

FC (3)/5/2008-PPP

Government of India
Ministry of Finance
Department of Economic Affairs
(PPP Cell)

New Delhi, the October 30, 2009

Municipal Commissioner
(Dr. Purushottam Bhapkar)
Aurangabad Municipal Corporation
Aurangabad-431001.

Subject: Developing a PPP project in water supply-Aurangabad Municipal Corporation – Assistance sought under Pilot Project Initiative and IIPDF-execution of Tripartite Agreement.

Sir,

I am directed to refer to the Tripartite Agreement of Aurangabad Municipal Corporation executed by Department of Economic Affairs, CRISIL Risk and Infrastructure Ltd. and Aurangabad Municipal Corporation.

The Tripartite Agreement has been executed and a copy of executed Tripartite Agreement is enclosed for your record.

Yours faithfully,

(Abhijit Phukon)
Deputy Director (PPP)

Copy along with copy of executed Tripartite Agreement forwarded to:

1. Shri S.R. Ram,anujam, Chief Executive Officer, CRISIL Risk and Infrastructure Solutions Limited, Solitaire Corporate Park, 6th Floor, Andheri-Ghatkopar Link Road, Andheri (East), Mumbai-400093
2. Mr. Anouj Mehta, Senior Infrastructure Finance Specialist , Asian Development Bank, 4 San Martin Marg, Chanakya Puri, New Delhi.

Shri. Pansade

En. Engr. Sir

n.a. pl.

Sir

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मुख्य आवक / वास्तविक विवरण (प. न. पा) 3069
दिनांक 3.11.19.
वेळीच्याची राती व वेळी.....

Shri. phukan,
pl. keep attached
with concern file.
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भारतीय गैर न्यायिक

एक सौ रुपये

Rs. 100

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ONE HUNDRED RUPEES

सत्यमेव जयते

भारत INDIA

INDIAN NON JUDICIAL

महाराष्ट्र MAHARASHTRA

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Handwritten notes and signatures in Marathi, including names like 'मोहमद रईसादान एम' and 'पुद्दाक/परवभ्रा ABD 153'.

अपपर कोषागार अधिकारी
औरंगाबाद.

AGREEMENT

This Agreement is made at New Delhi on this [29th] day of [October], [2009.] BETWEEN

Handwritten signature

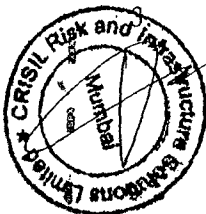
1. Department of Economic Affairs, which is the administrating agency under the India Infrastructure Project Development Fund, acting through [Mr. Hemant Ramesh, Joint Secretary...], [Designation], Department of Economic Affairs, Ministry of Finance, Government of India, New Delhi (hereinafter referred to as the 'DEA'),

AND



The Commissioner of the Aurangabad Municipal Corporation, acting through [Dr. P. N. Bhapkar,] (hereinafter referred to as the 'Sponsoring Authority')

AND



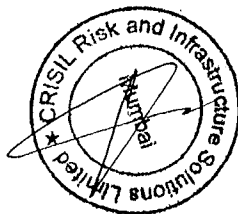
CRISIL Risk & Infrastructure Solutions Limited (CRIS), a company incorporated and existing under the Companies Act, 1956, having its registered office at 961-962, Solitaire Corporate Park, Andheri-Ghatkopar Link Road, Andheri East, Mumbai - 400 093 (hereinafter referred to as the 'Lead Transaction Advisor'), acting through [Mr. SR Ramanujam], Chief Executive Officer.

Handwritten signature and stamp of the Commissioner, Aurangabad Municipal Corporation.

(The expressions 'DEA', the 'Sponsoring Authority' and 'Lead Transaction Advisor' shall include their respective successors, and are hereinafter collectively referred to as the 'Parties' and individually as 'Party')

WHEREAS

- A. The Sponsoring Authority, with the objective of improving water supply service in Aurangabad Municipal Corporation area, proposes to implement the project described in Recital B below (hereinafter referred to as the 'Project') through Public-Private Partnership ('PPP');
- B. The Project focus is on – (i) reduction of non-revenue water by reduction of technical losses through leakage management and reduction of commercial losses in water supply system through identification and regularization of illegal connections, metering and improvement in billing and collection systems; (ii) rehabilitation and expansion of transmission and distribution network; (iii) development of a additional bulk supply scheme for the city;
- C. The Structuring Work for the Project is proposed to be carried out in two stages viz. the First Stage and the Second Stage;
- D. The Structuring Work under the First Stage of the Project has been commenced under the supervision of Asian Development Bank ('ADB'), which would be meeting the entire expenses for the First Stage constituting upto 25% of the Project Development Expenses through its technical assistance to the DEA for mainstreaming PPPs in India;
- E. The Government of India has notified the scheme for "India Infrastructure Project Development Fund" ('IIPDF Scheme') for providing financial support for quality project development activities to the Central Government Ministries/Departments, State Governments, Municipal or Local Bodies, Public Sector Undertakings or any other statutory authority (such as Delhi Development Authority);
- F. The primary objective of IIPDF is to fund project development expenses including costs of engaging consultants and transaction advisors in potential PPP projects, thus increasing the quality and quantity of successful PPPs and allowing informed decision making by the authorities based on good quality feasibility reports;
- G. The DEA has given approval to the IIPDF application made by the Project Sponsoring Authority. This constitutes financial assistance for the Second Stage of the Structuring work upto 75% of the Project Development Expenses;
- H. Transaction Advisors engaged by the ADB under the First Stage of the Structuring Work, by observing the procurement guidelines and processes of ADB, shall be continued as Transaction Advisors for the Second Stage based on estimates of man month rate as for the First Stage indicated in Schedule II;
- I. The Structuring Work under the Second Stage is to be supervised jointly by DEA, ADB



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(acting through the designated PPP focal point based in India to support DEA's PPP Cell) and the Sponsoring Authority.

