LOAN NUMBER 3248-VIE (SF)

TECHNICAL ASSISTANCE LOAN AGREEMENT
(Special Operations)

(Ho Chi Minh City Third Ring Road Technical Assistance Project)

between

SOCIALIST REPUBLIC OF VIET NAM

and

ASIAN DEVELOPMENT BANK

DATED 4 May 2015

VIE 43393

TECHNICAL ASSISTANCE LOAN AGREEMENT
(Special Operations)

TECHNICAL ASSISTANCE LOAN AGREEMENT dated 4 May 2015 between SOCIALIST REPUBLIC OF VIET NAM ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) the Borrower has applied to ADB for a technical assistance loan for the purposes of the Ho Chi Minh City Third Ring Road Technical Assistance Project (the "TA Project") described in Schedule 1 to this Technical Assistance Loan Agreement ("Loan Agreement");

(B) the TA Project shall be carried out by the Ministry of Transport ("MOT") and for this purpose the Borrower shall make available to the MOT 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 Special Funds resources upon the terms and conditions set forth herein and in the Project Agreement of even date herewith between ADB and Cuu Long CIPM (the "Project Agreement");

NOW THEREFORE the parties agree as follows:

ARTICLE I

Loan Regulations; Definitions

Section 1.01. All the provisions of the Special Operations Loan Regulations of ADB, dated 1 January 2006 ("Loan Regulations"), are hereby made applicable to this Loan Agreement with the same force and effect as if they were fully set forth herein.

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

(a) "Consulting Guidelines" means the Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers (2013, as amended from time to time);

(b) "Consulting Services" means the services to be financed out of the proceeds of the Loan as described in paragraph 3 of Schedule 1 to this Loan Agreement;

(c) "Cuu Long CIPM" means Cuu Long Corporation for Investment, Development and Project Management of Infrastructure, a company wholly owned and established by the MOT, or any successor thereto acceptable to ADB;

(d) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2012, as amended from time to time);

(e) "MOT" means the Ministry of Transport of the Borrower, or any successor thereto acceptable to ADB;

(f) "PAM" means the project administration manual for the TA Project dated 20 October 2014 and agreed between the Borrower and ADB, as updated from time to time in accordance with the respective administrative procedures of the Borrower and ADB;

(g) "Procurement Plan" means the procurement plan for the TA Project dated 20 October 2014 and agreed between the Borrower and ADB, as updated from time to time in accordance with the Consulting Guidelines, and other arrangements agreed with ADB;

(h) "Project Agreement" means the project agreement of even date herewith between ADB and the Project Implementing Agency, as amended from time to time;

(i) "Project Executing Agency" for the purposes of, and within the meaning of, the Loan Regulations means the MOT, which is responsible for the carrying out of the TA Project;

(j) "Project Implementing Agency" means Cuu Long CIPM or any successor thereto acceptable to ADB, which is responsible for carrying out all the day-to-day activities under the TA Project; and

(k) "Safeguard Policy Statement" or "SPS" means ADB's Safeguard Policy Statement (2009).

ARTICLE II

The Loan

Section 2.01. ADB agrees to lend to the Borrower from ADB's Special Funds resources an amount in various currencies equivalent to eight million four hundred seventy-five thousand Special Drawing Rights (SDR8,475,000).

Section 2.02. (a) The Borrower shall pay to ADB an interest charge at the rate of 2% per annum during the grace period and thereafter, on the amount of the Loan withdrawn from the Loan Account and outstanding from time to time.

(b) The term "grace period" as used in subsection (a) hereinabove 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 2.03. The interest charge and any other charge on the Loan shall be payable semiannually on 1 June and 1 December in each year.

Section 2.04. The Borrower shall repay the principal amount of the Loan withdrawn from the Loan Account in accordance with the amortization schedule set forth in Schedule 2 to this Loan Agreement.

Section 2.05. The currency of repayment of the principal amount of the Loan and the currency of payment of the interest charge for the purposes of Sections 4.03(a) and 4.04 of the Loan Regulations shall be the Dollar.

ARTICLE III

Use of Proceeds of the Loan

Section 3.01. (a) The Borrower shall make the proceeds of the Loan available to the Project Executing Agency on a grant basis upon terms and conditions satisfactory to ADB and shall cause the Project Executing Agency to apply such proceeds to the financing of expenditures on the TA Project in accordance with the provisions of this Loan Agreement and the Project Agreement.

