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LOAN NUMBER 2451-VIE

LOAN AGREEMENT  
(Ordinary Operations)

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

between

SOCIALIST REPUBLIC OF VIET NAM

and

ASIAN DEVELOPMENT BANK

DATED 20 MARCH 2009

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LAL:VIE 40198

## **LOAN AGREEMENT (Ordinary Operations)**

LOAN AGREEMENT dated 20 March 2009 between the SOCIALIST REPUBLIC OF VIET NAM (hereinafter called the Borrower) and ASIAN DEVELOPMENT BANK (hereinafter called 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 (hereinafter called 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 ordinary capital 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 hereto agree as follows:

## **ARTICLE I**

### **Loan Regulations; Definitions**

Section 1.01. All the provisions of the Ordinary Operations Loan Regulations Applicable to LIBOR-Based Loans Made from ADB's Ordinary Capital Resources, dated 1 July 2001, are hereby made applicable to this Loan Agreement with the same force and effect as if they were fully set forth herein, subject, however, to the following modifications thereof (said Ordinary Operations Loan Regulations as so modified being hereinafter called the Loan Regulations):

(a) Section 3.03 is deleted and the following is substituted therefor:

Commitment Charge; Credit. (aa) The Borrower shall pay a commitment charge on the unwithdrawn amount of the Loan at the rate and on the terms specified in the Loan Agreement.

(bb) ADB shall provide to the Borrower a credit at the rate specified in the Loan Agreement, which credit shall remain fixed for the term of the Loan. ADB shall apply the amount of the credit against the interest payable by the Borrower.

(b) Section 3.06 is deleted and the following is substituted therefor:

(aa) Following any announcement by ADB that the Fixed Spread applicable to new Loans shall be reduced, ADB shall provide a Rebate to any Borrower

with an outstanding Loan on which a higher Fixed Spread is applicable. The amount of the Rebate shall be determined by multiplying (i) the difference between the Fixed Spread applicable to the outstanding Loan and the Fixed Spread that will be applied to new Loans (expressed as a percentage per annum), by (ii) the principal amount of the outstanding Loan on which the Borrower shall pay interest for all interest periods commencing on and after the effective date of the lower Fixed Spread that will be applied to new Loans.

(bb) Following any announcement by ADB that its Funding Cost Margin calculations with respect to any Loan Currency (or Approved Currency) in any Semester resulted in ADB achieving savings, ADB shall provide a Rebate to the Borrower. The amount of the Rebate shall be determined by multiplying (i) the Funding Cost Margin (expressed as a percentage per annum) by (ii) the principal amount of the Loan on which the Borrower shall pay interest for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated. ADB shall apply the amount of the Rebate against the interest payable by the Borrower for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated.

(c) Section 3.07 is deleted and the following is substituted therefor:

(aa) Following any announcement by ADB that the Fixed Spread applicable to new Loans shall be increased, any Borrower with an outstanding Loan on which a lower Fixed Spread is applicable shall pay ADB a Surcharge. The amount of the Surcharge shall be determined by multiplying (i) the difference between the Fixed Spread that will be applied to new Loans and the Fixed Spread applicable to the outstanding Loan (expressed as a percentage per annum), by (ii) the principal amount of the outstanding Loan on which the Borrower shall pay interest for all interest periods commencing on and after the effective date of the higher Fixed Spread that will be applied to new Loans.

(bb) Following any announcement by ADB that its Funding Cost Margin calculations with respect to any Loan Currency (or Approved Currency) in any Semester resulted in ADB incurring additional costs, the Borrower shall pay ADB a Surcharge. The amount of the Surcharge shall be determined by multiplying (i) the Funding Cost Margin (expressed as a percentage per annum) by (ii) the principal amount of the Loan on which the Borrower shall pay interest for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated. ADB shall add the amount of the Surcharge to the interest payable by the Borrower for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated.