NOW THEREFORE, THE PARTIES HEREIN AGREE AND THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATIONS

1.1 Unless otherwise intended, the following terms shall have the meaning as hereinafter respectively assigned to them:

1.1.1 '**ADB Assistance**' shall mean the support provided by ADB for procuring the services of the Transaction Advisors on behalf of the Sponsoring Authority to undertake the First Stage of the Structuring Work entailing upto twenty five percent (25%) of the Project Development Expenses;

1.1.2 '**Agreement**' shall mean this Agreement, and amendments thereto, if any, made in accordance with the provisions contained herein in this behalf;

1.1.3 '**Applicable Laws**' means any law, rule, regulation, ordinance, order, treaty, judgment, decree, injunction, permit or decision of the Government of India, or the Government of Maharashtra or any local authority, agency, court or other body having jurisdiction over the matter in question, as may be in force from time to time;

1.1.4 '**Beneficiary Account**' shall mean the bank account designated by the Lead Transaction Advisor for receiving the Payment Disbursements from the Sponsoring Authority under the provisions of this Agreement;

1.1.5 '**Designated Account**' shall mean a designated bank account of the Sponsoring Authority to receive the IIPDF Disbursements;

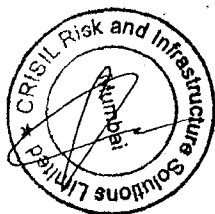
1.1.6 '**IIPDF Assistance**' means the assistance payable by the Central Government under and in accordance with the IIPDF Scheme for an amount specified under Clause 2.1 of this Agreement;


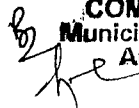
1.1.7 '**IIPDF Default**' shall bear the meaning as assigned to it under Clause 8 of this Agreement;

1.1.8 '**IIPDF Disbursements**' shall mean the disbursements of the installments in Indian Rupees (INR), made by the DEA to the Sponsoring Authority as provided in Clause 3.1 below and subject to the terms of the IIPDF Scheme;

1.1.9 '**Memorandum for Consideration**' or '**MFC**' shall mean the information provided by the Sponsoring Authority while applying for assistance under the IIPDF Scheme and approved by the DEA;

1.1.10 '**Milestone(s)**' shall mean the milestones as specified in Schedule I to this Agreement;




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- 1.1.11 **'Payment Disbursements'** shall mean the transfer of the IPDF Disbursements (after making the necessary deductions), by the Sponsoring Authority to the Lead Transaction Advisor towards payment of the professional or consultancy fees on achievement of Milestones specified in Schedule I;
- 1.1.12 **'Project Development Expenses'** shall mean the total cost of INR 1,22,85,120/- (Rupees One Crore Twenty-two Lakhs Eighty Five Thousand One Hundred and Twenty Only) as detailed in Schedule II, which is estimated to be payable to the Transaction Advisors for the Structuring Work;;
- 1.1.13 **'Structuring Work'** shall mean all technical, financial, legal and structuring advice and work in relation to the Project, which are required to achieve a Bid Closure. It shall be carried out in two stages. The First Stage shall include pre-feasibility assessment and structuring to lead to a preliminary financial model and related PPP structures, a draft Request for Qualification (RFQ)/ Pre-Qualification Questionnaire (PQQ). The Second Stage shall include pre qualification of bidders, detailed structuring and bid process management, leading to bid documents, finalized PPP structure and financial model, a Request for Proposal (RFP) launch, bid evaluation and recommendations, contract negotiations and Bid Closure;
- 1.1.14 **'Technical Close' or 'Bid Closure'** shall mean the stage of execution of the concession agreement or any other agreement for the Project, between the private sector developer and the Sponsoring Authority pursuant to the selection of a private sector developer through transparent bidding process;
- 1.1.15 **'Timeframe'** shall mean the time frame stipulated under Schedule I to this Agreement for completion of various Structuring Work;
- 1.1.16 **'Transaction Advisors'**, unless the context otherwise requires, shall mean to include all skilled professional individuals/proprietorship/firms/companies, etc. as listed in Schedule II who are either permanent employees of the Lead Transaction Advisor or will have entered into a separate suitable agreement/arrangement with the Lead Transaction Advisor for the Structuring Work for the Second Stage on such terms and conditions as are contained in this Agreement (including the Terms of Reference as contained in Schedule III). The term Transaction Advisors, wherever used in this Agreement shall deem to include the Lead Transaction Advisor;
- 1.1.17 **'Transaction Advisory Terms of Reference'** shall mean the terms of reference duly accepted for the Structuring Work and constituting part of this Agreement as Schedule III.
- 1.2 In this Agreement unless the context otherwise requires -
- (a) any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies or is capable of applying to any transactions



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entered into hereunder; (b) the words importing singular shall include plural and vice versa, and words denoting natural persons shall include all gender, partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal entity);

- (c) the headings are for convenience of reference only and shall not be used in any manner which shall not affect the construction or interpretation of this Agreement;
- (d) terms beginning with capital letters and defined in this Agreement shall have the meaning ascribed herein;
- (e) the words "include" and "including" are to be construed without limitation;
- (f) any reference to a "day" shall mean reference to a calendar day;
- (g) any reference to "month" shall mean reference to a calendar month;
- (h) any reference to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference provided that this clause shall not operate so as to increase liabilities or obligations of the DEA hereunder or pursuant hereto in any manner whatsoever;
- (i) references to Recitals, Articles, Clauses, Sub-clauses, Paragraphs, Schedules, Annexures or Appendices in this Agreement shall, except where the context otherwise requires, be deemed to be references to Recitals, Articles, Clauses, Sub-clauses, Paragraphs, Schedules, Annexures and Appendices of this Agreement;
- (j) Any agreement, consent, approval, authorization, proposal, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effectual only if it is in writing under the hands of duly authorised representative of such Party, in this behalf and not otherwise; and
- (k) Any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates.

