

A 783617

### AGREEMENT

This Agreement (hereinafter called the "Contract") is made on 1<sup>st</sup> day of **October, 2012** between

1. The Governor of Jammu & Kashmir State through Principal Secretary, Housing and Urban Development Department, Government of Jammu and Kashmir, Civil Secretariat, Srinagar / Jammu (hereinafter called the "Owner") and designated as **FIRST PARTY**.

AND

2. M/s National Buildings Construction Corporation Limited (NBCC), a Government of India Enterprise, under the Ministry of Urban Development, Government of India, having its registered office at NBCC Bilawart, Lodhi Road, New Delhi - 110003, hereinafter called the Executing Agency and designated as **SECOND PARTY**.

Whereas, Housing & Urban Development Department, Government of Jammu & Kashmir is the Owner of the Project "**Comprehensive Sewerage Scheme for left out areas, phase-II of Division-A of Greater Jammu City**" sanctioned by Ministry of Urban Development (MoUD), Government of India for amounting to **Rs 2032.03 Lac** in the 106<sup>th</sup> Meeting of Central Sanctioning & Monitoring Committee (CSMC) held on 12<sup>th</sup> March, 2012 under the chairmanship of Secretary, MoUD, Gol under UIG sub-mission-I of Jawaharlal Nehru National Urban Renewal Mission (JnNURM);

Whereas, keeping in view that the project "**Comprehensive Sewerage Scheme for left out areas, phase-II of Division-A of Greater Jammu City**" is a part of the main project "**Comprehensive Sewerage Scheme, phase-II of**

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**Division-A of Greater Jammu City”** that is already being executed through NBCC Ltd; the Government of Jammu & Kashmir has asked the executing agency to intimate whether their organization is willing to take up the execution of the above mentioned project vide letter No. CEO/SUIDA/308/2010 dated 19.06.2012;

Whereas, National Buildings Construction Corporation Limited (NBCC), the Executing Agency vide letter No. NBCC/SBG/JAT/Tech-24/2012/1470 dated 12.07.2012 has conveyed willingness to take up the execution of the project **“Comprehensive Sewerage Scheme for left out areas, phase-II of Division-A of Greater Jammu City”**; and

Whereas, National Buildings Construction Corporation Limited (NBCC), the Executing Agency has all the resources and capabilities for taking up implementation of above project under Jawaharlal Nehru National Urban Renewal Mission (JnNURM) in the state of J&K.

NOW, Therefore, the parties hereto hereby agree as follows:-

The Executing Agency shall be the implementing agency for taking up the implementation of **“Comprehensive Sewerage Scheme for left out areas, phase-II of Division-A of Greater Jammu City”** sanctioned under UIG submission-I of Jawaharlal Nehru National Urban Renewal Mission (JnNURM) in the State of J&K.

The terms and conditions shall be as under:

1. On the basis of the approved project cost, the Govt. of J&K shall release to the Executing Agency 75% of the funds released by Government of India and equivalent prescribed share of State Govt. This fund shall be treated as initial deposit. The Executing Agency shall incur expenditure from the initial deposits for the execution of the work and shall submit periodic expenditure statement in the accounting Proforma of CPWD/PWD, J&K as per requirements. The owner shall ensure that sufficient funds are available with the Executing Agency at all times for carrying out the works unhindered.
2. On utilization of 50% of the released funds by GOI and equivalent share of State Govt. the department shall release the balance funds released by the Govt. of India to the Executing Agency.
3. The Govt. of J&K shall pay 10% of the Actual cost of works as Agency

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charges to the Executing Agency apart from any applicable Taxes.

4. The actual cost means total construction cost of the Project including arbitration award/any court decree in favour of contractor. However, the Executing Agency shall not charge agency charges i.e. 10% on arbitration award/any court decree in favour of any contractual agency.
5. The land for the project shall be provided by the Govt. of J&K/Urban Local Body concerned. Hindrances/encroachments, if any, on the project site shall be got removed by the ULB concerned/ Govt. of J&K.
6. All approvals/clearances from Environment and Pollution Control Board, Department of Explosives, Central Ground Water Authority, Irrigation, Railways, 'National Highways Authority of India State Electricity Board, Revenue, etc, shall be initiated by the Executing Agency and the Housing and Urban Development Department/ULB concerned shall facilitate to get the necessary approvals/clearances from these departments. The payment of fees for approvals/clearances etc, if any, shall be made by the concerned ULB's.
7. All types of surveys and investigations shall be the responsibility of the Executing Agency.
8. The Chief Engineer UEED, J&K will be coordinator from the State Government side to monitor implementation of Comprehensive Sewerage Scheme for left out areas, phase-II of Division-A of Greater Jammu City in accordance with DPRs and the JnNURM Guidelines. The periodic progress of the execution shall be intimated regularly.
9. Scope of Services to be Provided by Owner

