



GOVERNMENT OF KERALA

Abstract

Local Self Government Department - Development of Integrated Solid Waste Management Project with Waste to Energy plant in the state - Inter LSGI Agreement - Approved - Orders issued

LOCAL SELF GOVERNMENT (WM) DEPARTMENT

G.O.(Rt)No.1385/2022/LSGD Dated,Thiruvananthapuram, 04-06-2022

(1) Letter No. KSIDC/TVM/W2E/2019/1999 dated 02.12.2019
Read from the Managing Director, KSIDC

(2) Letter No. KSIDC/TVM/WtE/2022/203 dated 25.04.2022
from the Managing Director, KSIDC

ORDER

As per letters read above Managing Director, KSIDC submitted the draft Inter LSGI Agreement to be executed for the development of Integrated Solid Waste Management Project with Waste to Energy Plant (WTE) in the State. WTE projects are currently in various stages of development, finalisation and execution in major cities of the State, and will be servicing their adjoining LSGs and other peri urban areas as well.

2. Government have examined the matter in detail and are pleased to approve the Inter LSGI Agreement enclosed with this Government Order for the development of such Integrated Solid Waste Management Project with Waste to Energy Plant for execution by all local self Governments who fall within the purview of the concerned project.

(By order of the Governor)
SARADA MURALEEDHARAN I A S
ADDITIONAL CHIEF SECRETARY

To:
The Managing Director, KSIDC
The Principal Accountant General (A&E) / (Audit I) / (Audit II),
Kerala, Thiruvananthapuram.

The Executive Director, Information Kerala Mission.
The I&PR (Web & New Media) Department.
Stock File / Office Copy

Forwarded /By order

Signed by Sherin J Titus

Date: 06-06-2022 11:03:14
Section Officer

Copy to :- PS to Minister LSGD
PA to ACS, LSGD
CA to Special Secretary, LSGD

INTER LSGI AGREEMENT

FOR

**CLUSTER LEVEL MUNICIPAL SOLID WASTE MANAGEMENT
[PROJECT DEVELOPMENT, IMPLEMENTATION AND OPERATION &
MANAGEMENT]**

BETWEEN

GOVERNMENT OF KERALA

AND

KERALA STATE INDUSTRIAL DEVELOPMENT CORPORATION

AND

..... MUNICIPAL CORPORATION

AND

.....MUNICIPALITY

AND

.....MUNICIPALITY

AND

..... MUNICIPALITY

AND

.....GRAMAPANCHAYATH

AND

..... GRAMAPANCHAYATH

AND

..... GRAMAPANCHAYATH

.....Date/ Month / Year

INTER LSGI AGREEMENT

THIS Inter LSGI Agreement (hereinafter referred to as "Agreement") is made on this the [●]th day of [●], AT THIRUVANTHAPURAM, KERALA

between:

the Government of Kerala, hereinafter referred to as "Authority" which expression shall unless it be repugnant to the context or meaning thereof, be deemed to include its successors and assigns represented by, Local Self Government Department, Government of Kerala.

and

Kerala State Industrial Development Corporation, a company wholly owned by Govt. of Kerala, incorporated under the Companies Act 1956, hereinafter referred to as "KSIDC", which expression shall unless it be repugnant to the context or meaning thereof, be deemed to include its successors and assigns represented by its Managing Director, {having its Registered Office at T.C. XI/266, Keston Road, Kowdiar, Thiruvananthapuram, Kerala 695003;

and

..... Municipal Corporation, established under the provisions of the Kerala Municipality Act, 1994, hereinafter referred to as "PLB 1", which expression shall unless it be repugnant to the context or meaning thereof, be deemed to include its successors and assigns represented by its [●] having its principal office at [●], Kerala [●];

and

..... Municipality, established under the provisions of the Kerala Municipality Act, 1994, hereinafter referred to as "PLB 2", which expression shall unless it be repugnant to the context or meaning thereof, be deemed to include its successors and assigns represented by its [●] {having its principal office at [●], Kerala [●]};

and

.....Municipality, established under the provisions of the Kerala Municipality Act, 1994, hereinafter referred to as "PLB 3", which expression shall unless it be repugnant to the context or meaning thereof, be deemed to include its successors and assigns represented by its [●] having its principal office at [●], Kerala [●];

and

..... Municipality, established under the provisions of the Kerala Municipality Act, 1994, [(hereinafter referred to as "PLB 4", which expression shall unless it be repugnant to the context or meaning thereof, be deemed to include its successors and assigns)]; represented by its [●] having its principal office at [●], Kerala [●]

and

.....Grama Panchayath, established under the provisions of the Kerala Panchayath Raj Act, 1994, hereinafter referred to as "PLB 5", which expression shall unless it be repugnant to the context or meaning thereof, be deemed to include its successors and assigns; represented by its [●] having its principal office at [●], Kerala [●]

and

..... Grama Panchayath, established under the provisions of the Kerala Panchayath Raj Act, 1994, hereinafter referred to as "PLB 6", which expression shall unless it be repugnant to the context, be deemed to include its successors and assigns; represented by its [●] having its principal office at [●], Kerala [●]

and

..... Grama Panchayath, established under the provisions of the Kerala Panchayath Raj Act, 1994, hereinafter referred to as "PLB 7", which expression shall unless it be repugnant to the context or meaning thereof, be deemed to include its successors and assigns; represented by its [●] having its principal office at [●], Kerala [●]

"Authority", "KSIDC", "PLB 1", "PLB 2", "PLB 3", "PLB 4", "PLB 5", "PLB 6" and "PLB 7" shall individually be referred to as "party" and collectively as "Parties".

