
LOAN NUMBER 2472-COO

LOAN AGREEMENT
(Ordinary Operations)
(Avatiu Port Development Project)

between

HER MAJESTY THE QUEEN IN RIGHT OF THE GOVERNMENT OF THE COOK ISLANDS

and

ASIAN DEVELOPMENT BANK

DATED 5 MAY 2009

LAL:COO 40287

LOAN AGREEMENT
(Ordinary Operations)

LOAN AGREEMENT dated 5 May 2009 between HER MAJESTY THE QUEEN IN RIGHT OF THE GOVERNMENT OF THE COOK ISLANDS ("the Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) by an agreement of the even date herewith between the Borrower and ADB (hereinafter called the "Special Operations Loan Agreement"), ADB has agreed to lend to the Borrower from ADB's Special Funds resources an amount in various currencies equivalent to four million five hundred and twenty four thousand Special Drawing Rights (SDR 4,524,000) (hereinafter called the "Special Operations Loan") for the purposes of the Project described in Schedule 1 to the Special Operations Loan Agreement (hereinafter called the "Project");

(B) the Project will be carried out by the Cook Islands Ports Authority (hereinafter called "CIPA"), and for this purpose the Borrower will make available to CIPA the proceeds of the Loan provided for herein upon terms and conditions satisfactory to ADB; and

(C) the Borrower has applied to ADB for a loan for the purposes of the Project and ADB has agreed to make a loan to the Borrower from ADB's ordinary capital resources (hereinafter called the "Loan"), for the purposes of the Project, upon the terms and conditions set forth herein and in the Project Agreement of even date herewith between ADB and CIPA;

NOW THEREFORE the parties hereto agree as follows:

ARTICLE I

Loan Regulations; Definitions

Section 1.01. All the provisions of the Ordinary Operations Loan Regulations Applicable to LIBOR-Based Loans Made from ADB's Ordinary Capital Resources, dated 1 July 2001, are hereby made applicable to this Loan Agreement with the same force and effect as if they were fully set forth herein, subject, however, to the following modifications thereof (said Ordinary Operations Loan Regulations as so modified being hereinafter called the Loan Regulations):

(a) Section 3.03 is deleted and the following is substituted therefor:

Commitment Charge; Credit. (aa) The Borrower shall pay a commitment charge on the unwithdrawn amount of the Loan at the rate and on the terms specified in the Loan Agreement.

(bb) ADB shall provide to the Borrower a credit at the rate specified in the Loan Agreement, which credit shall remain fixed for the term of the Loan. ADB shall apply the amount of the credit against the interest payable by the Borrower.

(b) Section 3.06 is deleted and the following is substituted therefor:

(aa) Following any announcement by ADB that the Fixed Spread applicable to new Loans shall be reduced, ADB shall provide a Rebate to any Borrower with an outstanding Loan on which a higher Fixed Spread is applicable. The amount of the Rebate shall be determined by multiplying (i) the difference between the Fixed Spread applicable to the outstanding Loan and the Fixed Spread that will be applied to new Loans (expressed as a percentage per annum), by (ii) the principal amount of the outstanding Loan on which the Borrower shall pay interest for all interest periods commencing on and after the effective date of the lower Fixed Spread that will be applied to new Loans.

(bb) Following any announcement by ADB that its Funding Cost Margin calculations with respect to any Loan Currency (or Approved Currency) in any Semester resulted in ADB achieving savings, ADB shall provide a Rebate to the Borrower. The amount of the Rebate shall be determined by multiplying (i) the Funding Cost Margin (expressed as a percentage per annum) by (ii) the principal amount of the Loan on which the Borrower shall pay interest for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated. ADB shall apply the amount of the Rebate against the interest payable by the Borrower for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated.

(c) Section 3.07 is deleted and the following is substituted therefor:

(aa) Following any announcement by ADB that the Fixed Spread applicable to new Loans shall be increased, any Borrower with an outstanding Loan on which a lower Fixed Spread is applicable shall pay ADB a Surcharge. The amount of the Surcharge shall be determined by multiplying (i) the difference between the Fixed Spread that will be applied to new Loans and the Fixed Spread applicable to the outstanding Loan (expressed as a percentage per annum), by (ii) the principal amount of the outstanding Loan on which the Borrower shall pay interest for all interest periods commencing on and after the effective date of the higher Fixed Spread that will be applied to new Loans.

(bb) Following any announcement by ADB that its Funding Cost Margin calculations with respect to any Loan Currency (or Approved Currency) in any Semester resulted in ADB incurring additional costs, the Borrower shall pay ADB a Surcharge. The amount of the Surcharge shall be determined by multiplying (i) the Funding Cost Margin (expressed as a percentage per annum) by (ii) the principal amount of the Loan on which the Borrower shall pay interest for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated. ADB shall add the amount of the Surcharge to the interest payable by the Borrower for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated.

