
LOAN NUMBER 4019-BHU(COL)

GRANT NUMBER 0765-BHU(SF)

PROJECT AGREEMENT

(Phuentsholing Township Development Project – Additional Financing)

between

ASIAN DEVELOPMENT BANK

and

DRUK HOLDING AND INVESTMENTS LIMITED

CONSTRUCTION DEVELOPMENT CORPORATION LIMITED

DATED 14 DECEMBER 2020

PROJECT AGREEMENT

PROJECT AGREEMENT dated 14 December 2020 between ASIAN DEVELOPMENT BANK ("ADB"), on the one part, and DRUK HOLDING AND INVESTMENTS LIMITED ("DHI") and CONSTRUCTION DEVELOPMENT CORPORATION LIMITED ("CDCL"), on the other part.

WHEREAS

(A) by a loan agreement dated 3 July 2018 between Kingdom of Bhutan ("Borrower") and ADB ("Original ADB Loan Agreement"), ADB agreed to make a concessional loan to the Borrower from ADB's ordinary capital resources in an amount of twenty-eight million seven hundred forty thousand Dollars (\$28,740,000) for the purposes of the project described in Schedule 1 of the Original ADB Loan Agreement ("Project");

(B) by a grant agreement dated 3 July 2018 between the Borrower and ADB, ADB agreed to make a grant to the Borrower from ADB's Special Funds resources in an amount of twenty-four million two hundred sixty thousand Dollars (\$24,260,000) for the purposes of the Project;

(C) by a Loan Agreement of even date herewith between the Borrower and ADB, ADB has agreed to make to the Borrower a concessional loan of eighteen million five hundred thousand Dollars (\$18,500,000) on the terms and conditions set forth in the Loan Agreement, but only on the condition that the proceeds of the loan be made available to DHI and CDCL and that each of DHI and CDCL agrees to undertake certain obligations towards ADB set forth herein;

(D) by a Grant Agreement of even date herewith between the Borrower and ADB, ADB has agreed to make a grant to the Borrower from ADB's Special Funds resources in an amount of ten million Dollars (\$10,000,000), but only on the condition that the proceeds of the grant be made available to DHI and CDCL and that each of DHI and CDCL agrees to undertake certain obligations towards ADB set forth herein; and

(E) DHI and CDCL, in consideration of ADB entering into the Loan Agreement and Grant Agreement with the Borrower ("Financing Agreements"), have agreed to undertake the obligations set forth herein;

NOW THEREFORE the parties hereto agree as follows:

ARTICLE I

Definitions

Section 1.01. Wherever used in this Project Agreement, unless the context otherwise requires, the several terms defined in the Loan Agreement, the Original ADB Loan Agreement and in the Loan Regulations (as so defined) have the respective meanings therein set forth.

ARTICLE II

Particular Covenants

Section 2.01. (a) DHI and CDCL shall carry out the Project with due diligence and efficiency, and in conformity with sound applicable technical, financial, business, and development practices.

(b) In the carrying out of the Project and operation of the Project facilities, DHI and CDCL shall perform all obligations set forth in the Financing Agreements to the extent that they are applicable to DHI and CDCL.

Section 2.02. DHI and CDCL shall make available, promptly as needed, and on terms and conditions acceptable to ADB, the funds, facilities, services, land and other resources as required, in addition to the proceeds of the Loan and Grant, for the carrying out of the Project.

Section 2.03. (a) In the carrying out of the Project, DHI and CDCL shall employ competent and qualified consultants and contractors, acceptable to ADB, to an extent and upon terms and conditions satisfactory to ADB.

(b) Except as ADB may otherwise agree, DHI and CDCL shall procure all items of expenditures to be financed out of the proceeds of the Loan and Grant in accordance with the provisions of Schedule 4 to the Original ADB Loan Agreement. ADB may refuse to finance a contract where any such item has not been procured under procedures substantially in accordance with those agreed between the Borrower and ADB or where the terms and conditions of the contract are not satisfactory to ADB.

