
LOAN NUMBER 2374 - VIE (SF)

LOAN AGREEMENT
(Special Operations)

(Ho Chi Minh City – Long Thanh – Dau Giay Expressway Technical Assistance Project)

between

THE SOCIALIST REPUBLIC OF VIET NAM

and

ASIAN DEVELOPMENT BANK

DATED 20 DECEMBER 2007

LAS:VIE 40198

**LOAN AGREEMENT
(Special Operations)**

LOAN AGREEMENT dated 20 December 2007 between 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) the Project will be carried out by Vietnam Expressway Corporation ("VEC"), and for this purpose the Borrower will make available to VEC the proceeds of the Loan provided for herein upon terms and conditions satisfactory to ADB; and

(C) 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) "Component" means a component of the Project as more particularly described in Schedule 1 to this Loan Agreement;

(b) "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);

(c) "EIA" means an environmental impact assessment;

(d) "EMP" means an environmental management plan;

(e) "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;

(f) “HLD Expressway” means the Ho Chi Minh City – Long Thang – Dau Giay Expressway;

(g) “HLD Expressway Project” means a project under which the HLD Expressway will be constructed;

(h) “MOT” means the Borrower’s Ministry of Transport and any successor thereto;

(i) “PIU” means the Project Implementation Unit established for the implementation of the Project as more particularly described in paragraph 2 of Schedule 5 to this Loan Agreement;

(j) “Procurement Guidelines” means ADB’s Procurement Guidelines (2007, as amended from time to time);

(k) “Procurement Plan” means the procurement plan for the Project dated 2 November 2007 and agreed between VEC and ADB, as updated from time to time in accordance with Procurement Guidelines, Consulting Guidelines, and other arrangements agreed with ADB;

(l) “Project Executing Agency” for the purposes of, and within the meaning of, the Loan Regulations means VEC, which is responsible for the carrying out of the Project;

(m) “Project facilities” means the equipment and facilities to be constructed, rehabilitated or otherwise provided under the Project; and

(n) “Subsidiary Loan Agreement” means an agreement whereby the Borrower relends the proceeds of the Loan to VEC for the purposes of execution of the Project, as more specifically described in Section 3.01 (a) of this Loan Agreement.

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 six million four hundred thirty-five thousand Special Drawing Rights (SDR6,435,000).

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 15 May and 15 November 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.

(b) The Borrower shall cause VEC to apply such 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, 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, 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 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 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 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 30 June 2010 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 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, 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 accomplish the purpose of the Loan.

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

ARTICLE V

Suspension; Cancellation; Acceleration of Maturity

Section 5.01. The following is specified as an additional event 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: the Borrower or VEC shall have failed to perform any of their respective obligations under the Subsidiary Loan Agreement.

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

ARTICLE VI

Effectiveness

Section 6.01. The following is specified as an additional condition to the effectiveness of this Loan Agreement for the purposes of Section 9.01(f) of the Loan Regulations: the Subsidiary Loan Agreement, in form and substance satisfactory to ADB, shall have been duly executed and delivered on behalf of the Borrower and VEC, and shall have become effective and binding upon the Borrower and VEC in accordance with its terms, subject only to the effectiveness of this Loan Agreement.

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 opinion or opinions to be furnished to ADB: 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, subject only to the effectiveness of this Loan Agreement.

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 its agent for the purposes of taking any action or entering into any agreement required or permitted under Sections 3.02 and 3.05 of this Loan Agreement and under Sections 5.01, 5.02, 5.03 and 5.04 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:

+63 2 636 2444
+63 2 636 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.

THE SOCIALIST REPUBLIC OF
VIET NAM

By



NGUYEN VAN GIAU
Authorized Representative

ASIAN DEVELOPMENT BANK

By



AYUMI KONISHI
Country Director
Viet Nam Resident Mission

SCHEDULE 1

Description of the Project

Impact and Outcomes

1. The Project's impact will be the construction of the HLD Expressway. The Project will facilitate: (a) completion of documentation required for the HLD Expressway Project, and (b) strengthening of the capacity of VEC as a commercially oriented infrastructure provider.

Scope

2. The Project comprises the following:

Component 1: HLD Expressway Design and Procurement.

This Component will address pre-construction activities for the HLD Expressway.

- (i) preparation of detailed designs for the HLD Expressway Project;
- (ii) updating of existing resettlement plans and the EIA for the HLD Expressway Project taking account of its detailed engineering designs;
- (iii) preparation of bidding documents for procurement of Goods, Works and consulting services required for implementation of the HLD Expressway Project;
- (iv) assistance to VEC in procurement of Works;
- (v) preparation of concession documents for the operation and maintenance of the HLD Expressway; and
- (vi) consulting services to assist in the implementation of the resettlement plan for the HLD Expressway Project.

Component 2: Regulatory and Institutional Strengthening for Expressways

This Component will address capacity building and strengthening of VEC to facilitate the change from a state owned enterprise to an independent infrastructure provider.

- (i) preparation of a revised organizational structure for VEC;
- (ii) review of legal and regulatory constraints to VEC's operation as an efficient and financially secured provider of expressway facilities;
- (iii) carrying out of the training needs assessment and the ensuing training programs;

- (iv) implementation of training programs and strengthening VEC's capacity to manage resettlement, social and environmental impacts of expressways; and
 - (v) establishment of an appropriate asset management system for VEC.
3. The Project is expected to be completed by 31 December 2009.

