

PROJECT AGREEMENT  
(Lae Port Development Project)

between

ASIAN DEVELOPMENT BANK

and

THE INDEPENDENT PUBLIC BUSINESS CORPORATION

DATED 12 JUNE 2008

## **PROJECT AGREEMENT**

PROJECT AGREEMENT dated 12 June 2008 between ASIAN DEVELOPMENT BANK ("ADB") and THE INDEPENDENT PUBLIC BUSINESS CORPORATION ("IPBC")

### **WHEREAS**

(A) by a Loan Agreement of even date herewith between the Independent State of Papua New Guinea (the "Borrower") and ADB (hereinafter called the Ordinary Operations Loan Agreement), ADB has agreed to make to the Borrower a loan of sixty million Dollars (\$60,000,000) (hereinafter called the Ordinary Operations Loan) on the terms and conditions set forth in the Ordinary Operations Loan Agreement;

(B) by a Loan Agreement of even date herewith between the Borrower and ADB (hereinafter called the Special Operations Loan Agreement, and together with the Ordinary Operations Loan Agreement, hereinafter called the Loan Agreements), ADB has agreed to make to the Borrower a loan in various currencies equivalent to twenty five million two hundred forty two thousand Special Drawing Rights (SDR 25,242,000) (hereinafter called the Special Operations Loan, and together with the Ordinary Operations Loan, called the Loans) on the terms and conditions set forth in the Special Operations Loan Agreement;

(C) ADB has agreed to make the Loans only on the condition that the proceeds of the Loans be made available to IPBC through a Subsidiary Loan Agreement and that IPBC agree to undertake certain obligations towards ADB as set forth in this Project Agreement; and

(D) IPBC, in consideration of ADB entering into the Loan Agreements with the Borrower, has agreed to undertake the obligations set forth in this Project Agreement;

NOW THEREFORE the parties agree as follows:

## **ARTICLE I**

### **Definitions**

Section 1.01. Wherever used in this Project Agreement, unless the context otherwise requires, the terms defined in the Special Operations Loan Agreement and in the Loan Regulations (as so defined) have the respective meanings therein set forth.

## ARTICLE II

### Particular Covenants

Section 2.01. (a) IPBC shall 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, IPBC shall perform all obligations set forth in the Loan Agreements to the extent that they are applicable to IPBC and the Schedule to this Project Agreement.

Section 2.02. IPBC shall make available, promptly as needed, the funds, facilities, services, equipment, land and other resources which are required, in addition to the proceeds of the Loans, for the carrying out of the Project.

Section 2.03. (a) In the carrying out of the Project, IPBC shall employ competent and qualified consultants and contractors, acceptable to ADB, to an extent and upon terms and conditions satisfactory to ADB.

(b) Except as ADB may otherwise agree, all Goods, Works and consulting services to be financed out of the proceeds of the Loans 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 Goods, Works or consulting 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 2.04. IPBC shall carry out the Project in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to ADB. IPBC shall furnish, or cause to be furnished, to ADB, promptly after their preparation, such plans, design standards, specifications and work schedules, and any material modifications subsequently made therein, in such detail as ADB shall reasonably request.

Section 2.05. (a) IPBC shall take out and maintain with responsible insurers, or make other arrangements satisfactory to ADB for, insurance of Project facilities to such extent and against such risks and in such amounts as shall be consistent with sound practice.

(b) Without limiting the generality of the foregoing, IPBC undertakes to insure, or cause to be insured, the Goods to be imported for the Project and to be financed out of the proceeds of the Loans against hazards incident to the acquisition, transportation and delivery thereof to the place of use or installation, and for such insurance any indemnity shall be payable in a currency freely usable to replace or repair such Goods.

Section 2.06. IPBC shall maintain, or cause to be maintained, records and accounts adequate to identify the Goods, Works and consulting services and other items of expenditure financed out of the proceeds of the Loans, to disclose the use thereof in the Project, to record the progress of the Project (including the cost thereof) and to reflect, in

accordance with consistently maintained sound accounting principles, its operations and financial condition.