Section 1.02. Wherever used in this Loan Agreement, unless the context otherwise requires, the several terms defined in the Loan Regulations have the respective meanings therein set forth, and the following additional terms have the following meanings:

(a) "Affected People" or "AP" means any person, household or community 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;

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

(c) “DCC” means a District Compensation Committee established by the People’s Committees of HCMC and Dong Nai Province for all districts through which the Project will be implemented;

(d) “Dong” means the currency of the Borrower;

(e) “DSCR” means debt service coverage ratio;

(f) “EIA” means the environmental impact assessment prepared for the Project by the Borrower and submitted to ADB on 8 April 2008, as may be updated from time to time with the concurrence of ADB;

(g) “EMA” means the external monitoring agency appointed by VEC, with ADB approval, to monitor Component C (Land Acquisition and Resettlement of Affected Communities) of the Project;

(h) “EMP” means the environmental management plan prepared for the Project by VEC dated 8 April 2008, as may be updated from time to time with the concurrence of ADB;

(i) “Expressway” means the HCMC – Long Thanh - Dau Giay expressway, the construction of which constitutes component A of the Project, as described in Schedule 1;

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

(k) “HCMC” means Ho Chi Minh City;

(l) “HIV/AIDS” means human immunodeficiency virus/acquired immune deficiency syndrome;

(m) “JBIC” means Japan Bank for International Cooperation;

(n) “MOF” means the Borrower’s Ministry of Finance or any successor thereto;

(o) “MONRE” means the Borrower’s Ministry of Natural Resources and Environment, or any successor thereto;

(p) “MOT” means the Borrower’s Ministry of Transportation or any successor thereto;

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

(r) “Procurement Plan” means the procurement plan for the Project dated [29 August 2008] 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;

(s) "Project Area" means the administrative districts in which the Expressway will be constructed;

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

(u) "Project Facilities" means the roads and bridges to be reconstructed, the structures to be built and the equipment purchased pursuant to this Loan Agreement;

(v) "RP" means the resettlement plan for the Project prepared by VEC dated May 2008, as may be updated from time to time with the concurrence of ADB;

(w) "SEPMU" means the Southern Expressway Project Management Unit, a unit within VEC;

(x) "SEMP" means a site-specific environmental management plan, being a subset of the EMP prepared by the contractor;

(y) "SGIA" means second generation imprest account;

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

(aa) "VAT" means value-added tax;

(bb) "VAT Account" has the meaning ascribed to it in paragraph 21 of Schedule 5; and

(cc) "VEC" means the Vietnam Expressway Corporation, a fully State-owned enterprise established in October 2004 under MOT to develop expressways in Viet Nam.

(dd) "Works" means the 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. (a) ADB agrees to lend to the Borrower from ADB's ordinary capital resources an amount of four hundred ten million and two hundred thousand Dollars (\$ 410,200,000), as such amount may be converted from time to time through a Currency Conversion in accordance with the provisions of Section 2.06 of this Loan Agreement.

(b) The Loan has a term of 25 years, including a grace period as defined in paragraph (c) of this Section.

(c) The term "grace period" as used in paragraph (b) of this Section means the period prior to the first Principal Payment Date in accordance with the amortization schedule set forth in Schedule 2 to this Loan Agreement.

Section 2.02. The Borrower shall pay to ADB interest on the principal amount of the Loan withdrawn and outstanding from time to time at a rate for each Interest Period equal to the sum of LIBOR and 0.60% as provided by Section 3.02 of the Loan Regulations, less a credit of 0.40% as provided by Section 3.03 of the Loan Regulations (as amended in accordance with Section 1.01(bb) of this Agreement).

Section 2.03. The Borrower shall pay a commitment charge of 0.15% per annum. Such charge shall accrue on the full amount of the Loan (less amounts withdrawn from time to time), commencing sixty (60) days after the date of this Loan Agreement.

Section 2.04. Interest and other charges on the Loan shall be payable semiannually on 15 May and 15 November in each year.

Section 2.05. The Borrower shall repay the principal amount of the Loan withdrawn from the Loan Account in accordance with the provisions of Schedule 2 to this Loan Agreement.

Section 2.06. (a) The Borrower may at any time request any of the following Conversions of the terms of the Loan in order to facilitate prudent debt management:

- (i) a change of the Loan Currency of all or any portion of the principal amount of the Loan, whether withdrawn and outstanding or unwithdrawn, to an Approved Currency;
- (ii) a change of the interest rate basis applicable to all or any portion of the principal amount of the Loan withdrawn and outstanding from a Floating Rate to a Fixed Rate, or vice versa; and
- (iii) the setting of limits on the Floating Rate applicable to all or any portion of the principal amount of the Loan withdrawn and outstanding by the establishment of an Interest Rate Cap or Interest Rate Collar on said Floating Rate.