2. ASSISTANCE

- 2.1 The Empowered Institution, the administrating entity for the IIPDF Scheme has approved an IIPDF Assistance in a sum of INR 92,04,000 (Rupees Ninety Two Lakhs Four Thousand Only) for the Second Stage of the Structuring Work to be performed in relation to the Project and on the terms and conditions set forth in this Agreement and subject to the terms of the IIPDF Scheme.



2.2 The Sponsoring Authority agrees and acknowledges that the IIPDF Assistance shall solely be used towards Payment Disbursements in relation to the Second Stage of the Structuring Work and for no other purpose whatsoever.

2.3 Notwithstanding anything to the contrary contained in this Agreement, in the event of

- i. Any suspension of rights under this Agreement or termination of this Agreement,
- ii. occurrence of any IIPDF Default; or

the IIPDF Assistance and/or the IIPDF Disbursement may be suspended or terminated partly or fully, as the case may be, in the sole discretion of the DEA without the DEA being responsible or liable to the Sponsoring Authority or the Lead Transaction Advisor in any manner whatsoever. The IIPDF Disbursement shall be used for making payments to the Lead Transaction Advisor for the Structuring Work done upto the date of termination of the IIPDF Assistance/suspension of the IIPDF Assistance only. The Sponsoring Authority shall, at its own cost, make payments to the Lead Transaction Advisor for the Structuring Work done beyond the date of termination of the IIPDF Assistance/during the suspension of the IIPDF Assistance.

2.4 The DEA shall have the right to recover the amount under the IIPDF Assistance from the private sector developer as provided under Clause 5 below.

3. IIPDF AND PAYMENT DISBURSEMENTS

3.1 The DEA shall make IIPDF Disbursements to the Sponsoring Authority of an amount equivalent to cover the Payment Disbursements estimated by the Sponsoring Authority to be made in the forthcoming one (1) year. The estimate made by the Sponsoring Authority shall be computed based upon the Milestones and Timeframe. The IIPDF Disbursements shall be held by the Sponsoring Authority in the Designated Account.

[Signature] 3.2 In order to make the Payment Disbursement, the Sponsoring Authority shall confirm to ADB/DEA the achievement of Milestones specified in Schedule I. The Sponsoring Authority shall make Payment Disbursement to the Lead Transaction Advisor within thirty (30) days of the approval from DEA/ADB and as per the payment request received from the Lead Transaction Advisor. The Sponsoring Authority, upon making the Payment Disbursements, shall notify DEA of the use of IIPDF Disbursements.

3.3 The Sponsoring Authority shall deduct from the Payment Disbursements, all taxes, levies, cess, penalty, etc. as required under the Applicable Laws and this Agreement

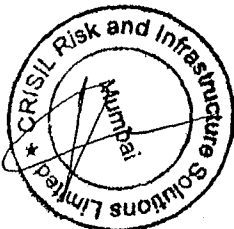
3.4 The Lead Transaction Advisor accepts that the Payment Disbursements made by the Sponsoring Authority to the Lead Transaction Advisor on completion of Milestones shall deemed to be the payment towards the Structuring Work performed by the Lead Transaction Advisor and other Transaction Advisors upto that particular Milestone.



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ROLE OF LEAD TRANSACTION ADVISOR

- 4.1 The Lead Transaction Advisor shall ensure completion of the Structuring Work within the Timeframe
- 4.2 The Lead Transaction Advisor will ensure that each Transaction Advisor has in place appropriate quality control processes over the quality of its deliverables. Any lapses in quality that bear the risk of affecting overall Project outcomes will be addressed by the Lead Transaction Advisor with the Transaction Advisors in the first instance, and, where appropriate, reported by the Lead Transaction Advisor to the Sponsoring Authority and DEA, who will jointly in consultation with ADB and the Lead Transaction Advisor discuss and resolve the matter.
- 4.3 The Lead Transaction Advisor, the Sponsoring Authority and the DEA acknowledge, understand and agree that the Lead Transaction Advisor is acting for itself and as a representative of the other Transaction Advisors, who have authorised Lead Transaction Advisor by way of a suitable arrangement in this behalf.
- 4.4 The Lead Transaction Advisor understands and agrees that other than its share in the Payment Disbursement for the services rendered by it, the Lead Transaction Advisor shall have no rights in the Payment Disbursements in any manner whatsoever and that the Lead Transaction Advisor shall keep the custody of the balance of the Payment Disbursement till the entire amount has been distributed to the other Transaction Advisors in accordance with the terms of the agreement/arrangement between the other Transaction Advisors and the Lead Transaction Advisor.
- 4.5 The Lead Transaction Advisor agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to any amount of the Payment Disbursements pending distribution to the Transaction Advisors.
- 4.6 In performing its functions and duties under this Agreement, the Lead Transaction Advisor shall act in trust and for the benefit of the Sponsoring Authority and the DEA.
- 4.7 The Lead Transaction Advisor shall maintain accurate account of all Payment Disbursements received, retained and distributed by it pursuant to this Agreement and shall within fifteen (15) days of receipt of the Payment Disbursements, furnish a copy thereof, duly certified under the hands of an authorised officer of the Lead Transaction Advisor to the Sponsoring Authority and the DEA.
- 4.8 The Lead Transaction Advisor shall maintain and operate the Beneficiary Account throughout the Term of this Agreement and undertakes to inform the DEA and the Sponsoring Authority of any change in the Beneficiary Account. In discharge of its duties and obligations hereunder, the Lead Transaction Advisor shall, within 5 (five) business days of its receipt, deliver to the Transaction Advisor(s) a copy of any notice or document received from the DEA or the Sponsoring Authority in connection herewith.



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5. **RECOVERY OF IIPDF ASSISTANCE**

- 5.1 The Parties herein understand and accept that on successful completion of the Technical Close, the Sponsoring Authority shall have the right to recover the amount of the IIPDF Assistance from the private sector developer with whom the Sponsoring Authority shall enter into the concession agreement or any other form of agreement for setting up of the Project and reimburse it to the DEA.
- 5.2 The Sponsoring Authority shall be liable to refund the entire amount of the IIPDF Assistance to the DEA in case it does not conclude the bidding process for any reason whatsoever or does not contract out the Project after the bid process has been completed. However, in case of failure of the bid, the IIPDF Assistance shall not be recovered by the DEA.
- 5.3 The Transaction Advisors and the Sponsoring Authority agree to take necessary steps and actions including making provisions under the concession agreement, RFP, etc. to protect the DEA's rights and interests for recovery of the IIPDF Assistance.