Section 2.07. (a) ADB and IPBC shall cooperate fully to ensure that the purposes of the Loans will be accomplished.

(b) IPBC shall promptly inform ADB of any condition which interferes with, or threatens to interfere with, the progress of the Project, the performance of its obligations under this Project Agreement or the Subsidiary Loan Agreement, or the accomplishment of the purposes of the Loans.

(c) ADB and IPBC shall from time to time, at the request of either party, exchange views through their representatives with regard to any matters relating to the Project, IPBC and the Loans.

Section 2.08. (a) IPBC shall furnish to ADB all such reports and information as ADB shall reasonably request concerning (i) the Loans and the expenditure of the proceeds thereof; (ii) the Goods, Works and consulting services and other items of expenditure financed out of such proceeds; (iii) the Project; (iv) the administration, operations and financial condition of IPBC; and (v) any other matters relating to the purposes of the Loans.

(b) Without limiting the generality of the foregoing IPBC shall furnish to ADB periodic reports on the execution of the Project and on the operation and management of the Project facilities. Such reports shall be submitted in such form and in such detail and within such a period as ADB shall reasonably request, and shall indicate, among other things, progress made and problems encountered during the period under review, steps taken or proposed to be taken to remedy these problems, and proposed program of activities and expected progress during the following period.

(c) Promptly after physical completion of the Project, but in any event not later than three (3) months thereafter or such later date as ADB may agree for this purpose, IPBC shall prepare and furnish to ADB a report, in such form and in such detail as ADB shall reasonably request, on the execution and initial operation of the Project, including its cost, the performance by IPBC of its obligations under this Project Agreement and the accomplishment of the purposes of the Loans.

Section 2.09. (a) IPBC shall (i) maintain separate accounts for the Project; (ii) have such accounts and related financial statements (balance sheet, statement of income and expenses, and related statements) audited annually, in accordance with appropriate auditing standards consistently applied, by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB; and (iii) furnish to ADB, promptly after their preparation but in any event not later than 6 months after the close of the fiscal year to which they relate, certified copies of such audited accounts and financial statements and the report of the auditors relating thereto (including the auditors' opinion on the use of the proceeds of the Loans and compliance with the financial covenants of the Loan Agreements as well as on the use of the procedures for imprest account), all in the English language. IPBC shall furnish to ADB such further information concerning such accounts and financial statements and the audit thereof as ADB shall from time to time reasonably request.

(b) IPBC shall enable ADB, upon ADB's request, to discuss IPBC's financial statements and its financial affairs from time to time with the auditors, appointed by IPBC pursuant to Section 2.09(a) hereabove, and shall authorize and require any representative of such auditors to participate in any such discussions requested by ADB, provided that any such discussion shall be conducted only in the presence of an authorized officer of IPBC unless IPBC shall otherwise agree.

Section 2.10. IPBC shall enable ADB's representatives to inspect the Project, the Goods and Works financed out of the proceeds of the Loans, all other plants, sites, properties and equipment of the IPBC, and any relevant records and documents.

Section 2.11. (a) IPBC shall, promptly as required, take all action within its powers to maintain its corporate existence, to carry on its operations, and to acquire, maintain and renew all rights, properties, powers, privileges and franchises which are necessary in the carrying out of the Project or in the conduct of its business.

(b) IPBC shall at all times conduct its business in accordance with sound administrative, financial, environmental and port management practices, and under the supervision of competent and experienced management and personnel.

(c) IPBC shall at all times operate and maintain its plants, equipment and other property, and from time to time, promptly as needed, make all necessary repairs and renewals thereof, all in accordance with sound administrative, financial, engineering, environmental, port management, and maintenance and operational practices.

