SINDH ECONOMIC ZONES MANAGEMENT COMPANY LIMITED

REQUEST FOR PROPOSALS

FOR AWARD OF CONCESSION

IN RESPECT OF THE

MARBLE CITY KARACHI

November 17, 2022
LETTER OF INVITATION

Sindh Economic Zone Management Company Limited (“SEZMC”) intends to engage a private party on PPP mode to design, finance, build, operate, maintain and transfer the Marble City Karachi as an industrial estate to uplift the value-added marble and granite sector and allied industries in Sindh. For details on Project background and scope of work, please refer to Volume II (Project Scope) of the Request for Proposals (“RFP”).

SEZMC invites the Interested Parties to participate in the Bidding Process and to submit their bids for the Project in accordance with the requirements of the Applicable Evaluation Documents.

Bidders are required to submit only one (1) Bid, comprising of one (1) original Technical Proposal and one (1) original Financial Proposal, and four (4) hard copies of each, with one (1) soft copy of each (on CDs/ DVDs/ USBs) and other supporting documents (as applicable), as identified in the RFP, no later than 11:00 hours PST by the Bid Submission Date at the submission address, each as indicated in the Data Sheet.

The Technical Proposals will be opened on the Bid Submission Date at 12:00 hours PST in the presence of the representatives of the Bidders who may wish to attend. The Financial Proposals of only technically qualified Bidders will be opened and evaluated, as per the requirements of the Applicable Evaluation Documents.

All Bidders are required to furnish, as part of their Financial Proposals (in a separately sealed envelope) a Bid Security. The Bid Security shall be an irrevocable, bank guarantee in the form attached as Bidding Form F2 (Form of Bid Security) of Part 2 (Bidding Forms) of Volume I (Bidding Procedure) of the RFP, issued in accordance with the requirements set out in the Instructions to Bidders.

It is mandatory for the Bids to be prepared using the standard formats for Technical Proposals and Financial Proposals, as provided in the RFP. Bids that are not prepared on the prescribed formats may not be considered by the TFEC. If any information required in the prescribed forms is found missing, or written elsewhere, no credit will be given during evaluation and may lead to rejection of the Bid.

Subject to the provisions of the Applicable Evaluation Documents, SEZMC reserves the right to cancel the Bidding Process at any time. SEZMC may amend the RFP by issuing an addendum as per the requirements specified in the RFP, at any time prior to the Bid Submission Date.

Interested Parties may obtain further information in relation to the Project and acquire the RFP either: (a) physically, by submitting a written application; or (b) electronically, by sending an email to the address / email, given below on a working day during office hours, not later than one (1) business day before the Bid Submission Date, in each case specifying its full name, address and contact details. The RFP will be made available on the websites of the SEZMC / SPPRA / Investment Department and / or PPP Unit.

All capitalized terms used herein and not otherwise defined shall have the meaning given to them in Volume I (Bidding Procedure) of the RFP.

Designation: Chief Executive Officer
Address: Sindh Economic Zones Management Company, 2nd Floor, Bahria Complex IV, Chaudhry Khaliq Uz Zamand Road, Gizri, Karachi.
Phone No.: +92 21 99332220
Email: rfp.marblecity@sezmc.gos.pk; info@sezmc.gos.pk
Websites:  
  PPP Unit – http://www.pppunitsindh.gov.pk/
  SEZMC – http://www.sezmc.gos.pk/
  Investment Department – http://www.sindhinvestment.gos.pk/

Sincerely,

CHIEF EXECUTIVE OFFICER
SINDH ECONOMIC ZONES MANAGEMENT COMPANY LIMITED
IMPORTANT NOTICE

The Request for Proposals, together with all volumes, attachments, forms, annexures and appendices, attached thereto, is issued by SEZMC and is provided to the recipients solely for use in preparing and submitting the Bids.

Bids submitted in response to the RFP by the Bidders shall be upon full understanding and agreement of all terms of the RFP and such submission shall be deemed as an acceptance to all the terms and conditions stated in the RFP.

No SEZMC Party makes any representations (express or implied) or warranties as to the accuracy or completeness of the information contained in the RFP, or in any other document made available to a person in connection with the Bidding Process for the Project; and the same shall have no liability for the RFP or for any other written or oral communication transmitted to the recipient in the course of the recipient’s evaluation of the Project. No SEZMC Party will be liable to reimburse or compensate any recipient for any costs, fees, damages or expenses incurred by the recipient in evaluating or acting upon the RFP or otherwise in connection with the Project. The RFP shall neither constitute a solicitation to invest, or otherwise participate, in the Project, nor shall it constitute a guarantee or commitment of any manner on the part of any SEZMC Party that the Project will be awarded. SEZMC reserves the right, in its full discretion, to modify the RFP and/or the Project requirements at any time to the fullest extent permitted by applicable laws and shall not be liable to reimburse or compensate the recipient for any costs, taxes, expenses or damages incurred by the recipient in such an event. The SEZMC Parties make no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by them and Bidders shall have no claim whatsoever of any nature against the SEZMC Parties in this regard.

Subject to the provisions of the Applicable Evaluation Documents, the SEZMC reserves the right to cancel the Bidding Process at any time. The SEZMC may amend the RFP by issuing an addendum as per the requirements specified in the RFP, at any time prior to the Bid Submission Date.

*All capitalized terms used herein and not otherwise defined shall have the meaning given to them in Volume I (Bidding Procedure) of the RFP.*
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PART 1
INSTRUCTIONS TO BIDDERS
**GLOSSARY**

Unless otherwise specified / defined, all capitalized terms used herein shall bear the meanings set out below. References to any law, rule or regulation shall include any amendments, modifications or any re-enactment thereof.

The headings in Instructions to Bidders, including the table of contents, are for convenience of reference only and not for purposes of construction or interpretation of the Instructions to Bidders.

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<th>TERM</th>
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| Acceptable International Credit Rating | Means, with respect to a person or instruments issued by such person,  
(a) in relation to such a person, that is rated A- or higher by S&P, A3 or higher by Moody’s or A- or higher by Fitch; and  
(b) in relation to such an instrument, that is rated A- or higher by S&P, A3 or higher by Moody’s or A- or higher by Fitch,  
provided that where a person or any instrument is rated by more than one of S&P, Moody’s or Fitch, then the lowest rating will apply for determining whether the person or instrument has an Acceptable International Credit Rating. |
| Acceptable Pakistan Credit Rating | Means, with respect to a person or instruments issued by such person:  
(a) in relation to such a person, that is rated AA+ or higher by PACRA or AA+ or higher by VIS; and  
(b) in relation to such an instrument, that is rated AA+ or higher by PACRA or AA+ or higher by VIS,  
provided that where a person or any instrument is rated by more than one of PACRA or VIS, then the lowest rating will apply for determining whether the person or instrument has an Acceptable Pakistan Credit Rating. |
| Acceptance of Notification of Award | Has the meaning given to it in Sub-Section 7.3.3 of the Instructions to Bidders. |
| Affiliate | With respect to a Bidder (or where the Bidder is a Consortium, each Consortium Member), means:  
(a) any company or entity that directly or indirectly Controls or is Controlled by, or is under common Control with a Bidder (or where the Bidder is a Consortium, a Consortium Member);  
(b) any director, senior executive or manager either of such Bidder (or where the Bidder is a Consortium, a Consortium |
<p>| <strong>Applicable Evaluation Documents</strong> | Member) or of any company or entity referred to in paragraph (a) above; (c) any consultant, agent or representative supporting such Bidder (or where the Bidder is a Consortium, a Consortium Member) in connection with the Project (including the Bidding Process for the Project); and / or (d) any person with an aggregate ultimate beneficial interest in at least five percent (5%) of the share capital or ownership interest in a Bidder (or where the Bidder is a Consortium, a Consortium Member) (howsoever held). |
| <strong>Best Evaluated Bid</strong> | Collectively: (a) the Sindh PPP Act; (b) the SPPRA Act; (c) the SPPRA Rules; (d) any applicable order, instruction, guideline, regulations or instrument issued under the Sindh PPP Act, the SPPRA Act and / or the SPPRA Rules; and (e) the RFP. |
| <strong>Bid</strong> | A Bid which is determined to be the ‘best evaluated bid’ for the award of Concession in terms of the requirements of the Applicable Evaluation Documents. |
| <strong>Bidder</strong> | The proposal (constituting the Technical Proposal and Financial Proposal) submitted by a Bidder in response to the RFP, which is prepared and submitted in accordance with this RFP. |
| <strong>Bidding Forms</strong> | An Interested Party, that has submitted a Bid, either individually or as a Consortium. |
| <strong>Bidding Process</strong> | The forms provided in Part 2 (Bidding Forms) of Volume I (Bidding Procedure) of the RFP, that are required to be submitted as part of the Technical Proposals and the Financial Proposals. |
| <strong>Bid Price</strong> | The international competitive bidding process being conducted pursuant to the Applicable Evaluation Documents, for the selection of the Successful Bidder for the award of the Concession for the Project. |
| <strong>Bid Security</strong> | The period of one hundred twenty (120) days starting from the Bid Submission Date, as may be extended from time to time as per the Applicable Evaluation Documents. |
| <strong>Bid Submission Date</strong> | The last date for submission of Bids as specified in the Data Sheet. |
| <strong>Bid Validity Period</strong> | Shall mean PV (present value) of revenue share collected from sub-lease of industrial and commercial plots in the Marble City Karachi to be shared with the SEZMC determined in accordance with the Bidding Form F3 (Financial Proposal Standard Form). |
| <strong>Best Evaluated Bid</strong> | Has the meaning given to it in Sub-Section 4.7.1 of the Instructions to Bidders. |</p>
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<th><strong>Companies Act</strong></th>
<th>The Companies Act, 2017.</th>
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<td><strong>Concession</strong></td>
<td>Has the meaning given to it in the Concession Agreement.</td>
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<td><strong>Concession Agreement</strong></td>
<td>The agreement titled “Concession Agreement” attached in Volume III (Concession Agreement and Appendices) of the RFP.</td>
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<td><strong>Concession Period</strong></td>
<td>Has the meaning given to it in the Concession Agreement.</td>
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<td><strong>Concessionaire</strong></td>
<td>Has the meaning given to that term in Sub-Section 1.2 (Overview of the Procurement Process) of the Instructions to Bidders and the Concession Agreement.</td>
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<tr>
<td><strong>Consortium</strong></td>
<td>A Bidder comprised of two (2) or more Consortium Members, formed to submit the Bid.</td>
</tr>
<tr>
<td><strong>Consortium Member(s)</strong></td>
<td>Each member of a Consortium, including the Lead Member.</td>
</tr>
<tr>
<td><strong>Consortium Agreement</strong></td>
<td>The consortium agreement to be submitted by a Bidder, in case the Bidder is a Consortium, in accordance with the requirements of the RFP (including Annexure C (Requirements for Consortium Agreement) of the Instructions to Bidders).</td>
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<td><strong>Construction Performance Security</strong></td>
<td>Has the meaning given to it in the Concession Agreement.</td>
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<td><strong>Construction Performance Security Expiry Date</strong></td>
<td>Has the meaning given to it in the Concession Agreement.</td>
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<td><strong>Control</strong></td>
<td>The:</td>
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<td></td>
<td>(a) ownership or control (whether directly or otherwise) of more than 50% of the equity share capital, voting capital, or the like, of the controlled entity; or</td>
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<td>(b) ownership of equity share capital, voting capital, or the like, by contract or otherwise, conferring control of or power to (i) control the composition of, or power to appoint more than 50% of the members of the board of directors, board of management, or other equivalent or analogous body of the controlled entity or (ii) appoint the key managers of such entity,</td>
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<td>and “Controls” “Controlling” or “Controlled” shall be construed accordingly.</td>
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<td><strong>Data Sheet</strong></td>
<td>The data sheet provided in Section 9 (Data Sheet) of the Instructions to Bidders.</td>
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<td><strong>Eligible Countries</strong></td>
<td>All countries of the world with whom Islamic Republic of Pakistan has commercial / trade relations, which are not subject to sanctions imposed by the United Nations Security Council.</td>
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<td><strong>Financial Proposal</strong></td>
<td>The financial proposal (including all forms, documents and information required in terms of the RFP and submitted therewith), submitted by a Bidder as part of its Bid pursuant to the RFP.</td>
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<td><strong>GoS</strong></td>
<td>Government of Sindh</td>
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<tr>
<td><strong>Insurance Policy(ies)</strong></td>
<td>Has the meaning given to it in the Concession Agreement.</td>
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<tr>
<td><strong>Integrity Pact</strong></td>
<td>Has the meaning given to that term in Sub-Section 8.3 (Integrity Pact) of the Instructions to Bidders.</td>
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<td><strong>Interested Party</strong></td>
<td>A person who has obtained the RFP in the manner as specified in the Letter of Invitation.</td>
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<tr>
<td><strong>Instructions to Bidders</strong></td>
<td>The Instructions to Bidders set out in Part 1 (Instructions to Bidders) of Volume I (Bidding Procedure) of the RFP.</td>
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<td><strong>Investment Department</strong></td>
<td>Investment Department, Government of Sindh</td>
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<td><strong>Lead Member</strong></td>
<td>Has the meaning given to it in Sub-Section 2.1.2(b) of the Instructions to Bidders.</td>
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<td><strong>Letter of Invitation</strong></td>
<td>The letter of invitation issued by the SEZMC and attached with the RFP.</td>
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<td><strong>Marketing Launch Date</strong></td>
<td>Has the meaning given to it in the Concession Agreement.</td>
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<tr>
<td><strong>Minimum Credit Rating</strong></td>
<td>The Acceptable International Credit Rating or the Acceptable Pakistan Credit Rating, as applicable.</td>
</tr>
<tr>
<td><strong>Notification of Award</strong></td>
<td>The notification of award to be issued by the SEZMC to the Successful Bidder as per Sub-Section 7.3.1 of the Instructions to Bidders.</td>
</tr>
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<td><strong>Ownership Stake</strong></td>
<td>Which shall refer to: (a) shareholding where the SPV is a company incorporated and established under the Companies Act; and (b) unitholding where the SPV is a “PPP REIT Scheme” formed under the REIT Regulations.</td>
</tr>
<tr>
<td><strong>PKR</strong></td>
<td>Pakistani Rupees, the lawful currency of the Islamic Republic of Pakistan.</td>
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<td><strong>PPP</strong></td>
<td>Public Private Partnership.</td>
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<tr>
<td><strong>PPP Unit</strong></td>
<td>The PPP Unit established under Section 6 (Public-Private Partnership Unit) of the Sindh PPP Act.</td>
</tr>
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<td><strong>Pre-Bid Meeting</strong></td>
<td>The meeting / conference relating to the queries raised and clarifications sought by the prospective Bidders held on the date specified in the Data Sheet.</td>
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<td><strong>Project</strong></td>
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<td><strong>Project Agreements</strong></td>
<td>Has the meaning given to it in the Concession Agreement.</td>
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<td><strong>PST</strong></td>
<td>Pakistan Standard Time.</td>
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<td><strong>REIT Regulations</strong></td>
<td>The Real Estate Investment Trust (REIT) Regulations, 2015.</td>
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<td><strong>RFP</strong></td>
<td>The Request for Proposals document issued by the SEZMC in relation to the Project, containing the documents specified in Sub-Section 3.1.1 of the Instructions to Bidders, and includes any amendments and / or modifications thereto.</td>
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<td><strong>SEZMC</strong></td>
<td>Sindh Economic Zones Management Company Limited.</td>
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<td><strong>SEZMC Parties</strong></td>
<td>Collectively, the SEZMC, the GoS and the TFEC, including their consultants, advisors, employees, personnel or agents and in case of the GoSall ministries, department, attached department, autonomous body of the GoS, local government or any organization or corporation owned or controlled by the GoS.</td>
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<tr>
<td><strong>Site</strong></td>
<td>Has the meaning given to it in the Concession Agreement.</td>
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<td><strong>SPPRA</strong></td>
<td>Sindh Public Procurement Regulatory Authority, established under the SPPRA Act.</td>
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<td><strong>SPPRA Act</strong></td>
<td>The Sindh Public Procurement Act, 2009.</td>
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<td><strong>Special Purpose Vehicle or SPV</strong></td>
<td>A: (a) company established and incorporated under the Companies Act; or (b) “PPP REIT Scheme” formed under the REIT Regulations, by the Successful Bidder, for the purposes of undertaking the Project.</td>
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<td><strong>Successful Bidder</strong></td>
<td>The Bidder whose Bid is determined to be the Best Evaluated Bid in terms of the requirements of the Applicable Evaluation Documents.</td>
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<tr>
<td><strong>Technical Proposal</strong></td>
<td>The technical proposal (including all forms, documents and information required in terms of the RFP and submitted therewith), submitted by a Bidder as part of its Bid pursuant to the RFP.</td>
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1. **GENERAL**

1.1 **INTRODUCTION**

Pakistan is blessed with a variety of rare and precious marble and mineral resources and stands out as a unique country, offering immense opportunities for domestic and international investors to earn maximum returns on their investments in this vital sector in the wake of upsurge in investment in the construction and real-estate sector.

With an increase in the number of commercial and residential real-estate projects, the demand for all construction related products including marble and granite products has increased in the domestic market.

SEZMC intends to engage a private party on PPP mode, to develop the Marble City Karachi as an industrial estate on 300 acres to uplift the value-added marble and granite sector and allied industries in Sindh.

For a period of twelve (12) months following the Marketing Launch Date, the Concessionaire shall offer seventy percent (70%) of the plots in the Project to the marble and granite sector industries on a ‘right of first refusal’ basis, and the remaining thirty percent (30%) of the plots may be offered to the allied sector industries (such as the construction sector). If the Concessionaire is unable to meet such allotment criteria within the aforementioned twelve (12) months, the Concessionaire may offer the remaining plots to the allied sector industries, provided, however, at least thirty percent (30%) of the plots shall be allotted to the marble and granite sector industries.

The Site is located at Deh Meetha Ghar accessible from Karachi, via the Northern Bypass Road (M - 10) near the Hamdard University of Medicine and Dentistry and Madinatul Hikmah along Hub River.

The salient features of the Site are:

- Located on the Northern Bypass which connects the National and Super Highway, the two major highways that connect Karachi with the rest of the province.
- Close proximity to new housing developments in Karachi.
- Connected through Karachi’s largest roads network.
- Distance from the Project to ports and highways:
  - 40 km to Karachi Port.
  - 60 km to Port Qasim.
  - 25 km to Karachi-Hyderabad Motorway.
  - 1.2 km to Karachi Northern Bypass.
  - 24 km to RCD Highway Baluchistan.
For details in relation to Project background and scope of work, please refer to VOLUME II (PROJECT SCOPE) of the RFP.

This RFP is being issued as a part of the competitive selection process to invite Bidders to submit their Bid with the intent of being awarded the Concession and to enter into a Concession Agreement for the Project.

For the purposes of guaranteeing the contractual (including financial) obligations of the SEZMC under the Concession Agreement, the Investment Department shall enter into the Provincial Support Agreement.

All risks and obligations of the SEZMC, the GoS and the Successful Bidder / SPV shall be in accordance with the RFP (including the Project Agreements) and the Bidders shall be deemed to have full and complete understanding of the risks relating to the Project and their allocation, as set out in the RFP (including the Project Agreements).

By submitting the Bid, the Bidder acknowledges the acceptance of all tax related obligations. The SPV’s obligations with regards to taxation are clearly identified in the Concession Agreement. For the sake of clarity, the SPV shall be required to pay all the taxes, duties, levies, stamp duties, rents, and other charges payable to any local government, provincial or federal government (as applicable) and it would not be allowed to seek any support from SEZMC Parties if it was unaware or ignorant of any taxes, duties, levies, stamp duties, rents, and other charges.

SEZMC Parties do not make any representation or warranty, express or implied, as to the accuracy or completeness of such information, or any information on which this RFP is based, or any other background or reference information or documents prepared and made available to the Bidders, and any liability related to such information is hereby expressly disclaimed.

Before submitting the Bids, the Bidders should carefully examine all the information provided in the RFP (including the Project Agreements).

1.2 OVERVIEW OF THE PROCUREMENT PROCESS

For the purposes of the Project, SEZMC has issued the RFP for conducting the Bidding Process for the selection of a Successful Bidder for the award of the Concession, in accordance with the requirements of the Applicable Evaluation Documents.

In terms of the Applicable Evaluation Documents, the “single stage two envelope” bidding procedure has been adopted. A Bidder whose Bid is determined to be the Best Evaluated Bid, shall be awarded the Concession. The Successful Bidder shall be required to form the SPV which shall be the developer for the purposes of the Project (the “Concessionaire”).

1.3 INDICATIVE SCHEDULE

The indicative timelines in relation to the Bidding Process for the Project (as may be amended by the SEZMC in its discretion) are as follows:

<table>
<thead>
<tr>
<th>Activity</th>
<th>Date (Tentative)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Issuance of RFP</td>
<td>November 17th, 2022</td>
</tr>
<tr>
<td>Event</td>
<td>Date</td>
</tr>
<tr>
<td>------------------------------------------------</td>
<td>-----------------------------------------</td>
</tr>
<tr>
<td>Pre-Bid Meeting</td>
<td>December 14th, 2022</td>
</tr>
<tr>
<td>Bid Submission Date &amp; Opening of Technical Proposals</td>
<td>January 10th, 2023</td>
</tr>
<tr>
<td>Opening of Financial Proposals</td>
<td>Thirty (30) days of the Bid Submission Date</td>
</tr>
<tr>
<td>Announcement of Bid Evaluation Results</td>
<td>Fifty (50) days of the Bid Submission Date</td>
</tr>
<tr>
<td>Award of Concession to Successful Bidder</td>
<td>One Hundred (100) days of the Bid Submission Date</td>
</tr>
<tr>
<td>Signing of the Concession Agreement</td>
<td>One Hundred Fifty (150) days of the Bid Submission Date</td>
</tr>
</tbody>
</table>

*In the event of any public holiday (including a gazetted holiday) occurring on the above-mentioned dates, the immediately succeeding business day will be considered as the day on which the respective milestone shall take place.*
2. **ELIGIBLE BIDDERS**

2.1 **GENERAL REQUIREMENTS**

2.1.1 A Bid received from a Bidder, shall only be considered for further evaluation in accordance with the requirements of the RFP if the criteria, as set out in Annexure A (*Basic Eligibility Criteria*) of Part 4 (*Annexures*) of Volume I (*Bidding Procedure*) of the RFP, is satisfied. Any non-compliant Bid shall be rejected by the SEZMC/TFEC.

2.1.2 For the purposes of the RFP, a Bid may be submitted by a single entity or a Consortium. In case a Bid is submitted by a Consortium:

(a) all members of the Consortium shall be jointly and severally liable in respect of their obligations in relation to the Project;

(b) one (1) member of the Consortium shall be nominated as being in-charge and shall act the lead member (the “**Lead Member**”) who shall have the authority to represent and irrevocably bind the Consortium in all matters connected with the Bidding Process, conduct all business for and on behalf of any and all Consortium Members during the Bidding Process and in case the Consortium is awarded the Project, finalize the Project Agreements.

This authorization shall be evidenced by submitting a power of attorney as set out in Part B (*Power of Attorney for Appointment of Lead Member*) of Bidding Form T3 (*Form of Power of Attorney*) of Part 2 (*Bidding Forms*) of Volume I (*Bidding Procedure*) of the RFP, signed by legally authorized signatories of all the Consortium Members, appointed pursuant to the power of attorney in Part A (*Power of Attorney to Authorize a Person to Sign the Documents*) of Bidding Form – T3 (*Form of Power of Attorney*) of Part 2 (*Bidding Forms*) of Volume I (*Bidding Procedure*) of the RFP;

(c) each Consortium Member shall be required to own at least twenty percent (20%) Ownership Stake in the SPV. The Lead Member shall be required to own the highest proportion of the Owner Stake in the SPV relative to other Consortium Members but in no case less than thirty four percent (34%) Ownership Stake in the SPV;

(d) the Bid shall contain a formal executed copy of the Consortium Agreement complying with the laws of Pakistan and the requirements indicated in Annexure C (*Requirements for Consortium Agreement*) and specifically appointing the Lead Member of the Consortium and identifying the roles of each Consortium Member. Following the Bid Submission Date, there shall be no change in the Consortium, by addition/withdrawal of a Consortium Member or change in percentage shareholding of any Consortium Member, except as may be permitted by SEZMC/TFEC; and

(e) in case the Successful Bidder is a Consortium, such Successful Bidder shall be required to comply with the requirements regarding Ownership Stake matters including transfer restrictions set out in the Concession Agreement.

2.1.3 Each Bidder shall authorize a representative who shall have the authority to represent and irrevocably bind the Bidder in all matters connected with the Bidding Process,
conduct all business for and on behalf of the Bidder during the Bidding Process, and in case the Bidder is awarded the Project, finalize the Project Agreements. Such authority shall be in the form of a power of attorney in favour of the authorized representative in the form attached as Part A (Power of Attorney to Authorize a Person to Sign the Documents) of the Bidding Form – T3 (Form of Power of Attorney) of Part 2 (Bidding Forms) of Volume I (Bidding Procedure) of the RFP.

2.1.4 A Bidder (including any Consortium Member) shall not have a conflict of interest. All Bidders (including any Consortium Members) found to have a conflict of interest shall be disqualified. SEZMC will take appropriate actions to manage such conflicts of interest, which may include rejecting the Bid if it determines that a conflict of interest may affect the integrity of the Bidding Process.

The circumstances giving rise to a conflict of interest for the purposes of the Bidding Process have been set out in Annexure A (Basic Eligibility Criteria) of Part 4 (Annexures) of Volume I (Bidding Procedure) the RFP and such circumstances are not exhaustive. SEZMC shall be the sole determinant of when a conflict of interest shall arise.

2.1.5 A Bidder (or any Consortium Member) which has been declared ineligible or has been blacklisted by any of its employers, any Federal or Provincial governmental or non-governmental department / agency in Pakistan, or any other provincial government / governments of any foreign countries or their governmental bodies as at the Bid Submission Date or thereafter, shall not be considered.

2.1.6 Each Bidder (including a Consortium Member) shall indemnify the SEZMC Parties fully in respect of any damage, cost, penalty or expense of any kind incurred by such person arising from a Bidder’s or its representative (including a Consortium Member’s or its representatives) breach of its obligations under the RFP.

2.1.7 The construction contractor engaged by the Concessionaire must possess valid PEC registration certificate in minimum category ‘C1’.

2.1.8 Bidders are encouraged to submit their respective Bids after visiting the Site and ascertaining for themselves the Site conditions, location, surroundings, climate, availability of power, water and other utilities for construction, access to Site, handling and storage of materials, weather data, applicable laws including but not limited to the Applicable Evaluation Documents and the Sindh Environmental Protection Act 2014, the general and local conditions associated with implementing the Project and any other matter considered relevant by them. The costs and permission(s) (if any) for the purposes of visiting such site(s) shall be at the Bidder’s own expense and liability. Bidders shall be required to seek prior written permission of SEZMC for visiting such site(s). Regardless of the Bid and outcome of the Bidding Process, SEZMC shall not be liable in any manner for any costs incurred as a result of such visit(s).

2.1.9 A Bidder or any of its personnel or agents may enter the site(s) where the works and services in relation to the Project are to be performed and undertaken, only upon the express condition that the Bidder, its personnel and agents will release and indemnify the SEZMC and its personnel and agents from and against all liability in respect thereof, and the Bidder will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection.

2.1.10 A Bidder is expected to examine all instructions, forms, terms and specifications in the
RFP. Failure to furnish all information or documentation required by the RFP may result in the rejection of the Bid.

3. **RFP DOCUMENT**

3.1 **CONTENTS OF THE RFP**

3.1.1 The RFP comprises the documents stated below and should be read in conjunction with any addendum issued in accordance with Sub-Section 3.4 (Amendment of RFP) of the Instructions to Bidders.

(A) **VOLUME I – BIDDING PROCEDURE**

(a) Part 1 – Instructions to Bidders.
(b) Part 2 – Bidding Forms.
(c) Part 3 – Bidding Documentary Requirements.
(d) Part 4 – Annexures

(i) Basic Eligibility Criteria (Annexure A);
(ii) Evaluation Criteria (Annexure B); and
(iii) Requirements for Consortium Agreement (Annexure C).

(B) **VOLUME II – PROJECT SCOPE**

(C) **VOLUME III – CONCESSION AGREEMENT AND APPENDICES**

3.1.2 The Bidding Forms comprise the forms stated below and should be read in conjunction with any addendum issued in accordance with Sub-Section 3.4 (Amendment to RFP) of the Instructions to Bidders:

(A) For the Technical Proposal:

(a) Bidding Form T1 – Letter of Technical Proposal;
(b) Bidding Form T2 – Form of Integrity Pact;
(c) Bidding Form T3 – Form of Power of Attorney;
(d) Bidding Form T4 – Form of Affidavit;
(e) Bidding Form T5 – Basic Information Form;
(f) Bidding Form T6 – Historical Non-Performance and Pending Litigation;
(g) Bidding Form T7 – Net Worth of Assets Owned by the Bidder;
(h) Bidding Form T8 – Cash and Funding Lines;
(i) Bidding Form T9 – Bidder’s Experience;
(j) Bidding Form T10 – Team Composition;
(k) Bidding Form T11 – Format of Curriculum Vitae (CV) for Proposed Key Staff;
(l) Bidding Form T12 – Operations & Maintenance Experience;
(m) Bidding Form T13 – Marble Sector Industry Commitment;
(n) Bidding Form T14 – Concept Plan and Design;
(o) Bidding Form T15 – O&M Plan; and
(p) Bidding Form T16 – Marketing Plan.

(B) For the Financial Proposal
Bidding Form F1 – Letter of Financial Proposal;
Bidding Form F2 – Form of Bid Security;
Bidding Form F3 – Financial Proposal Standard Form; and
Bidding Form F4 – Financial Model Form.

3.2 COMPLETENESS OF RFP

3.2.1 None of the SEZMC Parties shall be responsible for the completeness of the RFP and its addenda, if a Bidder has not obtained the same directly from the source(s) stated by the SEZMC in the Letter of Invitation.

3.2.2 Bidders are expected to carefully examine all instructions, forms and terms in the RFP and to furnish all information or documentation required pursuant to the RFP. Failure to comply with the requirements of Bid submission set out in the RFP will be at the Bidders’ own risk and may result in the rejection of the Bid. Pursuant to Sub-Section 6.4 (Determination of Responsiveness of Bids) of the Instructions to Bidders, Bids which are not responsive to the requirements of the RFP shall be rejected.

3.3 CLARIFICATIONS OF RFP

3.3.1 An Interested Party requiring any clarification pertaining to the RFP shall contact the SEZMC in writing, at address or through email provided in the Data Sheet or raise its enquiries during the Pre-Bid Meeting. The SEZMC will respond in writing to any request for clarification provided that such request is received no later than five (05) calendar days prior to the Bid Submission Date. The response shall be communicated to all the Interested Parties and also shall be uploaded on the websites of the SEZMC, the PPP Unit and the SPPRA, including a description of the inquiry but without identifying its source. Should the SEZMC deem it necessary to amend the RFP as a result of a request for clarification, it shall do so following the procedure under Sub-Section 3.4 (Amendment of RFP) of the Instructions to Bidders. No markup of the RFP (including the Project Agreements and / or other documents / instruments attached to the RFP) shall be accepted. Interested Parties may submit comments or seek clarifications on the RFP, which shall be considered by SEZMC / TFEC.

3.3.2 The designated representatives of the Interested Parties are encouraged to attend the Pre-Bid Meeting at the date, time and venue indicated in Data Sheet. The Pre-Bid Meeting may be conducted virtually, and in such a case, the SEZMC will provide the web link to all the Interested Parties. The purpose of the Pre-Bid Meeting will be to clarify issues and to answer questions of the Interested Parties on any matter relating to the RFP. Non-attendance at the Pre-Bid Meeting will not be a cause for disqualification of a Bidder.

3.4 AMENDMENT OF RFP

3.4.1 At any time prior to the Bid Submission Date, the SEZMC may amend the RFP by issuing an addendum.

3.4.2 Any addendum / corrigendum issued shall be part of the RFP, communicated to all the Interested Parties and published in widely circulated national and international dailies and on the respective websites of the SEZMC, the PPP Unit and the SPPRA. It shall be the sole responsibility of the Interested Parties to check for any updates in this regard on the respective websites and / or dailies.
3.4.3 The SEZMC may, at its discretion, extend the Bid Submission Date in accordance with Sub-Section 5.2.5 of the Instructions to Bidders, if it considers that as a result of issuance of any addendum / corrigendum, additional time will be required by the Interested Parties for preparation of their Bids.

4. PREPARATION OF BIDS

4.1 COSTS FOR BIDS

4.1.1 Bidders shall bear all costs associated with the preparation and submission of their Bids, including, without limitation, all costs and expenses relating to preparation of responses to any clarifications sought by the SEZMC in accordance with Sub-Section 6.1.1 of the Instructions to Bidders. The SEZMC shall in no case be responsible or liable for such costs, regardless of the conduct or outcome of the Bidding Process.

4.2 LANGUAGE OF THE BIDS

4.2.1 The Bid, and all correspondence and documents related to the Bid and the Bidding Process between the Bidder and the SEZMC shall be written in the English language. In case any document / information furnished by the Bidder is in a language other than English, it will need to be accompanied by an English translation (duly notarized by Notary Public and attested by Pakistan Embassy / Consulate in the country of origin and by the Ministry of Foreign Affairs, Pakistan) of its pertinent passages for the purposes of interpretation of the Bid. In case of any discrepancy, the English translation shall prevail.

4.3 DOCUMENTS COMPRISING THE BID

4.3.1 The Bid shall comprise a Technical Proposal, containing the documents listed in Sub-Section 4.4 (Technical Proposal) of the Instructions to Bidders, and a Financial Proposal, containing the documents listed in Sub-Section 4.5 (Financial Proposal) of the Instructions to Bidders, each submitted simultaneously in separately sealed envelopes clearly marked “TECHNICAL PROPOSAL” and “FINANCIAL PROPOSAL” respectively, in accordance with manner prescribed herein.

4.3.2 Interested Parties are expected to carefully examine the RFP when preparing their Bids and use only the Bidding Forms specified in Sub-Section 3.1.2 of the Instructions to Bidders. Bidding Forms must be completed without any alterations to the text, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested. Any deviations / omissions / reservations from the formats provided in the RFP shall not be accepted and may form basis for the rejection of the Bid. Material deficiencies in providing the information requested may result in rejection of a Bid.

4.3.3 In case a document required to be submitted as part of the Technical Proposal is submitted with the Financial Proposal, or a document required to be submitted with the Financial Proposal is submitted with the Technical Proposal, it shall not be considered for evaluation and such document shall be considered as not submitted by the Bidder.

4.4 TECHNICAL PROPOSAL

4.4.1 The Technical Proposal shall demonstrate the Bidder’s unconditional acceptance of the complete scope of works and services under the RFP. Any material omission, reservation,
deviation or condition attached in the Technical Proposal may cause the Bid to be rejected by TFEC as non-responsive. Under no circumstances shall the TFEC consider / accept a conditional Technical Proposal.

4.4.2 The Technical Proposal submitted by the Bidder shall include the following information:

(a) signed and filled out ‘Letter of Technical Proposal’, as set out in Bidding Form T1 (Letter of Technical Proposal) of Part 2 (Bidding Forms) of Volume I (Bidding Procedure) of the RFP;

(b) Integrity Pact, as set out in Bidding Form T2 (Form of Integrity Pact) of Part 2 (Bidding Forms) of Volume I (Bidding Procedure) of the RFP, in accordance with Sub-Section 8.3 (Integrity Pact) of the Instructions to Bidders;

(c) authorization in the form of a power of attorney on behalf of the Bidder, and in case of a Consortium, each Consortium Member, authorizing its representative to sign the relevant documents as per the requirements of the RFP, on its behalf, in the format attached as Part A (Power of Attorney to Authorize A Person to Sign the Documents) of Bidding Form T3 (Form of Power of Attorney) of Part 2 (Bidding Forms) of Volume I (Bidding Procedure) of the RFP;

(d) in case the Bidder is a Consortium, a power of attorney, to be executed by the authorized representatives of the Consortium Members, in favour of the Lead Member, to authorize it to represent and bind all Consortium Members, as set out in the form attached as Part B (Power of Attorney to authorize the Lead Member) of Bidding Form T3 (Form of Power of Attorney) of Part 2 (Bidding Forms) of Volume I (Bidding Procedure) of the RFP;

(e) in case the Bidder is a Consortium, Consortium Agreement prepared and executed based on the requirements set out in Annexure C (Requirements for Consortium Agreement), of Part 4 (Annexures) of Volume I (Bidding Procedure) of the RFP;

(f) an affidavit from the Bidder (in case of Consortium, each Consortium Member), in the form and substance as set out in Bidding Form T4 (Form of Affidavit) of Part 2 (Bidding Forms) of Volume I (Bidding Procedure) of the RFP;

(g) basic information form, in the form and substance as set out in Bidding Form T5 (Basic Information Form) of Part 2 (Bidding Forms) of Volume I (Bidding Procedure) of the RFP;

(h) all the information, along with the documents evidencing compliance with the eligibility criteria for Bidders set out in Annexure A (Basic Eligibility Criteria) of Part 4 (Annexures) of Volume I (Bidding Procedure) of the RFP;

(i) following Bidding Forms, specified in Part 2 (Bidding Forms) of Volume I (Bidding Procedure) of the RFP, each prepared as per the requirements and containing the details specified therein:
   
   (i) Bidding Form T6 (Historical Non-Performance and Pending Litigation);
   
   (ii) Bidding Form T7 (Net Worth of Assets Owned by the Bidder);
(iii) **Bidding Form T8 (Cash and Funding Lines);**

(iv) **Bidding Form T9 (Bidder’s Experience);**

(v) **Bidding Form T10 (Team Composition);**

(vi) **Bidding Form T11 (Format of Curriculum Vitae (CV) for Proposed Key Staff);**

(vii) **Bidding Form T12 (Operations & Maintenance Experience);**

(viii) **Bidding Form T13 (Marble Sector Industry Commitments);**

(ix) **Bidding Form T14 (Concept Plan and Design);**

(x) **Bidding Form T15 (O&M Plan);** and

(xi) **Bidding Form T16 (Marketing Plan);**

(j) **any other documents required under the RFP.**

4.4.3 The Technical Proposal shall not include any direct or indirect financial information relating to the Financial Proposal. Any Bid having such financial information shall be declared non-responsive.

**4.5 FINANCIAL PROPOSAL**

4.5.1 In preparing the Financial Proposals, Bidders are expected to fully understand the requirements and conditions set out in the RFP, including all contractual obligations of SEZMC and the Successful Bidder / SPV under the Project Agreements (as applicable) and the scope of works and services to be performed by the SPV (as the developer) in relation to the Project.

4.5.2 Any omission, reservation, deviation or condition included in the Financial Proposal to the contrary shall cause the Bid to be rejected by TFEC as non-responsive. Under no circumstances shall TFEC consider / accept a conditional Financial Proposal.

4.5.3 The Financial Proposal submitted by the Bidder shall comprise the following:

(a) signed and filled out Letter of Financial Proposal, as set out in Bidding Form F1 (**Letter of Financial Proposal**) of Part 2 (**Bidding Forms**) of Volume I (**Bidding Procedure**) of the RFP;

(b) Bid Security, as set out in Bidding Form F2 (**Form of Bid Security**) of Part 2 (**Bidding Forms**) of Volume I (**Bidding Procedure**) of the RFP, in accordance with Section 4.7 (**Bid Security**) of the Instructions to Bidders;

(c) information as required and set out in Bidding Form F3 (**Financial Proposal Standard Form**) of Part 2 (**Bidding Forms**) of Volume I (**Bidding Procedure**) of the RFP;

(d) information as required and set out in Bidding Form F4 (**Financial Model Form**)
of Part 2 (Bidding Forms) of Volume I (Bidding Procedure) of the RFP; and

(e) any other document required in the RFP.

4.6 **CURRENCIES OF BID AND PAYMENT**

4.6.1 All Bids and other supporting documents shall be typed in the English language and state all monetary amounts in Pakistan Rupees (PKR).

4.7 **BID SECURITY**

4.7.1 The Bidder shall furnish, as part of the Financial Proposal, in a separately sealed envelope, a Bid Security equivalent to three percent (3%) of the Bid Price (the “Bid Security”). In the case of a Consortium, the Bid Security shall be issued by the Lead Member.

4.7.2 The Bid Security shall be an irrevocable, bank guarantee in the form attached as Bidding Form F2 (Form of Bid Security) of Part 2 (Bidding Forms) of Volume I (Bidding Procedure) of the RFP.

4.7.3 The Bid Security shall be issued and maintained in PKR by a scheduled bank in Pakistan or a foreign bank outside Pakistan, in each case, having the Minimum Credit Rating at all times, acceptable to the SEZMC. Where the Bid Security is issued by a foreign bank outside Pakistan, such Bid Security shall be counter-guaranteed / confirmed by a scheduled bank in Pakistan (having the Minimum Credit Rating at all times, acceptable to the SEZMC).

4.7.4 The Bid Security shall be valid until twenty-eight (28) days following the Bid Validity Period, as may be extended in accordance with Sub-Section 4.8.2 of the Instructions to Bidders. If the Construction Performance Security has not been issued by the Successful Bidder seven (7) days prior to the expiry of the Bid Security, then the Successful Bidder shall extend the Bid Security until such date as notified by the SEZMC.

4.7.5 Any Bid not accompanied by a compliant Bid Security (as exclusively determined by the SEZMC), shall be rejected by TFEC as non-responsive and the Bidder shall not be allowed to submit the Bid Security at a later stage. The Bid Security issued by a foreign bank and not counter-guaranteed / confirmed from a local scheduled bank in Pakistan shall result in the rejection of the Bid.

4.7.6 Bidders are required to submit the original Bid Security with their original Financial Proposal. TFEC shall reject a Bid if a photocopy of the original Bid Security is attached with the original Financial Proposal and such Bid shall not be further evaluated.

4.7.7 The Bid Security of the unsuccesful Bidders shall be returned as soon as reasonably possible once the Successful Bidder furnishes the Construction Performance Security pursuant to Sub-Section 7.5 (Construction Performance Security) of the Instructions to Bidder.

4.7.8 The Bid Security of the Successful Bidder shall be returned as soon as reasonably possible once the Successful Bidder has furnished the required Construction Performance Security pursuant to Sub-Section 7.5 (Construction Performance Security) and has signed the Concession Agreement pursuant to Sub-Section 7.6 (Signing of the
4.7.9 The Bid Security shall be forfeited:

(a) if a Bidder:

(i) withdraws its Bid during the Bid Validity Period (except as provided in Sub-Section 5.4.4 of the Instructions to Bidders);

(ii) is found to be engaged in any corrupt, fraudulent, collusive, coercive, or obstructive practices;

(iii) is found to be blacklisted by any agency of the Federal or Provincial Government;

(iv) does not accept the arithmetical corrections of its Bid in accordance with Sub-Section 6.3.4 of the Instructions to Bidders; and / or

(v) fails to fulfil its obligations under the RFP in terms thereof.

(b) if the Successful Bidder or the SPV, as applicable:

(i) fails to sign the Concession Agreement, in accordance with Sub-Section 7.6 (Signing of the Concession Agreement) of the Instructions to Bidders;

(ii) fails to furnish Construction Performance Security pursuant to Sub-Section 7.5 (Performance Security) of the Instructions to Bidders; and / or

(iii) fails to comply with the requirements set out in the Notification of Award.

4.7.10 The Bid Security is required to protect the SEZMC Parties against the risk of Bidder’s conduct which would warrant the Bid Security’s forfeiture, pursuant to Sub-Section 4.7.9 of the Instructions to Bidders.

4.8 **Bid Validity**

4.8.1 Bids shall remain valid for the Bid Validity Period, as may be extended by the SEZMC in accordance with Sub-Section 4.8.2 of the Instructions to Bidders. A Bid valid for a shorter period shall be rejected by TFEC as non-responsive.

4.8.2 In exceptional circumstances, prior to the expiration of the Bid Validity Period, the SEZMC may request all Bidders to extend the period of validity of their Bids. Any such request by the SEZMC with respect to extension of the Bid Validity Period and the response by the Bidder shall be in writing. The Bid Security requested in accordance with Sub-Section 4.7 (Bid Security) of the Instructions to Bidders, shall also be extended accordingly for a corresponding period not exceeding the original Bid Validity Period. Extension of Bid Security may be requested upon the extension the period of Bid Validity Period. A Bidder may refuse the request following which such Bidder’s Bid will be disqualified and its Bid Security shall be returned without forfeiture. A Bidder accepting the request shall not be required or permitted to modify its Bid.

4.9 **Manner of Signing of Bid**
4.9.1 The Bidder shall prepare one (1) original of the Technical Proposal and one (1) original of the Financial Proposal comprising the Bid as described in Sub-Section 4.3 (Documents Comprising the Bid) of the Instructions to Bidders, and clearly mark each as “ORIGINAL—TECHNICAL PROPOSAL” and “ORIGINAL—FINANCIAL PROPOSAL”, respectively, in addition to the marking stipulated in Sub-Section 4.3 (Documents Comprising the Bid) of the Instructions to Bidders. The Bidder shall submit as “COPY” four (4) hard copies, printable softcopies (PDF), and editable softcopies (MS Word, MS Excel etc., as may be relevant). The CDs / DVDs / USBs should be clearly marked “Technical Proposal” and “Financial Proposal” and placed in their respective envelopes containing the Technical Proposal and the Financial Proposal marked as “ELECTRONIC COPY”. In the event of any discrepancy between the original and the copies, the original shall prevail. Note that the Bid Security is required to be submitted in a sealed envelope, separately in the envelope marked as “Financial Proposal”.

4.9.2 The original and all copies of the Bid shall be typed or written in indelible ink and shall be signed by a person duly authorised to sign on behalf of the Bidder. This authorization shall consist of a written power of attorney, as set out in Bidding Form T3 (Form of Power of Attorney) of Part 2 (Bidding Forms) of Volume I (Bidding Procedure) of the RFP, as per the requirements set out in the Instructions to Bidders. This authorization must contain the name and position held by each person signing the authorization and name and position of the authorised signatory.

4.9.3 The hard copy of each Bid should be bound in the hard book binding form to avoid the possibility of removal or insertion of page(s). All pages of the Bid must be signed and stamped in original by the Bidder’s authorized representative. All the pages must be numbered starting from the first page to the last. Any Bid not substantially adhering to these requirements may be rejected by TFEC.

4.9.4 Any interlineations, erasures, or overwriting shall be valid only if they are signed or initialled by the authorized representative signing the Bid.

4.9.5 The SEZMC / TFEC reserves the right to reject a Bid which does not meet the requirements in Sub-Section 4.9 (Manner of Signing of Bid) of the Instructions to Bidders.

5. SUBMISSION AND OPENING OF BIDS

5.1 SEALING, MARKING AND SUBMISSION OF BIDS

5.1.1 In accordance with Sub-Section 4.9.1 of the Instructions to Bidders, each Bid shall be in a separate envelope indicating the Bid as original or copy clearly marked as “ORIGINAL” and “COPY”, as appropriate. The Technical Proposal shall be placed in a sealed envelope clearly marked “TECHNICAL PROPOSAL” and the Financial Proposal in the sealed envelope clearly marked “FINANCIAL PROPOSAL”. These two envelopes, in turn, shall be sealed in an outer envelope bearing the address for Bid submission indicated in the Data Sheet. The envelope shall be clearly marked: “DO NOT OPEN, EXCEPT IN PRESENCE OF TFEC”.

The outer envelope of the Technical Proposal shall bear a warning not to open the envelope before the Bid Submission Date. The outer envelope of the Financial Proposal shall bear a warning not to open the envelope before the Technical Proposal has been evaluated. Any Bidder (including a Consortium Member) who submits or participates in
more than one (1) Bid shall be disqualified. The inner and outer envelopes of the Technical Proposal and the Financial Proposal shall bear the name of the Bidder and be addressed to the SEZMC and shall the mention the name of the Project i.e., “Marble City Karachi”.

5.1.2 If all the envelopes are not sealed and marked as required, the SEZMC / TFEC shall not assume any responsibility for the misplacement or premature opening of the Bid. In case of such misplacement of Bids or premature opening of Bid which results in disclosure of any direct or indirect financial information prior to the scheduled opening of the Financial Proposal, the Bid shall be rejected by TFEC as non-responsive.

5.1.3 All Bidding Forms forming part of the Technical Proposal and the Financial Proposal, as specified in the RFP are to be properly completed and signed. No alteration is to be made in the Letter of Financial Proposal, Letter of Technical Proposal or in the Bidding Forms, except in filling up the blanks as directed. If any alteration is made or if these instructions have not been fully complied with, the Bid shall be rejected.

5.1.4 Bids shall be submitted by the Bidders: (i) through courier / express mail; or (ii) by hand at the address indicated in the Data Sheet.

5.2 Deadline for Submission

5.2.1 Bids must be received by the SEZMC no later than the Bid Submission Date at the address provided in the Data Sheet.

5.2.2 Bids or any document received after 11:00 hours (PST) on the Bid Submission Date shall be declared late, rejected, and returned unopened to the Bidder. Bidders are responsible for ensuring that their Bids are timely submitted at the address provided in the Data Sheet.

5.2.3 No arrangements shall be made by the SEZMC with Bidders for collection of the Bids from any delivery point. Bidders shall bear all expenses incurred in the preparation and delivery of Bids. No claims for refund of any expense shall be entertained.

5.2.4 Where delivery of the Bid is by courier / express mail and the Bidder wishes to receive an acknowledgment of receipt of such Bid, such Bidder shall make a request for such acknowledgement in a separate letter attached to (but not included in) the sealed Bid.

5.2.5 The SEZMC may, at its discretion, extend the Bid Submission Date by issuing an addendum in accordance with Sub-Section 3.4 (Amendment of RFP) of the Instructions to Bidders, in which case all rights and obligations of the SEZMC and the Bidders previously subject to the earlier Bid Submission Date shall thereafter be subject to extended Bid Submission Date.

5.2.6 Delays in the mail, delays of person(s) in transit, or delivery of a Bid to an incorrect location, shall not be accepted as an excuse for failure to deliver a Bid at the proper place and time. It shall be the Bidder’s responsibility to ensure delivery of its Bid in a timely manner.

5.3 Modification, Substitution and Withdrawal of Bids

5.3.1 Any Bidder may modify, substitute, or withdraw its Bid after submission provided that written notice, duly signed by authorised representative, for the modification, substitution or withdrawal is received by the SEZMC prior to the Bid Submission Date.
The notice for modification, substitution or withdrawal of any Bid shall be prepared, sealed, marked and delivered in accordance with the provisions applicable to the original Bid with additional marking of “MODIFICATION” or “SUBSTITUTION” on all envelopes in case of modification or substitution, or “WITHDRAWAL” on the envelope containing the notice, in case of withdrawal.

Withdrawal of a Bid during the interval between the Bid Submission Date and the expiration of the Bid Validity Period (or any extension thereof pursuant to Sub-Section 4.8.2 of the Instructions to Bidders) shall result in forfeiture of the Bid Security pursuant to Sub-Section 4.7.9 of the Instructions to Bidders.

Bids requested to be withdrawn in accordance with Sub-Section 5.3.1 of the Instructions to Bidders shall be returned unopened to the requesting Bidder(s) on the Bid Submission Date.

After the Bid Submission Date, no changes to the Project Agreements shall be permitted other than those requested by the SEZMC and agreed to by the Bidders and inclusion of details of the Successful Bidder (to whom the Concession is awarded) and any other information that was incomplete prior to the Bid Submission Date.

Bids submitted in response to the RFP by the Bidders shall be upon full understanding and agreement of all terms of the RFP (including the Project Agreements) and such submission shall be deemed as an acceptance to all the terms and conditions stated in the RFP (including the Project Agreements).

**5.4 OPENING OF BIDS**

TFEC shall conduct the opening of Technical Proposals on the same day as the Bid Submission Date at the time and address provided in the Data Sheet, in the presence of Bidders’ designated representatives who choose to attend.

If the Technical Proposal and the Financial Proposal are submitted together in one envelope, other than as specified in the Instructions to Bidders, TFEC may reject the entire Bid. If any document, required to be submitted with Technical Proposal, is submitted with the Financial Proposal, or if any document required to be submitted with the Financial Proposal is submitted with the Technical Proposal, such document shall not be considered for evaluation and may also form the basis of rejection of a Bid.

The Financial Proposals shall remain unopened and will be held in the custody of the SEZMC until the specified time of their opening, as communicated by the SEZMC to the Bidders.

First, envelopes marked “WITHDRAWAL” shall be opened and read out and the inner envelope with the corresponding Bid shall not be opened but returned to the Bidder. No Bid shall be withdrawn unless the corresponding withdrawal notice contains a valid authorization by the Bidder to request the withdrawal and is read out during the Bid opening.

Second, outer envelopes marked “SUBSTITUTION” shall be opened. The inner envelopes containing the substitute Technical Proposal and / or substitute Financial Proposal shall be exchanged for the corresponding envelopes being substituted, which
shall be returned to the Bidder unopened. Only the substituted Technical Proposal, if any, shall be opened, read out, and recorded. Substituted Financial Proposal, if any, will remain unopened in accordance with Sub-Section 5.4.3 of the Instructions to Bidders. No Bid shall be substituted unless a valid authorization by the Bidder to request the substitution is submitted and is read out and recorded during the Bid opening.

5.4.6 Next, outer envelopes marked “MODIFICATION” shall be opened. The original Technical Proposal shall be opened, read out, and recorded, followed by the opening, reading out and recording of the modification to the Technical Proposal. Any modification to the Financial Proposal shall remain unopened in accordance with Sub-section 5.4.3 of the Instructions to Bidders. No Bid shall be modified unless a valid authorization by the Bidder to request the modification is submitted and is read out and recorded during the Bid opening.

5.4.7 All other envelopes holding the Technical Proposals shall be opened one at a time, and the following read out and recorded:

(a) the name of the Bidder;
(b) whether there is a modification or substitution; and
(c) any other details as the SEZMC / TFEC may consider appropriate.

5.4.8 Only Technical Proposals which are read out and recorded during the Bid opening shall be considered for evaluation as per the requirements of the RFP. No Bid shall be rejected at the time of opening of Technical Proposals except for late Bids, in accordance with Sub-Section 5.2.2 of the Instructions to Bidders.

5.4.9 TFEC shall prepare a record of the Bid opening that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification. The Bidders’ representatives who are present shall be requested to sign the attendance sheet. The omission of a Bidder’s signature on the attendance sheet shall not invalidate the contents and effect of the record.

5.4.10 At the end of the evaluation of the Technical Proposals, TFEC shall invite Bidders who have submitted responsive Technical Proposals pursuant to the requirements of the RFP and who have been determined as technically qualified for award of Concession to attend the opening of the Financial Proposals. The date, time, and location of the opening of Financial Proposals shall be advised in writing by the SEZMC.

5.4.11 The SEZMC shall notify in writing at any time prior to the opening of the Financial Proposals, the Bidders who have been rejected on the grounds of their Technical Proposals not being responsive to the requirements of the RFP. Such Bidders shall be required to collect their Financial Proposals unopened from the SEZMC on the date notified by the SEZMC.

5.4.12 TFEC shall conduct the opening of Financial Proposals of all Bidders who have technically qualified, in the presence of Bidders’ representatives who choose to attend at the address, date and time specified by the SEZMC. The Bidders’ representatives who are present shall be requested to sign an attendance sheet / register evidencing their
attendance.

5.4.13 Financial Proposals of the Bidders shall be opened one at a time and the following shall be read out and recorded:

(a) the name of the Bidder;
(b) whether there is a modification or substitution;
(c) the presence and value of the Bid Security;
(d) the Bid Price; and
(e) any other details as the SEZMC / TFEC may consider appropriate.

5.4.14 Only the Financial Proposals which are read out and recorded during the opening of Financial Proposals shall be considered for evaluation. No Financial Proposal shall be rejected at the time of opening of Financial Proposals.

5.4.15 TFEC shall prepare a record of the opening of Financial Proposals that shall include, as a minimum: the name of the Bidder, presence or absence and the value of Bid Security, and the Bid Price. The Bidders’ representatives who are present shall be requested to sign the attendance sheet. The omission of a Bidder’s signature on the attendance sheet shall not invalidate the contents and effect of the record.

6. **CLARIFICATION AND EVALUATION OF BIDS**

6.1 **CLARIFICATION OF BIDS**

6.1.1 To assist in the examination, evaluation and comparison of the Technical Proposals and/or Financial Proposals, TFEC may, at its discretion, ask the Bidders for any clarification, presentation, additional information or supporting documentation in respect of any matter associated with the documentation submitted by the Bidders in their Bids. Any such request and the response shall be in writing. No change in the price in the Financial Proposals or substance of the Bid shall be sought, offered or permitted except to confirm the correction of arithmetic errors discovered by TFEC in the evaluation of the Bids, in accordance with Sub-Section 6.3.4 of the Instructions to Bidders.

6.1.2 If a Bidder does not provide clarifications of the information requested by the date and time set in TFEC’s request for clarification, its Bid shall be rejected.

6.2 **EVALUATION OF BIDS**

6.2.1 During the evaluation of Bids, the following definitions apply:

(a) “Deviation” is a departure from the requirements specified in the RFP;
(b) “Reservation” is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the RFP; and
(c) “Omission” is the failure to submit part, or all of the information or documentation required in the RFP.
6.3 **PRELIMINARY EXAMINATION OF BIDS**

6.3.1 Prior to the detailed evaluation of Bids pursuant to Sub-Section 6.4 (*Determination of Responsiveness of Bids*) of the Instructions to Bidders, TFEC shall examine each Bid to determine whether:

(a) the Bid is complete and does not deviate from the scope of works and services to be performed in relation to the Project;

(b) any computational errors have been made;

(c) required sureties (including the Bid Security) have been furnished;

(d) the documents have been properly signed;

(e) valid authorization(s) is / are present;

(f) the Bid is valid till the Bid Validity Period; and

(g) the Bidder is compliant with the basic eligibility requirements set out in Annexure A (*Basic Eligibility Criteria*) of Part 4 (*Annexures*) of Volume I (*Bidding Procedure*) the RFP.

6.3.2 Prior to conducting detailed evaluation of Bids pursuant to Sub-Section 6.4 (*Determination of Responsiveness of Bids*) of the Instructions to Bidders, TFEC shall examine each Bid as follows, and a Bid may not be considered acceptable if:

(a) it is unsigned; or

(b) its validity is less than the Bid Validity Period.

6.3.3 Prior to the detailed evaluation of Bids pursuant to Sub-Section 6.4 (*Determination of Responsiveness of Bids*) of the Instructions to Bidders, TFEC shall examine each Bid as follows, and a Bid shall not be considered acceptable if:

(a) it is not accompanied by a Bid Security;

(b) it is received after the Bid Submission Date;

(c) it is submitted through fax, email, or any other form of electronic transmission;

(d) the Bidder refuses to accept arithmetic correction(s); or

(e) it materially deviates from the requirements of the RFP.

6.3.4 During the evaluation of Financial Proposals, TFEC shall correct arithmetical errors on the following basis:

(a) the relevant input amount and the output (i.e., total) amount in any Bidding Form, due to any error in calculation, the relevant input amount shall prevail, and the output (i.e., total) amount shall be corrected; and
the words and figures, the amount in words shall prevail.

6.3.5 If the Bidder does not accept the corrected amount of the Bid, its Bid shall be rejected, and its Bid Security shall be forfeited.

6.4 **DETERMINATION OF RESPONSIVENESS OF BIDS**

6.4.1 TFEC shall determine the responsiveness of each Bid to the RFP. The Technical Proposals that conform to all the terms and conditions of the RFP without material deviations, reservations or omissions shall be declared responsive. A material deviation, reservation or omission is one that:

(a) if accepted, would:
   (i) affect in any substantial way the scope, quality, or performance of the works and services in relation to the Project as specified in the RFP; or
   (ii) limit in any substantial way the SEZMC Parties’ rights or the Bidder’s or the SPV’s obligations under the RFP; or

(b) if rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive Technical Proposals.