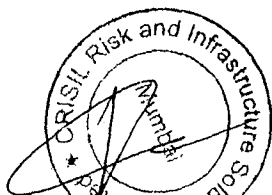
6. **REPRESENTATIONS AND WARRANTIES**

6.1 The Sponsoring Authority represents warrants and confirms to the DEA and the Lead Transaction Advisor, respectively that:

- (a) The IIPDF Assistance or any portion of it shall not be utilized by the Sponsoring Authority to meet the expenses incurred by the Sponsoring Authority on its own staff;
- (b) The IIPDF Assistance and the IIPDF Disbursements, or any part thereof shall not be utilised for any other purpose or project;
- (c) The estimate of the Project Development Expenses is based on assessment of and procurement by ADB duly following the standards and specifications normally applicable to such projects;

6.2 The Lead Transaction Advisor represents, warrants and confirms to the DEA and the Sponsoring Authority that:

- (a) The Lead Transaction Advisor is duly organized and validly existing under the Applicable Laws and has full power and authority to execute and perform its obligations under this Agreement and to enter into other suitable arrangements with other Transaction Advisors to carryout the Structuring Work;
- (b) The Lead Transaction Advisor shall take all necessary actions under the Applicable Laws to authorize the execution and delivery of this Agreement, to perform its obligations under this Agreement and to make other suitable



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arrangements with the other Transaction Advisors to carry out the Structuring Work;

- (c) This Agreement constitutes a legal, valid and binding document enforceable against the Lead Transaction Advisor in accordance with the terms hereof;
- (d) The execution, delivery and performance of this Agreement will not conflict with or result in a breach or constitute default under or accelerate performance required by any of the terms of any other contract, arrangement or understanding, or any decree or order of any court to which the Lead Transaction Advisor is a party or by which it or any of its properties or assets is bound or affected;
- (e) All information furnished to the DEA and the Sponsoring Authority are updated on or before the date of this Agreement and are true and accurate in all material respects;
- (f) There are no actions, suits, proceedings or investigations pending or threatened against the Lead Transaction Advisor under the Applicable Laws or in equity before any court or any other judicial, quasi judicial or other authority or body, the outcome of which may result in non performance or a breach of this Agreement;
- (g) The Lead Transaction Advisor has complied with all Applicable Laws and permits in all material respects;
- (h) The Lead Transaction Advisor shall perform all of its obligations in a professional manner and in accordance with the Timeframe and shall ensure that the other Transaction Advisors perform their obligations in accordance with the Timeframe;
- (i) No representation or warranty contained herein or any other document furnished by the Lead Transaction Advisor to the DEA or the Sponsoring Authority contains or will contain any untrue or misleading statement of material facts or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (j) All information, documents, etc are the intellectual property of the Sponsoring Authority and shall not be disclosed without the express approval of the Sponsoring Authority and DEA;
- (k) The Lead Transaction Advisor shall not participate in the bidding for the Project on its own or as a member of a consortium of a participating bidder; and
- (l) The Lead Transaction Advisor shall enter into suitable agreements with other Transaction Advisors to confirm that the other Transaction Advisors shall not participate in the bidding of the Project on their own or as a member of a consortium of a participating bidder.



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by **COMMISSIONER**
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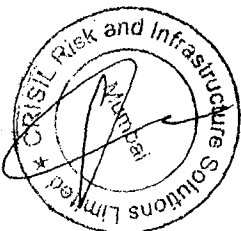
In the event of any occurrence or circumstance coming to the knowledge of the Party which renders any of its aforesaid representations or warranties untrue or incorrect at any time during the subsistence of this Agreement, such Party shall immediately notify the other Parties hereto about the same. Such notification shall not have the effect of remedying any such representation or warranty that has been found to be incorrect or untrue.


7. PROJECT MONITORING

- 7.1 ADB shall undertake regular monitoring and periodic evaluation of Structuring Work compliance with the Milestones, performance levels and Timeframe provided under this Agreement and as approved by the DEA. ADB shall, through periodic reports, advise and keep informed the DEA and the Sponsoring Authority about the slippages or otherwise in Structuring Work compliances with the Milestones, performance levels and Timeframe together with brief description of the causes of slippages or non-compliances, if any, therein.
- 7.2 The Sponsoring Authority agrees and undertakes that subject to the provisions of this Agreement, the Sponsoring Authority, in coordination with ADB, shall also regularly monitor and periodically evaluate compliance of the Structuring Work with the Milestones, performance levels and Timeframe. Without prejudice to the generality of the foregoing, the Sponsoring Authority shall send on a quarterly basis progress reports of the Structuring Work and utilization of IIPDF Disbursements to the DEA and ADB together with brief description of the causes of slippages or non-compliances, if any, therein.

8. IIPDF DEFAULT

- 8.1 Following events shall constitute an event of default ("IIPDF Default") under this Agreement unless such event of default has occurred as a result of Force Majeure or any act or omission of the DEA:
- (a) The Lead Transaction Advisor causes the Sponsoring Authority to transfer the Payment Disbursements to any other account other than the Beneficiary Account in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Beneficiary Account or any sub-account in which such transfer should have been made within a period of 5 (five) business days; or
 - (b) The Sponsoring Authority commits any breach of the terms and conditions of this Agreement and fails to remedy such breach within a period of 14 (Fourteen) business days; or
 - (c) The Lead Transaction Advisor commits or causes any other breach of the provisions of this Agreement; or




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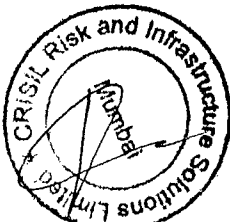
- (d) Any of the representation and warranties of the Lead Transaction Advisor or that of the Sponsoring Authority are found at any time to be false or incorrect and the Lead Transaction Advisor or the Sponsoring Authority fails to cure the same within a period of 5 (five) business days; or
- (e) The Lead Transaction Advisor is adjudged bankrupt or insolvent or is ordered to be wound up or passes an effective resolution for its winding up or a receiver is appointed for the Lead Transaction Advisor or for the whole or a material part of its assets.