Section 2.12. Except as ADB may otherwise agree, IPBC shall not sell, lease or otherwise dispose of any of its assets which shall be required for the efficient carrying on of its operations or the disposal of which may prejudice its ability to perform satisfactorily any of its obligations under this Project Agreement.

Section 2.13. Except as ADB may otherwise agree, IPBC shall apply the proceeds of the Loans to the financing of expenditures on the Project in accordance with the provisions of the Loan Agreements and this Project Agreement, and shall ensure that all Goods, Works and consulting services financed out of such proceeds are used exclusively in the carrying out of the Project.

Section 2.14. Except as ADB may otherwise agree, IPBC shall duly perform all its obligations under the Subsidiary Loan Agreement, and shall not take, or concur in, any action which would have the effect of assigning, amending, abrogating or waiving any rights or obligations of the parties under the Subsidiary Loan Agreement.

Section 2.15. IPBC shall promptly notify ADB of any proposal to amend, suspend or repeal any provision of the Independent Public Business Corporation Act and shall afford ADB an adequate opportunity to comment on such proposal prior to taking any action thereon.

**ARTICLE III****Effective Date; Termination**

Section 3.01. This Project Agreement shall come into force and effect on the date on which the Loan Agreements shall come into force and effect. ADB shall promptly notify IPBC of such date.

Section 3.02. All the provisions of this Project Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the Loan Agreements.

**ARTICLE IV****Miscellaneous**

Section 4.01. Any notice or request required or permitted to be given or made under this Project Agreement and any agreement between the parties contemplated by this Project Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand or by mail, telegram, cable, telex, facsimile or radiogram to the party to which it is required or permitted to be given or made at its address hereinafter specified, or at such other address as such party shall have designated by notice to the party giving such notice or making such request. The addresses so specified are:

For ADB

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

Cable Address:

ASIANBANK  
MANILA

Telex Numbers:

29066 ADB PH (RCA)  
42205 ADB PM (ITT)  
63587 ADB PN (ETPI)

Facsimile Numbers:

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

For IPBC

Independent Public Business Corporation  
Level 4, Pacific Place  
Corner Musgrave St & Champion Parade  
PO Box 320, Port Moresby  
Papua New Guinea

Facsimile Number:

(675) 321-0192.


Section 4.02. (a) Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Project Agreement or under Section 7.01 of the Loan Agreements by or on behalf of IPBC may be taken or executed by its managing director or by such other person or persons as the managing director shall so designate in writing notified to ADB.

(b) IPBC shall furnish to ADB sufficient evidence of the authority of each person who will act under paragraph (a) of this Section, together with the authenticated specimen signature of each such person.

Section 4.03. No delay in exercising, or omission to exercise, any right, power or remedy accruing to either party under this Project Agreement upon any default shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence in such default; nor shall the action of such party in respect of any default, or any acquiescence in any default, affect or impair any right, power or remedy of such party in respect of any other or subsequent default.

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

ASIAN DEVELOPMENT BANK

By   
C. LAWRENCE GREENWOOD, JR.  
Vice President (Operations 2),

THE INDEPENDENT PUBLIC  
BUSINESS CORPORATION

By   
SUMASY SINGIN, OBE  
Chairman

## SCHEDULE

### Execution of Project and Operation of Project Facilities; Financial Matters

#### Tariff

1. Six months prior to the operation of the port facilities, IPBC shall undertake the requisite actions to achieve tariff levels that shall allow for full cost recovery of the facilities.

#### Construction Quality

2. IPBC shall ensure that the Project facilities are built in accordance with the design technical specifications and that construction supervision, quality control, and contract management are implemented in accordance with the internationally accepted standards.

#### Environment

3. IPBC shall implement and comply with the EMP. The IPBC shall submit semiannual reports to ADB on the implementation of and compliance with the EMP.

4. IPBC shall ensure that the dumping of dredged sediments offshore shall only be permitted if appropriate mitigation measures are in place and conducted in compliance with ADB's *Environment Policy* and the Borrower's applicable laws and regulations.