6.4.2 TFEC’s determination of a Bid’s responsiveness may be based on the contents of the Bid itself without recourse to extrinsic evidence.

6.4.3 Any minor non-conformity or irregularity in a Technical Proposal that does not constitute a material deviation, reservation or omission may be waived by the SEZMC or required by the SEZMC to be rectified, provided such waiver or rectification does not prejudice or affect unfairly the competitive position of other responsive Technical Proposals.

6.4.4 Provided that a Bid is substantially responsive, TFEC may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify non-material non-conformities in the Bid related to documentation requirements. Requesting information or documentation on such non-conformities shall not be related to any aspect of the Financial Proposal. Failure of the Bidder to comply with the request may result in the rejection of its Bid.

6.4.5 If a Bid is not substantially responsive to the requirements of the RFP, it shall be rejected by TFEC and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.

6.4.6 A responsive Financial Proposal is one which meets the requirements of the RFP without any deviation, reservation or omission. No change in the Financial Proposals shall be allowed and shall be evaluated as per the information provided by the Bidders. A non-responsive Financial Proposal may not subsequently be made responsive by correction of the deviation, reservation, or omission.

6.5 **EVALUATION CRITERIA**

6.5.1 Bids of only those Bidders shall be considered who meet the basic eligibility criteria set forth in Annexure A (*Basic Eligibility Criteria*) of Part 4 (*Annexures*) of Volume I (*Bidding Procedure*) of the RFP.
6.5.2 In addition, and subject to the requirements set out in Sub-Section 6.3 (Preliminary Examination of Bids) and Sub-Section 6.4 (Determination of Responsiveness of Bids) each of the Instructions to Bidders, the Bidders shall be evaluated against the evaluation criteria for the Technical Proposals and the Financial Proposals set out in Annexure B (Evaluation Criteria) of Part 4 (Annexures) of Volume I (Bidding Procedure) of the RFP.

6.5.3 The TFEC shall attribute a technical score to responsive Technical Proposals.

6.5.4 Technical Proposals scoring less than seventy (70) points shall be rejected. The technical score shall be calculated as follows:

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Criteria</th>
<th>Weightage/Marks</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.</td>
<td>Financial Capability</td>
<td>35</td>
</tr>
<tr>
<td>B.</td>
<td>Technical Capability</td>
<td>45</td>
</tr>
<tr>
<td>C.</td>
<td>Business Plan Evaluation</td>
<td>20</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

For technical qualification, a Bidder must score at least seventy (70) or more marks. The detailed technical evaluation criteria for Technical Proposal is set out in Annexure B (Evaluation Criteria) of Part 4 (Annexures) of Volume I (Bidding Procedure) of the RFP.

6.5.5 After complete evaluation of the Technical Proposals, the Financial Proposals of the Bidders, who have been qualified technically, shall be evaluated as per the requirements set out in Volume I (Bidding Procedure) of the RFP.

6.6 SUCCESSFUL BIDDER

6.6.1 The Bidder who secures the highest marks based on the financial evaluation criteria, and whose Bid is determined to be the Best Evaluated Bid in terms of the Applicable Evaluation Documents, shall be declared the Successful Bidder.

6.6.2 If a Financial Proposal, in the opinion of TFEC, is seriously unbalanced or is seen to unfairly exploit the evaluation mechanism, TFEC may require the relevant Bidder to produce detailed price analysis for any or all items of the Bid, to demonstrate the internal consistency of those prices. After evaluation of the price analysis, taking into consideration the terms of payments, the SEZMC / TFEC may require the Bidder to rationalize the costs and / or terms of payments.

6.7 SEZMC’S RIGHT TO VERIFY DOCUMENTS

6.7.1 The SEZMC retains the right to verify particulars regarding any information, statements and / or documents furnished with a Bid. Any Bidder found to be misrepresenting information may be disqualified at any stage of the Bidding Process and their Bid Security shall be forfeited.

7. AWARD OF CONCESSION

7.1 AWARD CRITERIA
7.1.1 Subject to Sub-Section 7.2 (SEZMC’s Right to Accept / Reject Bids), the SEZMC shall award the Concession to the Bidder whose Bid has been determined to be the Best Evaluated Bid in terms of the requirements of the Applicable Evaluation Documents, provided that such Bidder continues to be eligible in accordance with the requirements set out in the Annexure A (Basic Eligibility Criteria) of Part 4 (Annexures) of Volume I (Bidding Procedure) of the RFP.

7.2 SEZMC’S RIGHT TO ACCEPT / REJECT BIDS

7.2.1 No Bid shall be considered to have been accepted, unless such acceptance is confirmed in writing and notified to the Successful Bidder by the SEZMC.

7.2.2 The SEZMC reserves the right to annul the Bidding Process and reject all Bids at any time prior to the issuance of the Notification of Award, without thereby incurring any liability to Bidders or providing any reason for rejection of the Bids. In case of such annulment, all Bids submitted and specifically, the Bid Securities, shall be promptly returned to the Bidders. The decision of the SEZMC shall be final and binding and no correspondence shall be entered into with the Bidders.

7.2.3 The SEZMC shall not be responsible for, or pay for, any expenses or losses which may be incurred by any Bidder in the preparation of, or in connection with, its Bid.

7.2.4 Each Bidder fully waives off any and all rights to claim in respect of such expenses or losses and agrees to indemnify the SEZMC, its affiliates and their advisors fully in respect of any direct or indirect losses, damages, costs or expenses of any kind incurred by any of them.

7.3 NOTIFICATION OF AWARD

7.3.1 Prior to expiration of the Bid Validity Period, the SEZMC shall notify the Successful Bidder through the Notification of Award that its Bid has been accepted.

7.3.2 The SEZMC shall, at least three (3) business days prior to the issuance of the Notification of Award, publish on the websites of the SPPRA, the SEZMC and the Sindh PPP Unit, the results of the Bidding Process in the form of a report.

7.3.3 The Successful Bidder shall acknowledge and return the Notification of Award with its acceptance (the “Acceptance of Notification of Award”) within seven (7) days of the issuance of Notification of Award, failure of which may constitute sufficient grounds for the annulment of the award and forfeiture of its Bid Security.

7.4 FORMATION OF SPV BY THE SUCCESSFUL BIDDER

7.4.1 The Successful Bidder shall incorporate a wholly owned SPV (i.e., the Concessionaire) that shall be incorporated in accordance with the laws of Pakistan exclusively for the implementation of the Project.

7.4.2 The Successful Bidder / SPV shall be obligated to replace the Bid Security (prior to expiry of the Bid Security) with the Construction Performance Security as per the requirements set out in Sub-Section 7.5.1 of the Instructions to Bidders.

7.5 CONSTRUCTION PERFORMANCE SECURITY
7.5.1 The Successful Bidder / SPV shall, at least seven (7) day(s) prior to the date of signing of the Concession Agreement, furnish to the SEZMC a satisfactory Construction Performance Security and shall maintain the same in full force and effect until the Construction Performance Security Expiry Date, in accordance with the requirements of the Concession Agreement and the RFP.

7.5.2 Failure of the Successful Bidder to comply with the requirements of Sub-Section 7.5.1 of the Instructions to Bidders shall constitute sufficient grounds for the annulment of the award and forfeiture of its Bid Security. Prior to execution of the Concession Agreement, the Construction Performance Security may be encashed for the same reasons as the Bid Security and for such other purpose as specified in the RFP. Following execution of the Concession Agreement, the Construction Performance Security shall be encashed in terms of the Concession Agreement.

7.6 **SIGNING OF THE CONCESSION AGREEMENT**

7.6.1 The Concession Agreement shall be executed between, the SEZMC and the SPV (as the Concessionaire), within thirty (30) days of issuance of the Notification of Award or within such extended timeline as determined by the SEZMC in its sole discretion. In case the Concession Agreement is not executed within the aforesaid timeline, the Bid Security or the Construction Performance Security (as applicable) shall be encashed by SEZMC and the award shall be cancelled, if such failure is due to reasons attributable to the Successful Bidder.

8. **OTHER CONSIDERATIONS**

8.1 **CONFIDENTIALITY**

8.1.1 Subject to Sub-Section 8.1.3 of the Instructions to Bidders and Sub-Section 3.3 (*Clarifications of RFP*), no Bidder shall contact the SEZMC / TFEC on any matter relating to its Bid from the time of Bid Submission Date.

8.1.2 Any attempt by a Bidder to influence the SEZMC / TFEC in relation to the Bidding Process may result in the rejection of its Bid and encashment of its Bid Security.

8.1.3 Notwithstanding Sub-Section 8.1.2 of the Instructions to Bidders, from the time of Bid opening to the time of award of the Concession, if any Bidder wishes to contact the SEZMC / TFEC on any matter related to the Bidding Process (including for the matters set out in Sub-Section 3.3 (*Clarifications of RFP*), it should do so in writing.

8.1.4 Information relating to the examination, clarification, evaluation and recommendation for the Bidder shall not be disclosed to any person who is not officially concerned with the Bidding Process or is not a retained professional advisor advising the SEZMC Parties in relation to, or matters arising out of, or concerning the Bidding Process. The SEZMC will endeavour to treat all information, submitted as part of the Bid, in confidence and will require all those who have access to such material to treat the same in confidence. The SEZMC may not divulge any such information, unless it is directed to do so by any statutory entity that has the power under law to require its disclosure, is required under the applicable laws in Pakistan, or it is to enforce or assert any right or privilege of the SEZMC, a statutory entity.
8.1.5 All information supplied by the SEZMC in connection with this RFP, shall be treated as confidential and the Bidders shall not, without the prior written consent of the SEZMC, at any time make use of such information for their own purposes or disclose such information to any person (except as may be required by applicable law). Subject to the provisions of this RFP, the RFP shall remain the property of the SEZMC and is issued solely for the purpose of preparation and submission of the Bid in accordance herewith.

8.1.6 The RFP and every part of it and all other information provided by or on behalf of the SEZMC must be treated as private and confidential. Bidders shall not disclose the fact that they have been invited to submit a Bid or release details of the RFP other than on a strictly confidential basis to those parties whom they need to consult for the purposes of preparing the Bids.

8.1.7 Bidders shall not at any time release any information concerning the RFP and / or their Bid and / or any related documents and / or any discussion with the SEZMC in this connection for publication in the press or on radio, television, screen or any other medium without the prior written approval of the SEZMC.

8.1.8 Each Bidder undertakes to indemnify the SEZMC Parties and to keep the SEZMC Parties indemnified against all actions, claims, demands, liability, proceedings, damages, costs, charges and expenses whatsoever arising out of or in connection with any breach of the provisions of this Sub-Section 8.1 (Confidentiality).

8.1.9 Any Bid submitted in response to the RFP is submitted upon a full understanding and agreement of terms of this Sub-Section 8.1 (Confidentiality) and therefore the submission of the Bid in response to the RFP would be deemed as an acceptance to the said terms.

8.2 **CORRUPT AND FRAUDULENT PRACTICES**

8.2.1 The SEZMC / TFEC will reject a Bid if it determines that a Bidder (including any of its Affiliates) has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations during the Bidding Process and/or shall declare such Bidder ineligible, either indefinitely or for a stated period of time, to engage with the SEZMC Parties.

8.2.2 “Corrupt and fraudulent practice” means either one or any combination of the practices given below:

(a) “Coercive practice” means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence the actions of a party to achieve a wrongful gain or to cause a wrongful loss to another party;

(b) “Collusive practice” means any arrangement between two or more parties to the procurement process or contract execution, designed to achieve with or without the knowledge of the procuring agency to establish prices at artificial, non-competitive levels for any wrongful gain;

(c) “Corrupt practice” means the offering giving, receiving or soliciting directly or indirectly of anything of value to influence the acts of another party for
wrongful gain;

(d) “Fraudulent practice” means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;

(e) “Obstructive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in a procurement process, or affect the execution of a contract or deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements before investigators in order to materially impede an investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or acts intended to materially impede the exercise of inspection and audit rights.

8.3 **INTEGRITY PACT**

Each Bidder shall sign and stamp Bidding Form T2 (*Form of Integrity Pact*) of Part 2 (*Bidding Forms*) of the RFP (the “*Integrity Pact*”). Failure to provide such Integrity Pact may cause the Bid to be rejected by TFEC as non-responsive.

8.4 **GRIEVANCE REDRESSAL**

Any Bidder being aggrieved by any act or decision of the SEZMC / TFEC, may after the issuance of the RFP, lodge a written complaint to the “*complaint redressal committee*” constituted by the SEZMC in accordance with the Applicable Evaluation Documents. The mechanism for redressal of grievances of Bidders shall be as per the Applicable Evaluation Documents.

8.5 **INSURANCE POLICIES**

If a Bidder is selected as the Successful Bidder, it understands, undertakes and confirms that it shall be responsible for procuring Insurance Policies in respect of the Project. All fees, costs and other expenditures relating to such Insurance Policies shall be borne by the SPV (as the Concessionaire).

8.6 **NO LOBBYING**

8.6.1 The Bidders (including any member of the Consortium), will not attempt to communicate, directly or indirectly, with any of the SEZMC Parties at any stage of the Bidding Process (including during the evaluation process), except as expressly permitted under this RFP, directed or permitted by the SEZMC, or except as may be required and permitted under another procurement process, project or other assignment, in which event the Bidder will not have any discussions regarding the Project.

8.6.2 The SEZMC / TFEC reserves the right to disqualify any Bidder that, in the SEZMC / TFEC’s opinion, has engaged in lobbying in connection with this Project.

8.7 **NOT USED**
8.8 **PROJECT SPECIFICATIONS**

The NHA General Specifications, 1998 shall serve as the Project specifications. All the Bidders shall obtain the NHA Specifications, 1998 from NHA.

9. **DATA SHEET**

The following specific data shall supplement the provisions in the Instructions to Bidders.

| Address for seeking clarifications on the RFP | Designation: Chief Executive Officer | **Address:** Sindh Economic Zones Management Company, 2nd Floor, Bahria Complex IV, Chaudhry Khaliq Uz Zaman Road, Gizri, Karachi. **Phone No.:** +92 21 99332220 Requests for clarifications to be sent to the following email addresses: rfp.marblecity@sezmc.gos.pk; info@sezmc.gos.pk Subject of email to be Att. MCK – RFP ([*Name of Bidder*]). |
|---|---|
| 1. Pre-Bid Meeting | Date: December 14th, 2022 Time: 11:00 hours PST Venue: Ambassador III, Marriot, Karachi, Sindh, Pakistan. |
| 2. Address for submission of Bids | Committee Room, P&D Department, Tughlaq House, 2nd Floor Sindh Secretariat, Karachi. |
| 3. Address for opening of Bids | Committee Room, P&D Department, Tughlaq House, 2nd Floor Sindh Secretariat, Karachi. |
| 4. Bid Submission Date | January 10th, 2023 |
| 5. Bid Opening Date (Technical Proposals only) | January 10th, 2023 |
| 6. Name of Project | Marble City Karachi. |
PART 2
BIDDING FORMS
1. **BIDDING FORMS**

1.1 The Bidding Forms comprise the forms stated below and each relevant form is required to be submitted with the Technical Proposal and the Financial Proposal, as applicable.

1.2 In case a document / Bidding Form required to be submitted as part of the Technical Proposal is submitted with Financial Proposal, or a document / Bidding Form required to be submitted with Financial Proposal is submitted with Technical Proposal, it shall not be considered for evaluation and such document / Bidding Form shall be considered as not submitted by the Bidder and may also form the basis of rejection of a Bid.

**(A)** For the Technical Proposal:

(a) **FORM T1 – LETTER OF TECHNICAL PROPOSAL;**
(b) **FORM T2 – FORM OF INTEGRITY PACT;**
(c) **FORM T3 – FORM OF POWER OF ATTORNEY;**
(d) **FORM T4 – FORM OF AFFIDAVIT;**
(e) **FORM T5 – BASIC INFORMATION FORM;**
(f) **FORM T6 – HISTORICAL NON-PERFORMANCE AND PENDING LITIGATION;**
(g) **FORM T7 – NET WORTH OF ASSETS OWNED BY THE BIDDER;**
(h) **FORM T8 – CASH AND FUNDING LINES;**
(i) **FORM T9 – BIDDER’S EXPERIENCE;**
(j) **FORM T10 – TEAM COMPOSITION;**
(k) **FORM T11 – FORMAT OF CURRICULUM VITAE (CV) FOR PROPOSED KEY STAFF;**
(l) **FORM T12 – OPERATIONS & MAINTENANCE EXPERIENCE;**
(m) **FORM T13 – MARBLE SECTOR INDUSTRY COMMITMENT;**
(n) **FORM T14 – CONCEPT PLAN AND DESIGN;**
(o) **FORM T15 – O&M PLAN;** and
(p) **FORM T16 – MARKETING PLAN.**

**(B)** For the Financial Proposal:

(a) **FORM F1 – LETTER OF FINANCIAL PROPOSAL;**
(b) **FORM F2 – FORM OF BID SECURITY;**
(c) **FORM F3 – FINANCIAL PROPOSAL STANDARD FORM;** and
(d) **FORM F4 – FINANCIAL MODEL FORM.**
To: Chief Executive Officer – Sindh Economic Zones Management Company Limited  
2nd Floor, Bahria Complex IV,  
Chaudhry Khaliq Uz Zamand Road,  
Gizri, Karachi

Re: Design, finance, build, operate, maintain and transfer of the Marble City Karachi project (the “Project”).

Dear Sir,

Reference the Request for Proposals document issued on November 17th, 2022, by the Sindh Economic Zones Management Company Limited (“SEZMC”), (the “RFP”) in relation to the Project.

We, [Name of the Bidder] hereby submit our Technical Proposal in conformity with the requirements of the RFP.

All capitalized terms unless defined herein shall bear the meaning as ascribed thereto in the RFP.

We, agree, confirm, undertake and declare that:

(a) We have examined and have no reservations to the RFP, including Addenda No(s)................................................

(b) We, [including all Consortium Members,] fully and completely understand and accept the terms of the RFP and hereby undertake to comply with the requirements specified therein.

(c) We offer to perform and undertake the works and services in respect of the Project in conformity with the RFP (including the Project Agreements) without any omission, reservation and deviation; and we accept and undertake to comply with all requirements in the RFP, including the appendices / annexures attached to the RFP.

(d) We, [including all Consortium Members,] as per the requirements of the RFP, respectively:

   (i) have nationalities of Eligible Countries;

   (ii) do not have any conflict of interest; and

   (iii) have not been declared ineligible/blacklisted by any of our employers, by any Federal or Provincial governmental or non-governmental department / agency in Pakistan, as at the Bid Submission Date.

(e) Our Bid consisting of the Technical Proposal and the Financial Proposal shall be valid for a period of one hundred twenty days (120) days from the date fixed for the Bid Submission Date in accordance with the RFP, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
(f) We understand that all the volumes, appendices / annexures attached to the RFP are integral part of the RFP.

(g) We have reviewed and accepted the form of the Concession Agreement along with the appendices attached thereto (attached as Volume III (Concession Agreement and Appendices) to the RFP), and undertake to execute the same within the time period stipulated in Notification of Award.

(h) We acknowledge that SEZMC Parties will be relying on the information provided in our Bid and the documents accompanying it to determine the Successful Bidder. We certify that all information provided in our Bid is true and correct and that nothing has been omitted which renders such information misleading.

(i) We certify that in the last five (5) years, we have neither failed to perform on any contract, as evidenced by imposition of a penalty by any arbitral or judicial authority or a judicial pronouncement or arbitration award, nor have been expelled from any project or contract by any public authority, nor have had any contract terminated by any public authority for breach by us or, if we are a Consortium, by any of our Consortium Members.

(j) We understand that this Bid, together with your written acceptance thereof included in your Notification of Award, shall constitute a binding contract between us, until the Concession Agreement (attached as Volume III (Concession Agreement and Appendices) to the RFP) is executed.

(k) We are not participating, as a Bidder in more than one Bid in this Bidding Process in accordance with the requirements of the RFP.

(l) We understand that the SEZMC may cancel the Bidding Process at any time and that the SEZMC is not bound either to accept any Bid that it may receive, without incurring any liability to the Bidders.

(m) We agree to permit the SEZMC, and any persons, representatives or auditors appointed and authorized by the SEZMC to inspect and audit our accounts, records and other documents relating to our Bid.

(n) All the information submitted along with our Bid, including the enclosed forms and documents, is accurate in all respects.

(o) We accept the right of the SEZMC to: (i) request additional information reasonably required to assess the Bid; (ii) amend the procedures and requirements or make clarifications thereof; and (iii) extend or amend the timelines as stipulated in the RFP.

(p) All information, representations and other matters of fact communicated (whether in writing or otherwise) to the SEZMC by us or on our behalf, in connection with or arising out of the Bid are true, complete and accurate in all respects.

(q) We hereby declare that all the information and statements made in this Bid are true and accept that any misrepresentation contained in it shall lead to our disqualification, forfeiture of the Bid Security and / or our blacklisting by the SEZMC.
(r) We, [including all Consortium Members,] have made our own investigations and research and have satisfied ourselves in respect of all matters (whether actual or contingent) relating to the Bid and the Project.

(s) We undertake, if our Bid is accepted, to furnish the Construction Performance Security as per the requirements of the RFP.

(t) We do hereby declare that the Bid is made without any collusion, comparison of figures or arrangement with any other person or persons making a Bid for the Project.

(u) We understand that the RFP has been issued by the SEZMC for the Project; and we undertake and confirm that if our Bid is accepted, we and the SPV (to be incorporated by us, in case the Project is awarded to us), as applicable, shall execute the Concession Agreement (including other Project Agreements) (attached as Volume III (Concession Agreement and Appendices) to the RFP) and all other instruments as may be required to be executed in relation to the Project as per the requirements of the RFP.

Name ...........................................................................................................................................................................
In the capacity of ...........................................................................................................................................................
Signed ...........................................................................................................................................................................
.......................................................................................... (Seal)...

Duly authorized to sign the Bid for and on behalf of: (Insert Name of the Bidder/names of all Consortium Members)

Date ...........................................................................................................................................................................

<table>
<thead>
<tr>
<th>Witness # 1:</th>
<th>Witness # 2:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Signature:</td>
<td>Signature:</td>
</tr>
<tr>
<td>Name:</td>
<td>Name:</td>
</tr>
<tr>
<td>Designation:</td>
<td>Designation:</td>
</tr>
<tr>
<td>Date:</td>
<td>Date:</td>
</tr>
<tr>
<td>CNIC/Passport No.:</td>
<td>CNIC/Passport No.:</td>
</tr>
</tbody>
</table>
BIDDING FORM T2 – FORM OF INTEGRITY PACT

Dated __________________

[name of Bidder] (the “Bidder”) hereby declares that it has not obtained or induced the procurement of any contract, right, interest, privilege or other obligation or benefit from Government of Sindh, Sindh Economic Zones Management Company Limited, any administrative subdivision or agency thereof or any other entity owned or controlled by the Government of Sindh (collectively to be hereinafter referred to as the “GoS”) through any corrupt business practice.

Without limiting the generality of the foregoing, [name of Bidder] represents and warrants that it has fully declared the brokerage, commission, fees etc., paid or payable to anyone and not given or agreed to give and shall not give or agree to give to anyone within or outside Pakistan either directly or indirectly through any natural or juridical person, including its affiliate, agent, associate, broker, consultant, director, promoter, shareholder, sponsor or subsidiary, any commission, gratification, bribe, finder’s fee or kickback, whether described as consultation fee or otherwise, with the object of obtaining or inducing the procurement of a contract, right, interest, privilege or other obligation or benefit in whatsoever form from GoS, except that which has been expressly declared pursuant hereto.

[name of Bidder] certifies that it has made and will make full disclosure of all agreements and arrangements with all persons in respect of or related to the transaction with the GoS and has not taken any action or will not take any action to circumvent the above declaration, representation or warranty.

[name of Bidder] accepts full responsibility and strict liability for making any false declaration, not making full disclosure, misrepresenting facts or taking any action likely to defeat the purpose of this declaration, representation and warranty. It agrees that any contract, right, interest, privilege or other obligation or benefit obtained or procured as aforesaid shall, without prejudice to any other rights and remedies available to GoS under any law, contract or other instrument, be voidable at the option of GoS.

Notwithstanding any rights and remedies exercised by GoS in this regard, [name of Bidder] agrees to indemnify GoS for any loss or damage incurred by it on account of its corrupt business practices and further pay compensation to GoS in an amount equivalent to ten time the sum of any commission, gratification, bribe, finder’s fee or kickback given by [name of Bidder] as aforesaid for the purpose of obtaining or inducing the procurement of any contract, right, interest, privilege or other obligation or benefit in whatsoever form from GoS.

Name of Employer: Sindh Economic Zones Management Company Limited

Signature¹: ……………………
[Seal]

Name of Bidder: ………………………

Signature: ……………………
[Seal]

¹ To be signed by SEZMC.
BIDDING FORM T3 – FORM OF POWER OF ATTORNEY

A. POWER OF ATTORNEY TO AUTHORIZAE A PERSON TO SIGN THE DOCUMENTS

NOTES FOR EXECUTION OF POWER OF ATTORNEY

• To be executed by each Bidder and in case the Bidder is a Consortium, by each Consortium Member, authorizing the relevant attorney to sign the required documents on its behalf. Such attorney may be the same person authorised to submit documents on behalf of the Bidder (or Consortium Member) or may be a separate person.

• The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.

• This Power of Attorney shall be on stamp paper and notarised with the Notary Public.

• For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Pakistani Embassy and notarised in the jurisdiction where the Power of Attorney is being issued.

• The Power of Attorney should comply with the requirements set out in Part 3 (Bidding Documentary Requirements) of Volume I (Bidding Procedure) of the RFP.

KNOW ALL BY THESE PRESENTS. WE, __________________________ (name of the entity and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr. / Ms. (Name), son / daughter / wife of __________________________ holding [CNIC / Passport] Number __________________________ and presently residing at __________________________, who is presently employed with us and holding the position of __________________________, as our true and lawful attorney (hereinafter referred to as the “Attorney”) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to the requirements of the request for proposals document issued on November 17th, 2022 (the “RFP”) by Sindh Economic Zones Management Company Limited (“SEZMC”) in relation to design, finance, build, operate, maintain and transfer of the Marble City Karachi (the “Project”), including but not limited to signing and submission of all documents and providing information / responses to the SEZMC, representing us in all matters before the SEZMC, and generally dealing with the SEZMC in all matters in connection with our Bid for the Project.

We hereby ratify all prior and / or future acts, deeds and things lawfully done or caused to be done by the Attorney in relation to the Project (including with respect to the submission of our Bid in response to the RFP) pursuant to this Power of Attorney and we hereby agree that all prior and/ or future acts, deeds and things done by the Attorney in relation to the Project (including with respect to the submission of our Bid in response to the RFP) shall, and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE, __________________________, HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS ________ DAY OF ________, 20__.
For & On Behalf of:

________________________ (name of the entity)

By Its Duly Authorized Signatory

………………………………………

(Signature)

(Name, Title and Address)

WITNESSES:

WITNESS 1:  WITNESS 2:

………………………………………  …………………………………………

NAME:  NAME:

CNIC / PASSPORT NUMBER:  CNIC / PASSPORT NUMBER:

ADDRESS:  ADDRESS:

SIGNATURE OF ATTORNEY

[NOTARISED]

………………………………………

(Signature)

(Name, Title and Address of the Attorney)
B. **POWER OF ATTORNEY TO AUTHORIZE THE LEAD MEMBER**

**NOTES FOR EXECUTION OF POWER OF ATTORNEY**

- This Power of Attorney for the appointment and authorization of Lead Member, is to be executed by the authorized representative of each Consortium Member (appointed pursuant to the power of attorney in Form A (Power of Attorney to Authorize a Person to Sign the Documents)).

- The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.

- This Power of Attorney shall be on stamp paper and notarised with the Notary Public.

- For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Pakistani Embassy and notarised in the jurisdiction where the Power of Attorney is being issued.

- The Power of Attorney should comply with the requirements set out in Part 3 (Bidding Documentary Requirements) of Volume I (Bidding Procedure) of the RFP.

**WHEREAS**, the Sindh Economic Zones Management Company Limited ("SEZMC") has invited bids for the ‘MARBLE CITY KARACHI’ (the “Project”) pursuant to the request for proposals document issued on November 17th, 2022 by the SEZMC (as amended from time to time) (the “RFP”);

**WHEREAS**, ____________, ____________ and ____________ (each hereinafter referred to individually as a “Consortium Member” and collectively as “Consortium Members”) have formed a consortium (the “Consortium”) in accordance with the requirements of the RFP and have issued a Consortium Undertaking as per the requirements of the RFP;

**AND WHEREAS**, the Consortium Members issue this Power of Attorney for the appointment and authorization of the ‘Lead Member’ with all necessary powers and authority to represent and irrevocably bind all the Consortium Members in all matters connected with the Bidding Process and during execution of the relevant agreements in relation to the Project, in case the Consortium is awarded the Project.

**KNOW ALL BY THESE PRESENTS**

**WE, ____________, having our registered office at ____________, M/s. ____________, having our registered office at ____________, and M/s. ____________, having our registered office at ____________, do hereby irrevocably designate, nominate, constitute, appoint and authorise M/s ____________, having its registered office at ____________, being one of the Consortium Members, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the “Attorney”) and hereby irrevocably authorise the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the Bidding Process being conducted by the SEZMC pursuant to the RFP and to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or
required or incidental to the Project, including but not limited to signing and submission of our Bid, all applications and other documents and writings, participate in conferences / meetings, respond to queries, submit information / documents, sign and execute contracts and undertakings including the Acceptance of Notification of Award, as applicable (if awarded the Project) and generally to represent the Consortium in all its dealings with the SEZMC (and the GoS), and / or any other governmental agencies or any person, in all matters in connection with or relating to or arising out of the Consortium’s Bid and its acceptance by the SEZMC.

We hereby ratify all prior and future acts, deeds and things lawfully undertaken by the Attorney in relation to the Project (including with respect to the submission of our Bid in response to the RFP) pursuant to this Power of Attorney and we hereby agree that all prior and/ or future acts, deeds and things done by the Attorney in relation to the Project (including with respect to the submission of our Bid in response to the RFP) shall, and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE THE ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS ________ DAY OF ________ 20__. 

For: __________________________________________
(Signature)
(Name, Title and Address)

For: __________________________________________
(Signature)
(Name, Title and Address)

For: __________________________________________
(Signature)
(Name, Title and Address)

WITNESSES:

WITNESS 1:                            WITNESS 2:

----------------------------------------
(Name, Title and Address)

CNIC / PASSPORT NUMBER: 
ADDRESS: 
(Executants)
(To be executed by all the Consortium Members in favour of Lead Member)
**BIDDING FORM T4 – FORM OF AFFIDAVIT**

**AFFIDAVIT**  
(this “Affidavit”)  

Date: ________________

**SINDH ECONOMIC ZONES MANAGEMENT COMPANY LIMITED**  
Sindh Economic Zones Management Company, 2nd Floor, Bahria Complex IV, Chaudhry Khaliq Uz Zamand Road, Gizri, Karachi.

Reference the request for proposals document issued on November 17th, 2022, by Sindh Economic Zones Management Company (the “RFP”), in relation to the design, finance, build, operate, maintain and transfer of the Marble City Karachi.

We, [insert name of Bidder / Consortium Member] hereby represent and warrant that, as of the date of this Affidavit [name of Bidder / Consortium Member] (as applicable):

(a) are not in bankruptcy or liquidation proceedings;

(b) are not blacklisted by any governmental or non-governmental department / agency;

(c) have not been convicted of, fraud, corruption, collusion or money laundering;

(d) are not aware of any conflict of interest or potential conflict of interest arising from prior or existing contracts or relationships which could materially affect our capability to comply with the obligations under the Concession Agreement;

(e) [are legally and financially autonomous and operate under commercial law]²;

(f) [there is no pending litigation which represents more than fifty percent (50%) of our net worth]³;

(g) [are not under any non-performance of a contract within last five (5) years of the Bid Submission Date]⁴; and

(h) [have not failed to sign a contract with any procuring authority following award]⁵.

We have also attached proof of our registration from the relevant statutory authority.

*All capitalized terms unless defined herein shall bear the meaning as ascribed thereto in the RFP.*

____________________

²Only relevant for the government owned legal enterprise or institution.

³If applicable;

⁴If applicable;

⁵If applicable;
Deponent

Verified on oath at ______________ on this ____day of __________, 20___ that the contents of the above Affidavit are true and correct to the best of my knowledge and belief.

____________________
Deponent

Yours sincerely,

Name and Title of Signatory: ______________________________
Name of Bidder / Consortium Member: ______________________________
Address of Bidder / Consortium Member: ______________________________

WITNESS 1: ...........................................................................
NAME: ...........................................................................
CNIC / PASSPORT NUMBER: ...........................................
ADDRESS: .................................................................

WITNESS 2: ...........................................................................
NAME: ...........................................................................
CNIC / PASSPORT NUMBER: ...........................................
ADDRESS: .................................................................
**BIDDING FORM T5 – BASIC INFORMATION FORM**

*To be submitted by all Bidders. In case of a Consortium, each Consortium Member must fill in this form.*

**Basic Information Form (Company Profile)**

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
</table>
| 1. | Name of Entity:  
(In case of Consortium, legal name of each Consortium Member) |
| 2. | Nature of Business:  
(Whether the entity is a corporation, partnership, trust etc.) |
| 3. | Head office address: |
| 4. | Telephone:  
Fax Number:  
E-mail address: |
| 5. | Place of Incorporation / Registration:  
Year of Incorporation / Registration: |
| 6. | Bidder’s authorized representative:  
Telephone:  
Fax numbers:  
E-mail address: |
| 7. | Nationality of owners:  
Name:  
Country: |
**BIDDING FORM T6 – HISTORICAL NON-PERFORMANCE AND PENDING LITIGATION**

### Non-Performing Contracts

- **Contract non-performance did not occur** within the last five (5) years prior to the Bid Submission Date based on all information on fully settled disputes or litigation *(Affidavit to be provided)*
- **Contract non-performance during the stipulated period.**

<table>
<thead>
<tr>
<th>Year</th>
<th>Outcome as Percent of Total Assets</th>
<th>Contract Identification</th>
<th>Total Contract Amount (current value, PKR)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

### Pending Litigation

- **No pending litigation** *(A fully settled dispute or litigation is one that has been resolved in accordance with the dispute resolution mechanism under the respective contract and where all appeal instances available to the Bidder / Consortium Member have been exhausted) (Affidavit to be provided)*
- **Pending litigation** *(All pending litigation shall in total not represent more than 50% of the Bidder’s / Consortium Member’s net worth and shall be treated as resolved against the Bidder / Consortium Member)*

<table>
<thead>
<tr>
<th>Year</th>
<th>Outcome as Percent of Total Assets</th>
<th>Details</th>
<th>Total Contract Amount (PKR)</th>
</tr>
</thead>
</table>
|      |                                   | Contract Identification:  
Name of Employer:  
Address of Employer:  
Matter in dispute: |                                           |
### Bidding Form T7 – Net Worth of Assets Owned by the Bidder

[This form will be used for evaluation of criteria A - 1]

*Each Bidder or member of a Consortium must fill in this form*

<table>
<thead>
<tr>
<th>Financial Data for Previous 3 Years</th>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Information from Balance Sheet</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Assets</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Liabilities</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Current Assets</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Current Liabilities</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net Worth</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Copies of audited financial statements which shall be signed and stamped by the auditor of the Bidder/respective Consortium Members (balance sheets including all related notes, and income statements) for the last three (3) years, as indicated above, complying with the following conditions:

- All such documents reflect the financial situation of the Bidder/every Consortium Member, and not sister or parent companies.
- Historic financial statements must be audited by a certified accountant, and in case of a Bidder, by a firm / company which meets ICAP’s satisfactory QCR requirements.
- Historic financial statements must be complete, including all notes to the financial statements.
- Historic financial statements must correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
- National tax number certificate (or equivalent) must be attached.
- Tax return filed must be provided.
- Foreign Bidders / Consortium Members should submit national tax number certificate (or equivalent) of their country duly attested by consulate of their country.
**BIDDING FORM T8 – CASH AND FUNDING LINES**

[This form will be used for evaluation of criteria A - 2]

*Each Bidder or member of a Consortium must fill in this form*

<table>
<thead>
<tr>
<th>Financial Data for Previous 3 Years</th>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Information from Balance Sheet</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash and Bank Balances</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Short Term Investments</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Funding Lines</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- Proof of funding lines such as term sheets, commitment letters etc. with financial institutions (if applicable) must be attached. The Bidders must provide such proof by way of confirmation of the respective financial institution(s) which has provided such funding lines.
**BIDDING FORM T9 - BIDDER’S EXPERIENCE**

[This form will be used for evaluation of criteria B – 1]

Note: Using the format below, provide information on each assignment for which your firm, and each associate for this assignment, was legally contracted either individually or as a corporate entity or as one of the major companies within an association, for carrying out consulting services similar to the ones requested under this Request for Proposal.

Projects will only be evaluated for scoring if the completion certificates or a copy of contract is provided.

<table>
<thead>
<tr>
<th>ASSIGNMENT NAME:</th>
<th>COUNTRY:</th>
</tr>
</thead>
<tbody>
<tr>
<td>LOCATION WITHIN COUNTRY:</td>
<td>PROFESSIONAL STAFF PROVIDED BY APPLICANT FIRM:</td>
</tr>
<tr>
<td>NAME OF CLIENT:</td>
<td>NO. OF STAFF:</td>
</tr>
<tr>
<td>ADDRESS:</td>
<td>NO. OF STAFF MONTHS:</td>
</tr>
<tr>
<td>START DATE(MONTH/YEAR):</td>
<td>COMPLETION DATE(MONTH/YEAR):</td>
</tr>
<tr>
<td>NAME OF ASSOCIATED FIRM(S), IF ANY:</td>
<td>NO. OF MONTHS OF PROFESSIONAL STAFF PROVIDED BY ASSOCIATED FIRM(S):</td>
</tr>
<tr>
<td>NAME OF SENIOR STAFF (PROJECT DIRECTOR/CO-ORDINATOR, TEAM LEADER) INVOLVED AND FUNCTIONS PERFORMED:</td>
<td></td>
</tr>
<tr>
<td>NARRATIVE DESCRIPTION OF PROJECT:</td>
<td></td>
</tr>
<tr>
<td>DESCRIPTION OF ACTUAL SERVICES PROVIDED BY YOUR STAFF:</td>
<td></td>
</tr>
<tr>
<td>NAME(S) OF THE CONSORTIUM MEMBER(S), IF ANY:</td>
<td></td>
</tr>
</tbody>
</table>

Note: Documentary proof (i.e., work order and completion certificate) to be attached.
BIDDING FORM T10 – TEAM COMPOSITION

[This form will be used for evaluation of criteria B – 2]

Bidders and each member of a Consortium should provide the names of suitably qualified personnel to meet the specified requirements stated in technical evaluation criteria.

<table>
<thead>
<tr>
<th>SR. NO.</th>
<th>NAME</th>
<th>PROPOSED KEY POSITION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
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<tr>
<td>3</td>
<td></td>
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<tr>
<td>4</td>
<td></td>
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<tr>
<td>5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
BIDDING FORM T11 - FORMAT OF CURRICULUM VITAE (CV) FOR PROPOSED KEY STAFF

[This form will be used for evaluation of criteria B – 2]

1. PROPOSED POSITION: ____________________________________

2. NAME OF FIRM: ________________________________________

3. NAME OF STAFF: _______________________________________

4. PROFESSION: __________________________________________

5. DATE OF BIRTH: ________________________________________

6. YEARS WITH FIRM: _____________________________________

7. NATIONALITY: __________________________________________

8. MEMBERSHIP IN PROFESSIONAL SOCIETY: _______________
   (Membership of and registration with Pakistan Engineering Council (PEC) or with an equivalent international body/authority acceptable to SEZMC is mandatory)

9. DETAILED TASKS ASSIGNED ON THE PROJECT: __________

10. KEY QUALIFICATION:
    (Give an outline of staff member’s experience and training most pertinent to assigned tasks. Describe degree of responsibility held by staff members or relevant previous assignments and give dates and locations. Use up to one page.)

11. EDUCATION:
    (Summarize college/university and other specialized education of staff member, giving names of institutions, dates attended and degrees/diplomas obtained.)

12. EMPLOYMENT RECORD:
    (Starting with present position, list in reverse order every employment held.)

13. LANGUAGES:
    (Indicate proficiency in speaking, reading and writing of each language: excellent, good, fair or poor.)

14. CERTIFICATION:
    I, the undersigned, certify to the best of my knowledge and belief that:
    
    (i) This CV correctly describes my qualifications and experience;
    
    (iii) I am not a current employee of the executing or the implementing agency/SEZMC;
    
    (iv) I was not part of the team who wrote the terms of reference for this consulting services assignment; and
(iv) I certify that I have been informed by the firm that it is including my CV in the bid for the Marble City Karachi. I confirm that I will be available to carry out the assignment for which my CV has been submitted in accordance with the implementation arrangements and schedule set out in the Proposal.

*If the CV is signed by the firm’s authorized representative, insert:*

I, as the authorized representative of the firm submitting this Proposal for the Marble City Karachi certify that I have obtained the consent of the named expert to submit his/her CV, and that s/he will be available to carry out the assignment in accordance with the implementation arrangements and schedule set out in the Proposal, and confirm his/her compliance with paras (i) to (iv) above.

______________________________  Date: ____________________________
Signature of staff Member  Day/Month/Year

______________________________  Date: ____________________________
Signature of Authorized official of firm  Day/Month/Year
### BIDDING FORM T12 – OPERATIONS & MAINTENANCE EXPERIENCE

[This form will be used for evaluation of criteria B - 3]

<table>
<thead>
<tr>
<th>Project Name &amp; Location</th>
<th>Duration (From and To)</th>
<th>Details of O&amp;M Activities Performed</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
BIDDING FORM T13 – MARBLE SECTOR INDUSTRY COMMITMENTS

[This form will be used for evaluation of criteria B - 4]

Bidders will be required to provide undertakings from marble sector companies in respect of industries to be set up in the Marble City Karachi.

The following form will be used for industrial commitments:

<table>
<thead>
<tr>
<th>Company Name:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acreage Commitment:</td>
</tr>
<tr>
<td>Value Addition Proposition:</td>
</tr>
</tbody>
</table>

Note: For every industrial commitment, the Bidder must provide a company profile of each interested party giving industrial commitment.
BIDDING FORM T14 – CONCEPT PLAN AND DESIGN

Bidder shall submit a concept master plan and design for the Project.

The concept plan & design shall comprise of various aspects including but not limited to:

(a) Project design;

(b) Innovative features; and

(c) Environmental considerations.

The Bidders shall be required to demonstrate their vision for development of the industrial zone and how they plan to undertake the development.

Bidder shall be required to present the same to the SEZMC (in the form of a presentation) upon request.
**BIDDING FORM T15 – O&M PLAN**

[This form will be used for evaluation of criteria C - 1]

Bidder shall submit an O&M plan for the Project.

The O&M plan shall be evaluated keeping in mind various aspects including but not limited to:

(a) Operation and maintenance of electricity and/or other utility infrastructure;

(b) Solid waste management;

(c) Effluent management operations; and

(d) Operation of common facilities such as training and skills development, common machinery pool operations and exhibition centers etc.

The Bidders shall be required to demonstrate their vision for O&M of the industrial zone and how they plan to undertake the operations and maintenance.

Marks would be awarded on the basis of value addition provided in the plan and the rationale behind the plan, together with demonstration of the implementation team’s past record on delivering on such concepts.

Bidder may be required to present the same to the SEZMC (in the form of a presentation) upon request.
BIDDING FORM T16 – MARKETING PLAN

[This form will be used for evaluation of criteria C - 2]

Bidder shall submit a marketing plan for the Project.

The marketing plan would be required to demonstrate the following aspects:

(a) Marketing strategy;

(b) Pricing strategy; and

(c) Leasing plan.

The marketing plan for the Marble City Karachi will be separately evaluated and marked.

Bidder is also required to submit a marketing plan as per the format provided below:

<table>
<thead>
<tr>
<th>Area (Acres)</th>
<th>Lease rental per acre</th>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marble</td>
<td></td>
<td>% of Area</td>
<td>% of Area</td>
<td>% of Area</td>
</tr>
<tr>
<td>PKR</td>
<td>PKR</td>
<td>PKR</td>
<td>PKR</td>
<td>PKR</td>
</tr>
<tr>
<td>Allied industry</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commercial</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Marks would be awarded for such Consortium Members who have an impressive set of credentials for developing and operating the Project and the ability to attract industries to the Marble City Karachi.

Bidder may be required to present the same to the SEZMC (in the form of a presentation) upon request.
B. FINANCIAL PROPOSAL BIDDING FORMS

BIDDING FORM F1 – LETTER OF FINANCIAL PROPOSAL

[Date]

To: Chief Executive Officer - Sindh Economic Zones Management Company Limited
2nd Floor, Bahria Complex IV,
Chaudhry Khaliq Uz Zamand Road,
Gizri, Karachi

Re: Design, finance, build, operate, maintain and transfer of the Marble City Karachi (the “Project”).

Dear Sir,

Reference the Request for Proposals document issued on November 17th, 2022, by Sindh Economic Zones Management Company Limited (“SEZMC”), (the “RFP”) in relation to the Project.

We, [Name of the Bidder] hereby submit our Financial Proposal in conformity with the requirements of the RFP.

All capitalized terms unless defined herein shall bear the meaning as ascribed thereto in the RFP.

We, agree, confirm, undertake and declare that:

(a) We have examined and have no reservations to the RFP, including Addenda No(s)..............................

(b) We, [including all Consortium Members,] fully and completely understand and accept the terms of the RFP and hereby undertake to comply with the requirements specified therein.

(c) We offer to perform and undertake the works and services in respect of the Project in conformity with the RFP, including the Project Agreements, without any omission, reservation and deviation; and we accept and undertake to comply with all requirements in the RFP including the appendices / annexures attached to the RFP.

(d) As security for due performance of the undertakings and obligations of this Bid, we submit unconditionally herewith a Bid Security equivalent to three percent (3%) of the Bid Price drawn in your favour or made payable to you and valid for a period twenty-eight (28) days beyond the period of validity of Bid. We confirm that the Bid Security has been issued and maintained in accordance with the requirements of the RFP.

(e) We, including all Consortium Members, as per the requirements of the RFP, respectively:

(i) have nationalities of Eligible Countries;
(ii) do not have any conflict of interest; and
(iii) have not been declared ineligible/blacklisted by any of our employers, by any Federal or Provincial governmental or non-governmental department / agency in Pakistan, as at the Bid Submission Date.

(f) Our Bid consisting of the Technical Proposal and the Financial Proposal shall be valid for a period of one hundred twenty days (120) days from the date fixed for the Bid
Submission Date in accordance with the RFP, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

(g) We understand that all the volumes, appendices / annexures attached to the RFP are integral part of the RFP.

(h) We have reviewed and accepted the form of the Concession Agreement along with the Appendices attached thereto (attached as Volume III (Concession Agreement and Appendices) to the RFP) and undertake to execute the same within the time period stipulated in Notification of Award.

(i) We acknowledge that the SEZMC Parties will be relying on the information provided in our Bid and the documents accompanying them to determine the Successful Bidder. We certify that all information provided in our Bid is true and correct and that nothing has been omitted which renders such information misleading.

(j) We certify that in the last five (5) years, we have neither failed to perform on any contract, as evidenced by imposition of a penalty by any arbitral or judicial authority or a judicial pronouncement or arbitration award, nor have been expelled from any project or contract by any public authority, nor have had any contract terminated by any public authority for breach by us or, if we are a Consortium, by any of our Consortium Members.

(k) We understand that this Bid, together with your written acceptance thereof included in your Notification of Award, shall constitute a binding contract between us, until the Concession Agreement (attached as Volume III (Concession Agreement and Appendices) to the RFP) is executed.

(l) We are not participating, as a Bidder in more than one Bid in this Bidding Process in accordance with the requirements of the RFP.

(m) We understand that the SEZMC may cancel the Bidding Process at any time and that the SEZMC is not bound either to accept any Bid that it may receive, without incurring any liability to the Bidders.

(n) We agree to permit the SEZMC and any persons, representatives or auditors appointed and authorized by the SEZMC to inspect and audit our accounts, records and other documents relating to our Bid.

(o) All the information submitted along with our Bid, including the enclosed forms and documents, is accurate in all respects.

(p) We accept the right of the SEZMC to: (i) request additional information reasonably required to assess the Bid; (ii) amend the procedures and requirements or make clarifications thereof; and (iii) extend or amend the timelines as stipulated in the RFP.

(q) All information, representations and other matters of fact communicated (whether in writing or otherwise) to the SEZMC by us or on our behalf, in connection with or arising out of the Bid are true, complete and accurate in all respects.

(r) We hereby declare that all the information and statements made in this Bid are true and accept that any misrepresentation contained in it shall lead to our disqualification, forfeiture of the Bid Security and / or our blacklisting by the SEZMC.
(s) We, [including all Consortium Members,] have made our own investigations and research and have satisfied ourselves in respect of all matters (whether actual or contingent) relating to the Bid and the Project.

(t) We undertake, if our Bid is accepted, to furnish the Construction Performance Security as per the requirements of the RFP.

(u) We do hereby declare that the Bid is made without any collusion, comparison of figures or arrangement with any other person or persons making a Bid for the Project.

(v) We understand that the RFP has been issued by the SEZMC for the Project; and we undertake and confirm that if our Bid is accepted, we and the SPV (to be incorporated by us, in case the Project is awarded to us), as applicable, shall execute the Concession Agreement (including other Project Agreements) (attached as Volume III (Concession Agreement and Appendices) to the RFP) and all other instruments as may be required to be executed in relation to the Project as per the requirements of the RFP.

Name ...........................................................................................................................................

In the capacity of ...........................................................................................................................................

Signed ..................................................................................................................................................

................................. (Seal)...

Duly authorized to sign the Bid for and on behalf of:   (Insert Name of the Bidder/names of all Consortium Members)

Date ..................................................................................................................................................

Witness # 1:       Witness # 2:

Signature: ________________   Signature: ________________

Name: ________________   Name: ________________

Designation: ________________   Designation: ________________

Date: ________________   Date: ________________

CNIC/Passport No.:______________   CNIC/Passport No.:______________
BIDDING FORM F2 – FORM OF BID SECURITY

BANK GUARANTEE

Guarantee No._____________________
(the “Bank Guarantee”)
Executed on _____________________
Expiry date _____________________

Name of Guarantor (Bank) with address:_______________________________________
Name of Bidder/Lead Member with address:____________________________________

Guaranteed Amount (express in words and figures):_____________________________

Date of Bid ______________

The above premised, we (the “Guarantor Bank”) hereby undertake irrevocably and
unconditionally on demand to pay to Sindh Economic Zones Management Company Limited
(“SEZMC”), without any notice, reference or recourse to the Bidder or to any other entity or
without any recourse or reference to any document, agreement, instrument or deed, any sum or
sums (or any part thereof) equivalent in aggregate up to but not exceeding a maximum amount
of:

[●] [●]/- ([●][●])
(the “Guaranteed Amount”)

at sight and immediately upon the receipt of SEZMC’s first written demand (the “Demand”) at
the Guarantor Bank’s offices located at [●] or through SWIFT instructions transmitted by
SEZMC’s bank, on behalf of SEZMC, to the Guarantor Bank, or through fax sent by SEZMC at
the Guarantor Bank’s fax number i.e., [●], such Demand stating:

(a) that the Bidder is in breach of its obligations towards SEZMC; and
(b) the total amounts demanded.

A Demand shall only be honoured by us: (i) in the case of a written Demand, if it is made by and
bears the signature of an authorised officer or other representative of SEZMC; or (ii) in the case
of a Demand transmitted through SWIFT, if it is transmitted through authenticated SWIFT
instructions by SEZMC’s bank, on behalf of SEZMC; or (iii) in the case of a Demand made
through fax, it is made by and bears the signature of an authorised officer or other representative
of SEZMC.

We, the Guarantor Bank, shall unconditionally honour a Demand hereunder made in compliance
with this Bank Guarantee at sight and immediately on the date of receipt of your Demand, as
stated earlier, and shall transfer the amount specified in the Demand to the bank account, as
notified in the Demand, in immediately available and freely transferable funds in the currency of
this Bank Guarantee, free and clear of and without any set-off or deduction for or on account of
any present or future taxes, levies, impost, duties, charges, fees, deductions or withholdings of
any nature whatsoever and by whomsoever imposed.
This Bank Guarantee shall come into force and shall become automatically effective upon its issuance.

Such demand must be received by us on or before the [●] (the “Expiry Date”), when this Bank Guarantee shall expire and shall be returned to us.

Upon expiry, this Bank Guarantee shall be returned to the Bidder without undue delay. Multiple Demands may be made by SEZMC under this Bank Guarantee, but our aggregate liability will be restricted up to the Guaranteed Amount.

We hereby agree that any amendment, renewal, extension, modification, compromise, release or discharge by mutual agreement by SEZMC, the Bidder or any other entity of any document, agreement, instrument or deed shall not in any way impair or affect our liabilities hereunder and maybe undertaken without notice to us and without the necessity for any additional endorsement, consent or guarantee by us.

This Bank Guarantee for its validity period shall not be affected in any manner by any change in our constitution or of the Bidder’s constitution or of their successors and assignees and this Bank Guarantee shall be legally valid, enforceable and binding on each of their successors and permitted assignees.

All references to any contract, agreement, deed or other instruments or documents are by way of reference only and shall not affect our obligations to make payment under the terms of this Bank Guarantee.

If one or more of the provisions of this Bank Guarantee are held or found to be invalid, illegal, or unenforceable for any reason whatsoever, in any respect, any such invalidity, illegality, or unenforceability of any provision shall not affect the validity of the remaining provisions of this Bank Guarantee.

The Guarantor Bank hereby declares and confirms that under its constitution and applicable laws and regulations, it has the necessary power and authority, and all necessary authorizations, approvals and consents thereunder to enter into, execute, deliver and perform the obligations it has undertaken under this Bank Guarantee, which obligations are valid and legally binding on and enforceable against the Guarantor Bank under the laws of Pakistan.

Further, the Guarantor Bank hereby declares and confirms that the signatory(ies) to this Bank Guarantee is/are its duly authorized officer(s) to execute this Bank Guarantee.

This Bank Guarantee and all rights and obligations arising from this Bank Guarantee shall be governed and construed in all respects in accordance with the laws of Pakistan. The courts in Pakistan shall have exclusive jurisdiction in respect of any dispute relating to any matter contained herein.

The issuance of this Bank Guarantee is permitted according to the laws of Pakistan and the laws of the jurisdiction where this Bank Guarantee is issued.

This Bank Guarantee is subject to the Uniform Rules for Demand Guarantee, ICC Publication No.758. To the extent that there is any inconsistency between the terms of this Bank Guarantee and the Uniform Rules for Demand Guarantees, ICC Publication No. 758, the terms of this Bank Guarantee shall prevail.

Name: ……………………………….
Designation: ………………………………. 
**BIDDING FORM F3 – FINANCIAL PROPOSAL STANDARD FORM**

*Note: For the purposes of electronic copies to be submitted, the aforementioned forms are required to be prepared using Excel file.*

*This form shall be used for the preparation of the Financial Proposal.*

Bidder who quotes the highest present value (“PV”) of revenue share (collected over a period of three (3) years) using a fixed percentage share of revenue will be considered as the Successful Bidder.

This PV shall be computed at a discount rate of sixteen percent (16%) over a period of three (3) years on the revenue arising from sub-lease of industrial and commercial plots in the Marble City Karachi.

Bidders are required to quote a single revenue sharing percentage and also provide estimated revenues for each year (during a period of three (3) years).

The minimum PV amount (for a period of three (3) years) quoted by any Bidder must be above PKR 200,000,000/- (Pakistani Rupees Two Hundred Million Only)

<table>
<thead>
<tr>
<th>YEAR 1</th>
<th>REVENUE (PKR) (A)</th>
<th>REVENUE SHARE TO SEZMC (IN PERCENTAGE) (B)</th>
<th>REVENUE SHARE TO SEZMC (PKR) (C) = A * B</th>
</tr>
</thead>
<tbody>
<tr>
<td>YEAR 2</td>
<td></td>
<td>X%</td>
<td></td>
</tr>
<tr>
<td>YEAR 3</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Total Revenue Share to SEZMC (in accordance with the terms of the Concession Agreement) discounted at sixteen percent (16%) = PKR (Insert amount in words) (the “**Bid Price**”).

If the actual revenues realized by the Concessionaire/Successful Bidder in any year are less than the estimated revenues quoted in column (A) above (for that year), then the Concessionaire/Successful Bidder will still be required to share the revenues as quoted in column (C) above.

In case the actual revenues realized by the Concessionaire/Successful Bidder in aggregate are higher than the Benchmark Revenue Amount being PKR 6,500,000,000/- (Pakistani Rupees Six Billion Five Hundred Million only) then the revenue sharing percentages that will apply will be seventy-five percent (75%) for SEZMC and twenty-five percent (25%) for the Concessionaire on the revenues in excess of the Benchmark Revenue Amount.
BIDDING FORM F4 – FINANCIAL MODEL FORM

The Bidder should provide the following components of the financial bid:

<table>
<thead>
<tr>
<th>Year</th>
<th>1</th>
<th>2</th>
<th>…</th>
<th>12</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue from Sale of Plots – (a)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Share of Revenue to SEZMC (in PKR) – (b)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operations and Maintenance Costs</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1. **PROJECT COST BREAKUP**

<table>
<thead>
<tr>
<th>Item</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>EPC Cost</td>
<td>In PKR</td>
</tr>
<tr>
<td>Non-EPC Cost</td>
<td>In PKR</td>
</tr>
<tr>
<td><strong>Total Project Cost</strong></td>
<td>In PKR</td>
</tr>
</tbody>
</table>

2. **FUNDING / CAPITAL STRUCTURE**

<table>
<thead>
<tr>
<th>Total Project Cost</th>
<th>Year 1</th>
<th>Year 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Private Party Equity</td>
<td>In PKR</td>
<td></td>
</tr>
<tr>
<td>Customer Advances</td>
<td>In PKR</td>
<td></td>
</tr>
</tbody>
</table>
PART 3
BIDDING DOCUMENTARY REQUIREMENTS
## BIDDING DOCUMENTARY REQUIREMENTS

<table>
<thead>
<tr>
<th>NO.</th>
<th>DOCUMENT</th>
<th>REQUIREMENTS(^6)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>LETTER OF TECHNICAL PROPOSAL AND LETTER OF FINANCIAL PROPOSAL</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>LOCAL ENTITY</td>
</tr>
<tr>
<td></td>
<td></td>
<td>To be dated, signed by the authorized representative and witnessed.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>FOREIGN ENTITY</td>
</tr>
<tr>
<td></td>
<td></td>
<td>To be dated, signed by the authorized representative and witnessed.</td>
</tr>
<tr>
<td>2.</td>
<td>FORM OF BID SECURITY</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>LOCAL ENTITY</td>
</tr>
<tr>
<td></td>
<td></td>
<td>To be dated, signed by an authorized representative and duly stamped (PKR 500/-).</td>
</tr>
<tr>
<td></td>
<td></td>
<td>FOREIGN ENTITY</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Note: Where the Bid Security is issued by a foreign bank outside Pakistan, such Bid Security shall be counter-guaranteed / confirmed by a scheduled bank in Pakistan (having the Minimum Credit Rating at all times, acceptable to SEZMC). Counter-guarantee to be dated, signed by an authorized representative and duly stamped (PKR 500/-).</td>
</tr>
<tr>
<td>3.</td>
<td>POWER OF ATTORNEY</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>LOCAL ENTITY</td>
</tr>
<tr>
<td></td>
<td></td>
<td>To be dated; witnessed; notarized; duly stamped (PKR 200/-); signed by an authorized representative; and in the language as required under the Instructions to Bidders.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>FOREIGN ENTITY</td>
</tr>
<tr>
<td></td>
<td></td>
<td>To be dated, witnessed, signed by an authorized representative, notarized by the notary public in the country where it is issued and attested by the Pakistan Embassy / Consulate, and adequately adhesive stamped when brought into Pakistan with a stamp duty of PKR 200/-.</td>
</tr>
<tr>
<td>5.</td>
<td>INTEGRITY PACT</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>LOCAL ENTITY</td>
</tr>
<tr>
<td></td>
<td></td>
<td>To be dated and signed by the authorized representative of the Bidder.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>FOREIGN ENTITY</td>
</tr>
<tr>
<td></td>
<td></td>
<td>To be dated and signed by the authorized representative of the Bidder.</td>
</tr>
<tr>
<td>6.</td>
<td>AFFIDAVIT</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>LOCAL ENTITY</td>
</tr>
<tr>
<td></td>
<td></td>
<td>To be dated; signed by the authorized signatory, witnessed, duly stamped (PKR 100/-), and in the format as required under the RFP,</td>
</tr>
<tr>
<td></td>
<td></td>
<td>FOREIGN ENTITY</td>
</tr>
<tr>
<td></td>
<td></td>
<td>To be in the English language and in compliance with the requirements under the RFP, notarized by the notary public in</td>
</tr>
</tbody>
</table>

\(^6\) Under the Laws of Pakistan (Qanun-e-Shahdat Order, 1984), the minimum witnessing requirement mandates the presence of either two males, or one male and two females to witness, for all instances of witnessing in financial matters.
| RFP. The Affidavit to be attested by an oath commissioner. | the country where it is issued, attested by the Pakistan Embassy/Consulate, adequately adhesive stamped when brought into Pakistan with a stamp duty of PKR 100/-, dated, signed by the authorized signatory, and witnessed. |
PART 4
ANNEXURES
ANNEXURE A – BASIC ELIGIBILITY CRITERIA

A Technical Proposal received from the Bidder, shall only be considered if all the following information / components have been provided and the requirements herein are satisfied:

In case any document / information furnished is in a language other than English, it will need to be accompanied by an English translation (duly notarized by Notary Public and attested by the Pakistan Embassy / Consulate in the country of origin and by the Ministry of Foreign Affairs, Pakistan). In case of any discrepancy, the English translation shall prevail.