Section 1.02. Wherever used in this Loan Agreement, unless the context otherwise requires, the several terms defined in the Loan Regulations and the Special Operations Loan Agreement have the respective meanings therein set forth and the following additional term shall have the following meaning:

(a) "Subsidiary Loan Agreement" means the agreement between the Borrower and CIPA referred to in Section 3.01 (a) of this Loan Agreement.

ARTICLE II

The Loan

Section 2.01. (a) ADB agrees to lend to the Borrower from ADB's ordinary capital resources an amount of eight million six hundred and thirty thousand dollars (\$8,630,000), as such amount may be converted from time to time through a Currency Conversion in accordance with the provisions of Section 2.06 of this Loan Agreement.

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

(c) The term "grace period" as used in paragraph (b) of this Section 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 interest on the principal amount of the Loan withdrawn and outstanding from time to time at a rate for each Interest Period equal to the sum of LIBOR and 0.60% as provided by Section 3.02 of the Loan Regulations, less a credit of 0.40% as provided by Section 3.03 of the Loan Regulations.

Section 2.03. The Borrower shall pay a commitment charge of 0.15% per annum. Such charge shall accrue on the full amount of the Loan (less amounts

withdrawn from time to time), commencing sixty (60) days after the date of this Loan Agreement.

Section 2.04. Interest and other charges on the Loan shall be payable semiannually on 15 May and 15 November in each year.

Section 2.05. The Borrower shall repay the principal amount of the Loan withdrawn from the Loan Account in accordance with the provisions of Schedule 1 to this Loan Agreement.

Section 2.06. (a) The Borrower may at any time request any of the following Conversions of the terms of the Loan in order to facilitate prudent debt management:

- (i) a change of the Loan Currency of all or any portion of the principal amount of the Loan, whether withdrawn and outstanding or unwithdrawn, to an Approved Currency;
- (ii) a change of the interest rate basis applicable to all or any portion of the principal amount of the Loan withdrawn and outstanding from a Floating Rate to a Fixed Rate, or vice versa; and
- (iii) the setting of limits on the Floating Rate applicable to all or any portion of the principal amount of the Loan withdrawn and outstanding by the establishment of an Interest Rate Cap or Interest Rate Collar on said Floating Rate.

(b) Any conversion requested pursuant to paragraph (a) of this Section that is accepted by ADB shall be considered a "Conversion", as defined in Section 2.01(6) of the Loan Regulations, and shall be effected in accordance with the provisions of Article V of the Loan Regulations and the Conversion Guidelines.

ARTICLE III

Use of Proceeds of the Loan

Section 3.01. (a) The Borrower shall relend the proceeds of the Loan to CIPA under a Subsidiary Loan Agreement upon terms and conditions satisfactory to ADB. Except as ADB may otherwise agree, the terms of the proceeds of the Loan made available to CIPA shall include (i) commitment charge and interest at the rates identical to those applied to the Loan; (ii) the repayment period including the grace period identical to those applied to the Loan; and (iii) the Borrower bearing the foreign exchange and interest rate variation risks.

(b) The Borrower shall cause CIPA to apply the proceeds of the Loan to the financing of expenditures on the Project in accordance with the provisions of this Loan Agreement and the Project Agreement.

Section 3.02. The Works and consulting services and other items of expenditure to be financed out of the proceeds of the Loan and the allocation of amounts of the Loan among different categories of such Works and consulting services and other items of expenditure shall be 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, Works and consulting services to be financed out of the proceeds of the Loan shall be procured in accordance with the provisions of Schedule 4 to the Special Operations Loan Agreement. ADB may refuse to finance a contract where Works or consulting or services have not been procured under procedures substantially in accordance with those agreed between the Borrower and ADB or where the terms and conditions of the contract are not satisfactory to ADB.

Section 3.04. Except as ADB may otherwise agree, the Borrower shall cause all Works and consulting services financed out of the proceeds of the Loan to be used exclusively in the carrying out of the Project.

Section 3.05. The closing date for withdrawals from the Loan Account for the purposes of Section 9.02 of the Loan Regulations shall be 31 December 2012 or such other date as may from time to time be agreed between the Borrower and ADB.

ARTICLE IV

Particular Covenants

Section 4.01. (a) The Borrower shall cause CIPA to carry out the Project with due diligence and efficiency and in conformity with sound administrative, financial, engineering, environmental and port operational practices.

(b) 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 Special Operations Loan Agreement and the Schedule to the Project Agreement.

