget and staff resources for EMP implementation and monitoring; and (ii) the Project complies with best environmental practices and meets the mitigation and monitoring requirements in a timely manner, as described in the EIA.

15. The Borrower shall cause VEC to ensure that the design, construction, operation and maintenance of Project facilities are carried out in accordance with the EMP, ADB's *Environment Policy* and the Borrower's laws and regulations. In accordance with the EMP, VEC shall cause the Works documents for the Project to include the specific measures included in the EMP and ADB's *Environment Policy* to mitigate negative environmental impacts caused by the construction and to cause (i) the Works contractors to comply strictly with all environmental mitigation and monitoring requirements stated in the EMP and contract documents, and (ii) the consultants engaged for construction supervision to closely monitor Works contractors' compliance with environmental mitigation and monitoring requirements.

16. The Borrower shall cause VEC to ensure that quarterly progress reports include a description of implementation of the EMP and updates on the development and implementation of mitigation measures, including any changes to the EMP that have been reviewed and approved by ADB and VEC.

Resettlement

17. The Borrower shall cause VEC and MOT to ensure that any involuntary resettlement is carried out in accordance with the agreed REMDP, ADB's *Involuntary Resettlement Policy* (1995) and the Borrower's laws and regulations on involuntary resettlement. In case of differences between the Borrower's laws and regulations and ADB's *Involuntary Resettlement Policy*, ADB's *Policy* shall prevail.

18. The Borrower shall cause VEC and MOT to ensure that the local authorities do not commence any land acquisition and relocation activities until the updated REMDP has been prepared following detailed design and that the updated REMDP has been reviewed and approved by ADB. MOT and VEC shall further ensure that affected persons are compensated at replacement cost and assisted before they are displaced from their houses, land, and assets. No affected persons shall be displaced until suitable alternative land within the same or a neighboring commune has been allocated to them or compensation has been paid that is sufficient to purchase suitable alternative land within the same or a neighboring commune. Where land is acquired for affected persons, VEC shall ensure joint registration of newly acquired land in the name of both the husband and wife.

19. The Borrower and VEC shall ensure that, whenever feasible, affected persons are allowed to cultivate annual crops on the land inside the right-of-way that is not immediately required for the Project or a succeeding phase of the Project. VEC shall ensure that the affected persons so utilizing the land agree that when the land is required for the Project, possession of the land will be relinquished to the Borrower at no cost.

20. The Borrower shall cause the VEC to be responsible for internal monitoring of resettlement with progress reports submitted to ADB on a quarterly basis, as part of the reports described in paragraph 37 of this Schedule.

21. The Borrower shall ensure that, within one (1) month following the commencement of REMDP updating, an EMA, acceptable to ADB, is engaged to monitor and evaluate implementation of the REMDP. The budget provided to the EMA shall include funds sufficient, in the opinion of ADB, for the EMA to adequately perform its functions.

22. The Borrower shall, and cause VEC to, provide to the EMA, at no cost, all documents required to monitor the resettlement process, specifically including the REMDP, detailed measurement survey documents, and all associated documents which may be reasonably requested by the EMA.

23. The Borrower shall cause VEC to ensure that Works contractors are not issued a notice of possession of site for any highway Section unless VEC has (i) satisfactorily completed, in accordance with the approved REMDP, compensation payment and relocation to new sites, (ii) ensured that the rehabilitation assistance is in place, and (iii) ensured that the area required for Works is free of all encumbrances.

24. The Borrower shall cause VEC to timely provide counterpart funds for land acquisition, resettlement and monitoring activities specified in the agreed upon REMDP, and shall meet any unforeseen obligations in excess of the REMDP budget estimate in order to satisfy resettlement objectives. VEC shall ensure that counterpart funds for compensation and entitlements under the agreed upon REMDP are fully provided directly to affected persons prior to their displacement from housing and prior to loss of land, livelihood, income or other assets.