BASIC ELIGIBILITY CRITERIA FOR BIDDERS:

A Bid received from a Bidder, shall only be considered if all the following components of the Basic Eligibility Criteria are satisfied:

ELIGIBILITY CRITERIA FOR BIDDERS

➢ REGISTRATION WITH TAX AUTHORITIES

The Bidder (or in the case of a Consortium, all Consortium Members) must possess valid registration certificate from income tax authority (i.e., the NTN certificate) and relevant sales tax authority, if applicable.

(Valid NTN certificate and tax returns filed for last three years to be attached and relevant sales tax certificate, if applicable.)

(Foreign entities if participating in the Bidding Process should submit tax certificate and tax returns filed for last (03) years of their country duly attested by the Pakistani Embassy / Consulate in their country and by the Ministry of Foreign Affairs, Pakistan).

➢ AFFIDAVIT FOR GOVERNMENT OWNED LEGAL ENTITIES

In case if the Bidder, or any Consortium Member, is a government owned legal enterprise or institution, such Bidder or any Consortium Member (as applicable) must establish that it is legally and financially autonomous and operating under commercial law.

(Bidders, or any Consortium Member, who are government owned legal enterprise or institution shall submit an Affidavit confirming that they are legally and financially autonomous and operating under commercial law).

Relevant Form: BIDDING FORM T4 (FORM OF AFFIDAVIT)

➢ NO CONFLICT OF INTEREST

The Bidder, and any Consortium Member, shall not have any Conflict of Interest.

Conflict of Interest means:

- where the Bidder and any Consortium Member, provides, or could provide, or could be perceived as providing biased professional advice to SEZMC and / or the GoS to obtain an undue benefit for himself or those affiliated with him;
- receiving or giving any remuneration directly or indirectly in connection with the Marble City Karachi except as provided in the RFP;

- any engagement in consulting or other procurement activities of a Bidder, and any Consortium Member, that conflicts with his role or relationship with SEZMC and/or the GoS under the Marble City Karachi; or

- where an official of the SEZMC and/or the GoS engaged in the procurement process has a financial or economic interest in the outcome of the process of procurement, in a direct or an indirect manner.

(The Bidders (or in case of a Consortium, each Consortium Member) shall submit an Affidavit for non-conflict)

**Relevant Form: BIDDING FORM T4 (FORM OF AFFIDAVIT)**

- **NON-BLACKLISTING**

  The Bidder, and any Consortium Member, shall not be Blacklisted.

  **Blacklisting** means barring a Bidder, or any Consortium Member, from participating in any future procurement proceedings by the GoS or any governmental entity.

  (Bidders (or in case of a Consortium, each Consortium Member) shall submit an Affidavit for non-blacklisting)

  **Relevant Form: BIDDING FORM T4 (FORM OF AFFIDAVIT)**

- **HISTORY OF NON-PERFORMING CONTRACTS AND LITIGATION**

  Any non-performance of a contract by the Bidder (or in case of Consortium, each Consortium Member) should not have occurred in the last five (5) years prior to the Bid Submission Date based on all information on fully settled disputes or litigation. All pending litigation against the Bidder or any Consortium Member shall in total not represent more than fifty percent (50%) of the respective net worth, nor shall there be any litigation that prevents or materially impedes the Bidder or any Consortium Member from its obligations in respect of the Project and the terms of the Concession Agreement.

  (The Bidders (or in case of a Consortium, each Consortium Member) shall provide details of the litigation or the Bidder (or in case of Consortium, each Consortium Member) shall submit an Affidavit in case of no litigation on PKR 100/- (Pakistani Rupees One Hundred only) stamp paper attested by Notary Public. Foreign Bidders’ Affidavit should be attested by Pakistani Consulate / Pakistan High Commission of their country).

  **Relevant Forms: BIDDING FORM T6 (HISTORICAL NON-PERFORMANCE AND PENDING LITIGATION) AND BIDDING FORM T4 (FORM OF AFFIDAVIT)**

- **FAILURE TO SIGN CONTRACTS**
The Bidder (or in case of a Consortium, each Consortium Member) shall not have failed to sign a contract in the last five (5) years.

(The Bidder (or in case of a Consortium, each Consortium Member) shall provide details of such failure to sign contracts or the Bidder (or in case of a Consortium, each Consortium Member) shall submit an Affidavit in case if not applicable on PKR 100/- (Pakistani Rupees One Hundred only) stamp paper attested by Notary Public. Foreign Bidders’ Affidavit should be attested by Pakistani Consulate / Pakistan High Commission of their country).

Relevant Form: **BIDDING FORM T6 (HISTORICAL NON-PERFORMANCE AND PENDING LITIGATION) AND BIDDING FORM T4 (FORM OF AFFIDAVIT)**

➢ **FINANCIAL SITUATION / HISTORICAL FINANCIAL PERFORMANCE**

• **Net Worth**

  Current net worth of the Bidder shall be PKR 3,000,000,000/- (Pakistani Rupees Three Billion Only) (excluding any surplus on revaluation) as presented in the most recent financial statements / wealth statement.

  The Bidder / each Consortium Member shall submit audited financial statements for the last three (3) years. For the avoidance of doubt, the audited financial statements of the latest financial year shall be evaluated to determine the net worth of the Bidder.

  The Lead Member of the Consortium shall have a minimum net worth of PKR 2,000,000,000/- (Pakistani Rupees Two Billion Only).

  Other members of the Consortium shall have a minimum net worth of PKR 1,000,000,000/- (Pakistani Rupees One Billion Only).

  The Consortium shall not comprise of more than three (3) members.

• **Average Annual Turnover or Liquid Investments**

  The Bidder shall have an average annual turnover of PKR 3,000,000,000/- (Pakistani Rupees Three Billion Only) for the last three (3) years.

  OR

  The Bidder must have a minimum cash, short term or liquid investments and funding lines of which at least seventy percent (70%) of the aggregate number should be demonstrated through cash and short term investments amounting to PKR 300,000,000/- (Pakistani Rupees Three Hundred Million Only) (the Bidder/each Consortium Member shall submit audited financial statements for the last three (3) years to demonstrate their capability for this criteria).

➢ **REGISTRATION WITH PAKISTAN ENGINEERING COUNCIL (PEC)**

Registration with Pakistan Engineering Council and registration in PCATP as a Professional Architect is mandatory. In case of a Consortium, the PEC registration of civil engineering firm/Consortium Member shall be required. Valid PEC registration
certificates to be attached. At least one (1) Consortium Member should be a CA (no limit) construction firm. The Consortium should also identify a consultant firm for design in accordance with the RFP (to satisfy this condition, a contractual arrangement in the form of memorandum of understanding or equivalent shall be submitted). The construction and consulting firms of the Consortium must be registered with PEC with following codes. Foreign entities if participating in the bidding process should strictly follow the rules stipulated in PEC bye laws for participation.

- **For construction:**

  The Bidder (in case of a Consortium, any Consortium Member) must possess valid PEC registration certificate in category C-A having specialization codes of CE-01, CE-02, CE-10, BC01, ME-02, ME-03 and EE-06 or by engaging the sub-contractor for not more than two specialization codes.

  (Valid PEC registration certificates is required to be attached).

  (Foreign entities if participating in the Bidding Process should strictly follow the rules stipulated in PEC bye laws for participation).

- **For design:**

  The Bidder (in case of a Consortium, any Consortium Member) must possess valid PEC registration certificate in Project Profile Code 1215.

  (Valid PEC registration certificate is required to be attached).

  (Foreign entities if participating in the Bidding Process should strictly follow the rules stipulated in PEC bye laws for participation).
ANNEXURE B – EVALUATION CRITERIA

(I) **TECHNICAL EVALUATION CRITERIA**

The Technical Proposal shall be evaluated on the basis of the criteria given below:

<table>
<thead>
<tr>
<th>A) Financial Capability</th>
<th>Maximum Points – 35</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A – 1) Net worth</strong></td>
<td>Maximum Points - 25</td>
</tr>
<tr>
<td>The Bidder must have a tangible net worth of not less than PKR 3,000,000,000/- (Pakistani Rupees Three Billion only). Tangible net worth shall not include any surplus on revaluation of property, plant and equipment. Net worth of PKR 3,000,000,000/- (Pakistani Rupees Three Billion only) will be awarded 15 marks. One (01) mark for each increment of PKR 200,000,000/- (Pakistani Rupees Two Hundred Million only) above the minimum will be awarded till the maximum of twenty-five (25) marks is reached. In case of a Consortium, only such Consortium Members that are proposed to be shareholders of the SPV as per the consortium agreement shall be considered for this criterion, and in the evaluation of the same they must collectively meet the criterion and the Lead Member must have a minimum net worth of PKR 2,000,000,000/- (Pakistani Rupees Two Billion only). Other members of the Consortium shall have a minimum net worth of PKR 1,000,000,000/- (Pakistani Rupees One Billion only). The Consortium may not have more than three (3) members.</td>
<td></td>
</tr>
<tr>
<td><strong>A – 2) Cash and funding lines</strong></td>
<td>Maximum Points - 10</td>
</tr>
<tr>
<td>The Bidder must have a minimum cash, short term or liquid investments and funding lines of which at least seventy percent (70%) of the aggregate number should be demonstrated through cash and short-term investments. Cash, short term or liquid investments and funding lines of not less than PKR 300,000,000/- (Pakistani Rupees Three Hundred Million Only) will be awarded 7.5 marks.</td>
<td></td>
</tr>
</tbody>
</table>
For every increase of PKR 50,000,000/- (Pakistani Rupees Fifty Million Only) an additional 0.5 mark will be awarded till the maximum of 10 marks is reached.

<table>
<thead>
<tr>
<th>B) Technical Capability</th>
<th>Maximum Points – 45</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>B – 1) Real Estate / Infrastructure / SEZs Development experience</strong></td>
<td>Maximum Points – 20</td>
</tr>
<tr>
<td>The following categories of experience would qualify as technical capability and eligible experience:</td>
<td></td>
</tr>
<tr>
<td>Bidders must have completed / successfully developed real estate / infrastructure projects in the last ten (10) years.</td>
<td></td>
</tr>
<tr>
<td><strong>Category 1:</strong> Development experience in real estate projects. Bidders must have completed / successfully developed real estate / infrastructure projects of built-up area not less than one hundred (100) acres.</td>
<td></td>
</tr>
<tr>
<td><strong>Category 2:</strong> Engineering Procurement Construction (EPC) / contracting experience and item rate contracts experience of infrastructure projects (including roads, bridges, sewerage, buildings, electricity transmission, transport and leisure).</td>
<td></td>
</tr>
<tr>
<td>Bidders must have completed each infrastructure project in excess of cost of PKR 1,000,000,000/- (Pakistani Rupees One Billion Only).</td>
<td></td>
</tr>
<tr>
<td>These scores will be allocated to the following categories: Category 1 – 10 marks for each completed project. Category 2 – 5 marks for each completed project.</td>
<td></td>
</tr>
<tr>
<td>Bidders must provide completion certificate for projects mentioned in the submitted Bid. The certificates must have been issued by the sponsors of the projects.</td>
<td></td>
</tr>
<tr>
<td>The criteria will be evaluated on a standalone and proportionate basis.</td>
<td></td>
</tr>
<tr>
<td><em>(Note: Historical exchange rate prevailing on completion of assignment/project will be used to convert foreign currency to PKR)</em></td>
<td></td>
</tr>
<tr>
<td><strong>B – 2) Team Composition</strong></td>
<td>Maximum Points – 10</td>
</tr>
<tr>
<td><strong>Project Manager/Team Leader – 2 Marks</strong></td>
<td></td>
</tr>
<tr>
<td>Master’s degree in relevant field having at least twenty (20) years overall experience out of which ten (10) years relevant</td>
<td></td>
</tr>
</tbody>
</table>
experience (detailed CV along with PMP/PRINCE2 certificate and a copy of degree to be submitted).

**Marketing/business development head – 2 Marks**
Must have Master's degree in relevant field with at least twenty (20) years overall experience out of which fifteen (15) years relevant experience (detailed CV along with a copy of degree to be submitted).

**Finance lead– 2 Marks**
Must hold Master’s degree / professional accountancy certification in relevant field, with at least ten (10) years overall experience out of which eight (8) years relevant experience (detailed CV along with a copy of degree to be submitted).

**Technical team lead / civil engineering background – 2 Marks**
Must hold Master’s degree in relevant field with at least fifteen (15) years overall experience out of which ten (10) years relevant experience (detailed CV along with a copy of degree to be submitted).

**Environmental expert – 2 Marks**
Must hold Bachelor’s degree in relevant field with at least fifteen (15) years overall experience out of which ten (10) years relevant experience (detailed CV along with a copy of degree to be submitted).

CVs in the manner and form format provided in this Request for Proposal would be provided for these experts, who should either be employees of the Bidder/any Consortium Member or be associated with them through binding contracts.

<table>
<thead>
<tr>
<th>B – 3) O&amp;M Experience</th>
<th>Maximum Points – 5</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bidder must have direct experience in providing O&amp;M services for real estate / infrastructure projects. The following services would qualify as relevant direct O&amp;M experience:</td>
<td></td>
</tr>
<tr>
<td>O&amp;M experience of an industrial park/special economic zone with the mix of following activities:</td>
<td></td>
</tr>
<tr>
<td>i. Operation and Maintenance of electricity and/or other utility infrastructure;</td>
<td></td>
</tr>
<tr>
<td>ii. Solid waste management;</td>
<td></td>
</tr>
<tr>
<td>iii. Effluent management operations; and</td>
<td></td>
</tr>
<tr>
<td>iv. Operation of common facilities such as training and skills development; common machinery pool operations, exhibition centers etc.</td>
<td></td>
</tr>
</tbody>
</table>
**B – 4) Industrial Commitments**

Bidders will be required to provide undertakings from marble sector companies/entities in respect of industries to be set up in the Marble City Karachi.

Bidder must demonstrate industry commitments of at least twenty-five (25) acres of occupancy and the Bidder will be awarded 5 marks.

Industry commitment of less than two (2) acres will not be considered for evaluation purposes.

For each increment of two (2) acres of commitment, additional 1 mark will be awarded until a total of 10 marks is reached.

<table>
<thead>
<tr>
<th>C) Business Plan Evaluation</th>
<th>Maximum Points – 20</th>
</tr>
</thead>
<tbody>
<tr>
<td>C – 1) O&amp;M Plan</td>
<td>Maximum Points – 10</td>
</tr>
</tbody>
</table>

The Bidder will be required to provide an O&M plan for the operation and maintenance of the facilities built in the industrial park.

<table>
<thead>
<tr>
<th>C – 2) Marketing Plan</th>
<th>Maximum Points – 10</th>
</tr>
</thead>
</table>

The Bidder to demonstrate the following aspects:

i. Marketing strategy; - 4 Marks

ii. Pricing strategy; and - 3 Marks

iii. Leasing plan; - 3 Marks
(II) **FINANCIAL EVALUATION CRITERIA**

*The Bidding Form F3 (Financial Proposal Standard Form) shall be used for the preparation of the Financial Proposal.*

Bidder who quotes the highest present value ("PV") of revenue share (collected over a period of three (3) years) using a fixed percentage share of revenue will be considered as the Successful Bidder.

This PV shall be computed at a discount rate of sixteen percent (16\%) over a period of three (3) years on the revenue arising from sub-lease of industrial and commercial plots in the Marble City Karachi.

Bidders are required to quote a single revenue sharing percentage and also provide estimated revenues for each year (during a period of three (3) years).

The minimum PV amount (for a period of three (3) years) quoted by any Bidder must be above PKR 200,000,000/- (Pakistani Rupees Two Hundred Million Only).

If the actual revenues realized by the Concessionaire/Successful Bidder in any year are less than the estimated revenues quoted in column (A) of the table set out in *Bidding Form F3 (Financial Proposal Standard Form)* (for that year), then the Concessionaire/Successful Bidder will still be required to share the revenues as quoted in column (C) of the table set out in *Bidding Form F3 (Financial Proposal Standard Form)*.

In case the actual revenues realized by the Concessionaire/Successful Bidder in aggregate are higher than the Benchmark Revenue Amount being PKR 6,500,000,000/- (Pakistani Rupees Six Billion Five Hundred Million only) then the revenue sharing percentages that will apply will be 75\% for SEZMC and 25\% for the Concessionaire on the revenues in excess of the Benchmark Revenue Amount.
ANNEXURE C – REQUIREMENTS FOR CONSORTIUM AGREEMENT

The legally binding and enforceable Consortium Agreement between each Consortium Member shall include, at a minimum, the following representations, undertakings, terms, conditions and requirements:

(a) Specify the designated Lead Member, nominated by the Consortium, as its representative and the role of each Consortium Member.

(b) Each Consortium Member shall authorise the Lead Member to sign and submit the Bid on its behalf and participate in the Bidding Process.

(c) The proportion of the Ownership Stake in the SPV to be held by each Consortium Member in the SPV.

(d) The Lead Member shall undertake, and all Consortium Members shall confirm, that the Lead Member shall maintain a minimum of thirty four percent (34%) Ownership Stake in SPV. No change in the Consortium, by addition/withdrawal of a Consortium Member or change in percentage shareholding of any consortium member, except as may be permitted under the RFP and the Concession Agreement (post award to the Successful Bidder).

(e) The other Consortium Members should hold at least twenty percent (20%) Ownership Stake in the SPV and there cannot be more than three (3) Consortium Members in a Consortium.

(f) Confirmation that the terms of the Consortium Agreement shall not be changed, amended or modified in any manner during the Bidding Process without prior consent of SEZMC, provided that no such change shall impact the minimum requirements set out in the RFP.

(g) Specify that the Consortium Members are jointly and severally liable in respect of their obligations in relation to the Project.
VOLUME II:
PROJECT SCOPE
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1.
2. **BRIEF BACKGROUND**

The Sindh Economic Zones Management Company, (SEZMC), has proposed Marble City Project to be developed as an industrial estate to uplift the value-added marble and granite sector and allied industries in Sindh.

The establishment of the Project is envisioned to achieve the following:

- Provide a secure, purpose-built industrial zone for the dimension stone (marble & granite) sector and allied industries in Karachi.
- Improved facilities such as common machinery pool for value addition stone sector.
- Increased direct and secondary job creation, supporting poverty alleviation in the region.
- Enhance exports and attract local & international investment.

3. **SITE ANALYSIS**

3.1 **General Information**

The Project Site is 300 acres in Deh Meetha Ghar, connected with the Hub Dam Road, located at 67°1'52.905" E to 67°3'11.075" E and 25°6'12.191" N to 25°6'20.886" N. It is 1.25 km away from Hub Dam Road and 0.5 km from Karachi Northern Bypass. The distance from Karachi-Hyderabad motorway is 21 km and 34 km away from Jinnah International Airport.

<table>
<thead>
<tr>
<th>Site Station Name</th>
<th>Deh Meetha Ghar (Sindh)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Start Point</td>
<td>67°1'52.905&quot; E</td>
</tr>
<tr>
<td>Station Coordinates</td>
<td>25°6'12.191&quot; N</td>
</tr>
<tr>
<td>Access Road</td>
<td>Karachi Northern Bypass (M-10)</td>
</tr>
</tbody>
</table>

3.2 **Site Features and its Surroundings**

The Site is located near the Hamdard University of Medicine and Dentistry and Madinat-ul Hikmah along Hub River. The Hub Dam Canal passing through the area divides the Site into two (2) parts.

The Site consists of dirt tracks which are not connected to each other to form a road network. The mud roads came into existence because of the villagers’ movements, living in the vicinity. A few natural drains were also seen on the Site which are connecting to one nullah running at the left of the Site.

Site reconnaissance survey concludes that the Site has varying topography, including small and major nullahs and natural streams, undulating surfaces caused by excavation of earth sand from the Project area at different points, which may cause an impact in the cost of earth works of the Site. The locals
living in the vicinity indicated that rain water may occasionally enter the Site. Thus, some protection measures may be required. The entire infrastructure with allied facilities will be developed on the Site.

3.3 Accessibility

The Site is currently accessible from the city centre of Karachi through the Northern Bypass and Hub Dam Road. However, the half kilometre long track leading to the Site from the Northern Bypass is a Katcha Track along the Hub Dam Canal.

3.4 Topography of the Site

The Site is heavily vegetated with wild plantations and the terrain of the Site is undulating on the western side of the Hub Dam Canal and hilly on the eastern side of the Hub Dam Canal.

3.5 Not Used.

3.6 Site Conditions

Photographs of the Site conditions are as under:

Table 3.2: Site Location Pictures

<table>
<thead>
<tr>
<th>High Elevated Area on the Western Side</th>
<th>Vegetation at Site</th>
</tr>
</thead>
<tbody>
<tr>
<td>Undulating areas around site</td>
<td>Eastern Side View of Hub Dam</td>
</tr>
</tbody>
</table>
4. **Conceptual Master Plan of Marble City Project**

On the basis of Site analysis feedback from stakeholders, the conceptual master plan (the “CMP”) was developed by the Project’s technical consultants at the feasibility stage of the Project.

The CMP provides the Marble City zoning scheme identifying the plots available for marble industry land use that the potential investors may be willing to buy for industrialization. It also provides the necessary detail with respect to access roads, infrastructure and allied facilities required within the zone. The Concessionaire for the Project is required to prepare detailed master plan based on the CMP, which defines the land use of the project Site.

4.1 *Marble City Project*

The CMP has been prepared considering planning standards within Pakistan and internationally. Land use allocation is presented in the Table 3.1 (*Land Use Schedule of MCP*) and Figure 3.1 (*Preliminary Plan of MCP*) below:

**Table 4.1 : Land Use Schedule of MCP**

<table>
<thead>
<tr>
<th>S. No</th>
<th>Category of Plots</th>
<th># Plots</th>
<th>Plot Size (Acres)</th>
<th>Area (Acre)</th>
<th>Percentages %</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>INDUSTRIAL PLOTS</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Industrial + Ware Houses (1.0 Acre)</td>
<td>185</td>
<td>01</td>
<td>185.00</td>
<td>61.67%</td>
</tr>
<tr>
<td>2</td>
<td>Industrial (0.50 Acre)</td>
<td>33</td>
<td>0.5</td>
<td>16.50</td>
<td>5.50%</td>
</tr>
<tr>
<td>3</td>
<td>D (0.50 Acre)</td>
<td>7</td>
<td>0.5</td>
<td>3.23</td>
<td>1.08%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>225</strong></td>
<td></td>
<td><strong>204.73</strong></td>
<td><strong>68.24%</strong></td>
<td></td>
</tr>
<tr>
<td><strong>COMMERCIAL</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Commercial (ST-06)</td>
<td>1</td>
<td>As Per CMP</td>
<td>0.55</td>
<td>0.18%</td>
</tr>
<tr>
<td>2</td>
<td>Petrol Pump / CNG (ST-08)</td>
<td>1</td>
<td>As Per CMP</td>
<td>0.51</td>
<td>0.17%</td>
</tr>
<tr>
<td>3</td>
<td>Commercial / Leisure Canteen (ST-10)</td>
<td>1</td>
<td>As Per CMP</td>
<td>0.53</td>
<td>0.18%</td>
</tr>
<tr>
<td>4</td>
<td>Commercial (ST-18)</td>
<td>1</td>
<td>As Per CMP</td>
<td>0.55</td>
<td>0.18%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>4</strong></td>
<td></td>
<td><strong>2.14</strong></td>
<td><strong>0.71%</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>RECREATION</td>
<td></td>
<td>AMENITIES</td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---------------------------------------------------------------------------</td>
<td>---</td>
<td>---------------------------------------------------------------------------</td>
<td>---</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Park (ST-12)</td>
<td>1</td>
<td>As Per CMP</td>
<td>0.22</td>
<td>0.07%</td>
</tr>
<tr>
<td>2</td>
<td>Park (ST-16)</td>
<td>1</td>
<td>As Per CMP</td>
<td>1.40</td>
<td>0.47%</td>
</tr>
<tr>
<td>3</td>
<td>Green Belt (ST-21)</td>
<td>1</td>
<td>As Per CMP</td>
<td>0.59</td>
<td>0.20%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2</td>
<td>As Per CMP</td>
<td>2.21</td>
<td>0.74%</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Weigh Station/ Check Post (ST-01)</td>
<td>1</td>
<td>As Per CMP</td>
<td>0.20</td>
<td>0.07%</td>
</tr>
<tr>
<td>2</td>
<td>STP (ST-02)</td>
<td>1</td>
<td>As Per CMP</td>
<td>2.20</td>
<td>0.73%</td>
</tr>
<tr>
<td>3</td>
<td>Sui Gas Station (ST-03)</td>
<td>1</td>
<td>As Per CMP</td>
<td>0.38</td>
<td>0.13%</td>
</tr>
<tr>
<td>4</td>
<td>Grid Station (ST-04)</td>
<td>1</td>
<td>As Per CMP</td>
<td>1.00</td>
<td>0.33%</td>
</tr>
<tr>
<td>5</td>
<td>Administration / Marketing Display Centre (ST-5)</td>
<td>1</td>
<td>As Per CMP</td>
<td>1.00</td>
<td>0.33%</td>
</tr>
<tr>
<td>6</td>
<td>Mosque (ST-7)</td>
<td>1</td>
<td>As Per CMP</td>
<td>0.23</td>
<td>0.08%</td>
</tr>
<tr>
<td>7</td>
<td>Truck Stand + Training Centre / Common Facility Centre / Machinery Pool (ST-9)</td>
<td>1</td>
<td>As Per CMP</td>
<td>3.20</td>
<td>1.07%</td>
</tr>
<tr>
<td>8</td>
<td>Clinic (ST-11)</td>
<td>1</td>
<td>As Per CMP</td>
<td>0.35</td>
<td>0.12%</td>
</tr>
<tr>
<td>9</td>
<td>Fire Brigade (ST-13)</td>
<td>1</td>
<td>As Per CMP</td>
<td>0.24</td>
<td>0.08%</td>
</tr>
<tr>
<td>10</td>
<td>Public Building P.B (ST-14)</td>
<td>1</td>
<td>As Per CMP</td>
<td>0.24</td>
<td>0.08%</td>
</tr>
<tr>
<td>11</td>
<td>Mosque (ST-15)</td>
<td>1</td>
<td>As Per CMP</td>
<td>0.50</td>
<td>0.17%</td>
</tr>
<tr>
<td>12</td>
<td>Mosque (ST-17)</td>
<td>1</td>
<td>As Per CMP</td>
<td>0.34</td>
<td>0.11%</td>
</tr>
<tr>
<td></td>
<td>Description</td>
<td>Quantity</td>
<td>Unit</td>
<td>Amount</td>
<td>Percentage</td>
</tr>
<tr>
<td>---</td>
<td>--------------------------------------------------</td>
<td>----------</td>
<td>------</td>
<td>--------</td>
<td>------------</td>
</tr>
<tr>
<td>13</td>
<td>Public Building P.B (ST-19)</td>
<td>1</td>
<td>As Per CMP</td>
<td>0.23</td>
<td>0.08%</td>
</tr>
<tr>
<td>14</td>
<td>Weigh Station (ST-20)</td>
<td>1</td>
<td>As Per CMP</td>
<td>0.33</td>
<td>0.11%</td>
</tr>
<tr>
<td>15</td>
<td>Water Storage Works &amp; Reservoir (ST-22)</td>
<td>1</td>
<td>As Per CMP</td>
<td>2.00</td>
<td>0.67%</td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td><strong>15</strong></td>
<td></td>
<td><strong>12.44</strong></td>
<td><strong>4.15%</strong></td>
</tr>
<tr>
<td>5</td>
<td>ROADS</td>
<td></td>
<td></td>
<td>78.48</td>
<td>0.26%</td>
</tr>
<tr>
<td></td>
<td><strong>GRAND TOTAL</strong></td>
<td></td>
<td></td>
<td><strong>300.00</strong></td>
<td><strong>100.00%</strong></td>
</tr>
</tbody>
</table>
5. **CONCESSIONAIRE’S SCOPE OF WORK**

5.1 *General*

The scope of work for the Project includes development, construction, operation & maintenance of the Project. The main features of the scope of work for the Concessionaire are outlined in the subsequent sections:

[Figure 5-1: Concessionaire's Scope of Work]

5.2 *Not Used*

5.3 **Preparatory Works**

1. **Topographical Survey**

Topographical surveys, as previously done, comprising level, contour and salient physical features of the Site will be provided. The Concessionaire shall carry out the confirmatory topographical survey at his own cost and risk.

2. **Geo Technical Investigations**

Geo-technical / sub-soil investigations, including soil classification, safe bearing capacity, subgrade CBR and level of ground water table shall be carried by the Concessionaire at his own cost and risk.

3. **Environmental Management and Monitoring Plan (EMMP)**

Based on the environmental study of the Project, i.e., the Environmental Impact Assessment (EIA) conducted as per clause 5.6 (*Environmental Considerations*) below and the Environmental Legal Requirements, a comprehensive ‘Environmental Management and Monitoring Plan’ (the “EMMP”) is required to be developed during the Construction Period.

The EMMP shall be conceived, prepared, documented, and implemented by the Concessionaire to ensure that:

- the execution of the Project does not have any detrimental effect on the environment;
- all required Environmental Legal Requirements are duly present in the EMMP as an integral component of the Concession Agreement;
- any foreseeable adverse impacts are effectively mitigated through appropriate measures adopted at every stage of the Project Activities; and
- protection and preservation of the natural environment and the ecosystem along the corridor are the prime considerations.

The EMMP shall also cover all Project Activities along the Site during the Concession Period, and provide for protection and preservation of the environment at the Site and effective mitigation of any adverse effects of the Project Activities, including, without limitation, control of:

- dust pollution;
- vehicular emissions;
- noise from construction machinery and vehicular traffic;
- loss of vegetation through effective replantation at a larger scale;
- water resources pollution;
- any type of Hazardous Substances; and
- solid waste management including proper collection and safe / environment-friendly transportation to the designated disposal sites.

The Concessionaire shall develop details of the scope and update EMMP at various stages of the Project.

Components and structure of the EMMP shall include but not be limited to the following main components:

- integration of the EMMP with Project Activities;
- mitigation of potentially adverse impacts;
- environmental cost estimates;
- institutional capacity building and training components along with their cost estimates for implementation of the proposed EMMP; and
- effective monitoring during implementation of Project Activities.

4. Site Clearance

The Site shall be cleared of rubbish / debris of all kinds, loose rocks, small trees (not exceeding 30 cm in girth, measured at one meter above ground level), shrubs, stumps, grass, brush wood, undergrowth and any other vegetation, and superficial earth etc. as directed by the Independent Engineer. The Site clearance shall be done twenty (20) meters around the periphery of the proposed Construction Activities.

All materials arising from Site clearance on the property shall be disposed-off by the Concessionaire at his own cost, as herein provided. All serviceable materials shall be temporarily stacked in separate lots at the Site, at places as directed by the Independent Engineer. The Site clearance shall cover all the activities required for clearing the Site and its surroundings, including providing labour, materials, tools, equipment and incidentals necessary to complete the work. It will also include handling, salvaging, piling or stacking or collecting and disposing off cleared materials.
The existing natural drain flowing through the Site shall be diverted parallel to the highway / Site boundary with a proper hydraulic & structural design. The proposed drain should have safe discharge carrying capacity for peak monsoon flow. All the material used for draining diversion must conform with international standard specification.

5. Levelling Works

After all Site clearance activities, as mentioned above, the Site shall be levelled, and a grading plan shall be prepared.

6. Planning & Design of Mandatory / Critical Physical Infrastructure

All Project components shall be planned & implemented as per Good Industry Practices, good engineering practices, applicable local and international standard codes, manuals, including but not limited to the following, as may be applicable:

- Sindh Building Control Authority Bye Laws;
- Karachi Building & Town Planning Regulations, 2002;
- National Reference Manual – Pakistan; and

The planning & design of the following mandatory / critical physical infrastructure is also included in the Concessionaire’s scope of work under the Project:

*Internal Development Works shall include:

- Boundary Wall - 18,810 rft (5.73 km).
- Gates – 01 No.s.
- Watch Towers - 10 No.s.
- Earth Work.
- Road Works - 16 km.
- Retaining Wall - 3,789 rft.
- Water Supply Network (2.00 MGD).
- Sewerage Network.
- Sewerage Treatment Plant (1.70 MGD) - Tricking Filtration.
- Storm Water Drainage.
- Electrification Works (13.73 MW).
- Gas Network (0.15 MMCFD).
- Building Works - open spaces / parks – as per the Master Plan, fulfilling the standards of NRM.
- Fire Fighting Works (Hydrants).

5.4 Construction Activities

The Concessionaire shall undertake construction of mandatory / critical physical infrastructure works and major buildings and allied facilities, as listed in para 6 of Section 4.3 above based on the approved Master Plan and detailed designs approved by Sindh Building Control Authority (SBCA) and other relevant Competent Authorities. In brief, the Concessionaire will provide for:

- the physical infrastructure, common facilities, road works, green areas along with industrial plots and buildings to be constructed as per building byelaws and seismic zone;
- industrial plots of varying size depending on the industry / market requirement;
- construction of mandatory physical infrastructure shall include compound wall with controlled access, entrance plaza / security office, roads & storm water drainage, water supply (including rising main, storage and distribution network), sewerage system (including wastewater collection, tertiary treatment facility and distribution network), open green spaces, telecommunication, and street lighting; and
- development of other facilities including but not limited to residential, commercial and common facilities.

The process of dewatering at any phase of the Project completely falls under the Construction Activities. The Concessionaire shall use sulphate resistant cement in any part of the Project as may be recommended by the Independent Engineer.

5.5 Operations Management

Following completion of the Construction Activities, including major buildings and allied facilities, the Project shall become operational, and the Concessionaire shall be responsible to keep it fully operational as per the Operating and Maintenance Procedures, especially focusing on the following activities and systems:

- provision of utilities inside the Site;
- solid waste management including effective collection and proper disposal to a designated site outside the Site;
- provision of security & surveillance;
- road safety and parking management; and
- disaster / emergency services management.

For hassle free facilities, dedicated on-call project management & maintenance teams will be required to provide round-the-clock services, upholding the quality of the Project and ensuring reliable support to the Zone Enterprises at all times.
5.6 Maintenance Management

The Concessionaire shall be required to ensure effective maintenance management of the entire Project infrastructure, building works and allied facilities.

6. DEVELOPMENT OF INFRASTRUCTURE

All designs, drawings, specifications, working procedures / methodologies, milestones have to be approved by the Independent Engineer prior to commencement of any activity / work component. At least two (2) weeks prior to commencement of the Construction Activities, the Concessionaire shall draw up a Quality Assurance Manual (the “QAM”) covering the Quality System (QS), Quality Assurance Plan (QAP) and documentation for all aspects of the Construction Activities and send three copies each to the Independent Engineer for review.

6.1 Site Clearance & Levelling

Site clearance and levelling shall be carried out as detailed in para 4 of Section 4.3 above.

6.2 Compound Boundary Wall (08 feet height from NGL) with 01 No.s Entrance Gate

The main purpose of the compound wall is to demarcate the boundary and provide security. Compound wall shall be on the entire peripheral length of the Site’s boundary. Compound wall shall be of 8 ft height, made of cement concrete with reinforcement, with appropriate foundation. The compound wall shall be constructed based on the soil strata and topography. The material used for construction of wall shall conform with Legal Requirements including international specification & design standards. The provision of entrance gate & plaza shall be in accordance with the approved Master Plan.

Swan wire fencing over the wall shall be provided. The internal and external surfaces of the compound wall shall be plastered and painted. Due care should be taken during the designing and construction of expansion joints and stability of structure. Separate entrance gate should be provided for the Site from the main road. Width of gate must be as per the access road width and vehicular traffic movement. Security and controlled access system with metal detector should be installed in place.

6.3 Solid Waste Management

Solid waste generated by the Project will be predominantly of organic nature; however, small proportion of inorganic solid waste would also be present. Solid waste terminal station shall be provided to collect and segregate the waste, which will be eventually transported to the designated Government of Sindh’s scientific landfill site outside of the Site. However, organic waste shall be segregated at the terminal station and scientific disposal arrangement are required to be in place at the demarcated area within the premises. The Concessionaire shall be required to ensure placement of garbage collection containers or trash bins at different points on the Project premises with easy access according to the waste generation per day capacity. The Concessionaire shall be obliged to place solid waste collection containers as per the Operating & Maintenance Procedures.

Due care needs to be taken for waste management and disposal. All the essential plants, equipment, machineries and manpower should be put in place to maintain the good working environment at the Site.

6.4 Buildings and Structures

The planning of buildings shall be done as per prevailing development control rules, plot area, and provision of all essential / mandatory facilities. All approvals should be obtained from relevant
Competent Authorities, including the Sindh Building Control Authority (SBCA), prior to proceeding with construction of any building / structure. All other utilities like water supply, sewerage, electricity, and telecommunication should be taken into account at the time of planning and implementation. All building works including structural, plumbing, electrical, mechanical, firefighting, shall be as per the Construction Documents and the Master Plan.

All material and accessories shall conform to applicable specifications and national building codes. No material should be used without the prior approval of Independent Engineer. After completion of all Construction Activities, all the requisite testing needs to be undertaken, and the occupation certificate from the relevant Competent Authority should be obtained prior to use of the buildings.

6.5 Open Spaces

As per the approved Master Plan, all the open spaces should be levelled and developed as garden / recreation zones. Tree plantation and landscaping shall be undertaken in a planned manner in different stretches / zones of open spaces. Land-use of open spaces shall not be changed.

6.6 Environmental Considerations

The Concessionaire shall undertake an EIA of the Project, taking into consideration all proposed buildings and associated access and service facilities (access roads, electricity, water supply and landscaping, etc.) before the construction of the buildings to identify and mitigate any environmental related impacts related to site preparation and Project Activities. The EIA would be done in concurrence with the layout and design of the Project’s infrastructure and service facilities.

The design of new facilities shall incorporate adequate measures to mitigate construction related impacts and provision of adequate facilities for solid and liquid waste disposal facilities, soil and water conservation measures, drainage and erosion control, as well as other measures identified in the EIA. As part of the EIA, a basic social assessment shall be conducted by the Concessionaire, to ensure access for those households and businesses above and below ground level on the Site and surrounding the access roads.

An EMMP would be developed to manage and mitigate any potential negative environmental impacts posed by the development and operation of the new facilities.

6.7 Other Related Infrastructure

The detailed scope of works for other related infrastructure items, facilities and systems including the following is presented in the subsequent sections:

- Road works;
- Electrical works – Street/Road Lighting System;
- Information and Communication Technologies;
- Gas Supply System; and
- Firefighting system.
7. **ROAD WORKS**

7.1 *Development Briefing*

The Concessionaire shall design and build all the infrastructure works of the Project. Following components shall be ensured with respect to the road works:

- The internal roads are divided into arterial, collector and local roads. External connections will link with arterial roads which will facilitate the collector roads and then to local streets.

- The R.O.W may vary with classification and types of roads: arterial roads are 150’ feet (45.72m) wide, collector roads range from 40’feet (12.19m) to 66’ feet (20.12 m) and similarly local street are 20’ feet wide.

- All roads shall comprise of all standard features such as paved structures for vehicles, footpath as sidewalks, utility corridors, storm drainage system, street lighting and allied works etc.

- Suitable structure should be proposed for the roads crossing nala, utilities or any storm water channel.

- At portions, some retaining wall should be considered to provide retention at locations with major level difference.

- An external road from M-10 (Karachi Northern Bypass) to Site boundary is approximately 500 m, the corridor of this 150 feet wide external road shall be purchased by the Concessionaire.

It is the responsibility of the Concessionaire to incorporate all the features in the road design as per the given criteria, the road standards and with compliance of all the utilities.

7.2 *Design Standards*

The Project comprises of industrial units and factories, which directly involve the use of heavy vehicles for loading and unloading of goods. There should be sufficient parking facilities and waiting areas in the cross sections to provide uninterrupted movements.

7.3 *Cross Sectional Elements*

**Width of Travelled Way (Lane Width)**

At mid-blocks, a standard width of travelled way (lane width) of 3.65m should be adopted in all types of corridors, excluding all the provisions like shy, apron and chevron etc., where at intersections, they may vary as per the standards for smooth transition.

7.4 *Median*

Medians should be provided on wide roads especially in arterial roads for greenery and plantation to enhance aesthetics and sustain the environment. In lengthy mid-blocks, these medians may need sufficient openings to provide access to connecting roads.
7.5 Curbs

Local urban streets normally are designed with curbs to allow greater use of available width and for control of drainage, protection of pedestrians and delineation for safety of vehicles. While designing cross sections, the curbs should be properly incorporated, keeping the road classification and type of land use in consideration. The curb should be 450mm to 150 mm (18 inches to 6 inches) high, depending on drainage considerations and traffic control.

7.6 Cross Slope

The standard pavement cross slope should be considered for proper drainage of storm water on roads with and without curbs. These cross-slopes have variable range depending on the type of road; normally ranging from 1.5 to 2 percent on paved surfaces, and two to four percent (2-4%) on unpaved surfaces.

7.7 Super elevation

Super elevation on horizontal curves may be advantageous for urban streets’ traffic operations in specific locations, but in built-up areas, the combination of wide pavement areas, proximity of adjacent development, control of cross slope, profile for drainage, frequency of cross streets and other urban features make the use of super elevation undesirable. Generally, for urban roads, the parameters are defined in relation with super elevation of four percent (4%). However, with the roads’ design speed of 30km/hr. or less, the super elevation can be omitted.

7.8 Sidewalks

The sidewalks should be provided on both sides of local streets to facilitate the pedestrians. These footpaths are often used as utility corridors, so for pedestrians, minimum 1.50 ~ 2.0m wide walkway is used.

7.9 Cul-de-Sacs and Turnarounds

These are turnarounds at the end of the dead-end streets to provide convenient turning to vehicles. The Master Plan should avoid close end streets as much as possible to prevent disturbance to heavy vehicles.

7.10 Provision of Utilities

In addition to the primary purpose of serving vehicular traffic, roads also often accommodate public utility facilities within the road right-of-way. Use of the right-of-way by utilities should be planned to minimize interference with traffic using the road.

7.11 Adopted Geometric Design Parameters

For geometric design, “A Policy of Geometric Design of Highways and Streets, by American Association of State Highway and Transportation Officials (AASHTO), 2011” is used. The geometric design standards and its final execution are shown in table 2-1.
Table 7.1: AAHSTO 2011 Geometric Design Standards

<table>
<thead>
<tr>
<th>S. No</th>
<th>Parameters</th>
<th>Unit</th>
<th>Road Type</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Arterial</td>
</tr>
<tr>
<td>1</td>
<td>Design Vehicle</td>
<td>-</td>
<td>WB-19</td>
</tr>
<tr>
<td>2</td>
<td>Design Speed</td>
<td>kph</td>
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<td></td>
<td>Posted Speed</td>
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</tr>
<tr>
<td>3</td>
<td>No. of Lanes</td>
<td>no</td>
<td>2+2</td>
</tr>
<tr>
<td>4</td>
<td>Lane Width</td>
<td>m</td>
<td>3.65</td>
</tr>
<tr>
<td>5</td>
<td>Shoulder</td>
<td>m</td>
<td>3.00</td>
</tr>
<tr>
<td>6</td>
<td>Median width</td>
<td>m</td>
<td>4~8</td>
</tr>
<tr>
<td>7</td>
<td>Sidewalk</td>
<td>m</td>
<td>1.50 ~ 2.0 (min.)</td>
</tr>
<tr>
<td>8</td>
<td>Parking width</td>
<td>m</td>
<td>18</td>
</tr>
<tr>
<td>9</td>
<td>Cross fall of carriageway</td>
<td>%</td>
<td>1.0~2.0</td>
</tr>
<tr>
<td>10</td>
<td>Embankment Slope</td>
<td>V:H</td>
<td>1 : 2</td>
</tr>
<tr>
<td>11</td>
<td>Maximum Grade</td>
<td>%</td>
<td>4</td>
</tr>
<tr>
<td>12</td>
<td>Minimum Grade</td>
<td>%</td>
<td>0.2</td>
</tr>
<tr>
<td>13</td>
<td>Maximum rate of super elevation</td>
<td>%</td>
<td>4</td>
</tr>
</tbody>
</table>
7.12 Design of Intersections and Roundabouts

7.12.1 Intersections

Intersections, including median openings, shall be designed with adequate intersection sight distance. Moreover, intersection areas shall be kept free of obstacles. To maintain the minimum sight distance, restrictions on height of embankment, locations of buildings, on-street parking and screening fences shall be kept in consideration.

Intersecting streets should be designed in such a way that most of them meet approximately at a 90-degree angle. The alignment design should be adjusted to avoid an angle of intersection of less than 60 degrees. The intersection and approach areas where vehicles are stored while waiting to enter the intersection should be designed with a relatively flat grade.

The design standards recommended by AASHTO shall be considered for the design of intersections making them compatible for the movement of vehicles. The additional provision at these locations shall include extra paved surface with signs, markings and channelization.

7.12.2 Roundabouts

A roundabout can be provided on any class of road where at-grade intersections are permissible. The principle objective of roundabout design is to secure the safe interaction of crossing traffic streams with minimum delay. In the Project’s scheme, there should be two (2) roundabouts in the Master Plan. The diameter for central island of both roundabouts circle is 19m (62 ft.). The inscribed circle diameter for both roundabouts is around 30m (100 ft.).

7.13 Traffic Signs and Pavement Markings

Traffic signs and pavement marking are an essential provision, which act as a means of communication between the road and road users. Geometric design of streets should include full consideration of the types of traffic control devices to be used, especially at the intersections where multiphase and actuated traffic signals are likely needed. Informatory, regulatory and warning signs shall be provided at appropriate locations. The fixing and foundation details for signs should be provided in the Master Plan/Construction Drawings by the Concessionaire. The pavement marking includes lane marking, pedestrian crossings and direction arrows. Details of their dimensions and colours are provided in the Master Plan/Construction Drawings. The schedules for the location of signs and marking are included in the Master Plan/Construction Documents.

7.14 Pavement Design

The pavement designs shall be carried out as per AASHTO Guide for the design of pavement structure (1993 edition) with load factors from axle load study report published by NTRC and the design shall be confirmed with the mechanistic design methodology. The pavement design shall be based on traffic volume after analysis of traffic demand. Traffic growth factors shall be established through the study of available traffic data.

Since the Project road will be a new facility, and no traffic is currently plying on its alignment, volume of traffic and in turn the required pavement structure is the prime concern. As such, the Concessionaire should quantify and price the flexible pavement based on a Pavement Design of 100 Million ESALS Load per Lane for a design life of 20 years. The Concessionaire should also maintain the road and do the possible remedies during the life and do the overlay after the design life. Other design criteria not specified herein shall be approved by the Independent Engineer before being adopted for the design.
Note: National Highway Authority (NHA) General Specifications 1998 is the Project Specification. NHA Specifications 1998 to be obtained from NHA.
Figure 7-1: Typical Road Sections - 1

TYPICAL SECTION FOR 40' ROAD (12.19m)

TYPICAL SECTION FOR 66' ROAD (20.12m)
Figure 7-2: Typical Road Sections - II

TYPICAL SECTION FOR 150' ROAD (45.72m)
INTERNAL ROAD

TYPICAL SECTION FOR 150' ROAD (45.72m)
ACCESS ROAD (500m)
Figure 7-4: Typical Roundabout Section Plan
8. PUBLIC HEALTH WORKS

8.1 External Water Supply

7.1.1. Source of Water supply to Marble City

The Marble City shall receive raw water from the Karachi Water Canal (KWC), running approximately 600m from the Project site. This canal receives water from Hub dam via Hub canal (also known as the WAPDA Canal).

The KWC was designed and constructed around four (4) decades ago and has been in operations ever since. The Government of Sindh, through KWSB, aims to competitively procure private party to design, build, finance, operate and maintain the KWC. The provision for water supply connection to Marble City has been kept in scope of private party.

7.1.2. Scope of Work

The Concessionaire’s scope for external water supply shall include, but no limited to the following:

1) The Concessionaire shall be responsible to coordinate with KW&SB to determine the exact water supply connection point for the Project.

2) The Concessionaire shall construct a new RCC valve chamber downstream of connection point. The chamber shall be equipped with bar screens, gate/butterfly valve and water metering system.

3) Construction of wet well with minimum 30,000 imp gallon capacity, downstream of valve chamber (if necessary, to be checked by Concessionaire based on the topographical survey)

4) Construction of pumping station and installation of vertical turbine pumps (if required) to lift water from wet well towards the project site, each pump shall be equipped with motor control panels, non-return valve, gate valve, air valve, flow meters, surge valves, pressure gauges, discharge, suction and manifold piping etc.

5) Laying, jointing, testing and commissioning of HDPE pipe (minimum pressure rating of PN-10) from Pumping Station to the Project Site with an approximate length of 600m. The pipe shall be sized for maximum of 15 hours supply to fulfill the requirement of 2 MGD water. Installation of butterfly, air release and washout valve at strategic point along the pipeline to facilitate controlling, releasing of air and drain out water from the pipeline.

6) Construction of access road of adequate width along the pipeline route for inspection and maintenance.

7) After successful construction, testing and commission of above works, the Concessionaire shall handover the pipeline, pumping station, valve chamber etc. to KW&SB, who shall be responsible for the security of pipeline, pumping station and associated facilities constructed outside the Project Site and shall put in place suitable security management and control.

8) The construction of pumping station and wet well, laying of pipeline from KWC up to the Project Site which includes the purchase of the required land corridor.
8.2 Internal Development

7.2.1. Water Treatment Plant

1. The preliminary water demand is estimated as 2 million IGPD, however, the Concessionaire must verify it based on the Industrial, Institutional, and Commercial usages. The Concessionaire shall determine alternate source of water if the estimated water requirement exceeds the volume provided by KW&SB.

2. The Concessionaire shall design, procure, construct and operate the water treatment plant with in the Project Site. It is envisaged that the industries to be setup in Marble City will not require potable water in their manufacturing or production processes, except for domestic use. Therefore, a treatment plant capable of fulfilling the domestic requirement of industries as well as residential, amenities and commercial areas shall be constructed with in the project area. The space of any future expansion in the treatment plant shall also be kept in the planning.

3. The filtered water requirement at this stage is expected to be no more than 25% of total water requirement of 2 MGD. Therefore, the water treatment plant with minimum capacity of 0.5 MGD shall be constructed (the Concessionaire may increase the capacity if required in his opinion).

4. The filter plant shall be designed based on the detailed water quality analysis and shall comprise of coagulation, flocculation, sedimentation, chemical mixing/dosing mechanism, disinfection facilities (chlorination system), rapid sand filtration system with complete civil, electromechanically and SCADA system etc.

5. The treatment plant shall be capable of bringing the canal raw water to NEQS or WHO drinking water standards; whichever is more stringent shall apply. The following shall be the essential components of the treatment plant;
   
i. Receiving tank
   ii. Rapid mixing tank
   iii. Flocculation tank
   iv. Sedimentation tank
   v. Rapid sand filter along with water backwash system with air scouring
   vi. Back wash tank
   vii. Waste water and sludge ponds
   viii. Operation Building (including electric room, laboratory, generator room, control room, office and conference room etc.)
   ix. Chemical Building (Chemical solution tank room, storage room, working space for chemical dissolving and elevated tank etc.)
   x. Chlorination building (chlorinator, booster pump and chlorine gas container room etc.)
   xi. Workshop (instruments, generator set repairs, office and store room etc.)
   xii. Chemical dosing equipment such as aluminum, lime and chlorination equipment as per requirement
   xiii. Mechanical equipment such as blower for air scouring, valves, piping, Plant water pump and flush water pump etc.
   xiv. Electrical facilities including power receiving and transformer facility & generator
   xv. Coated metallic structures and maneuvering elements
   xvi. SCADA control and monitoring system
xvii. Access road along the pipeline & with in the treatment facility for inspection and maintenance and parking area inside the treatment plant

xviii. Firefighting and alarm system

xix. Site drainage, storm water and sanitary drainage

xx. Disposal of sewage, as necessary

xxi. Provision of temporary roads and fencing, including gates as necessary

xxii. Online and continuous water quality analysis equipment for checking the raw water and filtered water quality

xxiii. Equipment lifting devices; electrical cranes should be provided for all pumping and engine rooms and generally where needed that will enable removal for maintenance or replacement.

xxiv. Lighting to all operating areas

xxv. Ventilation of all covered operating areas, including adequate odour monitoring and control

xxvi. Proper electrical insulation facilities

xxvii. Noise suppression and insulation where required

xxviii. Stairs, handrails, covers, harness points, etc.

xxix. Safety systems, monitors, meters and alarms

xxx. Street lighting shall be designed and constructed in accordance with international codes

xxxi. Ultrasonic or electromagnetic flow meters at the start and end of filter plant

6. The laboratory shall be constructed within filter Plant and shall fully equipped for making the necessary analytical measurements and operating control tests to meet monitoring requirements. The laboratory shall be capable of performing chemical, physical and microbiological analysis of water and waste streams. The laboratory shall be equipped to carry out all tests in compliance with WHO standards.

7.2.2. Water Distribution Network

1. The raw water from canal and filtered water from the treatment plant shall be stored in the storage tank to be constructed near the filter Plant. The tanks shall have two compartments, one for raw water and other for filtered water.

2. The volume of reservoir shall be decided considering the raw and filtered water requirement, smooth operation of pumps, water demand requirement and cost effectiveness, however, the minimum volume shall be 50% of total water demand. Adequate back wash mechanism for easy maintenance shall be provided.

3. For emergency storage, each industry should have underground tank with minimum storage capacity of 2 to 3 days with compartments for raw and filtered water.

4. Two types of internal piping network shall be designed, one for raw water distribution and other for filtered water distribution with in the zone. The allocation of corridor for both pipelines, and location of water treatment Plant shall be considered while finalizing the master plan to reduce the pipe lengths.

5. Project area shall be provided with a water supply loop network fed by reservoir and pumping station with a maximum 16 hours of water supply.
6. The controlling & operation of pumps shall be based on pressure. Each industry underground tank shall have approved float ball valve to avoid overflow & to maintain pressure within the network.

7. The Concessionaire shall carryout network analysis and development of water supply computer model for proposing implementable / feasible / operational sub division (zones) of water supply network. Each sub division / zone may be divided into metered districts and sub districts. The following criteria should be considered by Concessionaires during the hydraulic analysis for network design
   i. Distribution network should be designed as per the demand of each plot/property/area. The Concessionaire had to lay the pipe from a convenient place so that the required pressure should be maintained in entire area.
   ii. High Density Poly Ethylene (HDPE) shall be used. The pressure rating of pipes shall be determine based on system design requirement, however, the pressure rating for transmission and distribution network shall not be less than 12.5 bar and 10 bar respectively.
   iii. Pipe diameter must be calculated as per design requirements but in no case be less than 3 inches.
   iv. Minimum velocity must be maintained at 2.5 ft/s and maximum velocity must not exceed 8ft/s.
   v. Minimum pressure must be maintained at 20 psi and maximum pressure in the system must not be greater than 60 psi.
   vi. Zoning and pressure control of the network if applicable should be considered.
   vii. The network layout should consider looping the system wherever possible for better water circulation and system reliability.

8. Concrete thrust blocks behind every tee, bends & reducers shall be provided.

9. The pipeline shall have double acting air release valve and washout valve at the highest and lowest elevation, respectively.

10. Butterfly valves and gate valves shall be provided at regular intervals for maintenance and operation of the pipeline during the life of the project.

11. Water hammer analysis must be performed in computer modeling software and software must be run according to the possible worst case scenario like power failure and first pump run.

12. Check valves, air-vacuum and air relief, pressure reducing and regulating valves, surge tanks, backflow preventers and any other valve that is required as per the water hammer analysis and detailed design analysis, must be designed as per the relevant standards.

13. Cross structures must be taken into account before laying the pipeline, for example crossings include natural drainage streams crossings, road crossings and existing utilities crossings.

14. After completing the laying, jointing of pipe line, water metering testing has to be done, commissioning and trial run. The repairing of bursting and leakage of pipeline shall be repaired immediately. Pipeline carrying potable water shall be suitably disinfected before commissioning.

