
LOAN NUMBER 3668-BHU(COL)

LOAN AGREEMENT
(Ordinary Operations [Concessional])
(Phuentsholing Township Development Project)

between

KINGDOM OF BHUTAN

and

ASIAN DEVELOPMENT BANK

DATED 3 JULY 2018

BHU 50165

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 and a grant for the purposes of the Project described in Schedule 1 to this Loan Agreement;

(B) the Project will be carried out by Druk Holdings and Investments Limited ("DHI"), and for this purpose the Borrower will make available to DHI the proceeds of the loan provided for herein and the grant provided for the Grant Agreement (as hereinafter defined) (together, the "Financings") upon terms and conditions satisfactory to ADB;

(C) by a grant agreement of even date herewith ("Grant Agreement"), ADB has agreed to make the proceeds of a grant in the amount of twenty-four million two hundred sixty thousand Dollars (\$24,260,000) available to the Borrower for the purposes of financing 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 and in the Project Agreements of even date herewith between ADB and each of DHI and Construction Development Corporation Limited ("CDCL");

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(w) is deleted and the following is substituted therefor:

"Project Agreement" means the project agreements of even date herewith between ADB and each of DHI and CDCL, as each such agreement may be amended from time to time; and such project agreement includes all schedules to the project agreement;

(b) The term "Project Executing Agency" appearing in Sections 6.01(a), 8.01(d), 8.01(f), 8.01(k), 9.01(c) and 9.02(c) of the Loan Regulations shall be substituted by the terms "DHI" and "CDCL".

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 Financings as described in paragraph 3 of Schedule 1 to this Loan Agreement;
- (c) "Environmental Impact Assessment" or "EIA" means the environmental impact assessment for the Project, including any update thereto, prepared and submitted by the Borrower and cleared by ADB;
- (d) "Environmental Management Plan" or "EMP" means the environmental management plan for the Project, including any update thereto, incorporated in the EIA;
- (e) "Environmental Safeguards" means the principles and requirements set forth in Chapter V, Appendix 1, and Appendix 4 (as applicable) of the SPS;
- (f) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2017, as amended from time to time);
- (g) "Ngultrum" means the Borrower's currency;
- (h) "Procurement Guidelines" means ADB's Procurement Guidelines (2015, as amended from time to time);
- (i) "Procurement Plan" means the procurement plan for the Project dated 24 July 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;
- (j) "Project Administration Manual" or "PAM" means the Project's administration manual for the Project dated 24 July 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;
- (k) "Project Advisory Committee" or "PAC" means the Project's advisory committee chaired by DHI's Chief Executive Officer and comprising representatives as stated in the PAM;
- (l) "Project Implementation Unit" or "PIU" means the Project implementation unit comprising persons as stated in the PAM;

- (m) "Project Management Unit" or "PMU" means the Project management unit comprising persons as stated in the PAM;
- (n) "Safeguard Policy Statement" or "SPS" means ADB's Safeguard Policy Statement (2009);
- (o) "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;
- (p) "Strategic Action Plan" or "SAP" means the strategic action plan for sustainable township management in form and substance acceptable to ADB referred to in paragraph 5 of Schedule 5 to this Loan Agreement;
- (q) "Subsidiary Financing Agreement" means the agreement referred to in Section 3.01 of this Loan Agreement and Section 3.01 of the Grant Agreement;
- (r) "Subsidiary Loan" means the loan from the Borrower to CDCL under the Subsidiary Financing Agreement; and
- (s) "Works" means construction or civil works to be financed out of the proceeds of the Financings, 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.

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-eight million seven hundred forty thousand Dollars (\$28,740,000).

(b) The Loan has a principal repayment period of 24 years, and additionally, a grace period as defined in subsection (c) hereinafter.

(c) The term "grace period" as used in subsection (a) 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 Dollar.

ARTICLE III

Use of Proceeds of the Loan

Section 3.01. (a) The Borrower shall relend the proceeds of the Loan in Ngultrum to DHI under a Subsidiary Financing Agreement upon terms and conditions satisfactory to ADB (and DHI shall provide same to CDCL). Except as ADB shall otherwise agree, the terms for relending the proceeds of the Loan shall include interest at the rate of 1% per annum during the grace period and 2.55% per annum thereafter, on the amount of the Loan withdrawn from the Loan Account and outstanding from time to time, and a term of 32 years including a grace period of 8 years. The Borrower shall bear the risk associated with exchange mismatch between the Loan and the Subsidiary Loan.

(b) 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 and the Project 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 December 2025 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 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. The Borrower shall enable ADB's representatives to inspect the Project and Works, and any relevant records and documents.

Section 4.03. The Borrower shall take all actions which shall be necessary on its part to enable DHI and CDCL to perform their respective obligations under the Project Agreements, and shall not take or permit any action which would interfere with the performance of such obligations.

Section 4.04. (a) The Borrower shall exercise its rights under the Subsidiary Financing Agreement in such a manner as to protect the interests of the Borrower and ADB and to accomplish the purposes of the Loan.

