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attached to AWs

COFINANCING AGREEMENT

between

THE GOVERNMENT OF AUSTRALIA
(represented by the Australian Agency for International Development - AusAID)

and the

ASIAN DEVELOPMENT BANK

with respect to

Greater Mekong Subregion Southern Coastal Corridor Project

in

Socialist Republic of Viet Nam

3 Jan 2008

~~11 December 2007~~

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This Agreement, made and entered into as of 11 December 2007 between the Asian Development Bank (the "ADB") and the Government of Australia, represented by the Australian Agency for International Development ("AusAID").

WHEREAS

A. The Government of the Socialist Republic of Viet Nam (the "GoV") has requested the ADB to assist in the financing of certain goods and services required for the Greater Mekong Subregion Southern Coastal Corridor Project (the "Project") as described in the Report and Recommendation of the President, Project number: 36353 (the "Project Document"), attached hereto as Annex 1.

B. The ADB has entered into a loan agreement (the "Loan Agreement") with the GoV for the Project, under which ADB has agreed to provide a loan to the GoV, on the terms and conditions therein set forth or referred to, to finance part of the costs of the goods and services required for the Project;

C. AusAID has agreed to provide to the GoV on a grant basis A\$33.117 million (the "Grant") on the terms and conditions referred to herein, to be used for the purposes of partly funding the Project; and

D. The ADB has entered into a Grant Agreement with the GoV in which it agreed that the Grant will be provided through, and administered by, ADB in accordance with the terms and conditions agreed upon between the Government of Australia and ADB in consultation with the GoV.

NOW THEREFORE the Parties hereto agree as follows:

I. Definitions

1.1. Whenever used in this Agreement, unless the context otherwise requires, the several terms defined in the Loan Agreement (as so defined) and the Loan Regulations have the respective meanings therein set forth, and:

- (a) "A\$" means the lawful currency of Australia; and
- (b) "Party" or "Parties" means either or both of the parties to this Agreement.

II. Procurement and Administration

2.1 The proceeds of the Grant shall be used exclusively for meeting the costs of the Project as described in the Project Document.

2.2 The proceeds of the Grant shall be transferred by AusAID to ADB's United States Dollar interest-bearing account (the "Grant Account") to be specified by the ADB through 8 installments, at the exchange rate prevailing on the same day of the transfer, and in accordance with the following schedule, unless as otherwise agreed between AusAID and the ADB:

1)	Within 2 weeks after signing of this Agreement	A\$4,000,000
2)	Fee (2%) within 90 days of the signing of this Agreement	A\$ 649,000
3)	By no later than 30 September 2008	A\$2,500,000
4)	By no later than 31 March 2009	A\$2,500,000
5)	By no later than 30 September 2009	A\$5,800,000
6)	By no later than 31 March 2010	A\$5,800,000
7)	By no later than 30 September 2010	A\$5,800,000
8)	By no later than 31 March 2011	A\$6,068,000

2.3 Pending disbursement, ADB may invest and reinvest the Grant in accordance with its normal business practices. The resources of the Grant may be freely exchanged by ADB into other currencies to facilitate administration of the Grant. Any fees and charges relating to the purchase of such other currencies shall be paid out of the Grant proceeds. In the event any portion of the proceeds of the Grant is not utilized for such activities, the ADB shall return to AusAID such unutilized balance. Such balance amount shall be returned together with any interest income earned on the deposit from the Grant Account, net of all fees and charges, within six months after termination of this Agreement pursuant to Article IV below, except as may be otherwise agreed by ADB and AusAID.

2.4 Procurement of goods and services financed under the Grant shall be carried out in accordance with ADB's *Procurement Guidelines* (2007, as amended from time to time), and the selection and engagement of consultants financed under the Grant shall be carried out in accordance with ADB's *Guidelines on the Use of Consultants* (2007 as amended from time to time).

2.5 The Parties 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* (2007, as amended from time to time), and the detailed arrangements agreed upon between the GoV and ADB. The Grant Proceeds will be mainly utilized to finance civil works and consultants, as specifically provided in Appendix 6, Table A6.3: Viet Nam – Detailed Cost Estimate by Financier.

2.6 ADB shall provide AusAID with semi-annual financial statements reflecting the utilization of the Grant and progress reports on the implementation of the works funded under the Grant. ADB shall ensure that AusAID is provided with copies of Project reports prepared by GoV (e.g. quarterly project progress reports, monitoring and evaluation reports, project completion report). Upon completion of the Project, ADB will provide AusAID with a final report including an audited financial statement. The audited financial statement for the overall project submitted to ADB by the EA will be provided to AusAID by ADB free of charge. Should AusAID require a specific auditing of the Grant, the cost of such audit will be paid out of the Grant Account.