WHEREAS,

the Parties are mandated together for discharging their obligations under Kerala Municipality Act 1994, Kerala Panchayat Raj Act 1994, Solid Waste Management Rules 2016, and Plastic Waste Management Rules 2016, which are prevalent and modified from time to time.

AND WHEREAS Government of Kerala, vide G.O (Ms) No 82/2018/LSGD dated 11/06/2018 (attached as Schedule I) has decided to implement a cluster based integrated solid waste management project with a waste to energy plant at in the State of Kerala to meet its obligations for clean Kerala,

AND WHEREAS the Local Self Government Department, Government of Kerala hereinafter referred to as ("Department") is desirous of implementing such cluster based integrated solid waste management project in DBFOT basis by seeking private sector participation on Public Private Partnership ("PPP") mode by inviting Proposals for setting up of an integrated solid waste management project with a waste to energy plant and appointed KSIDC as the nodal agency for implementing, supervision and monitoring of the Project;

AND WHEREAS, KSIDC is the premier Government agency working for industrial and investment promotion in Kerala, with a mandate to promote, facilitate and finance large and medium scale industries and catalyzes the development of physical and social infrastructure required for industrial growth in the State. KSIDC has been appointed for managing all project development, administration and monitoring aspects of waste-to-energy projects in PPP mode in collaboration with Local Self Government Institutions hereinafter referred to as ("LSGI"s) vide G. O. (Ms) No. 82/ 2018/ LSGD dated June 11, 2018

AND WHEREAS, all the Grama panchayats and Local Bodies under clause 930 of section 3 of Solid Waste Management Rules, 2016, are bound to manage Solid Waste within their territorial boundary under the same rules also under Section 326 of the Kerala Municipality Act 1994, it is the obligatory function of Municipalities to manage collection and disposal of solid waste. Under Section 219A of the Kerala Panchayat Raj Act 1994, it is the obligatory function of Grama panchayats to manage collection and disposal of solid waste and under Section 6 and 7 of the Plastic Waste Management Rules 2016, it is the obligatory function of Local Bodies and Gram Panchayats respectively to manage collection and disposal of plastic waste;

AND WHEREAS, the Parties are presently providing Solid Waste Management hereinafter referred to as ("SWM") services in their respective territorial boundary and resources are deployed by respective Parties for the SWM services. However, Parties desires that the present service of waste collection, transportation, processing and disposing of waste at sanitary landfill site be improved, in order to comply with the above Acts and rules;

AND WHEREAS, the objective of Parties are to develop and implement a viable & environmentally sustainable integrated solid waste management system in Cluster (hereinafter referred to as the "Project"). Parties desires that its SWM system shall be a 'model system' for the Country, which would scientifically collect, transport, process and dispose of solid waste, have maximum recycling and recovery, and create public awareness and participation through a Public Private Partnership (PPP) format, on Regional level;

AND WHEREAS, the Parties intend to implement integrated SWM project with Waste to Energy facility through a private developer/operator selected through competitive bidding process and allow the selected private operator to operate on an exclusive basis. The scope of work shall include transportation, segregation, processing, and management of common engineered sanitary landfill facility at the location (more fully described in Schedule II);

AND WHEREAS, as per the Concession Agreement executed between Concessionaire, Authority, KSIDC and PLBs; the Project shall be implemented by selected private developer (or Concessionaire).

AND WHEREAS, it is also envisaged that Government of Kerala, make all kind of payments except power tariffs through KSIDC to the Concessionaire. This agreement is being executed as per the provisions of clause 2.6.1 and 2.6.2 of the Concession Agreement executed on between the Concessionaire, Authority, KSIDC and PLB's. In order to set out proper arrangements to carry out its obligations under the concession agreement, it is necessary and expedient that the Parties agree to undertake certain activities related, to entering into contractual arrangements with the Concessionaire and to do all other acts and deeds to effectively and efficiently implement the Project.

NOW, THEREFORE, the parties desire to enter into these presents to record the terms, conditions and covenants mutually agreed to by them for this purpose as set forth herein:

DEFINITIONS AND INTERPRETATION

In this agreement the following words and expressions shall unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them hereafter

"Agreement" means this agreement between Parties, including its schedules and includes any amendments and hereto in accordance with the provisions hereof.

"Concession Agreement" means the Agreement executed on, between the Authority, KSIDC, PLBs and Concessionaire selected through a transparent bidding process for the purpose of development and operation of the integrated solid waste management project with a waste processing capacity of TPD for the....cluster atin district.

"Concessionaire" means incorporated as Special Purpose company under the companies act 2013 for implementing the project as per the provisions in the tender document by the selected bidder.

