
LOAN NUMBER 4095-PNG(COL)

LOAN AGREEMENT
(Ordinary Operations [Concessional])
(Sustainable Highlands Highway Investment Program – Tranche 2)

between

INDEPENDENT STATE OF PAPUA NEW GUINEA

and

ASIAN DEVELOPMENT BANK

DATED 14 OCTOBER 2021

PNG 48444

LOAN AGREEMENT
(Ordinary Operations [Concessional])

LOAN AGREEMENT dated 14 OCTOBER 2021 between
INDEPENDENT STATE OF PAPUA NEW GUINEA ("Borrower") and ASIAN DEVELOPMENT
BANK ("ADB").

WHEREAS

(A) by a framework financing agreement dated 15 May 2017 between the Borrower and ADB, ADB has agreed to provide a multitranches financing facility to the Borrower for purposes of financing projects under the Sustainable Highlands Highways Investment Program;

(B) by a periodic financing request dated 09 March 2020, the Borrower has applied to ADB for loans for the purposes of the Project as described in Schedule 1 to the Ordinary Operations Loan Agreement (as defined below);

(C) by an agreement of even date herewith between the Borrower and ADB ("Ordinary Operations Loan Agreement"), ADB has agreed to make a regular loan to the Borrower from ADB's ordinary capital resources in an amount of two hundred eighty-five million Dollars (\$285,000,000) ("Ordinary Operations Loan") for the purposes of the Project; and

(D) ADB has agreed to make a concessional loan to the Borrower from ADB's ordinary capital resources upon the terms and conditions set forth herein;

NOW THEREFORE the parties agree as follows:

ARTICLE I

Loan Regulations; Definitions

Section 1.01. All provisions of ADB's Ordinary Operations (Concessional) Loan Regulations, dated 1 January 2017 ("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 and the Ordinary Operations Loan Agreement have the respective meanings therein set forth unless modified herein or the context otherwise requires.

ARTICLE II

The Loan

Section 2.01. (a) ADB agrees to lend to the Borrower from ADB's ordinary capital resources an amount of forty million Dollars (\$40,000,000).

(b) The Loan has a principal repayment period of 20 years, and a grace period as defined in subsection (c) hereinafter.

(c) The term "grace period" as used in subsection (b) hereinabove means the period prior to the first Principal Payment Date in accordance with the amortization schedule set forth in Schedule 1 to this Loan Agreement.

Section 2.02. 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.

Section 2.03. The interest charge and any other charge on the Loan shall be payable semiannually on 15 February and 15 August 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 1 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. The Borrower shall cause the proceeds of the Loan to be applied exclusively to the financing of expenditures on the Project in accordance with the provisions of this Loan Agreement.

Section 3.02. The proceeds of the Loan shall be allocated and withdrawn in accordance with the provisions of Schedule 2 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 the Ordinary Operations Loan Agreement.

Section 3.04. Withdrawals from the Loan Account in respect of Goods, Works, and Services shall be made only on account of expenditures relating to:

- (a) Goods which are produced in and supplied from and Works and 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) Goods, Works, and Services which meet such other eligibility requirements as shall have been specified by ADB from time to time.

Section 3.05. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations shall be 30 June 2026 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 of the Project and operation of the Project facilities, the Borrower shall perform, or cause to be performed, all obligations set forth in Schedule 5 to the Ordinary Operations Loan Agreement.

Section 4.02. (a) The Borrower shall (i) maintain separate accounts and records for the Project; (ii) prepare annual financial statements for the Project in accordance with financial reporting standards 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 auditing standards acceptable to ADB; (iv) as part of each such audit, have the auditors prepare a report, which includes the auditors' opinion(s) on the financial statements and the use of the Loan proceeds, and a management letter (which sets out the deficiencies in the internal control of the 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 Project and the opinion of the auditors on the financial statements within 14 days of the date of ADB's confirmation of their acceptability by posting them on ADB's website.

(c) The Borrower shall enable ADB, upon ADB's request, to discuss the financial statements for the Project and the Borrower's financial affairs where they relate to the 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 4.03. The Borrower shall enable ADB's representatives to inspect the Project, the Goods and Works, and any relevant records and documents.

ARTICLE V

Suspension; Acceleration of Maturity

Section 5.01. The following are specified as additional events for suspension of the right of the Borrower to make withdrawals from the Loan Account for the purposes of Section 8.01(m) of the Loan Regulations:

- (a) the Borrower shall have failed to perform one or more of its obligations under the Ordinary Operations Loan Agreement; or
- (b) the Ordinary Operations Loan shall have become liable for suspension or cancellation.

Section 5.02. The following is specified as an additional event for acceleration of maturity for the purposes of Section 8.07(d) of the Loan Regulations: either of the events specified in Section 5.01 hereinabove shall have occurred.

ARTICLE VI

Effectiveness

Section 6.01. The following is specified as an additional condition to the effectiveness of this Loan Agreement for the purposes of Section 9.01(f) of the Loan Regulations: the Ordinary Operations Loan Agreement shall have been duly executed and delivered on behalf of the Borrower, and all conditions precedent to its effectiveness (other than a condition requiring the effectiveness of this Loan Agreement) shall have been fulfilled.

Section 6.02. A date 90 days after the date of this Loan Agreement is specified for the effectiveness of this Loan Agreement for the purposes of Section 9.04 of the Loan Regulations.

ARTICLE VII

Miscellaneous

Section 7.01. The Minister of Treasury of the Borrower 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

Secretary
Department of Treasury
P.O. Box 542
Wagaini, National Capital District
Papua New Guinea

Facsimile Number:

(675) 313 3760.

For ADB

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

Facsimile Numbers:

(632) 8636-2444

(632) 8636-2446.

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.

INDEPENDENT STATE OF
PAPUA NEW GUINEA

By

IAN LING-STUCKEY, CMG, MP
Minister for Treasury



ASIAN DEVELOPMENT BANK

By

Leah Gutierrez
LEAH GUTIERREZ
Director General
Pacific Department

SCHEDULE 1

Amortization Schedule

<u>Payment Due</u>	<u>Payment of Principal</u> (expressed in Dollars)*
15 August 2026	1,000,000
15 February 2027	1,000,000
15 August 2027	1,000,000
15 February 2028	1,000,000
15 August 2028	1,000,000
15 February 2029	1,000,000
15 August 2029	1,000,000
15 February 2030	1,000,000
15 August 2030	1,000,000
15 February 2031	1,000,000
15 August 2031	1,000,000
15 February 2032	1,000,000
15 August 2032	1,000,000
15 February 2033	1,000,000
15 August 2033	1,000,000
15 February 2034	1,000,000
15 August 2034	1,000,000
15 February 2035	1,000,000
15 August 2035	1,000,000
15 February 2036	1,000,000
15 August 2036	1,000,000
15 February 2037	1,000,000
15 August 2037	1,000,000
15 February 2038	1,000,000
15 August 2038	1,000,000
15 February 2039	1,000,000
15 August 2039	1,000,000
15 February 2040	1,000,000
15 August 2040	1,000,000
15 February 2041	1,000,000
15 August 2041	1,000,000
15 February 2042	1,000,000
15 August 2042	1,000,000
15 February 2043	1,000,000
15 August 2043	1,000,000
15 February 2044	1,000,000

15 August 2044	1,000,000
15 February 2045	1,000,000
15 August 2045	1,000,000
15 February 2046	1,000,000
Total	40,000,000

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

SCHEDULE 2

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 of the Table.)

Basis for Withdrawal from the Loan Account

2. Except as ADB may otherwise agree, the proceeds of the Loan shall be allocated to items of expenditure, and 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 "Interest Charge" is for financing the interest charge on the Loan during the implementation period of the Project. ADB shall be entitled to withdraw from the Loan Account and pay to itself, on behalf of the Borrower, the amounts required to meet payments, when due, of such interest charge.

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.

Retroactive Financing

6. Withdrawals from the Loan Account may be made to finance eligible expenditures incurred under the Project before the Effective Date, but not earlier than 12 months before the date of this Loan Agreement in connection with Works and Consulting Services, subject to a maximum amount equivalent to 20% of the Loan amount.

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS			
Number	Item	Total Amount Allocated for ADB Financing (\$)	Basis for Withdrawal from the Loan Account
		Category	
1	Works	29,000,000	10% of total expenditure claimed
2	Consulting Services	3,000,000	10% of total expenditure claimed
3	DOW capacity building and program management	500,000	10% of total expenditure claimed
4	Project Management	1,000,000	10% of total expenditure claimed
5	Interest	1,720,000	100% of amounts due
6	Unallocated	4,780,000	
	TOTAL	40,000,000	