
LOAN NUMBER 3207-VIE

LOAN NUMBER 3208-VIE (SF)
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AMENDED AND RESTATED PROJECT AGREEMENT

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

between

ASIAN DEVELOPMENT BANK

and

VIETNAM EXPRESSWAY CORPORATION

DATED 4 May 2015

VIE 33307

AMENDED AND RESTATED PROJECT AGREEMENT

AMENDED AND RESTATED PROJECT AGREEMENT dated 4 May 2015
between ASIAN DEVELOPMENT BANK ("ADB") and VIETNAM EXPRESSWAY
CORPORATION ("VEC").

WHEREAS

(A) by a loan agreement dated 26 September 2008 between the Socialist Republic of Viet Nam ("Borrower") and ADB ("Initial ADF Loan Agreement"), ADB provided a loan (No. 2392-VIE[SF]) in the amount of one hundred twenty-seven million three hundred seventy-three thousand Special Drawing Rights (SDR127,373,000) on the terms and conditions set forth in the Initial ADF 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 set forth in the Project Agreement dated 26 September 2008 ("Initial Project Agreement");

(B) by a loan agreement dated 26 September 2008 between the Borrower and ADB ("Initial OCR Loan Agreement"), ADB provided a loan (No. 2391-VIE) in the amount of eight hundred ninety-six million Dollars (\$896,000,000) on the terms and conditions set forth in the Initial OCR 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 set forth in Initial Project Agreement;

(C) by a loan agreement of even date herewith between the Borrower and ADB ("OCR Loan Agreement"), ADB has agreed to make to the Borrower a loan of one hundred seventeen million Dollars (\$117,000,000) 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 set forth herein;

(D) by a loan agreement of even date herewith between the Borrower and ADB ("ADF Loan Agreement", together with the Initial ADF Loan Agreement, the Initial OCR Loan Agreement and the OCR Loan Agreement, "Loan Agreements"), ADB has agreed to make to the Borrower loans in various currencies equivalent to a total of twenty million two hundred eighty-four thousand Special Drawing Rights (SDR20,284,000) 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 set forth herein; and

(E) the Parties agree that the Initial Project Agreement is hereby amended and restated, and VEC, in consideration of ADB entering into the Loan Agreements with the Borrower, has 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 Agreements and in the Loan Regulations (as so defined) have the respective meanings therein set forth, except that for purposes of this Project Agreement:

(a) the term "Loans" means all loans provided under the Loan Agreements; and

(b) the term "Subsidiary Loan Agreement" means all subsidiary loan agreements executed in connection with carrying out the Loan Agreements.

ARTICLE II

Particular Covenants

Section 2.01. (a) VEC 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, VEC shall perform all obligations set forth in the Loan Agreements to the extent that they are applicable to VEC, and all obligations set forth in this Project Agreement.

Section 2.02. VEC shall make available, promptly as needed, the funds, facilities, services, land and other resources as required, in addition to the proceeds of the Loans, for the carrying out of the Project.

Section 2.03. (a) In the carrying out of the Project, VEC 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, VEC shall procure all items of expenditures to be financed out of the proceeds of the Loans in accordance with the provisions of Schedule 4 to the Initial ADF Loan Agreement and Schedule 3 to the Initial OCR 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. VEC shall carry out the Project in accordance with plans, design standards, specifications, work schedules and construction 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. (a) VEC shall take out and maintain with responsible insurers, or make other arrangements satisfactory to ADB for, insurance against such risks and in such amounts as shall be consistent with sound practice.

(b) Without limiting the generality of the foregoing, VEC 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. VEC shall maintain, or cause to be maintained, records and accounts adequate to identify the items of expenditure financed out of the proceeds of the Loans, to disclose the use thereof in the Project, to record the progress of the Project (including the cost thereof) and to reflect, in accordance with consistently maintained sound accounting principles, its operations and financial condition.

Section 2.07. (a) ADB and VEC shall cooperate fully to ensure that the purposes of the Loans 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 Loans.

(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 Loans.

Section 2.08. (a) VEC shall furnish to ADB all such reports and information as ADB shall reasonably request concerning (i) the Loans and the expenditure of the proceeds thereof; (ii) the items of expenditure financed out of such proceeds; (iii) the Project; (iv) the administration, operations and financial condition of VEC; and (v) any other matters relating to the purposes of the Loans.

(b) Without limiting the generality of the foregoing, VEC 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, 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 Loans.

Section 2.09. (a) VEC 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 Agreements 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, VEC shall (i) provide its annual financial statements prepared in accordance with national accrual-based financing reporting standards; (ii) have its financial statements audited annually by independent auditors whose qualifications, experience and terms of reference are sound and generally acceptable in the relevant industry, in accordance with international standards for 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) VEC shall enable ADB, upon ADB's request, to discuss the financial statements for the Project and VEC and its financial affairs where they relate to the Project with the auditors appointed by VEC 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 VEC, unless VEC shall otherwise agree.

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

Section 2.11. (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 operations.

(b) VEC shall at all times conduct its 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) 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 applicable technical, financial, business, development, operational and maintenance practices.

Section 2.12. 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 2.13. Except as ADB may otherwise agree, VEC shall apply the proceeds of the Loans to the financing of expenditures on the Project in accordance with the provisions of the Loan Agreements and this Project Agreement, and shall ensure that all items of expenditures financed out of such proceeds are used exclusively in the carrying out of the Project.

Section 2.14. Except as ADB may otherwise agree, 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 2.15. VEC shall promptly notify ADB of any proposal to amend, suspend or repeal any provision of its charter, which, if implemented, could adversely affect the carrying out of the Project or the operation of the Project facilities. VEC 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 either the ADF Loan Agreement or OCR Loan Agreement comes into force and effect. ADB shall promptly notify VEC of such date.

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

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

ARTICLE IV

Miscellaneous

Section 4.01. Any notice or request required or permitted to be given or made under this Project Agreement and any agreement between the parties contemplated by this Project Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand, mail or facsimile to the party to which it is required or permitted to be given or made at its address hereinafter specified, or at such other address as such party shall have designated by notice to the party giving such notice or making such request. The addresses so specified are:

For ADB

Asian Development Bank
6 ADB Avenue
Mandaluyong City
1550 Metro Manila
Philippines

Facsimile Numbers:

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

For VEC

MITEC Building, Lot E2
Cau Giay Urban Area, Yen Hoa Ward
Cau Giay District
Ha Noi, Viet Nam

Facsimile Number:

(844) 3643-0270.

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 Agreements by or on behalf of VEC may be taken or executed by its Chairman or by such other person or persons as he or she 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 subsection (a) hereinabove, together with the authenticated specimen signature of each such person.

Section 4.03. No delay in exercising, or omission to exercise, any right, power or remedy accruing to either party under this Project Agreement upon any default shall impair any such right, power or remedy or be construed to be a waiver thereof or


an acquiescence in such default; nor shall the action of such party in respect of any default, or any acquiescence in any default, affect or impair any right, power or remedy of such party in respect of any other or subsequent default.

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

ASIAN DEVELOPMENT BANK

By 
TOMOYUKI KIMURA
Country Director
Viet Nam Resident Mission

VIETNAM EXPRESSWAY CORPORATION

By 
TRAN QUOC VIET
Chairman of the Board
Vietnam Expressway Corporation