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GRANT NUMBER 0485-PNG(EF)

GRANT AGREEMENT  
(Externally Financed)

(Highlands Region Road Improvement Investment Program – Project 3)

between

INDEPENDENT STATE OF PAPUA NEW GUINEA

and

ASIAN DEVELOPMENT BANK

DATED 6 OCTOBER 2016

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PNG 40173

**GRANT AGREEMENT  
(Externally Financed)**

GRANT AGREEMENT dated 6 October 2016 between INDEPENDENT STATE OF PAPUA NEW GUINEA ("Recipient") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) by a loan agreement of even date herewith between the Recipient and ADB ("Ordinary Operations Loan Agreement"), ADB has agreed to make a loan to the Recipient from ADB's ordinary capital resources in the amount of \$70,410,000 for the purposes of the Project described in Schedule 1 to the ADB Loan Agreement;

(B) by a loan agreement of even date herewith between the Recipient and ADB ("Special Operations Loan Agreement", and, together with the Ordinary Operations Loan Agreement, the "Other Financing Agreements"), ADB has agreed to make a loan to the Recipient from ADB's special funds resources in the amount of twenty seven million four hundred sixty seven thousand Special Drawing Rights (SDR 27,467,000) for the purposes of the Project;

(C) the Recipient has applied to ADB for a grant, to be financed by the European Union ("EU"), for the purposes of cofinancing expenditures under the Project;

(D) by agreement dated 12 December 2014 between ADB and the EU ("Contribution Agreement"), the EU has agreed to provide, and ADB has agreed to administer, the grant provided for herein upon the terms and conditions set out in the Contribution Agreement; and

(E) ADB has agreed to make the proceeds of the grant from the EU available to the Recipient upon the terms and conditions set forth herein;

NOW THEREFORE the parties agree as follows:

**ARTICLE I**

**Grant Regulations; Definitions**

Section 1.01. All provisions of the Externally Financed Grant Regulations of ADB, dated 8 April 2009 ("Grant Regulations"), are hereby made applicable to this Grant Agreement with the same force and effect as if they were fully set forth herein.

Section 1.02. Wherever used in this Grant Agreement, the several terms defined in the Grant 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 Grant

Section 2.01. (a) ADB agrees to make available to the Recipient a grant from the EU in the amount of nineteen million nine hundred ninety thousand Dollars (\$19,990,000) ("Grant"), as such amount may be adjusted from time to time in accordance with subsection (b) hereinafter.

(b) The amount of the Grant shall be adjusted from time to time to account for currency fluctuations, such that the amount of the Grant, denominated in Dollars, shall be equivalent to eighteen million Euros (€18,000,000) at the time that ADB converted the resources made available to ADB by the EU for the purposes of the Grant.

## ARTICLE III

### Use of Proceeds of the Grant

Section 3.01. (a) The Recipient shall cause the proceeds of the Grant to be applied to the financing of expenditures on the Project in accordance with the provisions of this Grant Agreement.

(b) The Recipient agrees that the proceeds of the Grant may be used to pay ADB's administration fees and other charges pursuant to the Contribution Agreement. ADB shall be entitled to withdraw from the Grant Account and pay to itself, on behalf of the Recipient, the amounts required to meet payments, when due, of such administration fees and other charges.

Section 3.02. The proceeds of the Grant shall be allocated and withdrawn in accordance with the provisions of Schedule 1 to this Grant Agreement, as such Schedule may be amended from time to time by agreement between the Recipient and ADB.

Section 3.03. Except as ADB may otherwise agree, the Recipient shall procure, or cause to be procured, the items of expenditure to be financed out of the proceeds of the Grant in accordance with the provisions of Schedule 4 to the Ordinary Operations Loan Agreement.

Section 3.04. The Grant Closing Date for the purposes of Section 8.02 of the Grant Regulations shall be 30 June 2018 or such other date as may from time to time be agreed between the Recipient and ADB.



## ARTICLE IV

### Particular Covenants

Section 4.01. In the carrying out of the Project and operation of the Project facilities, the Recipient shall perform, or cause to be performed, all obligations set forth in Schedule 2 to this Grant Agreement and Schedule 5 to the Ordinary Operations Loan Agreement.

Section 4.02. (a) The Recipient 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 Grant 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 Recipient shall enable ADB, upon ADB's request, to discuss the financial statements for the Project and the Recipient'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 Recipient, unless the Recipient shall otherwise agree.

Section 4.03. The Recipient shall enable ADB's representatives to inspect the Project, the Goods and Works, and any relevant records and documents.

Section 4.04. The Recipient acknowledges and agrees that this Grant Agreement is entered into by ADB, not in its individual capacity, but as grant administrator for the EU. Accordingly, the Recipient agrees that (i) it may only withdraw Grant proceeds to the extent that ADB has received proceeds for the Grant from the EU, and (ii) that ADB does not assume any obligations or responsibilities of the EU in respect of the Project or the Grant other than those set out in this Grant Agreement.

