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LOAN NUMBER 3045-BAN

LOAN NUMBER 3046-BAN(SF)

PROJECT AGREEMENT

(Second Public-Private Infrastructure Development Facility Project)

between

ASIAN DEVELOPMENT BANK

and

INFRASTRUCTURE DEVELOPMENT COMPANY LIMITED

DATED 6 APRIL 2014

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BAN 42180

## PROJECT AGREEMENT

PROJECT AGREEMENT dated 6 April 2014 between ASIAN DEVELOPMENT BANK ("ADB") and INFRASTRUCTURE DEVELOPMENT COMPANY LIMITED ("IDCOL").

### WHEREAS

(A) by a loan agreement of even date herewith between the People's Republic of Bangladesh ("Borrower") and ADB ("Ordinary Operations Loan Agreement"), ADB has agreed to lend to the Borrower from ADB's ordinary capital resources an amount of one hundred million Dollars (\$100,000,000), on the terms and conditions set forth in the Ordinary Operations Loan Agreement ("Ordinary Operations Loan");

(B) by a loan agreement of even date herewith between the Borrower and ADB ("Special Operations Loan Agreement" and, together with the Ordinary Operations Loan Agreement, "Loan Agreements"), ADB has agreed to lend to the Borrower from ADB's Special Funds resources an amount in various currencies equivalent six million five hundred ninety nine thousand Special Drawing Rights (SDR6,599,000), on the terms and conditions set forth in the Special Operations Loan Agreement ("Special Operations Loan" and, together with the Ordinary Operations Loan, "Loans");

(C) ADB has agreed to make the Loans on the condition that the proceeds of the Loans be made available to IDCOL and that IDCOL agrees to undertake certain obligations towards ADB as set forth herein; and

(D) IDCOL, in consideration of ADB entering into the Loan Agreements with the Borrower, has agreed to undertake the obligations set forth herein;

NOW THEREFORE the parties hereto agree as follows:

## ARTICLE I

### Definitions

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

(b) In addition to the terms referred to in subsection (a) hereinabove, the following terms, wherever used in this Project Agreement, unless the context otherwise requires, have the following meaning:

- (i) "Component 1" means the Project described in Section 3.01 of the Ordinary Operations Loan Agreement;

- (ii) “Component 2” means the Project described in Section 3.01 of the Special Operations Loan Agreement; and
- (iii) “Projects” mean Component 1 and Component 2 collectively.

## **ARTICLE II**

### **Particular Covenants**

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

(b) In the carrying out of the Projects and in the conduct of its business, IDCOL shall perform all the obligations set forth in the Loan Agreements.

Section 2.02. IDCOL shall at all times make adequate provision to protect itself against any loss resulting from changes in the rate of exchange between Tk and the currency or currencies in which IDCOL's outstanding money obligations have to be met.

Section 2.03. IDCOL shall not make a Subloan to any Qualified Enterprise or PO unless such Qualified Enterprise or PO has at its disposal, or has made appropriate arrangements to obtain as and when required, all local currency funds, including adequate working capital, and other resources which are required by such Qualified Enterprise or PO for the carrying out of its Qualified Subproject or Subproject, in respect of which the Subloan is to be made.

Section 2.04. IDCOL shall maintain records and accounts adequate to record the progress of the Projects and of each Qualified Subproject (including the cost thereof) and to reflect, in accordance with consistently maintained sound accounting principles, the operations and financial condition of IDCOL.

Section 2.05. (a) ADB and IDCOL shall cooperate fully to ensure that the purposes of the Loans will be accomplished.

(b) IDCOL shall promptly inform ADB of any condition which interferes with, or threatens to interfere with, the progress of the Projects, the performance of its obligations under this Project Agreement and the Subsidiary Loan Agreements, or the accomplishment of the purposes of the Loans.

(c) ADB and IDCOL 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, IDCOL and the Loans.