15. Pumping facilities with all electro-mechanical components must be for a period of 20 years while provision of modification and expansion must be included. Location of pump station must be finalized after detailed soil investigation report.
8.3 Sewerage System

1. Sewerage system shall be designed as per topography to make the best use of existing gravity falls across the site.
2. Consideration shall be given to the likely flows following the initial stages of construction so that self-cleansing velocities are attained at times of peak flow each day.
3. Consideration should be given to the likely form and method of construction as a consequence of depth and other factors such as nature of ground, groundwater and the proximity of foundations, services, etc.
4. The route and depth of a new sewer shall take account of land where there is a possibility of any future development.
5. Steep gradients/high velocities shall be avoided to reduce problems of turbulence and the consequent gas/odor release and increased corrosion potential.
6. Adequate access provision for maintenance, sewers shall be laid out in straight lines, as far as is practical.
7. The following criteria should be considered during the hydraulic analysis for sewerage network
   i. uPVC pipe up to 16” or commercially available sizes shall be used. For diameters above 16”, GRP pipe shall be used.
   ii. The pressure rating will be determine as per design requirement. At minimum uPVC pipe shall be of Class B and GRP pipe shall be of SN 5000.
   iii. Sewage demand shall be estimated as 80% of water demand and infiltration losses shall also be included separately.
   iv. Pipe diameter shall not be less than 8 inches.
   v. Self-cleansing minimum velocity must be maintained at 2.25 ft/s while maximum velocity must not exceed 8 ft/s.
   vi. The design depth of flow shall be 0.7 of the pipe diameter at peak flow to allow room for gases produced.
   vii. Minimum flow shall be considered to avoid sedimentation and achieve self-cleansing velocities.
   viii. Maximum flow shall be able to clear sedimentation.
8. Following are the integral components of the sewerage system.
   i. Collection Network – Each and every property to be connected for wastewater / sewage with the collection network. Collection network with adequate diameter should be design and lay parallel to road in the ROW. Manholes and inspection chambers to be provided at appropriate locations as per standard practice.
   ii. Trunk Main – All laterals of collection network should be connected to the treatment plant through the trunk main. Trunk main pipeline has to be adequate in diameter with manholes and chambers.
9. The Concessionaire shall ensure that the effluent coming from the marble industries shall undergoes screening process from 6mm screens to remove small pieces of stones during marble cutting process, to avoid blockage of sewerage line and shall undergoes settling process for limiting lime content.
8.4 *Common Effluent Treatment Facility / Plant (CETP)*

1. A Common Effluent Treatment facility of 1.6 million IGPD capacity shall be established to process all the effluents let out from industrial units. Considering the quality of effluents from marble and construction industry.

2. The treatment technology shall be selected considering the quality of effluent from marble and construction industry, area requirement, treatment efficiency and capital and operation cost.

3. Design and construction of Common Effluent Treatment Facility should be made as per EPA rules and regulations.

4. The quality of treated water must be according to the National Environmental Quality Standards (NEQS) and according to the applicable rules and regulations.

5. CETP shall be design based on following considerations:
   i. Each Industry shall be bound to provide necessary preliminary and primary treatment within the facility to avoid clogging of sewer lines, manhole and to ensure effective treatment at the CETP. A regular inspection mechanism shall be prepared to check the quality of effluent being discharge by the industrial meet the prescribe limit or not and penalty mechanism shall also to developed for penalizing when required.
   ii. The Concessionaire shall ensure that the effluent coming out of CETP shall meet the required NEQS before disposal or reuse. An online monitoring system shall be installed at the outlet of CETP that shall monitor the quality of effluent (BOD, COS, TSS etc.) being discharge by CETP.
   iii. Estimate the amount of effluent to be generated, its quality, and rate of flow, peak flows and any other characteristics that are to be considered in the design of safe disposal system.
   iv. CETP shall be design for primary, secondary & tertiary level treatment.
   v. CETP shall be robust, must meet quality, legal & other regulatory requirement.
   vi. Whole life cost calculations shall be performed, including a full breakdown by treatment element.
   vii. Allowance for the expansion and upgrading of facility necessary to accommodate the envisaged increases in flows and loads over the development period.
   viii. All process design shall be to best current practice. Where innovative designs are suggested, these are to be justified in terms of cost, performance, operability and environmental performance.
   ix. Provision for an emergency bypass should be incorporated for all process units.
   x. Analyze the reuse of treated water. Explore the uses of this effluent for agriculture and other uses. Also, find out the cost-effective options for improving the multipurpose usage.

6. Based on the demand, treated wastewater should be store with adequate quantity to supply for gardening / landscaping / prospective users. However excess quantity of treated water should be discharged to natural stream.

7. Suitable arrangement shall be made for utilizing the treated water for gardening, landscaping, washing, firefighting, flushing purpose.
8.5 Storm Water Management System

1. The storm water shall be managed by considering all the hydrological and hydraulic parameters that may affect the project area. While maintaining the natural pattern for hydraulic design, adequate design of crossing structures based on hydrological analysis.
2. The Concessionaire shall perform the following tasks but are not limited to;
   i. Perform hydrological analysis based on the rainfall frequency analysis with data of past 30 years & adequate consideration for climate change shall include in the design.
   ii. Design of culverts, bridges or any crossing structure according to the return period of 25 years or more or as specified in the engineering design manuals such as AASHTO or FHWA, where ever is stringent. Consideration shall be given to the recent climate change and adequate margin in design shall be considered.
   iii. Estimate the amount of storm water drainage generated, considering historic storm and cyclone patterns in the area, quality of the storm water, intensity of flow, peak discharge, and other characteristics of the storm to analyze flood protection.
   iv. Concessionaire would carry out hydrological and hydro geological study for the whole project and especially provide management strategies/hydraulic design for the crossing of major streams that are crossing the project area (if any).

8.6 General Requirements & Design Standards

All Project activities to be performed by the Concessionaire shall be designed, procured, install and constructed in accordance with the following design codes and requirements. In event of any conflict, the most stringent framework shall apply.

8.7 Design Standards and Codes

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<tr>
<th>Code</th>
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<tr>
<td>AASHTO</td>
<td>American Association of State Highway &amp; Transportation Officials</td>
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<td>AWWA</td>
<td>American Water Works Association</td>
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<td>ASCE</td>
<td>American Society of Civil Engineers</td>
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<td>ASA</td>
<td>American Standard Association</td>
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<td>ACI</td>
<td>American Concrete Institute (USA)</td>
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<td>American Iron and Steel Institute (USA)</td>
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<td>AISC</td>
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<td>ANSI</td>
<td>American National Standard Institute (USA)</td>
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<td>AWS</td>
<td>American Welding Society (USA)</td>
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<td>ASHRAE</td>
<td>American Society of Heating, Refrigeration and Air Conditioning Engineers (USA)</td>
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<td>ASTM</td>
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<td>British Standard Institute Code of Practice</td>
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<td>National Environmental quality Standards</td>
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<td>PS</td>
<td>Pakistan Standards (Pak)</td>
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### 8.8 Technical Studies and Investigation

The Concessionaire shall be responsible for conducting the following studies and investigations including obtaining all necessary information as to the risks, contingencies and other circumstances which may influence or affect the implementation of the Project:

i. Detailed Topographic Survey of external pipeline
ii. Hydrological Study of pipeline route and at Filter Plant Area
iii. Water quality analysis from KWC canal
iv. Geotechnical investigation at filter Plant & CETP
v. Seismic analysis
vi. Natural risk assessment

Any other study that the Concessionaire finds necessary may be conducted including the above.

### 8.9 Design Life

The design life for public health works shall be as follows:

- Sixty (60) years for Pipeline
- Forty (40) years for new civil buildings and structures.
- Twenty (20) years for all the new mechanical & electrical components
- Five (5) years for instrumentation

### 8.10 Civil, Structural & Architectural Requirements

All civil, structural and architectural works for treatment Plant & pumping stations shall be designed, constructed, operated and maintained in compliance with Good International Industry Practices and in conformance with the minimal requirements and guideline standards.

The Concessionaire shall undertake all necessary preparatory works, including:

i. Ground surfaces shall be graded to slope away from structures
ii. Embankment shall be graded in accordance with the requirements of the geotechnical design report.
iii. Interceptor swales shall be provided at the top of any slopes to divert overland surface water flow from areas outside the Site boundary away from the main Site area.
iv. Finished floor levels of buildings shall be above the surrounding finished ground level, except where ramped access is required for vehicles or equipment.
7.10.1. Structural Design Requirements

The design of all structures shall be carried out in accordance with design codes, and the structural loading shall include, but is not limited to: dead loads, superimposed dead loads, variable loads, wind loading, seismic loading, accidental loading, thermal loads, both in-plane and through thickness differentials, traffic / live load surcharge, crane loading, both mobile and gantry type cranes, hydrostatic and hydrodynamic pressure, earth pressure; and construction loads. The sizing of all civil structure shall be design based on the following codes:

- UBC 97 / BCP-2007 (for Seismic)
- ACI–318–05 (for RCC design)
- ASCE-7 (for min. Design Loads)
- ACI 315-99 (for reinforcement Detailing)
- ACI 301M-05 (specification of Str.Concrete)
- AISC steel manual – 14th edition (for steel design)
- CI 350-01 (for environmental Eng.)
- BCP requirements for masonry structures
- All relevant ACI codes and committee reports

7.10.2. Building Finishes (CETP and Pumping Station Works)

*External*
- Roofs – typically flat roofs with single ply solar reflective waterproofing membrane (with protection) over rigid insulation over concrete slabs
- Walls – concrete structures with concrete masonry units as infill with insulation and a decorative render finish.
- Louvres – fixed aluminum with anodized finish, intake louvres shall be sand-trapping;
- Windows – fixed, aluminum framed with anodized finish, glazing shall be tinted insulating glass;
- Doors – habitable buildings: aluminum with anodized finish; non-hhabitable: steel, galvanized and painted. Equipment access doors shall be aluminum roller shutter type with anodized finish and motorized operations.

*Internal*
- Doors – timber with painted, hollow metal frames;
- Walls – habitable buildings: plastered and painted, tiled in wet areas; and non-hhabitable buildings: fair finish painted masonry suitable for wash-down and light reflectance;
- Floors – habitable buildings: tiled concrete / screed, and non-hhabitable buildings / workshop areas: concrete with power floated finish and sealer;
- Ceilings – habitable buildings: suspended ceilings; and non-hhabitable: painted for light reflectance; and
- Safety equipment shall be provided as necessary
7.10.3. Circulation Road for Water treatment Plant & CETP

Internal roads (with respect to CETP and pumping stations) shall have the following characteristics:

1) Internal roads to be designed for a target maximum speed of thirty (30) kph
2) 4.5m minimum width or as per requirement
3) Continuous around all tanks and buildings
4) Minimum longitudinal gradient of zero point three percent (0.3%) and maximum four percent (4%);
5) Maximum ramp gradient into buildings shall be fifteen percent (15%)
6) Minimum cross fall or camber of two percent (2%)
7) Pavements shall be designed for the cumulative effect of the largest loads expected during the operational life of the pavement and the effects of any cranes expected to be used during maintenance operations;

7.10.4. Landscaping

The Concessionaire shall prepare a landscaping plan, including planting plan, hardscape areas within the filter plant & CETP.

7.10.5. Rain Water Drainage

Rain water shall be diverted from roof structures via external down pipes to pipes at ground level where it shall then connect into the surface water drainage system for the Site.

Roof outlets shall be provided with sufficient redundancy to prevent build-up of water on roofs in the event of a blockage.

7.10.6. HVAC systems

All occupied areas within the building (for CETP and pumping stations) shall be provided with air conditioning and ventilation. The ventilation air shall be provided based on space occupancy levels and to meet the over pressurization requirements for the building.

7.10.7. Redundancy

The Concessionaire shall be fully responsible to provide adequate redundancy for the pumping stations and the treatment plant. The supply, fabrication and installation of all mechanical works / parts related to the plant shall be as per manufacturer's recommendation and 50% shall be the minimum standby requirement for dynamic equipment.

7.10.8. Origin of Materials and Equipment

All equipment to be supplied for pumping station, filter plant & CETP shall, wherever possible, have a proven reliability record in similar works and conditions. The Concessionaire must describe how problems caused by breakdowns and servicing will be minimized by the inclusion of stand-by equipment, spare capacity, by-passes etc.
The Concessionaire is encouraged to use maximum extent materials and products required for construction work from Pakistan, always provided that they are fully compliant or superior to the specifications. However, specialized equipment, motor, blower and pumps have to be from well-reputed brand preferably US\European\Japan\Malaysia\Turkish\German origin. Satisfactory proof of compliance has to be provided by the Concessionaire prior to ordering any such material or equipment.

9. ELECTRICAL POWER SUPPLY AND DISTRIBUTION

9.1 Design Objective

The power distribution system for Project should be designed, considering the reliability, cost and ease of maintenance.

9.2 Design Standards

The power distribution work/design shall be carried out in accordance with the latest BS, IEC, NEC, NFPA, ANSI, IEE and all relevant international and local utility company codes and standards. The design should comply with the specifications provided.

9.3 Secondary Distribution (MV and LV at 11kV/400V)

- Secondary distribution (Medium and Low Voltage (MV/LV)) system is to be designed for 11kV/400V underground system.

- Internal distribution network at 11kV shall comprise of room type substations, Ringy Main Units (RMU), transformers, MV/LV cables and associated accessories.

- Substations are to be provided at various locations considering the electrical load. It should comprise of 11kV switchgears, distribution transformers and LV Main DBs.

- 11kV switchgears shall be provided as per IEC 62271-2019 and K-Electric Standards. The switchgear should comprise of 3 compartments:
  - VCB compartment;
  - Control and protection auxiliaries’ compartment; and
  - Bus-bar compartment.

- Distribution transformers shall be oil immersed naturally cooled 3-Phase and compliant to BS 171/I EC 76 with voltage ratio at no load to be 11kV/415V.

- 12kV rated outdoor type RMUs shall be provided to interconnect the MV cables and substation switchgears, and have provision to supply power to industries at 11kV. All RMUs shall be 3 or 4 ways subject to the requirement and must be extensible on both sides.

- The RMUs shall be openable and comprise of SF6 breakers, CTs, bus bars, protection relays and all other associated accessories. RMUs must be fully type tested according to IEC 60298.
- For internal distribution, MV cable is required to be used, which shall be XLPE insulated armoured with voltage grade 15kV and should comply with IEC 60502. The cables used shall be of high conductivity stranded electrolytic copper.

- MV cable shall be laid direct in ground and be at a minimum depth of 1000mm measured from the top of the cables to the general ground level. For this purpose, a trench shall be excavated, cleaned and the floor of the trench shall be covered with a minimum of 100 mm of clean sand or sifted soil before laying the cable. After laying the cables, they shall be covered with additional clean sand or sifted soil, well punned over and around the cables to a level of 100 mm above the uppermost cable. Protective cable tiles shall be carefully placed over the cables.

- 11kV cable termination kits shall be used for termination of MV cables. Cable joints where required shall be as per IEC/BS standards.

9.4 Road/Street Lighting

- The road lighting system within the Project shall be designed to meet BS EN 13201–2:2015. CIBSE standards shall be followed for illumination levels.

- The electrical and related work shall be carried out in accordance with the BS, IEC and IEE Rules and regulations as adopted in Pakistan.

- The main consideration in road lighting design is the type of poles and light fixtures. The pole shall be octagonal galvanized and the height shall be based on road width. Pole spacing shall be based on the height of the pole.

- The light fixtures shall be of a LED type, optical compartment shall be IP 66 and the control gear compartment shall be IP 44.

- Power supply for the road lighting feeder pillars shall be taken from the nearest substation through separate 50kVA and 100kVA transformers at 11kV/400V 3-phase. Outgoing circuits shall be of 4C armoured case loop in / loop out to individual columns. Switchgear shall be incorporated in the road lighting feeder pillar via time switch / photo cell.

- Maximum allowable voltage drop between power take-off point at substation and load shall comply with IEE Wiring Regulations, 17th Edition which recommends not more than 5%.

- All cables and wire conductors shall be of copper. Conductors shall be of single core or multicore.

- Feeder pillars shall be of a floor standing type and shall have adequate internal space for ease of installation and maintenance.

- The feeder pillars shall be manufactured to a minimum rating of IP 54.

9.5 External Electrical Infrastructure Works

- Requirement of 11 kV feeder for Marble City is an external infrastructure job which is a domain of Grid companies. Four number of feeders are the requirement for this Project currently Concessionaire is required to apply for two number of feeders. Feeder# 01 will be routed from
Surjani Grid station while another Feeder# 02 will be routed from Maymar valika Grid station. However under the boundary all the infrastructure workings regarding light fixture, MV/LV cabling jobs will be done by the Concessionaire. Below are some major description.

Load submission

Concessionaire will submit electrical load demand to K-Electric and mention number of feeder’s requirement after which Grid Company will define their scope of work. The current status of the demand of the feeder is approx. 9 MW however the demand load is 16 MW.

Scope of work

From nearest grid station to the marble city electrical supply connection will be provided by K-Electric during that all civil working excavation working job responsibilities are the part of K-Electric.

Main feeder design and planning

From grid station to dedicated area power cables, ring main and vacuum circuit breaker their current transformer designing will be designed by K-Electric. All routings of cabling and placement of switch gear/RMU placement will be monitored by K-Electric.

Execution Works

From grid station to the dedicated area, cable laying, testing, commissioning works will be done by K-Electric. RMU/MV SWITCH will be provided by the grid company, during that K-Electric will share their specifications to the client end.

Concessionaire Scope

Under the boundary all medium voltage, low voltage cabling street lighting and earthling work are the responsibilities of Concessionaire. Concessionaire will recruit Concessionaires/contractors and will get the work done by Concessionaires/contractors, K-Electric job will be over after KE switch.

Billing Procedure

As per scope of work and job details all expenses of external infrastructure will be borne by the Concessionaire. Concessionaire will be responsible to look after all ambiguities from the grid company and not through an electrical consultant / Concessionaire. The current billing system will be covered along with all expenses of installation and execution charges.

10. GAS SUPPLY SYSTEMS

The Concessionaire shall provide the infrastructure of natural gas (NG), to furnish the daily gas demand of Zone Enterprises depending upon their requirements. The broad-based gas demand for the Project is 0.15 MMCFD. The Concessionaire shall recalculate and evaluate gas demand as per actual gas requirement of end users.
10.1 *External Tapping Point*

Tapping point from the main high-pressure line shall be such that it can cater to the peak gas demand flow rate and pressure required for Project. Main pipe diameter shall be such that it can cater to the peak gas flow rate.

The Concessionaire shall ensure the right of way from high pressure gas pipelines passing prior to construction and laying of internal layout.

10.2 *Distribution of Gas Piping*

Natural gas shall be supplied to every Zone Enterprise in the Project at their Plot. The gas shall be used for general application and not power generation. A gas connection with isolation valves shall be provided by the Concessionaire for every Plot. Gas sub meter for every Plot along with dual pressure regulator shall be installed by the Zone Enterprises themselves.

10.3 *Minimum Pressure Requirements*

A minimum pressure of 15 Psi shall be provided at remote outlet connection. The Concessionaire shall size the gas network to ensure that the minimum pressure of 25 psi is available to remote connection. The Plot connection pressure regulator shall be set at 05 Psi pressure.

10.4 *Piping material:*

Polyethylene PE-100 PN-16 pressure pipes and fittings as per DIN 8077-8078 and conforming to PS: 3580:1994, ISO 4437:1996, DIN 8075, ASTM D2513 shall be used for gas pipe distribution system.

Seamless sch. 40 Pipes as per ASTM A53 may be used with proper protection from corrosion.

10.5 *Gas network isolation valves*

Gas isolation valves shall be provided along the entire length of the gas system. The valves shall be evenly placed throughout the gas network but not in less than 1 km interval. The main isolation valves shall be installed above ground by making a ‘U’ connection with a bypass valve. In addition to main valves, all connections to the Plot shall be provided with an isolation valve. The Zone Enterprise shall install secondary metering and pressuring regulating station at their Plot prior to get a connection from the main gas network.

10.6 *Gas network modeling:*

The gas network shall be designed as per IFGS International Fuel Gas Code 2019 and SSGC gas distribution guidelines.

The velocity in gas lines should be less than 60 to 80 ft/sec to minimize noise and allow for corrosion inhibition. A lower velocity of 50 ft/sec should be used in the presence of known corrosives such as CO2. The minimum gas velocity should be between 10 and 15 ft/sec, which minimizes liquid fallout.

The following gas equation shall be used to calculate velocity
\[ V_g = 60 \frac{Q_g T Z}{d^2 P} \]

\( V_g \) = gas velocity, ft/sec,
\( Q_g \) = gas-flow rate, MMscf/D,
\( T \) = gas flowing temperature, °R,
\( P \) = flowing pressure, psia,
\( Z \) = compressibility factor, dimensionless.

The following gas equation shall be used for calculation of gas pipe diameter.

\[
d = \left[ \frac{11.9 + \frac{TR}{16.7P}}{1000V} \right]^{1/2} \]

\( D \) = pipe ID, in.
\( Z \) = compressibility factor, dimensionless,
\( R \) = gas/liquid ratio, ft3/bbl,
\( P \) = flowing pressure, psia,
\( T \) = gas/liquid flowing temperature, °R,
\( V \) = maximum allowable velocity, ft/sec, and
\( Q_L \) = liquid-flow rate, B/D.

Gas modelling software’s i.e., “Bently Gas Systems” and “KY Pipe” shall be used by the Concessionaire for modelling of main gas network.

10.7 *Gas network stress analysis:*

The gas network stress analysis shall be carried out by the Concessionaire.

Pressure and temperature as well as other operating conditions such as bending and expansion shall be evaluated by the Concessionaire.

10.8 *Gas network ROW (right of way):*

The Concessionaire shall only use the allocated Right of Way (ROW) for distribution of gas piping. The access roads shall only be used for crossing and temporary connections.

Refer Roads and Highway section for details on utilities ROW.
10.9 *Scope of Work*

The scope of work includes design, supply, installation / erection, testing & successful commissioning and handing over to SEZMC, the complete natural gas pipeline network. The work shall be executed as per provided specifications. These specifications shall be read in conjunction with the provisions of the Concession Agreement.

The tentative gas demand is 0.15 MMCFD. The Concessionaire needs to check and evaluate this demand as per the actual gas required by the Zone Enterprises.

The Concessionaire’s scope of work shall including make its own arrangements for utilities (water, power etc.) required during construction, fabrication, erection & trial run etc. Collection of data at the Site and carrying out detailed engineering, residual engineering for pipeline system including terminals and crossings in accordance with design basis, codes & standards and Project specifications provided.

The Concessionaire shall procure and supply all materials other than SSGC supply pipeline and Zone Enterprise metering skids, required for permanent installation of pipeline and piping system in sequence and at appropriate time. All equipment, materials and components etc. shall be suitable for the intended service.

The Concessionaire shall procure all materials, components, equipment and consumables etc. required for successful completion of the pipeline system. The Concessionaire shall also procure and supply spares required for pre-commissioning and overall commissioning / start up as recommended for all items supplied by him as per specifications provided.

Location / buildings for gas services to be provided.

Natural gas shall be supplied to every Zone Enterprise at their Plot, with individual gas meters, pressure regulator and a shut-off valves to control the pressure and flow as per the Zone Enterprise’s requirement.

10.10 *General Guidelines*

- Concessionaire is expected to perform a survey of the Site.
- Resources to be used should be indicated in the Project’s plan.

- A dedicated certified Project Manager must be assigned to the project.
- All installers assigned by the Concessionaire to the installation shall have factory certification that they are qualified to install and test the provided products.

- The number of certified installers to be used must be provided.
- Weekly reports must be submitted from the Concessionaire’s Project Manager.
- A detailed documentation of work done should be provided, including a diagram of paths taken, locations of nodes and any other related information.
- The Concessionaire shall maintain a work area free of debris, rubbish, spare pipe pieces, wastages etc. and dispose of such items on a daily basis.
- The Concessionaire must take a written approval from [Independent Engineer] for all the items samples before starting the [Construction Activities]. If the Concessionaire started the Construction Activities without this approval, and then [Independent Engineer] refused some items, it is the responsibility of the Concessionaire to remove all the refused items from the Site and to install the approved items.

- Any civil work required to install the pipes are the responsibility of the Concessionaire.

- The vendor should provide all components with the latest and highest specifications at the time of delivery.

10.11 General Guidelines for Piping

- Piping layout drawing shall be prepared before execution. Branches (drops) from main pipeline should be as minimum as possible. Single branch should take-off from the main, and that branch, with a shut-off valve should serve cluster of Plots in line.

- All valves shall be located and oriented in a way that are easily accessible for the O&M Activities.

- The Concessionaire shall prepare piping construction drawing such as alignment sheets for detour portion, crossing details, piping general drawings for Zone Enterprises’ metering stations and pipe supports etc. All drawings/methodology shall be subject to review and approval by Independent Engineer.

11. FIREFIGHTING NETWORK SUPPLY SYSTEM

- The Concessionaire’s scope of work includes design, supply and, installation of an external fire hydrant system.

- The work shall be executed as per provided specifications. These specifications shall be read in conjunction with the provisions of the Concession Agreement.

- The Concessionaire’s scope of work shall further include collection of data at the Site and carrying out detailed engineering, residual engineering for piping system including terminals and crossings in accordance with design basis, codes & standards and Project’s specifications provided.

- The Concessionaire shall procure and supply all materials required for permanent installation of pipeline and piping system in sequence and at appropriate time. All equipment, materials, components etc. shall be suitable for the intended service.

- The Concessionaire shall procure all materials, components, equipment and consumables etc. required for successful completion of firefighting system. The Concessionaire shall also procure and supply spares required for pre-commissioning and overall commissioning / start up as recommended for all items supplied by him as per specifications provided.

- The following items shall be provided by the Concessionaire as a minimum:

  - 3 Way pillar Type External Fire hydrants system;
• Isolation mechanical for hydrant network;
• External Hose House;
• Central Fire pump as per NFPA-20 and UL/FM guidelines and certification; and
• Fire Hydrant Flushing and Air Relief system.

11.1 Design Codes

The Concessionaire shall design the external Fire Hydrant system as the following mentioned specifications:

• NFPA-24 Standard for Installation of Private fire service Mains;
• NFPA-20 Standard for installation of Fire Pumps;
• NFPA-22 Standard for water Tanks of Private fire protection; and/or
• International Fire Codes 2019.

11.2 General for Piping

- Piping layout drawing shall be prepared before execution.
- All valves shall be located and oriented such a way that these are easily accessible for the O&M Activities.
- Preparation of piping construction drawing such as alignment sheets for detour portion, crossing details, piping general drawings for the Zone Enterprises’ metering stations, pipe supports etc. All drawings/methodology shall be subject to review and approval by the Independent Engineer. All Construction Activities shall be carried out based on the issued for construction (IFC) drawings.

11.3 Fire reserve

- Fire water reserve for four (4) hours of pump flow rate shall be provided in the facility as per NFPA requirement for industrial zones. A total fire reserve of 380,000 gallons shall be considered on the Site.

11.4 Fire hydrants

- The Concessionaire shall provide 2 Way post type fire hydrants at 90-meter interval throughout the facility. All fire hydrants shall be UL and FM as per details provided in firefighting specifications.
- Fire hydrants shall be of the approved type and have a minimum 150mm connection with the mains. Hydrant outlet threads shall have NHS external threads as per NFPA 1963.
- Hydrants vulnerable to mechanical damage shall be provided with protection barriers.
11.5 **Installation requirements**

- The hydrants shall be installed on flat or concrete slabs. The center of the hose shall not be less than 457mm above final grade.

![Diagram](image)

(Minimum height requirement)  
(Maximum height requirement)

- The depth of cover shall not be less than 0.8m for normal spaces, and 0.9m under driveways and 1.2m under railroad tracks.

11.6 **Hydrostatic testing**

- Pipe fittings and other components shall be hydraulically tested at a minimum pressure of 300 psi or 50 psi greater than the system pressure (whichever is greater) for a duration of (two) 2 hours.

- The testing procedure shall be as per NFPA-24 (10.10.2.2).

11.7 **Piping material**

- Polyethylene PE-100 PN-20 (SDR-9) pressure pipes and fittings as per DIN 8077-8078 and conforming to AWWA C 906 shall be used for water supply distribution.

- Polyvinyl Chloride (PVC) Schedule 80 pressure pipes and fittings conforming to AWWA C 900 shall be used for water supply distribution.
TRUCK PARKING

ACCESS ROAD INTERSECTION AT M-10

MARBLE CITY KARACHI

NOTES:
1. THIS DRAWING IS ORIENTED TO THE COORDINATES SHOWN ABOVE.
2. ACCIDENT OR MOVEMENT WILL CHANGE THE COORDINATE SYSTEM ADOPTED.
3. PROJECTION / DATUM: UTM ZONE 42N, WGS84.

CLIENT: SINDH ECONOMIC ZONES MANAGEMENT COMPANY (SEZMC)

FINANCIAL ADVISORY & TRANSACTION ADVISORY SERVICES FOR ESTABLISHMENT OF MARBLE CITY, KARACHI PROJECT

AREA FOR TRUCK PARKING = 2.778 ACRES
AREA FOR ACCESS ROAD = 4.420 ACRES
ACCESS ROAD LENGTH = 483M
VOLUME III:
Concession Agreement and Appendices
CONCESSION AGREEMENT

BETWEEN

SINDH ECONOMIC ZONES MANAGEMENT COMPANY LIMITED

- AND -

[THE CONCESSIONAIRE]

RELATING TO
THE MARBLE CITY KARACHI

DATED [●]
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THIS CONCESSION AGREEMENT is made on [●], 2022 at [●], Pakistan.

BETWEEN

(1) SINDH ECONOMIC ZONES MANAGEMENT COMPANY LIMITED, a public limited company incorporated under the laws of Pakistan, whose registered office is located at 2nd Floor, Bahria Complex IV, Choudhry Khaliq Uz Zaman Road, Gizri Karachi, Pakistan, through its authorized representative, the Chief Executive Officer (the “SEZMC” which expression shall, unless excluded by or repugnant to the context, be deemed to include its successors in interest, administrators and permitted assigns); and

(2) [CONCESSIONAIRE], a company incorporated under the laws of Pakistan, whose registered office is located at [●] (the “Concessionaire” which expression shall, unless excluded by or repugnant to the context, be deemed to include its successors in interest, administrators and permitted assigns).

RECATALS

A SEZMC invited proposals from prospective bidders to undertake the Project pursuant to a request for proposals issued on [●] (as amended, varied or supplemented) (the “RFP”).

B The Project has, pursuant to the process described in the RFP, been awarded to the Sponsor(s) as set out in the letter of award issued by SEZMC on [●].

C In accordance with the RFP, the Sponsors have incorporated the Concessionaire as a special purpose vehicle to implement the Project and perform the obligations and exercise the rights of the Concessionaire, including the obligation to enter into this Agreement.

D The Project will consist of the development, financing, operations, maintenance, and transfer of an industrial estate at the Site, by the name of “Marble City Karachi”.
The Concessionaire acknowledges and confirms that it has, based on the RFP, undertaken a thorough due diligence (including technical and financial viability and legal due diligence) of the Project and its requirements, and on the basis of its independent satisfaction is entering into this Agreement for the purpose of accepting the Concession (as defined herein) for the implementation of the Project on a Public-Private Partnership basis in the design, build, finance, operate, maintain, and transfer (the “DBFOMT”) mode, in accordance with the terms and conditions of this Agreement.

This Agreement sets out the terms and conditions on which the Concessionaire shall undertake the Project.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 DEFINITIONS

Except when the context requires otherwise, the capitalised terms used in this Agreement (including the recitals) shall have the following meanings:

“Abandonment” means:

(a) prior to the Substantial Completion Date, the Concessionaire’s failure to demonstrate to the Independent Engineer its ability to perform its obligations under this Agreement (taking into account its ability to accelerate the Construction Activities including during the Construction Period) such as to demonstrate that Substantial Completion shall be achieved on or before the Scheduled Substantial Completion Date, except where such failure to demonstrate is attributable to a Force Majeure Event or a Relief Event; and

(b) during the Operating Period, in the opinion of the Independent Engineer, other than due to a Force Majeure Event or a Relief Event:

(i) a persistent failure of the Concessionaire to perform its obligations hereunder such as to suggest an intention to repudiate this Agreement; or

(ii) failure by the Concessionaire to resume and continue the performance of substantially all of its obligations under this Agreement within a reasonable period following the cessation of a Force Majeure Event or a Relief Event, in each case, which prevented, hindered or delayed such performance;

“Acceptable Accounting Firm” means (a) A. F. Ferguson & Co. (a member firm of PricewaterhouseCoopers network); (b) KPMG Taseer Hadi & Co. (a member firm of KPMG International); (c) EY Ford Rhodes; or (d) any other accounting firm set out in Category A of the panel of auditors maintained by the State Bank of Pakistan under Section 35 of Banking Companies Ordinance, 1962, as approved by the SEZMC;

“Acceptable Bank” means (a) together the Foreign Bank and the Acceptable Pakistani Bank, which is counter-guaranteeing the obligations of the Foreign Bank, or (b) an Acceptable Pakistani Bank, as the case may be;

“Acceptable Pakistani Bank” means a scheduled bank or a financial institution incorporated or organised in Pakistan having a credit rating of at least AA or higher by PACRA, or AA or higher by VIS, or A3 or higher by Moody’s or equivalent rating by Fitch or Standard and Poor, approved by the SEZMC, such approval not to be unreasonably withheld or delayed;

“Accounting Principles” means the International Financial Reporting Standards, as may be amended from time to time, applicable in Pakistan;
“Adjoining Property” means any land and/or property adjoining or adjacent to any part of the Site, including all conduits, roads, footpaths, walls, fences, buildings, pipelines, cables, wires and other erections, structures and other apparatus on, under or within such land and/or property;

“Adverse Person” means:

(a) any person whose primary residence is in or who is incorporated or organized under the laws of a country:
   (i) which is subject to sanctions levied by the United Nations (or the Security Council thereof) pursuant to authority derived from Article 41 of Chapter 7 of the United Nations Charter (a “Sanctioned Country”); or
   (ii) with which the Government of Pakistan does not have commercial or trade relation or otherwise does not maintain official diplomatic relations (an “Unfriendly Country”);

(b) any national government, or any political subdivision, of any Sanctioned Country or Unfriendly Country;

(c) any ministry, department, authority, or statutory corporation of, or any corporation or other entity (including a trust), owned or controlled directly or indirectly by the national government, or any political subdivision, of any Sanctioned Country or Unfriendly Country; or

(d) any person who has been blacklisted by any federal or provincial government, governmental bodies or non-governmental department / agency whether in Pakistan or the government or governmental body of any foreign countries and / or international organizations;

“Affected Party” has the meaning given to it in clause 18.5.1;

“Affiliate” means, in relation to a person, a company or entity that directly or indirectly Controls, or is Controlled by, or is under common Control with that entity;

“Agreement” means this Concession Agreement, as amended and supplemented from time to time;

“Allied Sector Zone Enterprises” means the Zone Enterprises in sectors other than marble and granite sector such as the construction sector, including construction material companies;

“Allotment Letter(s)” means non-transferable allotment letters issued to Zone Enterprises in accordance with clause 11.2 and in the form set out in appendix 10;

“Approvals” means all such permits, licences, consents, authorisations, approvals, registrations, grants, acknowledgements or agreements (including the Environmental and Social Approvals) required under the Laws to be obtained from any Competent Authority for the Project Activities, and “Approval” shall be construed accordingly;

“Arbitration” has the meaning given to it in clause 26.3.1.1;

“Arbitrators” has the meaning given to it in clause 26.3.1.1;

“Archaeological Delay Event” means the discovery of any Archaeological Items found or located on or under the Site that results in a delay to the Construction Activities;

“Archaeological Items” means articles of archaeological value, interest or antiquity, historical structures, human remains, or other substances, objects or things of archaeological or historic interest;

“Award” has the meaning given to it in clause 26.3.4;
“Benchmark Revenue Amount” means PKR 6,500,000,000/- (Pakistani Rupees Six Billion Five Hundred Million Only);

“Bid Submission Date” means [●].

“Board Resolution” means a resolution passed by the board of directors of the Concessionaire and/or the Sponsors;

“Business Day” means any Day that is not declared a public holiday, in Karachi, Pakistan, during which banks are generally open for business in Karachi, Pakistan;

“Casualty Proceeds” has the meaning given to it in clause 18.9.1;

“Change in Law” means any of the following events:

(a) the introduction, adoption, enactment or promulgation of any new Law by a Competent Authority;

(b) the change or repeal by any Competent Authority of any Law;

(c) a change by a Competent Authority and having the force of Law: (i) in the manner in which a Law is applied; or (ii) in the interpretation of any Law; and

(d) the introduction, adoption, change or repeal by any Competent Authority of any material condition in connection with the issuance, renewal, or modification of any Approval;

which occurs after the Bid Submission Date and which:

(i) results in any imposition of, or change in Taxes, duties or levies payable by one or more of the Concessionaire or the Contractors in relation to the Project Activities; or

(ii) results in change in or repeal of any of the requirements applicable to the Project Activities,

it is clarified that Change in Law shall not include: (A) any change in any withholding tax, or other similar taxes, on income or dividends or other distributions distributed by the Concessionaire or the Contractors; and (B) the coming into effect, on or after the Bid Submission Date, of any provision of a Law which is already gazetted in accordance with the Law or any proposed new Law (including any proposed amendment or any change thereto) that is in the public domain prior to the Bid Submission Date;

“Change in Scope” means any alteration in the technical requirements, the scope of the Project, or the designs and drawings applicable to the Project, as instructed by the SEZMC or proposed by the Concessionaire, in accordance with clause 6.3, provided that, any such alteration shall not be considered as a Change in Scope if it arises as a result of a Change in Law;

“Change in Scope Order” means an order issued by the SEZMC certifying approval of a proposed Change in Scope and recording the terms and condition on which the proposed Change in Scope is required to be implemented;

“Claim” means any suits, actions, legal or administrative proceedings, claims, demands, losses, damages, liabilities, fines, costs and expenses of whatsoever kind or nature (including reasonable attorney’s fees and expenses and pre- and post-judgment interest and penalties), whether arising before or after the Final Expiry Date, but excluding any indirect or consequential damages;

1 Insert date stated in the RFP.
“Committed Annual Lease Amount” means the fixed annual lease rent amount payable by the Concessionaire to the SEZMC under the Lease Agreement during the Lease Payment Period, as specified in appendix 6;

“Competent Authority(ies)” means the SEZMC, Government of Sindh or any ministry, department or political subdivision thereof, any municipality, any court or tribunal or any other governmental entity, instrumentality, agency, authority, committee or commission, under the direct or indirect control of the Government of Sindh, or any department or political subdivision thereof, or any independent regulatory authority relating thereto, having jurisdiction under the Law over the Concessionaire or the Contractors, in each case within Pakistan, provided that, for the purposes of this Agreement, SEZMC shall not be considered a Competent Authority in their capacity as a party to any of the Project Agreements;

“Completed Project Activities” means the percentage of Project Activities completed by the Concessionaire as at the Termination Date, as certified by the Independent Engineer;

“Concession” has the meaning given to it in clause 2.1.1;

“Concession Period” means the period commencing at 00:00 hours on the CP Completion Date and ending at 23:59 hours on the Final Expiry Date;

“Concessionaire” has the meaning given to it in the preamble;

“Concessionaire Cure Period” has the meaning given to it in clause 20.6.2;

“Concessionaire Event of Default” has the meaning given to it in clause 20.4;

“Concessionaire Indemnified Parties” has the meaning given to it in clause 22.2;

“Concessionaire IPR” means all Intellectual Property Rights owned by the Concessionaire (or its relevant licensor) as at the Effective Date including all information provided as part of its Proposal;

“Concessionaire Notice of Intent to Terminate” has the meaning given to it in clause 20.6.1;

“Conditions Precedent” means the conditions precedent for achieving the CP Completion Date as set out in appendix 4;

“Confidential Information” has the meaning given to it in clause 28.5;

“Construction Activities” means all works and obligations to be performed by the Concessionaire by the Construction Completion Date, including, design, construction, procurement and installation as more fully described in this Agreement and particularly in appendix 1;

“Construction Completion” has the meaning given to it in clause 8.2.1;

“Construction Completion Certificate” means the certificate issued by the Independent Engineer upon Construction Completion;

“Construction Completion Check List” has the meaning given to it in clause 8.1.2;

“Construction Completion Date” means the date certified as the ‘Construction Completion Date’ in the Construction Completion Certificate;

“Construction Drawings” means the drawings, designs, calculations and documents prepared by the Concessionaire pursuant to the standards, and design requirements that pertain to the Project, set out in appendix 1;

“Construction Performance Security” means the irrevocable, unconditional and on-demand bank guarantee (and any replacement thereof), in favour of the SEZMC, in an
amount equal to four percent (4%) of the Initial Project Cost, issued by an Acceptable Bank in the form set out in part 1 of appendix 5;

“Construction Performance Security Expiry Date” has the meaning given to it in clause 4.1.1;

“Construction Period” means the period commencing on the Lease Agreement Date and ending at 23:59 hours on the Construction Completion Date;

“Construction Year” means the twelve (12) Month period commencing at 00:00 hours on the Lease Agreement Date and ending at 23:59 hours on the following anniversary of the Construction Completion Date provided that the last Construction Year shall end at 23:59 hours on the Construction Completion Date;

“Contractor(s)” means the contractor(s) hired by the Concessionaire for carrying out any component of the Project Activities and shall include sub-contractors, contractors for supply of equipment, procurement and engineering, construction, design, and supervision, service providers, operators and suppliers and/or any other contractors and sub-contractors, manufacturers or suppliers of equipment and works in relation to the Project;

“Control” means:

(a) ownership or control (whether directly or otherwise) of more than fifty percent (50%) of the equity share capital, voting capital, or the like, of the controlled entity;

(b) ownership of equity share capital, voting capital, or the like, by contract or otherwise, conferring control of or power to appoint more than fifty percent (50%) of the members of the board of directors, board of management, or other equivalent or analogous body of the controlled entity; or (ii) appoint the key managers of such entity; or

(c) power to influence (whether directly or indirectly) any decision of the board of the controlled entity through contract, agency or otherwise, and “Controls” or “Controlled” shall be construed accordingly;

“CP Completion Date” has the meaning given to it in clause 3.1.1;

“CP Satisfaction Certificate” means the certificate duly signed and issued by the Independent Appointees to the Parties, certifying that each of the Conditions Precedent have been satisfied, deferred or waived in terms of this Agreement;

“Cure Period” means the Concessionaire Cure Period or the SEZMC Cure Period, as the case may be;

“Day” means a 24-hour period beginning at 00:00 hours and ending at 23:59 hours;

“DBFOMT” means design, build, finance, operate, maintain and transfer;

“Deductible Termination Amount” means to the extent it is a positive amount, the aggregate, up to the date immediately preceding the Termination Payment Date, of:

(a) all credit balances on any bank accounts, held by or on behalf of the Concessionaire, including the Escrow Accounts and the Restoration Account, the value of any right of the Concessionaire to receive insurance proceeds and the value of any such proceeds actually received (save where such credit balances or proceeds are paid to the SEZMC and/or to be applied in reinstatement), sums due and payable from the Contractors and any third parties, value of any authorized investment, letters of credit issued in lieu of maintaining credit balance in any account; and
(b) amounts the SEZMC is entitled to set-off due to deductions / adjustments in terms of this Agreement;

“Defaulting Party” means the SEZMC in the case of a SEZMC Event of Default or the Concessionaire in the case of a Concessionaire Event of Default;

“Delay Damages Cap” has the meaning given to it in clause 7.3.2;

“Dispute” means a dispute, controversy, difference or claim between the Parties arising out of or in relation to this Agreement or the Parties’ performance or non-performance of this Agreement;

“Disputed Obligation” means any Dispute, by the SEZMC, in respect of the requirement to comply with an obligation expressed to be assumed by the SEZMC in any Project Agreement on the basis that such obligation is illegal, invalid, void, voidable or unenforceable under the applicable Legal Requirements;

“Effective Date” means the date of signing of this Agreement;

“Encumbrance” means any encumbrance on an asset, including but not restricted to mortgage, charge, pledge, lien, hypothecation or any security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, the Site or any part or portion thereof and physical encumbrances and encroachments thereon;

“Environmental Legal Requirements” means any Legal Requirements relating to the protection of or harm to the environment, humans, animals, plants, air or to any water body or system (including any Legal Requirements relating to obligations for monitoring, investigation and abatement in respect of the foregoing);

“Environmental and Social Approvals” means any permits, certificates and other Approvals (including any conditions which attach to the foregoing) required under the Environmental Legal Requirements;

“Environmental and Social Impact Assessment” or “ESIA” means the environmental impact assessment titled “Environmental and Social Impact Assessment” in relation to the Project, including all other supplements, modifications and amendments, to be prepared by competent professional advisers having relevant experience in conducting environmental and social impact assessments for similar projects;

“Escrow Accounts” means collectively the Revenue Escrow Account and the O&M Escrow Account;

“Escrow Account Certificate” has the meaning given to it in the Escrow Agreement;

“Escrow Agent” means the bank selected by the Parties to act as the ‘Escrow Agent’ in terms of the Escrow Agreement;

“Escrow Agreement” means the agreement, substantially in the form set out as appendix 12, between the SEZMC, the Escrow Agent and the Concessionaire (and such other persons as the parties thereto may agree) in relation to, inter alia, the collection of the Zone Enterprise Payments and O&M Fees in the Escrow Accounts and utilisation thereof;

“Estimated Remedial Costs” has the meaning given to it in clause 20.9.2.2;

“Event of Default” means, as the context requires, a Concessionaire Event of Default or a SEZMC Event of Default;

“Event of Loss” means an event that causes all or a portion of the Project to be damaged, destroyed or rendered unfit for normal operation in accordance with this Agreement;
“Fair Value of Equity” means a value equal to the net assets of the Concessionaire, calculated up to the date immediately preceding the Termination Payment Date, as determined pursuant to a special audit conducted by an Acceptable Accounting Firm;

“Final Expiry Date” means earlier of: (a) Term Expiry Date; and (b) the Termination Date;

“Financial Model Form” means the financial model form setting out, inter alia, the “Project Cost Breakup” and submitted as part of the Proposal;

“First IA List” has the meaning given to it in clause 16.7.1;

“First IE List” has the meaning given to it in clause 16.1.1;

“Force Majeure Event” has the meaning given to it in clause 18.1;

“Foreign Bank” means a scheduled bank or financial institution incorporated or organized outside Pakistan having a credit rating of at least AA or higher by Pakistan Credit Rating Agency, or AA or higher by VIS, or A3 or higher by Moody’s or equivalent rating by Fitch or Standard and Poor;

“Good Industry Practice(s)” means those practices, skills, diligence, prudence, foresight, methods, equipment, specifications and standards of safety and performance (as may change from time to time) employed by experienced professional international contractors or operators in activities or undertakings of the same or similar circumstances and conditions as the Project Activities, which in the exercise of reasonable judgement in light of the facts known at the time the judgement was made, are considered good, safe and prudent practice commensurate with standards of safety, performance, dependability, efficiency and economy;

“GoS” means the Investment Department, Government of Sindh;

“Handover Certificate” means the certificate to be issued by the Independent Appointees certifying the satisfaction of the Handover Conditions in terms of clause 20.9;

“Handover Conditions” means the conditions set out in appendix 14;

“Handover Date” means the date of issuance of the Handover Certificate;

“Hazardous Substances” means any solid, liquid or gaseous material, substance, constituent, chemical, mixture, raw material, intermediate product or by-product which are: (a) defined as “hazardous wastes”, “hazardous materials”, “toxic substances” or “toxic pollutants” under the Laws; or (b) are otherwise regulated by the Environmental Legal Requirements;

“Implementation Schedule” means the implementation schedule set out in appendix 2, as may be revised from time to time, pursuant to this Agreement;

“Increased Costs” means any increased costs or expenses that are incurred or suffered by the Concessionaire resulting from any circumstance described in clause 19.1, and not otherwise insured, which costs and expenses may include one or more of:

(a) capital costs;

(b) costs and expenses in respect of the design, engineering, procurement, manufacture, construction and completion of the Project; and

(c) costs of Taxes imposed on or payable by the Concessionaire;

“Independent Appointees” means the Independent Auditor and the Independent Engineer;
“Independent Auditor” means the auditor appointed for the Project in accordance with clause 16.7 and includes any replacement Independent Auditor appointed in terms of this Agreement;

“Independent Auditor Initial Term” has the meaning given to it in clause 16.8.1;

“Independent Auditor Authorized Representative(s)” has the meaning given to it in clause 16.9.1;

“Independent Auditor Contract” means the contract to be entered into between the Parties and the Independent Auditor in accordance with clause 16 and includes any contract subsequently executed with any replacement Independent Auditor in terms of this Agreement;

“Independent Auditor Payments” has the meaning given to it in clause 16.11.1;

“Independent Auditor Payment Account” means the account established and maintained by the Concessionaire pursuant to clause 16.12;

“Independent Auditor Payment Account Bank” means the financial institution in Pakistan selected by the Concessionaire, the Sponsors and the SEZMC where the Independent Auditor Payment Account is held;

“Independent Auditor Payment Account Standing Instructions” has the meaning given to it in clause 16.12.2;

“Indicative Independent Auditor Terms of Reference” means the indicative duties, functions and the scope of work to be performed by the Independent Auditor, as set out in part 1 of appendix 8;

“Independent Engineer” means the engineer appointed for the Project in accordance with clause 16.1 and includes any replacement Independent Engineer appointed in terms of this Agreement;

“Independent Engineer Initial Term” has the meaning given to it in clause 16.2.1;

“Independent Engineer Authorized Representative(s)” has the meaning given to it in clause 16.3.1;

“Independent Engineer Contract” means the contract to be entered into between the Parties, and the Independent Engineer in accordance with clause 16 and includes any contract subsequently executed with any replacement Independent Engineer in terms of this Agreement;

“Independent Engineer Payments” has the meaning given to it in clause 16.5.1;

“Independent Engineer Payment Account” means the account established and maintained by the Concessionaire pursuant to clause 16.6;

“Independent Engineer Payment Account Bank” means the financial institution in Pakistan selected by the Concessionaire, the Sponsors and the SEZMC where the Independent Engineer Payment Account is held;

“Independent Engineer Payment Account Standing Instructions” has the meaning given to it in clause 16.6.2;

“Indicative Independent Engineer Terms of Reference” means the indicative duties, functions and the scope of work to be performed by the Independent Engineer, as set out in part 2 of appendix 8;

“Initial Allotment Criteria” has the meaning given to it in clause 11.2.2;
“Initial Project Cost” means the “Total Project Cost” equivalent to PKR [insert from Proposal];

“Insurance Polic(ies)” has the meaning given to it in clause 17.1.1;

“Intellectual Property Rights” means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

“International Financial Reporting Standards” means any International Financial Reporting Standards promulgated by the International Accounting Standards Board (which includes standards and interpretations approved by the International Accounting Standards Board and International Accounting Principles issued under previous constitutions), together with its pronouncements thereon from time to time;

“International Accounting Standards Board” means the independent accounting standard-setting body of the International Financial Reporting Standards Foundation;

“Key Personnel” means the key personnel deployed by the Concessionaire to carry out various assigned tasks in respect of the Project as specified in appendix 11;

“KIBOR” means the average “ask side” Karachi Inter-Bank Offer Rate for a period equal to three (03) Months which appears on the appropriate page of the Reuters service at 11.00 am in Karachi on the last available Business Day in the relevant period, or in the event that the Reuters service, or any successor thereto, no longer provides such information, such other service as agreed by the Parties (in consultation with the Independent Auditor) that provides the average “ask side” Karachi Inter-Bank Offer Rate for Rupee deposits in the Karachi interbank market;

“Late Payment Rate” means the six (06) Months Karachi Inter Bank Offer Rate (KIBOR) plus two percent (2%), compounded semi-annually, calculated for the actual number of Days for which the relevant amount remains unpaid on the basis of a three hundred and sixty-five (365) Days year;

“Law” or “Laws” mean all federal, provincial and local laws of Pakistan, and all orders, rules, regulations, executive orders, statutory regulatory orders, decrees, judicial decisions, notifications, or other similar directives issued by any a Competent Authority pursuant thereto, including the Environmental Legal Requirements, as any of them may be amended, substituted, replaced or re-promulgated from time to time;

“Lease Agreement” means the lease agreement to be entered into by the GoS, SEZMC and the Concessionaire with respect to the Site, for the duration of the Lease Term in accordance with clause 5 and in the form set out in appendix 7;

“Lease Agreement Date” means the date of signing of the Lease Agreement, which shall be in accordance with the terms of this Agreement;

“Lease Payment Period” means the period commencing on the Marketing Launch Date and ending on the third (3rd) anniversary of the Marketing Launch Date;

“Lease Payment Shortfall Amount” has the meaning given to it in clause 11.8.1.1;

“Lease Payment Shortfall Event” has the meaning given to it in clause 11.8.1;

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[Insert from Bidding Form F – Other Financial Forms submitted as part of the Proposal]
“Lease Payment Year” means a period of one (01) year commencing on each consecutive anniversary of the Marketing Launch Date and ending as of the end of the day preceding the next anniversary of the Marketing Launch Date, except for the first (1st) Lease Payment Year which shall start on the Marketing Launch Date;

“Lease Payments” has the meaning given to it in clause 11.7.1;

“Lead Sponsor” means [●];

“Lease Term” means the period commencing on the Lease Agreement Date and ending on the fiftieth (50th) anniversary of the Lease Agreement Date;

“Legal Requirements” means all Laws and Approvals;

“Marble and Granite Sector Zone Enterprises” means the Zone Enterprises belonging to the marble and granite sector;

“Marketing Launch Date” means the date on which the Concessionaire shall launch the marketing campaign to allot Plots under the Project to potential Zone Enterprises, provided that approximately ten percent (10%) of the Construction Activities identified in part 4.4 of appendix 1 have been completed in accordance with the Legal Requirements and appendix 1, subject to the satisfaction of the Independent Engineer and the SEZMC;

“Marketing Plan” has the meaning given to it in clause 11.1.1;

“Master Plan” has the meaning given to it in clause 6.1.2.1;

“Minimum Allotment Criteria” has the meaning given to it in clause 11.2.3;

“Minimum Upfront Equity” means the minimum upfront equity investment of Pakistani Rupees [●] required to be injected by the Sponsor(s) into the Concessionaire;

“Month” means a calendar month beginning at 00:00 on the first Day of the month and ending at 23:59 on the last Day of the month;

“Natural Force Majeure Event” has the meaning given to it in clause 18.2;

“O&M Activities” means all works, services and obligations to be performed by the Concessionaire during the Operating Period, including operations and maintenance of the Project and collection of Zone Enterprise Payments and O&M Fees (as applicable), as more fully described in this Agreement and more particularly in appendix 1;

“O&M Escrow Account” means a bank account established with the Escrow Agent in accordance with the Escrow Agreement wherein O&M Fees shall be deposited;

“O&M Fee(s)” has the meaning given to it in clause 10.4;

“O&M Performance Security” means the irrevocable, unconditional and on-demand bank guarantee (and any replacement thereof), in favour of the SEZMC, in an amount equal to the O&M Performance Security Amount, or as may be increased in accordance with this Agreement, issued by an Acceptable Bank in the form set out in part 2 of appendix 5;

“O&M Performance Security Expiry Date” has the meaning given to it in clause 4.1.2;

“Operating and Maintenance Procedures” has the meaning given to it in clause 10.3.1;

1 Details to be inserted from the Proposal
2 To be inserted from the Proposal
“Operating Period” means the period commencing at 00:00 hours on the Substantial Completion Date and ending at 23:59 hours on the Final Expiry Date;

“Operating Year” means the twelve (12) Month period commencing at 00:00 hours on the Substantial Completion Date and ending at 23:59 hours on the following anniversary of the Substantial Completion Date and each subsequent twelve (12) Month period during the Operating Period ending on each subsequent anniversary of the Substantial Completion Date provided that the last Operating Year shall end at 23:59 hours on the Final Expiry Date;

“PACRA” means the Pakistan Credit Rating Agency Limited;

“Pakistan” means the Islamic Republic of Pakistan;

“Pakistani Rupees” or “PKR” means Pakistani Rupees, the lawful currency of Pakistan;

“Parties” means the SEZMC and the Concessionaire, and “Party” means either of them;

“Payment Certificate” has the meaning given to it in clause 11.6.1;

“Payment Milestone” means the payment milestones as provided in appendix 13;

“Performance Securities” means the Construction Performance Security and the O&M Performance Security;

“PFME Period” means the duration of a Political Force Majeure Event as determined by the Independent Engineer, provided that if more than one Political Force Majeure Event is ongoing at the same time, for the purposes of determining the PFME Period, such Political Force Majeure Events shall be considered as running concurrently in the same PFME Period;

“Plot(s)” means each plot (being an industrial and/or a commercial space) developed under the Project;

“Political Force Majeure Event” has the meaning given to it in clause 18.3;

“PPP Policy Board” means the Public Private Partnership Policy Board constituted pursuant to the Sindh Public-Private Partnership Act, 2010;

“Preliminary Marketing Plan” means the preliminary marketing plan submitted by the Sponsor(s) as part of the Proposal;

“Preliminary Master Plan” means the preliminary master plan as provided by the SEZMC including applicable requirements specified in appendix 1;

“Preliminary O&M Plan” means the preliminary operations and maintenance plan submitted by the Sponsor(s) as part of the Proposal;

“Project” means:

(a) the industrial estate and all associated facilities and infrastructure, in whatsoever stage of construction, to be constructed, owned, maintained, operated and transferred by the Concessionaire (located at the Site), as more fully described in appendix 1;

(b) the Project Activities;

(c) the use by the Concessionaire, in accordance with the Lease Agreement, of the Site;

(d) marketing of the Project in accordance with the Marketing Plan;

(e) collection of Zone Enterprise Payments and O&M Fees;

(f) payment to SEZMC by the Concessionaire of the Lease Payments;
(g) the handover of the Project in terms of this Agreement; and
(h) all activities incidental to any of the foregoing, in accordance with this Agreement;

“Project Activities” means the Construction Activities and O&M Activities;

“Project Agreement(s)” means:
(a) this Agreement;
(b) the Lease Agreement;
(c) the Escrow Agreement;
(d) the Provincial Support Agreement; and
(e) any other agreement entered into in respect of the Project between SEZMC, Concessionaire and / or the Sponsors and designated as a ‘Project Agreement’ with the written consent of the SEZMC and the Concessionaire;

“Project Cost(s)” means (without double-counting), any costs or expenses relating to the Project (including as set out in the Financial Model Form) stated in Pakistani Rupees, which costs and expenses may include one or more of the following:
(a) capital costs;
(b) costs and expenses in respect of the design, engineering, procurement, construction and completion of the Project;
(c) costs of Taxes imposed on or payable by the Concessionaire; and
(d) all other costs and expenses incurred in connection with the Project during the Construction Period;

“Project Cost Overruns” means an increase in the Project Cost (from the Initial Project Cost) for any reason as determined by the Concessionaire or the Independent Appointees;

“Project IPR” means all Intellectual Property Rights developed by or for the Concessionaire in connection with and for the Project after the Effective Date and prior to the Final Expiry Date, but excluding any SEZMC IPR and any Concessionaire IPR;

“Project Implementation Unit” means the project implementation unit established by the SEZMC for the purpose of overseeing the day-to-day implementation of the Project in accordance with the Legal Requirements;

“Proposal” means the proposal dated [●] delivered by the Sponsor(s) to the SEZMC on or before the Bid Submission Date in response to the RFP and any agreed amendments, variations or supplements thereto;

“Proposed Master Plan” has the meaning given to it in clause 6.1.1;

“Provincial Support Agreement” means the agreement to be entered into between the GoS, the SEZMC and the Concessionaire guaranteeing the contractual and payment obligations of SEZMC under this Agreement;

“Protected Assets” has the meaning given to it in clause 24.4.1.2;

“RE Period” means the duration of a Relief Event as determined by the Independent Engineer, provided that if more than one Relief Event is ongoing at the same time, for the

5 Insert as per Proposal
purposes of determining the RE Period, such Relief Events shall be considered as running concurrently in the same RE Period;

“Recipient” has the meaning given to it in clause 28.2.1;

“Relevant Period” means the PFME Period or the RE Period, as applicable;

“Relief Event(s)” means the following events or circumstances:

(a) an act of impediment or prevention by the SEZMC or a breach by SEZMC of any of its obligations under this Agreement or any other Project Agreement to which it is a party;

(b) prior to the Construction Completion Date, an Archaeological Delay Event, but only if and to the extent that the Concessionaire has made all reasonable efforts to reduce to a minimum and mitigate the effect of such event; and

(c) a delay by the GoS in providing the vacant possession of the Site in accordance with the terms of the Lease Agreement;

but only if and to the extent that in any such case: (i) in the opinion of the Independent Appointees, it materially and adversely impairs the ability of the Concessionaire (or its Contractors) or the Sponsors to perform their respective obligations under the Project Agreements; (ii) the Concessionaire has made all reasonable efforts to reduce to a minimum and mitigate the effect of such event; and (iii) such event or circumstance is not the direct or indirect result of a breach by Concessionaire (or its Contractors) or the Sponsors of any of their respective obligations under this Agreement or any other Project Agreement, or negligent act or omission by the Concessionaire, the Contractors or the Sponsors;

“Remedial Plan” has the meaning given to it in clause 20.9.2.2;

“Remedial Report” has the meaning given to it in clause 20.9.2.2;

“Remedial Works” has the meaning given to it in clause 20.9.2.2;

“Restoration Account” has the meaning given to it in clause 18.9.2;

“Revenue Escrow Account” means a bank account established with the Escrow Agent in accordance with the Escrow Agreement wherein all Zone Enterprise Payments shall be deposited;

“RFP” has the meaning given to it in recital A;

“Scheduled CP Completion Date” means the date specified in the Implementation Schedule for the achievement of the CP Completion Date (which is [●] as at the Effective Date) as such date may from time to time be amended in accordance with this Agreement;

“Scheduled Construction Completion Date” means the date set out in the Substantial Completion Certificate which date shall not be later than the date falling sixty (60) Days after the Substantial Completion Date;

“Scheduled Substantial Completion Date” means the date falling twenty-four (24) Months after the Lease Agreement Date, as extended from time to time in accordance with this Agreement;

“SEZ Laws” means collectively (a) the Special Economic Zones Act, 2012; (b) the Special Economic Zones Rules, 2013; (c) the Sole Enterprise Special Economic Zone Regulations, 2020; and (d) the SEZ Zone Enterprise Admission and Sale, Lease and Sub-Lease of Plot Regulations, 2021, as may be amended, re-promulgated, substituted or replaced from time to time;

6 Insert date that is 6 months from Effective Date.
“SEZMC Appointed IA” has the meaning given to it in clause 16.11.1;

“SEZMC Appointed IE” has the meaning given to it in clause 16.5.1;

“SEZMC Cure Period” has the meaning given to it in clause 20.6.1;

“SEZMC Event of Default” has the meaning given to it in clause 20.5;

“SEZMC Indemnified Parties” has the meaning given to it in clause 22.1;

“SEZMC IPR” means any Intellectual Property Rights owned by the SEZMC (or its relevant licensor) as of the Effective Date, including materials issued by or on behalf of the SEZMC as part of the RFP or during the RFP process, and any variations issued by or on behalf of the SEZMC;

“SEZMC Notice of Intent to Terminate” has the meaning given to it in clause 20.6.2;

“SEZMC Sharing Account” means the account notified by the SEZMC to the Concessionaire in which the Lease Rent Payments and other amounts due to the SEZMC under this Agreement and other Project Agreements shall be deposited;

“Shareholder” means a person who is from time to time registered in the Concessionaire’s share register as a holder of a Share;

“Shares” means the ordinary shares and any other class of shares that may be issued to the Shareholders (including the Sponsor(s)) from time to time and the term “Share” shall be construed accordingly;

“Shortfall Amount” has the meaning given to it in clause 11.2.7;

“Site” means the location of the Project, as more fully described in appendix 1, which is leased to the Concessionaire pursuant to the Lease Agreement for undertaking the Project Activities;

“Site Information” has the meaning given to it in clause 5.6.1;

“Sponsors” means [insert details];

“Sponsor Equity” means the share capital of the Concessionaire, represented in PKR, subscribed to by the Sponsor(s) for funding: (a) the equity component of the Project Cost; (b) any sums to cover the outstanding Lease Payment Shortfall Amount in terms of clause 11.8.1.2; (c) any refund amounts in accordance with clause 11.2.6; and/or (d) any Project Cost Overruns;

“Sponsor Loans” means the sponsor loan that may be provided to the Concessionaire by the Sponsor(s) for funding the Project Cost, the Project Cost Overruns and any sums to cover the outstanding Lease Payment Shortfall Amount in terms of clause 11.8.1.2;

“Sub-Lease Agreements” has the meaning given to it in clause 11.3.1;

“Substantial Completion” has the meaning given to it in clause 8.1.1;

“Substantial Completion Certificate” means the certificate issued by the Independent Engineer at the request of the Concessionaire in accordance with clause 8.1;

“Substantial Completion Date” means the date referred to as ‘Substantial Completion Date’ in the Substantial Completion Certificate;

Details to be inserted as per Bidding Form T4 of the Proposal.
“Taxes” means any tax, charge, impost, duty or fee of any kind charged, imposed or levied, directly or indirectly, by a Competent Authority including any zakat, value added tax, sales tax, notarisation fees, stamp duty, import duty, withholding tax (whether on income, dividends, commission payments, fees, equipment, rentals or otherwise), tax on foreign currency loans or foreign exchange transactions, excise tax, property tax, registration fee or licence, or environmental, including any commission, penalties or additions thereon;

“Term Expiry Date” means the twelfth (12th) anniversary of the CP Completion Date, as may be extended from time to time in accordance with this Agreement;

“Termination Date” means the date specified for termination in the relevant Termination Notice;

“Termination Notice” means a notice of termination issued by the Concessionaire or SEZMC, as the case may be, pursuant to clause 20;

“Termination Payment” means, as the context requires, Value A, Value B, Value C, or Value D;

“Termination Payment Date” means the date on which SEZMC has made payment of the relevant Termination Payment to the Concessionaire such date being within the period that is ninety (90) Days following the Termination Date, subject to the issuance of the Handover Certificate, as may be extended pursuant to this Agreement;

“Transfer Criteria” means:
(a) the transferee:
   (i) is not an Adverse Person;
   (ii) is not a defaulter of any bank or financial institution; and
   (iii) complies with the relevant qualification and evaluation criteria for such outgoing Sponsor as set out at the prequalification and bidding stage of the Project as determined by the Independent Appointees;
(b) the transfer of shareholding is in compliance with the applicable Legal Requirements;

“Transferring Sponsor” has the meaning given to it in clause 13.3.1.2;

“Unenforceability Event” means circumstances where:
(a) there is a Disputed Obligation;
(b) there is a final and binding determination of an arbitral tribunal or of a Pakistan court that the Disputed Obligation is illegal, invalid, void, voidable or unenforceable under the applicable Legal Requirements;
(c) such illegality, invalidity, voidability or unenforceability under the applicable Legal Requirements materially impairs the ability of the Concessionaire to perform its obligations under the Project Agreements,
   provided that the Concessionaire must have used its best efforts to mitigate such consequences (or the event itself). For the purposes of this definition, “materially” means a material impairment in the Concessionaire’s ability to collect Zone Enterprise Payments or the O&M Fees in terms of this Agreement; and
(d) the Concessionaire is not otherwise adequately compensated for the material impairment described in paragraph (c) above by way of remedy or relief pursuant to this Agreement or otherwise;

“Value” means, as the context requires, Value A, Value B, Value C or Value D;
“Value A” means, the lower of (as determined by the Independent Auditor):

Fair Value of Equity x 150%; or

(Completed Project Activities x Project Cost) minus Deductible Termination Amounts x 150%;

“Value B” means a nominal value of PKR 100/- (Pakistani Rupees Hundred only);

“Value C” means, the lower of (as determined by the Independent Auditor):

Fair Value of Equity x 100%; or

(Completed Project Activities x Project Cost) minus Deductible Termination Amounts x 100%;

“Value D” means the actual costs (as certified by the Independent Appointees), incurred in respect of any Construction Activities including preparation of the Master Plan and/or obtaining approval of the ESIA, carried out by the Concessionaire prior to the Scheduled CP Completion Date, which sum shall not exceed the value of the Construction Performance Security;

“VIS” means the VIS Credit Rating Company Limited (formerly the JCR-VIS Credit Rating Company Limited);

“Windfall Revenue” means the Zone Enterprise Payments received in excess of the Benchmark Revenue Amount;

“Windfall Revenue Event” has the meaning given to it in clause 11.8.2.1;

“Zone Enterprise” means the persons that have been: (a) allotted Plots under an Allotment Letter; and/or (b) sub-leased Plots under a Sub-Lease Agreement; and

“Zone Enterprise Payments” means all sums paid by the Zone Enterprises (including any payments, charges, penalties etc. set out under clause 11.3.3.5), under the Allotment Letters and Sub-Lease Agreements (excluding the O&M Fee) and deposited in the Revenue Escrow Account.