Section 3.02. The proceeds of the Loan shall be allocated and withdrawn 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, the Borrower shall procure, or cause to be procured, the items of expenditure to be financed out of the proceeds of the Loan in accordance with the provisions of Schedule 4 to this Loan Agreement.

Section 3.04. Except as ADB may otherwise agree, the Borrower shall cause all items of expenditure financed out of the proceeds of the Loan to be used exclusively in the carrying out of the TA Project.

Section 3.05. Withdrawals from the Loan Account in respect of Consulting Services shall be made only on account of expenditures relating to:

(a) Consulting Services which are supplied from such member countries of ADB as shall have been specified by ADB from time to time as eligible sources for procurement; and

(b) Consulting Services which meet such other eligibility requirements as shall have been specified by ADB from time to time.

Section 3.06. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations shall be 31 December 2017 or such other date as may from time to time be agreed between the Borrower and ADB.

ARTICLE IV

Particular Covenants

Section 4.01. In the carrying out the TA Project, the Borrower shall perform, or cause to be performed, all obligations set forth in Schedule 5 to this Loan Agreement and the Project Agreement.

Section 4.02. The Borrower shall enable ADB's representatives to inspect the TA Project and any relevant records and documents.

Section 4.03. (a) The Borrower shall (i) maintain separate accounts and records for the TA Project; (ii) prepare annual financial statements for the TA Project in accordance with accounting principles acceptable to ADB; (iii) have such financial statements audited annually by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with international standards for auditing or the national equivalent acceptable to ADB; (iv) as part of each such audit, have the auditors prepare a report (which includes the auditors' opinion on the financial statements, use of the Loan proceeds and compliance with the financial covenants of this Loan Agreement as well as on the use of the procedures for imprest fund(s) and statement of expenditures) and a management letter (which sets out the deficiencies in the internal control of the TA Project that were identified in the course of the audit, if any); and (v) furnish to ADB, no later than 6 months after the end of each related fiscal year, copies of such audited financial statements, audit report and management letter, all in the English language, and such other information concerning these documents and the audit thereof as ADB shall from time to time reasonably request.

(b) ADB shall disclose the annual audited financial statements for the TA Project and the opinion of the auditors on the financial statements within 30 days of the date of their receipt by posting them on ADB's website.

(c) The Borrower shall enable ADB, upon ADB's request, to discuss the financial statements for the TA Project and the Borrower's financial affairs where they relate to the TA Project with the auditors appointed pursuant to subsection (a)(iii) hereinabove, and shall authorize and require any representative of such auditors to participate in any such discussions requested by ADB. This is provided that such discussions shall be conducted only in the presence of an authorized officer of the Borrower, unless the Borrower shall otherwise agree.

Section 4.04. The Borrower shall take all actions which shall be necessary on its part to enable the Project Executing Agency to perform their obligations under the Loan Agreement and the Project Agreement, and shall not take or permit any action which would interfere with the performance of such obligations.

ARTICLE V

Effectiveness

Section 5.01. A date 90 days after the date of this Loan Agreement is specified for the effectiveness of the Loan Agreement for the purposes of Section 9.04 of the Loan Regulations.

ARTICLE VI

Delegation of Authority

Section 6.01. The Borrower hereby designates the Project Executing Agency 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 5.01, 5.02, and 5.03 of the Loan Regulations.

Section 6.02. Any action taken or any agreement entered into by the Project Executing Agency pursuant to the authority conferred under Section 6.01 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 6.03. The authority conferred on the Project Executing Agency under Section 6.01 of this Loan Agreement may be revoked or modified by agreement between the Borrower and ADB.

ARTICLE VII

Miscellaneous

Section 7.01. The State Bank of Vietnam is designated as representative of the Borrower for the purposes of Section 11.02 of the Loan Regulations.

Section 7.02. The following addresses are specified for the purposes of Section 11.01 of the Loan Regulations:

For the Borrower

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

Facsimile Numbers:

(84-4) 38250-612
(84-4) 38258-385

For ADB

Asian Development Bank
6 ADB Avenue
Mandaluyong City
1550 Metro Manila
Philippines

Facsimile Numbers:

(632) 636-2444
(632) 636-2015.

With a copy to:

Asian Development Bank
Units 701 – 706, Sun Red River Building
23 Phan Chu Trinh Str.
Ha Naoi
Viet Nam

Facsimile Number:

(84 4) 39 331 373.

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 as of the day and year first above written and to be delivered at the principal office of ADB.