9. TERM OF THE AGREEMENT

- 9.1 This Agreement shall come into force and effect upon the execution hereof and shall remain in full force and effect so long as any of the obligations of any of the Transaction Advisors remains to be discharged. This Agreement shall come to an end upon the Technical Close.

10. INDEMNITY

- 10.1 The Lead Transaction Advisor undertakes to indemnify, defend and hold harmless the DEA and the Sponsoring Authority against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any false or incorrect representation or warranty given by the Lead Transaction Advisor, breach by the Lead Transaction Advisor of any of the provision of this Agreement, or on account of wrong disbursement or failure to disburse the Payment Disbursements to the other Transaction Advisors, or on account of failure of the Lead Transaction Advisor to comply with the Applicable Laws.
- 10.2 The Sponsoring Authority shall indemnify, defend and hold the DEA harmless at all times against any and all proceedings, actions and third party claims for any loss, damage, cost and expense (other than any loss, damage, cost and expense, arising out of acts done in discharge of its lawful functions by the Sponsoring Authority, its officers, servants and agents) arising out of any false or incorrect representation or warranty given by the Sponsoring Authority, or on failure of the Sponsoring Authority to fulfill its obligations under this Agreement.
- 10.3 The DEA will indemnify, defend and hold harmless the Sponsoring Authority and the Lead Transaction Advisor at all times against any and all proceedings, action and third party claims for any loss, damage, cost and expense arising on account of failure to disburse the IIPDF Disbursement (except as provided under Clause 2.3) pursuant hereto or on account of failure of the DEA to fulfill its obligations under this Agreement..
- 10.4 In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity hereunder or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the other Party responsible for



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indemnifying such claim hereunder (the "Indemnifying Party") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

11. DISPUTE RESOLUTION

11.1 Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably within [15] days of communication thereof shall be decided by reference to arbitration to a Board of three Arbitrators comprising of one nominee of the Party which is the claimant in such dispute, one nominee of the second Party / the third Party and the third arbitrator to be appointed in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "Rules"). Such arbitration shall be held in accordance with the said Rules and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.

11.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be Delhi and the language of arbitration shall be English.


12. MISCELLANEOUS PROVISIONS

12.1 Governing law and jurisdiction


This Agreement shall be construed and interpreted in accordance with, and governed by the laws of India, and the Courts at Delhi shall have jurisdiction over all matters arising out of or relating to this Agreement.

12.2 Waiver of sovereign immunity

The DEA and the Sponsoring Authority unconditionally and irrevocably:

- 
- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
 - (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the DEA with respect to its assets;




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- (c) waives any right of immunity with respect to its assets, property or revenues that it now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgment or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgment that may be made or given in connection therewith).

12.3 Rights in the IIPDF Assistance or IIPDF Disbursement


12.3.1 The Lead Transaction Advisor understands and warrants that it shall not have any rights, interest, claim or lien in the IIPDF Disbursements or IIPDF Assistance, including in any balance thereof awaiting disbursement to the Sponsoring Authority. The rights, interest, claim or lien of the Lead Transaction Advisor are only limited to the Payment Disbursements.

12.3.2 The rights and remedies of the Lead Transaction Advisor in the IIPDF Assistance, including in any balance thereof awaiting disbursement to the Sponsoring Authority, are set forth in their entirety in this Agreement and the Lead Transaction Advisor shall have no other rights or remedy against or to such IIPDF Assistance including in any balance thereof awaiting disbursement.

12.4 Liability and Responsibility of the Lead Transaction Advisor

The aggregate liability of the Lead Transaction Advisor for any loss or damage caused to the DEA and/or Sponsoring Authority, collectively, in contract or tort or under any statute or otherwise, arising from or in connection with this Agreement, however the loss or damage is caused including Lead Transaction Advisor's negligence, shall be limited to the amount of the total fees received as per schedule I for the completed Milestone.


12.5 Amendments

 All additions, amendments, modifications and variations to this Agreement shall be valid, effectual and binding on the Parties only if they are made in writing and signed by their respective duly authorized representatives.

12.6 Waiver

12.6.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:




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- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

12.6.2 Neither the failure by any Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation there under, nor time or other indulgence granted by any Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

12.7 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity (including the other Transaction Advisors) shall have any rights hereunder.

12.8 Survival

12.8.1 Termination of this Agreement:

- (a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof;
- (b) shall not relieve either of the Party of any obligations or any liability for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party; and
- (c) shall not relieve the Sponsoring Authority of the liability to pay to the Lead Transaction Advisor the fees for the work done up to the date of such termination.

12.8.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

12.9 Severability

If for any reason whatsoever, any provision of this Agreement is or becomes invalid,



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illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 11 of this Agreement or otherwise.


12.10 Successors and assigns

This Agreement shall be binding on and shall work to the benefit of the Parties and their respective successors and permitted assigns.

12.11 Notices

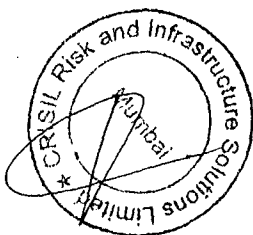
All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile. The address for service of each Party and its facsimile number are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof save that where it is received after 5.30 (five thirty) p.m. on a business day or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

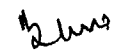
12.12 Language

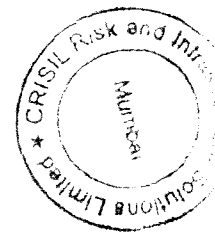
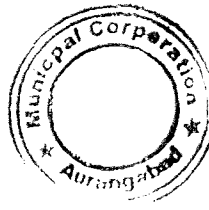
 All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

12.13 Authorized representatives

Each of the Parties shall by notice in writing designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.