(b) Any conversion requested pursuant to paragraph (a) of this Section that is accepted by ADB shall be considered a "Conversion", as defined in Section 2.01(6) of the Loan Regulations, and shall be effected in accordance with the provisions of Article V of the Loan Regulations and the Conversion Guidelines.

## **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 may 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, plus the commitment charge specified in Section 2.03 of this Loan Agreement, and any other charge payable by the Borrower under this Loan Agreement.

(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. 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. ADB may refuse to finance a contract where Goods, Works or consulting or 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 3.04. Except as ADB may otherwise agree, the Borrower shall cause all Goods, Works and consulting services financed out of the proceeds of the Loan to be used exclusively in the carrying out of the Project.

Section 3.05. The closing date for withdrawals from the Loan Account for the purposes of Section 9.02 of the Loan Regulations shall be 31 December 2014 or such other date as may from time to time be agreed between the Borrower and ADB.

## **ARTICLE IV**

### **Particular Covenants**

Section 4.01. (a) The Borrower shall cause VEC to 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, the Borrower shall perform, or cause to be performed, all obligations set forth in Schedule 5 to this Loan Agreement and the Schedule to the Project Agreement.

Section 4.02. The Borrower shall make available to VEC, promptly as needed and on terms and conditions acceptable to ADB, the funds, facilities, services, land and other resources which are required, in addition to the proceeds of the Loan, for the carrying out of the Project.

Section 4.03. The Borrower shall ensure that the activities of its departments and agencies with respect to the carrying out of the Project and operation of the Project Facilities are conducted and coordinated in accordance with sound administrative policies and procedures.

Section 4.04. 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 4.05. (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, abrogated or waived without the prior concurrence of ADB.

## **ARTICLE V**

### **SUSPENSION; 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 9.01(I) of the Loan Regulations: the Borrower shall have failed to comply with its obligations under paragraph 4 of Schedule 5 to this Loan Agreement.

Section 5.02. The following is specified as an additional event for acceleration of maturity for the purposes of Section 9.07(a) (iv) of the Loan Regulations: the event described in Section 5.01 above 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 10.01(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 fully effective and binding upon the Borrower and VEC in accordance with its terms.

Section 6.02. The following is specified as an additional matter, for the purposes of Section 10.02(d) of the Loan Regulations, to be included in the opinion or opinions to be furnished to ADB: that the Subsidiary Loan Agreement has been duly authorized or approved 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 10.04 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 3.05 of this Loan Agreement and under Sections 6.01, 6.02, 6.03 and 6.04 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 is designated as representative of the Borrower for the purposes of Section 12.02 of the Loan Regulations.

Section 8.02. The following addresses are specified for the purposes of Section 12.01 of the Loan Regulations:

For the Borrower

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

Facsimile Number:

(84-4) 8250-612.

For ADB

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

Facsimile Numbers:

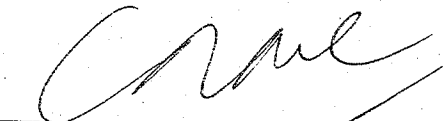
(632) 636-2444

(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

Authorized Representative

ASIAN DEVELOPMENT BANK

By



AYUMI KONISHI

Country Director

Viet Nam Resident Mission

## SCHEDULE 1

### Description of the Project

#### 1. Impact and Outcome

The Impact of the proposed Project will be business-led, pro-poor and sustainable economic growth in HCMC and neighboring provinces. The Project outcome will be ability of transport users in HCMC and Dong Nai provinces to travel from district 9 in HCMC to Dau Giay with lower transport costs on the Expressway.

#### 2. The Project will have the following components:

##### Component A: Construction of Transport Infrastructure

Construction of about 51 kilometers (km) of 4-lane expressway, from the junction of the Second Ring Road in District 9, HCMC to the junction with National Highway (QL) 1 at Dau Giay, Dong Nai Province (HCMC – Long Thanh portion to be financed by JBIC), including:

- (i) construction of 20 small or medium-scale bridges;
- (ii) construction of one (1) major-scale bridge over Dong Nai River at Long Thanh of about 1,700 meters (m) length and about 19.75m a width;
- (iii) construction of 2 service areas;
- (iv) construction of 3 toll plazas at the intersection with Second Ring Road, the intersection with National Highway 51 (QL51) at the southern end of Long Thanh town, and at Dau Giay (to be financed by JBIC).