(b) No rights or obligations under the Subsidiary Financing Agreement shall be assigned, amended, or waived without the prior concurrence of ADB.

ARTICLE V

Suspension; Acceleration of Maturity

Section 5.01. The following are specified as additional events 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:

- (a) the Borrower shall have failed to perform any of its obligations under the Grant Agreement; and
- (b) the Borrower or DHI shall have failed to perform any of their respective obligations under the Subsidiary Financing Agreement.

Section 5.02. The following are specified as additional events for acceleration of maturity for the purposes of Section 8.07(d) of the Loan Regulations: either of the events specified in Section 5.01 of this Loan Agreement shall have occurred.

ARTICLE VI

Effectiveness

Section 6.01. 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:

- (a) the Grant Agreement shall have been duly executed and delivered on behalf of the Borrower and all conditions precedent to its effectiveness other than a condition requiring the effectiveness of this Loan Agreement shall have been fulfilled; and
- (b) the Subsidiary Financing Agreement, in form and substance satisfactory to ADB, shall have been duly executed and delivered on behalf of the Borrower and DHI 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. The following is specified as an additional matter, for the purposes of Section 9.02(d) of the Loan Regulations, to be included in the opinion or opinions to be furnished to ADB: that the Subsidiary Financing Agreement has been duly authorized or ratified by, and executed and delivered on behalf of each of the Borrower and DHI and is legally binding upon each of them in accordance with its terms.

Section 6.03. 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 VII

Miscellaneous

Section 7.01. 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 7.02. 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

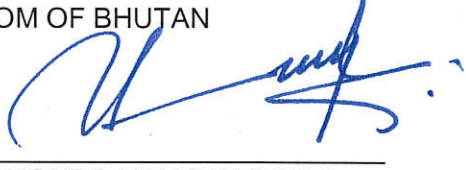
Asian Development Bank
6 ADB Avenue
Mandaluyong City
1550 Metro Manila
Philippines

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 to sustainably increase the urban area of Phuentsholing.
2. The Project shall comprise (i) development of climate and flood resilient land; (ii) construction of municipal infrastructure; and (iii) installation of sustainable township management systems.
3. Consulting Services shall be provided in connection with the above activities.
4. The Project is expected to be completed by 30 June 2025.

SCHEDULE 2**Amortization Schedule**

<u>Payment Due</u>	<u>Payment of Principal</u> (expressed in Dollars)
1 February 2027	598,750
1 August 2027	598,750
1 February 2028	598,750
1 August 2028	598,750
1 February 2029	598,750
1 August 2029	598,750
1 February 2030	598,750
1 August 2030	598,750
1 February 2031	598,750
1 August 2031	598,750
1 February 2032	598,750
1 August 2032	598,750
1 February 2033	598,750
1 August 2033	598,750
1 February 2034	598,750
1 August 2034	598,750
1 February 2035	598,750
1 August 2035	598,750
1 February 2036	598,750
1 August 2036	598,750
1 February 2037	598,750
1 August 2037	598,750
1 February 2038	598,750
1 August 2038	598,750
1 February 2039	598,750
1 August 2039	598,750
1 February 2040	598,750
1 August 2040	598,750
1 February 2041	598,750
1 August 2041	598,750
1 February 2042	598,750
1 August 2042	598,750
1 February 2043	598,750
1 August 2043	598,750
1 February 2044	598,750
1 August 2044	598,750
1 February 2045	598,750
1 August 2045	598,750
1 February 2046	598,750
1 August 2046	598,750
1 February 2047	598,750
1 August 2047	598,750
1 February 2048	598,750

Payment DuePayment of Principal
(expressed in Dollars)

1 August 2047	598,750
1 February 2048	598,750
1 August 2048	598,750
1 February 2049	598,750
1 August 2049	598,750
1 February 2050	598,750
1 August 2050	<u>598,750</u>

TOTAL**28,740,000**

* 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 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.

Reallocation

3. 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

4. Except as ADB may otherwise agree, the Loan proceeds shall be disbursed in accordance with the Loan Disbursement Handbook.

Retroactive Financing

5. 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 (USD) Category	Basis for Withdrawal from the Loan Account
1	Works	10,360,000	57% of total expenditure claimed
2	Consulting Services	7,420,000	98% of total expenditure claimed
3	Unallocated	10,960,000	
	TOTAL	28,740,000	

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 and Works shall be procured and Consulting Services shall be selected and engaged only on the basis of the procurement methods 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 methods 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 the procurement methods set forth below:
 - (a) International Competitive Bidding;
 - (b) Force Account; and
 - (c) Shopping.

Conditions for Award of Contract

5. CDCL shall not award any Works contract which involves environmental impacts until:
 - (a) The Borrower's National Environment Commission has granted the final approval of the EIA; and
 - (b) CDCL has incorporated the relevant provisions from the EMP into the Works contract.