**At Construction Stage:**

- i) Visit/inspection by Owner's representative(s), Govt./State Govt./ULB concerned.
- ii) Re-coup expenditure and payment of 10% services charges to the Executing Agency as per clauses 1, 2 & 3 hereinabove.

**11. Scope of Services of the Executing Agency;**

- i) To implement “**Comprehensive Sewerage Scheme for left out areas, phase-II of Division-A of Greater Jammu City**” sanctioned under UIG sub-mission-I of Jawaharlal Nehru National Urban Renewal Mission (JnNURM) for the Owner within the stipulated time, cost and conditions.
- ii) Scope of Services of the Executing Agency shall be spread over in three phase as under
  - a) Pre Construction Phase
  - b) Construction Phase
  - c) Post Construction Phase

12 (i) (A) **Pre-Construction Phase:**

The Executing Agency shall be responsible for carrying out the following activities:

- a) Technique to be used for monitoring or progress- primavera PS-8, 5, CPM/PERT, based on computer system of work and resource flow chart.
- b) Format for monitoring progress during Construction stage. The format/report shall covet bottlenecks including remedial measures, current position and two months advance programme.
- c) Tendering system to be in line with the Executing Agency norms and Central Vigilance Commission (CVC) guidelines.
- d) Financial Control aspects.
- e) Administrative Control Reverts/Returns — their format for monthly reports. The format for reports shall be based on Primavera/MS Project software.

The Chief Engineer, UEED, J&K, Coordinator of the project shall be responsible for carrying out the following activities:

- a) The UEED shall supply all the designs, drawings and Bills of quantities duly priced to the Executing Agency. All estimates shall be prepared on the basis of Delhi Schedule of rates (CPWD), wherever applicable, and on the basis of market rate analysis where DSR etc are not applicable. These estimates shall be comprehensive and shall include, for all items of anticipated expenditure.
- b) The UEED shall shift the utilities whether underground/overground during execution of works.
- c) The UEED in consultation with the Divisional Level Co-ordination Committee (DLCC) shall also take clearance from local authorities like Traffic Police, Police, Municipality, PWD, PHED, PDD, BSNL etc.

12(ii) (B) **Construction Phase:**

- a) The Executing Agency shall for and on behalf of the Owner prepare and issue the tender documents in accordance with approved DPR. On submission of bids against the tender, the Executing Agency shall examine and evaluate the bids and conclude contracts for the execution of works, acting for and on behalf of the Owner.
- b) The Executing Agency shall get the works executed from the start of construction upto commissioning and handing over of the project duly completed. These will be provided by way of using the Executing Agency's expertise and experience in projects, to execute the entire project as per the drawings and specifications. The Executing Agency shall depute required personnel for full time day-to-day supervision and headed by a qualified and experienced Manager to look after the interests of Owner and provide monthly reports using primavera/MS Project Software. The Manager shall coordinate with various agencies for civil, structural, services, landscaping works, etc. for smooth execution of the complete project.
- c) Supervision of works as per drawings, specifications and contract documents.
- d) Preparation of overall construction schedules, their coordination and monitoring. The monthly report apart from other details shall include current position, holdups, if any, and programme for next two months using primavera / MS Project Software.
- e) Testing, checking and inspection of quality of materials and workmanship.
- f) Monitoring progress and sequence of works of various deployed contractors for coordinated and harmonious construction.
- g) Co-ordination between various agencies involved during execution.
- h) During the execution of work, the additions /alterations / deletions / variations/substitutions/modification, etc in the contract of deployed contractors shall be finalized by the Executing Agency as per laid down procedures of the Executing Agency in consultation with owner

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provided that overall cost shall not exceed the approved DPR cost/ budgetary approval of the Government.