Section 2.04. DHI and CDCL shall carry out the Project in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to ADB. DHI and CDCL shall furnish, or cause to be furnished, to ADB, promptly after their preparation, such plans, design standards, specifications and work schedules, and any material modifications subsequently made therein, in such detail as ADB shall reasonably request.

Section 2.05. (a) DHI and CDCL shall take out and maintain with responsible insurers, or make other arrangements satisfactory to ADB for, insurance against such risks and in such amounts as shall be consistent with sound practice.

(b) Without limiting the generality of the foregoing, DHI and CDCL undertake to insure, or cause to be insured, the goods to be imported for the Project against hazards incident to the acquisition, transportation and delivery thereof to the place of use or installation, and for such insurance any indemnity shall be payable in a currency freely usable to replace or repair such goods.

Section 2.06. DHI and CDCL shall maintain, or cause to be maintained, records and accounts adequate to identify the items of expenditure financed out of the proceeds of the Loan and Grant, to disclose the use thereof in the Project, to record the progress of the Project (including the cost thereof) and to reflect, in accordance with consistently maintained sound accounting principles, its operations and financial condition.

Section 2.07. (a) ADB, DHI and CDCL shall cooperate fully to ensure that the purposes of the Loan and Grant will be accomplished.

(b) DHI and CDCL shall promptly inform ADB of any condition which interferes with, or threatens to interfere with, the progress of the Project, the performance of its obligations under this Project Agreement or, in the case of DHI, the Subsidiary Financing Agreement, or the accomplishment of the purposes of the Loan and Grant.

(c) ADB, DHI and CDCL shall from time to time, at the request of either party, exchange views through their representatives with regard to any matters relating to the Project, DHI, CDCL and the Loan and Grant.

Section 2.08. (a) DHI and CDCL shall furnish to ADB all such reports and information as ADB shall reasonably request concerning (i) the Loan, the Grant and the expenditure of the proceeds thereof; (ii) the items of expenditure financed out of such proceeds; (iii) the Project; (iv) the administration, operations and financial condition of DHI and CDCL; and (v) any other matters relating to the purposes of the Loan and Grant.

(b) Without limiting the generality of the foregoing, DHI and CDCL shall furnish to ADB periodic reports on the execution of the Project and on the operation and management of the Project facilities. Such reports shall be submitted in such form and in such detail and within such a period as ADB shall reasonably request, and shall indicate, among other things, progress made and problems encountered during the period under review, steps taken or proposed to be taken to remedy these problems, and proposed program of activities and expected progress during the following period.

(c) Promptly after physical completion of the Project, but in any event not later than 3 months thereafter or such later date as ADB may agree for this purpose, DHI and CDCL shall prepare and furnish to ADB a report, in such form and in such detail as ADB shall reasonably request, on the execution and initial operation of the Project, including its cost, the performance by DHI and CDCL of their obligations under this Project Agreement and the accomplishment of the purposes of the Loan and Grant.

Section 2.09. (a) DHI shall, or shall cause CDCL to (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 and Grant 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 close of the fiscal year to which they relate, 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) In addition to annual audited financial statements referred to in subsection (a) hereinabove, each of DHI and CDCL shall (i) provide its annual financial statements prepared in accordance with financing reporting standards acceptable to ADB; (ii) have its 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; (iii) as part of each such audit, have the auditors prepare the auditors' opinion(s) on the financial statements; and (iv) furnish to ADB, no later than 1 month after approval by the relevant authority, copies of such audited financial statements and auditors' opinion(s), 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.

(d) DHI and CDCL shall enable ADB, upon ADB's request, to discuss the financial statements for the Project, DHI and CDCL and their financial affairs where they relate to the Project with the auditors appointed by DHI and CDCL pursuant to subsections (a)(iii), as applicable, and (c)(ii) 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 DHI and CDCL, unless DHI and CDCL shall otherwise agree.

Section 2.10. DHI and CDCL shall enable ADB's representatives to inspect the Project, the Works and Consulting Services and any relevant records and documents.

Section 2.11. (a) DHI and CDCL shall, promptly as required, take all action within its powers to maintain its corporate existence, to carry on its operations, and to acquire, maintain and renew all rights, properties, powers, privileges and franchises which are necessary in the carrying out of the Project or in the conduct of its operations.