"Designated Bins" means the collection bins placed by the Concessionaire at locations recommended by the Concessionaire and approved by respective PLB for receiving the Primary Collection & Transportation of Solid Waste undertaken by the PLB's within the Project Area; as defined in the Concession Agreement;

"Encumbrances" means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest or other obligations and shall also include physical encumbrances, including utilities both under and above the ground and encroachments on the site;

"Event of Default" means: non compliance to the terms and condition set out in this agreement; or any conditions affecting the performance of Party;

"Escrow Account(s)" The special bank account opened between (1) Concessionaire and KSIDC to be called Escrow Account (B); (2) PLBs and KSIDC to be called Escrow Account (A) for the exclusive purpose of financial transaction or obligation related to project;

"Escrow Agreement" means the agreement signed between Parties or Party and Concessionaire for opening of Escrow Account (s);

"Financial Year" means the period commencing from April 1st on any given year to March 31st;

"GOI" means the Government of India;

"Government Agency or Competent Authority" shall mean Government of India, Government of Kerala, or any State Government or Governmental Department, Commission, Board, Body, Bureau, Agency, Authority, instrumentality, court or other judicial or administrative body, Central, State or local, having jurisdiction over Concessionaire, the Site/Project Facilities or any portion thereof, or the performance of all or any of the services or obligations of Concessionaire under or pursuant to this Agreement;

"Immovable Assets" means civil infrastructure, land and other stationary electro mechanical equipment/machinery owned by the PLBs and are either being used or intended to be used for the purpose of rendering SWM service;

"Concession Period" means the period of 27 years starts from the compliance date during which the Concessionaire is authorised to implement the Project on DBFOT basis including management of all facilities and resources required for integrated management of Solid Waste with provisions detailed in the Concession Agreement executed onfor the development of Integrated Solid Waste Management Project with Waste to Energy Plant atin district;

"Integrated Solid Waste Management Facility or ISWM Site or ISWM Facility" means the site allocated for waste segregation, material recovery, processing and disposal of inert.

"Land Fill Site" or "Sanitary Land Fill" means the Facility that shall be constructed, operated and maintained as part of the ISWM Facility, for managing the Residual Inert Matter;

"Letter of Award or LoA" means the letter of award issued by KSIDC to the Technically Qualified bidder who has quoted the lowest Tipping Fee complying with all the provisions of RFP and that bidder has been invited through a letter to sign the Concession Agreement;

"PLB" means Local Self Government Institution(s) or Public Local Bodies who are Parties to this agreement; ie. Municipal Corporation,Municipality, Municipality, Municipality, Grama Panchayath, Grama Panchayath and Grama Panchayath;

"Minimum Assured Quantity" shall have the meaning as per clause 7.1 (f) of the Concession Agreement;

"MSW" or Municipal Solid Waste or Solid Waste" means solid waste generated within the limits of Participating Local Bodies which includes waste generated by households, public utility services, agricultural farms/ poultry & dairy farms, commercial establishments and industries located within the jurisdiction of PLBs and shall include solid waste and organic waste.

"MSW Supply Area/ Project Area" means the area presently under the boundaries of the following PLB's or any extension thereof during the Concession period.

"MSW Quantity" means MSW generated per day in the MSW Supply Area;

"Municipal boundaries" means the present area under municipal jurisdiction of respective Parties as notified by GoK;

"Plant" means the ISWM Facility;

"PMC" means the agency appointed by Authority / KSIDC, the designated nodal agency on behalf of Authority for the overall supervision of implementation, operation and maintenance of the project by the Concessionaire.

"Project" means the project for enabling primary & secondary waste collection, transportation, material recovery, processing and disposal of MSW and for that purpose to design, develop, finance, construct, operate and maintain the Plant, under and in accordance with the terms and provisions of the Concession Agreement.

"Project Facilities" means, as the context may require either all or one or more of the following: (i) Primary & secondary Collection (ii) transportation inclusive of transfer stations [if any] (iii) the Site (iv) the individual facilities comprising the segregation/material recovery/processing, inert & residual management facility;

"Project Monitoring Unit" (PMU) or "PMU" means the unit set up by the Authority / KSIDC as specified in Article 4.1 of the Concession Agreement to monitor and supervise the activities of the Concessionaire;

"RFP" shall mean Request for Proposal document issued by KSIDC to the Qualified Bidder asking to submit the Technical Proposal and Financial Proposal.

"Rupees or Rs" refers to the lawful currency of the Republic of India;

"Site" means the land admeasuring about hectare located at

"Successful Bidder" means the entity selected by Authority through KSIDC, the designated nodal agency through a competitive bidding process for implementing and managing the project;

"Tender" means the public notice issued by KSIDC, the designated nodal agency on behalf of Authority for selecting a private partner for the development of an integrated solid waste management project with a waste to energy plant at, in district. ;

"Tipping fee" means the fee to be paid to the concessionaire for the secondary collection, transportation, treatment and disposal of per tonne of solid waste within the project cluster

" User Charges" means the charge to be collected from the beneficiaries of Project by the Parties in their respective administrative area

"Waste generators" means all residential, commercial, institutional and industrial establishments generating Solid Waste and located within the project area;

"Weighbridge" means the electronic weighbridge capable of performing the operations to meet the Concessionaire obligations as specified in Article 5 of the Concession Agreement executed on between Authority, KSIDC, Participating Local Bodies and the Concessionaire. .