1.2 INTERPRETATION

The following rules of construction and interpretation apply to this Agreement:

1.2.1 periods of time refer to the Gregorian calendar and reference to a time of Day shall be construed as a reference to the time of Day in Pakistan;

1.2.2 a “person” includes any individual, company, corporation, firm, partnership, joint venture, association (whether a body corporate or an unincorporated association of persons) or any government institution, department or establishment, and a person shall be construed as including a reference to its successors, permitted assigns and permitted transferees in accordance with their respective interests;

1.2.3 words importing the singular number include the plural and vice versa, and words importing a gender include the other gender;

1.2.4 the descriptive headings in this Agreement, including the cover page and table of contents, are for convenience of reference only and not for purposes of construction or interpretation of its provisions;
1.2.5 unless specifically provided otherwise, the words “herein” and “hereunder”, and words of similar import, refer to the entirety of this Agreement and not only to the clause in which such use occurs;

1.2.6 a reference to a “clause” or “appendix” is a reference to a clause or appendix of this Agreement, or an appendix to this Agreement;

1.2.7 this Agreement is to be read and construed as a whole; anything mentioned in any of the documents comprising this Agreement shall be of like effect as if stated or mentioned in all of them. In the event of a conflict between the clauses and the appendices, the Independent Appointees shall endeavour, in the first instance, to resolve the conflict by reading this Agreement as a whole and the provision that is more specific to the subject matter shall govern. If, notwithstanding the Independent Appointees’ good faith efforts to resolve the conflict as provided in the preceding sentence, the conflict continues to persist, the provision in the clauses shall govern;

1.2.8 where an obligation of a Party to make payment under this Agreement, as a result of the calculation of time, falls on a Day other than a Business Day, such time for performance shall be extended to the next Business Day;

1.2.9 “certified” shall mean in the context of the Concessionaire, duly certified by the company secretary and in the context of the SEZMC, duly certified by an authorised person;

1.2.10 “including” or “includes” shall be deemed to be qualified by a reference to “without limitation”;

1.2.11 reference to “this Agreement” or any other agreement or document shall be construed as a reference to such agreement or document as amended, modified or supplemented and in effect from time to time and shall include a reference to any document which amends, modifies or supplements it, or is entered into, made or given pursuant to or in accordance with its terms;

1.2.12 the “face amount” of a letter of credit or guarantee, shall be construed as a reference to the remaining amount available for drawing under that letter of credit or guarantee;

1.2.13 neither the giving of any approval or consent, the review, knowledge or acknowledgement of the terms of any document by or on behalf of the SEZMC or the Independent Appointees, nor the failure to do so, shall, unless expressly stated in this Agreement, relieve the Concessionaire of any of its obligations under this Agreement or of any duty which it may have under this Agreement to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, review, knowledge or acknowledgement;

1.2.14 the rule of construction, if any, that an agreement should be interpreted against the Party responsible for the drafting and preparation thereof shall not apply to this Agreement; and

1.2.15 the Parties acknowledge that liquidated damages for specific defaults prescribed under this Agreement are representative of the actual losses, liabilities, damages, costs, charges or expenses that shall be suffered by the non-defaulting Party due to failure of the defaulting Party to perform its obligations in accordance with this Agreement and are not in the nature of a penalty.
2. CONCESSION AND TERM

2.1 GRANT OF CONCESSION

2.1.1 In consideration of the Concessionaire’s obligations contained in this Agreement and relying on the Concessionaire’s representations, warranties and covenants contained herein, the SEZMC, subject to the terms of this Agreement, grants to the Concessionaire the right and authorizes it to:

2.1.1.1 carry out the Construction Activities during the Construction Period and the O&M Activities during the Operating Period, on a DBFOMT basis;

2.1.1.2 exercise and enjoy the rights, powers, benefits, privileges, authorizations and entitlements as set forth in this Agreement,

(collectively referred to as the “Concession”).

2.1.2 The Concessionaire agrees and undertakes to implement the Project in accordance with the terms of this Agreement.

2.2 CONCESSION

2.2.1 Unless otherwise stated, this Agreement shall become effective on the Effective Date. The Concession is granted to the Concessionaire and shall be effective in accordance with the terms of this Agreement.

2.3 Extension of Concession Period

The Concession Period may be extended for an additional period, if:

2.3.1 not less than eighteen (18) Months prior to the Term Expiry Date, the SEZMC provides a notice to the Concessionaire, or the Concessionaire provides a notice to the SEZMC, requesting that the Parties enter into good faith negotiations to extend the Concession Period for a period not exceeding ten (10) years;

2.3.2 subject to the Parties having agreed to enter into good faith negotiations pursuant to clause 2.3.1, not later than twelve (12) Months prior to the Term Expiry Date, the Parties agree to the terms of such extension;

2.3.3 not later than six (06) months prior to the Term Expiry Date, the Parties enter into a binding agreement in writing, confirming the agreed terms of the extension; and

2.3.4 any requisite approval for the extension of the Concession Period is obtained from the Competent Authorities in accordance with the Legal Requirements.

3. COMMENCEMENT

3.1 CP COMPLETION DATE

3.1.1 The rights and obligations of the Parties to undertake the Construction Activities shall be conditional upon the issuance of the CP Satisfaction Certificate by the Independent Appointees certifying in writing the satisfaction, deferral or irrevocable waiver of all Conditions Precedent by the relevant Party, in accordance with appendix 4 (the date of such certification being the “CP Completion Date”). The CP Satisfaction Certificate shall be issued within five (05) Business Days of the occurrence of such satisfaction, deferral or waiver.

3.1.2 Each Party shall use its best endeavours to cause the CP Completion Date to occur on or before the Scheduled CP Completion Date.
3.2 **REPORTS PRIOR TO CP COMPLETION DATE**

On a regular (at least weekly) basis from the Effective Date, the Concessionaire shall advise the Independent Appointees as to the status of the satisfaction of the Conditions Precedent for which the Concessionaire is responsible, provided that:

3.2.1 no review or approval by the Independent Appointees of any Conditions Precedent shall relieve the Concessionaire from any liability that it would otherwise have had in respect of such Conditions Precedent or failure to comply with the applicable Legal Requirements or this Agreement with respect thereto; and

3.2.2 neither the SEZMC, the Independent Appointees nor any of their representatives or advisors shall be liable to the Concessionaire or any other person by reason of their review or approval of any Conditions Precedent.

3.3 **DELAY IN ACHIEVING THE CP COMPLETION DATE**

3.3.1 If, the achievement of the CP Completion Date has been delayed due to:

3.3.1.1 any delay or failure on the part of the SEZMC in the performance of its obligations under this Agreement, which is not otherwise attributable to the Concessionaire or any of its Contractors; or

3.3.1.2 the occurrence of a Force Majeure Event,

the Independent Appointees shall confer with the Parties with a view to equitably adjusting the Scheduled CP Completion Date and the Implementation Schedule, taking into account:

3.3.1.3 the effect which the Concessionaire demonstrates is solely attributable to the SEZMC’s delay or failure and which would not have occurred but for such delay or failure;

3.3.1.4 the effect which the Concessionaire demonstrates is solely attributable to the occurrence of a Force Majeure Event and which would not have occurred but for such delay or failure; and

3.3.1.5 the ability of the Parties to reschedule their obligations to avoid or minimise the overall resulting delays and ensure that any such adjustment to the Scheduled CP Completion Date and the Implementation Schedule is limited to that which is necessary and as a consequence of the delay or failure.

3.3.2 The remedies set out in this clause 3.3 shall be the Concessionaire’s sole and exclusive remedies with respect to any delay in achieving the CP Completion Date by the Scheduled CP Completion Date due to any matter referred to in clause 3.3.1, provided that if the Concessionaire fails to achieve the CP Completion Date by the Scheduled CP Completion Date (as adjusted under clause 3.3.1), then, unless the Scheduled CP Completion Date is extended in accordance with clause 3.3.3, either Party may exercise its right to terminate this Agreement pursuant to clause 20.2.

3.3.3 If, for reasons other than those specified under clause 3.3.1, the Concessionaire is unable to achieve the CP Completion Date by the Scheduled CP Completion Date, then the Scheduled CP Completion Date shall be extended for a period as determined by SEZMC. No later than twenty (20) Days prior to the Scheduled CP Completion Date, the Concessionaire shall provide written notice to the Independent Appointees of its expected inability to achieve the CP Completion Date by the Scheduled CP Completion Date.

3.3.4 The Concessionaire acknowledges that any adjustment to the Scheduled CP Completion Date pursuant to clause 3.3.3 shall not entitle the Concessionaire to any adjustment to the Implementation Schedule.
4. **PROJECT IMPLEMENTATION**

4.1 **CONCESSIONAIRE’S OBLIGATIONS**

4.1.1 Prior to the Effective Date, the Sponsor(s) has delivered to the SEZMC the Construction Performance Security. The Concessionaire shall ensure that the same is maintained in full force and effect until the expiry of a period of three (03) Months from the Construction Completion Date (the “Construction Performance Security Expiry Date”). The Concessionaire shall notify the SEZMC and the Independent Auditor not more than three (03) Months prior to the Construction Performance Security Expiry Date. If the Construction Performance Security is not extended at least two (02) Months prior to the Construction Performance Security Expiry Date, the SEZMC may encash the full amount of the Construction Performance Security.

4.1.2 The Concessionaire shall deliver the O&M Performance Security to the SEZMC on or before the Scheduled Substantial Completion Date and shall ensure that the same is maintained in full force and effect until the later of: (a) expiry of a period of six (06) Months from the Final Expiry Date; or (b) the date determined in accordance with clause 20.9.3 (the “O&M Performance Security Expiry Date”). The Concessionaire shall notify the SEZMC and the Independent Auditor of the impending expiry of the O&M Performance Security not more than three (03) Months prior to the O&M Performance Security Expiry Date. If the O&M Performance Security is not extended at least two (02) Months prior to the O&M Performance Security Expiry Date, the SEZMC may encash the full amount of the O&M Performance Security.

4.1.3 The Concessionaire shall ensure that the face amount of the O&M Performance Security shall, prior to the start of each Operating Year, be equal to the applicable O&M Performance Security Amount for such Operating Year. Failure of the Concessionaire to comply with this clause 4.1.3 shall entitle the SEZMC to encash the full amount of the O&M Performance Security and any such encashment shall not relieve the Concessionaire from its obligation to provide and maintain a valid and effective O&M Performance Security in terms of this Agreement.

4.1.4 The Performance Securities:

4.1.4.1 shall be issued and maintained without any recourse to the Concessionaire, its assets or properties;

4.1.4.2 shall not be secured by the property or assets comprising of the Project or the Site; and

4.1.4.3 shall be encashed on demand in accordance with the terms of this Agreement.

4.1.5 The Concessionaire undertakes that no Encumbrance of any nature shall be created on the Site or immovable properties of the Concessionaire or those comprising of the Project.

4.1.6 All costs, expenses, fees and other charges of any nature, in each case, associated with the issuance, maintenance and encashment of the Performance Securities shall be solely on account of the Sponsors.

4.1.7 The Concessionaire shall cause and be responsible for:

4.1.7.1 compliance with and performance of all duties, obligations, acts, and deeds set out in, in each case, the Legal Requirements, including the SEZ Laws, in the event the Project obtains the status of a “Special Economic Zone”;

4.1.7.2 due and proper application for all Approvals and all renewals thereof required to be obtained in the name of the Concessionaire in connection with
the transactions contemplated by this Agreement and other Project Agreements, the diligent effort to obtain, the receipt of, and the maintenance of, all such Approvals until the Final Expiry Date;

4.1.7.3 compliance with the requirements of the Environmental and Social Impact Assessment;

4.1.7.4 procurement and use of any temporary land identified by Environmental and Social Impact Assessment as required by the Concessionaire for the Project Activities, in compliance with the Environmental Legal Requirements;

4.1.7.5 due and proper application for, the diligent effort to obtain, and the receipt of, any visas, work permits, employment permits, dependents’ permits, licences and other permits required for all individuals involved in the Project on behalf of or pursuant to contracts with the Concessionaire;

4.1.7.6 executing all Project Agreements to which it is a party in a timely manner;

4.1.7.7 co-operating with the SEZMC in the identification of the applications to be made by the SEZMC referred to in clause 4.2.2 and supporting such applications, including providing reasonable assistance in the preparation thereof, so as to expedite the consideration thereof by the appropriate Competent Authority, provided that such applications are in compliance with all applicable Legal Requirements and the terms and conditions of each Project Agreement in connection with which such application is made;

4.1.7.8 marketing the Plots in accordance with the Marketing Plan;

4.1.7.9 timely complying with all applicable requirements under appendix 4;

4.1.7.10 funding the Project Cost including any Project Cost Overruns (except as expressly provided for otherwise in this Agreement or as otherwise agreed between the Parties);

4.1.7.11 achieving the CP Completion Date on or before the Scheduled CP Completion Date;

4.1.7.12 achieving Substantial Completion on or before the Scheduled Substantial Completion Date; and

4.1.7.13 achieving Construction Completion on or before the Scheduled Construction Completion Date.

4.1.8 Within ten (10) Days after the CP Completion Date, the Concessionaire shall deliver to the Independent Appointees and the SEZMC, one (1) physical copy, each, of all Project Agreements and all other documents related or incidental thereto, and a closing book on CD-ROM containing conformed copies thereof.

4.2 SEZMC OBLIGATIONS

SEZMC shall cause and be responsible for:

4.2.1 ensuring the availability of the Site to the Concessionaire in accordance with clause 5 and the Lease Agreement;

4.2.2 due and proper application for, the diligent effort to obtain, and the receipt of, all Approvals and all renewals thereof that are required to be obtained in the name of the SEZMC in connection with the transactions contemplated by this Agreement;

4.2.3 preparing and executing the Project Agreements to which it is a party in a timely manner;
4.2.4 timely complying with all requirements under appendix 4;

4.2.5 facilitating the Concessionaire in obtaining access to all necessary infrastructure facilities and public utilities required for the Project, at the risk and cost of the Concessionaire;

4.2.6 upon request from the Concessionaire, providing reasonable assistance to the Concessionaire in procuring police assistance for removal of trespassers and / or encroachments on the Site as required under the applicable Laws, provided however, the provision of any assistance by the SEZMC (including delay or omission to provide such assistance) shall not relieve or absolve the Concessionaire of its obligations under this Agreement;

4.2.7 paying the Increased Cost where applicable in accordance with clause 19; and

4.2.8 facilitating the Concessionaire in the submission of a zone application for declaration of the Project as a “Special Economic Zone” in accordance with the SEZ Laws (as may be mutually agreed between the Parties to seek declaration of the Project as a “Special Economic Zone”).

4.3 SUB-CONTRACTORS

4.3.1 The appointment of any Contractor shall not relieve the Concessionaire of any of its obligations under this Agreement.

4.3.2 All references in this Agreement to any act, default, omission, breach or negligence of the Concessionaire shall be construed to include any such act, default, omission, breach or negligence of the Contractors or any other contractor or supplier of the Concessionaire or those of the Contractors.

4.3.3 The Concessionaire shall ensure that any agreements it enters into with the Contractors contain provisions allowing for, at the option of the SEZMC, novation or assignment (in favour of the SEZMC or its nominee) without any further consent or the approval from the Concessionaire or the relevant Contractor and entitles the SEZMC or its nominee to step into such contract, in substitution of the Concessionaire, if this Agreement is terminated prior to the Term Expiry Date.

4.3.4 The Concessionaire shall at all times comply and shall procure that any third-party contractors and subcontractors comply, with the Environmental Legal Requirements in relation to the performance of the Project Activities.

4.4 SEZMC REPRESENTATIVES

The SEZMC shall be entitled from time to time to appoint one or more representatives to support it or represent it in connection with the implementation of the Project. The SEZMC shall notify the Concessionaire from time to time of its appointed representatives and their roles and responsibilities. Unless and to the extent specified by the SEZMC in writing to the contrary, no such representative shall have authority to act on the SEZMC’s behalf for the purpose of giving any instruction or notice under this Agreement or otherwise taking any action binding on the SEZMC for any purpose in connection with this Agreement.

4.5 SEZMC SITE FACILITIES

The Concessionaire shall ensure that office space and related facilities are provided at the Site for the use of SEZMC and its representative, in accordance with the requirements set out in appendix 1.

4.6 TEMPORARY LAND

4.6.1 The Concessionaire shall procure and use any temporary land identified by the Environmental and Social Impact Assessment as required by the Concessionaire for the Project Activities.
4.6.2 The procurement or use of any land in terms of clause 4.6.1 shall be subject to compliance with the Environmental Legal Requirements.

4.7 **Key Personnel**

4.7.1 The Key Personnel are considered to be essential to the Project Activities.

4.7.2 Prior to replacing any of the Key Personnel (including due to death, illness, discharge, or resignation of such Key Personnel), the Concessionaire shall notify both the Independent Engineer and the SEZMC reasonably in advance and shall submit written justification (including proposed substitutions) for such change.

4.7.3 No replacement of the Key Personnel shall be made by the Concessionaire without the prior written approval of the Independent Engineer and the SEZMC, which shall not be unreasonably withheld.

5. **Site**

5.1 **Access**

If the Concessionaire (or its Contractors) requires access to the Site prior to the Lease Agreement Date, for the purposes of conducting preliminary activities such as investigations of the geotechnical or hydrological conditions of the Site, SEZMC shall support the Concessionaire in gaining such access. If agreed, such access shall be granted to the Concessionaire (or its Contractors) on terms and conditions to be agreed and recorded in writing between the Concessionaire, GoS and SEZMC. If and when such access is granted, the indemnities set out in clause 22 shall become fully effective in respect of the access to and activity on the Site.

5.2 **Lease Agreement**

5.2.1 Within ninety (90) days of the CP Completion Date, the Concessionaire shall enter into the Lease Agreement for the duration of the Lease Term and SEZMC shall ensure that the physical possession of the Site is handed over to the Concessionaire by the GoS upon and subject to the terms of the Lease Agreement.

5.2.2 The Concessionaire shall be responsible for registration and compliance of other Legal Requirements for execution of the Lease Agreement. All stamp duty, registration fees and other Taxes applicable to and resulting from the Lease Agreement shall be paid by the Concessionaire. All present and future federal, provincial, municipal, city district government, taxes, duties, levies or other impositions whatsoever arising out of and as a result of the Lease Agreement shall be paid by the Concessionaire. Any payments made by the SEZMC or the GoS on behalf of the Concessionaire shall be reimbursed by the Concessionaire to the SEZMC or the GoS (as the case may be) within ten (10) Days of such payment being made.

5.2.3 The Concessionaire hereby indemnifies SEZMC and the GoS (as applicable) from all liabilities, Claims, damages, costs, penalties, fines, expenses, fees (including attorney’s fees) and charges of any nature associated with any non-compliance by the Concessionaire of its obligations contained in this clause 5.2.

5.3 **Access for SEZMC and its Designee**

The Concessionaire shall permit and procure that its Contractors permit the GoS, the SEZMC, the Independent Appointees (as may be required) and their authorised representatives and designees to enter upon the Site at any time:

5.3.1 to monitor, sample, or otherwise investigate the nature and volume of discharges or other emissions from the Project;
5.3.2 to ensure that any interconnection to any utilities system is not adversely affecting or will not adversely affect such system;

5.3.3 in response to a fire, explosion or any other like event at the Site to preserve the safety or health of persons, materials or equipment at the Site;

5.3.4 to exercise their rights and comply with their obligations under this Agreement and the other Project Agreements;

5.3.5 to comply with any applicable Legal Requirements; and

5.3.6 in connection with an Archaeological Delay Event for the purposes of liaising with any Competent Authority in connection with the removal of Archaeological Items from the Site.

5.4 EXERCISE OF ACCESS RIGHTS

In exercising the right of access under clause 5.3, SEZMC and the GoS shall cause their representatives and designees to comply with all applicable Legal Requirements and the reasonable directions of the Concessionaire. SEZMC and the GoS shall exercise their access rights for the purposes specified in clause 5.3 in a manner that does not interfere with, or increase the cost of, the Concessionaire’s activities on the Site and shall adhere to the reasonable safety rules and procedures of the Concessionaire that are consistent with the Good Industry Practices.

5.5 ACCESS ROUTES AND TRANSPORTATION

5.5.1 The Concessionaire shall be responsible for:

5.5.1.1 selection and usage of all transportation means, routes, roads, bridges, highways and routes to and from the Site in respect of performance of its obligations under the Agreement and the SEZMC shall not be responsible for any Claims attributable to the Concessionaire in respect of the same; and

5.5.1.2 constructing and maintaining an external road network to the Site and an internal road network within the Site, till the zero point of each Plot, in accordance with the requirements of this Agreement, appendix 1, the Legal Requirements, and the Master Plan.

5.5.2 SEZMC, in collaboration with the Competent Authorities, shall assist and facilitate the Concessionaire in acquiring necessary Approvals and rights of way for the construction of external access roads to the Site.

5.6 SITE RISKS

5.6.1 SEZMC has made available to the Concessionaire the information in SEZMC’s possession in connection with the Site as set out in appendix 1 (the “Site Information”).

5.6.2 The Concessionaire shall be deemed to have obtained all necessary information as to the risks, contingencies and other circumstances which may influence or affect the implementation of the Project at the Site.

5.6.3 The Concessionaire shall also be deemed to have inspected and examined the Site and its surroundings, analysed and verified the accuracy and reliability of the Site Information and to have satisfied itself as to all the relevant matters including:

5.6.3.1 the nature of the Site, including the subsurface, hydrological, climatic and general physical conditions of the Site;

5.6.3.2 the suitability of the Site for undertaking the Project Activities;
5.6.3.3 that the Site is being handed over in a vacant manner, free of encroachments;
5.6.3.4 the extent, nature and availability of labour, material, transport, accommodation, storage facilities and other facilities and resources necessary to undertake the Project;
5.6.3.5 the nature of design, construction work and operations and maintenance services necessary for the performance of its obligations under this Agreement;
5.6.3.6 the Legal Requirements for undertaking the Project;
5.6.3.7 the risk of injury or damage to the Adjoining Property and to the occupiers thereof or any other risk;
5.6.3.8 the utilities and other facilities necessary to undertake the Project Activities; and
5.6.3.9 all other matters that may affect the performance of its obligations under this Agreement.

5.6.4 The Concessionaire acknowledges and agrees that except as otherwise provided in this Agreement, if any error or discrepancy is subsequently discovered in the data, including the Site Information, made available by the SEZMC or any other person on its behalf, then, such error or discrepancy shall not entitle the Concessionaire to any change in the Implementation Schedule, and / or compensation for loss of revenue, Increased Costs or any other costs it may incur or suffer. Further, any misinterpretation of the data, studies and reports provided by the SEZMC or any other person on its behalf shall not relieve the Concessionaire from the performance of its obligations under this Agreement.

5.7 DISCLAIMER

5.7.1 The Concessionaire acknowledges that it has, after a complete and careful examination, made an independent evaluation of the RFP, scope of the Project, this Agreement, the Site, the Site Information, existing structures, local conditions and all information provided by SEZMC (or any other person on its behalf) or obtained, procured or gathered otherwise and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. SEZMC makes no representations whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Concessionaire confirms that it shall have no Claim whatsoever against SEZMC in this regard.

5.7.2 The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters specified in clause 5.7.1 and that SEZMC shall not be liable for the same in any manner whatsoever to the Concessionaire or any person claiming through or under any of them.

5.7.3 Any mistake or error in or relating to any of the matters specified in clause 5.7.1 shall not vitiate this Agreement or render it voidable.

5.7.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters specified in clause 5.7.1, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of SEZMC to give any notice pursuant to this clause 5.7.4 shall not prejudice the disclaimer contained in clause 5.7.1 and shall not in any manner reallocate to SEZMC any risks, obligations or liabilities assumed by the Concessionaire pursuant to this Agreement.
5.7.5 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Concessionaire. SEZMC shall not be liable in any manner for such risks or the consequences thereof.

5.8 SITE SECURITY

5.8.1 From the Lease Agreement Date, the Concessionaire shall be responsible for making all necessary arrangements to secure the Site, and all persons, moveable and immovable properties present at or forming part of the Site, in accordance with the Legal Requirements.

5.8.2 SEZMC shall provide assistance for reasonable security on the Site, as and when reasonably requested by the Concessionaire. The provision of any assistance by the SEZMC (including delay or omission to provide such assistance) shall not relieve or absolve the Concessionaire of its obligations under the Project Agreements.

6. CONSTRUCTION

6.1 PREPARATION AND APPROVAL OF MASTER PLAN

6.1.1 Within forty-five (45) Days following the Effective Date, the Concessionaire shall submit to the Independent Engineer (with a copy to the SEZMC) a proposed master plan for the Project including plan for provision of utilities, based on the Preliminary Master Plan and the Construction Drawings, prepared in compliance with this Agreement, Good Industry Practices, the Legal Requirements and the Accounting Principles (the “Proposed Master Plan”).

6.1.2 Within fifteen (15) Days of receipt, the Independent Engineer shall either:

6.1.2.1 approve the Proposed Master Plan (the “Master Plan”); or

6.1.2.2 reject the Proposed Master Plan and convey its comments / observations (if any) to the Concessionaire.

6.1.3 The Concessionaire shall (at its own cost and expense) re-submit the revised Proposed Master Plan no later than fifteen (15) Days from receipt of the rejection and / or comments / observations under clause 6.1.2.2, and the approval process under this clause 6.1 shall be repeated.

6.1.4 The Master Plan shall be binding on the Parties including for performance of the Construction Activities.

6.1.5 The Master Plan may be amended from time to time through mutual agreement between the Parties and the Independent Engineer.

6.1.6 Any errors, omissions, ambiguities, inconsistencies, inadequacies, defects or deficiencies in the Master Plan or arising therefrom, including those caused due to non-compliance with clause 6.1.1, shall be rectified by the Concessionaire at its sole cost and risk.

6.1.7 The SEZMC and the Independent Appointees (as applicable) may use the Master Plan for such purposes it may require for the implementation of the Project.

6.2 CONSTRUCTION OF THE PROJECT

6.2.1 The Concessionaire shall undertake the Construction Activities in accordance with the parameters set out in appendix 1, such that the Project, and any part thereof:

6.2.1.1 is free from all defects in design, materials, and workmanship; and

6.2.1.2 is safe, reliable and fit for purpose.
6.2.2 All Construction Activities shall be consistent with the Good Industry Practices, Environmental Legal Requirements, and in accordance with any relevant Approvals, the Legal Requirements and the Accounting Principles.

6.2.3 The Concessionaire shall: (a) rectify any defects and/or deficiencies in the Project, including any defects and/or deficiencies identified by the Independent Engineer or the SEZMC; (b) bear all costs of remedying such defects and deficiencies; and (c) not be entitled to any extension of time for remedying such defects or deficiencies.

6.2.4 The Concessionaire shall ensure that an adequate number of suitably skilled and experienced contractors, architects, workmen and other personnel are engaged to undertake the Project, including the Key Personnel. The Concessionaire shall be solely responsible for the work performed by any staff and labour engaged by it to execute the Project and for payment of all applicable labour charges, fees, cess payable in accordance with the Legal Requirements (including labour welfare legislations). The Concessionaire shall ensure that its Contractors provide all necessary amenities and welfare facilities for the staff and labour engaged by them at the Site and comply with all applicable labour laws. The Concessionaire shall indemnify and hold harmless the SEZMC from and against all Claims, liabilities, expenses, costs and losses suffered or incurred by the SEZMC due to the Concessionaire’s or any Contractor’s failure to comply with any Legal Requirements (including labour welfare legislations).

6.2.5 The Independent Appointees and the SEZMC (and its representatives) shall have the right, at all times, to attend and be present at the Site and to observe the progress of the Construction Activities.

6.3 CHANGE IN SCOPE

6.3.1 Following the Effective Date, either Party may propose a Change in Scope, provided that neither Party shall propose a Change in Scope which would, if implemented:

6.3.1.1 materially and adversely affect the health and safety of any person;

6.3.1.2 infringe any Legal Requirement;

6.3.1.3 be a departure from the Good Industry Practice;

6.3.1.4 cause any Approval to be revoked or be unobtainable;

6.3.1.5 require a new Approval which will not be obtainable by the Concessionaire despite it using all reasonable endeavours; or

6.3.1.6 materially affect the Project Activities in a manner that cannot be compensated for under this Agreement.

6.3.2 Within fifteen (15) Days of receipt of a request for a Change in Scope from the SEZMC, the Concessionaire shall submit a proposal to the SEZMC and the Independent Appointees setting out in sufficient detail the implications of the proposed Change in Scope, including any implications on the Implementation Schedule, and any additional costs to be incurred in undertaking the Change in Scope.

6.3.3 Based on its review of the proposal submitted by the Concessionaire, the SEZMC and the Independent Appointees may, at their sole discretion: (a) accept the proposal and the corresponding adjustment to the Implementation Schedule and/or the additional costs for undertaking the Change in Scope; or (b) provide its comments on the proposal seeking amendments and/or justification for the implications put forth by the Concessionaire; or (c) reject the proposal submitted by the Concessionaire and withdraw the proposed Change in Scope, within fifteen (15) Days from the date of receipt of the Concessionaire’s proposal under clause 6.3.2.
6.3.4 To the extent the SEZMC or the Independent Appointees seek amendments and/or justification with respect to the proposal submitted by the Concessionaire, the Concessionaire shall incorporate or address, in writing, such comments and submit a revised proposal.

6.3.5 On approval of the proposal or the revised proposal, as the case may be, by the SEZMC, as recommended by the Independent Appointees, the SEZMC shall issue a Change in Scope Order and the Concessionaire shall proceed with the Change in Scope in accordance with the Change in Scope Order.

6.3.6 If the Parties are unable to agree on the implications of a Change in Scope proposed by the SEZMC, which in the SEZMC’s view is necessary or desirable for the Project, as determined by the Independent Appointees, the SEZMC shall have the right to require the Concessionaire to carry out the proposed Change in Scope at the cost determined by the Independent Appointees. Any dispute on the terms of the Change in Scope (including the method of payment of additional costs) shall be resolved in accordance with clause 26.

6.3.7 On implementation of a Change in Scope Order, the Concessionaire shall be entitled to the agreed adjustment to the Implementation Schedule and payment of additional amounts, if any, as set out in the Change in Scope Order.

6.3.8 The method of payment for and funding of any additional costs that become payable by the SEZMC in relation to a Change in Scope Order, shall be agreed by the Parties and included in the Change in Scope Order.

6.3.9 If, after the Effective Date, the Concessionaire wishes to effect any Change in Scope, the Concessionaire shall obtain the prior written approval of the SEZMC, such approval not to be unreasonably withheld or delayed. On approval by the SEZMC, the SEZMC shall issue a Change in Scope Order and the Concessionaire shall proceed with the Change in Scope in accordance with the Change in Scope Order. Any such change shall be effected at the Concessionaire’s own risk and cost.

6.3.10 No Change in Scope shall invalidate this Agreement.

6.4 DRAWINGS AND DOCUMENTATION

6.4.1 The Concessionaire shall obtain and maintain at the Site, in an orderly manner and in accordance with the Operations and Maintenance Procedures and Good Industry Practices, complete and up to date copies of all:

6.4.1.1 as-built drawings (including electronic files) for the Project, related to the civil and architectural works; and

6.4.1.2 detailed technical documents (including electronic files) related to the Project Activities.

7. IMPLEMENTATION SCHEDULE AND DELAYS

7.1 COMPLIANCE WITH IMPLEMENTATION SCHEDULE

The Concessionaire shall achieve the timely completion of the Project and the Construction Activities in accordance with the Implementation Schedule. The Concessionaire shall promptly inform the Independent Appointees and the SEZMC of any actual or anticipated material deviations from the dates stipulated in the Implementation Schedule. Without prejudice to the Parties’ rights and obligations under clauses 7.2, 7.3 or 7.4, as the case may be, the Concessionaire shall provide the Independent Appointees and the SEZMC with a remedial programme setting out the actions to be taken by the Concessionaire to mitigate the adverse effect of any such deviations on its ability to undertake the Project and the Construction Activities in accordance with the Implementation Schedule.
7.2 ADJUSTMENT OF IMPLEMENTATION SCHEDULE

7.2.1 If a Relief Event causes a delay that has, or is reasonably likely to have, the effect of delaying the achievement of the CP Completion Date, the Scheduled Substantial Completion Date and/or the Scheduled Construction Completion Date, then, subject to clause 7.2.2, the Scheduled CP Completion Date, the Scheduled Substantial Completion Date and/or the Scheduled Construction Completion Date (as applicable), and the Implementation Schedule shall be adjusted equitably by the Independent Appointees by taking into account the ability of the Concessionaire to re-schedule its activities to minimise the delay and the effect of such Relief Event on the ability of the Concessionaire to achieve the relevant milestone by the respective scheduled date, provided that such scheduled date shall not be extended in circumstances where a delay would have nevertheless been experienced had such Relief Event not occurred.

7.2.2 The Concessionaire must notify the Independent Appointees and the SEZMC in writing promptly (and in any event within fourteen (14) Days) after becoming aware of the occurrence of a Relief Event, and together with such notice or as soon as possible (and in any event within fourteen (14) Days) following such notice, the Concessionaire shall provide full details of the Relief Event and its consequences including details to confirm the existence of a Relief Event and its impact on the Scheduled CP Completion Date, the Scheduled Substantial Completion Date and/or the Scheduled Construction Completion Date (as applicable), and the Implementation Schedule. As soon as practicable (and in any event within fourteen (14) Days after receiving the Concessionaire’s detailed information and justification), the Independent Appointees shall confirm whether (and to what extent) they agree to adjust the Scheduled CP Completion Date, the Scheduled Substantial Completion Date and/or the Scheduled Construction Completion Date (as applicable), and the Implementation Schedule.

7.2.3 If a Force Majeure Event causes a delay that has, or is reasonably likely to have, the effect of delaying:

7.2.4.1 the achievement of the CP Completion Date, then the provisions of clause 3.3.1 shall apply; or

7.2.4.2 the achievement of the Substantial Completion Date and/or the Construction Completion Date, then the provisions of clause 18.7 shall apply.

7.3 CONCESSIONAIRE LIQUIDATED DAMAGES FOR DELAY

7.3.1 The Concessionaire acknowledges that the SEZMC will suffer actual damages if, for any reason not otherwise excused under this Agreement, the Concessionaire fails to achieve:

7.3.1.1 the Substantial Completion Date by the Scheduled Substantial Completion Date; and/or

7.3.1.2 the Construction Completion Date by the Scheduled Construction Completion Date.

7.3.2 Without prejudice to the SEZMC’s rights under clause 20, the Concessionaire shall pay liquidated damages (the “Construction Period Damages”) to the SEZMC in a sum calculated at the rate of PKR 400,000/- (Pakistani Rupees Four Hundred Thousand Only) for each full Day of delay in achieving:
7.3.2.1 the Substantial Completion beyond the Scheduled Substantial Completion Date, up to a maximum of four percent (4%) of the Initial Project Cost; and/or

7.3.2.2 the Construction Completion beyond the Scheduled Construction Completion Date, up to a maximum of four percent (4%) of the Initial Project Cost,

(each of clauses 7.3.2.1 and 7.3.2.2, the “Delay Damages Cap”).

7.3.3 Any payable Construction Period Damages shall be paid by the Concessionaire within thirty (30) Days of the date of the Concessionaire’s receipt of an invoice from the SEZMC setting out the amount of liquidated damages which are then due and payable by the Concessionaire. If the Concessionaire fails to pay such Construction Period Damages when due, the SEZMC shall be entitled to claim such amounts under the Construction Performance Security, plus charges at the Late Payment Rate, accruing from the due date of such payment until the SEZMC is actually paid such amounts, and the same shall be computed for the actual number of Days on the basis of a three hundred and sixty-five (365) Day year. To the extent that the Concessionaire’s liability for the Construction Period Damages exceeds the then current balance of the Construction Performance Security, the SEZMC shall be entitled to take steps to recover such amounts (plus any applicable charge) as a debt due from the Concessionaire to the SEZMC (including by way of set-off against any amounts due to the Concessionaire from the SEZMC under any Project Agreement).

7.3.4 The Parties agree that:

7.3.4.1 the Construction Period Damages payable pursuant to this clause 7.3 represent the actual losses, liabilities, damages, costs, charges or expenses that the SEZMC will suffer as a result of the failure of the Concessionaire to achieve the: (a) Substantial Completion Date by the Scheduled Substantial Completion Date; and/or (b) Construction Completion Date by the Scheduled Construction Completion Date (as the case may be);

7.3.4.2 there is, in any event, a commercial justification and legitimate interest in imposing such liquidated damages as a payment for the failure of the Concessionaire to achieve the: (a) Substantial Completion Date by the Scheduled Substantial Completion Date; and/or (b) the Construction Completion Date by the Scheduled Construction Completion Date, which would not be satisfied by a right to recover damages on an unliquidated basis for such default; and

7.3.4.3 the payment or deduction of Construction Period Damages payable pursuant to this clause 7.3 shall not relieve the Concessionaire from its obligations to complete the Construction Activities, or from any of its other duties, obligations or responsibilities under this Agreement. The Concessionaire shall use and continue to use its best endeavours to avoid or reduce further delay in completing the Construction Activities.

7.4 CONCESSIONAIRE LIQUIDATED DAMAGES FOR ABANDONMENT

7.4.1 If Abandonment occurs, in addition to any rights or remedies that the SEZMC may have pursuant to clause 20, the Concessionaire shall pay to the SEZMC as liquidated damages the following amount:

7.4.1.1 in case of Abandonment prior to the Construction Completion Date, an amount equal to the face amount of the Construction Performance Security as at the date Abandonment occurs, after any amounts paid or payable under clause 7.3 have been paid; and
7.4.1.2 in case of Abandonment on or following the Construction Completion Date, an amount equal to the face amount of the O&M Performance Security as at the date Abandonment occurs.

7.4.2 Any liquidated damages payable pursuant to this clause 7.4 shall be paid by the Concessionaire within thirty (30) Days of the date of the Concessionaire’s receipt of an invoice from the SEZMC setting out the amount of liquidated damages which are then due and payable by the Concessionaire. If the Concessionaire fails to pay such liquidated damages when due, the SEZMC shall be entitled to claim such amounts under the Performance Securities or to take steps to recover such amounts as a debt due from the Concessionaire to the SEZMC, plus charges at the Late Payment Rate, accruing from the due date of such payment until the SEZMC is actually paid such amounts, and the same shall be computed for the actual number of Days on the basis of a three hundred and sixty-five (365) Day year. To the extent that the Concessionaire’s liability for liquidated damages under clause 7.4.1 (plus any charges at the Late Payment Rate) exceeds the face amount of the Performance Securities, at the date of issue of a demand thereunder, SEZMC shall be entitled to take steps to recover such amounts (plus any charges at the Late Payment Rate) as a debt due from the Concessionaire to the SEZMC (including by way of set-off against any amounts due to the Concessionaire from the SEZMC under any Project Agreement).

7.4.3 The Parties agree that:

7.4.3.1 the liquidated damages payable pursuant to this clause 7.4 represent the actual losses, liabilities, damages, costs, charges or expenses that the SEZMC will suffer as a result of Abandonment by the Concessionaire; and

7.4.3.2 there is, in any event, a commercial justification and legitimate interest in imposing such liquidated damages as payment for Abandonment by the Concessionaire which would not be satisfied by a right to recover damages on an unliquidated basis for such default.

7.5 General Damages

7.5.1 If any of clause 7.3 or 7.4 is found for any reason to be void, invalid or otherwise inoperative so as to disentitle the SEZMC from claiming liquidated damages under such clause(s), the SEZMC is entitled to claim against the Concessionaire for general damages at law for the Concessionaire’s failure to achieve the: (a) Substantial Completion Date by the Scheduled Substantial Completion Date; and/or (b) the Construction Completion Date by the Scheduled Construction Completion Date, or for Abandonment, subject to the limitation that such damages must not exceed the amounts set out in clause 7.3 for any Day of delay or clause 7.4 for Abandonment, as the case may be.

8. Completion

8.1 Substantial Completion Certificate

8.1.1 The Parties hereto expressly agree that a Substantial Completion Certificate under this clause shall, upon request of the Concessionaire, be issued by the Independent Engineer, if:

8.1.1.1 at least ninety-five percent (95%) of the Construction Activities have been completed in accordance with the requirements of this Agreement, including appendix 1, the Master Plan, Good Industry Practices, the Legal Requirements, and the Accounting Principles; and

8.1.1.2 the movement and safety of the persons including the Zone Enterprises is not affected,
each as assessed and determined by the Independent Engineer (the “Substantial Completion”).

8.1.2 The Independent Engineer shall (in consultation with the SEZMC) issue the Substantial Completion Certificate upon Substantial Completion of the Construction Activities, even if certain works or things forming part thereof are outstanding and not yet complete. In such an event, the Substantial Completion Certificate shall have appended thereto a list of outstanding items to be completed by the Concessionaire, signed jointly by the Independent Engineer and the Concessionaire (the “Construction Completion Check List”).

8.2 Construction Completion Certificate

8.2.1 The Concessionaire undertakes to complete all items specified in the Construction Completion Check List by the Scheduled Construction Completion Date (the “Construction Completion”).

8.2.2 The Construction Completion Certificate shall be issued by the Independent Engineer (in consultation with the SEZMC) upon Construction Completion.

9. Utilities and Other Infrastructure

9.1 Utilities and Other Infrastructure

9.1.1 The Concessionaire shall be responsible, at its own risk and cost, for:

9.1.1.1 procuring all electricity and other utilities and other infrastructure required: (a) for the Project Activities; and (b) pursuant to the Legal Requirements; and (c) for the reinstatement of the Site in accordance with the Handover Conditions following the Final Expiry Date; and

9.1.1.2 coordinating with the relevant utility provider to relocate any utility infrastructure under or over the Site.

9.1.2 From the Lease Agreement Date and till the Handover Date, the Concessionaire shall be responsible for securing all supplies of telecommunications and all waste disposal services required for the Project either from its own resources or from the applicable authorities at published tariffs and in accordance with the standard terms and conditions of supply and pay for such supplies.

9.1.3 SEZMC, in collaboration with the Competent Authorities, shall use its best endeavours to assist and facilitate the Concessionaire in acquiring necessary Approvals and in the relocation of existing utilities and the procurement of external utilities works (including rights of way) at the risk and cost of the Concessionaire.

10. Operation and Maintenance

10.1 O&M Obligations

The Concessionaire shall:

10.1.1 carry out all O&M Activities in a manner consistent with this Agreement, Good Industry Practices, and in accordance with the Legal Requirements, the Accounting Principles, and the Operating and Maintenance Procedures;

10.1.2 employ at the Project all safety devices and practices required by applicable Legal Requirements, the requirements of appendix 1, all the Insurance Policies and the Good Industry Practices;

10.1.3 undertake the Project Activities in accordance with the parameters set out in appendix 1 such that the Project:
10.1.3.1 is free from all defects in design, materials, and workmanship;
10.1.3.2 is safe, reliable and fit for purpose; and
10.1.3.3 capable of meeting the technical specifications as provided in appendix 1;

10.1.4 operate and maintain the Project so as to prevent the release or leaching of any Hazardous Substances affecting the Site or surrounding environs (including the soil, subsoil, surface water, or groundwater);

10.1.5 as soon as reasonably practicable, inform the SEZMC of any instances of fire, explosion or any other like event at the Site;

10.1.6 to the extent consistent with the Good Industry Practice, keep accurate and up to date records of any accidents or other occurrences at the Site that result in injury to persons or damage to property for a minimum period of ten (10) years from the occurrence of such event, and provide to the Independent Engineer and the SEZMC reasonable access to such records, subject to requirements of confidentiality; and

10.1.7 ensure that its personnel are always on duty at the Project, twenty-four (24) hours a Day and seven (7) Days a week, from the Lease Agreement Date till the Final Expiry Date.

10.2 **CO-ORDINATION**

The Concessionaire shall maintain operating communications between the Project and the SEZMC in accordance with the Operating and Maintenance Procedures.

10.3 **OPERATING AND MAINTENANCE PROCEDURES**

10.3.1 The Concessionaire shall at its own costs and expense, develop written operating and maintenance procedures for the Project in accordance with this clause 10.3 (the “Operating and Maintenance Procedures”).

10.3.2 The Operating and Maintenance Procedures shall:

10.3.2.1 be based on the design parameters of the Project and other requirements specified in appendix 1 and the Preliminary O&M Plan;

10.3.2.2 be consistent with the Good Industry Practice and Legal Requirements; and

10.3.2.3 provide comprehensive procedures for all operational interfaces between the SEZMC and the Concessionaire.

10.3.3 The Concessionaire shall submit a draft of the Operating and Maintenance Procedures to the Independent Engineer and the SEZMC no later than one hundred eighty (180) Days prior to the Scheduled Substantial Completion Date.

10.3.4 Within sixty (60) Days after its receipt thereof, the Independent Engineer and the SEZMC shall have the right to provide comments on the draft Operating and Maintenance Procedures.

10.3.5 If, within such sixty (60) Day period, the Independent Engineer and the SEZMC do not provide any comments, the draft proposed by the Concessionaire shall become the Operating and Maintenance Procedures.

10.3.6 If the Independent Engineer or the SEZMC provide comments on the draft Operating and Maintenance Procedures within such sixty (60) Day period, the Concessionaire shall, within thirty (30) Days of its receipt of such comments, either incorporate the requested changes to the draft Operating and Maintenance Procedures or request a meeting with the Independent Engineer or the SEZMC to discuss any outstanding
requested changes. Any Dispute over the requested changes still not resolved within ten (10) Days following any such meeting between the Parties shall be referred for resolution pursuant to clause 26.

10.4 **O&M Fee**

The Concessionaire shall be entitled to levy and collect maintenance charges from Zone Enterprises (the “O&M Fee”) and immediately deposit the same into the O&M Escrow Account. The O&M Fees shall be released to the Concessionaire in accordance with the Escrow Agreement and the Concessionaire shall utilize such O&M Fees for the O&M Activities.

11. **MARKETING AND REVENUE**

11.1 **Marketing Plan**

11.1.1 Within twenty-five (25) Days of the Effective Date, the Concessionaire shall submit to the Independent Engineer and SEZMC a detailed plan for marketing of Plots in line with the Preliminary Marketing Plan (the “Marketing Plan”).

11.1.2 The Marketing Plan shall:

11.1.2.1 specify that the Plots will be marketed by the Concessionaire as “Industrial and Commercial Plots in Marble City Karachi”; and

11.1.2.2 detail marketing strategies to meet the Initial Allotment Criteria and the Minimum Allotment Criteria.

11.1.3 The Independent Engineer (in consultation with the SEZMC) shall notify the Concessionaire in writing, within ten (10) Days of its receipt of the proposed Marketing Plan, any observations whether any marketing item does not comply with requirements of Section 11.1.2.

11.1.4 The Concessionaire shall re-submit the Marketing Plan for review of the Independent Engineer (in consultation with the SEZMC) after addressing any observations raised under clause 11.1.3.

11.2 **Allotment of Plots**

11.2.1 The Concessionaire shall:

11.2.1.1 market and allot the Plots to the Zone Enterprises at any time after the Marketing Launch Date, in accordance with the Legal Requirements, the Master Plan, and the Marketing Plan, by way of Allotment Letters; and

11.2.1.2 collect payment (including advances) against allotment of Plots to the Zone Enterprises as per the Allotment Letter which shall be deposited in the Revenue Escrow Account.

11.2.2 From the Marketing Launch Date and till the first (1st) anniversary of the Marketing Launch Date, the Concessionaire shall offer:

11.2.2.1 seventy percent (70%) of the Plots to Marble and Granite Sector Zone Enterprises for allotment on a ‘right of first refusal’ basis; and

11.2.2.2 remaining thirty percent (30%) of the Plots to the Allied Sector Zone Enterprises,

(collectively, the “Initial Allotment Criteria”).

11.2.3 After the first (1st) anniversary of the Marketing Launch Date, if the Initial Allotment Criteria is not met, the Concessionaire may offer the remaining Plots to the Allied Sector Zone Enterprises, provided, however, at least thirty percent (30%) of the Plots
shall be allotted to Marble and Granite Sector Zone Enterprises (the “Minimum
Allotment Criteria”).

11.2.4 The Zone Enterprises shall be obligated to complete construction activities in
accordance with the terms stipulated in the Allotment letter.

11.2.5 Each Allotment Letter shall explicitly provide that the proposed allotment of the
relevant Plot shall automatically stand cancelled in case this Agreement is
terminated due to a Developer Event of Default.

11.2.6 In the event of cancellation of the Allotment Letter in accordance with the terms
thereof, the Concessionaire:

11.2.6.1 shall refund eighty percent (80%) of the payments received from the Zone
Enterprise till the date of cancellation of the Allotment Letter and the
remaining twenty percent (20%) of the payments shall be shared between
SEZMC and the Concessionaire on a 70:30 basis; and

11.2.6.2 may reallocate the respective Plot.

11.2.7 In the event the amount standing to the credit of the Revenue Escrow Account are
not sufficient to make payments under clause 11.2.6.1 (“Shortfall Amount”), then
the Concessionaire shall procure the payment of the Shortfall Amount through other
sources, including funds from its Sponsors, within thirty (30) Days of cancellation
of the Allotment Letter, failing which the SEZMC shall be entitled to encash the
Construction Performance Security or the O&M Performance Security (as
applicable) to the extent of the outstanding Shortfall Amount.

11.3 **Sub-Lease Agreements**

11.3.1 The Concessionaire shall enter into sub-lease agreements with the Zone Enterprises
after at least six (06) Months from the commence ment of the commercial operations
by the respective Zone Enterprise in the allotted Plot, as verified by the Independent
Engineer, in accordance with the Legal Requirements and in the form and substance
agreed between the Parties (the “Sub-Lease Agreements”).

11.3.2 Upon execution of a Sub-Lease Agreement, the respective Zone Enterprise shall
only be entitled to transfer their Sub-Lease Agreement, if:

11.3.2.1 the transferee of the Sub-Lease Agreement is approved by the SEZMC;

11.3.2.2 such Zone Enterprise is not in default of the terms of the Sub-Lease
Agreement and there are no outstanding dues payable by such Zone
Enterprise to the Concessionaire;

11.3.2.3 the transfer of the Sub-Lease Agreement does not constitute a real estate
activity;

11.3.2.4 the prescribed transfer fee has been deposited by the Zone Enterprise to the
Concessionaire; and

11.3.2.5 such Zone Enterprise has obtained all approvals required under the Legal
Requirements.

11.3.3 The Concessionaire undertakes that all Sub-Lease Agreements shall be in
conformity with the terms and conditions of this Agreement and the Lease
Agreement and shall contain, at minimum, the following provisions:

11.3.3.1 in the event of a conflict (direct or indirect) between the provisions of this
Agreement or the Lease Agreement, and the Sub-Lease Agreement, the
provisions of this Agreement and the Lease Agreement (as the case may be)
shall prevail and such Sub-Lease Agreement shall stand modified to the extent necessary;

11.3.3.2 the Sub-Lease Agreements shall be assigned to the SEZMC on the Final Expiry Date, provided, however, such assignment will be at the discretion of and at no cost to the SEZMC;

11.3.3.3 the Sub-Lease Agreements shall not be transferable to any third party by the Zone Enterprise except as permitted in clause 11.3.2;

11.3.3.4 the term of the Sub-Lease Agreements shall not, in any event, exceed the remaining Lease Term (at the time of signing of a Sub-Lease Agreement); and

11.3.3.5 all payments, charges, penalties etc. payable to the Concessionaire under such Sub-Lease Agreements which shall be deposited (on the relevant due date under the Sub-Lease Agreements) in the Revenue Escrow Account.

