
CREDIT NUMBER 2995 BD

Project Agreement
(Private Sector Infrastructure Development Project)

between

INTERNATIONAL DEVELOPMENT ASSOCIATION

and

INFRASTRUCTURE DEVELOPMENT COMPANY LIMITED

Dated November 14, 1997

CREDIT NUMBER 2995 BD

PROJECT AGREEMENT

AGREEMENT, dated November 14, 1997, between INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association) and INFRASTRUCTURE DEVELOPMENT COMPANY LIMITED (IDCOL).

WHEREAS (A) by the Development Credit Agreement of even date herewith between People's Republic of Bangladesh (the Borrower) and the Association, the Association has agreed to lend to the Borrower an amount in various currencies equivalent to one hundred sixty-eight million six hundred thousand Special Drawing Rights (SDR 168,600,000), on the terms and conditions set forth in the Development Credit Agreement, but only on condition that IDCOL agree to undertake such obligations toward the Association as are set forth in this Agreement;

(B) by an Agency and Administration Agreement to be entered into between the Borrower and IDCOL, part of the proceeds of the credit provided for under the Development Credit Agreement will be made available to IDCOL on the terms and conditions set forth in said Agency and Administration Agreement; and

WHEREAS IDCOL, in consideration of the Association's entering into the Development Credit Agreement with the Borrower, has agreed to undertake the obligations set forth in this Agreement;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

Definitions

Section 1.01. Unless the context otherwise requires, the several terms defined in the Development Credit Agreement, the Preamble to this Agreement and in the General Conditions (as so defined) have the respective meanings therein set forth.

ARTICLE II

**Execution of the Project
Management and Operations of LDCOL**

Section 2.01. IDCOL declares its commitment to the objective of the Project as set forth in Schedule 2 to the Development Credit Agreement, and, to this end, shall carry out Part A of the Project and conduct its operations and affairs in accordance with sound financial standards and practices, with qualified and experienced management and personnel, and in accordance with its Memorandum and Articles of Association.

Section 2.02. (a) IDCOL undertakes that, unless the Association shall otherwise agree, Subloans will be made in accordance with the procedures and on the terms and conditions set forth or referred to in Schedule I to this Agreement.

(b) IDCOL shall exercise its rights in relation to each Investment Project in such manner as to: (i) protect the interests of the Association and of IDCOL; (ii) comply with its obligations under this Agreement and the Agency and Administration Agreement; and (iii) achieve the purposes of the Project.

Section 2.03. Except as the Association shall otherwise agree, procurement of the goods, works and consultants' services required for Part A of the Project and to be financed out of the proceeds of the Credit shall be governed by the provisions of Schedule 2 to this Agreement.

Section 2.04. (a) IDCOL shall carry out the obligations set forth in Sections 9.03, 9.04, 9.05, 9.06, 9.07 and 9.08 of the General Conditions (relating to insurance, use of goods and services, plans and schedules, records and reports, maintenance and land acquisition) in respect of the Project Agreement and Part A of the Project.

(b) Without limitation upon the provisions of paragraph (a) of this Section, IDCOL shall: (i) prepare, on the basis of guidelines acceptable to the Association, and furnish to the Association not later than six (6) months after the Closing Date or such later date as may be agreed for this purpose between the Association and IDCOL, a plan designed to ensure the continued achievement of the Project's objective; and (ii) afford the Association a reasonable opportunity to exchange views with IDCOL on said plan.

Section 2.05. IDCOL shall duly perform all its obligations under the Agency and Administration Agreement. Except as the Association shall otherwise agree, IDCOL shall not take or concur in any action which would have the effect of assigning, amending, abrogating, or waiving the Agency and Administration Agreement or any provision thereof

Section 2.06. (a) IDCOL shall, at the request of the Association, exchange views with the Association with regard to the progress of Part A of the Project, the performance of its obligations under this Agreement and under the Agency and Administration Agreement, and other matters relating to the purposes of the Credit.

