

COFINANCING AGREEMENT ("AGREEMENT")

BETWEEN

THE GOVERNMENT OF AUSTRALIA

AND

ASIAN DEVELOPMENT BANK

WITH RESPECT TO

**DETAILED DESIGN AND CONSTRUCTION SUPERVISION TECHNICAL ASSISTANCE FOR
THE CAO LANH BRIDGE AND ALL NON-KOREAN FINANCED COMPONENTS OF THE
CENTRAL MEKONG DELTA CONNECTIVITY PROJECT**

**DONOR REFERENCE:
(AusAID Agreement No 59341)**

The Government of Australia represented by Australian Agency for International Development (the "Donor") has decided to provide an untied grant contribution (the "Grant") through Asian Development Bank ("ADB") amounting to United States Dollars **USD26,000,000** to support Vietnam: Central Mekong Delta Connectivity Technical Assistance Project (the "TA") as set out in the ADB TA Report ("TA Report"), attached hereto as Annex A.

Therefore, the Donor and ADB (the "Parties") agree as follows:

Transfer and Management of Funds

1. The Donor will transfer the proceeds of the Grant to a United States dollar denominated interest-bearing account ("Grant Account"), specified in this Agreement, in amounts and indicative installments as detailed in the following schedule:

Within two weeks from Signing of this Agreement	:	USD9,500,000
Date 1 August 2011	:	USD10,000,000
Date 1 August 2012	:	USD1,500,000
Date 1 August 2013	:	USD1,500,000
Date 1 August 2014	:	USD1,500,000
Date 1 August 2015	:	USD1,000,000
Date 1 August 2016	:	USD1,000,000

The schedule is tentative and can be changed subject to budget availability in Australian dollars and prevailing exchange rate. Total of the Grant is United States dollars **USD26,000,000**.

Notwithstanding the above installment schedule, the Parties may consult each other in writing in the form of an Exchange of Letters and adjust the timing and amounts of remittances that will appropriately meet the requirements of the TA.

2. ADB will hold the Grant funds within a United States dollar interest-bearing account, the Grant Account. If other currencies are required for payment to meet any eligible expenditure, ADB may purchase the required currencies with the proceeds of the Grant Account. Any fees and charges relating to such purchase will be paid out of funds from the Grant Account.

3. The adverse impacts of potential foreign currency fluctuations during TA implementation will be addressed among the Parties with appropriate remedial measures and amendments negotiated, if necessary. Notwithstanding, there is no obligation on behalf of the Donor to contribute additional funds as a result of any foreign currency fluctuations.

4. For the purposes of this Agreement, the Grant will be held, administered and invested at the discretion of ADB. Pending disbursements, ADB may invest and reinvest the Grant and any income earned in respect of such investment and reinvestment, as well as any interest earned in respect of the Grant Account. Such income will be credited to the Grant Account and used for the purpose of the TA and/or defray the costs of administration and other expenses incurred by ADB with respect to the administration of the Grant.

Implementation and Administration

5. The activities to be financed under this Agreement are expected to be implemented as from 1 June 2011 to 30 June 2017 and will be administered in accordance with applicable ADB policies and procedures. ADB will make every effort to ensure timely and full implementation of the TA. In particular, the ADB will ensure that a Project Coordinating Committee (PCC) is established for the TA and for the Ensuing Investment Project. The PCC will be responsible for ensuring coordination across all aspects of the project implementation, for resolving technical and contractual issues as they arise, and for monitoring implementation of the project's safeguards programs, in particular programs for involuntary resettlement and for environmental impact mitigation. The PCC will meet quarterly, with at least two meetings per year coinciding with joint co-financiers' review missions.

6. Procurement of all goods and works financed under the Grant shall be carried out in accordance with ADB's *Procurement Guidelines* dated April 2010, as amended from time to time. The selection and engagement of consultants financed under the Grant shall be carried out in accordance with *Guidelines on the Use of Consultants by ADB and its Borrowers*, dated April 2010, as amended from time to time. With regard to the environment, Indigenous Peoples, involuntary resettlement and other social matters, ADB will follow on TA implementation its established policies and their amendments as applicable, including but not limited to its *Safeguard Policy Statement*, dated June 2009.