#### Resettlement

5. IPBC shall ensure that the resettlement activities under the Project are implemented in accordance with ADB's *Involuntary Resettlement Policy* (1995), and the resettlement plan agreed upon between ADB and the Borrower. IPBC shall further ensure that (a) the people who are required to be relocated or have their assets dispossessed or both under the Project shall have been given adequate compensation and other related resettlement assistance in accordance with ADB's *Involuntary Resettlement Policy* and the resettlement plan prior to their relocation or the dispossession of their assets; (b) the Malahang resettlement site shall have been fully developed and ready for occupation prior to relocation of the people affected by the Project; and (c) the new boat landing facility and fish market in SP Beach shall have been fully developed and operational, prior to the acquisition of the existing boat landing site and associated fish market in Landaun Market for the purpose of the Project.

#### Labor, Health and Gender Development

6. IPBC shall ensure that Works contractors engaged under the Project shall (a) comply with all applicable labor laws and related international treaty obligations, and do not employ child labor under the Project, (b) provide information to all construction workers during the construction period on the prevention of sexually transmitted infections, including HIV/AIDS, in health and safety programs, (c) provide prompt and equal pay to men and women for work of equivalent value in accordance with national laws and international treaty

Schedule

obligations, (d) provide safe working conditions for both male and female workers, and (e) provide separate and culturally appropriate facilities for men and women workers. IPBC shall ensure that specific provisions to this effect shall be included in the bidding documents and contracts for Works. IPBC shall monitor compliance and to include the status of the implementation of these activities in the Project progress reports.

Anti-Corruption

7. IPBC shall ensure that (a) the entire PMU staff participate in training on ADB's Anticorruption Policy, and the Borrower's laws and regulations on anti-corruption, and (b) within three months of the Effective Date, a project website shall be developed and maintained to disclose, among other things, the audited Project financial accounts, the Project progress reports, and the procurement results.

Monitoring

8. IPBC shall ensure that the Project stakeholders are involved in monitoring the implementation of the Project. This shall include ensuring that the PMU meet with the representatives of stakeholders on a regular basis to report on the delivery of Project inputs, and the effectiveness of Project interventions.

Project Performance Management System

9. IPBC shall establish a Project performance and monitoring system to monitor and evaluate Project impacts to ensure that the Project is managed effectively and the benefits are maximized.

10. Within twelve months of the Effective Date, ADB and IPBC shall agree upon a system for monitoring and evaluating Project performance in relation to its goals and purposes, with an emphasis on trade, economic activities, job creation, and livelihood improvement. A consultant shall be recruited under the Project to establish the system and assess the socioeconomic impact of the Project. IPBC shall submit to ADB (a) within three months at the end of each year, the annual monitoring report, and (b) within 3 months after Project completion, the final monitoring report. The monitoring indicators shall include (a) industrial and commercial activities, (b) job creation, (c) exports and imports, (d) traffic volume, (e) port charges, (f) income generation, and (g) social services. Employment impact indicators shall include information about unskilled laborers, poor laborers, and women laborers.

Public-Private Partnership

11. Within twenty four months of the Effective Date, IPBC shall prepare a time-bound action plan, in accordance with the Borrower's public-private partnership policy, to develop a strategic public-private partnership model to ensure effective and efficient service delivery in the operation of the new port facilities constructed under the Project.

Project Review

12. ADB and IPBC shall undertake semi-annual and mid-term reviews to consider (a) the compliance to the loan covenants stipulated in Schedule 5 to the Special Operations Loan Agreement and the Schedule to this Project Agreement, (b) physical achievements against milestones along with any reasonable changes, and disbursement and financial progress, and (c) Project implementation issues requiring resolution or action. The mid-term review shall be undertaken within twenty four months of the Effective Date.

Audit Report

13. IPBC shall ensure that the annual audited accounts of the Project and IPBC as well as the quarterly Project progress reports shall be made accessible to the public.