
LOAN NUMBER 4011-PAL

LOAN AGREEMENT
(Ordinary Operations)
(Pacific Disaster Resilience Program – Phase 3)

between

REPUBLIC OF PALAU

and

ASIAN DEVELOPMENT BANK

DATED 15 DECEMBER 2020

PAL 50028

**LOAN AGREEMENT
(Ordinary Operations)**

LOAN AGREEMENT dated 15 December 2020 between REPUBLIC OF PALAU ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) ADB has received from the Borrower a development policy letter dated 20 October 2020 ("Policy Letter"), setting forth certain objectives, policies and actions, described in Schedule 1 to this Loan Agreement, designed to develop the Borrower's resilience to disasters caused by natural hazards and health related emergency events and strengthen risk management ("Program");

(B) the Borrower has applied to ADB for a loan for the purposes of the Program; and

(C) ADB has agreed to make a loan to the Borrower from ADB's ordinary capital resources upon the terms and conditions set forth herein;

NOW THEREFORE the parties hereto agree as follows:

ARTICLE I

Loan Regulations; Definitions

Section 1.01. All the provisions of ADB's Ordinary Operations 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, subject, however, to the following modifications:

(a) Section 2.01(tt) is deleted and the following is substituted therefor:

The term "Program" means the program for which ADB has agreed to make the Loan, as described in the Loan Agreement and as the description thereof may be amended from time to time by agreement between ADB and the Borrower;

(b) The term "Project" wherever it appears in the Loan Regulations shall be substituted by the term "Program".

(c) Section 2.01(vv) is deleted and the following is substituted therefor:

The term "Program Executing Agency" means the entity or entities responsible for the carrying out of the Program as specified in the Loan Agreement.

- (d) The term "Project Executing Agency" wherever it appears in the Loan Regulations shall be substituted by the term "Program Executing Agency".
- (e) Section 6.01(b) is deleted.

Section 1.02. Wherever used in this Loan Agreement, the several terms defined in the Loan Regulations 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) "Availability Period" means the period specified in Section 3.04 of this Loan Agreement;
- (b) "Deposit Account" means the account referred to in paragraph 3 of Schedule 2 to this Loan Agreement;
- (c) "Disaster Event" means an event of disaster caused by a natural hazard or a health related emergency, which in the case of COVID-19 emergency refers only to community transmission, the highest level of the COVID-19 transmission classification adopted by WHO;
- (d) "Disbursed Amount" means, in respect of each Interest Period, the aggregate principal amount of the Loan withdrawn from the Loan Account in the said interest period;
- (e) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2017, as amended from time to time);
- (f) "Maturity Fixing Date" means, for each Disbursed Amount, the date on which the amortization schedule for said Disbursed Amount is established, such date being the Interest Payment Date immediately succeeding the disbursement;
- (g) "MOF" means the Ministry of Finance of the Borrower;
- (h) "MOH" means the Ministry of Health of the Recipient or any successor thereto;
- (i) "Policy Matrix" means the policy matrix as agreed between the Borrower and ADB, which sets forth actions accomplished or to be accomplished by the Borrower under the Program and is attached to the Policy Letter;
- (j) "Program Executing Agency" for the purposes of, and within the meaning of, the Loan Regulations means MOF or any successor thereto acceptable to ADB, which is responsible for the carrying out of the Program; and
- (k) "WHO" means the World Health Organization, a specialized agency established within the terms of Article 57 of the Charter of the United Nations.

ARTICLE II

The Loan

Section 2.01. (a) ADB agrees to lend to the Borrower from ADB's ordinary capital resources an amount of twenty million Dollars (\$20,000,000), 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 12 years, and a grace period of 3 years with repayment calculated based on a disbursement-linked amortization schedule(s) as defined in Section 2.05 of 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:

- (a) LIBOR; and
- (b) 0.60% as determined by Section 3.02 of the Loan Regulations less a credit of 0.10% as provided by Section 3.03 of the Loan Regulations.

Section 2.03. The Borrower shall pay to ADB a front-end fee equal to 0.25% of the full amount of the Loan. On or promptly after the Effective Date, ADB shall be entitled to withdraw from the Loan Account and pay to itself, on behalf of the Borrower, the amounts of the fee.

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

Section 2.05. (a) Subject to the provisions of paragraph (b) of this Section, the Borrower shall repay each Disbursed Amount in semiannual installments payable on each 15 February and 15 August, the first such installment to be payable on the seventh (7th) Interest Payment Date following the Maturity Fixing Date for the said Disbursed Amount and the last such installment to be payable on the thirtieth (30th) Interest Payment Date following the Maturity Fixing Date for the said Disbursed Amount. Each installment except for the last one shall be equal to 1/24 of the said Disbursed Amount. The last installment shall be equal to the remaining outstanding amount of the said Disbursed Amount.