7. The Donor and the ADB agree that the Grant proceeds for the purpose of the TA will be disbursed in accordance with ADB's *Loan Disbursement Handbook* dated January 2007, as amended from time to time. In the event this TA is also co-financed by other sources, including ADB's own funds, ADB may, in consultation with the Donor, use its discretion in determining which funding source should be utilized first provided the total disbursements against this Grant is consistent with the cost sharing in the financing plan in the TA Report.

8. ADB will administer and account for the Grant in accordance with its financial regulations, other applicable rules, procedures and practices, and keep separate records and accounts for the TA.

9. ADB will be entitled to withdraw from the Grant Account an amount equivalent to five (5) percent of the disbursed Grant, in order to cover the costs incurred by ADB in the administration of the Grant.

10. Within six (6) months after financial closure of the TA, except as may be otherwise agreed by the Donor and ADB, any balance amount from the Grant Account shall be returned to the Donor together with any investment/reinvestment income and interest income earned on the deposit from the Grant Account, and any gains from foreign transactions, net of all fees and charges and losses.

Reviews, Reporting and Audits

11. ADB shall inform the Donor of any review missions undertaken by it related to the Grant and provide to the Donor a report setting out the main findings or results of such mission. ADB will invite the Donor to join any TA review missions, including supervision missions and the mid-term review during the implementation of the TA and upon its completion. The Donor will be responsible for its own costs with respect to any participation in TA review missions.

12. ADB will, in accordance with its usual procedures:

Progress Reports:

- (i) provide the Donor with reports on implementation of the activities funded under the Grant and other reports and information as the Donor may reasonably request concerning the progress of the TA. Within six (6) months from completion of the TA, ADB shall provide the Donor with a final report.

Financial Reports:

- (ii) provide the Donor with unaudited 6 *monthly* statements of expenditure stated in US dollars. In addition, ADB shall provide the Donor within six (6) months from financial closure of the TA, a terminal financial report showing the receipts, income and expenditures under the Grant Account and the remaining balance, if any.

13. **Audit Reports:** Should the Donor require an external audit of the terminal financial statements specifically in relation to the Grant the Donor should upon completion of the TA, request ADB for such an external audit in writing. The cost of this audit shall be charged against the Grant Account. The Donor shall provide additional funds in the Grant Account to cover the cost of this audit, should there not be sufficient funds left after settlement of all project expenditures and ADB administration costs.

14. ADB shall inform the Donor promptly of any condition which significantly interferes, or threatens to interfere, with the performance by ADB of its commitments under this Agreement.

Special Provisions

15. This Grant will be subject to ADB's *Anticorruption Policy* dated July 1998 and *Integrity Principles and Guidelines* dated October 2010, as amended from time to time. ADB's *Anticorruption Policy* requires staff, grant recipients, beneficiaries, consultants, bidders, suppliers, contractors, and other entities involved in the Grant and any related activity to observe the highest standards of ethics and personal integrity. Any party found in breach of ADB's *Anticorruption Policy* may be subject to disciplinary measures and/or sanctions in accordance with ADB's *Integrity Principles and Guidelines*.

16. Recognizing the obligations of ADB member countries under various United Nations Security Council Resolutions to take measures to prevent the financing of terrorists, ADB undertakes to use reasonable efforts, consistent with the Agreement Establishing the Asian Development Bank (the ADB Charter) and policies, including those pertaining to combating the financing for terrorists, to ensure that funds provided under any agreement are used for their intended purposes and are not diverted to terrorist or their agents. ADB must inform the Donor in a timely manner if, during the course of this Agreement ADB becomes aware that funds provided under this Agreement are being used for the purpose of any payment to persons or entities, or for the import of goods, if such payment or import is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations.

17. ADB will ensure that under activities funded by this Agreement that the participating ADB developing member countries (DMCs):

(i) will not use the proceeds of the Grant for the purpose of any payment to persons or entities, or for the import of goods, if such payment or import, to the DMC's knowledge or belief, is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, and, if applicable;

(ii) will take necessary measures to ensure that entities to which such DMCs make the grant funding available will not use the funds for the purpose of any payment to persons or entities, or for the import of goods, if such payment or import, to the DMC's knowledge or belief, is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations.