11.4 GENERAL OBLIGATIONS

11.4.1 The Concessionaire shall market Plots in accordance with the Marketing Plan.

11.4.2 The Concessionaire shall:

11.4.2.1 ensure registration and fulfilment of other requirements under the Legal Requirements for execution of the Sub-Lease Agreements;

11.4.2.2 be liable for ensuring fulfilment of the commitments made and liabilities assumed by the Zone Enterprises under the Allotment Letters and the Sub-Lease Agreements;

11.4.2.3 monitor and ensure the compliance of the Zone Enterprises with all Legal Requirements;

11.4.2.4 act as a liaison and facilitator between the SEZMC and the Zone Enterprises; and

11.4.2.5 indemnify, defend, save and hold harmless the SEZMC against all suits, proceedings, actions, demands and claims from Zone Enterprises or any other third-party in respect of any Allotment Letter, Sub-Lease Agreement or any other document entered into between or provided by the Concessionaire to a Zone Enterprise or any third party in relation to a Plot or otherwise in respect of the Project.

11.4.3 The Concessionaire shall provide SEZMC details of the Allotment Letters and Sub-Lease Agreements (together with certified copies (as being true and correct copies) of the Allotment Letters and the signed Sub-Lease Agreements) within thirty (30) Days of the issuance or signing thereof (as the case may be).

11.5 Escrow Agreement and Escrow Accounts

11.5.1 The Concessionaire shall enter into an Escrow Agreement within one hundred and twenty (120) Days of the Effective Date.

11.5.2 The Escrow Agreement shall remain in full force and effect until ninety (90) Days from the Handover Date.

11.5.3 The Escrow Agreement shall, inter alia, provide for:

11.5.3.1 setting up of the Revenue Escrow Account and the O&M Escrow Account;

11.5.3.2 receipt of Zone Enterprise Payments in the Revenue Escrow Account;
11.5.3.3 receipt of O&M Fees in the O&M Escrow Account;

11.5.3.4 release of Lease Payments to SEZMC which shall be calculated in accordance with clause 11.7 and appendix 6;

11.5.3.5 release of Zone Enterprise Payments to the Concessionaire, which shall be calculated in accordance with clause 11.7, appendix 6 and appendix 13;

11.5.3.6 release of O&M Fees from the O&M Escrow Account to the Concessionaire for O&M Activities; and

11.5.3.7 release of all funds, on the Handover Date, standing to the credit of the Escrow Account to an account designated in writing by the Concessionaire.

11.5.4 The Concessionaire shall establish and maintain the Escrow Accounts strictly in conformity with the arrangement and structure agreed between the Parties, as laid down in this Agreement and the Escrow Agreement.

11.5.5 The Zone Enterprise Payments and O&M Fees shall be deposited in the Escrow Accounts by the Concessionaire. The Concessionaire shall, in no circumstances, be permitted to deposit or retain the aforesaid sums in any other account maintained by the Concessionaire or any third party.

11.5.6 Withdrawals from the Escrow Accounts for: (a) payments to the SEZMC; and (b) payments to the Concessionaire shall in each case be made only in accordance with the terms of the Escrow Agreement.

11.6 PAYMENT CERTIFICATE

11.6.1 Following achievement of a Payment Milestone, the Concessionaire shall be entitled to apply (along with the relevant supporting documents) to the Independent Appointees for certification that the Payment Milestone has been completed in accordance with this Agreement and the amount to be released from the Revenue Escrow Account in accordance with the Escrow Agreement upon completion of the relevant Payment Milestone (the “Payment Certificate”). The Independent Appointees shall, within seven (07) Days from the receipt of the application made by the Concessionaire:

11.6.1.1 issue a Payment Certificate (with a copy to the SEZMC) confirming that the Payment Milestone has been completed by the Concessionaire in accordance with this Agreement; or

11.6.1.2 inform the Concessionaire (with a copy to the SEZMC) that the Payment Milestone has not been completed to their satisfaction and specify the steps required to be undertaken by the Concessionaire to achieve the relevant Payment Milestone.

11.6.2 The Concessionaire shall upon completion of the relevant Payment Milestones, apply to the Independent Appointees for the Payment Certificate and the process set out under this clause 11.6 shall be repeated.

11.7 SEZMC LEASE PAYMENT

11.7.1 During the Lease Payment Period, a percentage share (calculated in accordance with clause 11.7.2) of the Zone Enterprise Payments received in the Revenue Escrow Account shall be released to the SEZMC from time to time, by crediting such sums to the SEZMC Sharing Account, in accordance with appendix 6 and the Escrow Agreement, as lease payments due to the SEZMC under the Lease Agreement (the “Lease Payments”).
11.7.2 During the Lease Payment Period, and until such time the Zone Enterprise Payments equivalent to the Benchmark Revenue Amount have been deposited in the Revenue Escrow Account, the Escrow Agent shall:

11.7.2.1 retain [●]\(^8\) percent of the Zone Enterprise Payments received for the Concessionaire in the Revenue Escrow Account and within two (02) Days of the receipt of the Escrow Account Certificate, release sums specified in the Escrow Account Certificate; and

11.7.2.2 within two (02) Days of receipt of any payments in the Revenue Escrow Account, release [●]\(^9\) percent of the Zone Enterprise Payments received as Lease Payments.

11.8 \textbf{SHORTFALL AND WINDFALL REVENUE}

11.8.1 In the event the aggregate sum of the Lease Payments received by SEZMC in a Lease Payment Year is less than the Committed Annual Lease Amount for such Lease Payment Year (the “Lease Payment Shortfall Event”):

11.8.1.1 the Independent Auditor shall issue a certificate specifying the difference between the Committed Annual Lease Amount and the aggregate sum of the Lease Payments received by the SEZMC for such Lease Payment Year (the “Lease Payment Shortfall Amount”) within three (03) Days of the Lease Payment Shortfall Event; and

11.8.1.2 thereafter: (i) an amount equal to the Lease Payment Shortfall Amount shall be released in favour of the SEZMC from the Revenue Escrow Account; and (ii) if the amount standing to the credit of the Revenue Escrow Account is less than the Lease Payment Shortfall Amount, then the Concessionaire shall procure the payment of the outstanding Lease Payment Shortfall Amount through other sources, including funds from its Sponsors, within thirty (30) Days of the Lease Payment Shortfall Event, failing which the SEZMC shall be entitled to encash the Construction Performance Security or the O&M Performance Security (as applicable) to the extent of the outstanding Lease Payment Shortfall Amount plus any mark-up at the rate of average of three (03) Months KIBOR plus two percent (2\%) per annum. For the avoidance of doubt, such payments shall not include any O&M Fees received by the Concessionaire.

11.8.2 In the event the Zone Enterprise Payments, in aggregate, exceed the Benchmark Revenue Amount at any time during the Lease Payment Period:

11.8.2.1 the Independent Auditor shall issue a written notification to the Parties and the Escrow Agent certifying the occurrence of such an event (the “Windfall Revenue Event”); and

11.8.2.2 following the occurrence of the Windfall Revenue Event, the Escrow Agent shall:

\begin{enumerate}[a)]
\item retain twenty-five percent (25\%) of the Windfall Revenue received for the Concessionaire in the Revenue Escrow Account and within two (02) Days of the receipt of the Escrow Account Certificate, release sums specified in the Escrow Account Certificate; and
\item within two (02) Days of receipt of any payments in the Revenue Escrow Account, release seventy-five percent (75\%) of the Windfall Revenue by crediting such sums to the SEZMC Sharing Account.
\end{enumerate}

\(^8\) The revenue sharing percentage quoted in Bidding Form F1 shall be inserted.

\(^9\) Ibid.
11.9 **Late Payments**

Any amount under any invoice that is not paid in accordance with this Agreement on or before the relevant payment date thereof shall, unless stated otherwise herein, bear commission at the Late Payment Rate accrued from, but excluding, the relevant payment date, and including, the Day on which such payment is made.

11.10 **Set-Off**

The SEZMC shall be entitled to set off against any sum payable by the SEZMC to the Concessionaire under this Agreement or any other Project Agreement, any debt or other moneys due and owing (other than any amounts (including any liquidated damages) that are the subject of an on-going Dispute) from the Concessionaire to the SEZMC under this Agreement or any Project Agreement.

11.11 **Taxes**

11.11.1 The Concessionaire shall be responsible for payment of all applicable Taxes, including all procedural compliances related to the payment of Taxes pursuant to this Agreement, and shall be solely responsible for any proceedings initiated by any Competent Authority, in respect of any non-payment or short payment of Taxes.

11.11.2 Upon request from the Concessionaire, SEZMC will provide all relevant certificates and information it has on record to enable the Concessionaire to obtain any Tax exemptions available in relation to the Project. It is clarified that the SEZMC shall not be responsible in any manner for ensuring that any applicable Tax exemptions are available to the Concessionaire.

11.11.3 The Concessionaire shall indemnify the SEZMC from and against any cost or liability that may arise due to the Concessionaire’s failure to pay all applicable Taxes, in connection with the Project.

12. **Relief Event**

12.1 **Notice of Relief Event**

12.1.1 If a Relief Event occurs after the Effective Date, the Concessionaire must notify the Independent Appointees and the SEZMC in writing promptly (and in any event within fourteen (14) days) after becoming aware of the occurrence of a Relief Event. Together with such notice or as soon as possible (and in any event within fourteen (14) days) following such notice, the Concessionaire shall provide all details of the Relief Event and its consequences, including sufficient details to confirm the existence of a Relief Event and its impact (if any) on the ability of the Concessionaire to perform its obligations under the Agreement.

12.1.2 As soon as practicable (and in any event within fourteen (14) days after receiving the Concessionaire’s detailed information and justification) pursuant to Section 12.1.1, the Independent Appointees shall confirm whether (and if so to what extent) they agree that a Relief Event has occurred and the extent of its impact on the ability of the Concessionaire to perform its obligations under the Agreement. Any Dispute as to whether or not a Relief Event has occurred or the extent of its impact may be referred by any Party for resolution in accordance with the Dispute Resolution Procedure.

12.1.3 If the Concessionaire does not deliver a notice as required by Section 12.1.1 in accordance with the terms thereof, the Concessionaire shall not be entitled to invoke the benefits of clause 12.2 in respect of the relevant Relief Event.

12.2 **Effect of Relief Event**

12.2.1 Subject to clause 12.1, if a Relief Event occurs:
12.2.1.1 prior to the Construction Completion Date, the provisions of clause 7.2 shall apply; and

12.2.1.2 if the Concessionaire has incurred or suffered any Increased Cost as a result of a Relief Event, the provisions of clause 19 shall apply.

13. **FUNDING AND SHAREHOLDER MATTERS**

13.1 **FUNDING OF PROJECT COST**

13.1.1 The Concessionaire shall be solely responsible for funding the Project Cost and/or the Project Cost Overruns for the development of the Project and performance of its obligations hereunder, by way of:

13.1.1.1 Sponsor Equity;

13.1.1.2 utilizing the Concessionaire’s share of the Zone Enterprise Payments; and/or

13.1.1.3 Sponsor Loans to the Concessionaire.

13.1.2 The Zone Enterprise Payments shall only be utilized for the Project Cost once the Minimum Upfront Equity by the Concessionaire has been fully utilized for the Project in accordance with the Escrow Agreement, as certified by the Independent Auditor.

13.2 **FUNDING OF SPONSOR EQUITY AND SPONSOR LOANS**

The Concessionaire hereby undertakes (subject to the Legal Requirements) from time to time to procure funding by the Sponsor(s) of the Project Cost and/or the Project Cost Overruns by way of:

13.2.1 Sponsor Equity through subscription of Shares against cash in Pakistani Rupees or consideration other than cash; and/or

13.2.2 the Sponsor Loans.

provided, however, any funding by the Sponsor under this clause 13 shall be subject to minimum shareholding requirements under clause 13.3.

13.3 **TRANSFER RESTRICTIONS**

13.3.1 Subject to clauses 13.3 and 13.4:

13.3.1.1 until the Construction Completion Date, the Concessionaire shall not undertake or permit and hereby undertakes to procure that the Sponsor(s) do not undertake or permit any transfer of shareholding, unless such transfer is required by operation of Laws, and subject to the Legal Requirements, the Transfer Criteria is complied with; and

13.3.1.2 following the Construction Completion Date and subject to compliance with the Transfer Criteria, any Sponsor may transfer its shareholding in the Concessionaire (the “Transferring Sponsor”) without the consent of the SEZMC, but with prior notice to the SEZMC, provided that such transfer does not result in the Sponsors (in aggregate) holding less than fifty-one percent (51%) of shareholding in the Concessionaire.

13.3.2 The Transferring Sponsor, in addition to complying with the Transfer Criteria, shall also, in case of transfer:
13.3.2.1 by the Lead Sponsor, confirm to SEZMC in writing, that the proposed transferee shall at minimum acquire thirty-four percent (34%) of the Shares; and

13.3.2.2 by any Sponsor (other than the Lead Sponsor), confirm to SEZMC in writing, that the proposed transferee shall at minimum acquire twenty percent (20%) of the Shares.

13.3.3 Prior to the Final Expiry Date:

13.3.3.1 the Lead Member shall hold at least thirty-four percent (34%) of the Shares; and

13.3.3.2 each Sponsor (other than Lead Member) shall hold at least twenty percent (20%) of the Shares;

failure to comply with this clause 13.3.3 shall constitute a Concessionaire Event of Default.

13.3.4 For the purpose of this clause 13.3, the term “transfer” shall mean any issuance, sale, transfer, conveyance, disposal or any event, transaction, arrangement, Encumbrance or agreement of any nature that results in or may result in: (a) the issuance of any Share to any person; (b) the transfer of direct and/or indirect legal and/or beneficial ownership of any shares, or securities convertible into shares, that causes or may cause the sale, transfer, conveyance or disposal of the Sponsor’s legal and/or beneficial ownership, direct or indirect, in the total (or any part thereof) paid up and outstanding Shares of the Concessionaire; or (c) the Sponsor(s) losing the power to direct the management, policies and decisions, in each case, of the Concessionaire.

13.4 OTHER TRANSFER RESTRICTIONS

13.4.1 In addition to the restrictions set out in clause 13.3, any proposed transfer of Shares, shall be subject to the following restrictions:

13.4.1.1 the proposed transfer of Shares must be in accordance with the terms of this Agreement;

13.4.1.2 SEZMC (through Independent Appointees) has confirmed that it has completed its “know your customer” review to its satisfaction (acting reasonably and without unreasonable delay) and that the proposed transferee is acceptable to it (in its sole discretion) on reputational or similar grounds, taking into account without limitation, such transferee’s environmental and social track record, links to terrorism, political affiliations and conflicts of interest;

13.4.1.3 no default is continuing or will or would result from the transferee becoming a party to this Agreement; and

13.4.1.4 the Concessionaire and the Sponsor have delivered certificates to the Independent Appointees certifying, as applicable, that each of the relevant foregoing conditions has been satisfied.

13.4.2 The Concessionaire shall, refuse to recognize any purported transfer of Shares in violation of this clause 13.4, or record or register any such transfer of Shares. Any transfer made in breach of this clause 13.4 shall be null and void.

13.5 UNDERTAKINGS

13.5.1 No later than ninety (90) Days after the Effective Date, the restrictions imposed under clauses 13.3 and 13.4 shall be recorded in the corporate documents (so as to effectively constitute restrictions thereunder) of the Concessionaire and noted on all
13.5.2 The Concessionaire shall ensure and procure funding from the Sponsors any amounts required to be funded by them in accordance with the terms of this Agreement.

14. RECORDS, REPORTING AND AUDIT

14.1 MONITORING RIGHTS

14.1.1 The Independent Appointees and the SEZMC and their duly appointed representatives shall have the right to:

14.1.1.1 monitor the Project; and

14.1.1.2 review and make copies of all materials required to be obtained and retained by the Concessionaire pursuant to clause 6.4 and all materials pertinent to the exercise of audit rights pursuant to clause 14.2.

14.1.2 The purpose of such monitoring and review shall be to determine:

14.1.2.1 in the case of the Construction Activities, whether the Project is (or is being) designed, engineered, erected, constructed and installed in accordance with the technical parameters set out in appendix 1 and this Agreement, and to observe the progress of the Construction Activities; and

14.1.2.2 in the case of O&M Activities, to determine whether the Project is being operated and maintained in accordance with the Operating and Maintenance Procedures and this Agreement.

14.1.3 The Concessionaire shall permit the Independent Appointees and SEZMC and their duly appointed representatives to conduct such monitoring and review in accordance with clause 5 and, following the Lease Agreement Date, during normal operating hours upon reasonable notice to the Concessionaire.

14.1.4 Such monitoring and review shall be conducted in the presence of and, in the case of inquiries addressed to the Concessionaire's employees and contractors, through suitably qualified, appropriate representative(s) of the Concessionaire designated by the Concessionaire for this purpose.

14.1.5 The Concessionaire agrees to designate such a representative or representatives and to make such representative(s) available for all such monitoring and review. In the case of monitoring of equipment or supplies, the Independent Appointees and SEZMC shall have the right to conduct such monitoring with the prior approval of the Concessionaire, which shall not be unreasonably withheld or delayed, in the presence of a representative of the Concessionaire, at any and all locations inside or outside Pakistan at which such equipment and supplies are designed, manufactured, assembled or tested.

14.1.6 The Concessionaire shall ensure that any agreements it enters into with the Contractors provide for such rights, and further require the Contractors to require that their agreements with sub-contractors and suppliers provide for such rights.

14.1.7 The Concessionaire shall provide to the Independent Appointees and the SEZMC, promptly, and in any event within seven (07) Days of becoming aware, a report describing the occurrence of any act or condition materially affecting the Project or the Concessionaire's ability to perform any of its obligations under this Agreement and any other Project Agreements to which the Concessionaire is a party.

14.1.8 The Concessionaire hereby agrees that:

share certificates (if any) in respect of Shares issued by the Concessionaire to the Sponsors.
14.1.8.1 any monitoring or review by any of the Independent Appointees or the SEZMC (or their representatives) pursuant to this clause 14.1 is solely for information, and by conducting any such monitoring or review, neither the Independent Appointees, the SEZMC, nor their representatives, make (or shall be construed to make) any endorsement of the design or representation or warranty of the safety, durability or reliability of the Project or any part thereof; and

14.1.8.2 it shall in no way represent to any third party that, as a result of any monitoring or review by Independent Appointees and the SEZMC (or their representatives) pursuant to this clause 14.1, the Independent Appointees and the SEZMC (or their representatives) are in any way responsible for the engineering, design or construction soundness of the Project.
14.2 **BOOKS AND RECORDS AND AUDIT RIGHTS**

14.2.1 The Concessionaire shall comply with the Accounting Principles and maintain proper books, data and records in accordance with the Law and this Agreement.

14.2.2 The Independent Appointees and the SEZMC (and their duly appointed representatives) may at reasonable times, and at their expense, audit the Concessionaire's books, data and records in relation to invoicing, payments, Claims, claims for Increased Costs, Termination Payments, reimbursements and any other charges to the SEZMC, in all such cases for the purpose of determining whether the Concessionaire's charges to the SEZMC have been computed in accordance with this Agreement.

14.2.3 The Independent Appointees and the SEZMC shall have the right, upon reasonable prior notice to the Concessionaire, to examine and/or make copies of the books, data and records referred to in clause 14.2.2 during normal office hours during the period such books, data and records are required to be maintained pursuant to clause 14.2.4.

14.2.4 All books, data and records referred to in this clause 14.2 shall be maintained by the Concessionaire until the Handover Date. The Concessionaire shall provide a notice to the SEZMC thirty (30) Days prior to the Handover Date for handing over custody of such books, data and records to the SEZMC, and the SEZMC shall be entitled to take custody of the same within twenty (20) Days of the date of receipt of the notice provided by the Concessionaire hereunder.

14.2.5 The Concessionaire shall provide to the Independent Appointees and the SEZMC such information concerning the operational and financial performance of the Project and the Concessionaire as the Independent Appointees and the SEZMC may reasonably require.

14.2.6 The Concessionaire hereby agrees that:

14.2.6.1 any receipt, review or audit by any of the Independent Appointees or the SEZMC (or their representatives) of any books, data, records or other documentation or information pursuant to this clause 14.2 is solely for information and by such receipt, review or audit, neither the Independent Appointees, the SEZMC (nor their representatives) make (or shall be construed to make) any endorsement as to the accuracy and completeness of any books, data or records; and

14.2.6.2 it shall in no way represent to any third party that, as a result of any receipt, review or audit by the Independent Appointees and the SEZMC (or their representatives) of any books, data or records pursuant to this clause 14.2, the Independent Appointees and the SEZMC (or their representatives) are in any way responsible for accuracy and completeness of any such books, data or records.

14.2.7 The Concessionaire shall provide to the Independent Appointees and the SEZMC an updated financial model within three (3) Business Days after any update to the financial model made following a reasonable request by any of the Independent Appointees or the SEZMC.

14.3 **REPORTING**

Without limiting the rights and obligations of the Parties under clause 14.2, the Concessionaire shall comply with the requirements of appendix 1.

15. **COVENANTS**

15.1 **LICENSES, PERMITS AND CONSENTS**

The Concessionaire shall, as soon as reasonably practicable and in any event within seven (07) Days of request, deliver to the Independent Appointees and the SEZMC copies of all
Approvals that have been issued to the Concessionaire and not previously delivered to the Independent Appointees and the SEZMC.

15.2 **OTHER BUSINESS**

The Concessionaire shall not:

15.2.1 engage in any business activity other than as reasonably required to perform its obligations and enjoy its rights under this Agreement;

15.2.2 enter into any agreement of merger, consolidation or amalgamation with any entity; or

15.2.3 substantially amend or alter its memorandum of association and articles of association without the prior written approval of the Independent Appointees and the SEZMC.

15.3 **PROJECT AGREEMENTS**

15.3.1 After the CP Completion Date, the Concessionaire may not enter into:

15.3.1.1 any material amendments, modifications or supplements to, or waivers under any of the Project Agreements; or

15.3.1.2 any material new contracts,

without first giving the Independent Appointees and the SEZMC thirty (30) Days’ notice of such matter and obtaining the prior written approval of the Independent Appointees and the SEZMC, which approvals shall not be unreasonably withheld or delayed and which shall be deemed to have been granted if the Independent Appointees and the SEZMC do not object to such matter within such thirty (30) Days of receiving notice thereof, provided that no approval shall be deemed to have been granted by the Independent Appointees or the SEZMC if the Concessionaire shall have failed to provide such information as the Independent Appointees or the SEZMC may reasonably request to evaluate the matter proposed.

15.3.2 Promptly following the execution and delivery of any items referred to in clause 15.3.1, the Concessionaire shall deliver a copy of all relevant documents to the Independent Appointees and the SEZMC.

15.3.3 The Concessionaire acknowledges and agrees that no review or approval (actual or deemed) by the Independent Appointees or the SEZMC of any amendments, modifications, supplements, waivers or new contracts pursuant to clause 15.3.1 shall in any way relieve the Concessionaire from any liability it would otherwise have under this Agreement, and that neither the Independent Appointees nor the SEZMC nor any of their representatives shall be liable to the Concessionaire by reason of their review or approval of the amendments, modifications, supplements, waivers or new contracts.

15.3.4 The Concessionaire shall pay, on behalf of the SEZMC, all reasonable costs and fees of external advisers appointed by the SEZMC for the purposes of considering any approval or review of any documents (including amendments, modifications or supplements to, or waivers pursuant to any Project Agreement) as contemplated in this clause 15.3.

15.4 **COMPLIANCE WITH APPLICABLE LEGAL REQUIREMENTS**

15.4.1 Each Party agrees that all applicable Legal Requirements shall govern their performance of this Agreement, and each shall respectively comply in all material respects with the applicable Legal Requirements and shall keep in full force and effect all Approvals required to be in their respective names for the performance of their respective obligations under this Agreement and the Project Agreements to
which it is a party. Without limiting the generality of the foregoing, the Concessionaire specifically acknowledges that the applicable Legal Requirements may from time to time prohibit the import of goods or services manufactured, supplied or performed from or by any Adverse Person and undertakes not to import any such goods or services.

15.5 SITE RELATED UNDERTAKINGS

The Concessionaire agrees and undertakes that:

15.5.1 it shall take all necessary measures to confine the Project Activities, its personnel and equipment to the Site and not encroach on any Adjoining Property;

15.5.2 it shall make good any damage to any roads, footpaths, conduits, and other works on any Adjoining Property, which is caused by the Concessionaire or its Contractors or employees;

15.5.3 it shall use all reasonable endeavours not to do or permit to be done anything which might:

15.5.3.1 cause destruction, scarring or defacing of natural surroundings in the vicinity of the Site;

15.5.3.2 be or become a danger or nuisance or give rise to liability in tort to any owners or occupiers of the Adjoining Property or to members of the public; or

15.5.3.3 cause any contamination or damage to any Adjoining Property.

16. INDEPENDENT APPOINTEES

16.1 SELECTION OF INDEPENDENT ENGINEER

16.1.1 Within ten (10) Days from the Effective Date, the Concessionaire shall provide the SEZMC with a list of three (3) reputable firms of engineers for appointment of the Independent Engineer (the “First IE List”). In the event the proposed Independent Engineer is a consortium of engineers then: (a) a lead consortium member shall serve as the lead Independent Engineer and shall be fully responsible for the overall management, coordination and implementation of the services under the Independent Engineer Contract; and (b) the consortium members shall be jointly and severally liable for the services under the Independent Engineer Contract.

16.1.2 Within seven (07) Days of receipt by the SEZMC of the First IE List, the SEZMC shall (subject to one (1) of the firms in the First IE List being acceptable to the SEZMC) select a firm of engineers from the First IE List and finalise and sign the Independent Engineer Contract accordingly.

16.1.3 If the firms of engineers identified in the First IE List are not acceptable to the SEZMC, the Parties shall select as the Independent Engineer a firm acceptable to them and the Parties shall finalise and execute the Independent Engineer Contract.

16.1.4 The Independent Engineer Contract shall be executed within thirty (30) Days from the Effective Date.

16.1.5 The Independent Engineer shall provide the services set out in the Independent Engineer Contract, which shall be in accordance with the Indicative Independent Engineer Terms of Reference, provided, however, upon execution of the Independent Engineer Contract, the terms and conditions including scope of work under the Independent Engineer Contract shall supersede.
16.2 **TERM OF APPOINTMENT OF THE INDEPENDENT ENGINEER**

16.2.1 The appointment of the Independent Engineer shall initially be for a term not less than the Construction Period (the “Independent Engineer Initial Term”).

16.2.2 The Concessionaire shall ensure that until the Handover Date, an Independent Engineer is retained for the purposes of carrying out the functions of the Independent Engineer under this Agreement.

16.2.3 Prior to the expiry of the Independent Engineer Initial Term, the Concessionaire, the Sponsors and the SEZMC shall have the option to extend the Independent Engineer Contract (on terms and conditions agreeable to the Concessionaire, the Sponsors, the SEZMC and the Independent Engineer) or appoint a new independent engineer (such appointment to be effective upon expiry of the current Independent Engineer Initial Term). In the event a new Independent Engineer is to be appointed, the Parties shall follow the process set out in clause 16.1, *mutatis mutandis*, for appointment of a new independent engineer so as to ensure that at all times until the Handover Date an Independent Engineer is retained.

16.2.4 The Parties shall have the right to terminate the Independent Engineer Contract in accordance with its terms, provided, however, that prior to such termination and subject to clause 16.5, the Parties shall endeavour to select and appoint a replacement Independent Engineer and execute the Independent Engineer Contract.

16.2.5 The Concessionaire shall ensure that all provisions of this Agreement pertaining to the Independent Engineer and its responsibilities in respect of the matters set out herein are duly incorporated in the Independent Engineer Contract.

16.3 **INDEPENDENT ENGINEER AUTHORIZED SIGNATORIES**

16.3.1 The Parties shall require the Independent Engineer to designate and notify, suitably qualified and appropriate representatives, authorized to represent the Independent Engineer in all matters relating to this Agreement and sign for and on behalf of the Independent Engineer any communication or document required to be signed by the Independent Engineer (the “Independent Engineer Authorized Representative(s)”). Any document shall be valid and effective only if it is signed by such Independent Engineer Authorized Representative. The Independent Engineer, may by prior notice in writing to the Parties, substitute the Independent Engineer Authorized Representative.

16.4 **DECISION OF INDEPENDENT ENGINEER & DISPUTE RESOLUTION**

16.4.1 Subject to clause 16.4.2, any advice, instruction, certification, approval or determination of the Independent Engineer shall be binding on the Parties.

16.4.2 In the event the SEZMC, the Sponsor(s) or the Concessionaire disagree with any decision of the Independent Engineer, then it will be deemed as a Dispute under this Agreement and shall be resolved in accordance with clause 26.

16.4.3 The Concessionaire shall be responsible for procuring from the Independent Engineer any approval, consent, determination, certificate or other document or decision required or contemplated under this Agreement within the necessary timelines stated herein and delay in the procurement of the same shall not give rise to any claim for extension in the Scheduled CP Completion Date, the Scheduled Substantial Completion Date and/or the Scheduled Construction Completion Date, adjustment in the Implementation Schedule, or any additional payments (including Increased Costs).

16.5 **INDEPENDENT ENGINEER REMUNERATION**

16.5.1 Subject to funding in accordance with clause 16.5.2, the Concessionaire (and, until the CP Completion Date, the Sponsors) shall be solely responsible for the payment
of fees and expenses due to the Independent Engineer under the Independent Engineer Contract (the “Independent Engineer Payments”). In the event the Independent Engineer terminates the Independent Engineer Contract due to the Independent Engineer Payments not being paid, the SEZMC shall for the purposes of this Agreement (without prejudice to its rights under clause 20), act as the Independent Engineer, and all references to the Independent Engineer herein shall be considered as a reference to the SEZMC, provided that, the SEZMC shall be entitled to appoint a third party to carry out the functions of the Independent Engineer (the “SEZMC Appointed IE”) and all fees and expenses relating to the same shall be payable on demand of the SEZMC by the Sponsors or the Concessionaire (as the case maybe). The SEZMC shall be entitled to encash the Performance Securities (to the extent demanded), in case the Sponsors or the Concessionaire fail to provide the necessary funds demanded by SEZMC to pay the SEZMC Appointed IE. Where a SEZMC Appointed IE is appointed by the SEZMC, all references to Independent Engineer herein shall be considered as a reference to the SEZMC Appointed IE.

16.5.2 The Independent Engineer Payments shall be funded by the:

16.5.2.1 Sponsors from the date of signing of the Independent Engineer Contract until the CP Completion Date; and
16.5.2.2 Concessionaire from the CP Completion Date until the Handover Date.

16.6 INDEPENDENT ENGINEER PAYMENT ACCOUNT

16.6.1 The Concessionaire shall establish and maintain the Independent Engineer Payment Account from the date of signing of the Independent Engineer Contract until the Handover Date.

16.6.2 The Concessionaire shall issue standing instructions (that may be suspended, amended and/or revoked only with the consent of the Parties) to the Independent Engineer Payment Account Bank (the “Independent Engineer Payment Account Standing Instructions”) for making payments to the Independent Engineer in accordance with the Independent Engineer Contract.

16.7 SELECTION OF INDEPENDENT AUDITOR

16.7.1 Within ten (10) Days from the Effective Date, the Concessionaire shall provide the SEZMC with a list of three (3) reputable firms of auditors for appointment of the Independent Auditor (the “First IA List”). In the event the proposed Independent Auditor is a consortium of auditors then: (a) a lead consortium member shall serve as the lead Independent Auditor and shall be fully responsible for the overall management, coordination and implementation of the services under the Independent Auditor Contract; and (b) the consortium members shall be jointly and severally liable for the services under the Independent Auditor Contract.

16.7.2 Within seven (07) Days of receipt by the SEZMC of the First IA List, the SEZMC shall (subject to one (1) of the firms in the First IA List being acceptable to the SEZMC) select a firm of auditors from the First IA List and the Parties shall finalise and execute the Independent Auditor Contract.

16.7.3 If the firms of auditors identified in the First IA List are not acceptable to the SEZMC, the Parties shall select as the Independent Auditor a firm acceptable to them and finalise and execute the Independent Auditor Contract accordingly.

16.7.4 The Independent Auditor Contract shall be executed within thirty (30) Days from the Effective Date.

16.7.5 The Independent Auditor shall provide the services set out in the Independent Auditor Contract which shall be in accordance with the Indicative Independent Auditor Terms of Reference, provided, however, upon execution of the Independent
Auditor Contract, the terms and conditions including scope of work under the Independent Auditor Contract shall supersede.

16.8 **TERM OF APPOINTMENT OF THE INDEPENDENT AUDITOR**

16.8.1 The appointment of the Independent Auditor shall initially be for a term not less than the Construction Period (the “Independent Auditor Initial Term”).

16.8.2 The Concessionaire shall ensure that until the Handover Date, an Independent Auditor is retained, for the purposes of carrying out the functions of the Independent Auditor under this Agreement.

16.8.3 Prior to the expiry of the Independent Auditor Initial Term, the Concessionaire, the Sponsors and SEZMC shall have the option to extend the Independent Auditor Contract (on terms and conditions agreeable to the Concessionaire, the Sponsors, SEZMC and the Independent Auditor) or appoint a new independent auditor (such appointment to be effective upon expiry of the Independent Auditor Initial Term). In the event a new Independent Auditor is to be appointed, the Parties shall follow process set out in clause 16.7, mutatis mutandis, for appointment of a new independent auditor so as to ensure that at all times until the Handover Date, an Independent Auditor is retained.

16.8.4 The Parties shall have the right to terminate the Independent Auditor Contract in accordance with its terms, provided, however, that prior to such termination and subject to clause 16.11, the Parties shall endeavour to select and appoint a replacement Independent Auditor and execute, the Independent Auditor Contract.

16.8.5 The Concessionaire shall ensure that all provisions of this Agreement pertaining to the Independent Auditor and its responsibilities in respect of the matters set out herein are duly incorporated in the Independent Auditor Contract.

16.9 **INDEPENDENT AUDITOR AUTHORIZED SIGNATORIES**

16.9.1 The Parties shall require the Independent Auditor to designate and notify, suitably qualified and appropriate representatives, authorized to represent the Independent Auditor in all matters relating to this Agreement and sign for and on behalf of the Independent Auditor any communication or document required to be signed by the Independent Auditor (the “Independent Auditor Authorized Representative(s)”). Any document shall be valid and effective only if it is signed by such Independent Auditor Authorized Representative. The Independent Auditor may, by prior notice in writing to the Parties, substitute the Independent Auditor Authorized Representative.

16.10 **DECISION OF INDEPENDENT AUDITOR & DISPUTE RESOLUTION**

16.10.1 Subject to clause 16.10.2, any advice, instruction, certification, approval or determination of the Independent Auditor shall be binding on the Parties.

16.10.2 In the event the SEZMC, the Sponsor or the Concessionaire disagree with any decision of the Independent Auditor, then it will be deemed as a Dispute under this Agreement and shall be resolved in accordance with clause 26.

16.10.3 The Concessionaire shall be responsible for procuring from the Independent Auditor any approval, consent, determination, certificate or other document or decision required or contemplated under this Agreement within the necessary timelines stated herein and delay in the procurement of the same shall not give raise to any claim for extension in the Scheduled CP Completion Date, the Scheduled Substantial Completion Date and/or the Scheduled Construction Completion Date, adjustment in the Implementation Schedule, or any additional payments (including Increased Costs).
16.11 Independent Auditor Remuneration

16.11.1 Subject to funding in accordance with clause 16.11.2, the Concessionaire (and, until the CP Completion Date, the Sponsors) shall be solely responsible for the payment of fees and expenses due to the Independent Auditor under the Independent Auditor Contract (the “Independent Auditor Payments”). In the event the Independent Auditor terminates the Independent Auditor Contract due to the Independent Auditor Payments not being paid, the SEZMC shall for the purposes of this Agreement (without prejudice to its rights under clause 20), act as the Independent Auditor, and all references to Independent Auditor herein shall be considered as a reference to the SEZMC, provided that, the SEZMC shall be entitled to appoint a third party to carry out the functions of the Independent Auditor (the “SEZMC Appointed IA”) and all fees and expenses relating to the same shall be payable on demand of the SEZMC by the Sponsors or the Concessionaire (as the case maybe). The SEZMC shall be entitled to encash the Performance Securities (to the extent demanded), in case the Sponsors or the Concessionaire fail to provide the necessary funds demanded by SEZMC to pay the SEZMC Appointed IA. Where a SEZMC Appointed IA is appointed by the SEZMC, all references to Independent Auditor herein shall be considered as a reference to the SEZMC Appointed IA.

16.11.2 The Independent Auditor Payments shall be funded by the:

16.11.2.1 Sponsors from the date of signing of the Independent Auditor Contract until the CP Completion Date; and

16.11.2.2 Concessionaire from the CP Completion Date until the Handover Date.

16.12 Independent Auditor Payment Account

16.12.1 The Concessionaire shall establish and maintain the Independent Auditor Payment Account from the date of signing of the Independent Auditor Contract until the Handover Date.

16.12.2 The Concessionaire shall issue standing instructions (that may be suspended, amended and/or revoked only with the consent of the Parties) to the Independent Auditor Payment Account Bank (the “Independent Auditor Payment Account Standing Instructions”) for making payments to the Independent Auditor in accordance with the Independent Auditor Contract.

17. Insurance

17.1 Insurance Policies

17.1.1 The Concessionaire, at its sole cost and expense, shall obtain and maintain in effect such insurance policies and coverage as is required by the Legal Requirements, the Good Industry Practices, appendix 3 and this clause 17 (the “Insurance Policies”), provided that such coverage may be changed from time to time with the prior written consent of the SEZMC (in consultation with the Independent Appointees), which shall not be unreasonably withheld or delayed. Nothing under this clause 17.1 shall prevent the Concessionaire, at its sole cost and expense, from procuring insurance coverage in addition to those required under this clause 17.1.

17.2 Policy Endorsements

17.2.1 The Concessionaire shall cause the insurers to provide the following endorsement items in the Concessionaire’s third-party liability Insurance Policy and, if applicable, umbrella or excess liability Insurance Policies, relating to the Project:

17.2.1.1 the SEZMC and the Independent Appointees shall each receive at least thirty (30) Days prior notice of any cancellation of the Insurance Policies except in the event of non-payment of premium, in which case the prior notice of
cancellation period shall be ten (10) Days and any such notice shall be delivered by facsimile and confirmed in writing delivered by first class mail or, if sent from an office outside Pakistan, by international courier;

17.2.1.2 the insurance shall be primary with respect to the interest of the SEZMC and any other insurance maintained by it is excess and not contributory with such Insurance Policies; and

17.2.1.3 a cross-liability clause shall be made a part of the Insurance Policy to provide that in the event of claims being made by reason of:

(a) personal or bodily injuries suffered by any employee of one insured thereunder for which another insured thereunder is or may be liable; or

(b) damage to property belonging to any insured thereunder for which another insured thereunder is or may be liable,

then the policy shall cover such insured against whom a claim is made or may be made in the same manner as if separate policies had been issued to each insured thereunder, except with respect to the limits of insurance.

17.2.2 The Concessionaire shall cause its insurers to waive all rights of subrogation against the SEZMC (and its employees and contractors) and the Concessionaire (and its employees and Contractors) in respect of a claim arising under its Insurance Policies.

17.2.3 The Concessionaire shall be responsible for all deductibles under all Insurance Policies.

17.3 Evidence of Cover

17.3.1 Not later than thirty (30) Days after the date any of the Insurance Policies and coverage required to be in effect in accordance with this clause 17 are issued, or renewed in accordance with their terms, the Concessionaire shall cause its insurers or agents to provide the SEZMC and the Independent Appointees with such Insurance Policies, and where the Insurance Policies are being renewed, provide Insurance Policies evidencing the same terms and conditions as the expiring policies and coverage.

17.3.2 The Concessionaire shall provide the SEZMC and the Independent Appointees with copies of receipts or statements from the Concessionaire’s insurers evidencing payment by the Concessionaire of the premiums in respect of such Insurance Policies, reinsurance policies and cover.

17.4 Compliance with Insurance Obligations

17.4.1 Failure by the Concessionaire to obtain the insurance coverage or Insurance Policies required by clauses 17.1 or 17.3, respectively, shall not relieve the Concessionaire of its obligations under this clause 17 or in any way relieve or limit the Concessionaire’s obligations and liabilities under any other provision of this Agreement.

17.4.2 If the Concessionaire fails to procure or maintain any insurance required pursuant to this clause 17, then the SEZMC shall have the right to procure such insurance at the Concessionaire’s expense, provided that the SEZMC shall have given twenty (20) Days prior notice to the Concessionaire of their intention to exercise such right, unless such intention arises from the Concessionaire’s non-payment of premiums for existing insurance, in which case the SEZMC shall provide at least five (05) Days’ prior notice of such intention.

17.4.3 If the Concessionaire fails to reimburse the SEZMC for such premiums within seven (07) Days of being notified to do so, the SEZMC shall be entitled to payment of such
amount or amounts under the Performance Securities or by deducting such amount or amounts from any payments due to the SEZMC by the Concessionaire.

17.5 **APPLICATION OF PROCEEDS**

17.5.1 Subject to clause 18.9, the Concessionaire shall apply any and all insurance proceeds received in connection with the damage to or loss of the Project, toward the repair, reconstruction or replacement of the Project, in accordance with the provisions of this Agreement.

18. **FORCE MAJEURE**

18.1 **FORCE MAJEURE EVENT**

A “Force Majeure Event” means any circumstance, event or condition (or combination thereof) beyond the reasonable control, directly or indirectly, of the Affected Party but only to the extent that:

18.1.1 such circumstance, event or condition, despite the exercise of diligence, cannot be prevented, avoided or overcome by the Affected Party;

18.1.2 such circumstance, event or condition prevents the performance by the Affected Party of its obligations under or pursuant to this Agreement (save for payment obligations) including compliance with Legal Requirements;

18.1.3 such circumstance, event or condition was not foreseeable, or if foreseeable, could not have been prevented or avoided or overcome by the Affected Party having taken all reasonable precautions and due care;

18.1.4 the Affected Party has taken all reasonable precautions, due care and measures to prevent, avoid or overcome the effect of such circumstance, event or condition on its ability to perform its obligations under this Agreement and to mitigate its consequences;

18.1.5 such circumstance, event or condition is not the direct or indirect result of a breach or failure by the Affected Party to: (a) perform any of its material obligations under this Agreement or any other Project Agreement; or (b) comply with Legal Requirements;

18.1.6 such circumstance, event or condition is without fault or negligence of the Affected Party; and

18.1.7 the Affected Party has given the other Party notice in accordance with clause 18.5.1, and shall consist of “Natural Force Majeure Events” and “Political Force Majeure Events”.

18.2 **NATURAL FORCE MAJEURE EVENT**

A “Natural Force Majeure Event” means a Force Majeure Event which is not a Political Force Majeure Event, including:

18.2.1 lightning, fire, earthquake, unusual flood, storm, cyclone, tornado, tsunami, typhoon or other natural disaster or act of God;

18.2.2 pandemic, epidemic or plague;

18.2.3 accident, explosion or chemical contamination;

18.2.4 strikes, works to rule or go-slow (other than solely by employees of the Affected Party or its Affiliates);

18.2.5 the discovery of hydrocarbons on, under or within the Site; and
18.2.6 the discovery of unexploded bombs or munitions on or within the Site.

18.3 **Political Force Majeure Event**

A “Political Force Majeure Event” means:

18.3.1 acts of war (whether declared or not), invasion, armed conflict, act of foreign enemy or blockade in each case occurring within Pakistan or involving Pakistan;

18.3.2 acts of rebellion, riot, civil commotion, strikes of a political nature, act or campaign of terrorism, or sabotage of a political nature, in each case, occurring within Pakistan;

18.3.3 any boycott, sanction, embargo penalty or other restriction imposed directly on Pakistan by any government from where equipment and materials for the Project are being imported during the period up to and including the latest of the Construction Completion Date;

18.3.4 any action or failure to act by a Competent Authority, including any action or failure that results in any Approval:

18.3.4.1 ceasing to remain in full force and effect; or

18.3.4.2 not being issued or renewed in a timely manner upon due application having been made,

provided that the proper exercise of any rights of a Competent Authority in response to a Concessionaire default under or breach of the terms of any Approval, or any breach of any Legal Requirements by the Concessionaire, shall not constitute a Political Force Majeure Event; and

18.3.5 a Change in Law.

18.4 **Certain Events Not Force Majeure Events**

Notwithstanding that a Force Majeure Event may otherwise exist, the provisions of this clause 18 shall not excuse:

18.4.1 failure to make a payment of money in accordance with the Party’s obligations under this Agreement;

18.4.2 any failure by the Concessionaire or its Contractors to obtain or maintain any Approval due to negligence or default by the Concessionaire or such Contractor;

18.4.3 any failure to research, consider, plan for or take into account reasonably foreseeable ground and weather conditions at the Site;

18.4.4 any failure by a Contractor which results in the failure or inability of the Concessionaire to perform its obligations under this Agreement where the cause of such failure by the Contractor would not otherwise constitute a Force Majeure Event pursuant to this Agreement;

18.4.5 late performance by the Concessionaire or any Contractor caused by the failure of the Concessionaire or such Contractor for any reason, including failure to engage qualified subcontractors and suppliers or to hire an adequate number of personnel or labour or any failure of its subcontractors to perform their respective obligations;

18.4.6 late delivery of equipment, machinery, or materials caused by default, negligent acts or omissions on the part of the Concessionaire or any Contractor;

18.4.7 inability to obtain or maintain adequate funding for the Project;
18.4.8 mechanical or electrical breakdown or failure of equipment or machinery owned or operated by either Party due to the manner in which the equipment or machinery has been operated or maintained;

18.4.9 delays resulting from reasonably foreseeable unfavourable weather (including monsoon) or sea conditions or other similar reasonably foreseeable adverse conditions;

18.4.10 delays or non-performance of any Project Activities as a result of SARS-CoV-2, except where complete ban and lockdown measures are imposed by Competent Authorities, results in suspension of Project Activities; and

18.4.11 submission of documents and / or drawings for approval by the SEZMC or the Independent Appointees at a time which does not leave sufficient time for review thereof by SEZMC or the Independent Appointees within the time periods provided therefor in this Agreement.

18.5 **OBLIGATIONS**

18.5.1 If a Party desires to invoke a Force Majeure Event as a cause for delay or failure in performance of any of its obligations under this Agreement (other than payment of money) (the “Affected Party”), it shall:

18.5.1.1 as soon as reasonably practicable (and in any event no later than ten (10) Days) after the Affected Party first had knowledge of the occurrence of a Force Majeure Event, as a condition precedent to its entitlement under this clause 18, give notice to the other Party and the Independent Appointees of the circumstance, event or condition which it alleges constitutes the Force Majeure Event and an estimate of its likely duration. If the Affected Party does not deliver such notice in accordance with the terms hereof, such Affected Party shall not be entitled to invoke the benefits of clauses 3.3.1, 18, or 19 of this Agreement in respect of the relevant Force Majeure Event;

18.5.1.2 within ten (10) Days of the date of a notice issued pursuant to clause 18.5.1.1, provide a written report identifying the Force Majeure Event and the Affected Party’s understanding of its effects, including particulars of the circumstance, event or condition, a general description of the obligations likely to be affected, an estimate of its likely duration and a statement of the actions to be taken in order to comply with its obligations under this clause 18. If the Affected Party does not deliver such report in accordance with the terms hereof, such Affected Party shall not be entitled to invoke the benefits of clauses 3.3.1. 7.2.4, 18 or 19 of this Agreement in respect of the relevant Force Majeure Event; and

18.5.1.3 from time to time at reasonable intervals and upon any reasonable request from the other Party, provide updates as to the matters set out in clause 18.5.1.2.

18.5.2 The Affected Party shall:

18.5.2.1 make all reasonable efforts to prevent and reduce to a minimum and mitigate the effect of any Force Majeure Event, including recourse to alternate sources of services, equipment and materials, provided that, if there occurs a Force Majeure Event, the effects of which cannot be mitigated by the Concessionaire, SEZMC shall have the right to take such actions as are necessary to resume operations of the Project to ensure that the Zone Enterprises are minimally effected;

18.5.2.2 as soon as reasonably possible, and in accordance with the Good Industry Practice, ensure the resumption of normal performance of this Agreement after the cessation of any Force Majeure Event or its effects and shall
otherwise perform its obligations under this Agreement to the extent not excused under this clause 18; and

18.5.2.3 within three (03) Days following the cessation of any Force Majeure Event, submit to the other Party reasonable proof of the nature of such delay and its effect upon the performance of its obligations under this Agreement.

18.5.3 With respect to the Concessionaire only, if a Force Majeure Event occurs that affects the Concessionaire, such event may only be invoked with respect to the part of the Project affected by such event and not with respect to any other part of the Project not so affected, provided that, with respect to the operation of any part of the Project not so affected, such part of the Project is capable of independent or partial operation in accordance with Good Industry Practices.

18.6 Effects of a Force Majeure Event Generally

The Affected Party shall not be liable for any delay or failure in performing its obligations under this Agreement due to a Force Majeure Event, provided that no relief shall be granted to the Affected Party pursuant to this clause 18 to the extent that such failure or delay:

18.6.1 would have nevertheless been experienced by the Affected Party had the Force Majeure Event not occurred; or

18.6.2 was caused by the failure of the Affected Party to comply with its obligations under clause 18.5.2.1.

18.7 Effects of a Force Majeure Event During Construction Period

If, during the Construction Period, a Force Majeure Event occurs which results in material damage to or loss of the Project (while in the custody, care and control of the Concessionaire) or a delay in achieving the Substantial Completion Date and / or the Construction Completion Date, in addition to any remedies the Concessionaire may have under clause 19:

18.7.1 the Parties and the Independent Appointees shall consult with one another as soon as practicable after the giving of a notice as provided in clause 18.5.1.1 concerning the effect of such Force Majeure Event upon the Implementation Schedule, and the Implementation Schedule shall be adjusted equitably taking into account the effect which the Affected Party reasonably demonstrates is properly attributable to such Force Majeure Event and the ability of such Party to re-schedule its activities to minimise the overall delays to the Implementation Schedule resulting from such event; and

18.7.2 if the Parties and the Independent Appointees are unable to agree upon the equitable adjustment to the Implementation Schedule within a period of sixty (60) Days from the date the notice referred to in clause 18.7.1 is received, the Dispute shall be referred for resolution pursuant to clause 26 for the determination of the adjustment to the Implementation Schedule.

18.8 Effects of a Force Majeure Event After Expiry of Construction Period

18.8.1 If the Concessionaire has incurred or suffered any Increased Cost as a result of a Political Force Majeure Event, the provisions of clause 19 shall apply.

18.9 Reinstatement of the Project

18.9.1 If a Force Majeure Event causes an Event of Loss, the Concessionaire shall rebuild, repair and/or restore the Project, using all insurance proceeds or other amounts actually received on account of the Event of Loss, except proceeds from any delay in start-up or business interruption insurance (collectively, “Casualty Proceeds”), together with any other amounts that are available to the Concessionaire for such rebuilding, repair and/or restoration, in accordance with this clause 18.9.
18.9.2 All Casualty Proceeds received by the Concessionaire shall be deposited by the Concessionaire into a restoration account segregated from all other funds of the Concessionaire (the “Restoration Account”) to be applied as provided in clause 18.9.5. The Concessionaire:

18.9.2.1 shall diligently pursue all of its rights to compensation against any person with respect to such Event of Loss;

18.9.2.2 may, in the reasonable judgement of the Concessionaire, compromise or settle any Claim against any person with respect to such Event of Loss; and

18.9.2.3 shall hold all amounts of Casualty Proceeds (including financial instruments) received by the Concessionaire in respect of any Event of Loss (after deducting all reasonable expenses incurred by the Concessionaire in litigating, arbitrating, compromising or settling any Claims) in the Restoration Account.

18.9.3 As soon as reasonably practicable but no later than the date of receipt by the Concessionaire of any Casualty Proceeds, the Concessionaire shall make a good faith determination as to whether:

18.9.3.1 the Project or such portion thereof that has been affected by the Event of Loss can be rebuilt, repaired or restored to permit operation of the Project or such portion thereof on a commercially feasible basis; and

18.9.3.2 the Casualty Proceeds, together with any other amounts that are available to the Concessionaire for such rebuilding, repair and/or restoration, are sufficient to permit such rebuilding, repair and/or restoration of the Project or such portion thereof.

18.9.4 The determination of the Concessionaire under clause 0 shall be evidenced by a certificate of a responsible officer of the Concessionaire to be delivered to the Independent Appointees and the SEZMC which, in the event the Concessionaire determines that the Project or such portion thereof can be rebuilt, repaired and/or restored to permit operation thereof on a commercially feasible basis, shall also set out a reasonable good faith estimate by the Concessionaire of the total cost of such rebuilding, repair and/or restoration.

18.9.5 If the Parties agree or the Independent Appointees determine under clause 18.9.3 that:

18.9.5.1 the Project cannot be rebuilt, repaired and/or restored to permit operation on a commercially feasible basis or that the Casualty Proceeds, together with any other amounts that are available to the Concessionaire for such rebuilding, repair and/or restoration, are not sufficient to permit such rebuilding, repair and/or restoration, then any Party may elect to terminate this Agreement in accordance with clause 20.7.3 and all of the Casualty Proceeds shall be distributed in the following order of priority:

(a) first, to the payment of costs and expenses actually incurred and duly evidenced by the Concessionaire in the performance of its obligations under clause 18.9.6 and not already compensated for by way of payments otherwise received by the Concessionaire;

(b) second, to the payment of any amount due to the SEZMC under the Project Agreements; and

(c) third, to the Concessionaire or to whomever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct, any surplus then remaining from such proceeds;
18.9.5.2 only a portion of the Project can be rebuilt, repaired and/or restored to permit operation on a commercially feasible basis and that the Casualty Proceeds, together with any other amounts that are available to the Concessionaire for such rebuilding, repair and/or restoration, are sufficient to permit such rebuilding, repair and/or restoration, then the SEZMC may elect to terminate this Agreement in accordance with clause 20.7.3 and all of the Casualty Proceeds shall be distributed in the following order of priority:

(a) first, to the payment of costs and expenses actually incurred and duly evidenced by the Concessionaire in the performance of its obligations under clause 18.9.6 and not already compensated for by way of payments otherwise received by the Concessionaire;

(b) second, to the payment of any amount due to the SEZMC under the Project Agreements; and

(c) third, to the Concessionaire or to whomever may be lawfully entitled to receive the same as a court of competent jurisdiction may direct, any surplus then remaining from such proceeds;

or, if the SEZMC is not entitled to or does not elect to terminate this Agreement:

(i) the amount equal to the estimate of the total cost of such rebuilding, repair and/or restoration agreed by the Parties or determined by the Independent Appointees shall be deposited in the Restoration Account to be applied towards the costs of rebuilding, repairing and/or restoring such portion of the Project; and

(ii) the amount, if any, by which all the Casualty Proceeds exceed the estimate of the total cost shall be distributed in the following order of priority:

(A) first, to the payment of any amount due to the SEZMC under the Project Agreements; and

(B) second, to the Concessionaire or to whomever may be lawfully entitled to receive the same as a court of competent jurisdiction may direct, any surplus then remaining from such proceeds;

18.9.5.3 the Project (if applicable) can be rebuilt, repaired and/or restored to permit operation on a commercially feasible basis and the Casualty Proceeds, together with any other amounts that are available to the Concessionaire for such rebuilding, repair and/or restoration, are sufficient to permit such rebuilding, repair and/or restoration, then all of the Casualty Proceeds, together with such other amounts as are available to the Concessionaire for such rebuilding, repair and/or restoration, shall be deposited in the Restoration Account to be applied toward the costs of rebuilding, repairing and/or restoring the Project.

18.9.6 Upon the occurrence of an Event of Loss, the Concessionaire shall immediately take all necessary action, consistent with applicable Legal Requirements, to secure and make safe the Project and the Site.

18.9.7 If the Concessionaire is required to restore the Project, the Concessionaire shall promptly commence any restoration work and shall diligently pursue the same to completion, subject to a reasonable allowance for the time needed to adjust any insurance claims. Before the Concessionaire shall commence any such restoration, and at all times during the course of such restoration, the Concessionaire shall pay the SEZMC all amounts due to the SEZMC under the Project Agreements. In
addition, at all times the Concessionaire shall continue to perform and observe all of the terms, covenants, conditions, agreements and obligations of the Concessionaire to be performed under this Agreement and the other Project Agreements notwithstanding any Event of Loss.

18.9.8 If, at any time during restoration pursuant to clause 18.9.8, the Independent Engineer believes that the Concessionaire is not diligently pursuing the restoration activities, the Independent Engineer will specify a reasonable restoration timetable and if the Concessionaire subsequently fails to adhere to such timetable, the Concessionaire shall be held in material breach of its obligations under this Agreement.

19. INCREASED COSTS

19.1 CLAIM FOR INCREASED COSTS

19.1.1 If:

19.1.1.1 the Concessionaire believes that:

(a) a Political Force Majeure Event (other than a Change in Law);

(b) a Change in Law;

(c) a failure to achieve the CP Completion Date by the Scheduled CP Completion Date (under the circumstances described in, and prior to any adjustment pursuant to, clause 3.3.1); or

(d) a Relief Event;

has resulted in an Increased Cost,

then the Concessionaire shall promptly (and in any event within ten (10) Days after it first had knowledge of the relevant event or circumstance) and as a condition precedent to its entitlement to recover Increased Costs under this clause 19, issue a notice to the Independent Appointees (with a copy to the SEZMC) specifying:

19.1.1.2 the details of such Increased Costs;

19.1.1.3 details of the event or occurrence which gave or gives rise to such Increased Costs, providing reasonable evidence of the economic impact thereof which resulted in such Increased Costs; and

19.1.1.4 any other details required by this clause 19.1.

Such notification obligations shall be in addition to any notice or other requirements under clause 7 or clause 18 and shall be a condition precedent to the Concessionaire’s entitlement to recover Increased Costs under this clause 19.

19.1.2 The Concessionaire may thereafter, from time to time, deliver to the Independent Appointees additional notices identifying further Increased Costs that have resulted or are reasonably expected to result from the same circumstances, provided that any such additional notice shall be given not later than sixty (60) Days after the Concessionaire knew of, or should have known of, such additional Increased Costs.

19.1.3 The Concessionaire shall, acting in accordance with Good Industry Practice, use all reasonable efforts to minimise any Increased Costs.

19.1.4 If the Parties are unable to agree with the Independent Appointees on contents of the notice(s) delivered pursuant to clause 19.1.1 or 19.1.2 within sixty (60) Days of receipt thereof, then the Dispute shall be referred for resolution pursuant to clause 26.
19.1.5 To the extent that a claim for Increased Costs under clauses 19.1.1 or 19.1.2 has been allowed by the Independent Appointees:

19.1.5.1 the Concessionaire shall use its best efforts to raise additional capital to fund such Increased Costs; and

19.1.5.2 the SEZMC shall (in consultation with the Independent Appointees) propose to the Concessionaire a mechanism to compensate the Concessionaire through the payment of a lump-sum amount which takes account of all relevant circumstances and is structured so as to put the Concessionaire into a neutral financial position which results in it is deriving neither gain nor loss as a consequence of the relevant event giving rise to the claim under this clause 19.

19.1.6 Notwithstanding the foregoing, any:

19.1.6.1 Political Force Majeure Event; or

19.1.6.2 Relief Event;

that results in Increased Costs shall be funded by means of a lump-sum payment by the SEZMC under clause 19.1.5.2.

19.1.7 The Parties shall use reasonable endeavours to agree upon the appropriate reimbursement mechanism within thirty (30) Days of the Concessionaire’s receipt of the SEZMC’s proposal under clause 19.1.5.2, failing which, the Dispute shall be referred for resolution pursuant to clause 26.