(b) IDCOL shall promptly inform the Association of any condition which interferes or threatens to interfere with the progress of Part A of the Project, the accomplishment of the purposes of the Credit, or the performance by IDCOL of its obligations under this Agreement and under the Agency and Administration Agreement.

Section 2.07. IDCOL shall:

(a) maintain policies and procedures adequate to enable it to monitor and evaluate on an ongoing basis, in accordance with indicators satisfactory to the Association, the carrying out of Part A of the Project and the achievement of the objectives thereof;

(b) prepare, under terms of reference satisfactory to the Association, and furnish to the Association, on or about September 30, 1999, a report integrating the results of the monitoring and evaluation activities performed pursuant to paragraph (a) of this Section, on the progress achieved in the carrying out of Part A of the Project during the period preceding the date of said report and setting out the measures recommended to ensure the efficient carrying out of Part A of the Project and the achievement of the objectives thereof during the period following such date; and

(c) review with the Association, by December 31, 1999, or such later date as the Association shall request, the report referred to in subparagraph (b) of this paragraph, and, thereafter, take all measures required to ensure the efficient completion of Part A of the Project and the achievement of the objectives thereof, based on the conclusions and recommendations of the said report and the Association's views on the matter.

ARTICLE III

Financial Covenants

Section 3.01. (a) IDCOL shall maintain procedures and records adequate to monitor and record the progress of Part A of the Project and of each Investment Project (including its cost and the benefits to be derived from it) and to reflect in accordance with consistently maintained sound accounting practices the operations and financial condition of IDCOL.

(b) IDCOL shall:

- (i) have its records, accounts and financial statements (balance sheets, statements of income and expenses and related statements) for each fiscal year audited, in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Association;
- (ii) furnish to the Association as soon as available but in any case not later than six months after the end of each such year, (A) certified copies of its financial statements for such year as so audited, and (B) the report of such audit by said auditors of such scope and in such detail as the Association shall have reasonably requested; and
- (iii) furnish to the Association such other information concerning said records, accounts and financial statements as well as the audit thereof as the Association shall from time to time reasonably request.

Section 3.02. IDCOL shall prepare and furnish to the Association by May 31, 1998 and each May 31 thereafter during the execution of the Project, a business plan and budget for the succeeding fiscal year, for approval by the Association.

ARTICLE IV

Effective Date; Termination; Cancellation and Suspension

Section 4.01. This Agreement shall come into force and effect on the date upon which the Development Credit Agreement becomes effective.

Section 4.02. (a) This Agreement and all obligations of the Association and of IDCOL thereunder shall terminate on the earlier of the following two dates:

- (i) the date on which the Development Credit Agreement shall terminate; or
- (ii) the date twenty years after the date of this Agreement.

(b) If the Development Credit Agreement terminates before the date specified in paragraph (a) (ii) of this Section, the Association shall promptly notify IDCOL of this event.

Section 4.03. All the provisions of this Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the General Conditions.

ARTICLE V

Miscellaneous Provisions

Section 5.01. Any notice or request required or permitted to be given or made under this Agreement and any agreement between the parties contemplated by this 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 or by mail, telegram, cable, telex or radiogram to the party to which it is required or permitted to be given or made at such party's 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 the Association:

International Development Association
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Cable address:	Telex:
INDEVAS	248423 (MCI) or
Washington, D.C.	64145 (MCI)

For IDCOL:

Registered Office: do Juris Counsel 9 Mohakali C.A. (9th Floor) Dhaka, Bangladesh	
Cable address:	Telex:
BAHIRSAMPAD	642226 SETU BJ
Dhaka	

Section 5.02. Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement on behalf of IDCOL, or by JDCOL on behalf of the Borrower under the Development Credit Agreement, may be taken or executed by its Executive Director, or by such other person or persons as its Executive Director shall designate in writing, and IDCOL shall furnish to the Association sufficient evidence of the authority and the authenticated specimen signature of each such person.

Section 5.03. This Agreement may be executed in several counterparts, each of which shall be an original, and all collectively but one instrument.

