

MEMORANDUM OF UNDERSTANDING

FOR THE PRE-TENDER TIE-UP TO OFF LOAD THE WORK FOR EXECUTION OF 'Construction of Balance works of Major Bridge over Middle Strait Creek between Km. 106.590 to km 108.553 of NH-04 connecting South Andaman & Baratang Island in the Union Territory of Andaman & Nicobar Islands on EPC Basis' by NHIDCL.

This Pre-Tender Memorandum of Understanding is made at Kolkata on the _____ January, 2024.

BY AND BETWEEN

THE BRAITHWAITE BURN AND JESSOP CONSTRUCTION COMPANY LIMITED, an existing company under the provisions of Companies Act 2013, having its registered office at – 27, Rajendra Nath Mukherjee Road, Kolkata – 700 001, West Bengal, India (hereinafter referred to as “BBJ”) which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) of the **FIRST PART**.

AND

(Name of Agency) , a Proprietorship Firm / Partnership Firm / Company having its office at _____ a, Pin Code - _____, being represented by its Authorized Representative – MR. _____, aged about _____ years, Son of – _____, residing at _____, P.O. _____, P.S. _____, District – _____, Pin Code - _____, (Hereinafter referred to as the ‘Agency’) which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns of the **OTHER PART**.

The Expression ‘BBJ’ and ‘Agency’ shall, wherever the context admits, mean and include their successors-in-interest and assigns and shall collectively be referred to as “the Parties” and individually as “the Party”.

PREAMBLE

- WHEREAS BBJ** intends to participate by submitting the EPC tender to Deputy General Manager (Technical), National Highways & Infrastructure Development Corporation Ltd (hereinafter called “Employer”) for “Construction of Balance works of Major Bridge over Middle Strait Creek between Km. 106.590 to km 108.553 of NH-04 connecting South Andaman & Baratang Island in the Union Territory of Andaman & Nicobar Islands on EPC Basis” of NHIDCL, eTender No. NHIDCL/HQ/AN/Balance/MiddleStrait/3rdcall/2023-24 (hereinafter referred to as the “said Project”)
- In the event BBJ being the successful bidder in getting the contract for the said Project, BBJ will off-load a portion of the said Project to one / two agency(ies) to be selected through open tendering. In this regard the decision of BBJ is final.
- As BBJ will be the Bidder for the said Project of NHIDCL. For the said purpose of submission of the Bid by BBJ, the Agency agrees to submit all the required documents, Methodology Statements, Construction Schedule, etc. for the said Project and subsequent clarifications, if any, to BBJ within the specified time frame fixed by BBJ.

4. **NOW THIS MEMORANDUM** witnesseth and it is hereby agreed by and between the parties hereto as follows:

- A.** The scope and responsibility and participation of the Agency in this MOU shall generally be as follows:
- i)** The Agency shall prepare and provide the Planning, Survey, Design, and Construction of Maintenance of the entire work consisting of RCC Substructure with Foundation including earthwork, Deck concrete work, superstructure work along with Bearings, Return or Wing Wall, Approaches, Road work, Drainage Work, Project Furniture, Shifting of utilities, Traffic Management, Barricading, Supply of Cement, Reinforcement, etc. all components for the successful execution of the work.
 - ii)** The Agency has agreed that the tendered scope are tentative and may change after detail investigation, design and final acceptance of the authority during execution of the said Project.
 - iii)** The Agency shall bear their own expenses to submit necessary documents for Expression of Interest and Bidding.
 - iv)** The agency agrees and undertakes to indemnify and hold harmless BBJ against any liability, loss, cost, damages or expenses sustained as a result of breach or default or negligence or improper performance or disturbance caused by itself or by any of its subcontractors, suppliers, or associates in connection with its part of Works as per Contract.
 - v)** For the execution of the scope of work, the Agency shall make own arrangements to bring in the required finance, plant and equipment, materials, manpower and other resources as per the written direction given by BBJ.
 - vi)** The Agency shall co-operate with BBJ throughout the entire period of this MOU on the basis of exclusivity and shall not make arrangement or enter into agreement either directly or indirectly with any other Party or Group of Parties on matters relating to the Project except with the prior written consent of BBJ.
 - vii)** The Agency shall not assign or transfer its interest specified in this MOU to any other party without the prior written consent of BBJ.
- B.** The scope and responsibility of BBJ in this MOU shall generally be as follows:
- i)** BBJ will be responsible for participation and securing contract(s) for the said Project of NHIDCL.
 - ii)** In the event BBJ being the successful bidder in getting the contract for the said Project, BBJ will off-load a specific portion of the said Project to the Agency. In this regard the decision of BBJ is final.
 - iii)** BBJ will make payments to the Agency after successful completion of the off-loaded portion of the said Project by the Agency, at the agreed rates for the specific project / contract on back-to-back basis when BBJ will get corresponding payment from the concerned Authority of NHIDCL.