1. COMMENCEMENT AND DURATION

1.1 This Agreement shall be effective from the date hereof and shall remain effective till the date of expiration of Concession Agreement.

1.2 This Agreement shall be integral part of the Concession Agreement signed on between the Authority, KSIDC PLBs and the Concessionaire.

2. ROLE OF AUTHORITY

2.1 Govt of Kerala (Authority) acting through, the Department, shall keep KSIDC indemnified with such budgetary support so as to ensure the payment of Tipping Fee or any other payments so that the terms of the Concession Agreement do not inflict any liability on KSIDC.

2.2 In case of any dispute between PLBs, or between PLBs and KSIDC, the same shall be resolved amicably, as specified in the clause 11 of the agreement and if the dispute persists then decision of Govt of Kerala (Authority) shall be binding on the disputing Parties.

2.3 Authority, acting through the Department, shall give payment guarantee to the Concessionaire,

2.4 In case of any default in payment of penalties by one or more PLB(s) to KSIDC, for onward payment to Concessionaire; then in such case, Authority shall pay directly to the Concessionaire the shortfall and the same amount shall be deducted from the payment due to the PLB by the Authority from any other source, however this provision shall be exercised by Authority under exceptional circumstances.

2.5 The parties recognize that Authority may enforce terms and condition for the project development and financial sustainability of the project and, in such eventuality, the

directives of Authority shall be binding on Parties.

- 2.6 The Authority / KSIDC shall appoint a PMC and shall inform other parties in writing. PMC shall inter-alia be responsible for overall monitoring and supervision of the Project.

3. ROLE OF KSIDC

- 3.1 It is agreed between the Parties that the contractual documents including RFP issued for selection of private entity for the Project shall reflect that KSIDC is responsible to monitor the performance of the Concessionaire under the contractual arrangements. Accordingly, the other Parties to this Agreement do hereby nominate KSIDC who shall be responsible to undertake all necessary activities including those set out in this clause for implementing the Project in accordance with applicable provisions of law and guidelines issued by Government of India / Government of Kerala from time to time.
- 3.2 The selected bidder has accepted the Letter of Award issued by KSIDC and has incorporated an SPV in the name under the Companies act 2013 with(registration number) and has executed the Concession Agreement with the Authority, KSIDC and participating PLB's in the project cluster on
- 3.3 After signing of Concession Agreement with the Concessionaire, KSIDC shall open Escrow Account with Concessionaire [for this Agreement it is to be called Escrow Account (B)] as per the condition set out in schedule of Concession Agreement related to Escrow Agreement, and all the payment to Concessionaire shall be made through this account.
- 3.4 Escrow Account (B) will be operated under the provisions of Escrow Agreement between the Concessionaire and KSIDC. However, Escrow Account related details will be circulated to PLBs through PMU on regular basis.

4. ROLES & RESPONSIBILITY OF PLBs

Collection & Transportation

- 4.1 The PLBs will nominate their respective staff to co-ordinate with the PMU and Concessionaire for ensuring efficient and timely primary collection and transportation of Solid Waste from the waste generators to the designated Secondary Bins in their respective geographical boundary/administered area as per the Concession Agreement.
- 4.2 PLBs shall endeavour to bring to the notice of the PMU any deficiency on the part of the Concessionaire as per the Service Level Benchmarks of the Concession Agreement.

Minimum Assured Quantity & Penalty on shortfall

- 4.3 With reference to the total Minimum Assured Quantity of MSW from the cluster, as per the Concession Agreement, each PLB's shall ensure the following Minimum Quantity of MSW from their PLB.

PLB	Minimum Quantity (TPD)
1.....Municipal Corporation	
2.Municipality	

3.Municipality	
4.Municipality	
5. Gramapanchayath	
6. Gramapanchayath	
7.Gramapanchayath	
Total	

- 4.4 The PLBs shall provide a minimum tonnage of ...Tonnes Per Day (TPD) of total Solid waste other than excluded waste from project areas of PLBs to the Concessionaire on all days of the year during concession period. In case the PLBs fails to ensure the minimum assured quantity as set under this Agreement, as evidenced by measurement at the weighbridge checked daily by PMU and/or Concessionaire, the Concessionaire shall be liable to claim penalties for non-fulfilment/ damages, calculated at 25% of the corresponding year Tipping fee per ton for each ton of shortfall. The penalty shall be payable only if the monthly average of quantity received at the site is below 90% of assured quantity.
- 4.5 In case of shortfall of total tonnage from 90% of the above Minimum Quantity, the defaulting PLBs shall deposit respective monthly penalty cost if any, in the Escrow Account (A) within 15 days of receipt of invoice from the PMU in this regard, based on the documentary proof from the Concessionaire's Weighbridge submitted by PMU. The penalty cost for shall be 25% of the corresponding year Tipping Fee, per ton of shortfall.

