
LOAN NUMBER 3674-BHU(COL)

~~LOAN AGREEMENT~~
(Ordinary Operations [Concessional])
(Secondary Towns Urban Development Project)

between

KINGDOM OF BHUTAN

and

ASIAN DEVELOPMENT BANK

DATED 3 JULY 2018

BHU 42229

**LOAN AGREEMENT
(Ordinary Operations [Concessional])**

LOAN AGREEMENT dated 3 July 2018 between KINGDOM OF BHUTAN ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

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

(B) 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 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) "Consulting Guidelines" means the Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers (2013, as amended from time to time);
- (b) "Consulting Services" means the services to be financed out of the proceeds of the Loan as described in paragraph 3 of Schedule 1 to this Loan Agreement;
- (c) "Environmental Management Plans" or "EMPs" means the environmental management plans for the Subprojects, including any update thereto, incorporated in the IEEs;
- (d) "Environmental Safeguards" means the principles and requirements set forth in Chapter V, Appendix 1, and Appendix 4 (as applicable) of the SPS;
- (e) "FHH" means female headed household;

- (f) "Gender Action Plan" or "GAP" means the gender action plan prepared for the Project in consultation with the Borrower and approved by ADB;
- (g) "Initial Environmental Examinations" or "IEEs" means the initial environmental examination for the Subprojects, including any updates thereto, prepared and submitted by the Borrower and cleared by ADB;
- (h) "Involuntary Resettlement Safeguards" means the principles and requirements set forth in Chapter V, Appendix 2, and Appendix 4 (as applicable) of the SPS;
- (i) "km" means kilometers;
- (j) "mld" means millions of liters of water per day;
- (k) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2017, as amended from time to time);
- (l) "PAM" means the project administration manual for the Project dated 24 April 2018 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;
- (m) "Procurement Guidelines" means ADB's Procurement Guidelines (2015, as amended from time to time);
- (n) "Procurement Plan" means the procurement plan for the Project dated 24 April 2018 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;
- (o) "Project Implementation Units" or "PIUs" means the implementation units for the Project;
- (p) "Project Management Unit" or "PMU" means the management unit for the Project within the Borrower's Ministry of Works and Human Settlement or successor thereto;
- (q) "Resettlement Plan" or "RP" means a resettlement plan for the Project, including any update thereto, prepared and submitted by the Borrower and cleared by ADB;
- (r) "Safeguard Policy Statement" or "SPS" means ADB's Safeguard Policy Statement (2009);
- (s) "Safeguards Monitoring Report" means each report prepared and submitted by the Borrower to ADB that describes progress with implementation of and compliance with the EMP, including any corrective and preventive actions;
- (t) "Subproject" means a subproject under the Project;

- (u) "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, but excluding Consulting Services; and
- (v) "WTP" means water treatment plant.

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 six million eight hundred sixty-eight thousand Special Drawing Rights (SDR 6,868,000).

(b) The Loan has a principal repayment period of 24 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 during the grace period, and 1.5% per annum 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 February and 1 August 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, and Consulting Services shall be made only on account of expenditures relating to:

- (a) Works and Consulting Services 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 and Consulting Services 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 31 January 2024 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 Works and Consulting Services, and any relevant records and documents.

ARTICLE V

Effectiveness

Section 5.01. 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 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

Ministry of Finance
Royal Government of Bhutan
Thimphu, Bhutan
Facsimile Number:

+975 2 330 113

For ADB

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

(632) 636-2444
(632) 636-2293.

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.

KINGDOM OF BHUTAN

By 

LYONPO NAMGAY DORJI
Minister
Ministry of Finance

ASIAN DEVELOPMENT BANK

By 

KANOKPAN LAO-ARAYA
Country Director
Bhutan Resident Mission

SCHEDULE 1**Description of the Project**

1. The objective of the Project is: improved quality, efficiency and sustainability of urban services in Sandrup Jongkhar, Sarpang and Trashigang.
2. The Project shall comprise:
 - (a) expanding and/or upgrading urban infrastructure, by supporting construction of:
 - (i) approximately 46.8 km of new water transmission lines, approximately 36.7 km of new water distribution pipelines and upgrading of approximately 2.5 km of existing water supply pipelines;
 - (ii) six new ground level service reservoirs with total storage capacity of approximately 1300 cubic meters;
 - (iii) two new water intake structures with approximately 3.5 mld capacity;
 - (iv) one WTP with approximately 1.2 mld capacity and augmenting one WTP from 0.6 mld to approximately 1 mld capacity;
 - (v) approximately 800 new metered water supply connections;
 - (vi) approximately 2.5 km of sewage collection pipelines with approximately 250 new connections; and
 - (vii) approximately 9 km of new and improved drains and approximately 3.74 km of new roads in Sarpang.
 - (b) capacity strengthening of institutions and local communities, including:
 - (i) developing a staged water tariff framework for three project towns;
 - (ii) conducting awareness raising campaign for at least 3,500 people on gender and public health-related issues such as water conservation, solid waste segregation and reduction, and water sanitation and hygiene;
 - (iii) improving knowledge and skills on operation and maintenance and asset management of municipal infrastructure for at least 50 staff from the PMU, PIUs and other municipal units; and