##### Component B: Installation of an Electronic Toll Collection and Traffic Information and Monitoring System for the Expressway (to be financed by JBIC).

##### Component C: Land Acquisition and Resettlement of Affected Communities

- (i) Acquisition of land required for the construction of the Expressway and associated facilities; provision of compensation for all assets; and allowances for resettlement impacts and
- (ii) provision of new resettlement sites for AP, including associated infrastructure such as access roads, and improvement of common facilities such as schools and health facilities; and
- (iii) provision of assistance to restore and improve the livelihoods of the AP in a culturally sensitive manner, including training.

##### Component D: HIV/AIDS Awareness and Prevention of Human Trafficking Program

Implementation of an awareness campaign to supplement the Borrower's existing programs by expanding their existing actions to the Project Area (to be carried out by the Works contractors and the Project consultants), including:

- (i) capacity building of VEC;
- (ii) awareness campaigns in construction camps, and communities in the Project Area;

- (iii) community awareness programs on human trafficking, safe migration, community monitoring; and
- (iv) distribution of medical equipment to relevant health facilities.

Component E: Road Safety Awareness Program

Implementation of a road safety awareness program (to be carried out by the Project consultants), including:

- (i) carrying out a road safety audit of the Expressway design and facilities after completion of the construction;
- (ii) installation of roadside safety equipment, including, but not limited to, warning signs, delineators, and illuminations based on outputs of the road safety audit;
- (iii) providing a road safety awareness campaign to residents in the Project Area, with a focus on awareness of access-controlled Expressway operation immediately after the Expressway starts operation,
- (iv) review of the causes of traffic accidents happening during 6 months after the transfer of the first expressway section to VEC, and proposing necessary countermeasures.

3. The Project will utilize consulting services. The Project is expected to be completed by 30 June 2014.

## SCHEDULE 2

### Amortization Schedule

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

1. The following table sets forth the Principal Payment Dates of the Loan and the percentage of the total principal amount of the Loan payable on each Principal Payment Date (Installment Share). If the proceeds of the Loan shall have been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined by ADB by multiplying: (a) the total principal amount of the Loan withdrawn and outstanding as of the first Principal Payment Date; by (b) the Installment Share for each Principal Payment Date, such repayment amount to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

	<u>Payment Due</u>	<u>Installment Share</u> (Expressed as a % based on 10% annuity)
1	15 Nov 2013	0.827816
2	15 May 2014	0.869207
3	15 Nov 2014	0.912667
4	15 May 2015	0.958301
5	15 Nov 2015	1.006216
6	15 May 2016	1.056526
7	15 Nov 2016	1.109353
8	15 May 2017	1.164820
9	15 Nov 2017	1.223061
10	15 May 2018	1.284214
11	15 Nov 2018	1.348425
12	15 May 2019	1.415846
13	15 Nov 2019	1.486639
14	15 May 2020	1.560971
15	15 Nov 2020	1.639019
16	15 May 2021	1.720970
17	15 Nov 2021	1.807019
18	15 May 2022	1.897369
19	15 Nov 2022	1.992238
20	15 May 2023	2.091850
21	15 Nov 2023	2.196442
22	15 May 2024	2.306264
23	15 Nov 2024	2.421578

	<u>Payment Due</u>	<u>Installment Share</u> (Expressed as a % based on 10% annuity)
24	15 May 2025	2.542657
25	15 Nov 2025	2.669789
26	15 May 2026	2.803279
27	15 Nov 2026	2.943443
28	15 May 2027	3.090615
29	15 Nov 2027	3.245146
30	15 May 2028	3.407403
31	15 Nov 2028	3.577773
32	15 May 2029	3.756662
33	15 Nov 2029	3.944495
34	15 May 2030	4.141720
35	15 Nov 2030	4.348806
36	15 May 2031	4.566246
37	15 Nov 2031	4.794558
38	15 May 2032	5.034286
39	15 Nov 2032	5.286000
40	15 May 2033	5.550311
	Total	100.000000

2. If the proceeds of the Loan shall not have been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined as follows:

(a) To the extent that any proceeds of the Loan shall have been withdrawn as of the first Principal Payment Date, the Borrower shall repay the amount withdrawn and outstanding as of such date in accordance with paragraph 1 of this Schedule.