**ARTICLE V****Suspension**

Section 5.01. The following is specified as an additional event for suspension of the right of the Recipient to make withdrawals from the Grant Account for the purposes of Section 8.01(k) of the Grant Regulations: the Recipient shall have failed to perform any of its obligations under one of the Other Financing Agreements.

**ARTICLE VI****Effectiveness**

Section 6.01. The following are specified as additional conditions to the effectiveness of this Grant Agreement for the purposes of Section 9.01(e) of the Grant Regulations: the Other Financing Agreements each shall have been duly executed and delivered on behalf of the Recipient, and shall have become legally binding upon the Recipient in accordance with its terms, subject only to effectiveness of this Grant Agreement.

Section 6.02. The following is specified as an additional matter, for the purposes of Section 9.02(c) of the Grant Regulations, to be included in the opinion or opinions to be furnished to ADB: the Other Financing Agreements each have been duly executed and delivered on behalf of the Recipient, and have become legally binding upon the Recipient in accordance with its terms, subject only to effectiveness of this Grant Agreement.

Section 6.03. A date 90 days after the date of this Grant Agreement is specified for the effectiveness of this Grant Agreement for the purposes of Section 9.04 of the Grant Regulations.

**ARTICLE VII****Miscellaneous**

Section 7.01. The Minister of Treasury of the Recipient is designated as representative of the Recipient for the purposes of Section 11.02 of the Grant Regulations.

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

For the Recipient

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

For ADB

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

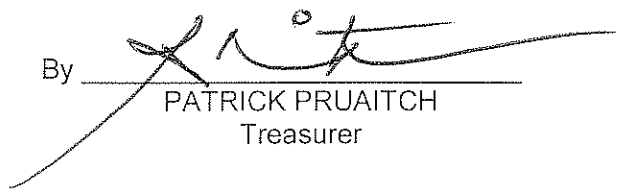
Facsimile Numbers:

(632) 636-2444  
(632) 636-2446.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Grant 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

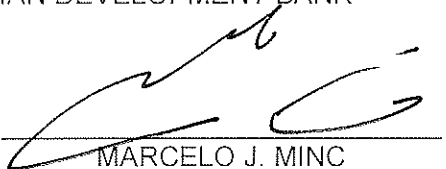
By



PATRICK PRUJATCH  
Treasurer

ASIAN DEVELOPMENT BANK

By



MARCELO J. MINC  
Country Director  
Papua New Guinea Resident Mission



**SCHEDULE 1****Allocation and Withdrawal of Grant 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 Grant and the allocation of the Grant 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 Grant Account

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

Reallocation

3. Notwithstanding the allocation of Grant proceeds and the withdrawal percentages set forth in the Table,

- (a) if the amount of the Grant allocated to any Category appears to be insufficient to finance all agreed expenditures in that Category, ADB may, by notice to the Recipient, (i) reallocate to such Category, to the extent required to meet the estimated shortfall, amounts of the Grant 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 Grant allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, by notice to the Recipient, reallocate such excess amount to any other Category.

Disbursement Procedures

4. Except as ADB may otherwise agree, the Grant proceeds shall be disbursed in accordance with the Loan Disbursement Handbook.



TABLE

ALLOCATION AND WITHDRAWAL OF GRANT PROCEEDS (Highlands Region Road Improvement Investment Program – Project 3)				
Number	Item	Total Amount Allocated for EU Financing (\$)		Basis for Withdrawal from the Grant Account
		Category	Subcategory	
1	Works	12,613,000		
1A	Gewa-Gembogl		3,779,000	12% of total expenditure claimed
1B	Nipa-Munihu		2,983,000	12% of total expenditure claimed
1C	Pangia-Wiru Loop		2,957,000	12% of total expenditure claimed
1D	Henganofi-Nupuru		2,894,000	12% of total expenditure claimed
2	Consulting Services	4,139,000		64% of total expenditure claimed*
3	Project Administration	1,235,000		47% of total expenditure claimed*
4	Unallocated**	2,003,000		
	Total	19,990,000		

\* Exclusive of taxes and duties imposed within the territory of the Recipient.

\*\* Includes ADB's 7% administration fee and other charges pursuant to the contribution agreement

## SCHEDULE 2

### Execution of Project; Financial Matters

#### Anticorruption

1. The Recipient shall, and shall cause contractors to, take appropriate measures to prevent irregularities, fraud, corruption or any other illegal activity in the management of the Project. All suspected and actual cases of irregularity, fraud and corruption related to this Grant Agreement as well as measures related thereto taken by the Recipient and contractors shall be reported to ADB without delay. Where appropriate the Recipient shall, and shall cause contractors to, terminate contracts with partners, contractors or agents involved in fraudulent behavior or corrupt practices in connection with the Project or any other projects implemented by the Recipient and financed by the EU, and shall take all reasonable measures to recover funds unduly paid. The Recipient shall assume sole liability towards third parties, including liability for damage or injury of any kind sustained by them in respect of or arising out of the Project. The Recipient shall, and shall ensure that contractors shall, discharge the EU of all liability associated with any claim or action brought as a result of an infringement, by the Recipient, a contractor or their respective employees or individuals for whom those employees are responsible, of rules or regulations, or as a result of violation of a third party's rights.

