GRANT AGREEMENT VIET NAM 1999.01

of NLG 22,298,630
dated 24th May, 2000

Vụ Luật pháp và Điều ước quốc tế
Bộ Ngoại giao

Reference: 97077/VN010701-1/18-05-2000

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The undersigned,

1. De Nederlandse Investeringsbank voor Ontwikkelingslanden N.V., with its registered office in The Hague, hereinafter referred to as the "NIO Bank", acting as agent of the Government of the Kingdom of the Netherlands (hereinafter referred to as the "Netherlands Government");

and

2. The Government of the Socialist Republic of Vietnam, represented by the People's Committee of Ho Chi Minh City, (hereinafter referred to as "the Grantee");

whereas:

- The Netherlands Government is prepared to make available a grant for the partial financing of the total amount to be paid to Vermeer Vietnam B.V. (hereinafter referred to as "Vermeer") pursuant to their contract dated 24th May, 2000 with The Ho Chi Minh City Waste Disposal Company (hereinafter referred to as "HOWADICO") for "the execution of the Upgrading Quality Solid Waste Project (Go Cat Landfill)", excluding costs for land compensation (hereinafter referred to as "the Project"), amounting to NLG 37,164,383 (hereinafter referred to as the "Contract");
- The amount of this Grant will be disbursed through the intermediary of the NIO Bank as agent of the Netherlands Government.

Therefore, it has been agreed as follows:

Article 1 (Financial Assistance)

1.1 The NIO Bank will make available a grant (hereinafter referred to as the "Grant") up to an amount of NLG 22,298,630 (twenty-two million two hundred ninety-eight thousand six hundred and thirty Netherlands guilders) to the Grantee, subject to the terms and conditions set forth in this Agreement.

1.2 The Grant shall be used exclusively for the purpose of the partial payment of the amounts to be disbursed to Vermeer pursuant to the Contract.

Article 2 (Conditions for Disbursement)

2.1 The financing of the amount of the Contract will be as follows:

- NLG 22,298,630 out of the Grant;
- NLG 14,865,753 out of an own contribution of The Grantee (hereinafter referred to as the "Own Contribution")

NLG 37,164,383

The Own Contribution will specifically be addressed in the Contract and in the Bill of Quantities which will be considered as an inseparable part of the Contract.

2.2 Payment of the amount of the Contract will be made in the following order:

- NLG 7,432,876 being 20% of the Contract price down payment of which NLG 3,716,438 out of the Grant and NLG 3,716,438 out of the Own Contribution;
- NLG 27,873,288 being 75% of the Contract price of which NLG 16,723,973 out of the Grant and NLG 11,149,315 out of the Own Contribution, payments to be made against Interim Payment Certificates pro rata parte out of the Grant and out of the Own Contribution
- NLG 1,858,219 being 5% of the Contract price out of the Grant against presentation of the Final Certificate of Completion

NLG 37,164,383

2.3 The Grant shall only be disbursed after:

a) the NIO Bank has received from the Grantee the present Agreement, duly signed and dated by the Grantee;

b) confirmation from the Grantee that the Own Contribution has been secured and that drawings hereunder are allowed;

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c) the NIO-Bank has received from Vermeer the original advance payment guarantee (hereinafter referred to as the "Bank Guarantee") as referred to in paragraphs 5, 6 and 7 of this Article (2) which shall be in form and substance to the satisfaction of the NIO-Bank and the Grantee, but in any case containing provisions setting forth that HOWADICO is the beneficiary of the Bank Guarantee and the NIO-Bank is the only party entitled to make a claim under such Bank Guarantee for and on behalf of HOWADICO.

2.4 If during the disbursement period:

a) the Grantee would refuse (further) drawings under the Own Contribution and/or would suspend, terminate or cancel the Own Contribution and/or

b) the Grantee fails to fulfil the obligations stated in the present Grant Agreement and/or

c) the Netherlands Government instructs the NIO Bank to cease honouring requests for drawings under the Grant Vietnam 1999.01,

the NIO Bank is entitled:

to refuse (further) drawings under the Grant;

to demand that the Grantee shall reimburse to the NIO Bank the aggregate amount drawn so far under the Grant and The Grantee shall do so upon the first written request thereto from the NIO Bank. The amount involved shall not be increased by interest or in any other way.

In the case of Article 2.4.c, the NIO Bank shall inform the Grantee in writing before taking effect.

