
LOAN NUMBER 3552-VAN(COL)

LOAN AGREEMENT
(Ordinary Operations [Concessional])
(Cyclone Pam Road Reconstruction Project – Additional Financing)

between

REPUBLIC OF VANUATU

and

ASIAN DEVELOPMENT BANK

DATED 1 September 2017

VAN 49319

LOAN AGREEMENT
(Ordinary Operations [Concessional])

LOAN AGREEMENT dated 1 September 2017 between REPUBLIC OF VANUATU ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) by a financing agreement and an externally financed grant agreement each dated 1 March 2016 between the Borrower and ADB (the "ADB Financing Agreement" and the "GEF Grant Agreement", respectively, and together the "Original Financing Agreements"), ADB agreed to (a) make (i) a loan to the Borrower from ADB's Special Funds resources in the amount of seven hundred eight thousand Special Drawing Rights (SDR708,000), (ii) a loan to the Borrower from ADB's Special Funds resources (Disaster Response Facility) in the amount of one million nine hundred eighty-six thousand Special Drawing Rights (SDR1,986,000), (iii) a grant to the Borrower from ADB's Special Funds resources in the amount of seven million Dollars (\$7,000,000), and (iv) a grant to the Borrower from ADB's Special Funds resources (Disaster Response Facility) in the amount of two million eight hundred five thousand Dollars (\$2,805,000), and (b) administer a grant to the Borrower from the Global Environment Facility in the amount of two million six hundred eighty thousand Dollars (\$2,680,000), for the purposes of the project described in Schedule 1 to the ADB Financing Agreement ("Initial Project");

(B) the Borrower has applied to ADB for a loan and a grant for the purposes of the Project described in Schedule 1 to this Loan Agreement;

(C) by a grant agreement of even date herewith entered into between ADB and the Borrower ("Grant Agreement"), ADB has agreed to provide to the Borrower a grant from ADB's Special Funds resources in the amount of four million one hundred thousand Dollars (\$4,100,000) for the purpose 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 ADB Financing Agreement have the respective

meanings therein set forth unless modified herein or the context otherwise requires. Additional terms used in this Loan Agreement have the following meanings:

- (a) "PAM" means the project administration manual for the Project dated 6 June 2017 and agreed between the Borrower and ADB, as updated from time to time in accordance with the respective administrative procedures of the Borrower and ADB;
- (b) "Procurement Plan" means the procurement plan for the Project dated 6 June 2017 and agreed between the Borrower and ADB, as updated from time to time in accordance with the Procurement Guidelines, the Consulting Guidelines, and other arrangements agreed with ADB; and
- (c) "Works" means construction or civil works to be financed out of the proceeds of the Loan, including services such as drilling or mapping, and project related services that are provided as part of a single responsibility or turnkey contract.

ARTICLE II

The Loan

Section 2.01. (a) ADB agrees to lend to the Borrower from ADB's ordinary capital resources an amount in various currencies equivalent to two million nine hundred sixty-one thousand Special Drawing Rights (SDR2,961,000).

(b) The Loan has a principal repayment period of 30 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 2 to this Loan Agreement.

Section 2.02. The Borrower shall pay to ADB an interest charge at the rate of 1% per annum 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 April and 15 October 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 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 3 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 this Loan Agreement.

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

- (a) Works 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) Works 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 2019 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 the Original Financing Agreements or the Grant Agreement.

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 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 Grant Agreement shall have been duly executed and delivered, 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 for Finance and Economic Management 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

Ministry of Finance and Economic Management
PMB 9031
Port Vila
Vanuatu

Facsimile Number:

+678 26884

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.



REPUBLIC OF VANUATU

By

GAETAN PIKIOUNE
Minister
Ministry of Finance and
Economic Management

ASIAN DEVELOPMENT BANK

By

XIAOQIN FAN
Regional Director
Pacific Liaison and
Coordination Office

SCHEDULE 1**Description of the Project**

1. The objective of the Project is restoration of socioeconomic activities to at least pre-Tropical Cyclone Pam levels.
2. The Project shall comprise reconstruction of transport infrastructure in damaged locations on Efate ring road and improvement of climate- and disaster resilience.
3. The Project is expected to be completed by 31 December 2018.