(b) Any withdrawal made after the first Principal Payment Date shall be repaid on each Principal Payment Date falling after the date of such withdrawal in amounts determined by ADB by multiplying the amount of each such withdrawal by a fraction, the numerator of which shall be the original Installment Share specified in the table in paragraph 1 of this Schedule for said Principal Payment Date (the Original Installment Share) and the denominator of which shall be the sum of all remaining Original Installment Shares for Principal Payment Dates falling on or after such date, such repayment amounts to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

3. Withdrawals made within two (2) calendar months prior to any Principal Payment Date shall, for the purposes solely of calculating the principal amounts payable on any Principal Payment Date, be treated as withdrawn and outstanding on the second Principal Payment Date

following the date of withdrawal and shall be repayable on each Principal Payment Date commencing with the second Principal Payment Date following the date of withdrawal.

4. Notwithstanding the provisions of paragraphs 1 and 2 of this Schedule, upon a Currency Conversion of all or any portion of the withdrawn principal amount of the Loan to an Approved Currency, the amount so converted in said Approved Currency that shall be repayable on any Principal Payment Date occurring during the Conversion Period, shall be determined by ADB by multiplying such amount in its currency of denomination immediately prior to said Conversion by either: (i) the exchange rate that reflects the amounts of principal in said Approved Currency payable by ADB under the Currency Hedge Transaction relating to said Conversion; or (ii) if ADB so determines in accordance with the Conversion Guidelines, the exchange rate component of the Screen Rate.

5. If the principal amount of the Loan withdrawn and outstanding from time to time shall be denominated in more than one Loan Currency, the provisions of this Schedule shall apply separately to the amount denominated in each Loan Currency, so as to produce a separate amortization schedule for each such amount.

### **SCHEDULE 3**

#### **Allocation and Withdrawal of Loan Proceeds**

##### General

1. The table attached to this Schedule sets forth the Categories of Goods, Works, consulting 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 and Commitment Charge

3. The amount allocated to Category 5 is for financing interest and commitment charges on the Loan during the implementation period of the Project. ADB shall be entitled to withdraw from the Loan Account and pay to itself, on behalf of the Borrower, the amounts required to meet payments, when due, of such interest and commitment charge.

##### 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, 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. DCCs shall each establish an SGIA at the provincial branch of a commercial bank acceptable to ADB. The imprest account, and each of the SGIA's, 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 Dollars and the currency of the SGIA's shall be Dong. The initial amount to be deposited into the imprest account shall not exceed the lower of (i) ADB's share of estimated expenditure to be funded from the imprest account for the first six (6) months of Project implementation, or (ii) forty million seven hundred thousand Dollars (\$40,700,000). 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 SGIA's. The initial amount to be deposited into any SGIA shall not exceed the lower of (i) ADB's share of estimated expenditure to be funded from the SGIA for the first six (6) months of Project implementation, or (ii) five million Dollars (\$5,000,000). Use of the SGIA's 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.

(b) The statement of expenditures (SOE) procedure may be used for reimbursement of eligible expenditures and to liquidate advances provided into the imprest account and SGIA's, in accordance with ADB's Loan Disbursement Handbook and detailed arrangements agreed upon between the Borrower and ADB. Any individual payment to be reimbursed under the SOE procedure shall not exceed the equivalent of one hundred thousand Dollars (\$100,000).

(c) Payments to consultants and contractors, including associated taxes, shall be made using direct payment procedures (with the exception of payments to contractors procured under national competitive bidding procedures). Payments for consulting services can also be made using the imprest account.

Retroactive Financing

7. Withdrawals from the Loan Account may be made for reimbursement of reasonable expenditures incurred under the Project before the Effective Date in respect of (i) acquisition of land and compensation of non-land assets; (ii) resettlement allowances; (iii) incremental expenses for the city, provincial and district resettlement committees incurred during implementation of the RP; (iv) Works to prepare resettlement sites for the Project; and (v) implementation of appropriate income restoration programs, but not earlier than 12 (twelve) months before the date of this Loan Agreement, subject to a maximum amount equivalent to twenty percent (20%) of the Loan amount.