(b) ADB shall notify the Borrower of the amortization schedule for each Disbursed Amount promptly after the Maturity Fixing Date for the said Disbursed Amount.

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(f) 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. The Borrower shall cause the proceeds of the Loan to be applied to the financing of expenditures for the Program in accordance with the provisions of this Loan Agreement.

Section 3.02. The proceeds of the Loan shall be 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. The Loan Closing Date for the purposes of Section 9.02 of the Loan Regulations shall be the date that is 90 days after the last day of the Availability Period or such other date as may from time to time be agreed between the Borrower and ADB.

Section 3.04. The Availability Period shall be the period commencing on the date of this Loan Agreement and terminating on the date that is the earlier to occur of (a) the date that is 3 years after the date of this Loan Agreement, or (b) 1 April 2024. The Availability Period may be extended up to four times for an additional 3-year period each, commencing from date of expiration of the initial Availability Period, for a maximum of 15 years in total, subject to satisfaction of the conditions set out in paragraph 6 of Schedule 3 to this Loan Agreement.

ARTICLE IV**Particular Covenants**

Section 4.01. In the carrying out of the Program, the Borrower shall perform, or cause to be performed, all obligations set forth in Schedule 3 to this Loan Agreement.

Section 4.02. As part of the information and reports referred to in Sections 7.01 and 7.04 of the Loan Regulations, the Borrower shall furnish, or cause to be furnished, to ADB all such reports and information as ADB shall reasonably request concerning the implementation of the Program, including the accomplishment of the targets and carrying out of the actions set out in the Policy Letter.

ARTICLE V**Effectiveness**

Section 5.01. A date 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 VI**Miscellaneous**

Section 6.01. The Minister of Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 12.02 of the Loan Regulations.

Section 6.02. The following addresses are specified for the purposes of Section 12.01 of the Loan Regulations:

For the Borrower

The Minister
Ministry of Finance
PO Box 6011, Koror
Republic of Palau 96940

Facsimile Number:

(680) 767-2168

For ADB

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

Facsimile Numbers:


(632) 8636-2444
(632) 8636-2388.

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 PALAU

By  _____
ELBUCHEL SADANG
Minister of Finance

ASIAN DEVELOPMENT BANK

By  _____
LEAH GUTIERREZ
Director General
Pacific Department

SCHEDULE 1**Description of the Program**

1. The principal objective of the Program is to strengthen resilience of Borrower's institutions and communities to disasters caused by natural hazards and health emergencies and the scope includes (a) strengthening policy and institutional arrangements for risk management; (b) improving risk-informed investment planning processes and tools; and (c) expanding risk financing. The Program shall support additional public spending to meet short-term and medium-term post-disaster and health emergency financing needs, in the event the Recipient is affected by a Disaster Event. The Program is described in more detail in the Policy Letter.
2. The Program is expected to be completed by 30 June 2024.

SCHEDULE 2**Withdrawal of Loan Proceeds**

1. Except as set out in this Schedule or as ADB may otherwise agree, the Loan proceeds shall be disbursed in accordance with the Loan Disbursement Handbook.
2. An application for withdrawal from the Loan Account shall be submitted to ADB by the Borrower and shall be in a form satisfactory to ADB.
3. (a) Prior to submitting the first application to ADB for withdrawal from the Loan Account, the Borrower shall nominate an account (Deposit Account) at Bank of Guam into which all withdrawals from the Loan Account shall be deposited. The Deposit Account shall be established, managed and liquidated in accordance with the applicable regulations and procedures of the Borrower.

(b) Separate accounts and records in respect of the Deposit Account shall be maintained in accordance with accounting principles acceptable to ADB. Upon ADB's request, the Borrower shall have the financial statements for the Deposit Account audited by independent auditors, whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with international standards for auditing or the national equivalent acceptable to ADB. Promptly after their preparation but in any event not later than 6 months after the date of ADB's request, copies of such audited financial statements and the opinion of the auditors on the financial statements, in the English language, shall be furnished to ADB.
4. No Loan proceeds shall be withdrawn to finance any item specified in the Attachment to this Schedule.
5. The Loan proceeds shall be disbursed through one or more withdrawals. Notwithstanding any other provisions of this Loan Agreement and except as ADB may otherwise agree, no withdrawal shall be made from the Loan Account unless:
 - (a) during the Availability Period, a Disaster Event shall have occurred and in connection therewith, the Borrower has
 - (i) issued the President's declaration of a state of emergency under Section 14 of Article VIII of the Constitution of the Borrower (1979), a 'Certification of Unavoidable Public Health Emergency' by the Minister of Health under the Palau National Code (PNC): 34 PNC §332 (a)(3) or taken the equivalent measure; or
 - (ii) in the case of COVID-19 community transmission, has reported, through the MOH, the occurrence of community transmission as confirmed by WHO; and
 - (iii) submitted an application for withdrawal to ADB in accordance with paragraph 2 of this Schedule 2 by no later than 90 days from the date of such declaration or the equivalent under subparagraphs (a)(i) and (a)(ii) of this paragraph 5 but in any event prior to the Loan Closing Date; or