- (iv) monitoring of Project gender results through the Gender Equality Monitoring System of the National Commission for Women and Children.
- 3. Consulting Services shall be provided to support the above activities.
- 4. The Project is expected to be completed by 31 July 2023.

SCHEDULE 2**Amortization Schedule**

Date Payment Due	Payment of Principal (Expressed in SDR*)
1 August 2026	143,083
1 February 2027	143,083
1 August 2027	143,083
1 February 2028	143,083
1 August 2028	143,083
1 February 2029	143,083
1 August 2029	143,083
1 February 2030	143,083
1 August 2030	143,083
1 February 2031	143,083
1 August 2031	143,083
1 February 2032	143,083
1 August 2032	143,083
1 February 2033	143,083
1 August 2033	143,083
1 February 2034	143,083
1 August 2034	143,083
1 February 2035	143,083
1 August 2035	143,083
1 February 2036	143,083
1 August 2036	143,083
1 February 2037	143,083
1 August 2037	143,083
1 February 2038	143,083
1 August 2038	143,083
1 February 2039	143,083
1 August 2039	143,083
1 February 2040	143,083
1 August 2040	143,083
1 February 2041	143,083
1 August 2041	143,083
1 February 2042	143,083
1 August 2042	143,083
1 February 2043	143,083
1 August 2043	143,083
1 February 2044	143,083
1 August 2044	143,083
1 February 2045	143,083
1 August 2045	143,083
1 February 2046	143,083

Date Payment Due	Payment of Principal (Expressed in SDR*)
1 August 2046	143,083
1 February 2047	143,083
1 August 2047	143,083
1 February 2048	143,083
1 August 2048	143,083
1 February 2049	143,083
1 August 2049	143,083
1 February 2050	<u>143,099</u>
TOTAL	6,868,000

* 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 During Construction

3. The amount allocated to the Category "Interest During Construction" 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 to pay 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 to finance 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 Works and Consulting Services, subject to a maximum amount equivalent to 20% of the Loan amount.

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS			
Number	Item	Total Amount Allocated for ADB Financing (SDR)	Basis for Withdrawal from the Loan Account
1	Works	5,032,000	87.9% of total expenditure claimed
2	Consulting Services	756,000	100% of total expenditure claimed*
3	Interest during Construction	254,000	100% of amount due
4	Unallocated	826,000	
	TOTAL	6,868,000	

* Exclusive of taxes and duties within the territory of the Borrower.

SCHEDULE 4**Procurement of Works and Consulting Services**General

1. The procurement of Works and Consulting Services shall be subject to and governed by the Procurement Guidelines, and the Consulting Guidelines, respectively.
2. Except as ADB may otherwise agree, Works shall be procured and Consulting Services shall be selected and engaged only on the basis of the procurement method and the selection 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 method and the selection 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 and/or the Consulting Guidelines, as applicable.

Works

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

National Competitive Bidding

5. The Borrower and ADB shall ensure that, prior to the commencement of any procurement activity under national competitive bidding, the Borrower's national competitive bidding procedures are consistent with the Procurement Guidelines. Any modifications or clarifications to such procedures agreed between the Borrower and ADB shall be set out in the Procurement Plan. Any subsequent change to the agreed modifications and clarifications shall become effective only after approval of such change by the Borrower and ADB.

Condition for Award of Contract

6. The Borrower shall not award any Works contracts until:
 - (a) the competent national authorities designated by the National Environment Commission of Bhutan have granted the final approval of the IEEs for (i) the Sarpang Water Supply Development Subproject, (ii) the Sarpang Satellite Town Urban Roads and Drains Subproject, (iii) the Sarpang Satellite Town Water Supply Distribution Network Subproject, (iv) the Dewathang (Samdrup Jongkhar) Water Supply Augmentation Subproject, and (v) the Rangjung (Trashigang) Intake and Water Treatment Plant Rehabilitation Subproject; and
 - (b) it has prepared and submitted to ADB the IEEs (including EMPs), obtained ADB's clearance of same and incorporated the relevant EMP provisions into the contract.