SCHEDULE 2**Amortization Schedule**

<u>Date Payment Due</u>	<u>Payment of Principal</u> (expressed in Special Drawing Rights)
15 October 2027	29,610
15 April 2028	29,610
15 October 2028	29,610
15 April 2029	29,610
15 October 2029	29,610
15 April 2030	29,610
15 October 2030	29,610
15 April 2031	29,610
15 October 2031	29,610
15 April 2032	29,610
15 October 2032	29,610
15 April 2033	29,610
15 October 2033	29,610
15 April 2034	29,610
15 October 2034	29,610
15 April 2035	29,610
15 October 2035	29,610
15 April 2036	29,610
15 October 2036	29,610
15 April 2037	29,610
15 October 2037	59,220
15 April 2038	59,220
15 October 2038	59,220
15 April 2039	59,220
15 October 2039	59,220
15 April 2040	59,220
15 October 2040	59,220
15 April 2041	59,220
15 October 2041	59,220
15 April 2042	59,220
15 October 2042	59,220
15 April 2043	59,220
15 October 2043	59,220
15 April 2044	59,220
15 October 2044	59,220
15 April 2045	59,220
15 October 2045	59,220
15 April 2046	59,220
15 October 2046	59,220
15 April 2047	59,220

<u>Date Payment Due</u>	<u>Payment of Principal</u> (expressed in Special Drawing Rights)
15 October 2047	59,220
15 April 2048	59,220
15 October 2048	59,220
15 April 2049	59,220
15 October 2049	59,220
15 April 2050	59,220
15 October 2050	59,220
15 April 2051	59,220
15 October 2051	59,220
15 April 2052	59,220
15 October 2052	59,220
15 April 2053	59,220
15 October 2053	59,220
15 April 2054	59,220
15 October 2054	59,220
15 April 2055	59,220
15 October 2055	59,220
15 April 2056	59,220
15 October 2056	59,220
15 April 2057	<u>59,220</u>
TOTAL	2,961,000

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

SCHEDULE 3

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 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 for reimbursement of eligible expenditures incurred under the Project before the Effective Date in connection with Works, subject to a maximum amount equivalent to 30% of the Loan amount; provided that the expenditures have been incurred after the emergency occurred but not earlier than 12 months before the date of this Loan Agreement.

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS			
Number	Item	Total Amount Allocated for ADB Financing (SDR) Category	Basis for Withdrawal from the Loan Account
1	Works**	2,721,000	100% of total expenditure claimed
2	Interest Charge	59,000	100% of amounts due
3	Unallocated	181,000	
	TOTAL	2,961,000	

** Funds may be withdrawn only after the grant funds are fully utilized.

SCHEDULE 4

Procurement of Works

General

1. The procurement of Works shall be subject to and governed by the Procurement Guidelines.
2. Except as ADB may otherwise agree, Works shall be procured only on the basis of the procurement methods set forth below. These methods are subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Borrower may only modify the procurement methods or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.
3. All terms used in this Schedule and not otherwise defined in this Loan Agreement have the meanings provided in the Procurement Guidelines.

Works

4. Works shall be procured on the basis of International Competitive Bidding.

Conditions for Award of Contract

5. The Borrower shall not award any Works contract for a Subproject which involves environmental impacts until it has incorporated the relevant provisions from the corresponding EMP into the Works contract.
6. The Borrower shall not award any Works contract involving involuntary resettlement impacts for a Subproject until it has prepared and submitted to ADB the final RP for such Subproject based on detailed design, and obtained ADB's clearance of such RP.

Industrial or Intellectual Property Rights

7. (a) The Borrower shall ensure that all Works procured (including without limitation all computer hardware, software and systems, whether separately procured or incorporated within other goods and services procured) do not violate or infringe any industrial property or intellectual property right or claim of any third party.

(b) The Borrower shall ensure that all contracts for the procurement of Works contain appropriate representations, warranties and, if appropriate, indemnities from the contractor or supplier with respect to the matters referred to in subparagraph (a) of this paragraph.

