

7.0 Draft Form of Contract

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I. Form of Contract

This CONTRACT (hereinafter called the "Contract") is made the _____ day of the Month of ____, 20____, between, on the one hand _____ (hereinafter called the "Client) and, on the other hand _____, (hereinafter called the "Agency").

[Note: If the Agency consists of more than one entity, the above should be partially amended to read as follows:

".....(hereinafter called the "Client") and, on the other hand, a joint venture consisting of the following entities, each of which will be jointly severally liable to the Client for all the Agency's obligations under this Contract, namely,____ and _____ (hereinafter called "Agency")]

WHEREAS

- (a) the Client has requested the Agency to provide certain services as defined in the General Conditions of Contract attached to this Contract (hereinafter called the "Services");
- (b) the Agency, having represented to the Client that they have the required professional skills, and personnel and technical resources, have agreed to provide the Services on the terms and conditions set forth in this Contract;

NOW THEREFORE the parties hereto hereby agree as follows:

- 1. The following documents attached hereto shall be deemed to form an integral part of this Contract:
 - (a) The General Conditions of Contract (hereinafter called "GC");
 - (b) The following Appendices:

[Note: If any of these Appendices are not used, the words "Not Used" should be inserted below next to the title of the Appendix on the sheet attached hereto carrying the title of that Appendix]

Appendix A: Description of the Services.
Appendix B: Cost Estimates
Appendix C: Letter of Award

- 2. The mutual rights and obligations of the Client and the Agency shall be as set forth in the Contract; in particular
 - (a) The Agency shall carry out the Services in accordance with the provisions of

- the Contract; and
- (b) The Client shall make payments to the Agency in accordance with the Provisions of the Contract.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be signed in their respective names as of the day and year first above written.

FOR AND ON BEHALF OF
[NAME OF THE CLIENT]

By
(Authorised Representative)

FOR AND ON BEHALF OF
[NAME OF THE AGENCY]

By
(Authorised Representative)

[Note: If the Agency consist of more than one entity, all of these entities should appear as signatures, e.g. in the following manner]

FOR AND ON BEHALF OF EACH OF
THE MEMBERS OF THE AGENCY

[NAME OF THE MEMBER]

By
(Authorised Representative)

[NAME OF THE MEMBER]

By
(Authorised Representative)

[NAME OF THE MEMBER]

By
(Authorised Representative)
etc.....

II. General Conditions of Contract

1.0 General Provisions

1.1 Definitions

Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:

- a) "Applicable Law" means the laws and any other instruments having the force of law in the Government's country, as they may be issued and in force from time to time.
- b) "Contract" means the Contract signed by the Parties, to which these General Conditions of Contract are attached, together with all the documents listed in Clause 1 of such signed Contract;
- c) "Effective Date" means the date on which this Contract comes into force and effect pursuant to Clause GC 2.1;
- d) "GC" means these General Conditions of Contract;
- e) "Government" means the Government of Client's Country;
- f) "Local currency" means the Indian Rupees;
- g) "Agency" wherever mentioned in this Contract Agreement means the "Exhibition Agency" and includes sub-Agency or Associates engaged by the primary Agency.
- h) "Party" means the Client or the Agency, as the case may be, and Parties means both of them;
- i) "PMNC" shall have the meaning Program Manager for New Cities.
- j) "Services" means the work to be performed by the Agency pursuant to this contract, as described in Appendix A hereto. The scope of work will be strictly as given in various Clauses in Scope of work and Bill of Quantities (BOQ). The approach and methodology to be adopted by the Agency for carrying out the assignment as Exhibition Agency may be modified depending on the requirements.
- k) "Sub-Agency and or Associates" means any entity to which the Agency subcontract any part of the Services in accordance with the provisions of Clause GC 3.7; and
- l) "Third Party" means any person or entity other than the Government, the Client, the Agency or a Sub-Agency.

1.2 Deleted

1.3 Law Governing Contract

This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Law.

1.4 Language

This Contract has been executed in the English language, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

1.5 Headings

The headings shall not limit, alter or affect the meaning of this Contract.

1.6 Notices

- 1.6.1 Any notice, request or consent required or permitted to be given or made pursuant to this Contract shall be in writing. Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, telegram or facsimile to such Party.