**TABLE**

<b>ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS</b>			
<b>(Ho Chi Minh City-Long Thanh-Dau Giay Expressway Construction Project)</b>			
<b>CATEGORY</b>			<b>ADB FINANCING</b>
	<b>Item</b>	<b>Amount Allocated (\$) Category</b>	<b>Percentage and Basis for Withdrawal from the Loan Account</b>
1	Works	90,000,000	100 percent of total expenditure
2	Land Acquisition and Resettlement Compensation	186,100,000	100 percent of total expenditure
3	Consulting Services	11,000,000	100 percent of total expenditure
4	Project Administration Costs	15,300,000	100 percent of total expenditure
5	Interest Charge	62,100,000	100 percent of amount due
6	Unallocated	45,700,000	
	<b>Total</b>	<b>410,200,000</b>	

## SCHEDULE 4

### Procurement of Goods and Works, and Consulting Services

#### A. General

1. All Goods, 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
National 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.
5. National Competitive Bidding. The Borrower and ADB shall ensure that, prior to the commencement of any procurement activity under national competitive bidding, the Borrower's national competitive bidding procedures are consistent with the Procurement Guidelines. Any modifications or clarifications to such procedures agreed between the Borrower and ADB shall be set out in the Procurement Plan. Any subsequent change to the agreed modifications and clarifications shall become effective only after written approval of such change by the Borrower and ADB.

#### C. Conditions for Award of Contract

6. The Borrower shall not award any Works contracts financed under the Loan until:
  - (a) Resettlement: 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; and

(b) Environment: an SEMP for the section of road covered by the proposed Works contract has been approved by ADB.

**D. Selection of Consulting Services**

7. Quality- and Cost-Based Selection. Except as ADB may otherwise agree, and except as set forth in the paragraph below, the Borrower shall apply quality- and cost-based selection for selecting and engaging consulting services.

8. The Borrower shall apply the following method for selecting and engaging the specified consulting services, in accordance with, among other things, the procedures set forth in the Procurement Plan:

Consultants' Qualifications Selection (QCS) for Project Audit Consulting Services.

**E. Industrial or Intellectual Property Rights**

9. (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.

10. 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.

**F. ADB's Review of Procurement Decisions**

11. 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

##### 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.

##### Implementing Agencies

2. The DCCs shall be the implementing agencies for Component C (Resettlement of Affected Persons) and shall be responsible for payment of all compensation and allowances. Each DCC shall comprise of about seven members, representing provincial (or city) and district government departments, members of the civil society (such as Farmers' Association, Women's Union), and APs, and be headed by the Vice-Chairman of the relevant District People's Committee.

3. VEC, through SEPMU, shall have overall responsibility for implementation of all other components of the Project.

##### Financing

4. In the event where the funds made available to the Borrower under the loan agreements between JBIC and the Borrower are insufficient at any time to finance the items to be funded by JBIC (as detailed in Schedule 1 to this Loan Agreement), the Borrower undertakes to fund the shortfall from its own resources under arrangements satisfactory to ADB.

##### Resettlement

5. The Borrower shall ensure that the RP is fully implemented to the satisfaction of ADB.

6. The Borrower shall ensure that (a) VEC recruits an EMA before commencement of any land acquisition activities; (b) 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) 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, being agreed by the Borrower 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.

7. The Borrower shall ensure that (i) APs are compensated at replacement cost and assisted before they are displaced from their houses, land, and assets and (ii) that no APs are 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.

8. The Borrower shall provide ADB with quarterly status reports on the land acquisition and resettlement process as part of the progress reports required under Section 6.05 of the Loan Regulations, and shall provide a report immediately following completion of an RP's implementation.

9. If, at any time after an RP has been approved, significant realignment of any part of the Project is required, the Borrower shall revise and update that RP to take into account the realignment. The updated RP shall be updated in accordance with ADB's *Involuntary Resettlement Policy* and submitted to ADB for approval prior to commencement of any land acquisition activities for the realigned part of the Project. 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%).

10. The Borrower shall ensure that VEC contracts an EMA for independent monitoring and evaluation of resettlement activities and that the EMA's monitoring reports be uploaded onto VEC's website. The Borrower shall ensure that VEC submits copies of the EMA's monitoring reports to ADB every quarter until resettlement and income restoration programs are complete.