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names in the District of Columbia, United States of America, as of the day and year first above written.

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/Manuel Penalver-Quesada
Acting Regional Vice President
South Asia

INFRASTRUCTURE DEVELOPMENT COMPANY LIMITED

By /s/ Quazi Mesbahuddin Ahmed
Authorized Representative

SCHEDULE 1

Investment Projects and Subloans

Part A: Investment Projects

1. (a) IDCOL shall provide financing for each Investment Project, including the Subloan approved for such Investment Project, in amounts not to exceed 40 percent of the total cost of such Investment Project on terms and conditions, satisfactory to the Association, including those set forth in Part B of this Schedule and in the Operations Manual, as the same may be amended from time to time by agreement between the Association and IDCOL.

(b) In addition to the financing provided by IDCOL, the Investment Enterprise sponsoring such Investment Project shall be required to provide financing through equity investment sufficient to cover at least 20 percent cost of the Investment Project and to finance the remainder of the cost of the Investment Project through loans and/or export credit raised, except as the Association may otherwise agree, without the borrower's guarantee.

Comment: Amended on 16th February 2000

2. Evaluation and Approval Criteria for Investment Projects

IDCOL shall not make any Subloan unless the Borrower and the Association are satisfied that:

- (1) the Investment Enterprise sponsoring the Investment Projects shall be able to arrange financing for the Investment Project on a limited recourse basis;
- (ii) the Investment Project meets the Borrower's priority plan and takes into account the Borrower's policy and regulatory frameworks;
- (iii) the Investment Enterprise uses proven technology;
- (iv) the Investment Project is technically and financially viable and will have an economic rate of return of at least 12 percent;
- (v) the Investment Enterprise will have at least 20 percent of the total project cost provided as equity; and
- (vi) the environment and social assessment of the Investment Project will meet the criteria as set out in paragraph 5 of Part A of this Schedule.

3. Appraisal, Approval and Supervision of Investment Projects

(a) IDCOL shall use its operational guidelines, including the guidelines for the appraisal, approval and supervision of Investment Projects, and models of the Implementation, Purchase and other Agreements referred to in Schedule 5 to the Development Credit Agreement, subject to such modifications thereof as shall be considered appropriate by the Borrower and the Association.

(b) With respect to each Investment Project, IDCOL shall:

- (i) require the Investment Enterprise sponsoring the Investment Project to prepare a detailed project information memorandum, with the assistance of consultants employed by the Investment Enterprise under terms of reference and with qualifications and experience satisfactory to IDCOL. Such detailed project information memorandum shall cover matters including: (aa) suitability of site; (bb) availability of inputs; (cc) appropriateness of, and proven experience with, the technology offered; (dd) project design; (ee) arrangements for detailed engineering; (ff) cost estimates; (gg) construction and procurement arrangements; (hh) arrangements for operation and maintenance; (ii) arrangements for compliance with environmental and resettlement standards; (jj) financial viability of the Investment Project; (kk) sources and adequacy of the proposed financing and the terms and conditions of such financing, including the contractual arrangements to be made therefor; and (ll) the corporate structure of the Investment Enterprise; and
- (ii) review such project information memorandum and, on the basis thereof, prepare and furnish to the Association for its review and approval, pursuant to paragraph 4 (a) of Part B of this Schedule, a comprehensive appraisal report on the Investment Project.

4. Preparation and Implementation of Investment Projects

Prior to approving a Subloan, IDCOL shall require the Investment Enterprise sponsoring such Investment Project to engage:

(a) engineering experts with qualifications and experience and terms of reference satisfactory to the Association for the preparation of detailed designs and bidding documents and supervision of project implementation; and

(b) financial experts with qualifications and experience and terms of reference satisfactory to the Association for the preparation of proposals for and assistance in mobilizing project financing.

