
LOAN NUMBER 2460-VIE(SF)

PROJECT AGREEMENT

(Greater Mekong Subregion: Ha Noi-Lang Son, Greater Mekong Subregion:
Ha Long-Mong Cai, and Ben Luc-Long Thanh Expressways Technical Assistance Project)

between

ASIAN DEVELOPMENT BANK

and

VIETNAM EXPRESSWAY CORPORATION

DATED 12 DECEMBER 2008

PAG:VIE 41414

PROJECT AGREEMENT

PROJECT AGREEMENT dated 12 December 2008 between ASIAN DEVELOPMENT BANK ("ADB") and VIETNAM EXPRESSWAY CORPORATION (hereinafter called VEC).

WHEREAS

(A) by a Loan Agreement of even date herewith between the Socialist Republic of Viet Nam (the Borrower) and ADB, ADB has agreed to make to the Borrower a loan in various currencies equivalent to sixteen million six hundred and sixteen thousand Special Drawing Rights (SDR16,616,000.00 on the terms and conditions set forth in the Loan Agreement, but only on the condition that the proceeds of the Loan be made available to VEC and that VEC agrees to undertake certain obligations towards ADB as set forth in this Project Agreement; and

(B) VEC, in consideration of ADB entering into the Loan Agreement with the Borrower, has agreed to undertake the obligations set forth in this Project Agreement.

NOW THEREFORE the parties agree as follows:

ARTICLE I

Definitions

Section 1.01. Wherever used in this Project Agreement, unless the context otherwise requires, the terms defined in the 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) VEC shall carry out the Project with due diligence and efficiency, and in conformity with sound administrative, financial, engineering, environmental and expressway practices.

(b) In the carrying out of the Project, VEC shall perform all obligations set forth in the Loan Agreement to the extent that they are applicable to VEC.

Section 2.02. VEC shall make available, promptly as needed, the funds, facilities, services, equipment and other resources which are 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, VEC shall employ competent and qualified consultants, acceptable to ADB, to an extent and upon terms and conditions satisfactory to ADB.

(b) Except as ADB may otherwise agree, all consulting services to be financed out of the proceeds of the Loan shall be procured in accordance with the provisions of Schedule 4 to the Loan Agreement. ADB may refuse to finance a contract where consulting services have 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. VEC shall carry out the Project in accordance with plans, design standards, specifications, work schedules and methods acceptable to ADB. VEC 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. VEC shall maintain, or cause to be maintained, records and accounts adequate to identify the consulting services 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, its operations and financial condition.

Section 2.06. (a) ADB and VEC shall cooperate fully to ensure that the purposes of the Loan will be accomplished.

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

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

Section 2.07. (a) VEC 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 consulting services financed out of such proceeds; (iii) the Project; (iv) the administration, operations and financial condition of VEC; and (v) any other matters relating to the purposes of the Loan.

(b) Without limiting the generality of the foregoing, VEC shall furnish to ADB quarterly reports on the execution of the Project. Such reports shall be submitted in such form and in such detail and within such a period as ADB shall reasonably request, and shall indicate, among other things, progress made and problems encountered during the quarter under review, steps taken or proposed to be taken to remedy these problems, and proposed program of activities and expected progress during the following quarter.

(c) Promptly after completion of the Project, but in any event not later than three (3) months thereafter or such later date as ADB may agree for this purpose, VEC 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 VEC of its obligations under this Project Agreement and the accomplishment of the purposes of the Loan.

Section 2.08. (a) VEC shall (i) maintain separate accounts for the Project; (ii) have such accounts and related financial statements (balance sheet, statement of income and expenses, and related statements) audited annually, in accordance with appropriate auditing standards consistently applied, by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB; and (iii) furnish to ADB, promptly after their preparation but in any event not later than six (6) months after the close of the Fiscal Year to which they relate, certified copies of such audited accounts and financial statements and the report of the auditors relating thereto (including the auditors' opinion on the use of the Loan proceeds and compliance with the financial covenants of the Loan Agreement, all in the English language). VEC shall furnish to ADB such further information concerning such accounts and financial statements and the audit thereof as ADB shall from time to time reasonably request.

(b) VEC shall enable ADB, upon ADB's request, to discuss the Project Executing Agency's financial statements and its financial affairs from time to time with the auditors, appointed by VEC pursuant to Section 2.09(a) hereabove, and shall authorize and require any representative of such auditors to participate in any such discussions requested by ADB, provided that any such discussion shall be conducted only in the presence of an authorized officer of VEC unless VEC shall otherwise agree.

Section 2.09. VEC shall enable ADB's representatives to inspect the any relevant records and documents relating to expenditures made out of the proceeds of the Loan.

Section 2.10. (a) VEC shall, promptly as required, take all action within its powers to maintain its corporate existence, to carry on its operations, and to acquire, maintain and renew all rights, properties, powers, privileges and franchises which are necessary in the carrying out of the Project or in the conduct of its business.

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

(c) VEC shall at all times operate and maintain its plants, equipment and other property, and from time to time, promptly as needed, make all necessary repairs and renewals thereof, all in accordance with sound administrative, financial, engineering, environmental, expressway, and maintenance and operational practices.

Section 2.11. Except as ADB may otherwise agree, VEC shall not sell, lease or otherwise dispose of any of its assets which shall be required for the efficient carrying on of its operations or the disposal of which may prejudice its ability to perform satisfactorily any of its obligations under this Project Agreement.

Section 2.12. Except as ADB may otherwise agree, VEC shall apply the proceeds of the Loan to the financing of expenditures for the Project in accordance with the provisions of the Loan Agreement and this Project Agreement, and shall ensure that all consulting services financed out of such proceeds are used exclusively in the carrying out of the Project.

Section 2.13. Except as ADB may otherwise agree, VEC 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 2.14. VEC shall promptly notify ADB of any proposal to amend, suspend or repeal any provision of its Constituting Documents and shall afford ADB an adequate opportunity to comment on such proposal prior to taking any action thereon.

ARTICLE III

Effective Date; Termination

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

Section 3.02. 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 or by mail, telegram, cable, telex, facsimile or radiogram to the party to which it is required or permitted to be given or made at its address hereinafter specified, or at such other address as such party shall have designated by notice to the party giving such notice or making such request. The addresses so specified are:

For ADB

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

Facsimile Numbers:

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

For VEC

Hamlet 2 – Linh Nam Ward
Hoang Mai District
Hanoi, Viet Nam

Facsimile Number:

+84 4 643-0270.

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 VEC may be taken or executed by its Chairman or by such other person or persons as he shall so designate in writing notified to ADB.

(b) VEC shall furnish to ADB sufficient evidence of the authority of each person who will act under paragraph (a) of this Section, together with the authenticated specimen signature of each such person.

Section 4.03. No delay in exercising, or omission to exercise, any right, power or remedy accruing to either party under this Project Agreement upon any default shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence in such default; nor shall the action of such party in respect of any default, or any acquiescence in any default, affect or impair any right, power or remedy of such party in respect of any other or subsequent default.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Project Agreement to be signed in their respective names and to be delivered at the principal office of ADB, as of the day and year first above written.

ASIAN DEVELOPMENT BANK

By 
AYUMI KONISHI
Country Director
Viet Nam Resident Mission

VIETNAM EXPRESSWAY CORPORATION


By _____
TRAN XUAN SANH
General Director