

DIGHA-KANKARBAGH PROJECT AGREEMENT

FOR

**DEVELOPMENT AND OPERATIONS OF SEWAGE
TREATMENT PLANTS AND SEWERAGE NETWORK AT
PATNA, BIHAR**

MAY 2018

DIGHA-KANKARBAGH PROJECT AGREEMENT

This Digha-Kankarbagh Project Agreement (hereinafter also referred to as ‘**Agreement**’) is executed on this [●] day of [●] Two Thousand and Eighteen at Patna, Bihar:

AMONGST

- (1) **BIHAR URBAN INFRASTRUCTURE DEVELOPMENT CORPORATION LIMITED**, constituted under the Companies Act, 1956 and amendments thereof, with its registered office at Second Floor, Khadya Bhawan, Road No-2, Daroga Prasad Rai Path, R. Block, Patna – 800 001 (hereinafter referred to as **BUIDCO** or ‘**the Owner**’, which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns);

AND

- (2) **NATIONAL MISSION FOR CLEAN GANGA**, a statutory body constituted under the Environment (Protection) Act, 1986, with its registered office at 1st Floor, Major Dhyanchand National Stadium, India Gate, New Delhi - 110002 (hereinafter referred to as **NMCG**, which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns);

AND

- (3) [_____][*insert name of the Concessionaire*], a company organized, incorporated, registered and existing under the Companies Act, with its registered office at _____ [*insert address*] acting through _____, _____ [*insert name of the authorised signatory and his/her designation*] duly authorized by resolution dated _____ [*insert date of the Board Resolution*] (hereinafter referred to as the **Concessionaire** or the ‘**Operator**’, which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns).

BUIDCO, NMCG and the Concessionaire shall collectively be referred to as the **Parties** and individually as a **Party**.

WHEREAS:

- A. The GoI, recognizing that long-term rejuvenation of the river Ganga will have significant social and economic benefits on the lives of the 500 million people living along its basin, has identified cleaning of the river Ganga as one of its priorities. For this purpose, in May 2015, the GoI

approved the flagship Namami Gange programme for cleaning, rejuvenation, and protection of the river Ganga. In January 2016, the GoI approved a hybrid annuity model to implement STP projects under the Namami Gange programme on a PPP basis.

- B. Subsequently, the MoWR issued the River Ganga (Rejuvenation, Protection and Management) Authorities Order, 2016 (**Ganga 2016 Order**) to constitute various authorities to assist the GoI in achieving its aim of effective abatement of pollution in the river Ganga. The Ganga 2016 Order designated NMCG as the nodal agency for the implementation of the Ganga 2016 Order.
- C. BUIDCO has the power to develop, maintain and regulate water supply and sewerage works in Bihar. With a view to implement the Namami Gange programme and the Ganga 2016 Order, BUIDCO, in association with NMCG, has decided to undertake the development of two STPs, one with a proposed capacity of 100 MLD and the second with a proposed capacity of 50 MLD, at Patna (Digha and Kankarbagh, respectively) and development of two sewerage networks, one of about 303 km in length and the second of about 150 km in length, at Patna (Digha and Kankarbagh, respectively).
- D. For this purpose, BUIDCO intends to engage a concessionaire who will design, develop, finance, construct, operate and maintain the STP Facilities on the STP Site, and redesign, build, operate and maintain the Sewerage Network Facilities on the Sewerage Network Site, and after the expiry of the Term, transfer the STP Facilities and the Sewerage Network Facilities to BUIDCO, in accordance with this Digha-Kankarbagh Project Agreement (collectively the **Project**). The Scope of the Project is as described in Clause 2.1 of this Digha-Kankarbagh Project Agreement.
- E. On [*insert date*], BUIDCO commenced a competitive Bid Process for the Project by issuing a request for proposal (the **RFP**), inviting interested parties to submit their qualification proposals and financial proposals to BUIDCO for undertaking the Project.
- F. Pursuant to the terms of the RFP, BUIDCO received proposals from various Bidders, including a proposal submitted by the Selected Bidder on [*insert date*].
- G. Following a process of evaluation of qualification proposals and financial proposals submitted by the Bidders (including the Selected Bidder), BUIDCO has on [*insert date*] accepted the proposal submitted by the Selected Bidder for the development of the Project. Subsequently, BUIDCO has issued the letter of award dated [*Insert date*] to the Selected Bidder (the **LOA**).
- H. The Selected Bidder has accepted the LOA and has agreed to undertake the Project in accordance with the terms of this Digha-Kankarbagh Project Agreement.
- I. The Selected Bidder has incorporated a special purpose vehicle to act as the Concessionaire, to

implement the Project and perform the obligations and exercise the rights of the Concessionaire, including the obligation to enter into this Digha-Kankarbagh Project Agreement.