The addresses are:

Client: Address of Employer
Attention:

Agency: Address of Agency
Attention:

1.6.2 Deleted.

1.6.3 Deleted.

1.7 Location

The Services shall be performed at such locations as are specified in the Contract Agreement and, where the location of a particular task is not so specified, at such locations whether in Government's Country or elsewhere, as the Client may approve.

1.8 Deleted

1.9 Authorized Representatives

Any action required or permitted to be taken, and any document required or permitted to be executed, under this Contract by the Client or the Agency may be taken or executed by the Authorised representative.

1.10 Taxes and Duties

The Agency, Sub-Agency and Personnel shall pay taxes, duties, fees and other impositions as may be levied under the Applicable Law. GST shall be inclusive in the quoted price. The Agency shall then deposit the same with the tax authorities and provide a proof of having done so in line with policy circulars issued by Client.

2.0 Commencement, Completion, Modification and Termination of Contract

2.1 Effectiveness of Contract

This Contract shall come into force and effect on the date (the "Effective Date") of the Client's notice to the Agency instructing the Agency to begin carrying out the Services.

2.2 Deleted

2.3 Commencement of Services

The Agency shall begin carrying out the Services after the Effective Date.

2.4 Expiration of Contract

Unless terminated earlier pursuant to Clause GC 2.9 hereof, this Contract shall expire when services have been completed and all payments have been made at the end of such time period after the Effective Date.

2.5 Deleted

2.6 Deleted

2.7 Force Majeure

2.7.1 Definition

(a) For the purposes of this Contract, "Force Majeure" means an event which is beyond the reasonable control of a Party, and which makes a Party's performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), confiscation or any other action by government agencies.

(b) Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a party or such Party's Sub-Agency or agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected to both (A) take into account at the time of the conclusion of this Contract and (B) avoid or overcome in the carrying out of its obligations hereunder.

- (c) Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

2.7.2 No Breach of Contract

The failure of a Party to fulfill any of its obligations hereunder shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Contract.

2.7.3 Measures to be taken

- (a) A Party affected by an event of Force Majeure shall take all reasonable measures to remove such Party's inability to fulfill its obligations hereunder with a minimum of delay.
- (b) A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any event not later than fourteen (14) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible.
- (c) The Parties shall take all reasonable measures to minimize the consequences of any event of Force Majeure.

2.7.4 Deleted

2.7.5 Deleted

2.7.6 Deleted

2.8 Suspension

The Client may, by written notice of suspension to the Agency, suspend all payments to the Agency hereunder if the Agency fail to perform any of their obligations under this Contract, including the carrying out of the Services, provided that such notice of suspension (i) shall specify the nature of the failure, and (ii) shall request the Agency to remedy such failure within a period not exceeding thirty (30) days after receipt by the Agency of such notice of suspension.

2.9 Termination

2.9.1 By the Client

The Client may, by not less than thirty (7) days' written notice of termination to the Agency (except in the event listed in paragraph (f) below, for which there shall be a written notice of not less than sixty (15) days, such notice to be given after the occurrence of any of the events specified in paragraphs (a) through (h) of this Clause GC 2.9.1, terminate this Contract.

- (a) if the Agency fail to remedy a failure in the performance of their obligations hereunder, as specified in a notice of suspension pursuant to Clause GC 2.8 hereinabove, within thirty (15) days of receipt of such notice of suspension or within such further period as the Client may have subsequently approved in writing;
- (b) if the Agency become (or, if the Agency consist of more than one entity, if any of their Members becomes) insolvent or bankrupt or enter into any agreements with their creditors for relief of debt or take advantage of any law for the benefit of debtors or go into liquidation or receivership whether compulsory or voluntary;
- (c) if the Agency fail to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause GC 8 hereof;
- (d) if the Agency submit to the Client a statement which has a material effect on the rights, obligations or interests of the Client and which the Agency know to be false;
- (e) if, as the result of Force Majeure, the Agency are unable to perform a material portion of the Services for a period of not less than sixty (15) days; or
- (f) if the Client, in its sole discretion and for any reason whatsoever, decides to terminate this Contract.
- (g) if the Agency, in the judgment of the Client has engaged in corrupt or fraudulent practices in competing for or in executing the Contract. For the purpose of this clause:

"corrupt practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the selection process or in contract execution.

"fraudulent practice" means a misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the Borrower, and includes collusive practice among Agency (prior to or after submission of proposals) designed to establish prices at artificial non-competitive levels and to deprive the Borrower of the benefits of free and open competition.

- (h) Deleted

2.9.2 Deleted

2.9.3 Cessation of Rights and Obligations

Upon termination of this Contract pursuant to Clauses GC 2.2 or GC 2.9 hereof, or upon expiration of this Contract pursuant to Clause GC 2.4 hereof, all rights and obligations of the Parties hereunder shall cease, except:

- (a) such rights and obligations as may have accrued on the date of termination

or expiration;

- (b) the obligation of confidentiality set forth in Clause GC 3.3 hereof;
- (c) the Agency' obligation to permit inspection, copying and auditing of their accounts and records set forth in Clause GC 3.6 (ii) hereof; and
- (d) any right which a Party may have under the Applicable Law.

2.9.4 Cessation of Services

Upon termination of this Contract by notice of either Party to the other pursuant to Clauses GC 2.9.1 or GC 2.9.2 hereof, the Agency shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Agency and equipment and materials furnished by the Client, the Agency shall proceed as provided, respectively, by Clauses GC 3.9 or GC 3.10 hereof.

2.9.5 Payment upon Termination

Upon termination of this Contract pursuant to Clauses GC 2.9.1 or GC 2.9.2 hereof, the Client shall make the following payments to the Agency {after offsetting against these payments any amount that may be due from the Agency to the Client}:

- (a) remuneration pursuant to Clause GC 6 hereof for Services satisfactorily performed prior to the effective date of termination;
- (b) reimbursable expenditures pursuant to Clause GC 6 hereof for expenditures actually incurred prior to the effective date of termination; and
- (c) except in the case of termination pursuant to paragraphs (a) through (d) of Clause GC 2.9.1 hereof, reimbursement of any reasonable cost incident to the prompt and orderly termination of the Contract including the cost of the return travel of the Agency' personnel and their eligible dependents.

2.9.6 Disputes about Events of Termination

If either Party disputes whether an event specified in paragraphs (a) through (e) of Clause GC 2.9.1 or in Clause GC 2.9.2 hereof has occurred, such Party may, within forty-five (45) days after receipt of notice of termination from the other Party, refer the matter to arbitration pursuant to Clause GC 8 hereof, and this Contract shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.

3.0 Obligation of the Agency

3.1 General

3.1.1 Standard of Performance

The Agency shall perform the Services and carry out their obligations hereunder with all due diligence, efficiency and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe and effective equipment, machinery, materials and methods "The Agency shall always" act, in respect of any matter relating to this Contract or to the Services, as faithful advisers to the Client, and shall at all times support and safeguard the Client's legitimate interests in any dealings with Sub-Agency or Third Parties.

3.1.2 Law Governing Services

The Agency shall perform the Services in accordance with the Applicable Law and shall take all practicable steps to ensure that any Sub-Agency and or Associates, as well as the Personnel of the Agency and any Sub- Agency and or Associates, comply with the Applicable Law. The Client shall advise the Agency in writing of relevant local customs and the Agency shall, after such notifications, respect such customs.

3.1.3 Performance Security:

Performance Security equivalent to 5 (five) percent of the total cost of Financial Proposal shall be furnished from a nationalised/ Scheduled Bank, within the 15 (fifteen) days from the date of issue of LOA, in form of a Bank Guarantee substantially in the form specified in this RfQ cum RfP. For the successful bidder the Performance Security will be retained by the Client until the completion of the assignment by the Consultant and be released Six (06) months after the completion of the assignment. The aforesaid performance security shall be kept valid until the completion certificate is issued by the Client.

3.1.4 Failure to complete the assignment on timely manner shall lead to the termination of the contract.

3.2 Deleted

3.2.2 Deleted

3.2.3 Deleted

3.3 Confidentiality

The Agency, their Sub-Agency and the Personnel of either of them shall not, either during the term or within two (2) years after the expiration of this Contract, disclose any proprietary or confidential information relating to the Project, the Services, this Contract or the Client's business or operations without the prior written consent of the Client.

3.4 Liability of the Agency

The Agency' liability under this Contract shall be as provided by the Applicable Law.

3.5 Insurance to be Taken Out by the Agency

The Agency (i) shall take out and maintain, and shall cause any Sub-Agency to take out and maintain, at their (or the Sub-Agency', as the case may be) own cost but on terms and conditions approved by the Client, insurance against the risks, and for the coverages and (ii) at the Client's request, shall provide evidence to the Client showing that such insurance has been taken out and maintained and that the current premiums therefore have been paid.

3.6 Deleted

3.7 Deleted

3.8 Reporting Obligations

The Agency shall submit to the PMNC the reports and documents specified in this agreement, in the form, in the numbers and within the time period.

3.9 Documents Prepared by the Agency to Be the Property of the Client

All plans, drawings, specifications, designs, reports, other documents and software prepared by the Agency for the Client under this Contract shall become and remain the property of the Client, and the Agency shall, not later than upon termination or expiration of this Contract, deliver all such documents to the Client, together with a detailed inventory thereof. The Agency may retain a copy of such documents and software. Restrictions about the future use of these documents and software, if any, shall be specified in the SC.

3.10 Deleted

4.0 Agency' Personnel and Sub-Agency and or Associates

4.1 General

The Agency shall employ and provide such qualified and experienced Personnel and Sub-Agency as are required to carry out the Services.

4.2 Description of Personnel

(a) The titles, agreed job descriptions, minimum qualification and estimated periods of engagement in the carrying out of the Services of each of the Agency' Key Personnel are described in Appendix B. If any of the Key Personnel has already been approved by the clients his/her name is listed as well.

4.3 Deleted

4.4 Deleted

4.5 Deleted

5.0 Obligations of the Client

5.1 Change in the Applicable Law

If, after the date of this Contract, there is any change in the Applicable Law with respect to taxes and duties which increases or decreases the cost or reimbursable expenses incurred by the Agency in performing the Services, then the remuneration and reimbursable expenses otherwise payable to the Agency under this Contract shall be increased or decreased accordingly by agreement between the Parties hereto, and corresponding adjustments shall be made to the ceiling amounts specified in Clause GC 6.1.

5.2 Deleted

5.3 Payment

In consideration of the Services performed by the Agency under this Contract, the Client shall make to the Agency such payments and in such manner as is provided by Clause GC 6 of this Contract.

6.0 Payments to the Agency

6.1 The amount payable under this contract is : _____ INR

6.2 Payment break up:

a) Advance payments up to 30% of the total value of the order will be payable against submission of Bank Guarantee on any Scheduled Bank.

b) The balance 70% payment within 30 days will be released on successful completion of project and on recommendation of committee constituted for the inspection.

6.3 Currency of Payment

All payments shall be made in Indian Rupees and shall be subjected to applicable Indian laws withholding taxes if any.

7.0 Fairness and Good Faith

7.1 Good Faith

The Parties undertake to act in good faith with respect to each other's rights under this Contract and to adopt all reasonable measures to ensure the realization of the objectives of this Contract.

8.0 Settlement of Disputes

8.1 Amicable Settlement

The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or the interpretation thereof.

8.2 Dispute Settlement

Any dispute between the Parties as to matters arising pursuant to this Contract which cannot be settled amicably within thirty (30) days after receipt by one Party of the other Party's request for such amicable settlement may be submitted by either Party for settlement in Arbitration.

- 8.2.1 Arbitration: In the event no amicable resolution or settlement is reached within a period of thirty (30) days from the date on which the above-mentioned dispute or difference arose, such dispute or difference shall be finally settled by arbitration. The arbitral tribunal shall consist of a sole arbitrator appointed by mutual agreement of the parties. In case of failure of the parties to mutually agree on the name of a sole arbitrator, the arbitral tribunal shall consist of three arbitrators. Each party shall appoint one arbitrator and the two arbitrators so appointed shall jointly appoint the third arbitrator. The seat of arbitration shall be Ahmedabad – India and the arbitration shall be conducted in the English language. The Arbitration and Conciliation Act, 1996 shall govern the arbitral proceedings. The award rendered by the arbitral tribunal shall be final and binding on the parties.

IV. Appendices

Appendix A Description of the Services

As per scope of work

Appendix B Cost Estimates

List hereunder amount of financial proposal of the successful Bidder in INR:

Appendix C: Letter of Award

Appendix D Format of Bank Guarantee for Performance Security

(To be stamped in accordance with Stamp Act if any, of the country for issuing bank)

Ref.: Bank Guarantee:

Date:

Dear Sir,

In consideration of M/s Dholera Industrial City Development Limited (hereinafter referred as the 'Client', which expression shall, unless repugnant to the context of meaning thereof include its successors, administrators and assigns) having awarded to M/s [name of consultant] a [type of company], established under laws of [country] and having its registered office at [address] (hereinafter referred to as the 'Consultant' which expression shall unless repugnant to the context or meaning thereof, include its successors, administrators, executors and permitted assigns), an Assignment for preparation of [name of assignment] Contract by issue of Client's Contract Letter of Award No. [reference] dated [date] and the same having been unequivocally accepted by the Consultant, resulting in a Contract valued at Rs. [amount in figures and words] for (Scope of Work) (hereinafter called the 'Contract') and the Consultant having agreed to furnish a Bank Guarantee amounting to Rs. [amount in figures and words] to the Client for performance of the said Agreement.

We [Name of Bank] incorporated under [law and country] having its Head Office at [address](hereinafter referred to as the Bank), which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators executors and assigns) do hereby guarantee and undertake to pay the Client immediately on demand and or, all monies payable by the Consultant to the extent of Rs. [amount in figure and words] as aforesaid at any time up to [date] without any demur, reservation, contest, recourse or protest and/ or without any reference to the Consultant. Any such demand made by the Client on the Bank shall be conclusive and binding notwithstanding any difference between the Client and the Consultant or any dispute pending before any Court, Tribunal, Arbitrator or any other authority.

We agree that the Guarantee herein contained shall be irrevocable and shall continue to be enforceable until the Client discharges this guarantee.

The Client shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee, from time to time to vary the advance or to extend the time for performance of the Contract by the Consultant nor shall the responsibility of the bank be affected by any variations in the terms and conditions of the contract or other documents. The Client shall have the fullest liberty without affecting this guarantee, to postpone from time to time the exercise of any powers vested in them or of any right which they might have against the Client and to exercise the same at any time in any manner, and either to enforce or to forbear to enforce any covenants, contained or implied, in the Contract between the Client and the Consultant any other course or remedy or security available to the client. The Bank shall not be relieved of its obligations under these presents by any exercise by the Client of its liberty with reference to the matters aforesaid or any of them or by reason of any other act or forbearance or other acts of omission or commission on the part of the Client or any other indulgence shown by the Client or by any other matter or thing whatsoever which under law would but for this provision have the effect of relieving the Bank.

The Bank also agrees that the Client at its option shall be entitled to enforce this Guarantee against the Bank as a principal debtor, in the first instance without proceeding against the Consultant and notwithstanding any security or other guarantee that the client may have in relation to the Consultant's liabilities.

This Guarantee shall be irrevocable and shall remain in full force and effect until discharge by the Bank of all its obligations hereunder.

This Guarantee shall not be affected by any change in the constitution or winding up of the Consultant /the Bank or any absorption, merger or amalgamation of the Consultant /the bank with any other Person.

Notwithstanding anything contained herein above our liability under this guarantee is limited to Rs. [amount in figure and words] and it shall remain in force up to and including [date] and shall extend from time to time for such period(s) (not exceeding one year), as may be desired by M/s [name of consultant] on whose behalf this guarantee has been given. Date this [date in words] day [month] of [year in 'yyyy' format] at [place].

WITNESS:

1. [signature, name and address]

2. [signature, name and address]

[Official Address]

Designation

[With Bank Stamp]

Attorney as Per Power of Attorney No.

Dated

Strike out, whichever is not applicable.

The stamp papers of appropriate value shall be purchased in the name of bank which issues the 'Bank Guarantee'. The bank guarantee shall be issued either by a bank (Nationalized/Scheduled) located in India or a foreign bank through a correspondent bank (scheduled) located in India or directly by a foreign bank which has been determined in advance to be acceptable to the Client.