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Conflict

In case of any conflict between the terms and conditions of this Agreement and the agreement/arrangement between the Lead Transaction Advisor and other Transaction Advisors, the provisions of this Agreement shall survive.

IN WITNESS WHEREOF THE PARTIES HERETO HAVE EXECUTED THESE PRESENTS ON THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.

For and on behalf of the Department of Economic Affairs.

By:


Name:

Designation:

Address:


Phone:

Fax:


GOVIND MOHAN
JOINT SECRETARY
Ministry of Finance, Department of Economic Affairs
011- 23093881
011 - 23092477

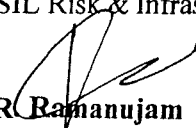
For and on behalf of the Commissioner of the Aurangabad Municipal Corporation

By:

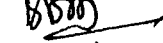


Name : Dr. P.N. Bhapkar
Designation : Municipal Commissioner
Address : Aurangabad Municipal Corporation, Town Hall, Aurangabad 431 001.
Phone : 0240-2331194
Fax : 0240-2331213

For and on behalf of CRISIL Risk & Infrastructure Solutions Limited

By:


Name : S. R. Ramanujam
Designation : Chief Executive Officer, CRISIL Risk & Infrastructure Solutions Limited
Address: CRISIL Risk and Infrastructure Solutions Limited
Phone: 11/962, Solitaire Corporate Park,
6th Floor, Andheri-Ghatkopar Link Road
Andheri (East),
Mumbai - 400 093
Fax:

In the presence of:

1. B. B. Maske . City Engineer A.M.C. → 
2. S. D. Panzade Executive Engineer A.M.C. → 

Schedule I

MILESTONES FOR THE SECOND STAGE OF THE STRUCTURING WORK

| Milestones | % Fee | Timelines |
|--|-------|---|
| Stage II Mobilisation | 25% | Within one week from signing of agreement |
| Stakeholders Consultation or Release of PQQ/ EOI | 25% | Within four weeks of signing of agreement |
| Submission of Draft Request for Proposal (RFP) and Stage II Report | 25% | Within 16 weeks of signing of agreement |
| Bid Award or 3 months post bid submission date | 25% | - |



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Schedule II TIME & COSTS FOR PROJECT DEVELOPMENT SUPPORT

| Total Estimated Consultancy Inputs and Phasing Per Project | | | | | | | Estimated Costs Of The Project | | | |
|---|---|---|-----------------------|--|-----------------------------|-------|--------------------------------|-------------|-----------|------------|
| Estimated Man-months For The Project | | | | | | | ADB Funded | IPDF Funded | Total | |
| Expertise Required | Engaged Persons/ Associates (Procurement Stage) | Stage I - ADB | | Stage II - IPDF | Other Activities | | | | | US\$ |
| | | Pre-Feasibility Assessment & PPP Structuring | | Detailed Structuring Implementation & Bld Process Management | Workshops, Documentation | | | | | |
| | | Time Man-months* | Rate per MM - \$** | Time Man-months* | Time Man-months* | Total | | | | |
| PPP Sector Expert/ PPP structuring Inputs | Rakesh Bangera | 1.00 | 8727 | 6.00 | 1.00 | 8.00 | 17,454 | 52,362 | 69,816 | |
| Financial & Commercial Structuring Consultant/ Financial Inputs | SR Ramanujam | 1.00 | 9332 | 6.00 | 1.00 | 8.00 | 18,664 | 55,992 | 74,656 | |
| Social Safeguards Inputs | K Sushma - Social Impacts Assessment | 0.50 | 5827 | 1.50 | 1.00 | 3.00 | 8,740 | 8,740 | 17,480 | |
| Legal | Through Ramanujam | | | 4.00 | 0.00 | 4.00 | | 37,328 | 37,328 | |
| Environmental Safeguards Inputs | Through Ramanujam | | | 2.00 | 0.00 | 2.00 | | 18,664 | 18,664 | |
| Technical Inputs | Through Ramanujam | | | 2.00 | 1.00 | 3.00 | 9,332 | 18,664 | 27,996 | |
| Workshops, Consumer Surveys and Awareness Building (US\$)*** | | 0 | 5000 | 0 | 5000 | 10000 | 10,000 | | 10,000 | |
| | | | | | | | US\$ | 64,190 | 191,750 | 255,940 |
| | | | | | | | Rs @ 48/\$ | 3,081,120 | 9,204,000 | 12,285,120 |
| | | | | | | | % of Total | 25% | 75% | 100% |

*Man-months - Stage I man-months contracted for under the ADB procurement process. Stage II estimates under Stage I reports as requirements for work scope for Stage II and as approved by ADB, DEA and Project Sponsor. The man-months per named consultant above also includes the time of other support consultants that may be utilised by the lead or named consultant above.

** US\$ Rates Per Man-months - all inclusive (rate, per diems, expenses) estimates derived from the ADB Stage I procurement process.

*** ADB estimates per past experience

Note: All estimates are subject to change dependant upon finalisation of contracts for Stage I and market conditions affecting time estimates for scope of work



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**SCHEDULE III: TRANSACTION ADVISORY TERMS OF REFERENCE FOR
SECOND STAGE OF STRUCTURING WORK**

Background

ADB is supporting the Government of India in mainstreaming PPPs at selected state governments through a technical assistance (TA) project. As part of this, a pipeline of projects has been created with assistance from PPP Cells at various state and local government levels.

For a selected number of these 'fast track' projects, the TA will assist in the development of projects. "Development" indicates all activities from project concept feasibility assessment to commercial structuring and finally bid process management for award of the project to a successful bidder. The Department of Economic Affairs (DEA) in the Government of India is the executing agency for the TA.

