
LOAN NUMBER 3554-BAN

LOAN NUMBER 3555-BAN(COL)

PROJECT AGREEMENT

(Third Public-Private Infrastructure Development Facility – Tranche 1)

between

ASIAN DEVELOPMENT BANK

and

INFRASTRUCTURE DEVELOPMENT COMPANY LIMITED

DATED 19 NOVEMBER 2017

BAN 42180

PROJECT AGREEMENT

PROJECT AGREEMENT dated 19 November 2017 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 make to the Borrower a loan of two hundred fifty million Dollars (\$250,000,000) on the terms and conditions set forth in the Ordinary Operations Loan Agreement, but only on the condition that the proceeds of the loan be made available to IDCOL and that IDCOL agrees to undertake certain obligations towards ADB as set forth herein;

(B) by a Loan Agreement of even date herewith between the Borrower and ADB ("Ordinary Operations [Concessional] Loan Agreement" and, together with the Ordinary Operations Loan Agreement, "Loan Agreements"), ADB has agreed to make to the Borrower a loan in various currencies equivalent to seven million two hundred and twenty-nine thousand Special Drawing Rights (SDR7,229,000) on the terms and conditions set forth in the Ordinary Operations (Concessional) Loan Agreement, but only on the condition that the proceeds of the Loan be made available to IDCOL and that IDCOL agrees to undertake certain obligations towards ADB as set forth herein; and

(C) 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. 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, except that for the purpose of this Project Agreement, the term "Project" means the Project described in Section 3.01 of the Ordinary Operations Loan Agreement and the Project described in Section 3.01 of the Ordinary Operations (Concessional) Loan Agreement collectively.

ARTICLE II

Particular Covenants

Section 2.01. (a) IDCOL 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 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 will have to be met.

Section 2.03. IDCOL shall not make a Subloan to any Qualified Enterprise unless such Qualified Enterprise has at its disposal, or has made appropriate arrangements to obtain as and when required, all local currency funds and other resources which are required by such Qualified Enterprise for the carrying out of its Qualified 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 Loan will be accomplished.

(b) IDCOL 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 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 Loan.

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, 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 dates 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) maintain separate accounts and records for the Project; (ii) prepare annual statements of utilization of funds for the Project in accordance with accounting principles acceptable to ADB; (iii) have such 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 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 close of the fiscal year to which they relate, copies of such audited 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 statements of utilization of funds for the Project and the opinion of the auditors on the 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 the annual audited statements of utilization of funds referred to in subsection (a) hereinabove, IDCOL shall (i) provide its annual financial statements prepared in accordance with financial 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 compliance with the financial covenants of the Loan Agreements; 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) IDCOL shall enable ADB, upon ADB's request, to discuss the statements of utilization of funds for the Project and the financial statements of IDCOL and its financial affairs where they relate to the Project with the auditors appointed by IDCOL pursuant to subsections (a)(iii) 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 IDCOL, unless IDCOL shall otherwise agree.

Section 2.08. IDCOL shall enable ADB's representatives to inspect any Qualified Enterprise, 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 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 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 Projects. 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. (a) This Project Agreement and all obligations of the parties hereunder shall terminate on the earlier of the following two dates:

- (i) the date on which the Loan Agreements shall terminate in accordance with their terms; or
- (ii) a date 7 years after the date of this Project Agreement.

(b) If the Loan Agreements terminate in accordance with their terms before the date specified in subsection (a)(ii) hereinabove, ADB shall promptly notify IDCOL of this event.

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 (16th Floor)
8 Panthapath, Kawran Bazar
Dhaka – 1215, Bangladesh

Facsimile Number:

(8802) 811-6663.

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 

MANMOHAN PARKASH
Country Director
Bangladesh Resident Mission

INFRASTRUCTURE DEVELOPMENT
COMPANY LIMITED

By 

MAHMOOD MALIK
Executive Director and
Chief Executive Officer