25. The Borrower shall carry out the measures on ethnic minorities as stipulated in the agreed REMDP and the Project shall be implemented in accordance with the applicable laws and regulations of the Borrower and ADB's *Policy on Indigenous Peoples* (1998).

Social Protection

26. The Borrower shall cause VEC to ensure that all Works contracts under the Project incorporate provisions and budgets to the effect that contractors: (a) comply with the Borrower's applicable labor laws and related international treaty obligations and do not employ child labor; (b) provide safe working conditions, and water and separate sanitation facilities for male and female workers; (c) provide equal wages to male and female workers for work of equal value; (d) provide day care services for female construction workers; and (e) carry out the HIV, Illicit Drugs, and Human Trafficking Prevention Program in the construction campsites with such Program being held in coordination with the Borrower's programs and other initiatives.

27. The Borrower shall cause VEC to ensure that an HIV, Illicit Drugs, and Human Trafficking Prevention Program is conducted during construction by the Works contractors and VEC in the construction camps, towns, and rural areas of the Project Provinces.

Gender

28. The Borrower shall cause MOT to ensure that the Gender Strategy provided in the REMDP and Summary of Poverty Reduction and Social Strategy prepared for the Project are undertaken to maximize Project benefits to women including, but not limited to, the following specific actions: (i) CARBs shall include representatives from the provincial, district and commune Women's Union, Committee for Ethnic Minorities in Mountainous Areas (CEMMA), and poor women from affected households; (ii) one male and one female representative from ethnic minority groups will be included in each district level CARB; (iii) at Project inception, capacity building training programs (including preparation of loss of inventory documentation) on resettlement activities is conducted for CARBs, commune officials, poor women, female headed households, ethnic minorities, and representatives of the district/commune Women's Union; (iv) skills development for livelihood activities for men and women; (v) gender sensitization training related to gender and resettlement for relevant VEC staff and staff from the VEC field offices, and (vi) awareness training on HIV, Illicit Drugs, and Human Trafficking Prevention Program for the women and men in the Project Provinces.

Governance

29. The Borrower shall comply with, and shall cause VEC and the PMT to comply with, ADB's *Anticorruption Policy* (1998, as amended to date) and the *Combating Money Laundering and the Financing of Terrorism Policy* (2003). The Borrower (i) acknowledges ADB's right to investigate, directly or through its agents, any alleged corrupt, fraudulent, collusive or coercive practices relating to the Project; (ii) agrees to cooperate fully with, and to cause VEC and the PMT to cooperate fully with, any such investigation and to extend all necessary assistance, including providing access to all relevant books and records, as may be necessary for the satisfactory completion of any such investigation; and (iii) agrees to refrain, and cause the VEC and PMT to refrain, from engaging in money laundering activities or financing of terrorism and shall allow, and cause VEC and the PMT to allow, ADB to investigate any violation or potential violation of these undertakings.

30. Without limiting the generality of the preceding paragraph, the Borrower shall (i) ensure that VEC and the PMT conduct periodic inspections on the contractors' activities related to fund withdrawals and settlements and (ii) ensure and cause VEC and the PMT to ensure that all contracts financed by ADB in connection with the Project include provisions specifying the right of ADB to audit and examine the records and accounts of all contractors, suppliers, consultants and other service providers as they relate to the Project.

31. The Borrower shall ensure that, in order to ensure transparency and good governance, VEC publicly discloses on the website information how Loan proceeds are being used, presenting (i) procurement contract awards, including for each such contract (a) the list of participating bidders, (b) name of the winning bidder, (c) basic details on bidding procedures adopted, (d) amount of the contract awarded, (e) list of Goods and/or services purchased, (f) intended and actual utilization of Loan proceeds under each contract, and (ii) internal and external resettlement reports. The website shall be updated within two (2) weeks after: (i) each award of contract, (ii) each submission of the EMA's quarterly resettlement report, and (iii) each submission of VEC's internal quarterly resettlement reports.