7. The Borrower shall not award any Works contract which involves involuntary resettlement impacts until it has prepared and submitted to ADB the final RP based on the Project's detailed design, and obtained ADB's clearance of such RP.

Consulting Services

8. Except as set forth in the paragraph below, the Borrower shall apply Quality- and Cost-Based Selection for Consulting Services.

9. The Borrower shall apply the following selection method for the specified Consulting Services, in accordance with, among other things, the procedures set forth in the Procurement Plan: Consultants' Qualifications Selection for community mobilization.

10. The Borrower shall recruit the individual consultants for construction supervision coordinator, stormwater management / drainage design engineer, institutional specialist, urban infrastructure trainer and wastewater systems design engineer in accordance with procedures acceptable to ADB for recruiting individual consultants.

Industrial or Intellectual Property Rights

11. (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.

12. The Borrower shall ensure that all ADB-financed contracts with consultants contain appropriate representations, warranties and, if appropriate, indemnities from the consultants to ensure that the Consulting Services provided do not violate or infringe any industrial property or intellectual property right or claim of any third party.

ADB's Review of Procurement Decisions

13. Contracts for Consulting Services shall be subject to prior review by ADB, unless otherwise agreed between the Borrower and ADB and set forth in the Procurement Plan.

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 the 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 the Project and all Project facilities comply with (a) all applicable laws and regulations of the Borrower relating to environment, health and safety; (b) the Environmental Safeguards; and (c) all measures and requirements set forth in the IEEs, the EMPs, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

Land Acquisition and Involuntary Resettlement

3. The Borrower shall ensure that:
- (a) all land and all rights-of-way required for the Project 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 (i) all applicable laws and regulations of the Borrower relating to land acquisition and involuntary resettlement; (ii) the Involuntary Resettlement Safeguards; and (iii) all measures and requirements set forth in the RP, and any corrective or preventative actions set forth in the Safeguards Monitoring Report; and
 - (b) no Works involving involuntary resettlement impacts are commenced until ADB has cleared the final RP of each package.

Indigenous Peoples

4. The Borrower shall ensure that the Project does not involve any indigenous peoples' impacts within the meaning of the SPS. In the event the Project involves any such impacts, the Borrower shall take all steps required to ensure that the Project complies with the applicable laws and regulations of the Borrower and with the SPS.

Labor Standards, Health and Safety

5. 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

6. The Borrower shall ensure that (a) the GAP is implemented in accordance with its terms; (b) the bidding documents and contracts include relevant provisions for contractors to comply with the measures set forth in the GAP; (c) adequate resources are allocated for implementation of the GAP; and (d) progress on implementation of the GAP, including progress toward achieving key gender outcome and output targets, are regularly monitored and reported to ADB.

Human and Financial Resources to Implement Safeguards Requirements

7. The Borrower shall make available necessary budgetary and human resources to fully implement the EMPs.

Safeguards – Related Provisions in Bidding Documents and Works Contracts

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

- (a) comply with the measures relevant to the contractor set forth in the IEE and the EMPs and any corrective or preventative actions set forth 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 risks or impacts that arise during construction, implementation or operation of the Project that were not considered in the IEEs and the EMPs;
- (d) adequately record the condition of roads, agricultural land and other infrastructure prior to starting to transport materials and construction; and
- (e) reinstate pathways, other local infrastructure, and agricultural land to at least their pre-project condition upon the completion of construction.

Safeguards Monitoring and Reporting

9. 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 IEEs and the EMPs, 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 EMPs promptly after becoming aware of the breach.

Prohibited List of Investments

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

Counterpart Support

11. The Borrower shall make available through budgetary allocations or other means all counterpart funds required for timely and effective implementation of the Project, including funds to mitigate unforeseen environmental and social impacts, and to cover any financing gap arising from design changes, price escalation in construction or installation costs or other unforeseen circumstances. In addition to the foregoing, the Borrower shall ensure that it has sufficient funds to satisfy its liabilities arising from any Works and/or Consulting Services contract.

Governance and Anticorruption

12. The Borrower 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 Project; and (b) cooperate with any such investigation and extend all necessary assistance for satisfactory completion of such investigation.

13. 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.

Operation and Maintenance

14. The Borrower shall, by 31 December 2021, develop and implement a program for regular and periodic maintenance of the facilities to be financed by the Project in accordance with international best practices acceptable to ADB, and make adequate resources available, through budgetary allocations or otherwise, for this purpose.