2.5 The making of the Grant by the NIO-Bank is subject to the non-occurrence of any event which constitutes that on behalf of HOWADICO a claim can be made under the Bank Guarantee that was issued as security for the repayment of the advance payment made by the NIO-Bank to Vermeer under the Contract. The value of the Bank Guarantee shall equal the amount of the advance payment. The occurrence of an event which constitutes that on behalf of HOWADICO a claim can be made under the Bank Guarantee leads to the obligation of HOWADICO to repay to NIO-Bank the (pro rata) amount that can be claimed under the Bank Guarantee.

2.6 HOWADICO may fulfil its repayment obligation under the provision of article 2.5 by allowing the NIO-Bank to make a claim under the Bank Guarantee and to use the amounts thus received to satisfy the repayment obligation. When such application has taken place, the NIO-Bank shall be deemed to have given HOWADICO discharge for the aforementioned obligation.

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2.7 Notwithstanding the discharge of HOWADICO for its obligation to repay the amounts as described in article 2.5, the NIO-Bank may in its sole discretion decide to again make the amount repaid available to The Grantee by way of donation in order to assist HOWADICO in the financing of the Contract.

Article 3 (Drawings/Payment)

3.1 The Grantee herewith irrevocably authorises the NIO Bank to make payments under the Grant up to NLG 22,298,630 to Vermeer in accordance with Article 2 hereof and the relevant clause of the Contract.

3.2 The drawings made by the Grantee under the Grant shall be charged to the account of the Grantee with the NIO Bank: Account Grant Vietnam 1999.01.

3.3 No drawings may be made and no disbursements shall be allowed after December 31, 2004, unless the NIO Bank informs the Grantee of a later date in this respect.

Article 4 (Consultation)

4.1 As long as the conditions of this Agreement will be in force, the Grantee and the NIO Bank shall provide each other with such information as may reasonably be required for the implementation and administration of the Grant.

4.2 Any amendment to the provisions of this Agreement has to be agreed upon in writing.

Article 5 (Entries)

The NIO Bank shall send to the Grantee a written statement of all entries in the books of the NIO Bank in connection with the Grant. A statement shall be deemed to have been acknowledged as correct by the Grantee if no objections of the Grantee duly justified in writing have been made to the NIO Bank within sixty days after such a statement may reasonably be expected to have been received by The Grantee. For the purpose of the preceding sentence the NIO Bank shall accept telex and fax messages.

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Article 6 (Assignment)

The Grant shall be used exclusively for the purpose of financing the activities of the Contract. The use of this Grant being exclusive to the Contract as well as limited to the agreed purposes as set forth in this Agreement, the Grantee shall not assign or in any other way whatsoever transfer any of its rights under this Agreement to a third party. If any third party would acquire, pledge, garnish or attach by law, by contract or in any other way what so ever any of the rights of the Grantee, the obligation of the NIO Bank to make the Grant or any part thereof available shall terminate forthwith and ipso facto.

Article 7 (Costs and charges)

7.1 It is hereby agreed that all activities and deliveries related to the contract are exempted from all current taxes imposed by the (relevant authorities of the) Government of Vietnam.

7.2 Expatriate personnel of Vermeer is exempted from all taxes and other charges imposed by the (relevant authorities of the) Government of Vietnam in respect of remuneration's paid to them by Vermeer.

7.3 Equipment, temporarily imported and used by Vermeer for the execution of the Project, shall be re-exported by Vermeer after the Project's implementation and be exempted from export duties and other related charges. In case this equipment is not re-exported after the execution of the Project, the new owner may become subject to import duties and other related charges.

Article 8 (Special conditions and Considerations)

By signing this Agreement the Grantee undertakes

- to provide the Go Cat Landfill during its life span with sufficient employees and maintenance budget;
- to consider and work out if time allows, the option of independent supervision by a third party, such as a Vietnamese organisation separate from HOWADICO, on the implementation of the Project;
- to further research and develop a general system of waste rights and levies which would ease Hochiminh City's financial burden of waste collection and processing and would also reduce the volume of waste produced.

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It is also given in consideration that:

- an extension of the Project's duration with two years to five years (the Contract amount remaining the same) could be in the Grantee's interest, because it would enable the Grantee to obtain further experience by acting, with Vermeer's assistance, as the main operator during this period;

Article 9 (Governing Law and Jurisdiction)

9.1 If any dispute arises between the NIO Bank and the Grantee relating to the interpretation, application or implementation of the Agreement, the NIO Bank and the Grantee shall in the first place endeavour to settle it by negotiation.

