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LOAN NUMBER 2451-VIE

PROJECT AGREEMENT

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

between

ASIAN DEVELOPMENT BANK

and

VIETNAM EXPRESSWAY CORPORATION

DATED 20 MARCH 2009

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PAL:VIE 40198

## **PROJECT AGREEMENT**

PROJECT AGREEMENT dated 20 March 2009 between ASIAN DEVELOPMENT BANK (hereinafter called 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 (hereinafter called the Borrower) and ADB, ADB has agreed to make to the Borrower a loan of four hundred and ten million two hundred thousand dollars (410,200,000) 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 as hereinafter set forth; and

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

NOW THEREFORE the parties hereto agree as follows:

## **ARTICLE I**

### **Definitions**

Section 1.01. Wherever used in this Project Agreement, unless the context otherwise requires, the several terms defined in the Loan Agreement and in the Loan Regulations (as so defined) have the respective meanings therein set forth.

## **ARTICLE II**

### **Particular Covenants**

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

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 and contractors, acceptable to ADB, to an extent and upon terms and conditions satisfactory to ADB.

(b) 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 the Loan Agreement. ADB may refuse to finance a contract where Goods, Works or 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 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 of the Project facilities and all equipment financed out of the proceeds of the Loan to such extent and against such risks and in such amounts as shall be consistent with sound practice.

(b) Without limiting the generality of the foregoing, VEC undertakes to insure, or cause to be insured, the Goods to be imported for the Project and to be financed out of the proceeds of the Loan 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 Goods, Works and consulting services and other items of expenditure financed out of the proceeds of the Loan, to disclose the use thereof in the Project, to record the progress of the Project (including the cost thereof) and to reflect, in accordance with consistently maintained sound accounting principles, its operations and financial condition.

Section 2.07. (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 2.08. (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 Goods, Works, consulting services and other 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 Loan.

(b) Without limiting the generality of the foregoing, VEC shall furnish to ADB quarterly reports on the execution of the Project, the operation and management of the Project facilities, on resettlement activities and on the implementation of the EMP. 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 physical 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 2.09. (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 covenants of the Loan Agreement as well as on the use of the procedures for imprest account, SGIs and statement of expenditures), 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 VEC'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 2.10. VEC shall enable ADB's representatives to inspect the Project, the Goods and Works financed out of the proceeds of the Loan, all other plants, sites, properties and equipment of the VEC 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 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 2.12. 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 Loan to the financing of expenditures on the Project in accordance with the provisions of the Loan Agreement and this Project Agreement, and shall ensure that all Goods, Works and consulting services 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 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

## SCHEDULE

### Execution of Project; Financial Matters

#### Project Executing Agency

1. VEC shall be the Project Executing Agency and shall be responsible for awarding all consulting services and Works contracts. VEC shall have overall responsibility for project implementation and formal correspondence with the line ministries, provincial authorities, and ADB. VEC shall delegate responsibility for day-to-day project implementation to the SEPMU, headed by a Director.

#### Resettlement

2. VEC shall ensure that the RP is fully implemented to the satisfaction of ADB.

3. VEC shall (a) recruit an EMA before commencement of any land acquisition activities for independent monitoring and evaluation of resettlement activities and ensure that the EMA's monitoring reports are uploaded to VEC's website, and submitted to ADB every quarter until resettlement and income restoration programs are complete; (b) ensure that land acquisition and relocation activities do not commence until an updated RP has been prepared for the relevant section of the Project and the updated RP has been reviewed and approved by ADB; (c) ensure that the updated RP is prepared in compliance with ADB's *Involuntary Resettlement Policy* (1995) and the Borrower's laws, regulations, and procedures and be applied to all resettlement activities under the Project, regardless of the source of funding, it being agreed that, in case of any discrepancy between the Borrower's laws and regulations, and ADB's *Involuntary Resettlement Policy*, the ADB policy requirements shall apply. VEC shall provide ADB with a final report immediately following completion of an RP's implementation.

4. If, at any time, significant realignment of any part of the Project is required, VEC shall ensure that the RP is revised and updated to take into account the realignment. Significant realignment occurs when the previously approved alignment is moved entirely outside the construction corridor of the previous design over a distance greater than 100 meters or the impact of the realignment increases the number of APs by more than ten percent (10%).

5. VEC shall contract an EMA for independent monitoring and evaluation of resettlement activities and ensure that the EMA's monitoring reports be uploaded on to VEC's website. VEC shall submit copies of the EMA's monitoring reports to ADB every quarter until resettlement and income restoration programs are complete.

6. VEC shall ensure that liquidation of any amount paid from any SGIA for land or other assets requires submission of: (i) a valid validation certificate issued by an external valuer acceptable to both the Borrower and ADB; (ii) the results of the detailed measurement survey (DMS) for the AP receiving the payment, signed as agreed by the AP, setting out the assets to be acquired; (iii) acknowledgment of receipt of payment by the AP, and (iv) certification by the EMA that the AP has received the full payment.