19.2 CLAIMS IN AGGREGATE

The Concessionaire shall not be entitled to assert any claim for Increased Costs under this clause 19 until:

19.2.1 in the case of any claim asserted prior to the Substantial Completion Date, the earlier of: (a) the date thirty (30) Days after the end of the Construction Year in which the relevant event or circumstance entitling the Concessionaire to claim Increased Costs occurred; and (b) the date on which the aggregate of all accrued and outstanding claims of the Concessionaire under this clause 19 exceeds the equivalent of PKR 10,000,000/- (Pakistani Rupees Ten Million Only); or

19.2.2 in the case of any claim asserted after the Substantial Completion Date, the earlier of: (a) the date thirty (30) Days after the end of the Operating Year in which the relevant event or circumstance entitling the Concessionaire to claim Increased Costs occurred; and (b) the date on which the aggregate of all accrued and outstanding claims of the Concessionaire under this clause 19 exceeds the equivalent of PKR 10,000,000/- (Pakistani Rupees Ten Million Only); or

at which time all accrued and outstanding claims of the Concessionaire may be asserted, provided that once such claims have been asserted, no future claims may be asserted until such time as all future claims again exceed such threshold, or the next annual deadline is reached.

20. TERMINATION

20.1 EXPIRY OF THE TERM

Unless terminated earlier in accordance with this clause 20, this Agreement shall terminate on the Term Expiry Date.

20.2 TERMINATION DUE TO NON-OCCURRENCE OF THE CP COMPLETION DATE
20.2.1 If the CP Completion Date is not achieved by the Scheduled CP Completion Date (as may be extended pursuant to clause 3.3.3) then, provided that the Parties have first used their reasonable endeavours to adjust the Scheduled CP Completion Date in accordance with clause 3.3.1, either Party may terminate this Agreement by issuing a notice of termination to the other Party, whereupon this Agreement shall terminate on the date of termination specified therein, or such later date as the Parties may agree in writing and, thereafter no Party shall have any liability to the other except for payment of Value D by the SEZMC, provided that if such failure is due to reasons solely attributable to the Concessionaire, the Parties acknowledge and agree that the SEZMC may draw upon and retain the full amount of the Construction Performance Security as payment of liquidated damages for such termination. On payment by the SEZMC of Value D to the Concessionaire, all the Concessionaire’s right, title and interest in the Project or the Shares (as opted by SEZMC in accordance with clause 20.9.1) shall stand transferred to SEZMC (or its nominee).

20.2.2 The Parties agree that:

20.2.2.1 the full amount of the Construction Performance Security are the actual losses that the SEZMC will suffer in the event this Agreement is terminated for reasons solely attributable to the Concessionaire as set out in this clause 20.2; and

20.2.2.2 there is in any event a commercial justification and legitimate interest in imposing such liquidated damages as a payment for the termination of this Agreement for reasons set out in this clause 20.2 which would not be satisfied by a right to recover damages on an unliquidated basis for such default.

20.3 TERMINATION FOR CONVENIENCE

20.3.1 The SEZMC may at its absolute discretion and at any time, terminate this Agreement for convenience by giving at least two (2) Months’ notice to the Concessionaire whereupon this Agreement shall terminate on the date of termination specified therein.

20.3.2 If the SEZMC exercises its right to terminate this Agreement for convenience pursuant to clause 20.3.1, prior to the CP Completion Date, the Concessionaire shall sell, and the SEZMC shall purchase the Concessionaire’s right, title and interest in the Project or the Shares (as opted by SEZMC in accordance with clause 20.9.1) for Value D.

20.3.3 If SEZMC exercises its right to terminate this Agreement for convenience pursuant to clause 20.3.1, after the CP Completion Date, the Concessionaire shall sell, and SEZMC shall purchase, the Concessionaire’s right, title and interest in the Project or the Shares (as opted by SEZMC in accordance with clause 20.9.1) for Value A.

20.4 CONCESSIONAIRE EVENT OF DEFAULT

Except where the relevant event occurs as a consequence of a Relief Event, or SEZMC Event of Default, each of the following events shall constitute a “Concessionaire Event of Default”:

20.4.1 a failure by the Concessionaire to achieve: (i) the Substantial Completion Date on or before the Scheduled Substantial Completion Date; and / or (ii) the Construction Completion Date on or before the Construction Completion Date;

20.4.2 a failure by the Concessionaire to obtain and maintain any Approvals required under the Legal Requirements or by a Competent Authority in order for it to perform its obligations pursuant to this Agreement where the Concessionaire has failed to use all reasonable endeavours to obtain or renew such Approvals;
20.4.3 a failure by the Concessionaire to pay any undisputed liquidated damages within the time periods specified therefor under clauses 7.3 or 7.4, as applicable, or a failure by the Concessionaire to pay any other amount due under this Agreement (including the Lease Payments due to SEZMC and/or the Windfall Revenue) within thirty (30) Days after such amount has become due and payable;

20.4.4 Abandonment;

20.4.5 a material breach by the Concessionaire of its obligations under this Agreement, which is not remedied within sixty (60) Days after notice from SEZMC to the Concessionaire stating that a breach has occurred, identifying the breach and demanding remedy thereof provided that, notwithstanding the exercise of reasonable efforts by the Concessionaire, such breach cannot be cured within sixty (60) Days after notice from the SEZMC, the Concessionaire shall be afforded a further period of sixty (60) Days within which to cure such breach, provided always that the Concessionaire shall throughout such further sixty (60) Days period, exercise reasonable continuous efforts to cure the breach;

20.4.6 termination of the Independent Engineer Contract by the Independent Engineer due to non-payment by the Concessionaire or the Sponsors, as applicable;

20.4.7 a material breach by the Concessionaire of the Project Agreements;

20.4.8 the Construction Period Damages exceed the Delay Damages Cap;

20.4.9 the voluntary filing by the Concessionaire of a petition of bankruptcy, moratorium, winding up, or other similar relief and/or the passing of a resolution for the bankruptcy, insolvency, winding up, liquidation or other similar proceeding relating to the Concessionaire;

20.4.10 the appointment of a liquidator, custodian or similar person in respect of the Concessionaire in a proceeding referred to in clause 20.4.10, which appointment has not been stayed or set aside within sixty (60) Days of such appointment;

20.4.11 the making by a Competent Authority of an order for the winding up or otherwise confirming the bankruptcy or insolvency of the Concessionaire, which order has not been set aside or stayed within sixty (60) Days of such making;

20.4.12 a failure of the Concessionaire to comply with its obligation to obtain and maintain the required insurances in accordance with clause 17;

20.4.13 a failure of the Concessionaire to issue, keep valid and maintain any of the Performance Securities in accordance with the terms of this Agreement;

20.4.14 a failure of the Concessionaire to meet the Minimum Allotment Criteria in terms of clause 11.2;

20.4.15 a failure of the Sponsors to fund any amounts required to be funded by them in accordance with the terms of this Agreement;

20.4.16 a change in shareholding in breach of clause 13.3 and/or 13.4; and

20.4.17 a breach in terms of clause 24.2.2.

20.5 **SEZMC EVENT OF DEFAULT**
Except where the relevant event occurs as a consequence of a failure or delay on the part of the Concessionaire or a Concessionaire Event of Default, each of the following events shall constitute an “SEZMC Event of Default”:

20.5.1 a failure by the SEZMC to make any undisputed payment under this Agreement, within ninety (90) Days from the due date therefor;

20.5.2 material breach or default by GoS or SEZMC under the Lease Agreement;

20.5.3 the expropriation, nationalisation or compulsory acquisition of any material asset of the Concessionaire or any shares or other interest in the Concessionaire by any Competent Authority;

20.5.4 a material breach by SEZMC of its obligations under this Agreement which is not remedied within sixty (60) Days after notice from the Concessionaire to the SEZMC stating that a breach has occurred, identifying the breach and demanding remedy thereof provided that, notwithstanding the exercise of reasonable efforts by SEZMC, such breach cannot be cured within sixty (60) Days after notice from the Concessionaire, the SEZMC shall be afforded a further period of sixty (60) Days within which to cure such breach, provided always that the SEZMC shall throughout such further sixty (60) Days period, exercise reasonable continuous efforts to cure the breach; and

20.5.5 the occurrence of an Unenforceability Event.

20.6 **TERMINATION DUE TO AN EVENT OF DEFAULT**

20.6.1 Upon the occurrence of a SEZMC Event of Default, the Concessionaire may give notice (the “Concessionaire Notice of Intent to Terminate”) to the SEZMC specifying in reasonable detail the relevant SEZMC Event of Default giving rise to such notice and the date upon which the Concessionaire proposes to terminate this Agreement, which date shall not be less than thirty (30) Days after the date of the Concessionaire Notice of Intent to Terminate or such longer period as specified in this Agreement (the “SEZMC Cure Period”).

20.6.2 Upon the occurrence of a Concessionaire Event of Default, the SEZMC may give notice (the “SEZMC Notice of Intent to Terminate”) to the Concessionaire specifying in reasonable detail the relevant Concessionaire Event of Default giving rise to such notice and the date upon which the SEZMC proposes to terminate this Agreement, which date shall not be less than thirty (30) Days after the date of the SEZMC Notice of Intent to Terminate or such longer period as specified in this Agreement (the “Concessionaire Cure Period”), provided that upon the occurrence of any of the Concessionaire Events of Default under clauses 20.4.10, 20.4.11 or 20.4.12, the SEZMC may terminate this Agreement immediately.

20.6.3 During the Cure Period, the Parties shall consult as to what steps shall be taken, and the Defaulting Party shall use its reasonable efforts, to mitigate the consequences of, and cure, the relevant Event of Default.

20.6.4 If, upon the expiry of the Cure Period, the relevant Event of Default has not been cured, unless the Parties have otherwise agreed, the SEZMC or the Concessionaire (as the case maybe) may issue a Termination Notice to the Defaulting Party whereupon this Agreement shall terminate on the date specified therein or such later date as the Parties may agree in writing.

20.6.5 If this Agreement is terminated by the SEZMC due to a Concessionaire Event of Default:

20.6.5.1 the SEZMC shall have the right to encash the Performance Securities to their full outstanding value; and
20.6.5.2 the SEZMC shall have the right, but not an obligation, to purchase the Concessionaire’s right, title and interest in the Project or the Shares (as opted by SEZMC in accordance with clause 20.9.1) for Value D where termination occurs prior to the CP Completion Date and for Value B where termination occurs after the CP Completion Date, and if the SEZMC exercises such right it shall do so by giving notice to the Concessionaire.

20.6.6 If this Agreement is terminated by the Concessionaire due to a SEZMC Event of Default, the Concessionaire shall have the right, but not the obligation, to require SEZMC to purchase the Concessionaire’s right, title and interest in the Project or the Shares (as opted by SEZMC in accordance with clause 20.9.1) for Value D where termination occurs prior to the CP Completion Date and for Value A where termination occurs after the CP Completion Date, and if the Concessionaire exercises such right, it shall do so by giving notice to SEZMC, and the SEZMC shall be obliged to purchase the Concessionaire’s right, title and interest in the Project or the Shares (as opted by SEZMC in accordance with clause 20.9.1) for such Value.

20.6.7 In the event that the circumstances giving rise to a Concessionaire Event of Default pursuant to clause 20.4.5 constitute a delay which directly impacts the Implementation Schedule and would, following the passage of time if not remedied, give rise to a Concessionaire Event of Default pursuant to clauses 20.4.1, the SEZMC undertakes and agrees that it shall not terminate this Agreement with respect to such circumstances other than pursuant to clause 20.4.1.

20.7 **Termination for a Prolonged Force Majeure Event**

20.7.1 Subject to clause 20.7.4, the Concessionaire shall have the right to terminate this Agreement if a Political Force Majeure Event prevents the SEZMC from performing any of its obligations under this Agreement for a continuous period of one hundred and twenty (120) Days.

20.7.2 Subject to clause 20.7.4, SEZMC shall have the right to terminate this Agreement if:

20.7.2.1 a Political Force Majeure Event prevents the SEZMC or Concessionaire from performing any of its obligations under this Agreement for a continuous period of one hundred and twenty (120) Days;

20.7.2.2 one or more Political Force Majeure Events or a combination thereof, results in the SEZMC incurring Increased Costs; or

20.7.2.3 a Natural Force Majeure Event prevents the SEZMC or the Concessionaire from performing any of its obligations under this Agreement for a continuous period of one hundred and twenty (120) Days.

20.7.3 Subject to clause 20.7.4, either Party shall have the right to terminate this Agreement if it is agreed, or determined, that the Project cannot be rebuilt, repaired and / or restored pursuant to clause 18.9.5.1 and the SEZMC shall have the right to terminate this Agreement if it is agreed, or determined, that the Project can only be partially rebuilt, repaired and / or restored pursuant clause 18.9.5.2, in either case following an Event of Loss caused by a Force Majeure Event.

20.7.4 If a Party wishes to exercise its right to terminate this Agreement pursuant to clauses 20.7.1, 20.7.2 or 20.7.3, it shall issue a Termination Notice to the other Parties specifying the date on which the Party giving such notice proposes to terminate this Agreement, which date shall not be less than sixty (60) Days from the date of such notice. Upon the occurrence of such date, provided that the event giving rise to such Termination Notice is continuing, unless the Parties otherwise agree in writing, this Agreement shall terminate on such date.

20.7.5 If this Agreement is terminated after the CP Completion Date by:
20.7.5.1 the Concessionaire pursuant to clause 20.7.1, the Concessionaire shall have the right, but not the obligation, to require the SEZMC to purchase the Concessionaire’s right, title and interest in the Project or the Shares (as opted by SEZMC in accordance with clause 20.9.1) for Value A, and if the Concessionaire exercises such right it shall do so by giving notice to the SEZMC, and the SEZMC shall be obliged to purchase the Concessionaire’s right, title and interest in the Project or the Shares (as opted by SEZMC in accordance with clause 20.9.1) for such Value;

20.7.5.2 SEZMC pursuant to clause 20.7.2.1, SEZMC shall purchase the Concessionaire’s right, title and interest in the Project or the Shares (as opted by SEZMC in accordance with clause 20.9.1) for Value A;

20.7.5.3 SEZMC pursuant to clause 20.7.2.2, SEZMC shall purchase the Concessionaire’s right, title and interest in the Project or the Shares (as opted by SEZMC in accordance with clause 20.9.1) for Value A;

20.7.5.4 SEZMC pursuant to clause 20.7.2.3 with respect to a prolonged Natural Force Majeure Event affecting the Concessionaire, SEZMC shall purchase the Concessionaire’s right, title and interest in the Project or the Shares (as opted by SEZMC in accordance with clause 20.9.1) for Value C;

20.7.5.5 SEZMC pursuant to clause 20.7.2.3 with respect to a prolonged Natural Force Majeure Event affecting SEZMC, the SEZMC shall purchase the Concessionaire’s right, title and interest in the Project or the Shares (as opted by SEZMC in accordance with clause 20.9.1) for Value C;

20.7.5.6 either Party pursuant to clause 20.7.3 with respect to an Event of Loss caused by a Political Force Majeure Event that prevents the Concessionaire from rebuilding, repairing and/or restoring the Project (in whole) pursuant to clause 18.9.5.1, the SEZMC shall purchase the Concessionaire’s right, title and interest in the Project or the Shares (as opted by SEZMC in accordance with clause 20.9.1) for Value A;

20.7.5.7 the SEZMC pursuant to clause 20.7.3 with respect to an Event of Loss caused by a Political Force Majeure Event that prevents the Concessionaire from rebuilding, repairing and/or restoring the Project (in part) pursuant to clause 18.9.5.2, the SEZMC shall purchase the Concessionaire’s right, title and interest in the Project or the Shares (as opted by SEZMC in accordance with clause 20.9.1) for Value A;

20.7.5.8 either Party pursuant to clause 20.7.3 with respect to an Event of Loss caused by a Natural Force Majeure Event that prevents the Concessionaire from rebuilding, repairing and/or restoring the Project (in whole) pursuant to clause 18.9.5.1, the SEZMC shall purchase the Concessionaire’s right, title and interest in the Project or the Shares (as opted by SEZMC in accordance with clause 20.9.1) for Value C; or

20.7.5.9 the SEZMC pursuant to clause 20.7.3 with respect to an Event of Loss caused by a Natural Force Majeure Event that prevents the Concessionaire from rebuilding, repairing and/or restoring the Project (in part) pursuant to clause 18.9.5.2, the SEZMC shall purchase the Concessionaire’s right, title and interest in the Project or the Shares (as opted by SEZMC in accordance with clause 20.9.1) for Value C.

20.7.6 Notwithstanding the foregoing, where the underlying Political Force Majeure Event giving rise to termination under this clause 20.7 is a Change in Law, the SEZMC shall purchase the Concessionaire’s right, title and interest in the Project or the Shares (as opted by SEZMC in accordance with clause 20.9.1) for Value C.

20.8 PAYMENTS ON TERMINATION
All amounts payable pursuant to this clause 20 shall be paid in Pakistani Rupees in immediately available funds as follows:

20.8.1 with respect to any amounts payable by the Concessionaire, immediately on the date of termination of this Agreement, by way of credit directly to a bank account designated, in writing, by the SEZMC; and

20.8.2 subject to clause 20.9.4, with respect to Termination Payments payable by the SEZMC, by the Termination Payment Date, by way of credit directly to a bank account in Pakistan designated, in writing, by the Concessionaire.

The obligations of the SEZMC under this clause 20.8 shall survive the termination of this Agreement until such time as all amounts due and owing by the SEZMC hereunder have been paid.

20.9 Transfer of the Project

20.9.1 Within one (01) Month following the Final Expiry Date, the Independent Appointees shall: (a) procure approval of SEZMC with respect to the preferred mode of transfer (either Concessionaire’s right, title and interest in the Project or acquisition of Shares) for satisfaction of the applicable Handover Conditions; and (b) carry out such inspections as they deem necessary to determine if the Concessionaire has satisfied the Handover Conditions.

20.9.2 If, in the opinion of the Independent Appointees:

20.9.2.1 the Project meets the Handover Conditions, making allowances for any Force Majeure Event or a SEZMC Event of Default that may have affected the Project and for which the Concessionaire shall not be responsible, then the Independent Appointees shall issue a Handover Certificate, together with such inspection reports and other data reasonably adequate to substantiate the conclusions reached in the Handover Certificate; or

20.9.2.2 the Project does not meet the Handover Conditions, making allowances for any Force Majeure Event or a SEZMC Event of Default that may have affected the Project and for which the Concessionaire shall not be responsible, then as soon as reasonably practicable, and in any event within two (02) Months following the Final Expiry Date, the Independent Appointees shall issue a report (the “Remedial Report”) providing to the Parties: (a) a list of the works and services required to be undertaken by the Concessionaire to meet the Handover Conditions (the “Remedial Works”); (b) a remediation plan, including the time period, for completing the Remedial Works (the “Remedial Plan”); and (c) a cost estimate of the costs of carrying out the Remedial Works (the “Estimated Remedial Costs”).

20.9.3 Immediately upon the issuance of a Remedial Report, the Concessionaire shall increase the face amount of the O&M Performance Security by the Estimated Remedial Costs and extend the validity thereof to the date falling six (06) Months following the estimated date stated in the Remedial Report for completion of the Remedial Works.

20.9.4 The Concessionaire shall complete all Remedial Works in accordance with the Remedial Plan at its own costs and expense. Upon completion of the Remedial Works in accordance with the Remedial Plan, as determined by the Independent Appointees, the Independent Appointees shall issue a Handover Certificate, together with such inspection reports and other data reasonably adequate to substantiate the conclusions reached in the Handover Certificate. Where the Remedial Plan has been prepared following issuance of a Termination Notice, the Termination Payment Date shall be extended (by such period as determined by the Independent Appointees) to account for the timelines stated in the Remedial Plan.
20.9.5 Any Termination Payments due to the Concessionaire shall be made by the SEZMC subject to the issuance of the Handover Certificate.

20.9.6 If the Concessionaire fails to comply with the Remedial Plan, unless the Parties agree otherwise, the SEZMC shall have the option to:

20.9.6.1 encash the O&M Performance Security to the extent of the Estimated Remedial Costs; or

20.9.6.2 deduct the Estimated Remedial Costs from any payments due to the Concessionaire from SEZMC in terms of this Agreement, following which (and subject to full recovery of the Estimated Remedial Costs by the SEZMC) the Handover Certificate shall be deemed as issued.

20.9.7 Upon issuance of the Handover Certificate and (if applicable) payment by the SEZMC of the Termination Payments under clause 20.8.2, the Shares or the Concessionaire’s right, title and interest in the Project (as intimated by SEZMC in accordance with clause 20.9.1) shall stand transferred to SEZMC (directly or through its nominee).

20.10 OTHER REMEDIES

20.10.1 Except as otherwise expressly provided in this Agreement, upon termination of this Agreement, the Parties shall have no further obligations or liabilities hereunder, save those obligations or liabilities that arose on or before the date, or as a result of termination, which shall survive until satisfied in full.

20.10.2 This clause 20 sets out the sole and exclusive grounds upon which this Agreement may be terminated, provided that upon the breach by any Party of any covenant or warranty hereunder, the Party damaged by any such default or breach may, in its sole discretion, in addition to exercising any other remedies provided for hereunder, proceed in accordance with clause 26 to protect and enforce its rights, to recover any damages to which it may be entitled (including all costs and expenses reasonably incurred in the exercise of its remedy), or to seek specific performance by the other Party of such breaching Party’s obligations under this Agreement and the other Project Agreements.

20.11 SURVIVAL

The provisions of clauses 11.9, 11.10, 11.11, 14.1, 20, 21, 22, 25, 26, and 28 shall survive the termination of this Agreement.

21. REINSTATEMENT

21.1 The Concessionaire shall reinstate the Site if and to the extent that it is required to do so pursuant to the Handover Conditions.

22. INDEMNITIES

22.1 INDEMNIFICATION BY THE CONCESSIONAIRE

The Concessionaire shall indemnify, defend and hold harmless the SEZMC (and their Affiliates and contractors and respective shareholders, directors, officers, employees, agents or representatives (collectively the “SEZMC Indemnified Parties”)), from and against all Claims made against or suffered by any of the SEZMC Indemnified Parties in relation to:

22.1.1 any loss of or damage to property or death or injury to persons (except for workers’ compensation claims), resulting from any negligent act or omission of the Concessionaire or any of the Concessionaire Indemnified Parties or that arises out of or is in any manner connected with the performance of this Agreement, except to the extent that such loss, damage, injury or death is attributable to the negligence or
misconduct of the SEZMC Indemnified Parties, or breach of this Agreement by the SEZMC Indemnified Parties, or the failure of the SEZMC Indemnified Parties, as applicable, to take reasonable steps in mitigation of the foregoing;

22.1.2 the violation of any Environmental Legal Requirements by any of the Concessionaire Indemnified Parties occurring at the Site or in any way related to the Project, except to the extent that such Claim results from or arises out of:

22.1.2.1 the condition of the affected Site existing prior to the Lease Agreement Date; or

22.1.2.2 any discharge, release or leaching of any Hazardous Substance on, in, over, under or otherwise affecting the Site (including the soil, subsoil, surface water or ground water on or beneath the Site and the air above the same) or caused by a person other than the Concessionaire or any of the Concessionaire Indemnified Parties;

22.1.3 in relation to any use, presence, suspected presence, disposal, discharge, storage, treatment, transportation, handling, generation, leaching, release, or threatened release of any Hazardous Substance on, in, over, under or otherwise affecting the Site and their respective neighbouring properties (including the soil, subsoil, surface water or ground water on or beneath the Site and the surrounding environs and the air above the same):

22.1.3.1 caused by the Concessionaire or any of the Concessionaire Indemnified Parties;

22.1.3.2 originating from the Site after the Lease Agreement Date; or

22.1.3.3 in any way related to the Project; and

22.1.4 in relation to the violation of any Legal Requirements arising out of the Concessionaire’s performance of the Project Activities, including the design, construction, operation or maintenance of the Project.

22.2 INDEMNIFICATION BY SEZMC

22.2.1 The SEZMC shall indemnify, defend and hold harmless the Concessionaire (and its Affiliates and Contractors and its or their respective shareholders, directors, officers, employees, agents or representatives (collectively the “Concessionaire Indemnified Parties”), from and against all Claims made against or suffered by the Concessionaire or any of the Concessionaire Indemnified Parties in relation to any loss of or damage to property or death or injury to persons (except for workers’ compensation claims), resulting from any negligent act or omission of the SEZMC or otherwise that arises out of or is in any manner connected with the performance of this Agreement, except to the extent such loss, damage, injury or death is attributable to the negligence or misconduct of the Concessionaire or any Concessionaire Indemnified Parties, or breach of this Agreement by the Concessionaire, or the failure of the Concessionaire or any Concessionaire Indemnified Parties, as applicable, to take reasonable steps in mitigation of the foregoing.

22.3 LIABILITY

No Party shall be liable to the other in contract, tort, warranty, strict liability, or any other legal theory for any indirect, consequential, incidental, punitive, or exemplary damages, except as expressly provided herein.

22.4 MITIGATION
The Parties shall make all reasonable endeavours to mitigate any loss, cost or expense they may suffer as a result of any breach of the other Party’s material obligations under this Agreement.

22.5 **JOINT NEGLIGENCE**

In the event any injury or damage results from the joint or concurrent negligent or intentional acts or omissions of the Parties (as determined by the Independent Appointees), each Party shall be liable under this indemnification in proportion to its relative degree of fault, as determined by the Independent Appointees.

23. **ASSIGNMENT**

23.1 **ASSIGNMENT WITH CONSENT**

Save as expressly provided otherwise in this Agreement, no Party shall be entitled to assign or transfer its rights or obligations under this Agreement without the prior written consent of the other Party.

24. **REPRESENTATIONS AND WARRANTIES**

24.1 **CONCESSIONAIRE REPRESENTATIONS AND WARRANTIES**

The Concessionaire represents and warrants to the SEZMC as follows:

24.1.1 it is duly incorporated and is validly existing and in good standing under the Legal Requirements;

24.1.2 it has the power and authority to enter into and perform its obligations under this Agreement;

24.1.3 it has the financial standing and capability to undertake and implement the Project in accordance with the terms of this Agreement;

24.1.4 neither the Concessionaire nor the Sponsors have committed a breach in respect of their payment obligations in relation to a financial indebtedness;

24.1.5 this Agreement has been duly authorised, executed and delivered by it and constitutes the legal, valid and binding obligation of it;

24.1.6 there is no pending or threatened litigation or claim which would materially impair its ability to perform its obligations under this Agreement;

24.1.7 the performance of its obligations under this Agreement will not result in the breach of any term or provision of, or constitute a default under, any judgment, decree, indenture, mortgage or other agreement or instrument to which it is a party or by which it is bound, nor will such performance conflict with any charter, by-law or similar provision applicable to it. There are no conflicts or violations of Legal Requirements which would materially affect its right or ability to comply with the terms of this Agreement;

24.1.8 it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Competent Authority which may result in any material impairment of its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would result in material impairment of its ability to perform its obligations under this Agreement;

24.1.9 it has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may materially impair its ability to perform its obligations under this Agreement;
24.1.10 no representation or warranty made by the Concessionaire and contained herein or in any other document furnished by it to the SEZMC or to any Competent Authority in relation to the Approvals contains any untrue or misleading statement of material fact or omits or will omit to state a material fact rendering such representation or warranty misleading;

24.1.11 it has not engaged in any fraudulent, collusive, coercive, or obstructive practices or other integrity violations and no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any Person by way of fees, commission or otherwise, in each case for securing the Concession or entering into this Agreement or any other Project Agreement, or for influencing or attempting to influence any officer or employee of the SEZMC or any other Competent Authority in connection therewith;

24.1.12 it has furnished a valid and effective Construction Performance Security to the SEZMC prior to the Effective Date and the Construction Performance Security is valid and subsisting;

24.1.13 it has undertaken all acts and deeds necessary and complied with all Legal Requirements and the RFP for the award of the Concession to the Concessionaire and the performance of its obligations under this Agreement;

24.1.14 the Sponsor(s) own one hundred percent (100%) of the Shares as of the Effective Date and no encumbrances exist on such Shares; and

24.1.15 the Sponsor(s) have the financial standing and resources to comply with their obligations under this Agreement and Project Agreements.

24.2 BREACH OF REPRESENTATIONS AND WARRANTIES

24.2.1 In the event that any occurrence or circumstance renders any of its representations or warranties incorrect, the Concessionaire shall immediately notify the SEZMC and the Independent Appointees of the same and take reasonable steps to ensure compliance with its representations or warranties. Such notification shall not have the effect of remedying any incorrect representation or warranty nor shall it adversely affect or waive any right, remedy or obligation of the Parties under this Agreement.

24.2.2 In the event any statement, representation or warranty made by the Concessionaire in this Agreement is rendered incorrect, in any material respect, due to any occurrence or circumstance, when made or reaffirmed and such incorrect statement, representation or warranty has materially impaired the Concessionaire’s ability to perform its obligations under this Agreement then such incorrect statement, representation or warranty shall give rise to a Concessionaire Event of Default pursuant to clause 20.4.

24.2.3 The representations and warranties under clause 24.1 shall be deemed repeated on the CP Completion Date, the Lease Agreement Date, the Substantial Completion Date, and the Construction Completion Date.

24.3 SEZMC REPRESENTATIONS AND WARRANTIES

The SEZMC represents and warrants to the Concessionaire as follows:

24.3.1 it has the power and authority to enter into and perform its obligations under this Agreement;

24.3.2 this Agreement has been duly authorised, executed and delivered by it and constitutes its legal, valid and binding obligation;

24.3.3 there is no pending or threatened litigation or claim which would materially impair its ability to perform its obligations under this Agreement; and
24.3.4 the performance of its obligations under this Agreement will not result in the breach of any term or provision of, or constitute a default under, any judgment, decree, indenture, mortgage or other agreement or instrument to which it is a party or by which it is bound, nor will such performance conflict with any decree, charter, by-law or similar provision applicable to the SEZMC. There are no conflicts or violations of Legal Requirements that would materially affect its right or ability to comply with the terms of this Agreement.

24.4 **IMMUNITY**

24.4.1 The Concessionaire expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement and / or any matters arising hereunder including any obligation, liability, or responsibility hereunder.

24.5 **PROJECT IMPLEMENTATION UNIT**

24.5.1 The Project Implementation Unit shall oversee day-to-day implementation of the Project on behalf of the SEZMC in accordance with the Legal Requirements.

24.5.2 The Concessionaire shall provide all necessary cooperation to the Project Implementation Unit to allow it to carry out its functions.

25. **GOVERNING LAW**

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the Laws.

26. **DISPUTE RESOLUTION**

26.1 **NEGOTIATION**

The Parties agree to attempt to resolve any Dispute promptly, amicably, and in good faith. Each Party shall designate a representative who shall be entitled to enter into discussions to resolve by amicable agreement any Dispute in connection with this Agreement.

26.2 **PUBLIC-PRIVATE PARTNERSHIP POLICY BOARD**

Any Dispute that is not finally resolved between the Parties pursuant to the clause 26.1 within thirty (30) Days from the date on which a Party receives notice from the other Party that a Dispute exists, then the Parties shall endeavour to settle the dispute in an amicable manner by mediation administered by an independent and impartial person appointed by the Public-Private Partnership Policy Board. If any Dispute is not resolved between the Parties pursuant to this clause 26.2 within sixty (60) Days from the date on which the matter has been referred by the Public-Private Partnership Policy Board to an independent and impartial person so appointed, then such Dispute shall be settled exclusively and finally in accordance with the provisions of clause 26.3.

26.3 **ARBITRATION**

26.3.1 Each of the Parties unconditionally and irrevocably agrees in respect of a Dispute, which cannot be resolved by the Parties pursuant to clause 26.2:

26.3.1.1 to the submission of such Dispute to binding arbitration governed by the Arbitration Act 1940, by appointment of a board of arbitrators, consisting of one (1) arbitrator appointed by each Party, and one (1) arbitrator appointed jointly by the arbitrators so appointed by the Parties (the “Arbitrators”). Any arbitration proceedings commenced pursuant to this clause 26.3.1 shall be referred to as arbitration (“Arbitration”);

26.3.1.2 not to claim any right it may have under the Laws to hinder, obstruct, or nullify the submission of the Dispute to Arbitration; and
26.3.1.3 To accept the Award rendered by the Arbitrators and any judgment entered thereon by a court of competent jurisdiction as final and binding and not to hinder, obstruct or nullify the enforcement or execution of any decision rendered by the Arbitrators or court of competent jurisdiction.

26.3.2 The place of Arbitration shall be Karachi, Pakistan.

26.3.3 The language of Arbitration shall be English.

26.3.4 Any decision or award resulting from the Arbitration (“Award”) shall be final and binding upon the Parties.

26.3.5 The Parties hereby waive, to the extent permitted under the Laws, any rights to appeal or to review of such Award by any Competent Authority.

26.3.6 The fees and expenses of the Arbitrators and all other expenses relating to Arbitration shall be borne and paid by the respective Parties, unless the Award states otherwise. The Arbitrators may provide in the Award, for reimbursement to a Party, of its costs and expenses in bringing or defending the Arbitration claim, including legal fees and expenses incurred by such Party.

26.3.7 This Agreement and the rights and obligations of the Parties shall remain in full force and effect pending the Award for any Arbitration, which Award, if appropriate, shall determine whether and when any termination shall become effective.

26.4 **EXCLUSIVE JURISDICTION**

No Party shall have the right to, nor shall they, commence or maintain any legal proceedings in or outside of Pakistan, concerning a Dispute, until the Dispute has been resolved in accordance with clauses 26.2 and/or 26.3 and then only to enforce or execute an Award.

26.5 **OBLIGATIONS CONTINUING**

Unless otherwise agreed in writing, the existence of a Dispute shall not relieve either Party from the performance of its obligations under this Agreement not the subject of the Dispute.

27. **INTELLECTUAL PROPERTY RIGHTS**

27.1 **SEZMC IPR**

27.1.1 The SEZMC (or its relevant licensor) shall retain exclusive ownership of the SEZMC IPR and nothing in this Agreement (other than the licence granted in clause 27.1.2) shall operate to transfer to the Concessionaire or vest in the Concessionaire any licence to use or rights in the SEZMC IPR.

27.1.2 The SEZMC hereby grants to the Concessionaire a royalty-free, non-exclusive licence to use the SEZMC IPR during the Concession Period to the extent necessary to enable the Concessionaire to exercise its rights and perform its obligations under this Agreement. This licence shall include the right for the Concessionaire to grant a sub-licence to its Contractors.

27.2 **CONCESSIONAIRE IPR**

27.2.1 The Concessionaire (or its relevant licensor) shall retain exclusive ownership of the Concessionaire IPR and nothing in this Agreement (other than the licence granted in clause 27.2.2) shall operate to transfer to the SEZMC or vest in the SEZMC any licence to use or rights in the Concessionaire IPR.

27.2.2 The Concessionaire hereby grants to the SEZMC a perpetual, irrevocable, royalty-free, and non-exclusive licence (with the free right to sub-licence and / or assign to any third party) to use, reproduce and maintain the Concessionaire IPR to
the extent and for the duration necessary to enable the SEZMC to exercise its rights and perform its obligations under this Agreement.

27.2.3 The Concessionaire shall ensure that the SEZMC is provided with copies of such items of Concessionaire IPR as the SEZMC may from time-to-time reasonably request.

27.3 **PROJECT IPR**

27.3.1 The Concessionaire shall use its best endeavours to procure that any licence or other arrangement with a third party or a Contractor relating to the Project IPR:

27.3.1.1 permits the Concessionaire to grant the licence set out in clause 27.3.2; and

27.3.1.2 permits the Concessionaire to make the transfer required by clause 27.3.3.3.

If the Concessionaire, despite the use of its best endeavours, is unable to secure the rights described above, the Concessionaire shall notify the SEZMC and shall (at its cost) take such other measures as are required to put the SEZMC in the position it would have been in if such rights had been procured or as close thereto as is reasonably possible in the circumstances. The Concessionaire shall pay any costs resulting from the performance of this clause 27.3.1, save for any on-going fees payable for the maintenance in force of the Project IPR following the Handover Date to the extent such fees are unaffected, directly or indirectly, by its transfer to the SEZMC or its nominee, which fees shall, to that extent, be paid by the SEZMC.

27.3.2 The Concessionaire hereby grants to the SEZMC a royalty-free, non-exclusive licence (with the free right to sub-licence and/or assign to any third party) to use, reproduce and maintain the Project IPR to the extent and for the duration necessary to enable the SEZMC to exercise its rights and perform its obligations under this Agreement.

27.3.3 On:

27.3.3.1 the Handover Date where the SEZMC has elected under the Handover Conditions that the Concessionaire should not fully reinstate in terms thereof; or

27.3.3.2 early termination of this Agreement for any reason where the SEZMC is obliged or has elected to purchase the Concessionaire’s right, title and interest in the Project or the Shares (as opted by SEZMC in accordance with clause 20.9.1) in accordance with clause 20.7 and has paid the purchase price in accordance with clause 20.8.2,

the Concessionaire shall deliver to the SEZMC or its nominee copies of all Project IPR, in each case in the form utilised by the Concessionaire in the operation of the Project and either:

27.3.3.3 transfer by way of future assignment, to the SEZMC all Project IPR and execute a transfer or any other documents necessary to transfer absolutely such Intellectual Property Rights to the SEZMC and otherwise to perfect the SEZMC’s title thereto; or

27.3.3.4 to the extent that the Project IPR is capable of use by the Concessionaire in any project other than in respect of the Project, grant the SEZMC a royalty free, non-exclusive, sub-licensable, irrevocable, perpetual, and freely assignable licence to use the Project IPR for any purpose in connection with the Project, any such licence to be effective from the Final Expiry Date or the termination of this Agreement.

27.4 **BREACHES OF INTELLECTUAL PROPERTY RIGHTS**
27.4.1 The Concessionaire shall not use:

27.4.1.1 any SEZMC IPR except to the extent expressly permitted by this Agreement; or

27.4.1.2 in the performance of this Agreement, any other material subject to any third-party Intellectual Property Rights to which they have not been granted an appropriate licence.

27.4.2 The SEZMC shall defend, indemnify and hold the Concessionaire harmless against all Claims, costs, charges and expenses arising from or incurred by reason of any actual infringement or alleged infringement of any rights in the:

27.4.2.1 the Concessionaire IPR or Project IPR granted to the SEZMC under clauses 27.2 or 27.3 provided that such infringement has arisen out of the use of the Concessionaire IPR or Project IPR otherwise than in accordance with the terms of this Agreement; and

27.4.2.2 the SEZMC IPR provided that such infringement has arisen out of the use of the SEZMC IPR in accordance with the terms of this Agreement.

27.4.3 The Concessionaire shall defend, indemnify and hold the SEZMC Indemnified Parties harmless against all Claims, costs, charges and expenses arising from or incurred by reason of any actual infringement or alleged infringement of:

27.4.3.1 any rights in the SEZMC IPR provided that such infringement has arisen out of the use of the SEZMC IPR otherwise than in accordance with the terms of this Agreement; and

27.4.3.2 the Concessionaire IPR or Project IPR licenced to the SEZMC under clauses 27.2 or 27.3 because of the use by or on behalf of the SEZMC of the rights granted under clause 27.2 or clause 27.3 provided that such infringement has arisen out of the use of the Concessionaire IPR or Project IPR in accordance with the terms of this Agreement.

27.4.4 Without in any way limiting the foregoing provisions of this clause 27.4, in circumstances where the Concessionaire is liable to indemnify the SEZMC Indemnified Parties in accordance with clause 27.4.3, the Concessionaire shall at the SEZMC’s request but at the Concessionaire’s own expense, complete one or more of the following without delay:

27.4.4.1 procure for the SEZMC the right to continue to use the Intellectual Property Rights in question; and/or

27.4.4.2 modify or replace the subject-matter of the activities permitted by this Agreement (at no cost to the SEZMC) so that it becomes non-infringing without loss of functionality or compatibility or affecting its use.

27.5 NO WARRANTY

Without prejudice to the liability to indemnify the Concessionaire under clause 27.4.2, the SEZMC gives no warranty and makes no representation that:

27.5.1 the SEZMC IPR or Intellectual Property Rights licenced by the SEZMC to the Concessionaire, or any part of them:

27.5.1.1 is accurate or valid;

27.5.1.2 is suitable for the Concessionaire’s purpose;

27.5.1.3 is capable of being patented; or
27.5.1.4 shall not cause any loss, damage or injury; or

27.5.2 the use of SEZMC IPR or Intellectual Property Rights licenced by the SEZMC to the Concessionaire does or shall not infringe the rights of any third party.

27.6 TERMINATION

In addition to, and without prejudice to the provisions of clause 20 and clause 27.3.3, on Final Expiry Date for any reason, the Concessionaire shall forthwith:

27.6.1 deliver to the SEZMC all the SEZMC IPR, all production manuals and other materials, information, data or documents in its possession or control containing or recording the SEZMC IPR, or other Intellectual Property Rights licenced by the SEZMC to the Concessionaire, or their subject matter, and shall provide the SEZMC with all reasonable facilities to inspect the same, and shall retain no copies of the documents or other manuals; and

27.6.2 cease to make any use of the SEZMC IPR and any other Intellectual Property Rights licenced by the SEZMC to the Concessionaire.

28. CONFIDENTIALITY

28.1 CONFIDENTIALITY OBLIGATION

During the term of this Agreement and after termination or expiry of this Agreement for any reason whatsoever a Party shall:

28.1.1 keep the Confidential Information confidential;

28.1.2 not disclose the Confidential Information to any other person who is not a Party other than:

28.1.2.1 with the prior written consent of the other Party; or

28.1.2.2 in accordance with clause 28.2; and

28.1.3 not use the Confidential Information for any purpose other than the performance of its obligations under this Agreement.

28.2 DISCLOSURE

During the term of this Agreement and after termination or expiry of this Agreement for any reason, a Party may disclose the Confidential Information:

28.2.1 in the case of the SEZMC, to any of its civil servants, directors, officers and employees, and in the case of the Concessionaire, to its direct shareholders, directors, officers or employees (each a “Recipient”) to the extent necessary to achieve the purposes of this Agreement, provided that:

28.2.1.1 the disclosing Party shall procure that each Recipient is made aware of and complies with all the disclosing Party's obligations of confidentiality under this Agreement as if the Recipient was a party to this Agreement; and

28.2.1.2 in no circumstances shall disclosure to the public be permitted pursuant to this clause 28.2.1;

28.2.2 if, and only to the extent, required to disclose such information by judicial, regulatory or administrative process or otherwise in accordance with any law or the rules of any recognised stock exchange applicable to the disclosing Party;

28.2.3 with the consent of the other Party (not to be unreasonably withheld), in the interests of attracting equity financing for the Project, provided that prior to making such
disclosure, the disclosing Party obtains an appropriate confidentiality undertaking from the person to whom the Confidential Information is to be disclosed;

28.2.4 to its Contractors, provided that prior to making such disclosure, the disclosing Party obtains an appropriate confidentiality undertaking from the person to whom the Confidential Information is to be disclosed;

28.2.5 to its legal, financial and/or technical advisors, provided that prior to making such disclosure, the disclosing Party obtains an appropriate confidentiality undertaking from the person to whom the Confidential Information is to be disclosed;

28.2.6 in a legal action or proceeding brought by the disclosing Party in pursuit of its rights or in exercise of its remedies; and/or

28.2.7 to its insurers, provided that prior to making such disclosure, the disclosing Party obtains an appropriate confidentiality undertaking from the person to whom the Confidential Information is to be disclosed.

28.3 EXCEPTIONS

The obligations contained in clauses 28.1 and 28.2 shall not apply to any Confidential Information which:

28.3.1 is at the Effective Date in, or at any time after the Effective Date comes into, the public domain other than through breach of this Agreement by the disclosing Party or any Recipient;

28.3.2 can be shown by the disclosing Party to the reasonable satisfaction of the other Party to have been known to the disclosing Party independently; and/or

28.3.3 on, before or after the Effective Date has come lawfully into the possession of the disclosing Party from a third party.

28.4 PRESS RELEASES

This prohibition shall not forbid a Party, with the prior written consent of the other Party, from issuing press releases containing Confidential Information in relation to the progress of the Project.

28.5 DEFINITION

For the purposes of this clause 28, “Confidential Information” means this Agreement and all information concerning the Project and the other Party (or its Affiliates), whether:

28.5.1 in writing, verbally or by any other means; or

28.5.2 acquired directly or indirectly before or after the Effective Date.

29. NOTICES

29.1 ADDRESSES FOR SERVICE

A notice and all other forms of written communication shall be personally delivered, sent by registered post, sent by facsimile transfer or sent by email to the relevant address below. Notice or communication by email shall only be valid if receipt is confirmed by the recipient acknowledging receipt of the email.

29.1.1 SEZMC

<table>
<thead>
<tr>
<th>Address:</th>
<th>Chief Technical Officer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attention:</td>
<td>2nd Floor, Bahria Complex IV, Choudhry Khaliq Uz Zaman Road, Gizri Karachi.</td>
</tr>
</tbody>
</table>
29.1.2 CONCESSIONAIRE

| Address: | ● |
| Attention: | ● |
| Fax: | ● |
| Email | ● |

29.2 DEEMED SERVICE

A notice or communication shall be deemed to have been made or delivered:

29.2.1 in the case of any communication made by letter, when delivered by hand, by recognised courier or by mail (registered return receipt requested) at the address set out in clause 29.1.1 or clause 29.1.2 (as applicable);

29.2.2 in the case of any communication made by facsimile, when transmitted properly addressed to the facsimile number set out in clause 29.1.1 or clause 29.1.2 (as applicable) and the sender has received a sent receipt; and

29.2.3 in the case of any communication made by email, when transmitted properly addressed to the email address set out in clause 29.1.1 or clause 29.1.2 (as applicable), and the sender has received a sent receipt.

29.3 CHANGES TO ADDRESSES FOR SERVICE

If a Party changes its notice details set out in clause 29.1, it shall provide the other Party with prompt notice of any such changes prior to effecting the same.

30. MISCELLANEOUS

30.1 AMENDMENTS

This Agreement may be amended only with the prior written consent of the Parties.

30.2 NO IMPLIED WAIVER

The failure of either Party to insist upon strict performance of any provisions of this Agreement shall not be construed as a waiver of any such provisions or the relinquishment of any such right for the future.

30.3 INVALIDITY

The invalidity or unenforceability of any provisions of this Agreement shall be determined in accordance with clause 26.4. The Parties hereby agree to use good faith efforts to negotiate an equitable adjustment to any provisions of this Agreement determined to be invalid or unenforceable with a view towards effecting the purposes of this Agreement, and the validity or enforceability of the remaining provisions of this Agreement shall not be affected by such determination.

30.4 BINDING EFFECT

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, legal representatives and permitted assigns.

30.5 RELATIONSHIP OF THE PARTIES

Nothing contained in this Agreement shall be construed to create an association, trust, partnership or joint venture between the Parties. Each Party shall be liable individually and severally for its own obligations under this Agreement.
30.6 EXPENSES

Without prejudice to the terms of this Agreement, each Party shall pay its own costs and expenses (including the fees and expenses of its agents, representatives, advisors, counsel and accountants) necessary for the negotiation, execution, delivery, performance of and compliance with this Agreement.

30.7 LANGUAGE

This Agreement is being executed in the English language.

30.8 ENTIRE AGREEMENT

This Agreement and its appendices constitute the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersedes all previous understandings, representations, or agreements between the Parties, whether written or oral.

30.9 NO WAIVER

The granting of any consent, approval or review by the Independent Appointees or the SEZMC to any of the designs, works, plans or time programmes or the manner of implementation of the Project shall not relieve or reduce the Concessionaire’s responsibility in performing its obligations as stipulated in the Agreement, or its responsibility to achieve the level of performance provided for in the Agreement.

30.10 COUNTERPARTS

The Parties may execute this Agreement in counterparts, which shall, in the aggregate, when signed by the Parties constitute one and the same instrument; and thereafter, each counterpart shall be deemed to be an original instrument as against the Party who has signed it.
IN WITNESS WHEREOF, the Parties, intending to be legally bound, have caused this Agreement to be executed by their duly authorised representatives as of the date first written above.

SINDH ECONOMIC ZONES MANAGEMENT COMPANY, THROUGH [●]

| Signature     | ................................................................. |
| Name (block capitals) | ................................................................. |
| Title         | ................................................................. |

In the presence of:

| Witness signature | ................................................................. |
| Witness name     | ................................................................. |
| (block capitals) | ................................................................. |

| Witness signature | ................................................................. |
| Witness name     | ................................................................. |
| (block capitals) | ................................................................. |
THE DEVELOPER

Signature

Name (block capitals)

Title
In the presence of:

Witness signature

Witness name (block capitals)

Witness signature

Witness name (block capitals)
APPENDIX I: TECHNICAL SPECIFICATIONS

[To be inserted from Volume II of RFP on Effective Date]
**APPENDIX 2: IMPLEMENTATION SCHEDULE**

<table>
<thead>
<tr>
<th><strong>SCHEDULED CP COMPLETION DATE</strong></th>
<th>The date falling six (6) months after the Effective Date, as extended from time to time in accordance with this Agreement.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ANTICIPATED LEASE AGREEMENT DATE</strong></td>
<td>Ninety (90) days of the CP Completion Date.</td>
</tr>
<tr>
<td><strong>ANTICIPATED START OF CONSTRUCTION ACTIVITIES</strong></td>
<td>Lease Agreement Date.</td>
</tr>
<tr>
<td><strong>SCHEDULED SUBSTANTIAL COMPLETION DATE</strong></td>
<td>Twenty-Four (24) months from Lease Agreement Date.</td>
</tr>
<tr>
<td><strong>SCHEDULED CONSTRUCTION COMPLETION DATE</strong></td>
<td>The date set out in the Substantial Completion Certificate which date shall not be later than the date falling sixty (60) days after the Substantial Completion Date.</td>
</tr>
<tr>
<td><strong>ANTICIPATED EXPIRY OF CONCESSION AGREEMENT</strong></td>
<td>The date falling after twelve (12) years from the CP Completion Date.</td>
</tr>
</tbody>
</table>
APPENDIX 3: MINIMUM INSURANCE REQUIREMENTS

PART I – Construction Period Insurances

i. Concessionaire’s All Risks Policy (in relation to development and Construction Activities)

Minimum sum to be insured: Total Project Cost

ii. Comprehensive Third-Party Liability

Minimum sum to be insured: Such minimum sum shall be decided by the Concessionaire, and approved by the Independent Engineer, depending on the third party identified.

iii. Workmen’s compensation insurance as required under the Laws

Minimum sum to be insured: This shall be according to the Workers compensation Act, 1939. The compensation amount in Sindh is currently PKR 400,000/- (Pakistani Rupees Four Hundred Thousand) per workman.

iv. Force Majeure Events

Minimum sum to be insured: Up to 25% of the Project Cost

PART II – Operating Period Insurances

i. Project Assets (Comprehensive insurance for Project assets for their full market value or replacement cost (including fire, burglary, standard and special peril);

Minimum sum to be insured: Total Project Cost

ii. Comprehensive Third-Party Liability

Minimum sum to be insured: Such minimum sum shall be decided by the Concessionaire, and approved by the Independent Engineer, depending on the third party identified.

iii. Workmen’s compensation insurance as required under the Laws

Minimum sum to be insured: This shall be according to the Workers compensation Act, 1939. The compensation amount in Sindh is currently PKR 400,000/- (Pakistani Rupees Four Hundred Thousand) per workman.

iv. Force Majeure Events

Minimum sum to be insured: Up to 25% of the Project Cost

Any other insurance that may be necessary to protect the Concessionaire, the persons claiming through or under it, its employees and its assets (against loss, damage or destruction at replacement value) including all Force Majeure Events that are insurable.
APPENDIX 4: CONDITIONS

1. Concessionaire’s Responsibility

It shall be a condition precedent to the CP Completion Date that each of the following conditions are satisfied and supplied to the Independent Appointees by the Concessionaire, unless any such condition precedent is deferred or waived in writing by the SEZMC:

1.1 copies of corporate documents (i.e., memorandum and articles of association, certificate of incorporation, certificate of commencement of business (if applicable), latest filings with the Securities and Exchange Commission of Pakistan or with the competent authority in the country where the entity is incorporated) of each of the Company, Sponsors and Contractors (if applicable), duly certified as true copies by the company secretary or director of each of the Company, Sponsors and Contractors (if applicable);

1.2 copies of the Board Resolutions (or authority letters, in case the Sponsor(s) is/are a partnership) that duly authorize:

(a) the Concessionaire and the Sponsor(s) (as the case may be) to enter into the relevant Project Agreements (to which they are a party) and to undertake the obligations, liabilities, as set out in the applicable Project Agreements, and the transactions as contemplated by the Project Agreements (to which they are a party); and / or

(b) a specified person or persons to:

(i) execute the relevant Project Agreements, on behalf of the Concessionaire and the Sponsor(s) (as the case may be), to which they are a party; and

(ii) undertake all other acts and to issue and / or execute any document / instrument, specifically relating to and / or under the Project Agreements (to which they are a party), as contemplated therein;

1.3 evidence of establishment of the:

(a) Independent Engineer Payment Account and issuance of the Independent Engineer Payment Account Standing Instructions;

(b) Independent Auditor Payment Account and issuance of the Independent Auditor Payment Account Standing Instructions; and

(c) Escrow Accounts.

1.4 copies of the Approvals procured by the Concessionaire and the same are effective and valid and have not been cancelled and/or rescinded;

1.5 a copy of an Environmental and Social Impact Assessment (ESIA) report, duly approved by the Sindh Environmental Protection Agency, Government of Sindh;

1.6 a copy of the environmental and social management plan setting out the Concessionaire’s action plan pursuant the ESIA;

1.7 submit evidence of procurement of insurances in accordance with clause 17;

1.8 submit the Marketing Plan in accordance with clause 11.1;

1.9 two (2) certified copies of the Construction Drawings;

1.10 procure the approval of the Master Plan in accordance with clause 6.1;

1.11 a legal opinion from the legal counsel of the Concessionaire confirming that: (a) the Concessionaire has been duly organized and is validly existing under the Laws and has the
requisite power and authority to enter into this Agreement and to undertake the transactions as contemplated by this Agreement and to assume the obligations as contained herein and the enforceability of the same against the Concessionaire; (b) this Agreement has been duly executed and is legally valid, binding and enforceable against the Concessionaire in accordance with the terms therein; and (c) all consents and approvals or actions required to be undertaken, fulfilled and obtained (including the obtaining of any necessary Concessionaire Approvals) in order for the Concessionaire to enter into and comply with its obligations under this Agreement, have been undertaken, fulfilled or obtained;

1.12 evidence of incorporation of share transfer restrictions for Sponsors, as specified in clauses 13.3 and 13.4, in the corporate documents of the Concessionaire;

1.13 within thirty (30) Days of the Effective Date, sign and enter into Independent Engineer Contract for the appointment of the Independent Engineer;

1.14 within thirty (30) Days of the Effective Date, sign and enter into Independent Auditor Contract for the appointment of the Independent Auditor;

1.15 two (02) certified copies of the signed Escrow Agreement;

1.16 two (02) certified copies of the signed Provincial Support Agreement;

1.17 acquire necessary Approvals and rights of way for the built of external utilities works as per the requirements of appendix 1;

1.18 submit a closing certificate dated the date of the CP Completion Date to the effect that the representations and warranties of the Concessionaire as contained or incorporated by reference herein are true and correct in all material respects on and as of the CP Completion Date with the same force as though made on and as of the CP Completion Date; and

1.19 such other documents which the SEZMC may require in connection with the above.

2. SEZMC’s Responsibility

It shall be a condition precedent to the CP Completion Date that each of the following conditions is satisfied and supplied to the Independent Appointees by the SEZMC, unless any such condition precedent is deferred or waived in writing by the Concessionaire:

2.1 evidence of the GoS having obtained approval of the Supreme Court of Pakistan for the lease of the Site to the Concessionaire in accordance with the terms of this Agreement (if applicable);

2.2 within thirty (30) Days of the Effective Date, sign and enter into Independent Engineer Contract for the appointment of the Independent Engineer;

2.3 within thirty (30) Days of the Effective Date, sign and enter into Independent Auditor Contract for the appointment of the Independent Auditor;

2.4 two (02) certified copies of the signed Escrow Agreement;

2.5 two (02) certified copies of the signed Provincial Support Agreement; and

2.6 submit a letter dated the date of the CP Completion Date to the effect that the representations and warranties of the SEZMC as contained or incorporated by reference herein are true and correct in all material respects on and as of the CP Completion Date with the same force as though made on and as of the CP Completion Date.
APPENDIX 5: PERFORMANCE SECURITIES
PART 1 – CONSTRUCTION PERFORMANCE SECURITY

To
[●],
[●],
SINDH ECONOMIC ZONES MANAGEMENT COMPANY LIMITED

GUARANTEE NO. [●] (hereinafter referred to as the “Bank Guarantee”)
Dated: [●]

[INSERT NAME OF BANK], being the Bank Guarantee issuing bank (hereinafter referred to as the “Guarantor Bank”) understands that the following parties shall enter into an agreement titled the “CONCESSION AGREEMENT” (hereinafter referred to as the “Agreement”) for the design, construction, operation, maintenance, commissioning, financing and transfer of the Project under the public private partnership mode (the “Project”):

(a) SINDH ECONOMIC ZONES MANAGEMENT COMPANY LIMITED, a public limited company incorporated under the laws of Pakistan whose registered office is located at [2nd Floor, Bahria Complex IV, Choudhry Khaliqu Uz Zaman Road, Gizri Karachi, Pakistan], through its duly authorized representative [●] (hereinafter referred to as “SEZMC” which expression shall, where the context so permits, be deemed to include its successors in interest, administrators, and permitted assigns); and

(b) [INSERT NAME OF THE CONCESSIONAIRE], a company incorporated under the laws of Pakistan, whose registered office is located at [●], (hereinafter referred to as the “Concessionaire”, which expression shall, where the context so permits, be deemed to include its successors in interest, administrators, and permitted assigns).

Further, the Guarantor Bank understands that pursuant to the terms of the request for proposals issued in respect of the Project by SEZMC (the “RFP”) read with the Agreement, the Concessionaire is required to provide SEZMC with a Bank Guarantee (referred to in the RFP and the Agreement as the Construction Performance Security) in an amount equal to PKR [INSERT AMOUNT IN NUMBERS]-/-(Pakistani Rupees [INSERT AMOUNT IN WORDS] only).

The above premised, the Guarantor Bank hereby undertakes irrevocably, unconditionally and on-demand to pay to SEZMC (without any notice, reference or recourse to the Concessionaire or to any other entity or without any recourse or reference to any contract, agreement, document or other instruments (including the RFP and the Agreement) whether executed or not), any sum or sums (or any part thereof) equivalent in aggregate up to but not exceeding a maximum amount of:

PKR [●]-(Pakistani Rupees [●] only)

(hereinafter referred to as the “Guaranteed Amount”)

immediately, however not later than within five (5) business days from the date of the Guarantor Bank’s receipt of SEZMC’s first written demand (hereinafter referred to as the “Demand”) at the Guarantor Bank’s office located at [INSERT ADDRESS OF THE GUARANTOR BANK AT WHICH DEMAND SHALL BE MADE], or through SWIFT instructions transmitted by SEZMC’s bank, on behalf of SEZMC, to the Guarantor Bank, or through fax sent by SEZMC at the Guarantor Bank’s fax number i.e., [●], such Demand stating:

(a) the Bank Guarantee number;

(b) the total amount demanded; and

(c) the bank account to which the amounts demanded pursuant to the demand are to be credited/transferred (hereinafter referred to as the “Beneficiary Account”).

A Demand shall only be honoured by us: (i) in the case of a written Demand, if it is made by and bears the signature of an authorised officer or other representative of SEZMC; or (ii) in the case of a Demand transmitted through SWIFT, if it is transmitted through authenticated SWIFT instructions
by SEZMC’s bank, on behalf of SEZMC; or (iii) in the case of a Demand made through fax, it is made by and bears the signature of an authorised officer or other representative of SEZMC.

