
LOAN NUMBER 4030-PAL(COL)

LOAN AGREEMENT
(Ordinary Operations [Concessional])

(Palau Public Utilities Corporation Reform Program – Subprogram 1)

between

REPUBLIC OF PALAU

and

ASIAN DEVELOPMENT BANK

DATED 10 DECEMBER 2020

PAL 54151

LOAN AGREEMENT
(Ordinary Operations [Concessional])

LOAN AGREEMENT dated 10 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 8 October 2020 ("Policy Letter"), setting forth certain objectives, policies and actions designed to develop the Borrower's state-owned enterprise in the energy and water sectors, described in Schedule 1 to this Loan Agreement ("Program");

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

(C) the Program comprises the first subprogram of a programmatic approach, as described in paragraph 1 of Schedule 1 to this Loan Agreement ("Programmatic Approach"), and the Borrower has applied to ADB for a loan for the purposes of the Program; 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 the 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, subject, however, to the following modifications:

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

"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(x) is deleted and the following is substituted therefor:

"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 5.01(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) "Counterpart Funds" means the local currency generated from the Loan proceeds under the Program and referred to in paragraph 4 of Schedule 4 to this Loan Agreement;
- (b) "Deposit Account" means the account referred to in paragraph 3 of Schedule 3 to this Loan Agreement;
- (c) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2017, as amended from time to time);
- (d) "PEA" means Palau Energy Administration of the Borrower's Ministry of Public Infrastructure, Industries and Commerce, or any successor thereto;
- (e) "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;
- (f) "PPUC" means Palau Public Utilities Corporation, a public corporation established under the Utilities Consolidation Act 2003 (RPPL No. 9-04), or any successor thereto acceptable to ADB; and
- (g) "Program Executing Agency" for the purposes of, and within the meaning of, the Loan Regulations means the Borrower's Ministry of Finance or any successor thereto acceptable to ADB, which is responsible for the carrying out of the Program.

ARTICLE II

The Loan

Section 2.01. (a) ADB agrees to lend to the Borrower from ADB's ordinary capital resources an amount of five million Dollars (\$5,000,000).

(b) The Loan has a principal repayment period of 20 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 2% per annum during the grace period and thereafter, on the amount of the Loan withdrawn from the Loan Account and outstanding from time to time.

Section 2.03. The interest charge and any other charge on the Loan shall be payable semiannually on 1 June and 1 December 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 of the Loan and the currency of payment of the interest charge for the purposes of Sections 4.03(a) and 4.04 of the Loan Regulations shall be the Dollar.

ARTICLE III

Use of Proceeds of the Loan

Section 3.01. The Borrower shall cause the proceeds of the Loan to be applied to the financing of expenditures on the 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 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. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations shall be 31 March 2021 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 Program, the Borrower shall perform, or cause to be performed, all obligations set forth in Schedule 4 to this Loan Agreement.

Section 4.02. As part of the reports and information referred to in Section 6.05 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: (a) the Counterpart Funds and the use thereof; and (b) 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. The following are specified as additional conditions to the effectiveness of this Loan Agreement for the purposes of Section 9.01(f) of the Loan Regulations: the policy actions accomplished under the Program as specified in the Policy Matrix continue to be in effect.

Section 5.02. 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 9.04 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 11.02 of the Loan Regulations.

Section 6.02. The following addresses are specified for the purposes of Section 11.01 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) 8636-2338.

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 
ELBUCHÉL SADANG
Minister
Ministry of Finance

ASIAN DEVELOPMENT BANK

By 
LEAH GUTIERREZ
Director General
Pacific Department

SCHEDULE 1**Description of the Program**

1. The principal objective of the Programmatic Approach is to improve the financial sustainability of PPUC and the scope includes: (a) managing tariff reforms, (b) enhancing the financial management of PPUC, (c) strengthening the corporate governance and transparency of PPUC and (d) improving market access for energy sector participation by the private sector. The Programmatic Approach comprises two subprograms and the Program is the first subprogram.
2. The Program is described in more detail in the Policy Letter.
3. The Program is expected to be completed by 31 January 2021.

SCHEDULE 2**Amortization Schedule**

Date Payment Due	Payment of Principal (expressed in USD)*
1 June 2026	125,000
1 December 2026	125,000
1 June 2027	125,000
1 December 2027	125,000
1 June 2028	125,000
1 December 2028	125,000
1 June 2029	125,000
1 December 2029	125,000
1 June 2030	125,000
1 December 2030	125,000
1 June 2031	125,000
1 December 2031	125,000
1 June 2032	125,000
1 December 2032	125,000
1 June 2033	125,000
1 December 2033	125,000
1 June 2034	125,000
1 December 2034	125,000
1 June 2035	125,000
1 December 2035	125,000
1 June 2036	125,000
1 December 2036	125,000
1 June 2037	125,000
1 December 2037	125,000
1 June 2038	125,000
1 December 2038	125,000
1 June 2039	125,000
1 December 2039	125,000
1 June 2040	125,000
1 December 2040	125,000
1 June 2041	125,000
1 December 2041	125,000
1 June 2042	125,000
1 December 2042	125,000
1 June 2043	125,000
1 December 2043	125,000

1 June 2044	125,000
1 December 2044	125,000
1 June 2045	125,000
1 December 2045	125,000
Total	5,000,000

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

SCHEDULE 3**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 (the 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 Borrower may withdraw the Loan upon effectiveness of this Loan Agreement.

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 4

Program Implementation and Other Matters

Implementation Arrangements

1. The Borrower, acting through MOF as the Program Executing Agency, shall oversee and coordinate the timely implementation of the Program. The Program shall be implemented by PPUC and PEA. The Program steering committee, chaired by the Minister of Finance and comprised of senior officials from PEA and members of PPUC board of directors, shall guide the implementation of the Program.

Policy Actions and Dialogue

2. The Borrower shall ensure, and cause the Program Executing Agency, PPUC and PEA to 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 Programmatic Approach.

3. 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.

Use of Counterpart Funds

4. The Borrower shall ensure that the Counterpart Funds are used to finance the implementation of certain programs and activities consistent with the objectives of the Program.

Governance and Anticorruption

5. The Borrower, the Program Executing Agency, and the implementing agencies 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.

Monitoring and Review

6. The Borrower shall monitor the implementation of the Program using a set of indicators and targets agreed between the Borrower and ADB to assess progress towards meeting the objectives of the Program. The Borrower, through the Program Executing Agency, shall maintain a monitoring system on the compliance status of the policy actions set out in the Policy Matrix. The Borrower and ADB shall also undertake a regular review of the status of implementation of indicative policy actions for the following subprogram of the Programmatic Approach.