5. Environmental Standards for Investment Projects

Each Investment Project shall comply with the standards set forth in the "Environmental and Social Framework document prepared by the Borrower and adopted by IDCOL in May, 1997. To that end, the Borrower shall, or shall cause IDCOL to:

(a) specify such standards in the Brochure;

(b) require each Investment Enterprise applying for a Subloan to furnish evidence satisfactory to the Borrower and the Association showing that the Investment Project in respect of which the application has been made would comply with such standards, such evidence to include an environmental impact assessment and, where applicable, a resettlement plan for displaced populations for such Investment

Project based on principles and procedures satisfactory to the Association; and

(c) in respect of each Investment Project, include in the Letter of Intent and the Implementation Agreement referred to in Schedule 5 to the Development Credit Agreement a suitable provision obligating the Investment Enterprise sponsoring such Investment Project to ensure compliance with such standards.

Part B: Subloans

Comment: Amended on 1 July 2000

Comment:

1. Except as the Association shall otherwise agree, the terms and conditions of each Subloan shall include:

- (a) Interest rate - the Investment Enterprise may choose between:
 - (i) For senior loans, a **variable** rate equal to the prevailing six month United States dollar LIBOR plus 350 basis points;
 - (ii) For subordinated loans, a **variable** rate equal to the prevailing six month United States dollar LIBOR plus 400 basis points;
 - (iii) A **fixed** rate based on the maturity of the Subloan and the market *swap* rate between variable and fixed interest rates for United States dollar debt at the time the Subloan is fully drawn, plus (a) a spread of 350 basis points for *senior* loans; or (b) a spread of 400 basis points for *subordinated* loans;
 - (iv) For the purposes of subparagraph (a):
 - (aa) "LIBOR" means the London interbank offered rate for six-month deposits in United States dollars.
 - (bb) "Basis Point" means one hundredths of one percent; and
 - (cc) "Market Swap Rate" means at the time of last loan draw, the fixed rate quoted in the relevant swap market as the equivalent of the United States dollar six-month LIBOR considering the repayment schedule, notional amounts outstanding on each repayment date and the forward rates applicable to six-month LIBOR at such dates.
 - (dd) *Senior* loans are defined as those enjoying rights of payment and/or enforcement that are *pari passu* with other senior lenders;
 - (ee) *Subordinated* loans are defined as those where rights of enforcement and/or payment are subordinated under some, or all, circumstances to senior lenders.
- (b) Final maturity in the case of a senior loan will be a maximum of fifteen (15) years including four (4) years grace. For subordinated loans, final maturity will be a maximum of twenty-three (23) years, including eight (8) years grace;
- (c) The principal amount of the loan repayable by the Investment Enterprise shall be the equivalent of the value of the currency or currencies withdrawn from the Credit Account expressed in terms of US dollars at the time of withdrawal;

- (d) Principal and interest payable by the Investment Enterprise shall be determined in United States dollars and the payments thereof shall be determined in United States dollars or the equivalent in Taka of the US dollar-Taka exchange rate on date payments are made;
- (e) Fees; and
- (f) Interest costs during construction for Investment Projects shall be capitalized and would be eligible for financing out of the credit.

2. IDCOL shall: (a) carry out an annual review of the lending terms and conditions, in consultation with the Association, not later than April 30 of each year; and (b) adjust such terms and conditions for new Subloans with effect from July 1 of such year as the Association and IDCOL shall have agreed on the basis of such review.

3. No expenditures for goods or works required for an Investment Project shall be eligible for financing out of the proceeds of the Credit unless the Subloan for such Investment Project shall have been approved by the Association and such expenditures shall have been made not earlier than ninety days prior to the date on which the Association shall have received the application and information required under paragraph 4(a) of Part B of this Schedule in respect of such Subloan.

4. (a) IDCOL, when presenting a Subloan to the Association for approval, shall furnish to the Association an application, in form satisfactory to the Association together with: (i) a description of the Investment Enterprise and an appraisal of the Investment Project, including a description of the expenditures proposed to be financed out of the proceeds of the Credit; (ii) the proposed terms and conditions of the Subloan, including the schedule of amortization of the Subloan; and (iii) such other information as the Association shall reasonably request.

