

COFINANCING AGREEMENT ("AGREEMENT")

BETWEEN

THE GOVERNMENT OF AUSTRALIA
AND
ASIAN DEVELOPMENT BANK

WITH RESPECT TO

CAO LANH BRIDGE CONSTRUCTION - CENTRAL MEKONG DELTA REGION
CONNECTIVITY PROJECT

DONOR REFERENCE: 68395

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 Australian dollars 128,000,000 to support the Cao Lanh Bridge Construction - Central Mekong Delta Region Connectivity Project (the "Project"). The Donor has agreed to provide the Government of the Socialist Republic of Viet Nam (the "Government") the Grant for this purpose. The Grant will be administered by ADB and utilized solely to implement the Project in accordance with the arrangements as set out in the ADB Report and Recommendation of the President to the Board (Project No. 40255), attached hereto as Annex A to this Agreement and the Detailed Cost Estimates by Financier attached hereto as Annex B (collectively "the Project Documents"). In case of discrepancy between ADB's Project Documents and Grant documentation between the Donor and the Government (if any), the Project Documents will prevail.

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, at the exchange rate prevailing on the same day of the transfer in currencies, amounts and **indicative installments** as detailed in the following schedule:

Date:	31 October 2013	:	AUD14.5million
Date:	31 January 2014	:	AUD7.5million
Date:	1 August 2014	:	AUD16million
Date:	15 January 2015	:	AUD16million
Date:	1 August 2015	:	AUD16million
Date:	15 January 2016	:	AUD21million
Date:	1 August 2016	:	AUD21million
Date:	15 January 2017	:	AUD16million

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 Project.

2. ADB will hold the Grant funds within 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 Project implementation will be addressed among the Parties with appropriate remedial measures and amendments negotiated, if necessary. Notwithstanding the foregoing, there is no obligation on 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 Project 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. Unless otherwise notified, the Project is expected to be implemented from **October 2013** to **30 June 2017**. The Ministry of Transport (the "Executing Agency" or "EA") will execute the Project in accordance with applicable ADB policies and procedures. ADB will make every effort to ensure timely and full implementation of the Project.
6. Procurement of all goods and works financed under the Grant shall be carried out in accordance with ADB's *Procurement Guidelines* dated March 2013, 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 March 2013, as amended from time to time. With regard to the environment, Indigenous Peoples, involuntary resettlement and other social matters, ADB will follow on Project 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 ADB agree that the methods of disbursement under the Grant proceeds for the purpose of financing Project expenditures shall be in accordance with ADB's *Loan Disbursement Handbook* dated July 2012, as amended from time to time, and the detailed arrangements agreed upon between the Government and ADB and this Agreement. The Donor and ADB agree that the Donor's funds will be utilized based on cost-sharing financing option, where different ratios will be applied for each cost category and/or subcategory, as specified in Annex B.

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 Project.
9. ADB shall be entitled to withdraw from the Grant Account an amount equivalent to five (5) percent of the disbursed Grant up to US\$5.0 million, or two (2) per cent of the disbursed Grant above US\$5.0 million with a minimum of US\$250,000, whichever is greater, in order to cover the costs incurred by ADB in the administration of the Grant.
10. Within (6) six months after financial closure of the Project, 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. Each Party shall inform the other Party of any review missions undertaken by it related to the Grant, and provide to the other Party a report setting out the main findings or results of such mission. ADB will invite the Donor to join project review missions, including supervision missions and the mid-term review during the implementation of the Project and the review upon its completion. The Donor will be responsible for its own costs with respect to any participation in project review missions.
12. ADB will, in accordance with its usual procedures:

Progress Reports:

- (i) provide the Donor with quarterly progress reports in relation to the Project, as prepared by ADB and/or the Executing Agency, and provide the Donor with such reports and information as the Donor may reasonably request concerning the progress of the Project. Within six (6) months from completion of the Project, ADB shall provide the Donor with a final report.

Financial Reports:

- (ii) provide the Donor with unaudited annual statements of expenditure stated in US dollars within six (6) months following the end of December (ADB's fiscal year). In addition, ADB shall provide the Donor within six (6) months from financial closure of the Project, a terminal financial report showing the receipts, income and expenditures under the Grant Account and the remaining balance, if any.

Audit Reports:

- (iii) provide the Donor free of charge, with externally audited annual financial statements, as submitted to the ADB by the Executing Agency, in relation to the Project.

13. Should the Donor require an external audit of the terminal financial statements specifically in relation to the Grant, and in addition to the audited annual financial statements submitted by the Executing Agency, the Donor should upon completion of the Project request ADB for such 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 cost.
14. ADB shall inform the Donor promptly of any condition which significantly interferes, or threatens to interfere, with the performance by ADB or any Executing Agency of its commitments under this Agreement.

Special Provisions

15. This Grant will be subject to ADB's *Anticorruption Policy* (1998) and *Integrity Principles and Guidelines* (2012), both as amended from time to time. ADB's *Anticorruption Policy* requires staff, the recipients of the Grant, beneficiaries, consultants, bidders, suppliers and contractors involved in the Grant or any activity financed by or related to the Grant to observe the highest standards of ethics and personal integrity. Any party found in breach of ADB's *Anticorruption Policy* may be subject to sanctions and other remedial actions in accordance with *ADB's Integrity Principles and Guidelines*. Any legal entity or individual debarred or cross debarred in accordance with the Integrity Principles and Guidelines shall be ineligible to participate in activities financed by or related to the Grant.
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 of terrorism, to ensure that funds provided under any Agreement are used for their intended purposes and are not diverted to terrorists 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 projects funded by this Agreement the participating ADB developing member country or 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 knowledge or belief of such DMCs, 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 knowledge or belief of such DMCs, 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 October 2011, 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 Project (e.g. through related signage, documentation and public information about the Project, including the use of the Donor's logo). ADB will invite Donor representatives to participate in key events related to the Project. The Donor will be responsible for its own costs with respect to any participation in such events.
- 21. ADB will ensure that the participating DMCs shall apply an appropriate international labor 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 Party 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 the Donor whenever ADB identifies a major change of scope in relation to any Project financed under the Grant. If any such changes occur which in the opinion of the Donor significantly impairs the developmental value of the Project, 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 Project.
- 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,
 8 Dao Tan Street, Ba Dinh District, Hanoi, Vietnam

Fax No: 84-4-38317706
 Tel. No. 84-4-37740210

- (b) For ADB:
 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 (US\$)

Name of the Bank: Deutsche Bank Trust Co. Americas
 New York, U.S.A.
 Account name: Asian Development Bank N1
 Account Number: 04-430-016
 SWIFT/BIC: BKTRUS33

Effectiveness

- 29. The 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 projects 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 representative have signed this Agreement in duplicate as follows:

Signed: _____

Signed: _____

FOR AUSTRALIAN AGENCY FOR INTERNATIONAL DEVELOPMENT:

FOR ASIAN DEVELOPMENT BANK:

Name: Hugh Borrowman
Title: Ambassador
on behalf of James Batley,
Acting Director General, AusAID

Name: James Nugent
Title: Director General
Southeast Asia Department

Date: _____

Date: _____

ATTACHMENTS

- Annex A: Report and Recommendation of the President
- Annex B: Detailed Cost Estimates by Financier