18. ADB, in consultation with the Donor, may disclose this Agreement and information with respect to it in accordance with ADB's *Public Communications Policy*, dated March 2005, as amended from time to time.

19. The Donor, in consultation with ADB, may disclose this Agreement and information with respect to it in accordance with the Donor's policy and legislative obligations.

20. ADB will endeavor to maximize opportunities to highlight the identity of the Donor's contribution to the TA (e.g. through related signage, documentation and public information about the activities, including the use of the Donor's logo). ADB will invite Donor representatives to participate in key events related to the TA. The Donor will be responsible for its own costs with respect to any participation in such events.

21. ADB will ensure that participating DMCs apply an appropriate international labour standard including prohibiting child labor in accordance with applicable international laws and/or conventions.

Consultations, Amendments, Termination and Dispute Settlement

22. The parties may consult with each other on any matter of common interest arising out of this Agreement.

23. The Donor and ADB shall consult each other, in particular whenever either participant proposes to:

- (i) modify the Agreement; or
- (ii) suspend or terminate, in whole or in part, disbursement under this Agreement.

24. Any amendments and/or modifications to this Agreement will be made by mutual consent and in writing in the form of an Exchange of Letters between the Parties.

25. ADB will notify and consult with the Donor whenever ADB identifies a major change of scope in relation to any activities financed under the Grant. If any such changes occur which in the opinion of the Donor impairs significantly the developmental value of the TA, the Donor and ADB will consult on measures to resolve the problem and possible courses of action. In the event of such changes, the Donor, however, may decide to modify and/or terminate its financial contribution to the TA.

26. This Agreement does not have the status of a treaty and any dispute between ADB and the Donor over its interpretation or application (or both) shall be resolved amicably between the Parties.

27. If at any time either Party determines that the purposes of the Agreement can no longer be effectively or appropriately carried out either Party may give notice of termination of this Agreement. Such termination will enter into effect three (3) months after notice has been received, subject to the settlement of any outstanding obligations made prior to the notice being received. In the event of termination by either Party, both Parties will cooperate to ensure that all arrangements made hereunder are settled in a fair and orderly manner.

Contacts

28. Correspondence relating to the implementation of this Agreement will be addressed to the following:

- (a) For Australian Agency for International Development:
 - Attention: Vu Duc Cong, Senior Infrastructure Program Manager
 - Address: AusAID, Australian Embassy,
Hanoi
 - Fax No: 84 4 38317706
 - Tel. No: 84 4 37740210
- (b) For ADB:
 - Address: Asian Development Bank
6 ADB Avenue,
Mandaluyong City
1550 Metro Manila
Philippines

(i) General communication and financial matters:

Facsimile Number: (632)636-2456 (Direct)
(632)636-2444 (Central)

Attention: Head, Office of Cofinancing Operations

(ii) Implementation and technical matters:

Facsimile Number: (632) 636-2232 (Direct)

Attention: Director General, Southeast Asia Department

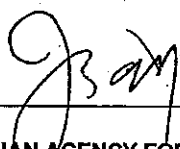
Grant Account (USD)

Name of the Bank: Bank of Tokyo Mitsubishi UFJ Ltd.
1251 Avenue of the Americas
New York, NY 10020-1104, USA
Account name: Asian Development Bank
Account Number: N XI 0031103215
SWIFT/BIC: BOTKUS33
Fedwire No.: 0260 0963 2

Effectiveness

29. This Agreement shall take effect upon its signature by both Parties, and shall remain in full force and effect until the date on which the Grant shall have been fully disbursed or all activities financed under the Grant shall have been completed to the satisfaction of ADB and the Donor, whichever is the later, or any other date as may be agreed between the Parties.

30. The Parties, acting through their duly authorized representatives have signed this Agreement in duplicate as follows:

Signed: 
FOR AUSTRALIAN AGENCY FOR INTERNATIONAL DEVELOPMENT:

Name: James Batley
Title: Deputy Director General, AusAID

Date: 1 JUNE 2011

Signed: 
FOR ASIAN DEVELOPMENT BANK:

Name: Tadashi Kondo
Title: Head, Office of Cofinancing Operations

Date: 25 May 2011