5. Jurisdiction:

This MOU shall be governed by the laws of India and both the parties shall obtain all necessary approval from appropriate authorities such as, Board / Ministry etc. as and when required for smooth execution of projects. The Courts in Kolkata will have exclusive jurisdiction in respect to any disputes arising out of this MOU or relation thereto.

6. Validity:

This MOU shall expire upon happening of the earliest occurrence of any of the following events:

- a) BBJ does not become eligible to bid for the project or
- b) Having become eligible to bid BBJ submits a tender which is unsuccessful or
- c) Having been awarded the contract, on completion of the defect liability period of the contract or
- d) On the signing of a detailed Agreement by the Parties, setting-out therein detailed terms of the said agreement.

7. Confidentiality:

All information acquired/obtained from one party by the other shall be treated as confidential by the recipient and shall not be used other than for the purpose meant for without the consent in writing of the party providing the information.

8. Settlement of Disputes/ Arbitration:

In case a dispute or difference of any kind whatsoever, arises out of or relates to the present MOU or ancillary / incidental as to the terms and conditions of it or relates to any matter for execution and/or performance, it is a term of the agreement by and between the parties herein that before invoking arbitration, the aggrieved party shall first & foremost refer the matter to the Competent Authority of BBJ and the decision / recommendation / interpretation made by the said Competent Authority of BBJ shall be final & binding upon both the parties.

If a party is dissatisfied with the decisions / recommendations aforesaid, and notwithstanding anything else contained elsewhere, the aggrieved party may by a notice in writing to the Competent Authority of BBJ clearly evince the intention to refer the disputes and differences that have arisen between the parties to Arbitration by constitution of an Arbitral Tribunal. The Arbitral Tribunal shall consist of three Arbitrators, one each to be nominated by the respective parties and the third to be appointed by the nominated arbitrators.

Pending submission of and/or decision on a dispute or difference as aforesaid or until the Arbitral Award is published, the parties (if the Contract is not terminated / cancelled) shall continue to perform all of their obligations under this present MOU, without prejudice to a final adjustment in accordance with such award.

The decision of the Arbitral Tribunal arrived at after hearing the parties shall be final and binding upon the parties. The Arbitration Proceedings shall be conducted in accordance with the Arbitration and Conciliation Act, 1996 or any statutory modifications or re-enactments thereof.

It is also agreed by the parties that the Arbitration Proceedings shall be conducted in English language. The venue of Arbitration shall be Kolkata only and any proceedings arising out of this Agreement / Contract shall be subject to the jurisdiction of Courts at Kolkata.”

9. General:

- a. All notices which are required to be given hereunder shall be in writing and shall be sent to the address of Registered Office of the Company or to the addresses as set out in this MOU or such other address in India as the recipient may designate by notice given in accordance with the provisions of this clause. Any such notice may be delivered personally or by Speed Post or facsimile transmission and shall be deemed to have been served if by hand when delivered, if by Speed Post, after five working days from the date of posting and if by facsimile transmission when dispatched.
 - b. 'Project Specific Development Agreement', prepared in line with the present MOU, shall be signed between the parties for construction of Projects over each land after reaching consensus of the parties herein.
 - c. Neither party shall be entitled to have any claim for damages against the other party in respect of non-performance or delay in performance of this MOU caused by reason of any event beyond the reasonable control of other party, including but not limited to government action, war, hostilities act of the public enemy, civil commotion, any imminent threat of the proceeding, sabotage, fire, flood explosion, epidemics, acts of God, quarantine restrictions, strike or lockout, orders/directions of any statutory/judicial authority etc.
 - d. Other matters not stipulated in this MOU shall be discussed and decided later between the Parties.
 - e. This MOU is being executed in duplicate.
10. By signing this MOU, the Parties acknowledge that it correctly records the understanding the parties have reached with regard to the mutual co-operation in their common interest.

THIS MOU IS MADE BETWEEN BBJ AND AGENCY WITH THE APPROVAL OF THEIR RESPECTIVE BOARD OF DIRECTORS OF THE COMPANY AND IS SIGNED BY THE DULY AUTHORIZED REPRESENTATIVE OF BOTH THE PARTIES, IN PRESENCE OF THE FOLLOWING WITNESSES:-

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 FOR AND ON BEHALF OF
**The Braithwaite Burn And
 Jessop Construction Company Limited.**
(BBJ)
 (A Government of India Enterprise)

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 FOR AND ON BEHALF OF AGENCY

Witnesses

1.

2.

Witnesses

1.

2.