SCHEDULE 2**Amortization Schedule****VIE: HCMC – Long Thanh – Dau Giay Expressway Technical Assistance Project**

<u>Date Payment Due</u>		<u>Payment of Principal</u> (expressed in SDR)*
15 May	2016	134,063.00
15 November	2016	134,063.00
15 May	2017	134,063.00
15 November	2017	134,063.00
15 May	2018	134,063.00
15 November	2018	134,063.00
15 May	2019	134,063.00
15 November	2019	134,063.00
15 May	2020	134,063.00
15 November	2020	134,063.00
15 May	2021	134,063.00
15 November	2021	134,063.00
15 May	2022	134,063.00
15 November	2022	134,063.00
15 May	2023	134,063.00
15 November	2023	134,063.00
15 May	2024	134,063.00
15 November	2024	134,063.00
15 May	2025	134,063.00
15 November	2025	134,063.00
15 May	2026	134,063.00
15 November	2026	134,063.00
15 May	2027	134,063.00
15 November	2027	134,063.00
15 May	2028	134,063.00
15 November	2028	134,063.00
15 May	2029	134,063.00
15 November	2029	134,063.00
15 May	2030	134,063.00
15 November	2030	134,063.00
15 May	2031	134,063.00
15 November	2031	134,063.00
15 May	2032	134,063.00
15 November	2032	134,063.00
15 May	2033	134,063.00
15 November	2033	134,063.00

<u>Date Payment Due</u>		<u>Payment of Principal</u> (expressed in SDR)*
15 May	2034	134,063.00
15 November	2034	134,063.00
15 May	2035	134,063.00
15 November	2035	134,063.00
15 May	2036	134,063.00
15 November	2036	134,063.00
15 May	2037	134,063.00
15 November	2037	134,063.00
15 May	2038	134,063.00
15 November	2038	134,063.00
15 May	2039	134,063.00
15 November	2039	134,039.00
		6,435,000.00

* 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, 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 2 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 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.

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS			
(Ho Chi Minh City - Long Thanh - Dau Giay Expressway Preparation Project)			
CATEGORY			ADB FINANCING
	Item	Amount Allocated (SDR) Category	Percentage and Basis for Withdrawal from the Loan Account
1	Consulting Services	5,792,000	100 percent of total expenditure*
2	Interest Charge	64,000	100 percent of amount due
3	Unallocated	579,000	
	Total	6,435,000	

* Exclusive of local taxes

SCHEDULE 4

Procurement of Goods and Consulting Services

A. General

1. All Goods 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

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

Shopping

The method of procurement is 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.

C. Selection of Consulting Services

4. 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

5. (a) The Borrower shall ensure that all Goods 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 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.

6. 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

7. 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****I. Project Implementation****Project Executing Agency**

1. VEC shall be the Project Executing Agency and shall be responsible for recruiting and managing the consultants engaged for the Project, withdrawal of Loan proceeds and reporting to ADB.

PIU

2. VEC shall establish the PIU for day to day implementation of the Project and assign necessary counterpart staff to the PIU prior to the commencement of any consulting services. The PIU shall be headed by the Project Director, who shall be responsible for overall Project implementation and management.

II. Social and Environmental Issues**Environment**

3. The Borrower shall ensure that VEC prepares an EIA that takes into account the detailed engineering design for the HLD Expressway Project. The EIA shall include an EMP which shall have been prepared with adequate public consultation, in accordance with the requirements of ADB's Public Communications Policy (2005) and Environment Policy (2002), and submit it to ADB for approval. The Borrower shall ensure that the civil works contracts for the HLD Expressway Project include specific measures as indicated in the EIA and in accordance with ADB's Environment Policy to mitigate negative environmental impacts caused by the construction of the HLD Expressway and to give due consideration to prevention of damage to the natural environment in the design, construction, operation, and maintenance of the highway facilities. The Borrower shall also ensure that (i) specific provisions are included in civil works and consulting services contracts for the implementation of the EMP and its monitoring, and (ii) budget allowances are made for the implementation of these provisions.

Resettlement

4. The Borrower shall ensure that VEC updates the existing resettlement plan for the HLD Expressway Project in accordance with the requirements of ADB's Policy on Involuntary Resettlement (1995) and submits the updated resettlement plan to ADB for approval. The updated resettlement plan shall take into account the final detailed engineering design and shall have been disclosed to the affected people prior to submission to ADB.

Indigenous Peoples

5. The Borrower shall ensure that VEC conducts surveys to identify any impacts of the HLD Expressway Project on ethnic minorities, and takes appropriate mitigation

measures, should any such impact be established, in accordance with ADB's Policy on Indigenous Peoples (1998).

Other Social Issues

6. The Borrower shall ensure that all civil works procurement documents to be prepared under the Project incorporates provisions and budget to the effect that contractors (a) comply with all applicable labor laws and related international treaty obligations; (b) do not employ child labor, as defined under Vietnamese laws; (c) provide safe and proper working conditions for male and female workers; (d) do not differentiate between wages of male and female workers for work of equal value, (e) implement the provisions set forth in the Gender Action Plan prepared for the Project; and (f) carry out HIV/AIDS and human trafficking awareness campaigns in the campsites and corridors of influence.

III. Other Issues

Expressway Subsector

7. The Borrower shall ensure that (a) revised regulations for VEC operations will be submitted to MOT for consideration by 30 November 2009; and (b) VEC will establish and suitably staff an Environmental and Social Unit by 30 June 2009.

Project Review

8. The Borrower and ADB shall jointly conduct periodic reviews and a midterm review of the Project in the second year of the Project implementation period to review the progress of the Project and undertake any necessary midcourse corrections.