Transfer of Asset of PLBs

- 4.5 PLBs shall hand over to the Concessionaire land and immovable assets free of all encumbrances for the project purpose for development of Secondary Collection Points.
- 4.6 The PLBs hereunto have agreed that after signing Concession Agreement the SWM services will be provided by Concessionaire. To this end, PLBs may handover its immovable assets related to SWM to the Concessionaire during the subsistence of Concession Agreement as per the Schedule III of this Agreement, however the ownership of the assets will continue to remain with respective PLBs unless otherwise stated differently.
- 4.7 PLB may bill user charges i.e. distribute invoices to user; for funding its Primary Collection responsibilities. PLBs may appoint independent agency or third party for collection of User Charges.

5 JURISDICTION & COMPLIANCE WITH APPLICABLE LAW

- 5.1 This Agreement shall be governed by relevant provisos of Indian Contract Act, 1872 (9 of 1872) Arbitration and conciliation Act, 1996 (26 of 1996), Concession Agreement entered with the(SPV), Kerala Municipality Act, 1994 (20 of 1994), Kerala Panchayat Raj Act, 1994 (13 of 1994), Solid Waste Management Rules, 2016, and Plastic Waste Management Rules, 2016, relevant Court Judgment and any relevant order/ instructions issued by statutory organisation/ competent authority.

6 WAIVER

- 6.1 Waiver by either Party of any default by the other Party in the observance and

performance of any provision of or obligations or under this Agreement:

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

6.2 Neither the failure by either 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 a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

7 AMENDMENTS

7.1 This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the Agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless agreed to by all the Parties hereto and evidenced in writing.

8 NOTICES

8.1 Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term, breach of any term of this Agreement and termination of this Agreement, shall be in writing and shall be given by hand delivery through courier or Department of Post, email, facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

.....
Local Self Government Department,
Government of Kerala

Managing Director
Kerala State Industrial Development Corporation
T.C. XI/266, Keston Road, Kowdiar,
Thiruvananthapuram, Kerala 695003

Municipal Secretary
.....

Municipal Secretary
.....

Municipal Secretary
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Municipal Secretary
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Panchayath Secretary
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Panchayath Secretary

.....
Panchayath Secretary
.....

9. FORCE MAJEURE

- 9.1 For the purposes of this Agreement, the expression "Force Majeure" means an event, act, or circumstances, or combination of events, acts or circumstances, which materially and adversely affects the affected Party's performance of its obligations pursuant to the terms of this Contract, but only if and to the extent that such events, acts or circumstances are beyond the reasonable control of the affected Party, were not the fault of the affected Party, were not reasonably foreseeable at the time of execution of this Contract and could not have been prevented or overcome or mitigated by the affected Party through the exercise of Good Design, Engineering and Construction Practices.
- 9.2 Force Majeure includes, but is not limited to non- Statutory / non-administrative Events such as epidemic, extremely adverse weather conditions, lightning, earthquake strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission if any of them) interrupting Project development/ implementation and Statutory / administrative events such as Change in Law, Compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors etc.
- 9.3 Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:
- (a.) the nature and extent of each Force Majeure Event which is the subject of any claim for relief with evidence in support thereof;
 - (b.) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
 - (c.) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
 - (d.) any other information relevant to the Affected Party's claim.
- 9.4 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

10. TERMINATION

- 10.1 This agreement will be co-terminus with the Concession Agreement executed between Authority, KSIDC, PLBS and the Concessionaire on and will be terminated on termination of the Concession Agreement or expiry of the Concession Period granted to

the Concessionaire as per the Concession Agreement or pursuant to Termination Notice or otherwise in accordance with the provisions of this Agreement

11. DISPUTE RESOLUTION

11.1 For the purpose of this agreement any dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to this Agreement, including those arising with regard to acts, decision or opinion of the Authority (the "Dispute") shall in the first instance be attempted to be resolved amicably. The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

11.2 The parties shall report the disputes if any being occurred during the Concession period to the competent authorities for amicable settlement. Upon such reference, the two shall meet at the earliest mutual convenience and in any event within fifteen (15) days of such reference to discuss and attempt to amicably resolve the Dispute. If the Dispute is not amicably settled within 15 (fifteen) days of such meeting between the two, then decision of Authority shall be binding on the disputing Parties.

12. LIABILITY

12.1 Each party shall be responsible for executing, performing its obligations hereunder in accordance with the provisions of this Agreement at its risk and consequence.

IN WITNESS WHEREOF, the parties have placed their respective hands and seal hereto on the day, month and year first herein above mentioned.

For and on behalf of:

..... Municipal Secretary

Witness.....

Witness.....

..... Municipal Secretary.....

Witness.....

Witness.....

..... Municipal Secretary

Witness.....

Witness.....

..... Municipal Secretary

Witness.....

Witness.....

..... Panchayath Secretary

Witness.....

Witness.....

..... Panchayath Secretary

Witness.....

Witness.....

..... Panchayath Secretary

Witness.....

Witness.....

Government of Kerala acting through Local Self-Government Department

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.....

.....
Local Self Government Department, Government of Kerala

.....

.....

.....

Managing Director
Kerala State Industrial Development Corporation
T.C. XI/266, Keston Road, Kowdiar, Thiruvananthapuram, Kerala 695003

SCHEDULE I: Government Order



GOVERNMENT OF KERALA

Abstract

Local Self Government Department- Establishing 5 MW solid Waste-to-Energy(WtE) plants on Design, Build, Finance, Operate and Transfer (DBFOT) basis through Public-Private- Partnership (PPP) - Sanction accorded- Orders issued.

