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LOAN NUMBER 3404-PNG(SF)

LOAN AGREEMENT  
(Special Operations)

(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

**LOAN AGREEMENT  
(Special Operations)**

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

WHEREAS

(A) by a framework financing agreement dated 19 November 2008 between the Borrower and ADB, ADB has agreed to provide a multitranche financing facility to the Borrower for purposes of financing projects under the Highlands Region Road Improvement Investment Program;

(B) by a periodic financing request dated 25 April 2016, the Borrower has applied to ADB for a loan for the purposes of the Project described in Schedule 1 to the Ordinary Operations Loan Agreement (as defined in Recital C below);

(C) by a loan agreement of even date herewith between the Borrower and ADB ("Ordinary Operations Loan Agreement"), ADB has agreed to lend to the Borrower from ADB's ordinary capital resources the amount of seventy million four hundred ten thousand Dollars (\$70,410,000) in connection with the Project; and

(D) by a grant agreement of even date herewith between the Borrower and ADB ("Grant Agreement", and, together with the Ordinary Operations Loan Agreement, the "Other Financing Agreements"), ADB has agreed to make available to the Borrower a grant from the European Union in the amount of nineteen million nine hundred ninety thousand Dollars (\$19,990,000), as such amount may be adjusted from time to time, for the purpose of the Project;

(E) ADB has agreed to make a loan to the Borrower from ADB's Special Funds 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 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 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. ADB agrees to lend to the Borrower from ADB's Special Funds resources an amount in various currencies equivalent to twenty seven million four hundred sixty seven thousand Special Drawing Rights (SDR 27,467,000).

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 15 March and 15 September 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. The Borrower shall cause the proceeds of the Loan to be applied 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. 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 Project.

Section 3.05. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations shall be 30 June 2018 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 this 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 is specified as an additional event 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: the Borrower shall have failed to perform any of its obligations under one of the Other Financing Agreements.

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: the event specified in Section 5.01 of this Loan Agreement shall have occurred.

**ARTICLE VI****Effectiveness**

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

Section 6.02. The following is specified as an additional matter, for the purposes of Section 9.02(d) of the Loan 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 Borrower, and have become legally binding upon the Borrower in accordance with their terms, subject only to effectiveness of this Loan Agreement.

Section 6.03. 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  
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 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   
PATRICK PRUAITCH  
Treasurer

ASIAN DEVELOPMENT BANK

By   
MARCELO J. MINC  
Country Director  
Papua New Guinea Resident Mission

## SCHEDULE 1

## Amortization Schedule

(Highlands Region Road Improvement Investment Program – Project 3)

<u>Date Payment Due</u>	<u>Payment of Principal</u> (expressed in Special Drawing Rights)*
15 September 2021	686,675
15 March 2022	686,675
15 September 2022	686,675
15 March 2023	686,675
15 September 2023	686,675
15 March 2024	686,675
15 September 2024	686,675
15 March 2025	686,675
15 September 2025	686,675
15 March 2026	686,675
15 September 2026	686,675
15 March 2027	686,675
15 September 2027	686,675
15 March 2028	686,675
15 September 2028	686,675
15 March 2029	686,675
15 September 2029	686,675
15 March 2030	686,675
15 September 2030	686,675
15 March 2031	686,675
15 September 2031	686,675
15 March 2032	686,675
15 September 2032	686,675
15 March 2033	686,675
15 September 2033	686,675
15 March 2034	686,675
15 September 2034	686,675
15 March 2035	686,675
15 September 2035	686,675
15 March 2036	686,675
15 September 2036	686,675
15 March 2037	686,675
15 September 2037	686,675
15 March 2038	686,675
15 September 2038	686,675
15 March 2039	686,675
15 September 2039	686,675
15 March 2040	686,675
15 September 2040	686,675
15 March 2041	<u>686,675</u>
<b>TOTAL</b>	<b>27,467,000</b>

\* 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 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 2 is for financing the interest charge on the Loan during the implementation period of the 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.

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Highlands Region Road Improvement Investment Program – Project 3)				
Number	Item	Total Amount Allocated for ADB Financing (SDR)		Basis for Withdrawal from the Loan Account
		Category	Subcategory	
1	Works	22,668,000		
1A	Gewa-Gembogl		6,773,000	30% of total expenditure claimed
1B	Nipa-Munihu		5,346,000	30% of total expenditure claimed
1C	Pangia-Wiru Loop		5,301,000	30% of total expenditure claimed
1D	Henganofi-Nupuru		5,248,000	30% of total expenditure claimed
2	Financing Charge	847,000		100% of amounts due
3	Unallocated	3,952,000		
	<b>Total</b>	<b>27,467,000</b>		