(b) DHI and CDCL shall at all times conduct their operations in accordance with sound applicable technical, financial, business, development and operational practices, and under the supervision of competent and experienced management and personnel.

(c) DHI and CDCL shall at all times operate and maintain its plants, equipment and other property, and from time to time, promptly as needed, make all necessary repairs and renewals thereof, all in accordance with sound applicable technical, financial, business, development, operational and maintenance practices.

Section 2.12. Except as ADB may otherwise agree, DHI and CDCL shall not sell, lease or otherwise dispose of any of its assets which shall be required for the efficient carrying on of its operations or the disposal of which may prejudice its ability to perform satisfactorily any of its obligations under this Project Agreement.

Section 2.13. Except as ADB may otherwise agree, DHI and CDCL shall apply the proceeds of the Loan and Grant to the financing of expenditures on the Project in accordance with the provisions of the Financing Agreements and this Project Agreement, and shall ensure that all items of expenditures financed out of such proceeds are used exclusively in the carrying out of the Project.

Section 2.14. Except as ADB may otherwise agree, DHI shall duly perform all its obligations under the Subsidiary Financing Agreement, and shall not take, or concur in, any action which would have the effect of assigning, amending, abrogating or waiving any rights or obligations of the parties under the Subsidiary Financing Agreement.

Section 2.15. DHI and CDCL shall promptly notify ADB of any proposal to amend, suspend or repeal any provision of its constitutional documents, which, if implemented, could adversely affect the carrying out of the Project or the operation of the Project facilities. DHI and CDCL shall afford ADB an adequate opportunity to comment on such proposal prior to taking any affirmative action thereon.

ARTICLE III

Effective Date; Termination

Section 3.01. This Project Agreement shall come into force and effect on the date on which the Financing Agreements come into force and effect. ADB shall promptly notify DHI and CDCL of such date.

Section 3.02. This Project Agreement and all obligations of the parties hereunder shall terminate on the date on which the Financing Agreements shall terminate in accordance with their terms.

Section 3.03. All the provisions of this Project Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the Financing Agreements.

ARTICLE IV

Miscellaneous

Section 4.01. Any notice or request required or permitted to be given or made under this Project Agreement and any agreement between the parties contemplated by this Project Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand, mail or facsimile to the party to which it is required or permitted to be given or made at its address hereinafter specified, or at such other address as such party shall have designated by notice to the party giving such notice or making such request. The addresses so specified are:

For ADB

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

Facsimile Numbers:

(632) 8636-2444

(632) 8636-2391

For DHI

Druk Holding and Investments Limited

5th Floor, BoB Corporate Building.

Norzin Lam

P.O. Box 1127

Thimphu

Bhutan

Facsimile Number:

(975) 2 336259

For CDCL

Construction Development Corporation Limited

Namtog Lam, Khanggulu.

P.O. Box 573

Thimphu 11001

Bhutan

Facsimile Number:

(975) 2 332973.


Section 4.02. (a) Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Project Agreement by or on behalf of each of DHI and CDCL may be taken or executed by its Chief Executive Officer or by such other person or persons as he or she shall so designate in writing notified to ADB.

(b) DHI and CDCL shall furnish to ADB sufficient evidence of the authority of each person who will act under subsection (a) hereinabove, together with the authenticated specimen signature of each such person.


Section 4.03. No delay in exercising, or omission to exercise, any right, power or remedy accruing to either party under this Project Agreement upon any default shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence in such default; nor shall the action of such party in respect of any default, or any acquiescence in any default, affect or impair any right, power or remedy of such party in respect of any other or subsequent default.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Project 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.

ASIAN DEVELOPMENT BANK

By 
KANOKPAN LAO-ARAYA
Country Director
Bhutan Resident Mission

DRUK HOLDING AND INVESTMENTS
LIMITED

By 
KARMA YEZER RAYDI
Chief Executive Officer

CONSTRUCTION DEVELOPMENT
CORPORATION LIMITED

By 
KARMA GAYLEY
Acting Chief Executive Officer