Local Self Government (DC) Department

GO(Ms) No.82/2018/LSGD

Dated, Thiruvananthapuram 11.06.2018

- Read: 1. GO(Rt) No.3122/2017/LSGD dated 23/09/2017.
 2. GO(Rt) No. 499/2018/LSGD dated 21.02.2018.
 3. Minutes of the meeting convened by Hon'ble Chief Minister with concerned Ministers and Secretaries on 16.05.2018.

ORDER

Government have been continuously endeavouring to find comprehensive solutions to manage the hazardous implications from accumulation and unscientific disposal of waste and garbage in the State. Scientific management of waste by establishing comprehensive solid Waste-to-Energy (WtE) systems with minimal leachate is a solution to the problem of accumulated garbage/waste. Therefore, it is proposed to establish 5 MW solid Waste-to- Energy plants that would generate energy and reduce environmental and health hazards on Design, Build, Finance, Operate and Transfer (DBFOT) basis in Public-Private- Partnership (PPP) mode. With a view to coordinate further activities towards this end, a State Level Advisory Committee (SLAC) comprising the following members was constituted vide GO read as 1st paper above and reconstituted vide GO read as 2nd paper above:

Chief Secretary (Chairman)
 Additional Chief Secretary (Industries)
 Additional Chief Secretary (Revenue)
 Additional Chief Secretary (Labour & Skills)
 Agricultural Production Commissioner
 Law Secretary
 Principal Secretary (Finance)
 Principal Secretary (LSGD)
 Secretary (Information Technology)
 Managing Director, KSIDC (Convener)

2. Multiple meetings were held to discuss the modalities involved in setting up modern WtE plants. As a result of the discussions, a process by which a competent and qualified Concessionaire is selected through a transparent tender procedure to set up WtE plants has evolved. The bidder offering the lowest levelized tariff for the power generated from the waste processed will be allowed to set up the plant on a site to be provided by the Government. Waste generated within a radial distance of around 25-35 kms of the plant will be collected and transported by the Concessionaire and treated there; hence there will have to be binding agreements among the Concessionaire and all the local bodies that lie in the hinterland of the plant. Kerala State Industrial

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Development Corporation (KSIDC) is designated as the nodal agency to set up the WtE plants in collaboration with the Concessionaire and local bodies. While the Request for Proposal (RFP) will be floated by KSIDC and the contract with the Concessionaire executed by them, there will have to be an agreement between Government and KSIDC to compensate KSIDC for all the liabilities incurred by them on account of this operation.

3. KSIDC engaged M/s IRG Systems South Asia Pvt Ltd, based in Delhi, as Consultant for preparing RFP for selection of the Concessionaire. Feasibility reports on the land plots available with various Government departments in 8 districts were obtained from the Consultant. Reports of the District Collectors were also called for on the sites proposed by the Consultant. These reports were discussed in detail by the SLAC and the following 7 sites were found suitable for setting up WtE plants:

- 3.1. 6.07 hectares (15 acres) of land in the possession of Agriculture department (district agriculture farm and banana nursery) in Peringamala village of Trivandrum district.
- 3.2. 6.07 hectares (15 acres) of land in the possession of Thrissur Corporation at Lalur in Sy.No. 358, 359 and 361 of Aranattukara village in Thrissur district.
- 3.3. 6.07 hectares (15 acres) of land in the possession of Kerala State Electricity Board (KSEB) at Kanjikkode in Block 34, Re Sy No. 459,460, 449/1,2,3,4,5, 444/1,2,3,4,5, 461, 458/1 to 13, 448/1,2,3 & 473/1,2 of Puthussery Central village at Palakkad taluk in Palakkad district.
- 3.4. 5.12 hectares (12.67 acres) of land in the possession of Kozhikode Corporation at Njaliamparambu in Sy.No. 12/1A2 and 13 of Cheruvannur village in Kozhikode district.
- 3.5. 3.93 hectares (9.7 acres) of land in possession of Kannur Corporation at Chelora in Sy. Nos. 6/1A, 6/1B and 6/2 of Chelora village of Kannur district.
- 3.6. 2.85 hectares (7.05 acres) of land in the possession of Kollam Corporation at Kureepuzha in Sakthikulangara, Kollam West & Thrikkadavoor villages of Kollam district which is not covered under CRZ norms.
- 3.7. 4.04 hectares (10 acres) of land in the possession of KSIDC at Panakkad in Sy No. 204/1,2 of Panakkad village in Malappuram district.

4. Government have examined the matter in detail and hereby accord sanction for setting up 5 MW solid Waste-to-Energy (WtE) plants at the above 7 sites in Thiruvananthapuram, Thrissur, Palakkad, Kozhikode, Kannur, Kollam and Malappuram on Design, Build, Finance, Operate and Transfer (DBFOT) basis, in Public-Private- Partnership (PPP) mode as per the proposal at para 2 above. KSIDC is entrusted to float an RFP with the following broad terms and conditions, for the selection of a suitable Concessionaire to set up WtE plants in the above 7 sites:

4.1. The RFP may specify the role of the Concessionaire to include collection of waste, transportation to the site, weighing, segregation and processing thereof to produce electrical energy.