9.2 If the NIO Bank and the Grantee fail to reach a settlement by negotiation, the dispute may at the request of either the NIO Bank or the Grantee be submitted for decision to a tribunal of three arbitrators, one to be named by each party and the third to be agreed upon by the two arbitrators so chosen, provided that such third arbitrator shall not be a national of either party. The NIO Bank and the Grantee shall designate an arbitrator within a period of sixty (60) days from the date of receipt by either party to this Agreement by notification in writing to the other party, requesting arbitration of the dispute and the third arbitrator shall be agreed upon within a further period of sixty (60) days. If the NIO Bank or the Grantee fail to designate its own arbitrator within the period of sixty (60) days or if the third arbitrator is not agreed upon within the period indicated, the president of the permanent court of arbitration at The Hague may be requested by either party to this Agreement to appoint an arbitrator or arbitrators. The NIO Bank and the Grantee undertake to comply with any decision given under Article 9.2 of this Agreement.

9.3 For the performance of this Agreement and for the serving of legal process the Grantee elects domicile at the Embassy of Vietnam in The Hague, The Netherlands and NIO Bank elects domicile at its office in The Hague, the Netherlands.

9.4 This Agreement and the interpretation of any of the provisions thereof, shall be governed by Netherlands law.

Article 10 Currency denomination

The Netherlands Government and the NIO Bank reserve the right to fulfil their obligations where applicable in the currency legally prescribed in the Netherlands at the time of payment.

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Article 11 (Notices)

All notices, advices, statements, requests, demands and other communications with regard to this Agreement shall be made in the English language and shall be addressed, unless indicated otherwise in this Agreement, as follows:

in the case of notice to the Grantee:

The People's Committee of Hochiminh City
86 Le Thanh Ton Str. Dist. 1
HOCHIMINH CITY
Vietnam
(Telephone: 84 8 8295673)
(Telefax: 84 8 8295675)

and copy to:

Ministry of Planning and Investment
2 Hoang Van Thu Str.
HANOI
Vietnam
(Telephone: 84 4 8454363)
(Telefax: 84 4 7330536)

in the case of notice to the NIO Bank to:

De Nederlandse Investeringsbank voor Ontwikkelingslanden N.V.
P.O. Box 380
2501 BH THE HAGUE
The Netherlands
(Telephone: 31 70 3425467)
(Telefax +31 70 3657815)

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In witness whereof the parties hereto, each acting through its representatives duly authorised thereto, have signed this Agreement in two originals.

THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS
represented by
DE NEDERLANDSE INVESTERINGSBANK VOOR ONTWIKKELINGSLANDEN N.V.

THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIETNAM
represented by
THE PEOPLE'S COMMITTEE OF HO CHI MINH CITY

Vụ Luật pháp và Điều ước quốc tế
Bộ Ngoại giao

BỘ NGOẠI GIAO

Số : 52 /LPQT

SAO Y BẢN CHÍNH
(Để thực hiện)

Hà Nội, ngày 26 tháng 06 năm 2000

TL. BỘ TRƯỞNG BỘ NGOẠI GIAO
KT. Vụ trưởng Vụ Luật pháp và Điều ước quốc tế
Phó Vụ trưởng

Nguyễn Duy Chiến

Nơi nhận :

- Văn phòng Chính phủ (để báo cáo),
- Bộ Kế hoạch và Đầu tư,
- Bộ Tài chính,
- Ngân hàng Nhà nước Việt nam,
- Tổng cục Hải quan,
- UBND thành phố Hồ Chí Minh,
- Đại sứ quán Việt Nam tại Hà Lan,
- Vụ Châu Âu II,
- Vụ LPQT,
- Lưu trữ.

Hiệp định tài trợ Dự án đầu tư nâng cấp chất lượng công trường xử lý rác Gò Cát - thành phố Hồ Chí Minh giữa Chính phủ nước Cộng hoà xã hội chủ nghĩa Việt Nam và Chính phủ Vương quốc Hà Lan bắt đầu có hiệu lực từ ngày 24 tháng 5 năm 2000.

Vụ Luật pháp và Điều ước quốc tế
Bộ Ngoại giao