11. The Borrower shall ensure that liquidation of any amount paid from any SGIA for land or other assets requires the submission of: (i) a valid validation certificate issued by an external values 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) that receipt of payment is acknowledged by the AP, and (iv) certification by the EMA that the AP has received the full payment.

12. The Borrower shall ensure that 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

13. The Borrower shall ensure that its 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 the Borrower's laws and regulations, and ADB's *Environment Policy*, the ADB policy requirements shall apply. The Borrower shall ensure that the EMP is fully implemented to the satisfaction of ADB.

14. The Borrower 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; (b) 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. The Borrower shall ensure that 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.

15. The Borrower shall cause VEC to ensure that additional environmental studies will be undertaken and corresponding approval from MONRE and ADB shall be 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.

16. If, at any time, significant realignment of any part of the Project is required, and this change may have an adverse environmental impact as agreed between the Borrower and ADB, 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%).

17. The Borrower 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. The Borrower shall ensure that VEC submits to ADB semi-annual reports on implementation of the EMP as stated in the EIA.

18. The Borrower shall ensure that VEC conducts an unexploded ordnance survey and clearance, and that completion of such clearance is certified to ADB by the Borrower, prior to commencement of Works.

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

19. The Borrower 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, Borrower's laws and regulations, and ADB's *Policy on Indigenous Peoples* (1998), it being agreed that, if there is any discrepancy between Borrower's laws and regulations and ADB's *Policy on Indigenous Peoples*, the ADB policy requirements shall apply.

20. The Borrower 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, the Borrower shall ensure that, in any instance where land is acquired for AP, VEC ensures joint registration of land or land use rights 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).

21. The Borrower 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. The Borrower 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

22. The Borrower shall ensure that a Project specific web page shall be established on VEC's website and information shall be 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

23. The Borrower shall cause VEC to (i) maintain separate accounts for the Project; (ii) 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; (iii) have all Project accounts (including the VAT account) 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 (iv) 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, all in the English language. The audit opinion shall include (i) a detailed description on the source of funds and expenditures made, (ii) an assessment of the adequacy of accounting and internal control systems with respect to project expenditures and other financial transactions, and to ensure safe-custody of Project-financed assets, (iii) an assessment as to whether the Borrower, VEC and the DDCs have maintained adequate documentation for all financial transactions, (iv) a separate opinion on the use of the SOE and imprest account and SGIA procedures, and (v) confirmation of compliance with the financial covenants in this Loan Agreement. The audit opinion shall further include 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. The Borrower shall cause VEC to 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.

24. The Borrower shall ensure that (a) VEC authorizes all withdrawals from the SGIAs, and (b) that all SGIA's are audited as part of the regular annual audits of Project accounts. The Borrower shall ensure that that ADB staff will have the right to conduct spot or random checks of expenditures covered by the SGIAs.



Financial Matters

25. The Borrower shall ensure that VEC (a) achieves 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) submits 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. The Borrower shall cause VEC to 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. The Borrower shall ensure that, on or before 31 December 2009, 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.

Anticorruption

27. The Borrower shall comply with, and shall cause VEC to 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). 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 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 VEC to refrain, from engaging in money laundering activities or financing of terrorism and shall allow, and cause VEC to allow, ADB to investigate any violation or potential violation of these undertakings.

28. Without limiting the generality of the preceding paragraph, the Borrower shall (i) ensure that VEC conducts periodic inspections on the contractors' activities related to fund withdrawals and settlements; and (ii) ensure and cause VEC 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 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, the Borrower shall cause VEC to create and maintain a webpage to disclose information about procurements related to the Project, such webpage to include, for each contract, 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. The Borrower shall further ensure that stakeholders, which include civil society and non-governmental organizations are provided detailed information on procurement on public notice boards in each respective province of the Borrower.

#### Operation and Maintenance

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

31. The Borrower shall ensure that, by completion of the Works, VEC shall submit 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. The Borrower shall ensure that VEC establishes a systematic Project performance monitoring and analysis system for use throughout the Project period.

33. The Borrower shall ensure that VEC establishes 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 (1) year of the Effective Date. A second survey shall be conducted upon Project completion and a third survey five (5) 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. The Borrower shall ensure that VEC: (i) collects and consolidates all Project progress reports, site reports, technical and financial reports and submit them to ADB; and (ii) prepares 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.