SCHEDULE 5

Execution of Project

Implementation Arrangements

1. The Borrower shall ensure that the Project is implemented in accordance with the detailed arrangements set forth in the PAM. Any subsequent change to the PAM shall become effective only after approval of such change by the Borrower and ADB. In the event of any discrepancy between the PAM and this Loan Agreement, the provisions of this Loan Agreement shall prevail.

Environment

2. The Borrower shall ensure that the preparation, design, construction, implementation, operation and decommissioning of each Subproject comply with (a) all applicable laws and regulations of the Borrower relating to environment, health, and safety; (b) the Environmental Safeguards; (c) the EARF; and (d) all measures and requirements set forth in the respective IEE and EMP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

Land Acquisition and Involuntary Resettlement

3. The Borrower shall ensure that all land and all rights-of-way required for each Subproject are made available to the Works contractor in accordance with the schedule agreed under the related Works contract and all land acquisition and resettlement activities are implemented in compliance with (a) all applicable laws and regulations of the Borrower relating to land acquisition and involuntary resettlement; (b) the Involuntary Resettlement Safeguards; (c) the RF; and (d) all measures and requirements set forth in the respective RP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

4. Without limiting the application of the Involuntary Resettlement Safeguards, the RF or the RP, the Borrower shall ensure that no physical or economic displacement takes place in connection with the Subprojects until:

- (a) compensation and other entitlements have been provided to affected people in accordance with the RP; and
- (b) a comprehensive income and livelihood restoration program has been established in accordance with the RP.

Indigenous Peoples

5. The Borrower shall ensure that the Project does not involve any indigenous peoples risks or impacts within the meaning of the SPS. If due to unforeseen circumstances, the Project involves any such impacts, the Borrower shall take all steps necessary or desirable to ensure that each Subproject complies with all applicable laws and regulations of the recipient and with the SPS.

Labor Standards, Health and Safety

6. The Borrower shall ensure that the core labor standards and the Borrower's applicable laws and regulations are complied with during Project implementation. The Borrower shall include specific provisions in the bidding documents and contracts financed by ADB under the Project requiring that the contractors, among other things: (a) comply with the Borrower's applicable labor law and regulations and incorporate applicable workplace occupational safety norms; (b) do not use child labor; (c) do not discriminate workers in respect of employment and occupation; (d) do not use forced labor; (e) allow freedom of association and effectively recognize the right to collective bargaining; and (f) disseminate, or engage appropriate service providers to disseminate, information on the risks of sexually transmitted diseases, including HIV/AIDS, to the employees of contractors engaged under the Project and to members of the local communities surrounding the Project area, particularly women. The Borrower shall strictly monitor compliance with the requirements set forth above and provide ADB with regular reports.

Gender and Development

7. The Borrower shall ensure that the principles of gender equity aimed at increasing Project benefits and impacts on women in the Project area consistent with ADB's Policy on Gender and Development (1998) are followed during implementation of the Project, including (a) equal pay to men and women for work of equal value; (b) enabling working conditions for women workers; and (c) taking necessary actions to encourage women living in the Project area to participate in the design and implementation of Project activities.

Human and Financial Resources to Implement Safeguards Requirements

8. The Borrower shall make available necessary budgetary and human resources to fully implement the EMP and the RP in the event that an RP is prepared in connection with the Project.

Safeguards – Related Provisions in Bidding Documents and Works Contracts

9. The Borrower shall ensure that all bidding documents and contracts for Works contain provisions that require contractors to:

- (a) comply with the measures and requirements relevant to the contractor set forth in the IEE, the EMP, and the RP (to the extent they concern impacts on affected people during construction) and any corrective or preventative actions set out in a Safeguards Monitoring Report;
- (b) make available a budget for all such environmental and social measures;
- (c) provide the Borrower with a written notice of any unanticipated environmental, resettlement or indigenous peoples risks or impacts that arise during construction, implementation or operation of the Project that were not considered in the IEE, the EMP, and the RP;
- (d) adequately record the condition of roads, agricultural land and other

infrastructure prior to starting to transport materials and construction;
and

- (e) fully reinstate pathways, other local infrastructure, and agricultural land to at least their pre-project condition upon the completion of construction.