Section 2.06. (a) IDCOL shall furnish to ADB all such reports and information as ADB shall reasonably request concerning (i) the Loans and the expenditure of the proceeds thereof; (ii) the Projects; (iii) the Qualified Enterprises or POs, the Qualified

Subprojects, and the Subloans; (iv) the administration, operations and financial condition of IDCOL; and (v) any other matters relating to the purposes of the Loans.

(b) Without limiting the generality of the foregoing, IDCOL shall furnish to ADB periodic reports on the execution of the Projects and on the operation and management of IDCOL. 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 the Loan Closing Dates, but in any event not later than 3 months after the said closing dates or such later date as ADB may agree for this purpose, IDCOL shall prepare and furnish to ADB a report, in such form and in such detail as ADB shall reasonably request, on the utilization of the Loans, the execution of the Qualified Subprojects, their costs, the performance by IDCOL of its obligations under this Project Agreement and the accomplishment of the purposes of the Loans.

Section 2.07. (a) IDCOL shall (i) provide its annual financial statements prepared in accordance with national accrual-based 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 international standards for auditing or the national equivalent acceptable to ADB; (iii) as part of each such audit, have the auditors prepare a report (which includes the auditors' opinion on the financial statements, use of the Loans' proceeds and compliance with the financial covenants of the Loan Agreements as well as on the use of the procedures for imprest fund(s) and statement of expenditures) 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 (iv) 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 IDCOL and the opinion of the auditors on the financial statements within 30 days of the date of their receipt by posting them on ADB's website.

(c) IDCOL shall enable ADB, upon ADB's request, to discuss the financial statements for IDCOL and its financial affairs where they relate to the Project with the auditors appointed by IDCOL pursuant to subsection (a)(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 IDCOL, unless IDCOL shall otherwise agree.

Section 2.08. IDCOL shall enable ADB's representatives to inspect any Qualified Enterprise or PO, any Qualified Subproject, the Goods and Works, and any relevant records and documents.

Section 2.09. (a) IDCOL 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 Projects or in the conduct of its business.

(b) IDCOL shall at all times conduct its business in accordance with sound applicable technical, financial, and business practices, and under the supervision of competent and experienced management and personnel.

(c) Except as ADB may otherwise agree, IDCOL 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 2.10. Except as ADB may otherwise agree, IDCOL shall duly perform all its obligations under the Subsidiary Loan Agreements 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 Loan Agreements.

Section 2.11. IDCOL shall promptly notify ADB of any proposal to amend, suspend or repeal any provision of its Memorandum and Articles, which, if implemented, could adversely affect the carrying out of the Project. IDCOL 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 Loan Agreements come into force and effect. ADB shall promptly notify IDCOL of such date.

Section 3.02. This Project Agreement and all obligations of the parties hereunder shall terminate on date on which both Loan Agreements shall have terminated 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 Loan 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) 636-2444  
(632) 636-2337.

For IDCOL

Infrastructure Development Company Limited  
UTC Building (16<sup>th</sup> Floor)  
8 Panthapath, Kawran Bazar  
Dhaka – 1215, Bangladesh

Facsimile Number:

(8802) 8116663.

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 or under Section 7.01 of each Loan Agreement by or on behalf of IDCOL may be taken or executed by its Executive Director or by such other person or persons as he shall so designate in writing notified to ADB.

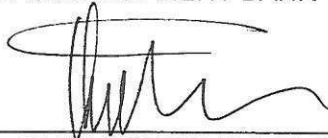
(b) IDCOL shall furnish to ADB sufficient evidence of the authority of each person who will act under subsection (a) hereinabove, together with the authenticated specimen signature of each such person.

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   
OLEG TONKONOJENKOV  
Officer-in-Charge  
Bangladesh Resident Mission

INFRASTRUCTURE DEVELOPMENT  
COMPANY LIMITED

By   
MAHMOOD MALIK  
Executive Director and CEO