- J. BUIDCO and NMCG have agreed to enter into this Agreement with the Concessionaire for implementation of the Project, subject to and on the terms and conditions set out in this Digha-Kankarbagh Project Agreement.
- K. The key parts of this Digha-Kankarbagh Project Agreement comprise **Part A - Concession Agreement for STP Facilities**, and **Part B – Conditions of Contract for Sewerage Network Facilities**

IT IS AGREED as follows:

1. **Scope of the Project**

The Scope of the Project shall be as described in detail in the Concession Agreement and Condition of Contract, and shall include the following:

- (i) Design, build, finance, operate, maintain and transfer Sewage Treatment Plant of capacity 100 MLD in Digha and 50 MLD in Kankarbagh, including interception and diversion works, SCADA and online monitoring system, effluent channel and all appurtenant structures and allied works (**STP Facilities**)
- (ii) Survey, review the designs, redesign wherever necessary and build, operate, maintain and transfer Sewerage Network Facilities of 303 km length in Digha and 150 km in Kankarbagh, including pumping stations, and all appurtenant structures (**Sewerage Network Facilities**) at Digha and Kankarbagh sewerage zones of Patna, Bihar. The details of such assets to be developed as part of the Project, along with their bundling into facilities are provided in the Table 1 below.

Table 1: Scope of Project

No	Asset Details	Construction Period	O&M Period	Reference Document
Digha STP Facilities				
1	Digha STP - 100 MLD	21 months from Effective Date	15 years from COD	Concession Agreement, along with its Schedules (Schedule 1 to Schedule 13)
2	Digha I&D SPS A of 53 MLD including Nala Tapping Works(Rajapur Nallah)	21 months from Effective Date	2 years from COD mandated O&M, after that as per notice from BUIDCO	
3	Digha I&D SPS B of 2 MLD including Nala Tapping Works (For Kurji Nalla, Inside STP Premises)	21 months from Effective Date		
Digha Sewerage Network Facilities				
4	Digha Sewerage Network of 303 km including trunk sewer and lateral network	31 months from the Design Build Start Date	From OSD till End of Concession	Conditions of Contract for Sewerage Network Facilities, along with its Schedules (Schedule 14 to Schedule 25)
5	Digha SPS A - 104 MLD including the rising main,			
6	Digha SPS B - 103 MLD including the rising main	21 months from Effective Date	From COD of Digha STP till End of Concession	

No	Asset Details	Construction Period	O&M Period	Reference Document
Kankarbagh STP Facilities				
7	Kankarbagh STP - 50 MLD	21 months from Effective Date	15 years from COD	Concession Agreement, along with its Schedules (Schedule 1 to Schedule 13)
8	Kankarbagh I&D Works including weir arrangement		2 years from COD mandated O&M, after that as per notice from BUIDCO	
Kankarbagh Sewerage Network Facilities				
9	Kankarbagh Sewerage Network - 150 km including trunk sewer and lateral network	31 months from the Design Build Start Date	From OSD till End of Concession	Conditions of Contract for Sewerage Network Facilities, along with its Schedules (Schedule 26 to Schedule 37)
10	Kankarbagh SPS A – 90 MLD including rising main			
11	Kankarbagh SPS B – 110 MLD including rising main	21 months from Effective Date	From COD of Kankarbagh STP till End of Concession	

For clarification purposes, the Digha SPS B and Kankarbagh SPS B of the Sewerage Network Facilities along with their appurtenant structures such as rising main, shall be tested and commissioned by the Commercial Operations Date (COD) of the STP Facilities.