4.2 The payment to the Concessionaire for their services will be in terms of payment for the energy produced by the WtE plant. The bidder who offers the lowest energy tariff for the entire process that is outlined above will be selected

for the contract. The concession agreement will contain the time period, amount payable, interest payable, terms regarding protection of Concessionaire interest and so forth.

4.3. The Government may ensure, through policy directives, that all power produced in the plant is purchased by Kerala State Electricity Board (KSEB) at the rate fixed by the Kerala State Electricity Regulatory Commission (KSERC).

4.4. It is possible that the amount quoted by the lowest bidder may exceed the rate fixed by the KSERC. This differential amount shall be paid by the KSIDC to the Concessionaire and the same shall be reimbursed to KSIDC by the participating local bodies, and in case they fail to do so, by the State Government.

4.5. Government will keep KSIDC indemnified with such budgetary support so as to ensure that the operations done on behalf of Government do not inflict any liability on KSIDC. Adequate budgetary allocation shall be made in the Plan head of Local Self Government Department-the grant for local bodies, for this purpose each year.

4.6. The RFP will seek offers from bidders or consortium of bidders, who have experience in designing and developing and /or operating at least a 1 MW WtE plant for minimum period of one year.

4.7. The net worth of the bidder shall be at least Rs.25 crores.

4.8. If the bidder is a single specified entity, the stipulated criteria shall be fulfilled by the bidder either by itself individually, or as a member of a consortium/ Special Purpose Vehicle (SPV) wherein its share of ownership is not less than 26% held directly or through its affiliate, parent or subsidiary.

4.9. The Concessionaire may be permitted to disinvest up to 49% of his/her stakes after 5th anniversary of date of commencement of commercial operation of the plant (COD). A minimum of 51% of his/her stakes shall be held by the bidder till the 10th anniversary, after which further divestment/ disinvestment will be allowed.

4.10. Concessionaire may attempt to maximise their revenue through resource recovery from the collected waste. To this end they shall segregate the waste collected and utilize for resource recovery through reprocessing facilities directly or indirectly within the allotted site. Such activities shall be at the risk and cost of the bidder and they may retain all the income from such activities.

4.11. Construction and Demolition (C&D) waste: There will not be any express ban on collecting C&D waste in the RFP document.

4.12. 10-15 acres of land may be offered on lease for 27 years, including two years for project planning and implementation, on nominal terms.

4.13. The Concessionaire may be permitted to mortgage the leasehold rights on the land for the concession period for raising finance to establish and operate the plant.

4.14. The RFP may not specify that bidders will quote any particular process; instead it will only specify that the process deployed shall be compliant with pollution control standards for air, water and land as per Central Pollution Control Board (CPCB) & State Pollution Control Board (SPCB) rules and norms. The RFP will specify that the process deployed shall not give out leachate beyond a specified level, and that the leachate shall be treated as per CPCB standards. Similarly, it will state that the residual waste from the process that may be used for landfill shall not exceed 10% and the bidder shall try to bring down this percentage to zero.

4.15. The participating local bodies shall sign an undertaking with KSIDC agreeing to make available a minimum amount of solid waste for collection by the Concessionaire from their respective jurisdictions for the concession period, and pay penalty at the rate of Rs.1500/- per tonne, if there is a shortfall of more than 10% from the monthly average of committed quantity.

4.16. The qualification norms for opening of financial bid shall be as under:

4.16.1. Number of years that the bidder has experience in successfully operating WtE plants above the eligibility norms.

4.16.2. Number of WtE projects above the eligibility norms implemented during the past five years.

4.16.3. Energy produced in units in the last financial year from the WtE projects implemented by the bidder

4.17. The dispute resolution mechanism shall be mediation and arbitration. Only courts in Kerala shall have jurisdiction.

4.18. The RFP should specify that it will be the responsibility of the Concessionaire to ensure that the WtE plant is compliant with all laws of the land at all times.

5. Sanction is also accorded to the Municipal Corporations of Thrissur, Kozhikode, Kannur and Kollam to lease the lands in their possession, as mentioned at para 3 above for establishing 5MW solid Waste-to-Energy (WtE) plants on DBFOT basis in Public-Private- Partnership (PPP) mode, through KSIDC and to permit KSIDC to sublease the lands to the Concessionaire for 27 years, with permission to mortgage the leasehold rights on the lands for raising funds for this project only.

6. Sanction is also accorded to the Agriculture department and Kerala State Electricity Board Ltd to transfer fifteen (15) acres of land from the lands currently in their possession at Peringamala in Thiruvananthapuram district and Kanjikode in Palakkad district, respectively, as mentioned at para 3 above, to the Industries Department for

granting it on lease to KSIDC for subleasing to the Concessionaire for 27 years, with permission to mortgage the leasehold rights on the land for raising funds for this project only.

7. Sanction is further accorded to KSIDC to lease out 10 acres of land in its possession at Panakkad in Malappuram district, as mentioned at para 3 above, to the Concessionaire for 27 years, with permission to mortgage the leasehold rights on the land for raising funds for this project only.