Section 4.02. The Borrower shall make available to CIPA, promptly as needed and on terms and conditions acceptable to ADB, the funds, facilities, services, land and other resources which are required, in addition to the proceeds of the Loan, for the carrying out of the Project.

Section 4.03. The Borrower shall ensure that the activities of its departments and agencies with respect to the carrying out of the Project and operation of the Project facilities are conducted and coordinated in accordance with sound administrative policies and procedures.

Section 4.04. The Borrower shall take all action which shall be necessary on its part to enable CIPA to perform its obligations under the Project Agreement

and shall not take or permit any action which would interfere with the performance of such obligations.

Section 4.05. (a) The Borrower shall exercise its rights under the Subsidiary Loan Agreement in such a manner as to protect the interests of the Borrower and ADB and to accomplish the purposes of the Loan.

(b) No rights or obligations under the Subsidiary Loan Agreement shall be assigned, amended, abrogated or waived without the prior concurrence of ADB.

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 9.01(l) of the Loan Regulations:

(a) the Borrower shall have, in the opinion of ADB, failed to perform any of its obligations under the Special Operations Loan Agreement; and

(b) the Borrower and/or CIPA shall have, in the opinion of ADB, failed to perform any of its obligations under the Subsidiary Loan Agreement;

Section 5.02. The following are is specified as an additional event for acceleration of maturity for the purposes of Section 9.07(a)(iv) of the Loan Regulations: the events 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 10.01(f) of the Loan Regulations:

(a) the Special 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; and

(b) The Borrower and CIPA shall have concluded a Subsidiary Loan Agreement, the terms of which shall have the same financial and other terms as required in this Loan agreement.

Section 6.02. The following is specified as an additional matter, for the purposes of Section 10.02(d) of the Loan Regulations, to be included in the opinion or opinions to be furnished to ADB: the Special Operations Loan Agreement and the Subsidiary Loan Agreement have been duly executed and delivered on behalf of and are legally binding upon the Borrower and CIPA respectively in accordance with its terms.

Section 6.03. A date ninety (90) days after the date of this Loan Agreement is specified for the effectiveness of the Loan Agreement for the purposes of Section 10.04 of the Loan Regulations.

ARTICLE VII

Miscellaneous

Section 7.01. The Minister of Finance and Economic Management of the Borrower is designated as representative of the Borrower for the purposes of Section 12.02 of the Loan Regulations.

Section 7.02. The following addresses are specified for the purposes of Section 12.01 of the Loan Regulations:

For the Borrower

Ministry of Finance and Economic Management
PO Box 120,
MFEM Building, Rarotonga
Cook Islands

Facsimile Number:

(682) 23877

E-mail:

cifinsec@mfem.gov.ck

For ADB

Asian Development Bank
P.O. Box 789
0980 Manila, Philippines

Facsimile Numbers:

(632) 636-2444

(679) 331-8074

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

HER MAJESTY THE QUEEN IN RIGHT OF
THE GOVERNMENT OF THE COOK ISLANDS

By _____
TEREPAI MAOATE
Authorized Representative

ASIAN DEVELOPMENT BANK

By _____
HARUHIKO KURODA
President

SCHEDULE 1

Amortization Schedule

(Avatiu Port Development Project)

1. The following table sets forth the Principal Payment Dates of the Loan and the percentage of the total principal amount of the Loan payable on each Principal Payment Date (Installment Share). If the proceeds of the Loan shall have been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined by ADB by multiplying: (a) the total principal amount of the Loan withdrawn and outstanding as of the first Principal Payment Date; by (b) the Installment Share for each Principal Payment Date, such repayment amount to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

Sequence	Date Payment Due	Installment Share (Expressed as a % based on 10% annuity)
1	15 May 2014	0.827816
2	15 Nov 2014	0.869207
3	15 May 2015	0.912667
4	15 Nov 2015	0.958301
5	15 May 2016	1.006216
6	15 Nov 2016	1.056526
7	15 May 2017	1.109353
8	15 Nov 2017	1.164820
9	15 May 2018	1.223061
10	15 Nov 2018	1.284214
11	15 May 2019	1.348425
12	15 Nov 2019	1.415846
13	15 May 2020	1.486639
14	15 Nov 2020	1.560971
15	15 May 2021	1.639019
16	15 Nov 2021	1.720970
17	15 May 2022	1.807019
18	15 Nov 2022	1.897369
19	15 May 2023	1.992238
20	15 Nov 2023	2.091850
21	15 May 2024	2.196442
22	15 Nov 2024	2.306264
23	15 May 2025	2.421578
24	15 Nov 2025	2.542657
25	15 May 2026	2.669789
26	15 Nov 2026	2.803279
27	15 May 2027	2.943443
28	15 Nov 2027	3.090615