(b) Applications made pursuant to the provisions of subparagraph (a) of this paragraph shall be presented to the Association on or before December 31, 2000.

5. Subloans shall be made on terms whereby IDCOL shall obtain, by written consent with the Investment Enterprise or by other appropriate legal means, rights adequate to protect the interests of IDCOL, the Borrower and the Association, including the right to:

(a) require the Investment Enterprise to carry out and operate the Investment Project: (i) with due diligence and efficiency and in accordance with sound technical, environmental, financial, commercial, and managerial standards and to maintain adequate records; and (ii) without limitation upon the foregoing and to the extent relevant, in accordance with the provisions of Part A of this Schedule;

(b) require that: (i) the goods and works to be financed out of the proceeds of the Credit shall be procured in accordance with the provisions of Schedule 2 to this Agreement; and (ii) such goods and works shall be used exclusively in the carrying out of the Investment Project;

(c) inspect, by itself or jointly with representatives of the Association if the Association shall so request, such goods and the sites, works, plants and construction included in the Investment Project, the operation thereof, and any relevant records and documents;

(d) require that: (i) the Investment Enterprise shall take out and maintain with responsible insurers such insurance, against such risks and in such amounts, as shall be consistent with sound

business practice; and (ii) without any limitation upon the foregoing, such insurance shall cover hazards incident to the acquisition, transportation and delivery of goods financed out of the proceeds of the Credit to the place of use or installation, any indemnity thereunder to be made payable in a currency freely usable by the Investment Enterprise to replace or repair such goods;

(e) obtain all such information as the Borrower and the Association shall reasonably request relating to the foregoing and to the administration, operations and financial condition of the Investment Enterprise and to the benefits to be derived from the Investment Project; and

(f) suspend or terminate the right of the Investment Enterprise to the use of the proceeds of the Credit upon failure by such Investment Enterprise to perform its obligations under its contract with IDCOL.

SCHEDULE 2

Procurement

Section I. Procurement of Good and Works

Part A: General

Goods and works required for Part A of the Project shall be procured in accordance with the provisions of Section I of the "Guidelines for Procurement under IBRD Loans and IDA Credits" published by the Bank in January 1995 and revised in 1996 (the Guidelines) and the following provisions of this Section, as applicable.

Part B: International Competitive Bidding

1. Except as otherwise provided in Part C of this Section, goods and works shall be procured under contracts awarded in accordance with the provisions of Section II of the Guidelines and paragraph 5 of Appendix 1 thereto.

2. The following provisions shall apply to goods and works to be procured under contracts awarded in accordance with the provisions of paragraph 1 of this Part B.

(a) Prequalification

Bidders shall be prequalified in accordance with the provisions of paragraphs 2.9 and 2.10 of the Guidelines.

(b) Notification and Advertising

The invitation to prequalify or bid for each contract estimated to cost \$10,000,000 equivalent or more shall be advertised in accordance with the procedures applicable to large contracts under paragraph 2.8 of the Guidelines.

(c) Preference of domestically manufactured goods and domestic Contractors

The provisions of paragraphs 2.54 and 2.55 of the Guidelines and Appendix 2 thereto shall apply to goods manufactured in the territory of the Borrower and works to be carried out by domestic contractors.

Part C: Other Procurement Procedures

1. Investment Project Procurement

(a) Except as otherwise provided in subparagraph (b) hereof, an Investment Project shall be constructed under a contract awarded to an Investment Enterprise selected on the basis of international competitive bidding procedures or, with the prior approval of the Association, limited international bidding procedures, in accordance with the provisions of Section II or paragraph 3.2 of the Guidelines, respectively, subject to the provisions of paragraph 3.13 (a) thereof. The goods and works required for the construction of such Investment Project shall then be procured in accordance with the applicable procedures of such Investment Enterprise.