(By Order of the Governor)
Tom Jose
Additional Chief Secretary

To

The District Collectors:
Thiruvananthapuram/Kollam/Thrissur/Palakkad/Kozhikode/Kannur/Malappuram
The Chairman, Kerala State Electricity Board Limited.
The Principal Accountant General (Audit)/(A&E), Kerala.
The Managing Director, KSIDC.
The Director of Urban Affairs.
The Director, Agriculture Department.
The General Administration (SC) department
The Power Department.
The Industries Department.
The Agriculture Department.
The Revenue Department.
The Labour and Skills Department.
The Information Officer, I&PRD (Web & New Media)
The Executive Director, Information Kerala Mission.
Stock File / Office Copy.

Forwarded/By Order

(Signature)
Section Officer

SCHEDULE-II: SCOPE OF SERVICES OF THE CONCESSIONAIRE

The Concessionaire shall:

- (a) perform and fulfill all of the Concessionaire's obligations with respect to the Project set out in the Concession Agreement executed on For the development of Integrated Solid Waste Management Project with Waste to Energy Plant atin..... district. ;
- (b) to comply with the time lines for setting up the plant, collection of waste etc. as set forth in the Concession Agreement and its schedules.
- (c) obtain all Applicable Approvals as required by or under the Applicable Law and be in compliance thereof at all times during the Concession Period;
- (d) comply with Applicable Law (including without limitation all public and labour related laws and health, safety, and sanitation laws, as then in force) governing the operations of Project at all times during the Concession Period;
- (e) endeavour to improve the ancillary conditions and infrastructure related to the Project including assistance to informal recycling workers, procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project;
- (f) right to enter into sub-contracts for the purposes of and subject to the terms of this Agreement;
- (g) develop, construct and operate the Sanitary Landfill Site at the allocated site in conformance with the terms of Concession Agreement for disposal of Residual Inert Matter and Rejected Waste and dispose not more than 10% (Ten percentage) of waste processed;
- (h) make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of its obligations under the Concession Agreement and shall be solely responsible for compliance with all labour laws and be solely liable for all possible claims and employment related liabilities of its staff employed in relation with the Project and hereby agrees to keep the PLBs indemnified against any claims, damages, expenses or losses in this regard and in no case and for no purpose shall the PMU/ Authority and/ or any of the PLBs be treated as the employers of the Concessionaire, in this regard;

- (i) be responsible for all the health, security, environment and safety aspects of the Project at all times during the Concession Period;
- (j) ensure that the Project remains free from all encroachments and take all steps necessary to remove encroachments, if any;
- (k) upon receipt of a request thereof, afford access to the Project to the authorised representatives of the PMU/ Authority for the purpose of ascertaining compliance with the terms, covenants and conditions of Concession Agreement ;
- (l) bear all expenses towards uniforms, safety gear and waste handling equipment to all the waste lifters and drivers;
- (m) ensure that the project is operational on all calendar days of the year;
- (n) be responsible for the conduct of its staff employed for this project while on duty;
- (o) shall obtain approval from transport department as applicable and obtain fitness certificate for the vehicles each year before the due date and shall bear any cost or expense associated with this;
- (p) to operate, maintain, repair and renovate the project assets and project facilities, in accordance with, *inter alia*, the Applicable Laws, Applicable Approvals and the requirements;
- (q) submit the Operational Plan to the PLBs at least 1 month before proposed Commencement Date and get the same approved;
- (r) commence Secondary collection and transportation of the Solid Waste from the Designated Bins and collection points within the project area at least 30 days prior to COD;
- (s) intimate to the PMU and the PLBs the date of commencement of the Secondary Collection and Transportation ("Commencement Date") at least 2 weeks in advance, and place the Designated Bins at the locations at least 2 (two) days before actual date of commencement of Secondary Collection and Transportation Services;
- (t) procure, acquire and put into place at its own cost and expenses all the project assets and project facilities required by the Concessionaire to implement the project during the Pre- COD Period so as to achieve COD within the time stipulated in the Concession Agreement ;

- (u) promptly rectify and remedy any defects or deficiencies, if any pointed out by the PMU in the Inspection Report and furnish a report within the stipulated time period in respect thereof to the PMU;
- (v) comply with all the performance parameters as specified in Service Level Benchmarks, set forth in Schedule 2 of the Concession Agreement ;
- (w) to carry out all necessary test(s) and get the approvals as per Applicable Law and in conformity with Good Industry Practices, prior to achieving COD;
- (x) pay all taxes, duties and outgoings, including utility charges relating to the project;
- (y) transfer the project to the Authority upon expiry or early termination of the Concession Agreement in accordance with the provisions thereof;
- (z) provide live GPS feed of movement of transportation vehicles, camera feeds at weighbridge of Project Site to the PMU, as and when sought by the PMU;
- (aa) be responsible and indemnify the Authority/ PMU/ PLBs for any accident due to negligence or otherwise in the performance of the project;
- (bb) submit compliance as required to environmental agency and shall provide all information related to project as would be required by the PMU/ Authority/ PLBs pursuant to any RTI query or any issue raised in State Assembly/

SCHEDULE-III: LIST OF IMMOVABLE ASSETS