7. VEC shall ensure that no Works contract is awarded until an updated RP for the section of road covered by the proposed Works contract has been approved by ADB, including



(i) a detailed measurement survey (DMS) for the relevant section and validated compensation unit rates for all categories of losses and allowances; and (ii) a final database of AP, a summary of the updated DMS data, and replacement cost tables for the relevant section.

8. VEC shall ensure that Works contractors are not issued a notice of possession for a geographic area until (a) compensation payment and relocation to new sites has been satisfactorily completed for that area in accordance with the approved RP, (b) agreed rehabilitation assistance is in place, and (c) the area is free of all encumbrances.

### Environment

9. VEC shall ensure that the EMP is fully implemented to the satisfaction of ADB.

10. VEC shall ensure that the Borrower's laws and regulations governing environmental impact assessments, as well as ADB's *Environment Policy (2002)* are followed, it being agreed that if there is any discrepancy between Borrower's laws and regulations, and ADB's *Environment Policy*, the ADB policy requirements shall apply.

11. VEC shall ensure that (a) specific provisions are included for the implementation of the EMP and its monitoring in Works contracts, and in consulting services contracts, together with budget allowances for these provisions; (c) the provisions of the EIA and EMP, and any updates, are fully implemented for all activities under the Project, regardless of the source of funds for a particular activity. VEC shall ensure that (i) the EMP, as updated during detailed design and approved by ADB, is included in the bidding documents as a basis for the contractors to prepare SEMP's and that (ii) submission to and approval by ADB of an SEMP for the section of road covered by any Works contract is a condition for award of the relevant Works contract.

12. VEC shall ensure that additional environmental studies are undertaken and that corresponding approval from MONRE and ADB are obtained should there be changes in the Project design that would cause significant environmental impacts that are not included in the scope of the current EIA and that such changes shall be screened for environmental significance and environmental category determination.

13. If, at any time, significant realignment of any part of the Project is required, which change may have an adverse environmental impact as agreed between the Borrower and ADB, VEC shall ensure that an additional environmental assessment shall be completed and a process similar to that used for an EIA, and acceptable to ADB, shall be undertaken. Significant realignment occurs when the previously approved alignment is moved entirely outside the construction corridor of the previous design over a distance greater than 100 meters or the impact of the realignment increases the number of APs by more than ten percent (10%).

14. VEC shall cause (i) the contractors engaged under the Works contracts to comply strictly with all environmental impact mitigation requirements set out in the contract documents, and (ii) the consultants engaged for construction supervision to monitor closely the compliance by the contractors with the environmental impact mitigation requirements. VEC shall submit to ADB semi-annual reports on implementation of the EMP as stated in the EIA.

15. VEC shall conduct an unexploded ordnance survey and clearance prior to commencement of Works.

### Indigenous Peoples and Ethnic Minorities, Gender and Other Social Issues

16. VEC shall ensure that, to the extent any ethnic minorities are likely to be significantly affected by the Project, the measures set forth in the ethnic minorities specific sections in the RP are carried out in accordance with such actions, the Borrower's laws and regulations, and ADB's *Policy on Indigenous Peoples* (1998), it being agreed that, if there is any discrepancy between the Borrower's laws and regulations and ADB's *Policy on Indigenous Peoples*, the ADB policy requirements shall apply.

17. VEC shall ensure that the provisions set forth in the project-specific gender strategy and the HIV/AIDS Awareness and Prevention of Human Trafficking Program are implemented. In particular, VEC shall ensure that, in any instance where land is acquired for APs, land or land use rights is/are jointly registered in the names of both the husband and wife and, where compensation is paid, payment is made into a joint account opened in the names of both the husband and wife (where applicable).

18. VEC shall ensure that all Works contracts under the Project incorporate provisions and budget to the effect that contractors comply with all applicable labor laws and related international treaty obligations and carry out the project-specific gender strategy and the HIV/AIDS Awareness and Prevention of Human Trafficking Program in the campsites and corridors of influence. VEC shall further ensure that all Works contracts include provisions to: (a) prohibit employment of child labor; (b) prohibit differential wages or benefits to men and women for work of equal value; (c) require the provision of basic water and sanitation facilities for men and women in the construction camps as well as separate bathing and toilet facilities for men and women; (d) provide day care service for the children of female construction workers; and (e) provide safe working conditions for male and female workers.

### Governance

19. VEC shall ensure that a Project specific webpage is established on VEC's website and that information is publicly disclosed on this web page on how Loan proceeds are being used, including for each 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, (d) list of Goods and/or services purchased, and (e) intended and actual utilization of Loan proceeds under each contract and that the web page shall be updated within two weeks after each award of contract.

### Auditing and Accounting

20. VEC shall authorize all withdrawals from the SGIAs, and ensure that all SGIA's are audited as part of the regular annual audits of Project accounts. VEC shall ensure that ADB staff have the right to conduct spot or random checks of expenditures covered by the SGIAs.