2. **Term** of the Digha-Kankarbagh Project Agreement shall be valid until 15 years from the Commercial Operations Date of the STP Facilities

3. Rules of Interpretation

3.1 Unless otherwise stated in this Agreement, the following shall prevail

- (i) the terms and conditions set out in the Concession Agreement and its schedules shall be applicable for the Digha STP Facilities and Kankarbagh STP Facilities;
- (ii) the terms and conditions set out in the Conditions of Contract and its schedules shall be applicable for the Digha Sewerage Network Facilities and Kankarbagh Sewerage Network Facilities

3.2 In the event of any discrepancy between various documents issued by or provided to BUIDCO as a part of the Bid Process, the following order of priority shall apply:

- (i) this Digha-Kankarbagh Project Agreement;
- (ii) Concession Agreement, and Conditions of Contract
- (iii) the Schedules to the Concession Agreement, the Schedules to the Conditions of Contract;
- (iv) the Financial Proposal submitted by the Selected Bidder;
- (v) the LOA issued to the Selected Bidder;
- (vi) the written clarifications, if any, issued to the Bidders; and
- (vii) the RFP.

3.3 Definitions

Capitalized words and phrases used in the Concession Agreement and Conditions of Contract shall have the meaning as ascribed to them in such documents. Definitions related to the Sewerage Network Facilities described in Conditions of Contract shall be applicable only to the Articles and Schedules of the Conditions of Contract, unless and otherwise

referred to in Clause 1.1 of the Concession Agreement

3.4 Unless otherwise stated in the Agreement, in the event of any discrepancy between the Concession Agreement and the Conditions of Contract, the terms and conditions set out in the Concession Agreement shall be applicable for the STP Facilities and that set out in the Conditions of Contract shall be applicable for the Sewerage Network Facilities

3.5 Project Engineer:

NMCG shall appoint a third-party engineering firm with requisite technical expertise, knowledge and experience in the design, engineering and construction of STPs and Sewerage Network as the engineer for the Project (the Project Engineer). Details related to the Project Engineer's responsibilities regarding the STP Facilities shall be as described in Article 6 of the Concession Agreement and that of the Sewerage Network Facilities shall be as described in Article 7 of the Conditions of Contract.

3.6 Escrow Agreement:

The Concessionaire, NMCG, BUIDCO and the Escrow Bank shall enter into the Escrow Agreement and NMCG shall open a single Escrow Account with the Escrow Bank, in accordance with the Clause 9.4 of the Concession Agreement. This Escrow Agreement shall set out the terms and conditions for payment during the Construction period and Operations Period for both the STP Facilities and the Sewerage Network Facilities, and the terms and conditions set out in Clause 9.4 of the Concession Agreement shall be applicable for the complete Project.

3.7 NMCG, BUIDCO and the Concessionaire shall execute the Substitution Agreement, for the Project, including both STP Facilities and Sewerage Network Facilities, in accordance with the Concession Agreement.

3.8 Article 10 (Financing Arrangements and Security), Article 12 (Change in Ownership) and Article 22 (Representation and Warranties) of the Concession Agreement, shall prevail for the Sewerage Network Facilities, as applicable.

3.9 The total aggregate Limitation of Liability for the Project shall be the sum of the aggregate limitation of liability mentioned for the STP Facilities and Sewerage Network Facilities, separately in the Concession Agreement and Conditions of Contract respectively.

3.10 Termination of the Concessionaire either in Digha & Kankarbagh STP project Concession under Hybrid Annuity based PPP mode or the Digha & Kankarbagh Sewerage Network Facility, under DBOT mode shall be construed as the termination from the entire Project Agreement and the terms and conditions of the respective Concession agreement and Conditions of Contract shall be applied accordingly. All the relevant clauses, consequences and conditions with respect to the entire Project shall be applicable for the Event of Default of such Party in accordance with the Concession Agreement and Conditions of Contract for the respective facilities.

In witness whereof the Parties hereto have signed this Agreement on this _____ day of _____ 2018.

BIHAR URBAN INFRASTRUCTURE DEVELOPMENT CORPORATION LIMITED (BUIDCO)

By:

Name:

Title:

NATIONAL MISSION FOR CLEAN GANGA (NMCG)

By:

Name:

Title:

[Insert name of the Concessionaire] (CONCESSIONAIRE)

By:

Name:

Title: