



BRUHAT BENGALURU MAHANAGARA PALIKE

Office of the Joint Commissioner (SWM), Narasimharaja Square, Bengaluru - 560002

No: BBMP/JC(SWM)/PP/2509/2019-20

Date: 14/10/2019

Sri K R Mallesh
Environment Support Group
No. 1572, 46th Cross, 100 Ft Road
Banashankari 2nd Stage
Bengaluru 560070

Sub: Request for information sought under Right to Information Act, 2015. – Reg.

Ref: Your application dated 24-09-2019

The information sought as per the request referred above is as follows:

Application No. and Date	Information requested	Information provided
	<p>Details of each and every Waste to Energy (incineration) project promoted by BBMP by itself or in collaboration with any agency – public or private:</p> <ol style="list-style-type: none">1) Detailed Project Report of each and every project2) Financial agreement of each and every WTE project3) Environmental and site clearances of each and every WTE project (if obtained). If not provide complete applications made for securing clearances.4) Power Purchase Agreements of each and every WTE project.	<ol style="list-style-type: none">1) Detailed Project Report is yet to be submitted by the Concessionaire, M/s 3Wayste Bengaluru Pvt. Ltd2) A copy of the Concession Agreement between BBMP and M/s 3Wayste Bengaluru Pvt. Ltd is provided herewith.3) Obtaining environmental and site clearances are the obligations of the Concessionaire under the said Agreement.4) The Concessionaire has to enter into PPA with the power purchasing entity as per the rates approved by KERC.


Joint Commissioner
Solid Waste Management

Encl:
As above.



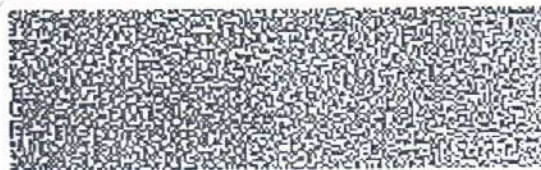
सत्यमेव जयते

INDIA NON JUDICIAL

Government of Karnataka

e-Stamp

Certificate No. : IN-KA84763838479781R
Certificate Issued Date : 29-Mar-2019 04:31 PM
Account Reference : NONACC (FI)/ kabacs108/ M G ROAD1/ KA-BA
Unique Doc. Reference : SUBIN-KAKABACSL0800198936105148R
Purchased by : 3WAYSTE BENGALURU PVT LTD
Description of Document : Article 12 Bond
Description : CONCESSION AGREEMENT
Consideration Price (Rs.) : 0
(Zero)
First Party : 3WAYSTE BENGALURU PVT LTD
Second Party : BRUHAT BENGALURU MAHANAGARA PALIKE
Stamp Duty Paid By : 3WAYSTE BENGALURU PVT LTD
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



Please write or type below this line

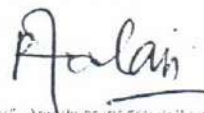
CONCESSION AGREEMENT

This Concession Agreement (hereinafter referred to as "Agreement") mutually agreed and entered into on this 25th day of April 2019 at Bengaluru.

AMONGST

Bruhat Bengaluru Mahanagara Palike (BBMP), a municipal corporation established under The Karnataka Municipal Corporations Act, 1976, and having its office at N.R.Square, Bengaluru 560002, acting through its Commissioner/Authorized Officer (hereinafter referred to as


Commissioner



Bruhat Bengaluru Mahanagara Palike

Page 1 of 30

Any discrepancy please inform the Municipal Authority

"Concessioneing Authority"/ "BBMP", which expression shall, unless repugnant to the context or meaning thereof, mean and include its successors) of the FIRST PART,

AND

M/s 3WAYSTEBengaluru Private Limited (3WAYSTE), a company incorporated under the Companies Act 2013, having its registered office at Survey No. 31, Anekal Taluk, Chikkanagamangala Road, Bengaluru 560099 (hereinafter referred to as "Concessionaire", which expression shall unless repugnant to the context or meaning thereof, mean and include its successors and assigns), acting through its Director duly authorized representative by Board Resolution dated _____, of the SECOND PART.

BBMP and 3WAYSTE (the Concessionaire) are hereinafter referred to individually as the Party and collectively as the Parties.

WHEREAS:

- A. The Ministry of Environment, Forests and Climate Change under the aegis of Government of India (GOI), has notified the Solid Waste Management Rules (SWM) 2016, which makes it mandatory for every municipal authority to implement a scientific management system for Municipal Solid Waste in conformity with the above Rules wherein the Municipal Solid Waste is duly collected, transported, processed and the residual inert/ non-degradable remnants are disposed off in an scientific landfill (as defined hereinafter);
- B. The BBMP, as the municipal authority for Bengaluru, is the civic body responsible for providing municipal and civic services to the citizens, including collection, transportation, processing and disposal of MSW generated in Bengaluru, in accordance with SWM Rules, 2016
- C. In an effort to implement improved and efficient MSW management in compliance with SWM Rules 2016, the Authority has set up wet waste processing facilities at 6 locations based on the composting technology. Further, the BBMP solicited proposals from private companies for setting up MSW management and waste-to-energy projects on public private partnership model through public tenders;
- D. The Government of Karnataka (GOK) in May 2017 ordered that in the event of unsuccessful tenders it would continue to receive and review proposals from private companies and in the event of acceptance, it would grant exemption from tenders under applicable provision of Karnataka Transparency in Public Procurements Act;
- E. On 8 August 2017, 3WAYSTE SAS submitted a proposal to GOK and BBMP to implement an integrated MSW management project at Chikkanagamangala, consisting of industrial sorting of MSW using the company's proprietary, patented technology cum waste-to-energy plant to produce electricity with the end product from MSW processing, i.e. the Refuse Derived Fuel (RDF);
- F. On 10 August 2017, the BBMP Commissioner submitted the proposal to GOK for review and on 23 October 2017, a High-Level Committee chaired by the Hon'ble Minister for Bengaluru Development recommended to accept the said proposal;
- G. After obtaining the required departmental clearances, GOK issued Government Order (GO) UD540MNY2017 dated 8 March 2018 to set up the 3WAYSTE project at Chikkanagamangala;
- H. Upon notification of the Government Order, 3WAYSTE SAS has undertaken steps towards the implementation of the Project (as defined below), including registration of its technology and know-

Commissioner

Bengaluru Mahanagara Palike

Alan

h. "Arbitration Act" shall mean the Arbitration and Conciliation Act, 1996 of India and the Rules there under and shall include, any amendment to or any re-enactment thereof as in force from time to time.

i. "BESCOM" shall mean Bengaluru Electricity Supply Company Ltd.

j. "BBMP" shall mean Bruhat Bengaluru Mahanagara Palike, established under the provisions of the Karnataka Municipal Corporations Act, 1976.

k. "Biodegradable waste" shall have the same meaning as ascribed to it under Rule 3 (4) of SWM Rules, 2016.

l. "Biomedical Waste" shall have the same meaning as ascribed to it under the Biomedical Wastes (Management and Handling) Rules 2016.

m. "Book Value" shall mean value of all assets as per the statement of accounts of the Concessionaire wherein the said assets are related to the Project netor accumulated depreciation computed on straight line method basis in accordance with the rates specified in/Companies Act, 2013 and as determined by an independent firm of Chartered Accountants mutually agreed.

n. "Bulk Solid Waste Generators" shall mean and includes – apartment complexes with more than 50 units and Commercial bulk generators viz hotel/ restaurant, clubs, factory, choultry, mall, shopping complex, marriage halls, convention hall, place of worship, institution, office establishment, railway stations, bus stand or any other commercial or public entity which accumulates MSW of a quantity not less than 10 kg per day, as notified by BBMP vide its notification dated 25-07-2013.

o. "Construction & Demolition"/ "C&D Debris" means waste comprising of building materials, debris and rubble resulting from construction, remodeling, repair, renovation or demolition of any civil structures, as defined under C&D Rules, 2016.

p. "CPOD" shall mean the date of commencement of commercial operations of the Project as defined in this agreement.

q. "Composting" shall have the same meaning as ascribed to it under Rule 3 (12) of SWM Rules, 2016.

r. "Concession" shall have the meaning ascribed thereto in *Article 2.1* of this Agreement.

s. "Concession Period" shall have the meaning ascribed thereto in *Article 2.3* of this Agreement.

t. "Concessionaire" shall mean party entering into this Agreement to implement the Project and includes its successors and permitted assigns expressly approved by BBMP.

u. "Consent Conditions" shall mean the conditions imposed by the Karnataka State Pollution Control Board (KSPCB) while according Consent, i.e. to establish/ operate the Project under the various rules, notifications, regulations, Act etc.

v. "Construction Requirements" shall mean the Project Construction Requirements to be compliant with the provisions of this Agreement and with the provisions of SWM Rules 2016.

w. "Construction Works" shall mean all works required to be carried out by the Concessionaire, pursuant to the Construction Requirements and O & M Requirements.


Commissioner

Bruhat Bengaluru Mahanagara Palike


Aalan

to CPOD of the Project as defined under this Agreement.

zm. "KEREC" shall mean Karnataka Electricity Regulatory Commission.

zn. "Sanitary Landfill Life" or "Active Operations Period" of each cell of sanitary landfill shall mean the period commencing from CPOD till each cell of the Sanitary Landfill is completely filled with inert material and a final cover designed in accordance with the SWMRules 2016 is laid on the Sanitary Landfill.

zo. "Residual Solid Waste" shall have the same meaning as ascribed to it under Rule 3 (39) of SWM Rules, 2016.

zp. "Material Adverse Effect" shall mean, with respect to any event, matter or circumstance, any change or effect that: (a) individually or when taken together with all other changes or effects that have occurred during any relevant period of time before the determination of the occurrence of that change or effect, is or is reasonably likely to be materially adverse to the Project; or (b) materially adversely affects the ability of the Concessionaire to implement the Project during the Term.

zq. "Material Breach" shall mean a breach by either Party of any of its obligations under this Agreement which has or is likely to have a Material Adverse Effect on the Project and which such Party shall have failed to cure.

zr. "SWM Rules 2016" or "SWM Rules" shall mean the Solid Waste Management Rules 2016, including any amendments thereto.

zs. "Municipal Solid Waste" or "Solid Waste" shall have the same meaning as ascribed to it under Rule 3 (46) of SWM Rules, 2016.

zt. "MSW Supply Area" means the area under municipal jurisdiction of BBMP and shall also include such areas as may be included by BBMP from time to time.

zu. "MSW Quantity" means an aggregate of MSW recorded at the Receipt Point(s) per day in accordance with this Agreement.

zv. "Maximum MSW Quantity" means MSW per day, which is the maximum quantity of MSW that the Processing Facility can process as per design capacity of the processing plant as defined under the Project in this agreement.

zw. "Parties" shall mean the parties to this Agreement and "Party" shall mean any one of them, as the context may admit or require.

zx. "Preliminary Notice" shall mean the notice of intended termination by the Party entitled to terminate this Agreement to the other Party setting out, inter alia, the underlying event of default.

zy. "Processing" shall have the same meaning as ascribed to it under Rule 3 (35) of SWM Rules, 2016.

zz. "Processing Facility" shall mean the plant with its territory and all installations, equipment, sheds and infrastructure located at the Site defined, specifically including the waste processing and sorting installations, the power plant, water well, electricity connections, and all administrative buildings and associated infrastructure.

zza. "Project" shall mean the design, development, construction, operation and maintenance by the


Commissioner

Bruhat Bengaluru Mahanagara Palike

Page 6 of 30


A. J. Anil

Concessionaire of a MSW processing and sorting facility at the Site with three channels for production of compost, production of RDF and recycling as well as the design, development, construction, industrial commissioning, operation and maintenance by the Concessionaire of a power plant to generate electricity using the produced RDF and the construction of a Sanitary Landfill at the Site for the use by the Concessionaire to dispose off the residual solid waste as permitted under the SWM Rules, 2016.

zzb. "Residual Solid Waste" shall have the same meaning as ascribed to it under Rule 3 (39) of SWM Rules, 2016

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

zzd. "Reception Point" or "Receipt Points" means the place within the Site, specified in writing and marked on a layout plan, at which the incoming MSW shall be required to be weighed in accordance with the terms of this Agreement.

zze. "Recyclable waste" shall mean non-biodegradable waste containing recoverable resources that can be recycled under the provisions of applicable laws.

zzf. "Rejected Waste" shall have the same meaning as ascribed to it under Rule 3 (46) of SWM Rules, 2016

zzg. "Site" shall mean the land located at Survey No.31, measuring 15 acres 21 guntas situated in Chikkanagamangala Village, Anekal Taluk, Bangalore, comprising of two blocks, including the existing installations, equipment and infrastructure as set out in Section 3.1.1. to be handed over to the Concessionaire by BBMP for the purpose of planning, designing, financing, constructing, operating and maintaining the Project solely by the Concessionaire during the Term

zzh. "Tax" shall mean and includes all taxes, fees, levies that may be payable by the Concessionaire under Applicable Laws.

zzi. "Term" means the time period beginning on the date of this Agreement and ending 30 (thirty) years after the Commercial Production and Operation Date (CPOD).

zzj. "Termination" shall mean early termination of this Agreement pursuant to termination notice or otherwise in accordance with the provisions of this Agreement but shall not, unless the context otherwise requires, include expiry of this Agreement due to efflux of time in the normal course.

zzk. "Termination Date" shall mean the date specified in the Termination Notice as the date on which Termination occurs / comes into effect.

z zl. "Termination Notice" shall mean the notice of Termination by either Party to the other Party, in accordance with the applicable provisions of this Agreement.

zzm. "Utilities" shall mean electricity, water or any other services, provisions of which is imperative for the performance of the obligations of the Concessionaire.

1.2 Interpretation

1.2.1. The words, phrases and expressions defined in Article 1 above or defined elsewhere by description in this Agreement, together with their respective grammatical variations and cognate expressions shall carry the respective meanings assigned to them in the said Article 1.1 or in this Agreement and shall be interpreted accordingly. Expressions, which have not been defined in this


Commissioner
Bruhat Bengaluru Mahanagara Palike



Agreement shall carry the respective meanings assigned to them in their ordinary applicability read in context with the manner of their usage in this Agreement or in their respective technical sense, as the case may be.

1.2.2. 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 modifications or re-enactment or consolidation applies to, or is capable of being applied to any transaction entered into herein under.

1.2.3. References to applicable laws shall include the laws, acts, ordinances, rules, regulations, notifications, guidelines or bylaws, which have the force of law.

1.2.4. All words in singular shall be deemed to connote their respective plurals and vice-versa, unless the context suggests otherwise.

1.2.5. The words "include" and "including" are to be construed without limitation.

1.2.6. The headings of the Articles in this Agreement are merely for purposes of conveniences and shall have no bearing on the interpretation of this Agreement.

1.2.7. The Schedules and Annexure to this Agreement form an integral part of this Agreement and shall be interpreted accordingly.

1.2.8. Any reference at any time 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.

1.2.9. Reference to recitals, articles, sub articles or schedules in this agreement shall except where the context otherwise requires be deemed to be reference to recitals, sub articles, clauses and schedules of this agreement.

1.2.10. Any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this agreement from or by any other party shall be valid and effectual only if it is in writing under the hands of duly authorized representative of such party in his behalf and not otherwise.

1.2.11. References to day, month, or year shall mean a reference to a calendar day, calendar month or calendar year respectively

1.2.12. References to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days and dates.

ARTICLE 2

Concession

2.1 Grant of Concession

2.1.1. Subject to and in accordance with the terms and conditions set out in this Agreement, BBMP hereby grants to the Concessionaire the Concession to undertake the Project (the Concession) and the Concessionaire hereby accepts the grant of Concession comprising of the exclusive right and authority, during the Term, to investigate, study, design, engineer, procure, finance, set up, construct, operate and maintain all the facilities under the Project and to exercise and/or enjoy the rights, powers, benefits, privileges, authorizations and entitlements granted under this Agreement on an exclusive basis during the Term, and, without limiting the foregoing, to carry out the following


Commissioner
 Bruhat Bengaluru Mahanagara Palike



activities in the BBMP area:

- a) receive MSW at the Reception Point of the Processing Facility established at the Site;
- b) inspect the MSW and identify any Wastes not defined as Solid Waste as defined in SWM Rules 2016, as per the provisions of *Article 5.8*;
- c) process the MSW in the Processing Facility;
- d) dispose off Residual Waste suitable for landfill in the Sanitary Landfill Facility located within the Site;
- e) receive all financial and fiscal incentives permissible and available under applicable laws and the scope of this project and genuine commercial benefits accruing in respect of or on account of the Project, in accordance with prevailing laws.

2.2 Rights associated with the Grant of Concession

2.2.1. Without prejudice to the generality of foregoing, the Concession hereby granted to the Concessionaire shall include, without being limited to, and shall entitle Concessionaire, to enjoy, the following rights, privileges and benefits in accordance with the provisions of this Agreement and Applicable Laws:

- a) design, engineer, finance, procure, set up, construct, install, commission, operate and maintain the Project at the Site;
- b) borrow or raise money or funding at Concessionaire's own effort and risk required for the due implementation, operation and maintenance of the Project;
- c) use, appropriate, process MSW delivered at the Reception Point as per the provisions of this Agreement and in accordance to SWM Rules 2016;
- d) avail available subsidies or concessions from Central/State governments, bilateral co-operation or any other multilateral agencies for setting up or maintaining the Project; wherever permissible and eligible;
- e) store, use, appropriate, market and sell or dispose of all the products obtained after the Processing and treatment of the MSW such as electricity, methane, RDF, compost and recyclables and any other non-objectionable products in line with applicable laws, and to further retain and appropriate any revenues generated from the sale of such products;
- f) obtain electricity, water and telecommunications connections against payment of the amounts as may be prescribed, required for enabling the set up and construction of the Project;
- g) exclusively hold and control the Site (without the right to own, pledge or alienate the Site through sale with or without consideration) on permissive use basis only in accordance with the terms of this Agreement, for the purposes of the due implementation of this Project, in accordance with the terms of this Agreement;
- h) employ qualified staff in accordance with labour laws for carrying out its obligations under the Agreement;

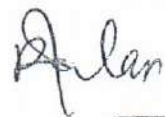
2.3 Term of Concession

The Concession is granted to the Concessionaire during the Term for a period of 30 (thirty) years starting with CPOD (the Concession Period) and shall terminate upon the expiry of the Term. The term of permissive use of Site shall be co-terminus with the Concession Period.

2.4 Acceptance of Concession

In consideration of the rights, privileges and benefits conferred upon the Concessionaire, the Concessionaire hereby accepts the Concession and agrees and undertakes to perform/ discharge all of its obligations in accordance with the provisions hereof.


Commissioner
Bruhat Bengaluru Mahanagara Palike



2.5 Conditions Precedent for the Project

The Concession granted herein is valid and binding from the date of Concessionaire obtaining all approvals and permits, provided however, the obligations of Parties under this Agreement would become effective and binding (Effective Date), only upon the satisfaction of the following Conditions Precedent.

i) Conditions Precedent for BBMP:

- a) BBMP shall vest with the Concessionaire the complete, unencumbered and vacant (meaning with no other tenants, occupants or existing employees) possession of the Site on as is where is basis along with the necessary right of way through the Access Road for accessing the Site. Such possession shall however be on Permissive Use basis only;
- b) BBMP shall support the Concessionaire through letters recommending the necessary statutory approvals required for the Project in line with applicable laws, which come under the purview of BBMP, GOK and GOI as set out in *Article 3.4* of this Agreement, on best effort basis;
- c) BBMP shall empanel the Concessionaire as service provider authorized to receive prescribed quantum of waste from Bulk Solid Waste Generators at the Site as per the terms of this Agreement;
- d) BBMP shall nominate its representatives for the Steering Group chaired by the Additional Chief Secretary of Urban Development Department, GOK as described under *Article 4*;

ii) Conditions Precedent for Concessionaire:

- a) Concessionaire shall apply in a timely manner for the necessary statutory approvals for the Project, which come under the purview of BBMP, GOK and GOI as set out in *Article 3.4* of this Agreement and shall strive to obtain the clearances in a time bound manner without undue delay.
- b) Concessionaire shall achieve full financial closure for the Project from Investors and Lenders, without any corresponding liability on BBMP/GOK/GOI;
- c) Concessionaire shall nominate its representative for the Steering Group chaired by the Additional Chief Secretary of Urban Development Department, GOK as described under *Article 4*.

2.6 Non-compliance with Conditions Precedent

In the event that the above Conditions Precedent on the part of either Party are not met within 90 (Ninety) days from the date of this Agreement, then the affected Party shall have the option to either (i) extend the time period for satisfaction of the Conditions Precedent by another 90 (ninety) days or (ii) terminate this Agreement. However after lapse of the additional 90 days, the affected party shall terminate the agreement.

ARTICLE 3 Project Site

3.1 Permissive Use of the Site

3.1.1. BBMP shall within 90 days from the date of the Concessionaire obtaining all approvals vests with the Concessionaire the complete, unencumbered and vacant (meaning with no other tenants, occupants or existing employees) possession of the Site on as is where is basis along with the necessary right of way through the Access Road for accessing the Site, for the purpose of implementing the Project on Permissive Use basis only.


Commissioner

Bruhat Bengaluru Mahanagara Palike



3.1.2. Upon obtaining the Permissive Use of Site, the Concessionaire shall have the right to enter upon, occupy and use the same and to undertake all necessary activities in the Site as may be necessary or appropriate to implement the Project in accordance with the provisions of this Agreement and in accordance with SWM Rules 2016 and applicable laws.

3.2 Rights of Use and Access to Site

3.2.1. The Concessionaire shall have the right to access to use the Site in accordance with the provisions of this Agreement and for this purpose the Concessionaire may regulate the entry into and use of the same by third parties, subject to any directions of the Steering Group, BBMP and GOK.

3.2.2. The Concessionaire shall not, without the prior written approval of BBMP, use the facilities of the Site for any purpose other than to fulfill its obligations under this Agreement and for purposes incidental or ancillary thereto.

3.2.3. The Concessionaire shall allow access to and use of the Site for laying/ installing/ maintaining telegraph lines, electric lines or for such other public purposes and necessary purposes as BBMP / GOK may specify, provided these do not directly interfere and impact with the Project.

3.2.4. BBMP herewith permits the Concessionaire to use the space available in any area related to the Site and infrastructures to display messages and such other mechanisms for Information, Education and Communication (IEC) activities related to the Project only without any charges payable to BBMP. The IEC messages would have to be in line with the SWM Rules 2016.

3.3 Peaceful Possession

3.3.1. BBMP hereby represents and warrants that:

- a) BBMP has all powers to deal with the Site and that there are no Encumbrances on the Site whatsoever, and that the Concessionaire shall have no liability regarding any compensation on account of land acquisition or rehabilitation/ resettlement of any persons whatsoever;
- b) The Concessionaire shall, subject to complying with the terms and conditions of this Agreement, remain in peaceful possession and enjoyment of the Site on permissive use basis during the Term or Termination whichever is earlier.

3.3.2. In the event the Concessionaire is obstructed by any person claiming any right, title or interest in or over the Site or any part thereof or in the event of any enforcement action including any attachment, restraint, appointment of receiver or liquidator being initiated by any person claiming to have any interest on the Site or any part thereof, BBMP shall, as called upon by the Concessionaire, defend such claims and proceedings, including in the court of law as the case may be, at its own costs and keep the Concessionaire indemnified against all costs arising out of such claims / proceedings. This however would not entitle the Concessionaire to claim any associated damages or compensation.

3.4 Applicable Permits

3.4.1. The Concessionaire shall obtain and maintain permits required under Applicable Laws of the Country / State in connection with the Project in such sequence as is consistent with the requirements of the Project and shall be responsible for and shall comply with the terms and conditions subject to which applicable permits have been issued

3.4.2. While the Project is being undertaken at an existing Site for which NOCs and approvals have been obtained in the past, since this project involves a unique and patented sorting, processing and


Commissioner
Bruhat Bengaluru Mahanagara Palike



waste to energy conversion technology, the concessionaire shall apply for necessary permits including modifications and renewals wherever applicable and comply with all the statutory and regulatory requirements under applicable laws to meet its obligations under this Agreement.

3.4.3. BBMP, notwithstanding the obligation of the Concessionaire under Article 3.4.1, shall support the Concessionaire through letters recommending the necessary statutory approvals required for the Project in line with applicable laws; which come under the purview of BBMP, GOK and GOI as set out in *this Article*, on best effort basis;

3.5 Existing Staff/ Employment at Site

3.5.1. BBMP agrees that all existing staff, whether employed directly by BBMP or indirectly through contracts and other means and are assigned to the Site or on the books of the Site, do not have an automatic right of continuance of employment at the Site, the Project or the Processing Facility.

3.5.2. The Concessionaire may at its sole discretion retain individual staff employed at the Site based on its requirements, qualifications and competence of staff. In the event that a staff agrees to become employee of the Concessionaire, the said staff is required to resign from any previous employment and shall receive a new contract issued by the Concessionaire on the terms and conditions agreed by the Concessionaire and the said staff in compliance with labour laws. Staff directly under the BBMP / GOK would be governed by the subsequent directions of BBMP/GOK.

ARTICLE 4 Steering Group

4.1 Constitution of Steering Group

The BBMP and the Concessionaire shall constitute a Steering Group comprising of two (2) representatives each of the BBMP and Concessionaire within 30 (thirty) days of the signature of this Agreement. The Steering Group shall be chaired by Additional Chief Secretary, Urban Development Department, Government of Karnataka.

4.2 Functions of Steering Group

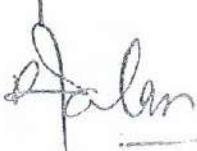
4.2.1. The Steering Group shall hold meetings at least once in every calendar month either at BBMP or at the Site or at any mutually agreed location to review the progress during the period between the date of this Agreement and the CPOD of the Project and once every quarter after the CPOD until the end of the Term. The Steering Group shall carry out such functions and exercise such powers as are prescribed/conferred under this Agreement. The Parties to this Agreement shall formulate detailed Terms of Reference setting out the responsibilities of the Steering Group within a reasonable time after the date of this Agreement.

4.2.2. During the period prior to the CPOD, the Concessionaire shall furnish to the Steering Group regular reports on progress of the Construction Works and the erection of the equipment and installations.

ARTICLE 5 Concessionaire's Obligations

In addition to and not in derogation or substitution of any of its other obligations under this Agreement, the Concessionaire shall have the following obligations:


Commissioner
Bruhat Bengaluru Mahanagara Palike



5.1 Financing Arrangements

5.1.1. The Concessionaire shall at its cost, expenses and risk make financing arrangements to meet all the costs of the Project. In this regard, BBMP shall only facilitate access to related documentation and information for due diligence purposes undertaken by investors and financiers of the Project.

5.1.2. The Concessionaire may seek Viability Gap Funding (VGF) and other types of concessional financing from the GOI, GOK, bilateral co-operation and multilateral financial institutions, agencies and funds.

5.1.3. The Concessionaire, shall develop and maintain the Sanitary Landfill at the Site as prescribed in SWM Rules 2016 to dispose the residual inert matter from the processing facility.

5.2 Construction and Erection of the Project

5.2.1. The Concessionaire shall undertake the necessary Construction Works by itself or through Contractor(s) selected by the Concessionaire, taking into account requisite technical and managerial expertise and capability of such Contractor(s), considering that the Concessionaire's technology is protected by Intellectual Property Rights (IPR) and equipment is proprietary to the Concessionaire and is imported from France.


5.2.2. The Concessionaire shall ensure that Construction Works are undertaken in accordance with Construction Requirements and shall erect, construct and commission the Project and inform the Steering Group about the industrial commissioning of the Project.

- i. The Concessionaire, shall before commencement of Construction Works have requisite organization and designate and appoint suitable officers/representatives as it may deem appropriate to supervise the Project, to deal with the Authority Representative and to be responsible for all necessary exchange of information required pursuant to this Agreement.
- ii. For the purpose of determining that Construction Works are being undertaken in accordance with the Construction Requirements and O&M Requirements, the Concessionaire shall with due diligence carry out all necessary and periodical tests in accordance with the Construction Requirements and O&M Requirements. The Concessionaire shall maintain proper records of such Tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated by the Test Results.
- iii. All tests shall be conducted in accordance with the Construction Requirement. If the Tests are successful and the Project Facilities can be safely and reliably opened for operation the Completion Certificate shall be provided by the Authority Representative.

5.2.3. In the event of any reasonable and justifiable delay in the implementation, BBMP and the Concessionaire shall have the right to extend or modify the implementation schedule. Such modifications and extensions shall be requested in writing and shall be granted by concurrence by BBMP. However, if the delay is prolonged i.e. beyond the approved timelines prescribed, and it remains without remedy and is solely attributable to the Concessionaire, this would be an Event of Default by the Concessionaire subject to *Article 7.1* of this Agreement.

5.2.4. When the Processing Facility is fully operational the Concessionaire shall be responsible for the operation of the Processing Facility.

5.2.5. In the event that the Concessionaire fails to operate the Processing Facility according to


Commissioner
Bruhat Bengaluru Mahanagara Palike



industry standards and Good Industry Practice or as per SWM Rules 2016 and fails to carry out scheduled or planned maintenance or the scheduled or planned maintenance has resulted in prolonged interruptions of functioning of the Processing Facility or any part thereof has deteriorated to a level which is below the good industry standard and Good Industry Practice acceptance level and thereby the Processing Facility or any part thereof is not safe for operations, such events are Events of Default by the Concessionaire subject to *Article 7.1* of this Agreement.

5.3 Operation and Maintenance of the Project

5.3.1 The Concessionaire shall operate and maintain the Project Facilities in accordance with the O&M Requirements.

5.3.2 The Concessionaire shall during the Agreement Period:

- a) have requisite organization and designate and appoint suitable officers/representatives as it may deem appropriate to supervise the Project, to deal with the Authority Representative and to be responsible for all necessary exchange of information required pursuant to this Agreement.
- b) For the purpose of determining that Construction Works and Project Facilities are being maintained in accordance with the Construction Requirements and O&M Requirements, the Concessionaire shall with due diligence carry out all necessary and periodical tests in accordance with the Good Industry Practice. The Concessionaire shall maintain proper records of such Tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated by the Test Results.
- c) Conduct all tests to ascertain compliances with the Construction Requirements and O&M Requirements. Upon failure to cure the defects as per the O&M Requirements within 120 (One Hundred Twenty) days from the occurrence of such defect, the Authority shall subject to the provisions of Article 7, be entitled to terminate this Agreement.

5.4 Insurance


The Concessionaire shall at its own cost, purchase and maintain by due re-instatement or otherwise, after the handover of the Site during the rest of the Term appropriate insurance in respect of the Site and Processing Facility in accordance with the Good Industry Practice and environmental liability acts. The Concessionaire shall maintain records of insurance policies and the same shall be produced before BBMP officials upon request.

5.5 Application of Insurance Proceeds

The Concessionaire, subject to the provisions of the Project financing agreements and unless otherwise provided herein, shall promptly apply the proceeds of all insurance policies received towards repair, renovation, restoration or re-instatement of the Processing Facility or any part thereof which may have been damaged or destroyed. Moreover, the Concessionaire shall, if mandated under the Project financing agreements, designate the lenders as the loss payees under the insurance policies or assign the insurance policies in their favor as security for the financial assistance provided by them to the Project.

5.6 Environmental Compliance

5.6.1. The Concessionaire shall, at all times during the Concession Period, ensure that all aspects of the Processing Facility employed in the construction, operation and maintenance shall conform with the Applicable Laws pertaining to environment, health, safety and labour aspects including Rules, Policies and guidelines related thereto and shall have obtained prior permissions from Regulatory Authorities, wherever applicable. There shall be compliances to the norms laid out by regulatory


Commissioner
Bruhat Bengaluru Mahanagara Palike



authorities viz Central Pollution Control Board, Karnataka State Pollution Control Board, Karnataka Electricity Regulatory Authority and such others.

5.6.2. The Concessionaire shall be responsible for the development, construction, operation & maintenance of the Processing Facility to be compliant with all Applicable Laws, regulations, guidelines, etc. and ensure that there is no damage to the environment due to the development and operation of facilities. The Concessionaire shall be liable to meet any expenses/ compensation to be paid due to pollution/ environmental damage or remediation caused by the development, operation and maintenance of the Project Facility. In the event of environmental damage and pollution due to negligent operation of the Processing Facility solely attributable to the Concessionaire, this is an Event of Default by the Concessionaire subject to Article 7.1 of this Agreement.

5.6.3. BBMP agrees that the Concessionaire shall not be liable for any environmental conditions and damages, which occurred prior to the handover of Site and indemnifies the Concessionaire from any claims in this respect.

5.7 Land Use

The Concessionaire shall not use the Site for any purpose unconnected with which is not incidental to the Project or not authorized by BBMP. Specifically, it is noted that the Concessionaire shall not construct any residential units within the Site. Available infrastructure shall be used to the maximum. However, the Concessionaire may provide rooms for security guards, resting rooms for staff on duty, a staff canteen, office rooms and minimum training facilities as part of the Project, with prior approval of Steering Group.

5.8 Weighing, Acceptance and Rejection of MSW

5.8.1. The Concessionaire shall accept the MSW Quantities set out in Article 6.1.1. of this Agreement, weigh and regulate the incoming MSW at the Reception Point of the Processing Facility. The Concessionaire shall be obligated to accept +/- 10% of the agreed quantity of waste supplied by BBMP.

5.8.2. The Concessionaire hereby undertakes to accept all the Municipal Solid Waste as defined under SWM Rules, 2016, supplied by BBMP as per the terms of this Agreement.

5.8.3. In the event that the Concessionaire determines that the MSW supplied at the Reception Point does not fall under the scope of MSW as defined under the SWM Rules 2016, the Concessionaire has a right to decline to accept such waste from entry onto the Site and immediately inform the Steering Group and BBMP.

5.9 Sale/ Distribution of Compost, Energy and Recyclables

The Concessionaire shall be free to sell or otherwise dispose of the compost, energy (power), recyclables or other materials recovered after processing the MSW at the Processing Facility at such price and to such persons or entities and using such marketing and selling arrangements and strategies as it may deem appropriate and as provided for by law.

5.10 Sanitary Landfilling

5.10.1. The Concessionaire shall dispose of the Landfill Waste at the Sanitary Landfill Facility set up by the Concessionaire within the Site in accordance with Applicable Laws.

5.10.2. If during the Term of Agreement, the capacity available at the Landfill Facility falls short of



Commissioner

Bruhat Bengaluru Mahanagara Palike



the actual landfill requirement of the Project but not earlier than 10 years from the date of CPOD, then the Concessionaire shall duly inform BBMP of the additional landfill requirement for the balance of the Concession Period at least 12 (twelve) months prior to the exhaustion of the Landfill Facility at the Site and BBMP shall provide the Concessionaire with an alternative site to which the Landfill Waste shall be transported the costs of the Concessionaire.

5.11 General Obligations:


The Concessionaire shall at its own cost and expense:

- a) Investigate, study, design, construct / renovate, set up, operate and maintain the Site, the Project and the Processing Facility;
- b) Obtain all applicable Permits as required by or under the Applicable Laws in connection with the Project and be in compliance thereof at all times during the Term;
- c) Comply with Applicable Law governing the operations of processing and disposal of MSW at all times during the Term;
- (e) Procure and maintain, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project;
- (f) Make commercially reasonable efforts to maintain harmony and good industrial relations among the personnel employed by the Concessionaire at the Site and comply with all applicable labour laws;
- (g) Make its own arrangements for construction materials and observe and fulfill the environmental and other requirement during construction and its safe disposal under the Applicable Law and applicable Permits;
- (h) Be responsible for all the health, security environment and safety aspects of the Processing Facility at all times during the Term;
- (i) Ensure that the Project remain free from all Encumbrances and support BBMP in whatever manner possible to remove the Encumbrances, if any, at its own cost;
- (j) Submit proof of statutory payments to employees of the Processing Facility, such as Provident Fund upon demand by the BBMP and place it in the Steering Group for information.
- (k) Upon receipt of a written request thereof, afford access to the site for authorized representatives of BBMP for the purpose of ascertaining compliance with the terms, covenants and conditions of this Agreement;
- (l) Ensure personal protection equipment, including uniform, fluorescent jackets, gloves, raincoats, appropriate foot wear and masks to employees as per SWM Rules 2016 and labour laws;
- (m) Maintain and keep in force a Public Liability Insurance of Rs.10 crore as per The Public Liability Insurance Act 1991 during the Term.

5.12 No Breach of Obligations by Concessionaire:

The Concessionaire shall not be considered to be in breach of its obligations under this Agreement on account of any of the following:

- a) A breach that results or is connected to any ForceMajeure Event as per Article 8 of this Agreement;
- b) An Event of Default by BBMP as per Article 7.2;
- c) Compliance with the written instructions given by BBMP or the directions of any Government Agency other than instructions issued as a consequence of a breach by the Concessionaire of any of its obligations hereunder;
- d) Any repair or maintenance work being undertaken in any part of the Processing Facility that requires suspension of the operations, the period of which shall be in line with industry standards;


Commissioner
 Bruhat Bengaluru Mahanagara Palike

Page 16 of 30



- e) Closure of the Site or the Processing Facility in full or in part by court order by a court of competent jurisdiction.

5.13 Maintenance of Records

The Concessionaire shall maintain records of the quantum (measured in Metric Tons) of MSW supplied to the Processing Facility, MSW processed, Landfill Waste disposed in the Landfill Facility at the Site, Compost produced, recyclables recovered, electricity generated etc. and provide monthly, quarterly and annual reports of the same to the Steering Group along with any other details sought by BBMP for documentation purposes. The Concessionaire shall also maintain month-wise records of sale of products for information to the Steering Group on a quarterly basis.

5.14 Drawings

The Concessionaire may, based on the Construction Requirements, adapt existing Drawings for the Site and create own Drawings at own costs and responsibility and provide the said Drawings promptly and in such sequence as is consistent with the Construction Requirements submit a copy of Drawings to the Steering Group for information. By forwarding the Drawings to the Steering Group, the Concessionaire shall be deemed to have represented that it has verified and determined that the Drawings forwarded are in conformity with the Construction Requirements.

ARTICLE 6 **BBMP's Obligations**

In addition to and not in derogation or substitution of any of its other obligations under this Agreement, BBMP shall have the following obligations:

6.1 Delivery of MSW

6.1.1. At its own cost, expense, arrangement and in full compliance of Applicable Laws, including SWM Rules 2016, supply a maximum of 300 tons per day per day of MSW (+/- 10%) as collected from the MSW Supply Area. BBMP undertakes to supply only the MSW as collected from the MSW Supply Area and shall not be responsible for the quality or composition of such waste supplied as long as it is Solid Waste under SWM Rules, 2016.

6.1.2. A prolonged violation of Article 6.1.1. of this Agreement is an Event of Default by BBMP subject to Article 7.2 of this Agreement.

6.1.3. In the event that BBMP fails to supply MSW at the Reception Point as per Article 6.1.1 above for a continuous period of more than 30 days, the Concessionaire shall be entitled to compensation by BBMP as agreed to in the Steering Group.


6.2 Empanelment regarding Bulk Solid Waste Generators

6.2.1. BBMP shall empanel the Concessionaire to receive a maximum of 200 tons per day of MSW from Bulk Solid Waste Generators from MSW Supply Area.

6.3 Exclusivity

BBMP shall ensure that, during the Term, the Concession granted to the Concessionaire shall be exclusive to the Concessionaire for this Project under this Agreement, unless otherwise terminated as per provisions of this agreement.


Commissioner
Bengaluru Mahanagara Palike



6.4 Approvals, Permissions and Authorizations

BBMP shall grant in a timely manner all such approvals, permissions and authorizations, which the Concessionaire may require or is obliged to seek from BBMP under this Agreement and shall facilitate any such approvals, permission and authorization, which the Concessionaire may require or is obliged to seek under this Agreement in connection with the Project pursuant to *Article 3.4*.

6.5 Provisions for Existing Personnel

BBMP shall reassign, transfer or otherwise manage all existing employment contracts for staff employed at the Site or employed on the books of the Site or employed by contractors at the Site subject to any decisions by the Concessionaire in accordance with *Article 3.4* of this Agreement.

6.6 Cooperation on Financing Documents

BBMP shall facilitate the Concessionaire by way of providing required information and documents as may be requested or compulsorily by Investors and Lenders, provided, that such assistance and provision of information and documentation shall not be construed as a loan guarantee by BBMP or otherwise bind BBMP with respect to financing of the Project. BBMP also agrees, for the purposes of the Project financing agreements, to inform the Investors and Lenders by such notice as required of the happening of an Event of Default on the part of the BBMP or Concessionaire or the Termination of this Agreement by the BBMP or by the Concessionaire or the occurrence, continuance and cessation of any Force Majeure cause.

ARTICLE 7

Events of Default and Termination

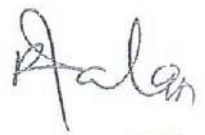
Events of Default shall mean either Concessionaire Event of Default or BBMP Event of Default or both as the context may admit or require.

7.1 Concessionaire Event of Default

Any of the following events shall constitute an Event of Default by the Concessionaire ("Concessionaire Event of Default") when not caused by a BBMP Event of Default as set out in Article 7.2 or a Force Majeure Event as set out in Article 8 of this Agreement:

- a) The Concessionaire has failed to obtain the statutory clearances for the Project within an upper timeline of 12 months from the date of signing of this Agreement.
- b) The Concessionaire has failed to achieve CPOD within 7 months of obtaining the necessary approvals.
- c) The Concessionaire has failed to implement the Construction Works solely attributable to the Concessionaire and the delays have been prolonged and without remedy as per Article 5.2.3 of this Agreement;
- d) The Concessionaire fails to operate and maintain the Processing Facility to O&M Requirements and fails to carry out scheduled or planned maintenance resulting in prolonged interruptions of operations and/or the conditions of the Processing Facility have deteriorated to below acceptable industry standards as per Article 5.3.5 of this Agreement;
- e) The Concessionaire has caused environmental damage and pollution due to negligent operation of the Processing Facility solely attributable to the Concessionaire as per Article 5.6.2 of this Agreement;
- f) The Concessionaire has made false or misleading representations or given false warranties;
- g) The Concessionaire creates an Encumbrance on the Site in favour of any person save and


Commissioner
 Bruhat Bengaluru Mahanagara Palike



- except as otherwise expressly permitted in this Agreement;
- h) The Concessionaire is in Material Breach of any of its obligations under this Agreement and the same has not been remedied within sixty (60) days or any extension granted thereof after the receipt of notice from BBMP;
 - i) The Concessionaire suspends or abandons the operations at the Processing Facility without the prior consent of the BBMP, provided that the Concessionaire shall be deemed not to have suspended/ abandoned operation if such suspension/ abandonment was (i) as a result of Force Majeure Event and only for the period such Force Majeure is continuing, or (ii) is on account of a breach of BBMP obligations thereby forcing the Concessionaire suspending the operations of the Processing Facility;
 - j) The Concessionaire unlawfully repudiates this Agreement or otherwise evidences an intention not to be bound by this Agreement.
 - k) The Concessionaire has failed to accept the Municipal Solid waste supplied by the Authority in accordance of Article 6 for 30 days.
 - l) There is a notice from the KSPCB/ CPCB/ NGT/ Court of Law and such other regulatory authorities on inadequate management of pollution from the facility and the same has not been remedied and compliance accepted by said authority within a period of 90 days from date of such notice.
 - m) A resolution for voluntary winding up has been passed by the shareholders of the Concessionaire;

7.2 BBMP Event of Default

Any of the following events shall constitute an Event of Default by BBMP ("BBMP Event of Default") when not caused by the Concessionaire Event of Default as set out in *Article 7.1* or a Force Majeure Event as set out in *Article 8* of this Agreement:

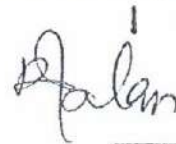
- a) BBMP has failed to supply atleast 75% of the agreed MSW Quantity as per *Article 6.1* of this Agreement to the Processing Facility for a continuous period of 2 (Two) months;
- b) BBMP has made false or misleading representations or given false warranties;
- c) BBMP is in Material Breach of any of its obligations under this Agreement and has failed to cure such breach within 90 days of receipt of notice thereof issued by the Concessionaire;
- d) BBMP unlawfully repudiates this Agreement or otherwise evidence its intention not to be bound by this Agreement.

7.3 Termination due to Event of Default

The process for Termination due to an Event of Default by either Party, the following procedure shall apply:

- a) Without prejudice to any other right or remedy which either Party may have in respect thereof under this Agreement upon the occurrence of an Event of Default as set out in Articles 7.1 and 7.2, either Party shall be entitled to terminate this Agreement in the manner set out herein;
- b) If a Party decides to terminate this Agreement pursuant to Article 7.3 (a) above, (i) it shall in the first instance issue a Preliminary Notice to the defaulting Party. Within thirty (30) days of receipt of the Preliminary Notice, the defaulting Party shall submit to the notice-giving Party the manner in which it proposes to cure the underlying Event of Default ("Proposal to Rectify") and the same shall be reasonably considered by the notice-giving Party;
- c) In the case of non-submission of the defaulting Party's Proposal to Rectify within the said period or any extension granted thereof in writing, the notice-giving Party shall be entitled to terminate this Agreement by issuing a Termination Notice;
- d) In the case the defaulting Party submits a Proposal to Rectify within the period stipulated, the defaulting Party shall have a further period of 90 days or any extension granted thereof by the


Commissioner


D. Palan

- notice-giving Party to implement the remedy/ cure of the underlying Event of Default;
- e) If, however, the defaulting Party fails to remedy/ cure the underlying Event of Default within such further period allowed, the notice-giving Party shall be entitled to terminate this Agreement by issue of Termination Notice.

7.4 Termination Notice

If a Party, having become entitled to do so, decides to terminate this Agreement pursuant to *Article 7.3 above*, the said Party shall issue a Termination Notice setting out:

- a) In sufficient detail the underlying Event of Default;
- b) The Termination Date which shall be a date occurring not earlier than ninety (90) days from the date of Termination Notice;
- c) The estimated termination obligations including the computation if any thereof as on the date of termination;
- d) Any other relevant information.

7.5 Obligation of Parties

Following issue of Termination Notice by either Party, the Parties shall promptly take all such steps as may be necessary or required to ensure that:

- a) Until Termination, the Parties shall continue to discharge their respective obligations as may be reasonably possible so as to maintain the continued operation of the Processing Facility;
- b) Once the Termination is effected after duly following the Termination process, the Site shall be handed over back to BBMP by the Concessionaire on the Termination Date free from any Encumbrance after restoring all the infrastructure and equipment to BBMP as was at the time handing over, in line with the Government Order dated 08-03-2018,.

7.6 Withdrawal of Termination Notice

Notwithstanding anything inconsistent contained in this Agreement, if the Party who has been served with the Termination Notice cures the underlying Event of Default to the satisfaction of the other Party at any time before the Termination becomes effective, the Termination Notice shall be withdrawn by the Party which has issued the same.

7.7 Termination Obligations:

Upon Termination of this Agreement on account of Event of Default of either the Concessionaire of BBMP, as the case may be, a Termination Payment shall be made as follows:

a) Concessionaire Event of Default:

Upon termination of this Agreement on account of Concessionaire Event of Default,

- (i) The Concessionaire shall handback the Site after restoring all the infrastructure and equipment to BBMP as was at the time handing over, in line with the Government Order dated 08-03-2018, following a joint inspection of the Processing Facility by the Steering Group, the BBMP and the Concessionaire.

b) BBMP Event of Default:

Upon termination of this Agreement on account of the BBMP Event of Default, the


Commissioner

Brihat Bengaluru Mahanagara Palike



Concessionaire shall proceed with withdrawing all the infrastructure and equipment invested in by the Concessionaire.

7.8 Termination due to Expiry of the Concession Period

7.8.1. At the time of the expiry of the Term, the Concessionaire agrees to hand back the Site and the Processing Facility, including all movable assets owned by the Concessionaire until end of the Term, including equipment, machinery, vehicles, etc. to the BBMP in line with the Government Order dated 08-03-2018,

7.8.2. The Concessionaire shall in cooperation with BBMP make orderly arrangements for return of Site to BBMP. The orderly transition shall include a joint inspection by the Parties of the Site with the view to ensuring that the Site and Processing Facility is transferred to BBMP in good working condition.

7.8.3. Six (6) months prior to the expiry of the Term and the Concession under this Agreement, the Concessionaire shall provide operational training free of costs to the BBMP to designated staff of BBMP for the operation of the Processing Facility provided that BBMP nominates the to be trained staff without delay at the time of the joint inspection.

7.8.4. At the termination of the Term, all employment contracts shall be deemed terminated and there shall be no liability on the Concessionaire from compensation for loss of employment, continuance or regularization of employment, absorption or reemployment on any ground, in relation to any person in the employment of or engaged by the Concessionaire in connection with the Project.

7.9 Accrued Rights of Parties


Notwithstanding anything to the contrary contained in this Agreement, Termination pursuant to any of the provisions of this Agreement shall be without prejudice to accrued rights of either Party including its right to claim and recover money damages and other rights and remedies which it may have in law or contract. The rights and obligations of either Party under this Agreement, including without limitation those relating to the Termination Payment, shall survive the Termination but only to the extent such survival is necessary for giving effect to such rights and obligations.

ARTICLE 8 **Force Majeure**

As used in this Agreement, the expression "Force Majeure" or "Force Majeure Event" shall mean the occurrence of any or all of a Non-Political Event, Indirect Political Event and Political Event, as defined in Articles 8.1, 8.2 and 8.3 respectively, if it affects the performance of the Party claiming the benefit of a Force Majeure (the "Affected Party") of its obligations under this Agreement and which act or event is (i) beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice.

8.1 Non-Political Event

- a) Act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionizing, radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);


Commissioner
Bruhat Bengaluru Mahanagara Palike



- b) Strikes or boycotts interrupting supplies and services to the Processing Facility, the Site or the Project for a continuous period of at least 72 (seventy-two) hours, and not being an Indirect Political Event set forth in Article 8.3
- c) Any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- d) Any judgment or order of any court, competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or applicable permit related to the Project or (ii) enforcement of this Agreement;
- e) Discovery of geological conditions, toxic contamination or archaeological remains on the Site; or
- f) Any event or circumstances of a nature analogous to any of the foregoing.

8.2 Indirect Political Event

An Indirect Political Event shall mean one or more of the following acts or events:

- a) An act of war (whether declared or undeclared), invasion, armed conflict of foreign enemy, blockade, embargo riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- b) Industry-wide or State-wide strikes or industrial action for a continuous period of 72 hours;
- c) Any civil commotion, boycott or political agitation which prevents collection of waste by the Concessionaire for a continuous period of 7 days;
- d) Any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- e) Any Indirect Political Event that causes a Non-Political Event; or
- f) Any event or circumstances of a nature analogous to any of the foregoing.

8.3 Political Event

A Political Event shall mean one or more of the following acts or events by or on account of any Government Agency:

- a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of the Article 9 of this Agreement;
- b) Compulsory acquisition in national interest or expropriation of any assets of the Projector rights of the Concessionaire or of the Contractors;
- c) Unlawful or unauthorized or without jurisdiction revocation of or refusal to renew or grant without valid cause, any clearance, license, permit, authorization, no objection certificate, consent, approval or exemption required by the Concessionaire to perform its respective obligations under this Agreement; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's inability or failure comply with any condition relating to grant maintenance or renewal of such clearance, license, authorization, no objection certificate, exemption, consent, approval or permit;
- d) Any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or behalf of such Contractor; or
- e) Any event or circumstance of a nature analogous to any of the foregoing.

8.4 Duty to report Force Majeure Event

8.4.1. 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:



Commissioner

Urban Bengaluru Mahanagara Palike



- a) The nature and extent of each Force Majeure Event which is the subject of any claim for relief under this *Article 8* 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.

8.4.2. 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 not later than seven (7) 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

8.4.3. For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Article 8.4.1, and, such other information as the other Party may reasonably request the Affected Party to provide.

8.5 Effect of Force Majeure Event on the Concession

At any time after the Approvals Date for Project, if any Force Majeure Event occurs before CPOD, the Concession Period and the CPOD shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists.

8.6 Termination Notice for Force Majeure Event


If a Force Majeure Event subsists for a period of 180 (One Hundred and Eighty) days or more within a continuous period of 365 (Three Hundred and Sixty Five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save, as provided in this Article 7, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant it 15 days to make a representation, and may after the expiry of such 15 days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

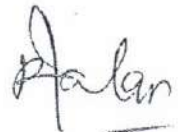
8.7 Force Majeure Dispute Resolution

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming and/or excuse on account of such Force Majeure Event.

8.8 Excuse from Performance of Obligations

If the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such of its obligations to the extent, it is unable to perform on account of such Force Majeure Event; provided that:


Commissioner
Bengaluru Mahanagara Palike



- 7
- a) The suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
 - b) The excuse from performance shall be of no greater scope and of no longer duration than is necessitated by the Force Majeure Event;
 - c) The Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
 - d) When the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.
 - e) The Affected Party shall continue to perform such of its obligations which are not affected by the Force Majeure Event and which are capable of being performed in accordance with this Agreement.
 - f) Any insurance proceeds received shall be subject to the provisions of Financing Documents, entirely applied to repair, replace or restore the assets damaged on account of the Force Majeure Event, or in accordance with the Good Industry Practice.

ARTICLE 9
Change in Law

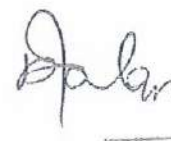
Change in Law shall mean the occurrence or coming into force of any of the following, after the date of this Agreement, having an adverse bearing on the performance of obligations of Parties under this Agreement:

- a) The enactment of any new Indian law;
- (i) The repeal, modification or re-enactment of any existing Indian law;
 - (ii) A change in interpretation or application of any Indian law by a court record;
 - (iii) Any order, decision or direction of a court of record.
- b) Provided that Change in Law shall not include:
 - (i) Coming into effect, after the date of this Agreement, of any provision which was a matter of public knowledge before the date of this Agreement;
 - (ii) Any new law or any change in the existing law under the active consideration of or in the contemplation of any government as of the date of this Agreement which is a matter of public knowledge;
 - (iii) Any change in the rates of the taxes.
- c) Subject to Change in Law resulting in Materials Adverse Effect and subject to the Concessionaire taking necessary measures to mitigate the impact or likely impact of change in law on the Project, if as a direct consequence of a "Change in Law by BBMP, the Concessionaire is obliged to incur Additional Cost, the Concessionaire shall bring the same to the notice of Steering Group. Upon receipt of the notice of Change in Law attributable to BBMP only, issued by the Concessionaire, the Steering Group shall deliberate the matter and take all such steps as may be necessary including determination of the quantum of the Additional Cost to be borne by BBMP and submit its findings to the BBMP for prompt action.
- d) Upon occurrence of a Change in Law, the Concessionaire may notify the BBMP and the Steering Group of the following:



Commissioner

Bruhat Bengaluru Mahanagara Palike



- (i) The nature and the impact of Change in Law on the Project;
- (ii) Insufficient detail, the estimate of the Additional Cost likely to be incurred by the Concessionaire on account of Change in Law;
- (iii) The measures, which the Concessionaire has taken or proposes to take to mitigate the impact of Change in Law, including in particular, minimizing the Additional Cost;
- (iv) The relief sought by the Concessionaire.

ARTICLE 10
Ownership

10.1. Ownership during the Term of Concession

Without prejudice and subject to the Concession, the ownership of Site, the Processing Facility and the Landfill Facility, including all improvements made therein by the Concessionaire during the term of the Concession, shall at all times remain as set out below:

- a) The territory/ land of the Site, already invested equipment and infrastructure and the Landfill Facility located within the Site shall remain property of BBMP;
- b) The Processing Facility to the extent of newly constructed shall remain property of the Concessionaire, including all assets invested in afresh including equipment, machinery, vehicles shall be the exclusive property of the Concessionaire subject to any restrictions, if any, as per the Project Financing Documents.
- c) All Intellectual Property Rights (IPR) related to the Project shall remain property of the Concessionaire, except as provided by IPR law.

ARTICLE 11
Dispute Resolution

11.1 Amicable Dispute Resolution

11.1.1. Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to this Agreement (the "Dispute") shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth below.

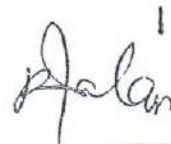
11.1.2. Either Party may refer a Dispute to the Commissioner BBMP (or the person holding charge) and the Chief Executive Officer of the Concessionaire or the nominee of the Concessionaire for amicable settlement. Upon such reference, the two Parties shall meet at the earliest convenience and in any event within 15 (fifteen) days of such reference to discuss and attempt to amicably settle the dispute within 15 (fifteen) days of such meeting between the Parties. If an amicable dispute resolution has failed within the stipulated time period, either Party may refer the Dispute to the Steering Committee first for resolution and thereafter as a next level appeal go in for arbitration in accordance with the provisions of set out below.