(b) In those cases where an Investment Enterprise has not been selected in accordance with the procedures set forth in subparagraph (a) hereof, the goods and works to be financed out of the proceeds of the Credit required for an Investment Project to be constructed by such Investment Enterprise shall be procured under contracts awarded on the basis of international competitive bidding procedures, or, with the prior approval of the Association, limited international bidding procedures in accordance with, respectively, the provisions of Section II or paragraph 3.2. With the prior approval of the Association, up to 20 percent of the financing approved for a particular Investment Project may be made available on a stand-by basis to be drawn down pari-passu with other financing for such Investment Project to cover unanticipated cost overruns. Such stand-by financing will only be approved by the Association in respect of goods and works procured under international competitive bidding procedures or other procurement methods acceptable to the Association and carried out with due attention to considerations of economy and efficiency and in accordance with sound commercial procedures which meet the requirements of paragraphs 1.5 and 1.6 of the Guidelines. Notwithstanding the above, no contract for goods and works required for an Investment Project to be constructed by an Investment Enterprise which has not been selected in accordance with the procedures set forth in subparagraph (a) hereof shall be eligible for financing out of the proceeds of the Credit if it shall have been awarded to suppliers and/or contractors who are also the sponsors or shareholders of the Investment Enterprise carrying out the Investment Project.

2. Limited International Bidding

All risks and marine insurance may be procured under contracts awarded in accordance with the provisions of paragraph 3.2 of the Guidelines.

3. National Shopping

Equipment and materials required for Part A.2 of the Project estimated to cost \$50,000 equivalent or less per contract and \$250,000 equivalent or less in the aggregate, may be procured under contracts awarded on the basis of national shopping procedures in accordance with the provisions of paragraphs 3.5 and 3.6 of the Guidelines.

Part D: Review by the Association of Procurement Decisions

1. Procurement Planning

Prior to the issuance of any invitations to prequalify for bidding or to bid for contracts, the proposed procurement plan for Part A of the Project shall be furnished to the Association for its review and approval, in accordance with the provisions of paragraph 1 of Appendix 1 to the Guidelines. Procurement of all goods and works shall be undertaken in accordance with such procurement plan as shall have been approved by the Association, and with the provisions of said paragraph 1.

2. Prior Review

With respect to each contract financed out of a Subloan under Part A. 1 of the Project and estimated to cost the equivalent of \$1,000,000 or more, the procedures set forth in paragraphs 2 and 3 of Appendix 1 to the Guidelines shall apply.

3. Post Review

With respect to each contract not governed by paragraph 2 of this Part, the procedures set forth in paragraph 4 of Appendix 1 to the Guidelines shall apply.

Section II. Employment of Consultants

Part A: General

Consultants' services required for Part A of the Project shall be procured in accordance with the provisions of the Introduction and Section IV of the "Guidelines: Selection and Employment of Consultants by World Bank Borrowers" published by the Bank in January 1997 (the Consultant Guidelines).

Part B: Review by the Association of the Selection of Consultants

1. Selection Planning

Prior to the issuance to consultants of any requests for proposals, the proposed plan for the selection of consultants under Part A of the Project shall be furnished to the Association for its review and approval, in accordance with the provisions of paragraph 1 of Appendix 1 to the Consultant Guidelines.

Selection of all consultants' services shall be undertaken in accordance with such selection plan as shall have been approved by the Association, and with the provisions of said paragraph I.

2. Prior Review

(a) With respect to each contract for the employment of consulting firms estimated to cost the equivalent of \$100,000 or more, the procedures set forth in paragraphs 1, 2 (other than the third subparagraph of paragraph 2(a)) and 5 of Appendix 1 to the Consultant Guidelines shall apply.

(b) With respect to each contract for the employment of individual consultants estimated to cost the equivalent of \$50,000 or more, the qualifications, experience, terms of reference and terms of employment of the consultants shall be furnished to the Association for its prior review and approval. The contract shall be awarded only after the said approval shall have been given.

3. Post Review

With respect to each contract not governed by paragraph I of this Part, the procedures set forth in paragraph 4 of Appendix 1 to the Consultant Guidelines shall apply.