Auditing and Accounting

32. Without prejudice to the generality of Section 2.09 of the Project Agreement, the Borrower shall ensure that a separate accounting system for Project expenditures is maintained in accordance with sound accounting principles. All Project accounts, including financial statements, statements of expenditures and account records, shall be audited annually as part of the regular audit of accounts and financial statements by an independent auditing firm. The consolidated audit reports (in English) shall be submitted to ADB in accordance with the requirements and within the deadlines stated in Section 2.09 of the Project Agreement. The audit opinion shall include (i) a detailed description of the source of funds and expenditures made; (ii) an assessment of the adequacy of accounting and internal controls systems with respect to Project expenditures and other financial transactions, and to ensure safe custody of Project-financed assets; (iii) a determination as to whether the Borrower and VEC have maintained adequate documentation for all financial transactions, specifically including the SOE and imprest account procedures (utilized under the Ordinary Operations Loan); and (iv) confirmation of compliance with this Loan Agreement's financial covenants.

33. The Borrower shall ensure that VEC maintains a separate set of records for incremental administration costs, and VEC shall submit to ADB: (i) within three (3) months prior to the start of each applicable fiscal year, an annual operating plan, projected financial statements, anticipated debt obligations, and estimated incremental administration costs for charging to the Project and which estimates are based on an acceptable standard costing method, and (ii) an audited statement in the annual audit of accounts confirming that the charged services were duly provided to the Project.

Project Performance Monitoring and Evaluation

34. The Borrower shall cause VEC to ensure the implementation of a systematic Project performance monitoring and evaluation system for use throughout the Project period, and after as needed, that indicates: (i) the effectiveness of Project implementation activities, including (a) the precise nature, timeliness, cost and quality of physical infrastructure implemented in the Project, (b) the integrity of resettlement and related programs, and (c) the extent to which the HIV, Illicit Drugs, and Human Trafficking Prevention Program is implemented as planned, and their impacts; and (ii) the effectiveness of the Project with regard to its anticipated effect on economic and social development relative to the baseline prior to its implementation as indicated by at least the following indicators: (a) per capita income in the Project area, (b) level of cross-border trade at Lao Cai, (c) passenger and freight vehicle operating costs and poverty rate on the Project highway and between key locations, (d) cost for freight and fare for passenger movement between selected locations that indicate the impact of the Project on the community, (e) traffic volume at selected locations and travel time between the selected locations; (f) number of traffic accidents; and (g) number of new small and medium businesses and employment of local people. The impacts of development on low income households resulting from improved road access will receive particular attention with regard to consideration of the effectiveness of the Project.

35. The Borrower shall ensure that disaggregated monitoring indicators by gender and ethnic minority are developed for monitoring of social benefits, economic opportunities, livelihood program, road safety, resettlement activities, and the HIV, Illicit Drugs, and Human Trafficking Prevention Program.

36. The Borrower shall ensure that baseline data is collected within six (6) months of the Effective Date, with a second survey to be conducted upon Project completion and a third survey to be conducted three (3) years after Project completion to establish Project impact. The baseline and subsequent surveys shall draw on data collected during Project preparatory activities and data collected from traffic and travel surveys, household socioeconomic sample surveys, participatory rapid appraisals and secondary data from government sources.

Reporting

37. The Borrower shall ensure that the PMT: (i) collects and consolidates all Project progress reports, site reports, technical and financial reports and submits them to ADB; (ii) reviews and submits quarterly progress reports, a baseline Project evaluation report and an overall Project completion report; and (iii) reviews and submits other reports as may be reasonably requested by ADB. Quarterly reports shall include updated implementation, financial and procurement-related information, as well as reports submitted by the EMA for resettlement activities. Quarterly reports shall be submitted to ADB within 30 (thirty) days of the end of each quarter.

38. The Borrower shall ensure that, within six (6) months of Project completion, PMT submits to ADB, through VEC, a Project completion report providing a detailed evaluation of Project design, costs, performance of Project consultants, and contractors, the performance indicators described in paragraph 34 of this Schedule, social and environmental impacts, economic and financial assessments, and such other information as may be requested by ADB.