11.1.3. If an amicable dispute resolution as set out in Article 11.1.2 has failed within the stipulated time period either Party may refer the dispute to the Steering Group. Upon such reference, the two Parties shall meet at the earliest convenience and in any event within 15 days of such reference to discuss and attempt to amicably settle the dispute within 15 days of such meeting between the Parties.



Commissioner

Borough Bengaluru Mahanagara Palike



11.1.4. If an amicable dispute resolution as set out in Article 11.1.3 has failed within the stipulated time period, arbitration in accordance with the provisions set out below shall apply.

11.2 Arbitration

11.2.1. Procedure

Subject to the provisions of Article 10.1, any Dispute which is not resolved amicably shall be finally settled by binding arbitration under the Arbitration and Conciliation Act, 1996. The arbitration shall be by a panel of three arbitrators one to be appointed by each Party and the third to be appointed by the two arbitrators appointed by the Parties. The Party requiring arbitration shall appoint an arbitrator in writing, inform the other Party about such appointment and call upon the other Party to appoint its arbitrator. If within 30 days of receipt of such intimation, the other Party fails to appoint its arbitrator, the Party seeking appointment of arbitrator may take further steps in accordance with Arbitration and Conciliation Act, 1996.

11.2.2. Place of Arbitration

The place of arbitration shall ordinarily be Bengaluru.

11.2.3. Language

The request for arbitration, the answer to the request, the terms of reference, any written submission, any orders and awards shall be in English and, if oral hearings take place, English shall be the language to be used in the hearings.

11.2.4. Enforcement of Award

The Parties agree that the decision or award resulting from arbitration shall, be final and binding upon the Parties and shall be enforceable in accordance with the provisions of the Arbitration and Conciliation Act, 1996 subject to the rights of the aggrieved parties to secure relief from any higher forum.

11.2.5. Performance during Arbitration

Pending a decision by the Arbitrator on a Dispute submitted for arbitration, the Parties shall continue to perform their respective obligations under this Agreement without prejudice until a decision has been published and lead to an adjustment in accordance with such award.

ARTICLE 12 Representations and Warranties

12.1 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to BBMP that:

- It is duly organized, existing and in good standing under the laws of India;
- It has power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein;
- It has taken all necessary corporate and other actions under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement;


Commissioner
Bruhat Bengaluru Mahanagara Palike



- d) This Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- e) The execution, delivery and performance of this Agreement will not conflict with, result in the breach of/ constitute a default under or accelerate performance required by any of the terms of the Concessionaire's Memorandum and Articles of Association or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected; there are no actions, suits, proceedings or investigations pending or to the Concessionaire's knowledge threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may constitute Concessionaire Event of Default;
- f) To its knowledge, it has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect;
- g) Without prejudice to any express provision contained in this Agreement, the Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has after a complete and careful examination made an independent evaluation of the Project, and the information provided by BBMP, and has determined to its satisfaction the nature and extent of risks and hazards as are likely to arise or may be faced by the Concessionaire in the course of performance of its obligations hereunder.

12.2 Representations and Warranties of BBMP

BBMP represents and warrants to the Concessionaire that:

- a) It is duly incorporated under the laws of India and has the power to conduct the activities contemplated in this Agreement and the power to enter into this Agreement;
- b) It has full power, capacity and authority to execute, deliver and perform this Agreement and has taken all necessary sanctions and approvals and followed all the procedures required to authorize the execution, delivery and performance of this Agreement;
- c) Nothing in this Agreement conflicts with its constitutional understanding or arrangement or any judgment, decree or order or any statute, rule or regulation applicable to it;
- d) All approvals and permissions necessary for the execution of this Agreement have been obtained and the required procedure for the due execution of this Agreement has been adhered to and further that this Agreement will be valid, legal and binding under Indian Law.

12.3 Obligation to Notify Change

In the event that any of the representations or warranties made or given by a Party ceases to be true or stands changed, the Party who had made such representation or given such warranty shall promptly notify the other of the same.

ARTICLE 13 Miscellaneous

13.1. Assignment and Charges

- a) Neither Party shall not assign in favor of any person this Agreement or the rights, benefits and obligations hereunder save and except with prior consent of the other Party;
- b) Neither Party shall create nor permit to subsist any Encumbrance over the Site except with prior consent in writing of the other Party;
- c) Restraint set forth in Article 12.1 (a) and (b) above shall not apply to:
 - (i) liens/Encumbrances arising by operation of law (or by an agreement evidencing the


Commissioner
Bruhat Bengaluru Mahanagara Palike



- same) in the ordinary course of business of the Concessionaire:
- (ii) Pledges of goods/stocks/moveable assets, revenue and receivables as security for indebtedness, in favor at the Lenders and working capital providers for the Assignment of Concessionaire's rights and benefits under this Agreement to or in favor of the Lenders as security for financial assistance provided by them.

13.2. Governing Law and Jurisdiction

This Agreement shall be governed by the laws of India. The competent Courts at Bengaluru, Karnataka shall have jurisdiction over all matters arising out of or relating to this Agreement.

13.3. Waiver

Waiver by either Party of any default by the other Party in the observance and performance of any provision of, or obligations under this Agreement 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 and shall not be effective unless it is in writing and executed by a duly authorized representative of such Party and shall not affect the validity or enforceability of this Agreement in any manner. 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 hereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver/breach of any terms, conditions or provision of this Agreement.

13.4. Survival

The Termination of this Agreement shall not relieve the Concessionaire or BBMP of any obligations already incurred hereunder which expressly or by implication survives Termination hereof, and except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities 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.

13.5. Amendments


This Agreement and the Schedules together constitute a complete and exclusive understanding 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 in writing.

13.6. Notices

Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term or breach will be done in writing and shall be given by Registered Post with acknowledgement due, hand delivery, recognized international courier, E-mail, facsimile transmission and delivered or transmitted to the Parties at their respective addresses and contact details set out below:

If to BBMP:

The Commissioner
BBMP
NR Square
Bengaluru 560002


Commissioner
Bruhat Bengaluru Mahanagara Palike



If to the Concessionaire:

CEO
3WAYSTE Bengaluru Pvt. Ltd
Survey No. 31, Anekal Taluk
Chikkanagamangala Raod
Bengaluru 560099

Or such address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered, in the case of any communication made by letter, when delivered by Registered Post with acknowledgement due, hand delivery, recognized international courier, E-mail, (registered, return receipt requested) at that address, and in the case of any communication made by facsimile, when transmitted properly addressed to such telex number or facsimile number.

13.7. Severability

If for any reason whatsoever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, the validity, legally enforceability remaining provisions shall not be affected in any manner, and the Parties shall negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable. Provided, failure to agree upon any such provisions shall not be subject to Dispute Resolution under this Agreement or otherwise.

13.8. No Partnership

Nothing contained in this Agreement shall be construed or interpreted as constituting a Partnership between the Parties. Neither Party shall have any authority to bind the other in any manner whatsoever.


13.9. Exclusion of Implied Warranties etc.,

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties and any representation by any Party not contained in a binding legal agreement executed by the Parties.

13.10. Counterparts


This Agreement is executed in two counterparts, each of which when executed and delivered shall constitute an original of this Agreement but shall together constitute one and only the Agreement.


Commissioner
Bruhat Bengaluru Mahanagara Palike




IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT ABOVE FIRST WRITTEN ABOVE, SIGNED AS OF THE DATE AND DELIVERED

For and on behalf of BBMP:

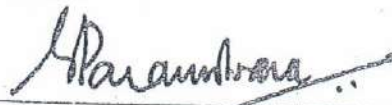

Name: N. M. PRASAD
Brhat Bengaluru Mahanagara Palike
COMMISSIONER,
Position: BBMP
Date: 29/04/2019

For and on behalf of the Concessionaire:


Name: DR. RAMESH KUMAR JALAN
Position: DIRECTOR, 3WAYSTE BENGALURU
Date: 25.04.2019

3WAYSTE
3Wayste Bengaluru Pvt. Ltd.
Survey No. 31, Anekal Taluk,
Sarjapur Hobli, Chikkanagamangala
Bengaluru 560 099 D.

Witness:


Name: _____
Position: DR. G. PARAMESHWARA.
Date: DCM, Gok, B'lore