2.7 AusAID shall pay to ADB a fee representing two percent (2%) of the amount disbursed under the Grant. Such amount will be remitted to ADB by AusAID in accordance with the schedule outlined in Article 2.2 of the Agreement.

III. Coordination, Exchange of Information and Consultation

3.1 Each Party shall, in conformity with and subject to its practices with respect to the treatment of information of a confidential nature, and at the request of the other Party, exchange views and provide pertinent information with respect to the following matters:

- (a) the financial condition of the GoV; and
- (b) the progress achieved by the GoV in the implementation of the Project, including procurement and disbursement status relating to the ADB Loan and the AusAID Grant.

3.2 Each Party shall promptly inform the other Party of any event of which such Party becomes aware which, in the opinion of such Party, is likely to materially interfere with, or seriously hinder or impair, the implementation of the Project, or to adversely and materially interfere with the performance by the GoV of its obligations under the Loan Agreement.

3.3 Each Party shall inform the other Party of any review missions related to the ADB Loan or the AusAID Grant, as the case may be, undertaken by itself, and provide to the other Party a report setting out the main findings or results of such a mission. ADB will invite AusAID to join Project review missions, including supervision missions and the mid-term review.

3.4 Without prejudice to the independent right of decision and action, each Party shall give notice to, and to the extent reasonably practicable consult with, the other Party whenever it proposes to:

- (a) suspend, terminate, cancel or accelerate, in whole or in part, the ADB Loan or the AusAID Grant, as the case may be;
- (b) agree to any substantial amendment on the part of ADB to the Loan Agreement, or take any action which might result in the termination of the Loan Agreement, as the case may be; or
- (c) agree to extend the disbursement period for either the ADB Loan or the AusAID Grant.

3.5 In addition to the matters referred to in the foregoing section of this Article III, ADB and AusAID may consult with each other on any matter of common interest arising out of this Agreement.

3.6 Except as otherwise provided in this Agreement, ADB and AusAID agree that all their respective decisions, including decisions to take or refrain from taking action, concerning the Project or the Loan Agreement, as the case may be, shall be based exclusively on their own judgment, independently of the information provided by, or expected from, the other Party, or the views expressed by the other Party.

3.7 Any dispute over the interpretation or application of any provision herein contained shall be settled through negotiations or by such means as the Parties shall mutually agree in writing.

IV. Effectiveness

4.1 The arrangements described in 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 AusAID, whichever is the later, or any other date as may be agreed between the Parties.

V. Miscellaneous

5.1 Any notice required under this Agreement and any agreement or other document contemplated hereunder shall be given in writing. Any such notice shall be deemed to have been duly given either on the date of dispatch, if delivered by hand or sent by facsimile, or fourteen (14) days after the date of posting, if sent by registered airmail, and in each case addressed as specified below, or to such other address as either Party shall have designated by notice to the other.

For ADB:

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

- (a) General Communications and Financial Matters
Attention: Principal Director, Office of Cofinancing Operations
Facsimile: (63 2) 636 2456
- (b) Technical and Implementation Matters
Attention: Country Director, Viet Nam Resident Office
Facsimile: (84-4) 933 1373
(with copy to Principal Director, Office of Cofinancing Operations,
Facsimile (63-2) 636-2456)

For AusAID:

Mekong Subregion Program Manager
Mekong Section
Australian Agency for International Development
GPO Box 887
Canberra ACT 2601
Australia

5.2 In administering the AusAID Grant, ADB will fully implement its *Anti-corruption Policy* (1998, as amended to date).

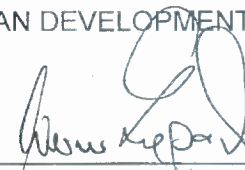
5.3 Recognizing the obligations of ADB member countries under various United Nations Security Council Resolutions to take measures to prevent financing of terrorists, the ADB will undertake to use reasonable efforts to ensure that the funds provided under this Agreement are used for their intended purposes and are not diverted to terrorists or their agents. The ADB shall inform AusAID in a timely manner if, during the course of this Agreement, the 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.

5.4 The ADB may disclose, in consultation with AusAID, this Agreement and information with respect to it in accordance with the ADB's *Public Communications Policy* (2005).

5.5 Notwithstanding any other provision of this Agreement, ADB is neither obligated to make any disbursement from the AusAID Grant, except to the extent that ADB has received the Government of Australia Grant funds, nor is it acting as a representative of the Government of Australia when disbursing such funds to the GoV.

IN WITNESS THEREOF the duly authorized representatives of the Parties have executed this Agreement in duplicate.

ASIAN DEVELOPMENT BANK

By: 

Werner E. Diepach
Principal Director

Office of Cofinancing Operations

AUSTRALIAN AGENCY FOR
INTERNATIONAL DEVELOPMENT

By: 

Bruce Davis
Director General