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Sequence	Date Payment Due	Installment Share (Expressed as a % based on 10% annuity)
29	15 May 2028	3.245146
30	15 Nov 2028	3.407403
31	15 May 2029	3.577773
32	15 Nov 2029	3.756662
33	15 May 2030	3.944495
34	15 Nov 2030	4.141720
35	15 May 2031	4.348806
36	15 Nov 2031	4.566246
37	15 May 2032	4.794558
38	15 Nov 2032	5.034286
39	15 May 2033	5.286000
40	15 Nov 2033	5.550311
TOTAL		100.000000

2. If the proceeds of the Loan shall not have been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined as follows:

(a) To the extent that any proceeds of the Loan shall have been withdrawn as of the first Principal Payment Date, the Borrower shall repay the amount withdrawn and outstanding as of such date in accordance with paragraph 1 of this Schedule.

(b) Any withdrawal made after the first Principal Payment Date shall be repaid on each Principal Payment Date falling after the date of such withdrawal in amounts determined by ADB by multiplying the amount of each such withdrawal by a fraction, the numerator of which shall be the original Installment Share specified in the table in paragraph 1 of this Schedule for said Principal Payment Date (the Original Installment Share) and the denominator of which shall be the sum of all remaining Original Installment Shares for Principal Payment Dates falling on or after such date, such repayment amounts to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

3. Withdrawals made within two calendar months prior to any Principal Payment Date shall, for the purposes solely of calculating the principal amounts payable on any Principal Payment Date, be treated as withdrawn and outstanding on the second Principal Payment Date following the date of withdrawal and shall be repayable on each Principal Payment Date commencing with the second Principal Payment Date following the date of withdrawal.

4. Notwithstanding the provisions of paragraphs 1 and 2 of this Schedule, upon a Currency Conversion of all or any portion of the withdrawn principal amount of the Loan to an Approved Currency, the amount so converted in said Approved Currency that shall be repayable on any Principal Payment Date occurring during the Conversion Period, shall be determined by ADB by multiplying such amount in its currency of denomination immediately prior to said Conversion by either: (i) the exchange rate that reflects the amounts of principal

Schedule 1

in said Approved Currency payable by ADB under the Currency Hedge Transaction relating to said Conversion; or (ii) if ADB so determines in accordance with the Conversion Guidelines, the exchange rate component of the Screen Rate.

5. If the principal amount of the Loan withdrawn and outstanding from time to time shall be denominated in more than one Loan Currency, the provisions of this Schedule shall apply separately to the amount denominated in each Loan Currency, so as to produce a separate amortization schedule for each such amount.

SCHEDULE 2

Allocation and Withdrawal of Loan Proceeds

General

1. The table attached to this Schedule sets forth the Categories of Goods, Works, consulting services and other items to be financed out of the proceeds of the Loan and the allocation of amounts of the Loan to each such Category (hereinafter called the Table). (Reference to "Category" or "Categories" in this Schedule is to a Category or Categories of the Table).

Percentages of ADB Financing

2. Except as ADB may otherwise agree, the items of the Categories listed in the Table shall be financed out of the proceeds of the Loan on the basis of the percentages set forth in the Table.

Interest and Commitment Charge

3. The amount allocated to Category 2 is for financing interest and commitment 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 and commitment 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 then 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 for financing goods, Works, and consulting services and other items shall be disbursed in accordance with ADB's "Loan Disbursement Handbook" dated January 2007 (ADB's Loan Disbursement Handbook), as amended from time to time.

Retroactive Financing

6. Withdrawals from the Loan Account may be made for reimbursement of reasonable 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 Project management, including consulting services to be retroactively financed, subject to a maximum amount equivalent to 5 percent of the Loan amount.

Conditions for Disbursement

7. Notwithstanding any other provision of this Loan Agreement, no disbursements shall be made from the Loan Account until:

(a) the Subsidiary Loan Agreement has been duly executed and delivered on behalf of and is legally binding upon the Borrower and CIPA in accordance with its terms; and

(b) a legal opinion has been issued, on behalf of the Borrower, showing the legal and valid ownership by the Borrower or its agencies of the land to be utilized for the Project.

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS Avatiu Port Development Project			
CATEGORY			ADB FINANCING BASIS
Number	Item	Total Amount Allocated for ADB Financing (\$)	Percentage of ADB Financing from the Loan Account
1	Works	6,470,000	52.9 percent of total expenditure
2	Interest and Commitment Charge	320,000	100 percent of amounts due
3	Unallocated	1,840,000	
	Total	8,630,000	