SOCIALIST REPUBLIC OF VIET NAM

By _____
NGUYEN VAN BINH
Governor
State Bank of Vietnam

ASIAN DEVELOPMENT BANK

By _____
TOMOYUKI KIMURA
Country Director
Viet Nam Resident Mission

SCHEDULE 1

Description of the TA Project

1. The objective of the TA Project is to advance the readiness of the remaining sections of the Ho Chi Minh City Third Ring Road Project (3RR Project) for financing.

2. The TA Project shall comprise the following outputs:

Output 1: Completed feasibility studies for the Ben Luc-National Highway 22 and National Highway 22-Binh Chuan sections of the 3RR Project; and

Output 2: Updated due diligence and completed detailed design and project and safeguards documents required to finance the construction of the Tan Van-Nhon Trach section of the 3RR Project and an extension road to National Highway 1.

3. The TA Project includes the provision of Consulting Services for TA Project outputs described in paragraph 2 above.

4. The TA Project is expected to be completed by 30 June 2017.

SCHEDULE 2

Amortization Schedule

(Ho Chi Minh City Third Ring Road Technical Assistance Project)

Date Payment Due	Payment of Principal (expressed in Special Drawing Rights)*
1 June 2020	211,875
1 December 2020	211,875
1 June 2021	211,875
1 December 2021	211,875
1 June 2022	211,875
1 December 2022	211,875
1 June 2023	211,875
1 December 2023	211,875
1 June 2024	211,875
1 December 2024	211,875
1 June 2025	211,875
1 December 2025	211,875
1 June 2026	211,875
1 December 2026	211,875
1 June 2027	211,875
1 December 2027	211,875
1 June 2028	211,875
1 December 2028	211,875
1 June 2029	211,875
1 December 2029	211,875
1 June 2030	211,875
1 December 2030	211,875
1 June 2031	211,875
1 December 2031	211,875
1 June 2032	211,875
1 December 2032	211,875
1 June 2033	211,875
1 December 2033	211,875
1 June 2034	211,875
1 December 2034	211,875
1 June 2035	211,875
1 December 2035	211,875
1 June 2036	211,875
1 December 2036	211,875
1 June 2037	211,875
1 December 2037	211,875
1 June 2038	211,875

Date Payment Due	Payment of Principal (expressed in Special Drawing Rights)*
1 December 2038	211,875
1 June 2039	211,875
1 December 2039	211,875
Total	**8,475,000**

* The arrangements for payment are subject to the provisions of Sections 3.04 and 4.03 of the Loan Regulations.

SCHEDULE 3

Allocation and Withdrawal of Loan Proceeds

General

1. The table attached to this Schedule sets forth the Categories of items of expenditure to be financed out of the proceeds of the Loan and the allocation of the Loan proceeds to each such Category ("Table"). (Reference to "Category" in this Schedule is to a Category or Subcategory of the Table.)

Basis for Withdrawal from the Loan Account

2. Except as ADB may otherwise agree, the proceeds of the Loan shall be disbursed on the basis of the withdrawal percentage for each item of expenditure set forth in the Table.

Interest Charge

3. The amount allocated to Category 3 is for financing the interest charge on the Loan during the implementation period of the TA Project.

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 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 shall be disbursed in accordance with the Loan Disbursement Handbook.

Attachment to Schedule 3

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Ho Chi Minh City Third Ring Road Technical Assistance Project)				
Number	**Item**	**Total Amount Allocated for ADB Financing (SDR) Category**		**Basis for Withdrawal from the Loan Account**
1	Consulting Services	6,198,000		
1A	Feasibility and Social/Safeguards Study		1,718,000	100% of total expenditure*
1B	Detailed Design		4,163,000	100% of total expenditure
1C	Design Appraisal and Roads Safety Audit		283,000	100% of total expenditure*
1D	Independent Audit		34,000	100% of total expenditure*
2	Project Management	593,000		100% of total expenditure*
3	Interest Charges	559,000		100% of amount due
4	Unallocated	1,125,000		
	Total	8,475,000		

* Exclusive of taxes and duties imposed within the territory of the Borrower.

SCHEDULE 4

Procurement of Consulting Services

General

1. The procurement of Consulting Services shall be subject to and governed by the Consulting Guidelines.

2. All terms used in this Schedule and not otherwise defined in this Loan Agreement have the meanings provided in the Consulting Guidelines.

Consulting Services

3. 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.

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

Least-Cost Selection for independent audit.

5. The Borrower shall recruit the individual consultants for preparation for the TA Project and capacity development in accordance with procedures acceptable to ADB for recruiting individual consultants.