This TOR is for a proposed water supply PPP fast track project that focuses on – (i) reduction of non-revenue water by reduction of technical losses through leakage management and reduction of commercial losses in water supply system through identification and regularization of illegal connections, metering and improvement in billing and collection systems; (ii) rehabilitation and expansion of transmission and distribution network; (iii) development of a additional bulk supply scheme for the city.

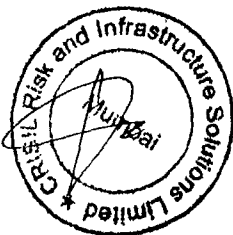
The Structuring Work to be undertaken as part of this Agreement refers to the First and the Second Stage, in which pre-feasibility of the water PPP project was established.

The First Stage of the Structuring Work has been completed. The Terms of Reference for the Second Stage of the Project is described hereunder.

TERMS OF REFERENCE FOR LEAD TRANSACTION ADVISOR

Detailed Financial Analysis and Project Structuring:

1. Finalization of technical design aspects and related cost estimates
2. Financial Modeling and sustainability analysis
3. Project Structuring including institutional reform, legal issues and contract structure
4. Financing plan including likely funding sources
5. Project risk analysis
6. Social and environmental impact studies
7. Stakeholder consultations as deemed appropriate leading to a likely list of interested private sector players
8. Detailed timelines for bid process



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Bid Process Management:

1. Finalization of documents including bid documents (Request for Qualification Request for Proposal – RFQ/ RFP), draft contractual agreements, documents pertaining to implementation of agreed institutional reform issues
2. Project marketing and consultations
3. Finalization and approvals of bidder qualification and bidding evaluation criteria
4. Development of marketing and evaluation frameworks
5. Assistance in bidding process, bid evaluations and contract negotiations
6. Assistance with compilation and provision of required documents for any due diligence on funding for a project.

Detailed Terms of Reference


1. Co-ordination: Project Team Leader

- The consultant will act as Team Leader (TL) for overall project management of the overall assignment.
- The TL will be responsible for coordinating all inputs of at the TAS team submission of deliverables to ADB, DEA and project sponsor, facilitation of meetings and stakeholder consultations as required, liaison with project sponsor and DEA as required

2. Financial and PPP Analysis: Activities for the consultant noted below are for all stages of the assignment. All financial and commercial structuring activities undertake

- **Financial Model:** This will include inputs on capital expenditure (CAPEX), operation and maintenance (O&M) expenditure and projected revenues for the project will be assessed and commencing with inputs from the technical (engineering) expert; a financial model will thus be developed with suitable




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assumptions, a base case, sensitivities, and outputs (projected project financial statements - balance sheet, cash flow, income statement, key ratio analysis, assumptions should be tested against key outputs such as Financial Internal of Return (FIRR), Debt Service Coverage Ratio (DSCR), other ratios.

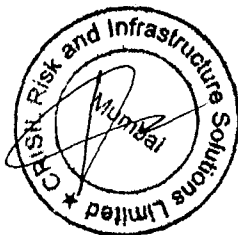
- PPP Options Development: Assess different PPP structures, assign objectives and political and other factors to devise a recommended PPP structure capable of achieving sustainable operational and financial viability. Various commercial and legal options, (together with the project's legal specifications as required). Project structuring will be examined to recommend a suitable modality and suitable implementation structure such as concession / manager contract / etc, whether as a Special Purpose Vehicle joint venture, etc; the analysis should include feedback as to the potential acceptability of the PPP structure for developers and lenders.
- Financing Plan: Based on the PPP options development, identify and assess possible financing options for the assignment. Recommendations may be provided on debt equity ratios, loan tenures and rates, etc to improve project viability and attractiveness. Funding sources examined should include the ADB Non Sovereign Public Sector lending schemes (for lending to government owned entities such as an SPV or joint venture vehicle) which may potentially be offered as part of the bid package (only post due approvals from ADB) to ensure project viability or for risk perception improvement. Funding support required from government, if appropriate should also be estimated.
- Private sector and risk analysis: Develop private sector qualification criteria, risk analysis and due mitigation strategies and inputs for contract documents.
- Assist in the overall bid process management including marketing efforts, pre bid meetings and formulation of responses to bidder queries, bid evaluations per criteria in the RFP document, recommend a preferred private developer.

TERMS OF REFERENCE FOR OTHER TRANSACTION ADVISORS

Legal and Institutional Consultant

Detailed Tasks:

Likely activities required of the legal / institutional specialist under Stage II will include:



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- **Validation of Policy Framework Reviews** – including detailed review of policies pertinent to the Project and impacting a project structure and PPP process. This will include reviews of central government funding schemes such as the IIPDF and V which might be required for financial closure and thus impacts the PPP design of a project.
- **Indian and international best practices** – Providing inputs on best practices related to the relevant sector, and drawing inferences from these for PPP project structure proposed.
- **Finalization of institutional structures** – especially any project vehicles created for PPP process, regulatory and monitoring mechanisms proposed, etc.
- **Finalization of bid related issues** – including bid criteria, bid variables, bid evaluation mechanisms, and bid processes proposed.
- **Development of contract documentation** – including the Request for Proposal and Information Memorandum.
- **Assistance with bid process** and negotiations with short-listed bidders at relevant pre bid conferences.
- **Finalization of contracts documentation.**
- **Awareness and Consensus Building** – through participation in structuring discussion with the sponsors/ DEA / ADB / private sector bidders / financiers / end users, including disseminating best practices.

Timeframe:

9 months from the signing of this Agreement

Outputs:

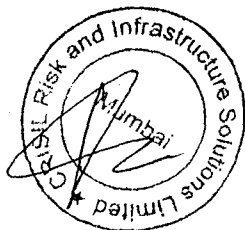
- Inputs into Report containing financial model results, final designs and final project structure.
- Inputs into Bid documents including Draft Concession Agreement.
- Inputs into Bid Process Management and Negotiation Support
- Inputs on a “need-basis” required by the Lead Transaction Advisor.