- i) Checking certifying and making payments of Running and Final Bills of various deployed contractors and obtaining guarantees as per Contract.
- j) Preparing and submitting monthly progress reports to Owner to appraise the project from time to time in approved formats the reports shall be *in* hard as well as soft copy.
- k) The Executing Agency shall inter-alia be responsible:

- i. For taking suitable action on behalf of the Owner with due consultation with it against the deployed contractor(s) including termination, if required, as per provisions of contract, in case of failure of non-performance of the contractor.
- ii. To invite fresh tenders on behalf of the Owner with due consultation with it at the risk and cost of the contractor on termination of the contract, *if* any, as per existing laid down procedures of the Executing Agency.

12 (iii) (C) **Post Construction Phase:**

The Executing Agency shall be responsible for carrying out the following activities:

- a. The Executing Agency shall rectify all the defects pointed out by representative of owner during the defect liability period.
- b. Checking of As Built Drawings, Plant Record Books and all operations and maintenance manual, history sheet of machines submitted by deployed contractor for onward submission to owner.
- c. "Final Report" which will contain all technical and financial information of the project.
- d. The Chief Engineer UEED will inspect all the works and will ensure that the works are executed strictly as per the DPRs and that quality is maintained throughout the execution. He has to satisfy himself fully in terms of quality and quantity of works before taking over the sewerage project for left out area from NBCC.

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e. The observations / recommendations / suggestions of Independent Review and Monitoring Agency (IRMA) to be appointed by the owner shall be complied by the executing agency (NBCC) from time to time. The compliance reports to the effect shall also be submitted by NBCC to the owner.

13 **Project Completion Schedule:**

The project shall be completed within the period as indicated in the Administrative Approval of DPR.

14 **Penalty Clause**

If the Executing Agency fails to complete the implementation of a particular project within the stipulated project period approved in the DPR, the Executing Agency will have to pay the compensation of 5% of the project cost by recovering the same from the contractor, to the owner except in case of Force Majeure, wherein for the purpose of this Agreement, Force Majeure means an event which is beyond the reasonable control of the Executing Agency and which makes the Executing Agency's performance of its obligations under the Agreement impossible or so impractical as to be considered impossible under the circumstances. The decision on Force Majeure will be binding on both parties as decided by the arbitrator.

Not later than fifteen (15) days after the Executing Agency as the result of an event of Force Majeure, have become unable to perform a material portion of the Services, the parties shall consult with each other with a view to agreeing on appropriate measures to be taken in the circumstances. Any period within which the Executing Agency shall pursuant to this Agreement, complete any action or task, shall be extended for a period equal to the time during which the Executing Agency was unable to perform in such action as a result of Force Majeure.

15 **Disputes**

All disputes and differences between the Owner and the Executing Agency arising out of the contract shall as far as possible be resolved through negotiation. However, if any differences/disputes still persist, the same shall be referred to the Chief Secretary J&K

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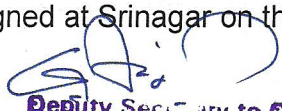


Government who shall act as Sole Arbitrator. The decision of the Sole Arbitrator shall be final and binding on the parties. The arbitration shall be governed by the provisions of the J&K Arbitration and Conciliation Act, 1997.

16 **Miscellaneous**

On the basis of the Agreement, the Executing Agency shall start activities for implementation of the Projects at each location immediately.

Signed at Srinagar on this day as mentioned above.

  
Deputy Secretary to Govt.  
Housing & Urban Development Deptt.  
J&K

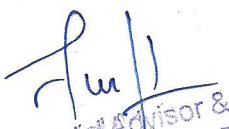
For and on behalf of:  
Principal Secretary  
Housing & UD Department  
Government of Jammu & Kashmir

  
For and on behalf of:

M/s National Buildings Const. Corp.Ltd.  
(A Govt. of India Enterprise)  
New Delhi - 110003  
HEM RAJ  
GENERAL MANAGER  
SBG(J&K/PUNJAB)  
NBCC LIMITED  
JAMMU

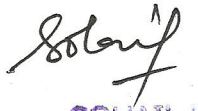
Witnesses:

1.   
Dy. Secretary to Govt.  
Housing & Urban Dev Deptt.

2.   
Financial Advisor & CAO  
Housing & Urban Dev. Department  
Civil Secretariat, J&K

Witnesses:

  
1. (BILAL AHMED ZARGAR)  
Junior Engineer  
NBCC Limited

2.   
SOHAIL HASSAN  
J. E.  
NBCC LTD.  
SRINAGAR