#### Conflict of interest

2. The Recipient shall, and shall ensure that contractors shall, take all necessary precautions to avoid conflicts of interests and shall inform ADB without delay of any situation constituting or likely to lead to any such conflict. There is a conflict of interests where the impartial and objective exercise of the functions of any person implementing this Grant Agreement is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with another party.

#### Confidentiality

3. Subject to Section 4.02 of this Grant Agreement, the Recipient shall, and shall cause contractors to, preserve the confidentiality of any document, information or other material directly related to this Grant Agreement and duly classified as confidential, until at least 29 October 2024.

#### Visibility and Transparency

4. Unless ADB requests or agrees otherwise, the Recipient shall, and shall ensure that contractors shall, take all appropriate measures to publicize the fact that the Project has received funding from the EU. Information given to the press, the beneficiaries of the Project, all related publicity material, official notices, reports and publications, shall acknowledge that the Project was carried out "with funding by the European Union" and shall display in an appropriate way the European logo (twelve yellow stars on a blue background).

5. It is understood that the Recipient's or contractors' equipment and vehicles may routinely carry its emblem and other indications of ownership prominently displayed. In cases where equipment or vehicles and major supplies have been purchased using funds

provided by the EU, the Recipient or contractors shall display appropriate acknowledgment on such vehicles, equipment and major supplies (including display of the European logo). Where such display could jeopardize the safety and security of the Recipient's or contractors' staff, the Recipient or contractors shall propose appropriate alternative arrangements. The size and prominence of the acknowledgment and EU logo shall be clearly visible in a manner that does not create any confusion regarding the identification of the Project as an activity of the Recipient or contractors and the ownership of the equipment and supplies by the Recipient or contractors.

6. All publications by the Recipient or contractors pertaining to the Project, in whatever form and whatever medium, including the internet, shall carry the following or a similar disclaimer: "This document has been reproduced with the financial assistance of the European Union. The views expressed herein can in no way be taken to reflect the official opinion of the European Union and the Asian Development Bank". If the equipment bought with an EU contribution is not transferred to local partners of the Recipient or the final recipient of the Project at the latest when submitting the final report, the visibility requirements as regards this equipment (in particular display of the European logo) shall continue to apply between submission of the final report and the end of the overall project, program or action of the Recipient, if the latter is longer. Publicity pertaining to EU contributions shall quote these contributions in Euro (€ or EUR), in parenthesis if necessary. The Recipient's publications and reports prepared in response to, and in accordance with, its legislative directives are excluded from this provision.

7. With due regard to the applicable rules on confidentiality, security and protection of personal data, the Recipient shall provide on an annual basis to ADB and the EU a list of the names of contractors and grant beneficiaries financed by the Grant for publication (including by electronic means such as Internet) by the EU.

#### Accounts and Technical and Financial Checks

8. The Recipient shall, until at least 29 October 2024:
- (a) keep financial accounting documents concerning the activities financed by the Grant; and
  - (b) make available to the competent bodies of the EU, upon request, all relevant financial information, including statements of accounts concerning the Project.
9. The Recipient shall fully collaborate with such reviews of the Project as the EU may reasonably require pursuant to the Contribution Agreement.
10. Where the Project is not carried out at all, or is not carried out properly, in full or on time, the EU may, after allowing ADB to submit its observations, reduce the contribution pro rata the actual implementation of the Project on the terms laid down in the Contribution Agreement.

Grant Refund and Recovery

11. If ADB determines that an amount of the Grant has been used in a manner inconsistent with the provisions of this Grant Agreement, the Recipient shall, upon notice by ADB to the Recipient, promptly refund such amount to ADB. Except as ADB may otherwise determine, ADB shall cancel all amounts refunded pursuant to this provision.

12. The Recipient shall repay to ADB within 30 days of the issuing of a letter (debit note) by which EU reclaims from ADB, any amounts paid in excess of the final amount due, inclusive of any interest and other charges. Any partial payment shall first cover the interest.

Evaluation of the Project

13. Representatives of the EU shall be invited to participate in the main monitoring and in the evaluation missions relating to the performance of the Project.

14. The above provision is without prejudice to any evaluation mission which the EU may wish to perform. Evaluation missions by representatives of the EU shall be planned and completed in a collaborative manner between the Recipient's and ADB's staff and the EU's representatives, keeping in mind the commitment of the Recipient, ADB, and the EU to the effective and efficient implementation of the Project. These missions shall be planned ahead and procedural matters shall be agreed upon by the EU, ADB, and the Recipient in advance.

Obligations regarding Information

15. The Recipient shall provide ADB with full information on the implementation of the Project. ADB may request additional information at any time, and such information shall be supplied within 30 days of the request. In any event, the Recipient shall inform ADB without delay of any circumstances likely to hamper or delay the implementation of the Project.