Condition for Award of Consulting Services Contract for Detailed Design

6. The Borrower shall cause the Project Executing Agency and the Project Implementing Agency not to award any contract for Consulting Services for detailed design for the Tan Van-Nhon Trach section of the 3RR Project and an extension road to National Highway 1 until the MOT has approved the basic design for the Tan Van-Nhon Trach section of the 3RR Project and an extension road to National Highway 1 and ADB has received confirmation of the MOT approval from the Borrower.

Industrial or Intellectual Property Rights

7. 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.

ADB's Review of Procurement Decisions

8. 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 TA Project; Financial Matters

Implementation Arrangements

1. The Borrower shall ensure and shall cause the Project Executing Agency and the Project Implementing Agency to ensure that the TA Project is implemented in accordance with the detailed arrangements set forth in the PAM, including ensuring timely recruitment and hiring of consultants and adequate staff resources to carry out the TA Project. Any subsequent change to the PAM shall become effective only after approval of such change by the Borrower and ADB. In the event of any discrepancy between the PAM and this Loan Agreement, the provisions of this Loan Agreement shall prevail.

Counterpart Support

2. The Borrower shall ensure through the MOT that the counterpart funds necessary for the TA Project are provided on a timely basis, including funds and resources necessary for the financing of the (i) value added tax of the Consulting Services for the feasibility studies, design appraisal, road safety audit, independent audit of the TA Project accounts and project management costs; and (ii) part of contingencies, as detailed in the PAM. The Borrower shall ensure that additional counterpart support is available to cover any shortfalls that may occur during the TA Project implementation.

Safeguards

3. The Borrower shall ensure and shall cause the Project Executing Agency and the Project Implementing Agency to ensure that the TA Project does not have any environmental, indigenous peoples or involuntary resettlement impacts, all within the meaning of the Safeguard Policy Statement. In the event that the TA Project does have any such impact, the Borrower shall take all steps required to ensure that the TA Project complies with the applicable laws and regulations of the Borrower and with the Safeguard Policy Statement.

Labor Standards; Health

4. The Borrower shall ensure and shall cause the Project Executing Agency and the Project Implementing Agency to ensure that bidding documents under the TA Project shall include specific provisions to comply with all applicable labor laws and core labor standards of the Borrower relating to (a) prohibition of child labor; (b) equal pay for equal work of equal value regardless of gender, ethnicity or caste; and (c) elimination of forced labor.

Gender and Development

5. The Borrower shall ensure that the principles of gender equity aimed at increasing TA Project benefits and impacts on women in the TA Project area consistent with ADB's Policy on Gender and Development (1998) are followed during implementation of the TA Project, including (a) equal pay to men and women for work of equal value; (b) enabling working conditions for women workers; and (c) taking necessary actions to encourage

women living in the TA Project area to participate in the design and implementation of TA Project activities.

Governance and Anticorruption

6. The Borrower, the Project Executing Agency, and the Project Implementing Agency shall (a) comply with ADB's Anticorruption Policy (1998, as amended to date) and acknowledge that ADB reserves the right to investigate directly, or through its agents, any alleged corrupt, fraudulent, collusive or coercive practice relating to the TA Project; and (b) cooperate with any such investigation and extend all necessary assistance for satisfactory completion of such investigation.

7. The Borrower, the Project Executing Agency and the Project Implementing Agency shall ensure that the anticorruption provisions acceptable to ADB are included in all bidding documents and contracts, including provisions specifying the right of ADB to audit and examine the records and accounts of the Project Executing Agency and Project Implementing Agency and all contractors, suppliers, consultants, and other service providers as they relate to the TA Project.

Prohibited List of Investment

8. The Borrower shall ensure or cause the Project Executing Agency and the Project Implementing Agency to ensure that no proceeds of the Loan are used to finance any activities in the list of prohibited activities in Appendix 5 of the SPS.

Public Disclosure

9. The Borrower shall ensure through the Project Implementing Agency's website, the public disclosure of information about the use of Loan proceeds and procurement of Consulting Services, including (i) contract awards, (ii) name of winning bidder, (iii) bidding procedures, (iv) amount of contract awarded, (v) list of services purchased, and (vi) intended and actual utilization of the Loan proceeds under each contracts. The website shall be updated within two weeks of each contract award.

Coordination and Agreement among Various Entities

10. The Borrower through the Project Executing Agency shall ensure coordination and agreement among the various entities, including the Project Implementing Agency, related local governments, cities and provinces and any private entities throughout the preparation and implementation of the TA Project and before the commencement of the 3RR Project.