Safeguards Monitoring and Reporting

10. The Borrower shall do the following:

- (a) submit semi-annual Safeguards Monitoring Reports to ADB and disclose relevant information from such reports to affected persons promptly upon submission;
- (b) if any unanticipated environmental and/or social risks and impacts arise during construction, implementation or operation of the Project that were not considered in the IEE, the EMP, or the RP, promptly inform ADB of the occurrence of such risks or impacts, with detailed description of the event and proposed corrective action plan; and
- (c) report any actual or potential breach of compliance with the measures and requirements set forth in the EMP, or the RP promptly after becoming aware of the breach.

Prohibited List of Investments

11. The Borrower shall ensure that no proceeds of the Loan and Grant are used to finance any activity included in the list of prohibited investment activities provided in Appendix 5 of the SPS.

Counterpart Support

12. The Borrower shall make available all counterpart funds required for timely and effective implementation of the Project, including any funds required to meet additional costs arising from unforeseen circumstances. In addition to the foregoing, the Borrower shall ensure that MFEM and the Borrower's Ministry of Infrastructure and Public Utilities have sufficient funds to satisfy liabilities arising from any Works or Consulting Services contract.

Governance and Anticorruption

13. The Borrower shall (a) comply with ADB's Anticorruption Policy (1998, as amended to date) and acknowledge that ADB reserves the right to investigate directly, or through its agents, any alleged corrupt, fraudulent, collusive or coercive practice relating to the Project; and (b) cooperate with any such investigation and extend all necessary assistance for satisfactory completion of such investigation.

14. The Borrower shall ensure that the anticorruption provisions acceptable to ADB are included in all bidding documents and contracts, including provisions specifying the right of ADB to audit and examine the records and accounts of the executing and implementing

agencies and all contractors, suppliers, consultants, and other service providers as they relate to the Project.

Project Website

15. Within 90 days of the Effective Date, the Borrower shall establish and maintain a Project website which shall be regularly updated. The Project website shall include information on (a) bidding procedures, bidders, and contract awards; (b) use of the funds disbursed under the Project; and (c) physical progress of the Project.

Debris Removal

16. In the event of any future flooding or other natural disasters, the Borrower shall ensure prompt removal of debris from Project facilities and other related areas to ensure sustainability and proper O&M of such Project facilities.

Consultation and Participation Plan

17. Within 12 months after the Effective Date, the Borrower shall prepare a consultation and participation plan acceptable to ADB as described in the PAM.

O&M

18. During Project implementation and thereafter, the Borrower shall ensure that the Project facilities are maintained and that proper technical supervision and adequate routine funds for this purpose are provided. The funds required for the O&M of the Project facilities shall be allocated annually and released on a timely basis. The Borrower shall prepare an asset management plan for Efate ring road forecasting routine and periodic maintenance expenditures for 5 years with incremental increases each year for the sustainability of the road assets.

19. The Borrower shall ensure that its budget allocation for road maintenance is increased annually, so that adequate funds are made available for O&M of the Project facilities and other transport infrastructure.

Road Safety

20. The Borrower shall ensure that road safety audits, accompanied by road safety awareness sessions, are undertaken during the design process, construction, and on existing roads, and shall also ensure that recommendations of the road safety audits are reviewed and promptly incorporated in the design and implemented on existing roads, as appropriate.

Selection Criteria and Approval Process for Subprojects

21. Feasibility studies prepared for proposed Subprojects shall be endorsed by the project steering committee established for the Project prior to submission to ADB for approval. The Borrower shall periodically submit for ADB's approval a list of roads it wishes to propose for Subprojects. The list shall be accompanied by an endorsed feasibility study for each proposed Subproject. The Borrower shall ensure that the feasibility studies are prepared with

sufficient detail for ADB to assess whether the proposed Subprojects meet the criteria set forth in the PAM, and are otherwise suitable and viable.

22. The Borrower shall ensure that all documents forming the basis for screening, selection and processing of Subprojects are made available to ADB upon request and are kept available for such purposes for a minimum period of five years from the date of the project completion report for the Project.