21. VEC shall maintain a separate Project account ledger to record VAT payments to Project consultants and contractors and recovery of these amounts from the relevant tax authority within MOF (the VAT Account), it being agreed that funds from the VAT Account shall only be applied to Works procured under International Competitive Bidding.

22. VEC shall ensure that the VAT Account is audited annually in accordance with appropriate auditing standards consistently applied, by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB. VEC shall further

ensure that the audit opinion includes confirmation that (i) the VAT Account has only been used for the payment of VAT amounts for Project-related expenses, and (ii) the accounting records and documentation of the VAT Account are complete.

23. VEC shall ensure that the use of the imprest account shall be limited to providing funds for (i) payments for VEC's Project administration costs, (ii) payments for Project consulting services (including associated taxes other than VAT), (iii) payments to contractors procured under national competitive bidding procedures (including associated taxes other than VAT), and (iv) replenishment of the SGIAs.

24. VEC shall ensure that the use of the SGIAs shall be limited to providing funds for payments: (i) to APs for land and other assets acquired to facilitate the construction of the Project, (ii) to APs for resettlement compensation and allowances as set out in the RP, (iii) of relocation site development and income restoration programs, and (iv) for incremental expenses incurred by the DCCs necessary for the implementation of the approved RP.

### Financial Matters

25. VEC shall (a) achieve beginning from Financial Year 2020 (i) a DSCR of at least 1.2 times, and (ii) a debt:equity ratio of not greater than 90:10; (b) submit to ADB a reasonable forecast of the projected financial statements to achieve those financial ratios and sets up toll rate structure and levels in agreement with ADB on the earlier of (i) 1 June 2012, or (ii) the opening of the first section of the HLD Expressway to users. VEC shall carry out periodic reviews of the toll structure and toll levels as may be required to adjust for inflation or unanticipated costs or at ADB's request, it being agreed that any changes to the toll rates must be submitted to ADB for approval before they may be implemented. For the purpose of this paragraph, the following definitions shall have the meanings prescribed hereunder:

- (i) DSCR shall be (a) an indicator of VEC's cash flow margin, enabling it to service debt from internal sources; and (b) a ratio that measures the extent to which forecast cash flows are able to cover forecast debt service requirements; and
- (ii) debt equity ratio means the ratio that measures the relationship between all borrowed funds and shareholders' invested capital.

26. On or before 31 December 2009, VEC shall have 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.

### Anticorruption

27. VEC shall comply with ADB's *Anticorruption Policy* (1998, as amended to date) and the *Policy relating to Enhancing ADB's Role in Combating Money Laundering and the Financing of Terrorism* (2003). VEC (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 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 from

engaging in money laundering activities or financing of terrorism and shall allow ADB to investigate any violation or potential violation of these undertakings.

28. Without limiting the generality of the preceding paragraph, VEC shall (i) conduct periodic inspections on the contractors' activities related to fund withdrawals and settlements; and (ii) 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 VEC, and all contractors, suppliers, consultants and other service providers as they relate to the Project.

29. In addition to these requirements, to deter corruption and increase transparency, VEC shall create and maintain a website to disclose information about procurements related to the Project. For each contract, the website shall include information on, among others, the list of participating bidders, name of the winning bidder, basic details on bidding procedures adopted, amount of contract awarded, and the list of goods/services, including consulting services, procured. In addition to the web-based disclosure, stakeholders, which include civil society and non-governmental organizations, shall be provided detailed information on procurement on public notice boards in their respective provinces.

#### Operation and Maintenance

30. VEC will ensure that the Expressway includes permanent truck weigh station facilities to be used to prevent overloaded trucks from using the Expressway.

31. VEC shall, by completion of the Works, submit to ADB documentation for an Operations and Maintenance (O&M) concession for the entire Expressway, including a time-bound implementation schedule in form and substance satisfactory to ADB.

#### Project Performance Monitoring and Evaluation

32. VEC shall establish a systematic Project performance monitoring and analysis system for use throughout the Project period.

33. VEC shall establish Project indicators (baseline data) in the Project Area for the Expressway, including: (i) traffic volumes and journey times; (ii) goods moved, by value and category, and number of passengers; (iii) average road roughness; (iv) annual expenditures on maintenance in HCMC and Dong Nai Province for the national, city and provincial level road networks; and (v) social and economic impact indicators. The data shall be collected within one year of the Effective Date. A second survey shall be conducted upon Project completion and a third survey five years after Project completion to establish Project impact. The design of the baseline and impact surveys shall include appropriate control areas and an assessment of all Project interventions, including resettlement and other safeguard interventions that affect the livelihood of Project beneficiaries.

34. VEC shall: (i) collect and consolidate all Project progress reports, site reports, technical and financial reports and submit them to ADB; and (ii) prepare monthly and quarterly progress reports, a midterm Project evaluation report and an overall Project completion report. Quarterly reports shall include updated implementation, financial and procurement-related information, as well as reports submitted by the EMA for resettlement activities. Monthly and quarterly reports shall be submitted to ADB within 15 days of the end of each month or quarter, as applicable.