(b) after the expiration of the Availability Period but prior to the Loan Closing Date, the Borrower has (i) submitted an application for withdrawal to ADB in accordance with paragraph 2 of this Schedule 2 up to the amount that shall remain unwithdrawn from the Loan Account after taking into account any withdrawals made in accordance with subparagraph (a) of this paragraph 5, and (ii) as confirmed by ADB, continued to comply with the policy actions and adopt the post-program partnership framework as set forth in the Policy Matrix.

Negative List

No withdrawals of Loan proceeds will be made for the following:

- (i) expenditures for goods included in the following groups or sub-groups of the United Nations Standard International Trade Classification, Revision 3 (SITC, Rev. 3) or any successor groups or sub-groups under future revisions to the SITC, as designated by ADB by notice to the Borrower:

Table: Ineligible Items

Chapter	Heading	Description of Items
112		Alcoholic beverages
121		Tobacco, unmanufactured; tobacco refuse
122		Tobacco, manufactured (whether or not containing tobacco substitute)
525		Radioactive and associated materials
667		Pearls, precious and semiprecious stones, unworked or worked
718	718.7	Nuclear reactors, and parts thereof, fuel elements (cartridges), nonirradiated for nuclear reactors
728	728.43	Tobacco processing machinery
897	897.3	Jewelry of gold, silver or platinum-group metals (except watches and watch cases) and goldsmiths' or silversmiths' wares (including set gems)
971		Gold, nonmonetary (excluding gold ore and concentrates)

Source: United Nations.

- (ii) expenditures for goods supplied under a contract that any national or international financing institution or agency will have financed or has agreed to finance, including any contract financed under any loan or grant from the ADB;
- (iii) expenditures for goods intended for a military or paramilitary purpose or for luxury consumption;
- (iv) expenditures for narcotics;
- (v) expenditures for environmentally hazardous goods, the manufacture, use or import of which is prohibited under the laws of the Borrower or international agreements to which the Borrower is a party; and
- (vi) expenditures on account of any payment prohibited by the Borrower in compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations.

SCHEDULE 3

Program Implementation and Other Matters

Implementation Arrangements

1. MOF as the Program Executing Agency shall be responsible for the overall Program implementation. The implementing agencies for the Program include the Borrower's Ministry of Health, Ministry of Natural Resources, Environment, and Tourism, Ministry of Public Infrastructure, Industries, and Commerce, and National Emergency Management Office, which, together with MOF, are responsible for the reforms presented in the Policy Matrix.

2. In the event that a Disaster Event occurs and the Borrower contemplates withdrawal from the Loan Account, the Borrower shall coordinate closely with ADB on the necessary actions to facilitate withdrawal as described in paragraph 5 of Schedule 2 to this Loan Agreement, including providing adequate information to ADB on the proposed withdrawal amount.

Policy Actions and Dialogue

3. The Borrower shall ensure that all policy actions adopted under the Program, as set forth in the Policy Letter and the Policy Matrix, continue to be in effect for the duration of the Program.

4. The Borrower shall keep ADB informed of policy discussions with other multilateral and bilateral aid agencies that may have implications for the implementation of the Program and shall provide ADB with an opportunity to comment on any resulting policy proposals. The Borrower shall take into account ADB's views before finalizing and implementing any such proposal.

Governance and Anticorruption

5. 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 Program; and (b) cooperate with any such investigation and extend all necessary assistance for satisfactory completion of such investigation.

Extension of Availability Period

6. Extension of the Availability Period as provided in Section 3.04 of this Loan Agreement shall be subject to the following conditions: (a) confirmation by ADB of the continued adequacy of the Borrower's macroeconomic environment, including receipt by ADB of an updated assessment letter in respect of the Borrower from the International Monetary Fund; (b) the Borrower's continued progress towards the post-program partnership framework agreed to between the Borrower and ADB; (c) agreement between the Borrower and ADB on an updated monitoring framework with mutually agreed objectives for the period covered under the extended Availability Period; and (d) payment of front-end fee in an amount equal to 0.25% of the renewal amount (up to the amount that remain unwithdrawn from the Loan Account). No later than 6 months prior to expiration of the initial Availability Period, the Borrower shall notify

ADB of any intention to extend the Availability Period and, if such extension is desired, the Borrower shall coordinate closely with ADB on the necessary actions to ensure compliance with the conditions to such extension set forth in this paragraph.