Social Impact and Safeguards Consultant

Detailed Tasks:

Likely activities required of the Social Impact and Safeguards Consultant under Stage II will include:

- Will review project impact analysis reports, and where appropriate improve these as required to provide due impact analysis reports to ensure that the project is in compliance with ADB's *Involuntary Resettlement Policy (1995)*, *OM Section F2 (2003)* and *"Handbook on Resettlement: A Guide to Good Practice" (1998)*, *ADB Policy on Indigenous People*
- The analysis will ensure timely and correct project classification by (i) discussing with the project team leader the key involuntary resettlement (IR) concerns that should be properly addressed in the IR checklist, and (ii) key impacts, if any, on Indigenous people (iii) preparing the IR & IP checklist and filling in the project categorization form and submitting the same for endorsement by RSES



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- Will include feedback from appropriate due diligence ground visits to review the project and location, discussions on project sponsor commitment to comply with ADB's IR and IP safeguard requirements, and evaluate the institutional capacity to prepare and implement resettlement plans and monitor resettlement implementation
- Recommend appropriate IR safeguards to be integrated into the project design and preparation of resettlement planning documents
- Ensure that proposed projects comply with ADB's IR and IP safeguard requirements (i) reviewing client's draft resettlement plans, resettlement frameworks, summaries ensuring that projects meet procedural and public disclosure requirements, (ii) discuss the suggested improvements with the project TAS team, consultant or client, assist them in integrating the improvements into project design, and documenting these in relevant resettlement planning documents; (iii) if needed, undertake census survey and update the information for preparation of resettlement plan (iv) assist client in formulating disclosure of RP (v) finalization of RP documents.
- Assist TAS team leader as requested

Timeframe:

9 months from the signing of this Agreement

Outputs:

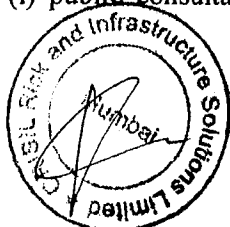
- Inputs into Report containing financial model results, final designs and final project structure.
 - Approval of school designs from a social safeguards' perspective
- Inputs into Bid documents including Draft Concession Agreement.
- Inputs into Bid Process Management and Negotiation Support
- Recommendation of appropriate IR safeguards to be integrated into the project design and preparation of resettlement planning documents
- Inputs on a "need-basis" required by the Lead Transaction Advisor.

Environmental Safeguards Consultant

Detailed Tasks:

Likely activities required of the Environmental Safeguards Consultant under Stage II will include:

- Will review existing project environmental impact reports, if any, and develop these reports as to provide an ADB compliant impact assessment of the project; the analysis will therefore reconfirm the environmental categorization screening in accordance with ADB's Environment Policy
- Based on the categorization, review, develop or finalise the project's (Category A projects) Initial Environmental Examination (IEE) per *ADB Environmental Assessment Guidelines (2003)*, or (for Category A projects) an Environmental Impact Assessment (EIA) per *ADB Environment Policy (2003)*, and Appendix 2 of the *ADB Environmental Assessment Guidelines (2003)*
- Will prepare if necessary, an environmental assessment and review framework (EARF) to guide environmental assessment of future Stages
- Will assist the project's TAS team leader in ensuring adequate attention is given to the following: (i) public consultation, (ii) collection and dissemination of project-specific



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and quantitative information, wherever available, on potential environmental impacts (both positive and negative) and proposed suitable mitigation measures, (iii) evaluation of executing and implementing agencies' capabilities for implementing environmental mitigation measures and where necessary proposing a training program for improving capacity, and (iv) preparation of summary initial environmental examinations and environmental impact assessments

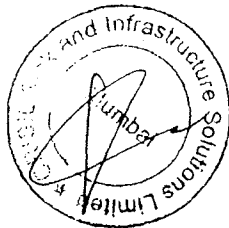
- Will include appropriate contractor specifications for the bid evaluation and project monitoring framework to ensure environmental issues are addressed during project implementation

Timeframe:

9 months from the signing of this Agreement

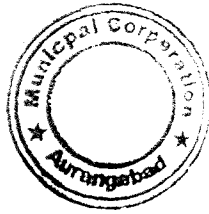
Outputs:

- Impact assessment report of the Project and compliance with ADB Environmental Policy
- Preparation of an environmental management plan (EMP) as per ADB standards.
- Inputs on a "need-basis" required by the Lead Transaction Advisor.



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Technical Consultant

Detailed Tasks:

Likely activities required of the Technical Consultant under Stage II will include:

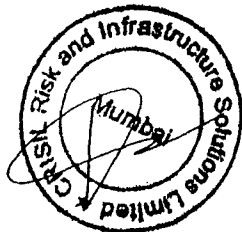
- Will review and update any pre-feasibility technical analysis, with a view to reconfirm or recommending the technical validity / viability of the project. This will include verifying assumptions for project design such as population coverage, loss level, national policy guidelines, current and projected demand levels for project output, design criteria and standards, capacity, prevailing topographical and other conditions, etc.
- Will finalize a) technical design aspects and related cost estimates
- To verify quantities and rates for major civil works, equipment, construction and supervision consulting, and other input items
- To verify and develop projected operation and maintenance (O&M) costs for the project
- To review and quantify costs and benefits from the project, and confirm the project design is on a least cost basis in financial and economic terms
- Assist the financial and economic analysis with project rationale analysis, project cost (CAPEX and O&M) inputs, required contingency levels, and any other information as requested


Timeframe:

9 months from the signing of this Agreement

Outputs:

- Inputs into Report containing financial model results, final school designs and final project structure.
 - Recommendation of final project designs
 - Recommendations on alternative revenue streams
 - Recommendations on technical validity/viability of the Project
 - Confirmation on Capex and Opex estimates assumed in the financial model
- Inputs into Bid documents including Draft Concession Agreement.
- Inputs into Bid Process Management and Negotiation Support
- Inputs on a "need-basis" required by the Lead Transaction Advisor.




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