Consulting Services

6. The Borrower shall apply Quality- and Cost-Based Selection for Consulting Services.
7. The Borrower shall recruit the individual consultants for independent environmental monitoring expert, urban management advisor and investment promotion

advisor in accordance with procedures acceptable to ADB for recruiting individual consultants.

Industrial or Intellectual Property Rights

8. (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.

9. 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

10. Contracts procured under international competitive bidding procedures and 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, DHI and CDCL 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.

2. The Borrower shall ensure that DHI and CDCL employ sufficient staff for the PMU and PIU for the duration of the Project, with adequate and relevant expertise in the field of project management, financial management, engineering, procurement, and environmental and social safeguards implementation. The PMU Project Director and PIU Project Director shall hold the position not less than the rank of Class 1 engineer, or equivalent, Officers, unless otherwise acceptable to ADB.

3. The Borrower, DHI and CDCL shall (a) ensure that the majority of counterpart staff assigned to the PMU and PIU are assigned to the Project on a full-time basis; and (b) undertake best efforts to ensure that they remain in their positions for a reasonable period of time, and that staff replacements do not unduly disrupt implementation of the Project. The Borrower, DHI and CDCL shall provide ADB reasonable opportunity to comment on any proposed appointment of persons to key positions in the PMU and PIU, including the Project Director for the PMU and the Project Directors for PIU.

4. The Borrower shall remain fully committed to the Project and shall ensure that all its ministries, agencies and divisions involved in the implementation of the Project give their full cooperation to ensure smooth implementation of the Project. Specifically, the Borrower shall cause DHI and CDCL to give full, timely and efficient cooperation in obtaining any licenses, permits or approvals required in connection with infrastructure work. The Borrower shall also ensure that Bhutan Power Corporation and Bhutan Telecom will provide the necessary connections in the developed areas.

Strategic Action Plan

5. Within 36 months of the Effective Date, the Borrower through DHI shall develop and finalize, and ensure approval by the relevant government agency and implementation of, the SAP, which shall include, among other matters, (i) the required legal, policy and operational frameworks for operation of the new township that will establish institutional arrangements for sustainable township management, including the required approval process, and the allocation of roles and responsibilities between the municipality and CDCL; (ii) the allocation of sufficient municipal and CDCL human resources; (iii) a plan on the development of the surrounding area adjacent to the newly developed township, including plans for raising grounds level for the protection for surface flooding; and (iv) a time bound plan for the operation and maintenance of the newly developed township.

Environment

6. The Borrower shall ensure or cause DHI and CDCL to 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 Recipient relating to environment, health and safety; (b) the Environmental Safeguards; and (c) all measures and requirements set forth in the EIA and the EMP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

Land Acquisition and Involuntary Resettlement

7. The Borrower shall ensure that 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.

8. The Borrower shall ensure that the Project does not involve any involuntary resettlement 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.

Indigenous Peoples

9. 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

10. 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

11. The Borrower shall ensure that the principles of gender equality aimed at increasing Project benefits and impact on women in the Project area are followed during implementation of the Project. These include (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

12. The Borrower shall make available, or cause DHI and CDCL to make available, necessary budgetary and human resources to fully implement the EMP.

Safeguards – Related Provisions in Bidding Documents and Works Contracts

13. The Borrower shall ensure, or cause DHI and CDCL to 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 EIA and the EMP (to the extent they concern impacts or affected people during construction), 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 EIA and the EMP;
- (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

14. The Borrower shall to do the following:

- (a) submit bi-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 EIA and the EMP, promptly inform ADB of the occurrence of such risks or impacts, with detailed description of the event and proposed corrective action plan;
- (c) no later than six months of the Effective Date, engage qualified and experienced external experts or qualified NGO[s] under a selection process and terms of reference acceptable to ADB, to verify

information produced through the Project monitoring process, and facilitate the carrying out of any verification activities by such external experts; and

- (d) report any actual or potential breach of compliance with the measures and requirements set forth in the EMP promptly after becoming aware of the breach.

Prohibited List of Investments

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

Counterpart Support

16. The Borrower through DHI will provide all counterpart funds, land and facilities required for timely and effective implementation of the Project, including without limitation, any funds required to (a) to meet any shortfall between cost and revenues for the operation and maintenance of the facilities developed under the Project, (b) to mitigate any unforeseen environmental and social impacts, and (c) to meet additional costs arising from design changes, price escalation in construction costs and/or unforeseen circumstances. The Borrower will make the resources thus required available on an annual basis for each fiscal year. In addition to the foregoing, the Borrower shall ensure that DHI and CDCL have sufficient funds to satisfy their liabilities arising from any Works and/or Consulting Services contract.

Governance and Corruption

17. The Borrower, DHI and CDCL 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.

18. The Borrower, DHI and CDCL 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

19. The Borrower shall 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.

Exemption of Import Duties

20. The Borrower shall exempt the cost of Works contracts from otherwise applicable customs duties.