The Guarantor Bank shall unconditionally honour a Demand hereunder made in compliance with this Bank Guarantee at sight and immediately on the date of receipt of your Demand, as stated earlier, and shall transfer the amount specified in the Demand to the Beneficiary Account, in immediately available and freely transferable funds in the currency of this Bank Guarantee, free and clear of and without any set-off or deduction for or on account of any present or future taxes, levies, imposts, duties, charges, fees, deductions or withholdings of any nature whatsoever and by whomsoever imposed.

This Bank Guarantee shall come into force and shall become automatically effective upon its issuance.

After having come into force, this Bank Guarantee and the Guarantor Bank’s obligations hereunder shall expire on [INSERT DATE AND TIME] (the “Expiry Date”) irrespective of whether this Bank Guarantee has been returned to the Guarantor Bank provided that, in the event that the SEZMC issues a Demand to the Guarantor Bank on or immediately prior to the Expiry Date and the same is received by the Guarantor Bank on or prior to the Expiry Date, the Guarantor Bank shall honour such Demand.

Upon expiry, this Bank Guarantee shall be returned to the Concessionaire without undue delay. Multiple Demands may be made by SEZMC under this Bank Guarantee but the Guarantor Bank’s aggregate liability shall be restricted up to the Guaranteed Amount.

The Guaranteed Amount shall be revised upon receipt by the Guarantor Bank of a notice duly signed by SEZMC and the Concessionaire of the revised guaranteed amount. The Expiry Date shall be revised upon receipt by the Guarantor Bank of a notice duly signed by SEZMC and the Concessionaire of the revised date.

The Guarantor Bank hereby agrees that any part of the Agreement or the RFP may be amended, renewed, extended, modified, compromised, released or discharged without:

(a) in any way impairing or affecting the Guarantor Bank’s liabilities hereunder;
(b) notice to the Guarantor Bank; and
(c) the necessity for any additional endorsement, consent or guarantee by the Guarantor Bank.

This Bank Guarantee for its validity period shall not be affected in any manner by any change in the Guarantor Bank’s constitution or of the Concessionaire’s constitution or of their successors and assignees and this Bank Guarantee shall be legally valid, enforceable and binding on each of their successors and permitted assignees.

All references to any contract, agreement, document or other instruments (including the Agreement and the RFP), whether executed or not, are by way of reference only and shall not affect the Guarantor Bank’s obligations to make payment under the terms of this Bank Guarantee.

If one or more of the provisions of this Bank Guarantee are held or found to be invalid, illegal, or unenforceable for any reason whatsoever, in any respect, any such invalidity, illegality, or unenforceability of any provision shall not affect the validity of the remaining provisions of this Bank Guarantee.

The Guarantor Bank hereby declares and confirms that under its constitution and applicable laws, it has the necessary power and authority and all necessary authorizations, approvals and consents thereunder, to:

(a) enter into, execute and deliver this Bank Guarantee; and
(b) perform the obligations it has undertaken under this Bank Guarantee, which obligations are valid and legally binding on and enforceable against the Guarantor Bank under the laws of Pakistan.
Further, the Guarantor Bank hereby declares and confirms that the signatory(ies) to this Bank Guarantee is/are its duly authorized officer(s) to execute this Bank Guarantee.

This Bank Guarantee and all rights and obligations arising from this Bank Guarantee shall be governed and construed in all respects in accordance with the laws of Pakistan. The courts in Karachi, Pakistan shall have exclusive jurisdiction in respect of any dispute relating to any matter contained herein.

The issuance of this Bank Guarantee is permitted according to the laws of Pakistan and the laws of the jurisdiction where this Bank Guarantee is issued.

This Bank Guarantee is subject to the Uniform Rules for Demand Guarantee, ICC Publication No.758. To the extent that there is any inconsistency between the terms of this Bank Guarantee and the Uniform Rules for Demand Guarantees, ICC Publication No. 758, the terms of this Bank Guarantee shall prevail.

**EXECUTED & ISSUED**
**FOR & ON BEHALF OF THE GUARANTOR BANK**


NAME:  
DESIGNATION:  
DATED:
PART 2 – O&M PERFORMANCE SECURITY

TO
[●],
[●],
SINDH ECONOMIC ZONES MANAGEMENT COMPANY LIMITED

GUARANTEE NO. [●] (hereinafter referred to as the “Bank Guarantee”)
Dated: [●]

[INSERT NAME OF BANK], being the Bank Guarantee issuing bank (hereinafter referred to as the “Guarantor Bank”) understands that the following parties have entered into an agreement titled the “CONCESSION AGREEMENT” dated [●] (hereinafter referred to as the “Agreement”) for the design, construction, operation, maintenance, commissioning, financing and transfer of the Project under the public private partnership mode:

(a) SINDH ECONOMIC ZONES MANAGEMENT COMPANY LIMITED, a public limited company incorporated under the laws of Pakistan whose registered office is located at [2nd Floor, Bahria Complex IV, Choudhry Khaliq Uz Zaman Road, Gizri Karachi, Pakistan], through its duly authorized representative [●] (hereinafter referred to as “SEZMC” which expression shall, where the context so permits, be deemed to include its successors in interest, administrators, and permitted assigns); and

(b) [INSERT NAME OF THE CONCESSIONAIRE], a company incorporated under the laws of Pakistan, whose registered office is located at [●], (hereinafter referred to as the “Concessionaire”, which expression shall, where the context so permits, be deemed to include its successors in interest, administrators, and permitted assigns).

Further, the Guarantor Bank understands that pursuant to the terms of the Agreement, the Concessionaire is required to provide the SEZMC with a Bank Guarantee (referred to in the Agreement as the O&M Performance Security) in an amount equal to PKR [INSERT AMOUNT IN NUMBERS]/- (Pakistani Rupees [INSERT AMOUNT IN WORDS]).

The above premised, the Guarantor Bank hereby undertakes irrevocably, unconditionally and on demand to pay to SEZMC (without any notice, reference or recourse to the Concessionaire or to any other entity or without any recourse or reference to any contract, agreement, document or other instruments (including the Agreement) whether executed or not), any sum or sums (or any part thereof) equivalent in aggregate up to but not exceeding a maximum amount of:

PKR [●]/- (Pakistani Rupees [●] Only) (hereinafter referred to as the “Guaranteed Amount”)

immediately, however not later than within five (5) business days from the date of the Guarantor Bank’s receipt of SEZMC’s first written demand (hereinafter referred to as the “Demand”) at the Guarantor Bank’s office located at [INSERT ADDRESS OF THE GUARANTOR BANK AT WHICH DEMAND SHALL BE MADE], or through SWIFT instructions transmitted by SEZMC’s bank, on behalf of SEZMC, to the Guarantor Bank, or through fax sent by SEZMC at the Guarantor Bank’s fax number i.e., [●], such Demand stating:

(a) the Bank Guarantee number;
(b) the total amount demanded; and
(c) the bank account to which the amounts demanded pursuant to the demand are to be credited/ transferred (hereinafter referred to as the “Beneficiary Account”).

A Demand shall only be honoured by us: (i) in the case of a written Demand, if it is made by and bears the signature of an authorised officer or other representative of SEZMC; or (ii) in the case of a Demand transmitted through SWIFT, if it is transmitted through authenticated SWIFT instructions
by SEZMC’s bank, on behalf of SEZMC; or (iii) in the case of a Demand made through fax, it is made by and bears the signature of an authorised officer or other representative of SEZMC.

The Guarantor Bank shall unconditionally honour a Demand hereunder made in compliance with this Bank Guarantee at sight and immediately on the date of receipt of your Demand, as stated earlier, and shall transfer the amount specified in the Demand to the Beneficiary Account, in immediately available and freely transferable funds in the currency of this Bank Guarantee, free and clear of and without any set-off or deduction for or on account of any present or future taxes, levies, imposts, duties, charges, fees, deductions or withholdings of any nature whatsoever and by whomsoever imposed.

This Bank Guarantee shall come into force and shall become automatically effective upon its issuance.

After having come into force, this Bank Guarantee and the Guarantor Bank’s obligations hereunder shall expire on [INSERT DATE AND TIME] (the “Expiry Date”) irrespective of whether this Bank Guarantee has been returned to the Guarantor Bank provided that, in the event that SEZMC issues a Demand to the Guarantor Bank on or immediately prior to the Expiry Date and the same is received by the Guarantor Bank on or prior to the Expiry Date, the Guarantor Bank shall honour such Demand.

Upon expiry, this Bank Guarantee shall be returned to the Concessionaire without undue delay. Multiple Demands may be made by SEZMC under this Bank Guarantee, but the Guarantor Bank’s aggregate liability shall be restricted up to the Guaranteed Amount.

The Guaranteed Amount shall be revised upon receipt by the Guarantor Bank of a notice duly signed by SEZMC and the Concessionaire of the revised guaranteed amount. The Expiry Date shall be revised upon receipt by the Guarantor Bank of a notice duly signed by SEZMC and the Concessionaire of the revised date.

The Guarantor Bank hereby agrees that any part of the Agreement may be amended, renewed, extended, modified, compromised, released or discharged without:

(a) in any way impairing or affecting the Guarantor Bank’s liabilities hereunder;
(b) notice to the Guarantor Bank; and
(c) the necessity for any additional endorsement, consent or guarantee by the Guarantor Bank.

This Bank Guarantee for its validity period shall not be affected in any manner by any change in the Guarantor Bank’s constitution or of the Concessionaire’s constitution or of their successors and assignees and this Bank Guarantee shall be legally valid, enforceable and binding on each of their successors and permitted assignees.

All references to any contract, agreement, document or other instruments (including the Agreement), whether executed or not, are by way of reference only and shall not affect the Guarantor Bank’s obligations to make payment under the terms of this Bank Guarantee.

If one or more of the provisions of this Bank Guarantee are held or found to be invalid, illegal, or unenforceable for any reason whatsoever, in any respect, any such invalidity, illegality, or unenforceability of any provision shall not affect the validity of the remaining provisions of this Bank Guarantee.

The Guarantor Bank hereby declares and confirms that under its constitution and applicable laws, it has the necessary power and authority and all necessary authorizations, approvals and consents thereunder, to:

(a) enter into, execute and deliver this Bank Guarantee; and
(b) perform the obligations it has undertaken under this Bank Guarantee, which obligations are valid and legally binding on and enforceable against the Guarantor Bank under the laws of Pakistan.
Further, the Guarantor Bank hereby declares and confirms that the signatory(ies) to this Bank Guarantee is/are its duly authorized officer(s) to execute this Bank Guarantee.

This Bank Guarantee and all rights and obligations arising from this Bank Guarantee shall be governed and construed in all respects in accordance with the laws of Pakistan. The courts in Karachi, Pakistan shall have exclusive jurisdiction in respect of any dispute relating to any matter contained herein.

The issuance of this Bank Guarantee is permitted according to the laws of Pakistan and the laws of the jurisdiction where this Bank Guarantee is issued.

This Bank Guarantee is subject to the Uniform Rules for Demand Guarantee, ICC Publication No.758. To the extent that there is any inconsistency between the terms of this Bank Guarantee and the Uniform Rules for Demand Guarantees, ICC Publication No. 758, the terms of this Bank Guarantee shall prevail.

**EXECUTED & ISSUED**
**FOR & ON BEHALF OF THE GUARANTOR BANK**

.................................................................
NAME:
DESIGNATION:
DATED:
Sharing of Zone Enterprise Payments shall be in accordance with table below:

<table>
<thead>
<tr>
<th>YEAR</th>
<th>REVENUE / ZONE ENTERPRISE PAYMENTS (Pkr) (A)</th>
<th>REVENUE SHARE TO SEZMC (IN PERCENTAGE) (B)</th>
<th>REVENUE SHARE TO SEZMC (Pkr)/COMMITTED ANNUAL LEASE AMOUNT (C) = A * B</th>
</tr>
</thead>
<tbody>
<tr>
<td>YEAR 1</td>
<td>[●]</td>
<td>[●]%</td>
<td>[●]</td>
</tr>
<tr>
<td>YEAR 2</td>
<td>[●]</td>
<td>[●]%</td>
<td>[●]</td>
</tr>
<tr>
<td>YEAR 3</td>
<td>[●]</td>
<td>[●]%</td>
<td>[●]</td>
</tr>
<tr>
<td>TOTAL</td>
<td>[●]</td>
<td>[●]%</td>
<td>[●]</td>
</tr>
</tbody>
</table>

If the actual revenues realized by the Concessionaire in any year are less than the estimated revenues quoted in column (A) above (for that year), then the Concessionaire will still be required to share the revenues as quoted in column (C) above.

In case the actual revenues realized by the Concessionaire in aggregate are higher than the Benchmark Revenue Amount, then the revenue sharing percentages that will apply will be seventy-five percent (75%) for SEZMC and twenty-five percent (25%) for the Concessionaire on the revenues in excess of the Benchmark Revenue Amount.

* Amounts and percentages quoted in Bidding Form F3 of the Proposal shall be inserted.
APPENDIX 7: FORM OF LEASE AGREEMENT

THIS LEASE AGREEMENT is made on _______ day of ______________, 2022, at ______________, Pakistan.

BETWEEN

(1) THE GOVERNOR OF SINDH (through ●, Investment Department, Government of Sindh) having its office located at ●, for and on behalf of the Government of Sindh (the “GoS” which expression shall, where the context so permits, be deemed to mean and include its successors and assigns);

(2) SINDH ECONOMIC ZONES MANAGEMENT COMPANY LIMITED, a public limited company incorporated under the laws of Pakistan, whose registered office is located at 2nd Floor, Bahria Complex IV, Choudhry Khaliq Uz Zaman Road, Gizri Karachi, Pakistan, through its duly authorized representative, the Chief Executive Officer (the “SEZMC” which expression shall, unless excluded by or repugnant to the context, be deemed to include its successors in interest, administrators and permitted assigns);

(3) [CONCESSIONAIRE], a ● incorporated under the laws of ● whose registered office is located at ● (the “Concessionaire” which expression shall, unless excluded by or repugnant to the context, be deemed to include its successors in interest, administrators and permitted assigns),

(GoS, SEZMC and the Concessionaire are hereinafter collectively referred to as the “Parties” and individually as a “Party”).

RECITALS

A. WHEREAS, the Parties have entered into the Concession Agreement.

B. WHEREAS, in terms of the Concession Agreement, GoS has agreed to grant the Lease to the Concessionaire in respect of the Site.

C. WHEREAS, GoS is the true and lawful owner of the Site, and grants the Lease over the Site to the Concessionaire pursuant to this Lease Agreement.

D. AND WHEREAS, the Parties are now entering into this Lease Agreement to set out the terms and conditions relating to the use of the Site by the Concessionaire and the rights and obligations of the Parties with respect thereto.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED HEREBIN, THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 DEFINITIONS

Unless specified otherwise herein in this Lease Agreement (including the Recitals), all capitalized terms shall have the meanings assigned to them under the Concession Agreement. In addition, the following terms shall have the following meanings, unless the context otherwise requires:

“Arbitration” has the meaning given to it in clause 7.3.1(a);

“Arbitrators” has the meaning given to it in clause 7.3.1(a);

“Award” has the meaning given to it in clause 7.3.4;

“Concession Agreement” means the agreement titled ‘Concession Agreement’ dated ● entered into by SEZMC and the Concessionaire in respect of the Project;
“Concessionaire” has the meaning given to it in the Preamble;

“Dispute” means a dispute, controversy, difference or claim between the Parties arising out of or in relation to this Lease Agreement or the Parties’ performance or non-performance of this Lease Agreement;

“Effective Date” means the date of signing of this Lease Agreement;

“GoS” has the meaning given to it in the Preamble;

“GoS Parties” means, as the context may require, GoS and/or SEZMC;

“Lease” has the meaning given to it in clause 2.1.1;

“Lease Agreement” means this Lease Agreement, as amended and supplemented from time to time;

“Lease Period” has the meaning given to it in clause 2.1.1;

“Lease Payments” means the rental payment to be paid by the Concessionaire to the SEZMC in terms of this Lease Agreement, in the amount and manner as set out in appendix 2 of this Lease Agreement;

“Parties” has the meaning given to it in the Preamble;

“Party” has the meaning given to it in the Preamble;

“Preamble” means the preamble of this Lease Agreement;

“Public-Private Partnership Policy Board” means the Public-Private Partnership Policy Board constituted pursuant to the Sindh Public-Private Partnership Act, 2010;

“Recitals” means the recitals of this Lease Agreement; and

“Site” means the land on which the Project is located, as more fully described in appendix 1 of this Lease Agreement.

1.2 **INTERPRETATION**

The rules of construction and interpretation set forth in clause 1.2 of the Concession Agreement shall apply, *mutatis mutandis*, to this Lease Agreement.

2. **LEASE AND RELATED MATTERS**

2.1 **LEASE OF THE SITE**

2.1.1 In consideration of the payment of Lease Payments, the GoS grants to the Concessionaire, commencing from the Effective Date and until the fiftieth (50th) anniversary of the Effective Date (the “Lease Period”), the lease hold rights in the Site, together with all rights, easements and privileges appurtenant thereto, free from any Encumbrances, to be held and enjoyed by the Concessionaire in accordance with the Concession Agreement and Legal Requirements (the “Lease”). Within forty-five (45) days of the Lease Agreement Date SEZMC shall ensure that the physical possession of the Site is handed over to the Concessionaire by the GoS upon and subject to the terms of this Lease Agreement.

2.1.2 GoS Parties shall provide to the Concessionaire such assistance as may be reasonably requested by the Concessionaire to enjoy the Lease, provided that the Concessionaire is in compliance with all Legal Requirements and provided however, the provision of any assistance by SEZMC (including delay or omission to provide
such assistance) shall not relieve or absolve the Concessionaire of its obligations under this Lease Agreement or the Concession Agreement.

2.1.3 The Concessionaire shall ensure that, during the Lease Period, GoS Parties, any relevant Competent Authority, the Independent Appointees and each of their representatives, officers, employees and agents shall have the right to access the Site to exercise their rights under the Law, provided, however, such access shall be subject to any reasonable requirements of the Concessionaire regarding safety and security of the Site and the Project.

2.2 LEASE PAYMENTS AND PAYMENT TERMS

2.2.1 SEZMC is duly authorized by the GoS to collect, retain and utilize at its discretion, all Lease Payments.

2.2.2 The Concessionaire shall pay the Lease Payments to SEZMC in respect of the Site in such amounts and on such dates as set out in appendix 2 of this Lease Agreement. Failure to pay the Lease Payments in accordance with this Lease Agreement shall constitute a material breach of this Lease Agreement and be a Concessionaire Event of Default.

2.2.3 The Parties acknowledge and agree that the Lease Payments shall be deposited in the SEZMC Sharing Account, in accordance with the requirements of the Concession Agreement and the Escrow Agreement.

2.3 TITLE AND USE OF SITE

2.3.1 The GoS represents and warrants that it has the power and authority to grant the Lease for the Lease Period, provided the title and ownership to the Site shall always vest with GoS.

2.3.2 The SEZMC represents and warrants that it has the power and authority to enter into and perform its obligations under this Lease Agreement.

2.3.3 The Concessionaire undertakes, covenants and agrees that it shall only use the Site in accordance with the Concession Agreement and at all times in compliance with the Legal Requirements.

2.4 NO SALE OR CREATION OF ENCUMBRANCE

2.4.1 Unless otherwise permitted in this Lease Agreement, the Concessionaire shall not part with, dispose of, sell, sub-lease, license or create any Encumbrance of any nature whatsoever on the whole or any part of the Site and shall not place or create nor permit any Contractor or other person claiming through or under the Concessionaire to place or create any Encumbrance over all or any part of the Site, or on any rights of the Concessionaire therein or under this Lease Agreement.
2.4.2 Subject to the requirements of clause 2.6 of this Lease Agreement, the Concessionaire shall be permitted to issue Allotment Letters, enter into Sub-Lease Agreements and shall ensure that the terms of any such Allotment Letters and Sub-Lease Agreements provide that in the event of termination or expiry of the Concession Agreement or termination or expiry of this Lease Agreement:

(a) the GoS Parties (or its nominees) can enter into direct Allotment Letters and/or Sub-Lease Agreements with Zone Enterprises; and

(b) the Zone Enterprises shall pay any amounts due and payable under such Allotment Letters and/or Sub-Lease Agreement directly to the SEZMC (or its nominee).

2.5 PROTECTION FROM ENCROACHMENTS

2.5.1 For the duration of the Lease Period, the Concessionaire shall:

(c) be fully responsible for and shall protect the Site from, in each case, any and all occupations, thefts, encroachments and Encumbrances; and

(d) develop a security protocol for security of the Site and arrange for (at its own cost and expense) appropriately trained and qualified security personnel to undertake the security of the Site.

2.5.2 For the duration of the Lease Period, SEZMC shall provide assistance for reasonable security on the Site, as and when reasonably requested by the Concessionaire. The provision of any assistance by the SEZMC (including delay or omission to provide such assistance) shall not relieve or absolve the Concessionaire of its obligations under the Project Agreements.

2.5.3 The Concessionaire undertakes, covenants and agrees that it shall for the Lease Period, remain liable for any Claims and/or damage to the Site or the Project caused by the Concessionaire, the Contractors, the Zone Enterprises or any of their representatives, officers, employees and agents.

2.6 ALLOTMENT & SUB-LEASE OF PLOTS

2.6.1 The Concessionaire shall be allowed to allot and, thereafter, sub-lease the Plots to Zone Enterprises solely for the purposes set out in the Concession Agreement and in compliance with Legal Requirements.

2.6.2 The Concessionaire shall ensure that the Allotment Letters and Sub-Lease Agreements are duly stamped and registered in accordance with the applicable Laws. Further, the Concessionaire shall provide the GoS Parties relevant details of any Allotment Letters and Sub-Lease Agreements (together with certified true copies within thirty (30) days of signing of the aforesaid documents).

2.6.3 The Concessionaire undertakes that:

(a) all Sub-Lease Agreement shall be in conformity with the terms and conditions of this Lease Agreement and the Concession Agreement;

(b) it shall ensure that the term of each Sub-Lease Agreement shall expire on or prior to the expiry of the Lease Period; and

(c) it shall ensure that the terms of the Allotment Letters and/or Sub-Lease Agreements are assignable to the GoS Parties (or its nominees) in accordance with clause 2.4.2.

2.6.4 The Concessionaire shall ensure that the Zone Enterprises do not:

(a) part with, dispose of, sell, sub-lease, license or create any Encumbrance of any nature whatsoever on the Plots; and / or
(b) place or create nor permit any other person claiming through or under the Zone Enterprise to place or create any Encumbrance over any part of the Plot, or on any rights of the Zone Enterprises therein or under the Allotment Letter and/or Sub-Lease Agreement.

3. BREACH AND TERMINATION

3.1.1 Any breach or default by a Party of its obligations under this Lease Agreement and shall be dealt with in accordance with the terms of the Concession Agreement.

3.1.2 Upon the Final Expiry Date or expiry of the Lease, the Parties shall enter into and execute such further agreements, deeds, instruments or documents as may be necessary or reasonably required by GoS Parties to give effect to such expiry or termination. For such purpose, the Concessionaire appoints SEZMC as its duly authorized agent to affect the deregistration of this Lease Agreement and to execute such further agreements, deeds, instruments or documents as may be necessary or reasonably required by GoS Parties to give effect to such deregistration.

Provided that all costs, fees, expenses, charges and taxes relating to such deregistration of this Lease Agreement shall be borne by the Concessionaire.

4. REPRESENTATIONS AND WARRANTIES

4.1 GoS’S REPRESENTATIONS AND WARRANTIES
GoS hereby represents and warrants to the Concessionaire that it has the power and authority to:
(a) grant the Lease to the Concessionaire; and
(b) enter into and deliver this Lease Agreement, and that this Lease Agreement forms the valid, binding and enforceable obligations of GoS.

4.2 SEZMC’S REPRESENTATIONS & WARRANTIES

4.2.1 The SEZMC represents and warrants that it has the power and authority to enter into and perform its obligations under this Lease Agreement.

4.3 CONCESSIONAIRE’S REPRESENTATIONS & WARRANTIES
The Concessionaire hereby represents and warrants to the GoS Parties that:
(a) it has the power and authority to enter into and deliver this Lease Agreement and that this Lease Agreement forms the valid and binding enforceable obligations of the Concessionaire; and
(b) the execution and performance of this Lease Agreement by the Concessionaire does not violate any Law or any other obligations to which the Concessionaire is subject.

5. NOTICES

5.1 NOTICES

5.1.1 A notice and all other forms of written communication shall be personally delivered, sent by registered post, sent by facsimile transfer or sent by email to the relevant address below. Notice or communication by email shall only be valid if receipt is confirmed by the recipient acknowledging receipt of the email.

(a) GoS:

| Address: | [●] |
5.1.2 A notice or communication shall be deemed to have been made or delivered:

(a) in the case of any communication made by letter, when delivered by hand, by recognised courier or by mail (registered return receipt requested) at the address set out in clauses 5.1.1(a), 5.1.1(b) or 5.1.1(c) (as applicable); and

(b) in the case of any communication made by facsimile, when transmitted properly addressed to the facsimile number set out in clauses 5.1.1(a), 5.1.1(b) or 5.1.1(c) (as applicable) and the sender has received a sent receipt; and

(c) in the case of any communication made by email, when transmitted properly addressed to the email address set out in clauses 5.1.1(a), 5.1.1(b) or 5.1.1(c) (as applicable), and the sender has received a sent receipt.

If a Party changes its notice details set out in clause 5.1.1, it shall provide the other Parties with prompt notice of any such changes prior to effecting the same.
6. **GOVERNING LAW AND DISPUTE RESOLUTION**

6.1 **GOVERNING LAW**

This Lease Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the Laws.

7. **DISPUTE RESOLUTION**

7.1 **NEGOTIATION**

The Parties agree to attempt to resolve any Dispute promptly, amicably, and in good faith. Each Party shall designate a representative who shall be entitled to enter into discussions to resolve by amicable agreement any Dispute in connection with this Lease Agreement.

7.2 **PUBLIC-PRIVATE PARTNERSHIP POLICY BOARD**

Any Dispute that is not finally resolved between the Parties pursuant to the clause 7.1 within thirty (30) days from the date on which a Party receives notice from the other Party that a Dispute exists, then the Parties shall endeavour to settle the dispute in an amicable manner by mediation administered by an independent and impartial person appointed by the Public-Private Partnership Policy Board. If any Dispute is not resolved between the Parties pursuant to this clause 7.2 within sixty (60) days from the date on which the matter has been referred by the Public-Private Partnership Policy Board to an independent and impartial person so appointed, then such Dispute shall be settled exclusively and finally in accordance with the provisions of clause 7.3.

7.3 **ARBITRATION**

7.3.1 Each of the Parties unconditionally and irrevocably agrees in respect of a Dispute, which cannot be resolved by the Parties pursuant to clause 7.2:

(a) to the submission of such Dispute to binding arbitration governed by the Arbitration Act 1940, by appointment of a board of arbitrators, consisting of one (1) arbitrator appointed by each Party (the “Arbitrators”). Any arbitration proceedings commenced pursuant to this clause 7.3.1 shall be referred to as arbitration (“Arbitration”);

(b) not to claim any right it may have under the Laws to hinder, obstruct, or nullify the submission of the Dispute to Arbitration; and

(c) to accept the Award rendered by the Arbitrators and any judgment entered thereon by a court of competent jurisdiction as final and binding and not to hinder, obstruct or nullify the enforcement or execution of any decision rendered by the Arbitrators or court of competent jurisdiction.

7.3.2 The place of Arbitration shall be Karachi, Pakistan.

7.3.3 The language of Arbitration shall be English.

7.3.4 Any decision or award resulting from the Arbitration (“Award”) shall be final and binding upon the Parties.

7.3.5 The Parties hereby waive, to the extent permitted under the Laws, any rights to appeal or to review of such Award by any Competent Authority.

7.3.6 The fees and expenses of the Arbitrators and all other expenses relating to Arbitration shall be borne and paid by the respective Parties, unless the Award states otherwise. The Arbitrators may provide in the Award, for reimbursement to a Party, of its costs and expenses in bringing or defending the Arbitration claim, including legal fees and expenses incurred by such Party.
7.3.7 This Lease Agreement and the rights and obligations of the Parties shall remain in full force and effect pending the Award for any Arbitration, which Award, if appropriate, shall determine whether and when any termination shall become effective.

7.4 EXCLUSIVE JURISDICTION

No Party shall have the right to, nor shall they, commence or maintain any legal proceedings in or outside of Pakistan, concerning a Dispute, until the Dispute has been resolved in accordance with clauses 7.2 and/or 7.3 and then only to enforce or execute an Award.

7.5 OBLIGATIONS CONTINUING

Unless otherwise agreed in writing, the existence of a Dispute shall not relieve either Party from the performance of its obligations under this Lease Agreement not the subject of the Dispute.

8. MISCELLANEOUS

8.1 PARTIAL INVALIDITY AND SEVERABILITY

If for any reason whatsoever, any provision of this Lease Agreement is, or becomes invalid, illegal or unenforceable, or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions of this Lease Agreement 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 provision(s), as nearly as is practicable.

8.2 AMENDMENT

No amendment or modification of this Lease Agreement shall be valid and effective unless agreed to by the Parties and evidenced in writing.

9. ORIGINALS

9.1 NUMBER OF ORIGINALS

This Lease Agreement shall be executed in two (2) originals.
**SIGNATURE PAGE**

**IN WITNESS WHEREOF**, the Parties, intending to be legally bound, have caused this Lease Agreement to be executed by their duly authorised representatives as of the date first written above.

**GOVERNOR OF SINDH,**
**THROUGH THE [●], INVESTMENT DEPARTMENT, GOVERNMENT OF SINDH**

| Signature | .............................. |
| Name (block capitals) | .............................. |
| Title | .............................. |
| In the presence of: | .............................. |
| Witness signature | .............................. |
| Witness name (block capitals) | .............................. |
| Witness signature | .............................. |
| Witness name (block capitals) | .............................. |

**SINDH ECONOMIC ZONES MANAGEMENT COMPANY,**
**THROUGH THE CHIEF EXECUTIVE OFFICER**

| Signature | .............................. |
| Name (block capitals) | .............................. |
| Title | .............................. |
| In the presence of: | .............................. |
| Witness signature | .............................. |
| Witness name (block capitals) | .............................. |
| Witness signature | .............................. |
| Witness name (block capitals) | .............................. |
THE CONCESSIONAIRE

Signature
Name (block capitals)
Title
In the presence of:
Witness signature
Witness name (block capitals)
Witness signature
Witness name (block capitals)
APPENDIX 1 – DESCRIPTION OF SITE

[Description of Site being leased to be inserted]
APPENDIX 2 – LEASE PAYMENTS

[To be inserted]
APPENDIX 8: INDEPENDENT APPOINTEES TERMS OF REFERENCE

PART 1 – INDEPENDENT AUDITOR TERMS OF REFERENCE

[To be inserted on the Effective Date]

PART 2 – INDEPENDENT ENGINEER TERMS OF REFERENCE

[To be inserted on the Effective Date]
APPENDIX 9: FORM OF HANDOVER CERTIFICATE

1. [insert details] being the Independent Engineer, and [insert details] being the Independent Auditor (collectively the “Independent Appointees”), refer to the agreement titled “Concession Agreement” dated [●] (as amended from time to time) (the “Concession Agreement”) relating to, inter alia, development, design, financing, construction and marketing of the Marble City Karachi (the “Project”).

2. The Independent Appointees hereby acknowledge the compliance and fulfilment by the Concessionaire of the “Handover Conditions” (in terms of the Concession Agreement) and, on such basis, hereby issue this Handover Certificate (this “Certificate”).

Signed this …………… day of …………., at Karachi.

FOR AND ON BEHALF OF
[INSERT DETAILS]

______________________________
Signature

______________________________
Name

______________________________
Designation

Signed in the presence of the following witnesses:

______________________________  ______________________________
Signature  Signature

______________________________  ______________________________
Name  Name

______________________________  ______________________________
NIC No.  NIC No.

FOR AND ON BEHALF OF
[●]

______________________________
Signature

______________________________
Name

______________________________
Designation

Signed in the presence of the following witnesses:
<table>
<thead>
<tr>
<th>Signature</th>
<th>Signature</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
<td>Name</td>
</tr>
<tr>
<td>CNIC No.</td>
<td>CNIC No.</td>
</tr>
</tbody>
</table>
APPENDIX 10: FORM OF ALLOTMENT LETTER

Reference No: [●]

Date: [●] (the “Allotment Letter Date”)

To:
[insert name]
[insert designation]
[insert name of Zone Enterprise]
[insert address]
(hereinafter referred to as the “Zone Enterprise”)

SUBJECT: ALLOTMENT LETTER

Dear Sir / Madam,

I, [insert name of the Concessionaire’s authorized representative], am pleased to accept your application number [●], dated [●], expressing your interest in acquiring land in the Marble City Karachi. Consequently, you are hereby allotted plot number [●], measuring [insert size of land] (the “Plot”) for the purposes of establishing [insert the industry to be set up by the Zone Enterprise] (the “Authorized Commercial Activities”).

The allotment is against a total consideration of PKR [●] (Pakistani Rupees [●] only) (the “Total Payment”) which shall be payable strictly in accordance with the installment schedule attached herewith as Annexure I (Installment Schedule).

Please countersign, acknowledge and confirm this Allotment Letter, signifying your acceptance on the terms and conditions contained herein (including but not limited to the terms and conditions set out in Annexure II (Terms and Conditions)) within five (05) days of the Allotment Letter Date and return the same at the address mentioned below. This Allotment Letter shall stand cancelled in the event the Zone Enterprise fails to convey its acceptance within the time period stipulated hereinabove.

Sincerely yours,

………………………………..
[insert name of the Concessionaire’s authorized representative]
[insert designation]
[insert name of Concessionaire] (hereinafter referred to as the “Concessionaire”)
[insert address of Concessionaire]
1. **POSESSION:** The Zone Enterprise shall take possession of the Plot within fifteen (15) days of the Allotment Letter Date from [insert details of the Concessionaire’s authorized representative], subject to the payment of any applicable Transaction Expenses.

2. **PAYMENT SCHEDULE:** The payments in respect of the Plot shall be made strictly in conformity with Annexure I appended hereto and deposited in the bank account specified below:

   [insert details of the Revenue Escrow Account maintained by the Concessionaire with the Escrow Agent under this Agreement] (the “Payment Account”)

3. **TRANSACTION EXPENSES:** The Zone Enterprise shall be required to pay any stamp duty, registration fees, taxes and any other related expenses (the “Transaction Expenses”), which may be incurred by the Zone Enterprise and the Concessionaire in order to meet all legal and administrative requirements, as well as to be in conformity with the procedures related to the allotment of the Plot to the Zone Enterprise.

4. **PROGRESS REPORTS:** The Zone Enterprise shall submit a project progress report within forty-five (45) days of the Allotment Letter Date and thereafter on a monthly basis on or before the tenth (10th) of each month until the Operations Start Date.

5. **CONSTRUCTION:** The Zone Enterprise shall:

   (a) commence construction on the Plot, not later than six (06) months from the Allotment Letter Date; and

   (b) complete construction on the Plot within twenty-four (24) months from the Allotment Letter Date,

   and each in accordance with the business plan, drawings and any other documents that may be submitted at the time of application for allotment of the Plot (the “Implementation Plan”) and the applicable laws of Pakistan.

6. **COMMERCIAL OPERATIONS:** The Zone Enterprise shall commence business operations within twenty-four (24) months of the Allotment Letter Date, unless otherwise extended by the Concessionaire to the extent permitted under the applicable laws (“Operations Start Date”).

7. **MINIMUM LOT COVERAGE RATIO:** The Zone Enterprise shall completely utilize at least fifty percent (50%) of the Plot at all times including following the Operations Start Date.

8. **SUB-LEASE:** The Concessionaire shall execute a formal sub-lease agreement with the Zone Enterprise with respect to the Plot upon fulfillment of the following conditions:

   (a) the Zone Enterprise has completed the construction on the Plot by the Operations Start Date;

   (b) the Zone Enterprise is engaged in Authorized Commercial Activities and has commenced commercial operations on the Plot for a continuous period of six (6) months from the Operations Start Date; and

   (c) the Zone Enterprise has deposited a fee of PKR [●] (Pakistani Rupees [●] only) in the Payment Account.

9. **OPERATING AND MAINTENANCE FEE:** The Zone Enterprise shall pay an amount equal to PKR [●] (Pakistani Rupees [●] only) per acre per annum on account of operating and maintenance fee (“O&M Fee”) to the Concessionaire following the later of:

   (a) [●] months of the Allotment Letter Date; or
Such O&M Fee shall be:

(a) deposited by the Zone Enterprise in the bank account specified below:

[insert details of the O&M Escrow Account maintained by the Concessionaire with the Escrow Agent under this Agreement]; and

(b) increased by [●] on an annual basis.

10. **TRANSFER / ASSIGNMENT BY CONCESSIONAIRE:** In the event the Concession Agreement entered into between the Concessionaire and the Sindh Economic Zones Management Company (the “SEZMC”), dated [●], in relation to the development of the Marble City Karachi, expires and / or is terminated, all rights, title, interests and obligations of the Concessionaire under this Allotment Letter shall, at SEZMC’s option and at no cost to SEZMC, be transferred/assigned to SEZMC (or its nominee), and all payments due hereunder shall be made to SEZMC thereafter.

11. **TRANSFER / ASSIGNMENT BY ZONE ENTERPRISE:** Except as otherwise provided herein, this Allotment Letter is non-transferable and non-assignable.

12. **CONSEQUENCES OF BREACH AND CANCELLATION OF THE ALLOTMENT LETTER:** In the event the Zone Enterprise:

(a) fails to commence business operations by the Operations Start Date, provided the utilities highlighted in the Implementation Plan have been made available by the Concessionaire, this Allotment Letter shall stand cancelled;

(b) fails to meet the minimum plot coverage ratio in accordance with paragraph 7, a non-utilization fee equivalent to ten percent (10%) of the Total Payment shall be charged per month for each acre of the Plot not utilized, upto a maximum period of twenty (20) months from the Operations Start Date. Thereafter, the allotment of the non-utilized Plot shall stand cancelled and a revised allotment letter shall be issued. Upon cancellation of the allotment for non-utilization, the Zone Enterprise hereby acknowledges and confirms that it shall have no claim (including for any installments paid as per Annexure I) whatsoever against SEZMC or the Concessionaire in this regard;

(c) fails to pay any due and payable amount under this Allotment Letter including in accordance with Appendix I (“Amount Due”):

(i) the Zone Enterprise shall pay, in addition to the Amount Due hereunder, liquidated damages equal to ten percent (10%) of the Amount Due on a monthly basis. Such liquidated damages payment shall be deposited by the Zone Enterprise in the Payment Account; and / or

(ii) for a consecutive period of six (06) months, this Allotment Letter shall stand cancelled and all installment payments paid in accordance with Annexure I shall be forfeited; and / or

(d) ceases Authorized Commercial Activity for a continuous period of six (06) months or performs such activities which are prohibited under the Marble City Karachi and/or applicable laws, including as may be determined and notified by the SEZMC from time to time, this Allotment Letter shall stand cancelled and all payments forfeited.

13. **REFUND OF PAYMENT ON CANCELLATION:** Upon cancellation of the Allotment Letter as per paragraph 12(a) above, the Concessionaire:

(a) shall refund eighty percent (80%) of the payments received from the Zone Enterprise till the date of cancellation of the Allotment Letter and the remaining twenty percent
(20%) of the payments shall be shared between SEZMC and the Concessionaire on a 70:30 basis; and

(b) may reallocate the respective Plot.

The Zone Enterprise hereby acknowledges and confirms that upon cancellation of its Allotment Letter and refund of sums under paragraph 13(a) above, it shall have no further claim to the Plot or for any installments paid as per Annexure I, whatsoever against SEZMC or the Concessionaire.

14. **INDEMNITY:** The Zone Enterprise shall indemnify the SEZMC, the Government of Sindh and the Government of Pakistan (as applicable) from all liabilities, claims, damages, costs, penalties, fines, expenses, fees (including attorney’s fees) and charges of any nature associated with this Allotment Letter.

15. **LAWS:** The Zone Enterprise shall ensure that the Zone Enterprise and all construction and operation activities undertaken and facilities developed on the Plot comply with all applicable laws of Pakistan, including laws relating to environmental protection and any and all directions, notifications, standards and orders issued by the Concessionaire (as may be updated and notified from time to time) or any other competent authority.

ACKNOWLEDGED AND CONFIRMED BY [●]

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THE ZONE ENTERPRISE
Name:
Address:

WITNESSES:

1. ........................................... 2. ...........................................
Name: Name:
Address: Address:
CNIC No.: CNIC No.:
APPENDIX 11: KEY PERSONNEL

[TO BE INSERTED FROM BID]11

11 1.2 of the Technical Evaluation Criteria requires the bidder to identify various experts. The relevant experts evaluated as part of the technical bid may be inserted at the time of signing and thereafter any change in such personnel shall be with SEZMC approval.
APPENDIX 12: ESCRrow AGREEMENT

THIS ESCRROW AGREEMENT is made on [insert details] day of [insert details] 202[●] at Karachi, Pakistan:

BEWEEN

(1) SINDH ECONOMIC ZONES MANAGEMENT COMPANY LIMITED, a public limited company incorporated under the laws of Pakistan having its place of business located at 2nd Floor, Bahria Complex IV, Choudhry Khaliq Uz Zaman Road, Gizri, Karachi, Pakistan, through its duly authorized representative, the Chief Executive Officer (the “SEZMC” which expression shall, unless excluded by or repugnant to the context, be deemed to include its successors in interest, administrators and permitted assigns);

(2) [INSERT NAME OF THE CONCESSIONAIRE], a company incorporated under the laws of Pakistan, whose registered office is located at [insert address] (the “Concessionaire” which expression shall, unless excluded by or repugnant to the context, be deemed to include its successors in interest, administrators and permitted assigns); and

(3) [●], a banking company incorporated under the laws of Pakistan, whose registered office is located at [insert address], through its duly authorized representative [●] (the “Escrow Agent” which expression shall, unless excluded by or repugnant to the context, be deemed to include its successors in interest, administrators and permitted assigns).

(The SEZMC and the Concessionaire are hereinafter collectively referred to as the “Concession Agreement Parties”, and each individually as a “Concession Agreement Party”, as the context may require).

(The SEZMC, the Concessionaire and the Escrow Agent are hereinafter collectively referred to as the “Parties” and each individually as “Party”, as the context may require).

RECITALS

E. WHEREAS, the Concession Agreement Parties have entered into the Concession Agreement for the purposes of setting up an industrial park by the name of “Marble City Karachi” through public-private partnership, on a DBFOMT basis;

F. WHEREAS, the Concession Agreement requires appointment of an Escrow Agent by the Concession Agreement Parties that will perform various duties and obligations as contemplated therein;

G. WHEREAS, the Concession Agreement Parties have requested the Escrow Agent to open, supervise, and control the Escrow Accounts in accordance with the terms of this Agreement;

H. AND WHEREAS, the Parties are now entering into this Agreement to set out the terms and conditions of their relationship and their rights and obligations.

NOW, THEREFORE, in view of the foregoing and in consideration of the mutual benefits to be derived and the representations and warranties, covenants and agreements contained herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged and intending to be legally bound, the Parties hereby agree as follows:

1. DEFINITIONS AND INTERPRETATIONS

1.1. DEFINITIONS

Unless specified otherwise herein in this Agreement (including the Recitals), all capitalized terms shall have the meanings assigned to them under the Concession Agreement. In addition, the following terms shall have the following meanings, unless the context otherwise requires:
“Agreement” means this Escrow Agreement, as amended and supplemented from time to time;

“Arbitration” has the meaning given to it in clause 14.3.1(a);

“Arbitrators” has the meaning given to it in clause 14.3.1(a);

“Authorised Representative” means a representative specified in Schedule A;

“Award” has the meaning given to it in clause 14.3.4;

“Concession Agreement” means the agreement titled “Concession Agreement”, dated [●], entered into between SEZMC and the Concessionaire;

“Concession Agreement Parties” or “Concession Agreement Party” has the meaning given to it in the Preamble;

“Concessionaire Designated Account” means the bank account of the Concessionaire, as specified in Schedule B;

“Concessionaire Excess Revenue Share” means an amount equivalent to thirty percent (30%) of the Excess Revenues as certified and confirmed by the Independent Appointees in the Escrow Account Certificate from time to time;

“Concessionaire Revenue Share” has the meaning given to it in clause 5.1(a);

“Concessionaire Windfall Revenue Share” has the meaning given to it in clause 5.2(b)(ii);

“Confidential Information” has the meaning given to it in clause 16.5;

“Designated Account” means, as the context may require, the SEZMC Designated Account, or the Concessionaire Designated Account;

“Dispute” means a dispute, controversy, difference or claim between the Parties arising out of or in relation to this Agreement or the Parties’ performance or non-performance of this Agreement;

“Escrow Account Certificate” means the certificate duly issued by the Independent Appointees from time to time setting out (in each case as may be applicable):

(a) actual Zone Enterprise Payments credited to the Revenue Escrow Account;
(b) Concessionaire Revenue Share, as determined in accordance with the Payment Certificate;
(c) SEZMC Revenue Share;
(d) Lease Payment Shortfall Amount;
(e) Windfall Revenue;
(f) Concessionaire Windfall Revenue Share, as determined in accordance with the Payment Certificate;
(g) SEZMC Windfall Revenue Share;
(h) the Excess Revenue;
(i) the SEZMC Excess Revenue Share;
(j) the Concessionaire Excess Revenue Share;
(k) the Refund Amount; and

(l) the O&M Fee;

“Excess Revenue” means an amount equivalent to ten percent (10%) of the payments received from the Original Zone Enterprise till the date of cancellation of the Allotment Letter as certified and confirmed by the Independent Appointees in the Escrow Account Certificate;

“Original Zone Enterprise” means any Zone Enterprise whose Allotment Letter for a Plot is cancelled by the Concessionaire;

“Preamble” means the preamble of this Agreement;

“Recipient” has the meaning given to it in clause 16.2(a);

“Recitals” means the recitals of this Agreement;

“Refund Amount” means an amount, equivalent to eighty percent (80%) of the payments received from the Original Zone Enterprise till the date of cancellation of the Allotment Letter, to be refunded to the Original Zone Enterprise on cancellation of an Allotment Letter for a Plot, as certified and confirmed by the Independent Appointees in the Escrow Account Certificate from time to time;

“SEZMC Designated Account” means the bank account of the SEZMC, as specified in Schedule B;

“SEZMC Excess Revenue Share” means seventy percent (70%) of the Excess Revenue as certified and confirmed by the Independent Appointees in the Escrow Account Certificate from time to time;

“SEZMC Revenue Share” has the meaning given to it in clause 5.1(b);

“SEZMC Windfall Revenue Share” has the meaning given to it in clause 5.2(b)(i);

“Signing Date” means the date of signing of this Escrow Agreement; and

“Term” has the meaning given to it in clause 17.1.

1.2. **INTERPRETATION**

The rules of interpretation set out in clause 1.2 of the Concession Agreement shall be applied in the interpretation of the terms and provisions of this Agreement. Unless the context otherwise requires, any reference to this Agreement or to any other instrument is a reference to this Agreement or that instrument as amended, supplemented or novated from time to time and includes a reference to any instrument which amends, waives, is supplemental to, novates or is entered into, made or given pursuant to or in accordance with any of the terms of this Agreement or any such other instrument.

2. **APPOINTMENT**

2.1. **APPOINTMENT OF ESCRROW AGENT**

2.1.1. The Concession Agreement Parties designate and appoint the Escrow Agent to act as their escrow agent to exercise such rights, powers, authorities and discretions as are specifically delegated to the Escrow Agent in terms of this Agreement, and the Escrow Agent accepts such designation and appointment pursuant to the terms hereof and agrees to operate the Escrow Accounts in accordance with the terms and conditions of this Agreement.

2.1.2. The obligations of the Concession Agreement Parties under this Agreement shall be several.
2.2. **Acceptance of the Escrow Agent**

2.2.1. The Escrow Agent hereby agrees to act as such and to accept all payments and other amounts to be delivered and held by the Escrow Agent pursuant to the terms of this Agreement. The Escrow Agent shall hold and safeguard the Escrow Accounts during the term of this Agreement and shall treat the amounts in the Escrow Accounts as monies deposited by the Concessionaire with the Escrow Agent, in accordance with the provisions of this Agreement.

2.2.2. In performing its functions and duties under this Agreement, the Escrow Agent shall act as the agent for the benefit of the Concession Agreement Parties (as applicable) in accordance with the provisions of this Agreement.

3. **Establishment of Escrow Accounts**

3.1. **Establishment and Operation of the Escrow Account**

3.1.1. The Concessionaire confirms that it has opened the Escrow Accounts in the name of the Concessionaire with the Escrow Agent on the terms of this Agreement and the Concession Agreement.

3.1.2. The Escrow Accounts shall be denominated in PKR and be interest / profit bearing accounts.

3.1.3. The Escrow Agent shall ensure that the Escrow Accounts are not in overdraft. The Concession Agreement Parties acknowledge that the Escrow Accounts shall be funded in accordance with clause 4.

3.1.4. The Escrow Agent holds all moneys in the Escrow Accounts as a banker and not as a trustee. The Escrow Agent shall not be liable to account to any Party for any profits made by the Escrow Agent’s use as a banker of such funds.

3.1.5. The Escrow Agent shall maintain and operate the Escrow Accounts in accordance with the Legal Requirements and the terms of this Agreement.

3.2. **Specific Reporting Obligations**

3.2.1. The Escrow Agent shall provide online viewing of the account details for the Escrow Accounts to the Concession Agreement Parties and the Independent Appointees, and if such online viewing is unable to be provided by the Escrow Agent, the Escrow Agent shall provide an account balance confirmation letter with respect to the Escrow Accounts to the Concessionaire, with a copy to the SEZMC and the Independent Appointees:

(a) on a fortnightly basis; and

(b) following any deposit into the Escrow Accounts.

3.2.2. The Escrow Agent hereby undertakes to each of the Concession Agreement Parties that it shall deliver bank statements of the Escrow Accounts (setting out, *inter alia*, details of all amounts credited and debited from the Escrow Account) to the Concession Agreement Parties and the Independent Appointees within five (5) Days of the end of each Month during the Term.

3.2.3. Each of the Concession Agreement Parties undertakes to the Escrow Agent that it shall provide all documentation and other information reasonably required by the Escrow Agent from time to time to comply with all Legal Requirements in relation to the Escrow Accounts, forthwith upon reasonable request by the Escrow Agent.

3.2.4. Each of the Concession Agreement Parties undertakes that any instructions it gives in connection with the Escrow Accounts will be given only in accordance with the terms of this Agreement, and, without prejudice to the generality of the foregoing, shall be sent to the Escrow Agent in accordance with clause 12.
3.2.5. The Concessionaire shall ensure that the Escrow Account Certificate is timely issued in order to avoid any delay with respect to any payments under this Agreement and the other Project Agreements.

3.3. **RIGHTS OF THE PARTIES**

The rights of the Concession Agreement Parties in the monies held in the Escrow Accounts are set-forth in its entirety in this Agreement and the Concession Agreement, and the Concession Agreement Parties shall have no other rights against or to the monies in the Escrow Accounts.

3.4. **SEGREGATION OF FUNDS**

Monies or other properties received by the Escrow Agent under this Agreement, until used or applied in accordance with this Agreement, shall be:

(a) held by the Escrow Agent for the purposes of which they were received; and

(b) segregated from other funds and property of the Escrow Agent.

4. **ESCROW ACCOUNTS FUNDING**

4.1. **DEPOSITS BY CONCESSIONAIRE**

The Concession Agreement Parties have agreed that the Concessionaire shall ensure deposit of:

(a) Zone Enterprise Payments in the Revenue Escrow Account; and

(b) the O&M Fees in the O&M Escrow Account.

5. **OPERATING ESCROW ACCOUNTS**

5.1. **REVENUE ESCROW ACCOUNT**

5.1.1 During the Lease Payment Period, and until such time the Concessionaire receives the Zone Enterprise Payments equivalent to the Benchmark Revenue Amount, the Escrow Agent shall within two (02) Days of receipt of the Escrow Account Certificate:

(a) debit funds standing to the credit of the Revenue Escrow Account, and credit to the Concessionaire Designated Account, an amount certified as payable to the Concessionaire in the Escrow Account Certificate, which amount shall not, in any event and at any given time exceed [●]\(^{12}\) percent of the Zone Enterprise Payments received in the Revenue Escrow Account ("Concessionaire Revenue Share"); and

(b) debit funds standing to the credit of the Revenue Escrow Account, and credit to the SEZMC Designated Account, an amount certified as payable to the SEZMC in the Escrow Account Certificate, which amount shall not, in any event and at any given time exceed [●]\(^{13}\) percent of the Zone Enterprise Payments received in the Revenue Escrow Account ("SEZMC Revenue Share").

5.2. **SHORTFALL AND WINDFALL REVENUE**

5.2.1 The Escrow Agent shall:

(a) upon occurrence of a Lease Payment Shortfall Event and within two (2) days of receipt of the Escrow Account Certificate, debit funds standing to the credit of the Revenue Escrow Account, and credit to the SEZMC Designated Account, an amount

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\(^{12}\) The revenue sharing percentage quoted in Bidding Form F3 shall be inserted.

\(^{13}\) Ibid.
equivalent to the Lease Payment Shortfall Amount, provided, if the amount standing to the credit of the Revenue Escrow Account is less than the Lease Payment Shortfall Amount, the difference in the amount shall be compensated in accordance with clause 11.8 of the Concession Agreement; and

(b) following the occurrence of the Windfall Revenue Event and within two (2) days of receipt of the Escrow Account Certificate, debit funds standing to the credit of the Revenue Escrow Account, and credit:

(i) to the SEZMC Designated Account, an amount certified as payable to the SEZMC in the Escrow Account Certificate, which amount shall not, in any event and at any given time exceed seventy-five percent (75%) of the Windfall Revenue (“SEZMC Windfall Revenue Share”); and

(ii) to the Concessionaire Designated Account, an amount certified as payable to the Concessionaire in the Escrow Account Certificate, which amount shall not, in any event and at any given time exceed twenty-five percent (25%) of the Windfall Revenue (“Concessionaire Windfall Revenue Share”).

5.3. **O&M Escrow Account**

The Escrow Agent shall, within two (2) Days of receipt of the Escrow Account Certificate, debit the O&M Escrow Account and credit the O&M Fees deposited therein to the Concessionaire Designated Account.

5.4. **Release of Funds Upon Handover Date**

5.4.1 Upon the Handover Date, the Escrow Agent shall debit all remaining funds standing to the credit of the Escrow Accounts (if any) and credit the same to the Concessionaire Designated Account.

5.4.2 On the Handover Date, the Escrow Agent shall close the Escrow Accounts.

5.5. **Taxes**

5.5.1 Any payment by the Escrow Agent under this Agreement shall be made without any deduction or withholding of any Tax, unless such deduction or withholding is required in accordance with the Legal Requirements.

5.5.2 If the Escrow Agent is required to make a deduction or withholding referred to in clause 5.5.1, it shall not pay an additional amount in respect of that deduction or withholding to any Party. Any such deduction or withholding shall be the responsibility of the Concessionaire as between the Escrow Agent and the Concessionaire.

6. **Refund Amount and Payment of Excess Revenue**

6.1. **Issuance of Escrow Account Certificate**

6.1.1 In the event the Concessionaire cancels the Allotment Letter of any Original Zone Enterprise in accordance with the Allotment Letter, the Concessionaire shall procure the issuance of an Escrow Account Certificate confirming and certifying the Refund Amount, the Concessionaire Excess Revenue Share and the SEZMC Excess Revenue Share.

6.1.2 The Concessionaire shall provide all such information, data and access as is reasonably required by the Independent Appointees for the issuance of the Escrow Account Certificate.

6.1.3 Following issuance of the Escrow Account Certificate, the Concessionaire shall deliver the same to the SEZMC and the Escrow Agent.

6.2. **Payments of Refund Amount and Payment of Excess Revenue**

6.2.1 The Escrow Agent shall, within two (2) Days of receipt of the Escrow Account Certificate:
(a) debit the Revenue Escrow Account, and credit to such Original Zone Enterprise’s account (as notified by the Concessionaire) the Refund Amount; and

(b) debit the Revenue Escrow Account, and credit:

(i) the Concessionaire Excess Revenue Share to the Concessionaire Designated Account; and

(ii) the SEZMC Excess Revenue Share to the SEZMC Designated Account.

provided, however, if the amount standing to the credit of the Revenue Escrow Account is less than the sum of the Refund Amount, the Concessionaire Excess Revenue Share and the SEZMC Excess Revenue Share, the difference in the amount shall be compensated in accordance with clause 11.2.7 of the Concession Agreement.

7. AUTHORISED REPRESENTATIVE AND DESIGNATED ACCOUNTS

7.1 AUTHORISED REPRESENTATIVES

The Concession Agreement Parties shall provide such details of their Authorised Representatives, as required under Schedule A. The Authorised Representatives shall carry out the duties specified in this Agreement on behalf of Concession Agreement Parties. The Concession Agreement Parties undertake to provide the Escrow Agent, a minimum five (5) Business Days’ notice in writing, in accordance with clause 12, if their Authorised Representatives are substituted, providing the requisite details under Schedule A. Any substitution of the Authorised Representatives shall take effect upon the expiry of such notice period (or such shorter period as agreed between the Parties). The Concession Agreement Parties acknowledge and accept the risks associated with any appointment of the same person(s) to act as their respective Authorised Representatives.

7.2 DESIGNATED ACCOUNTS

The Concession Agreement Parties shall provide details of the Designated Accounts (as specified in Schedule B), wherein the Escrow Agent shall credit and transfer sums to the Concession Agreement Parties (as the case may be) in accordance with the terms of this Agreement. The Concession Agreement Parties undertake to give the Escrow Agent, a minimum five (5) Business Days’ notice in writing, in accordance with clause 12, of any substitution of their Designated Accounts, providing the requisite details under Schedule B. Any substitution of the Designated Accounts shall take effect upon the expiry of such notice period (or such shorter period as agreed between the Parties).

8. REPRESENTATIONS AND WARRANTIES

8.1 CONCESSION AGREEMENT PARTIES REPRESENTATIONS AND WARRANTIES

Each of the Concession Agreement Parties represents and warrants to the Escrow Agent that:

(a) it is duly incorporated and validly existing under the Laws, and is not subject to any insolvency proceedings;

(b) it has the power to enter into and perform its obligations under this Agreement which constitutes its legally binding and enforceable obligations;

(c) this Agreement and the underlying transaction(s) to which it relates will not conflict in any material respect with:

(i) any Legal Requirements;

(ii) its constitutional documents; or

(iii) any agreement to which it is a party or which is binding upon it or its assets;
and

(d) neither it nor any of its assets enjoys a right of immunity from set off proceedings or execution in respect of its obligations under this Agreement.

8.2 Escrow Agent Representations and Warranties

The Escrow Agent represents and warrants to the Concession Agreement Parties that:

(a) it is duly incorporated and validly existing under the Laws, and is not subject to any insolvency proceedings;

(b) it has the power to enter into and perform its obligations under this Agreement which constitutes its legally binding and enforceable obligations; and

(c) this Agreement and the underlying transaction(s) to which it relates will not conflict in any material respect with:

(i) any Legal Requirements;

(ii) its constitutional documents; or

(iii) any agreement to which it is a party or which is binding upon it or its assets.

9. Replacement of Escrow Agent

9.1 Resignation

Subject to clause 9.3, the Escrow Agent may resign from its appointment hereunder at any time without providing any reason therefor by giving at least sixty (60) Days’ prior written notice to that effect to each of the Concession Agreement Parties, provided that the Escrow Agent also resigns from any other appointments in connection with the Project, simultaneously with its resignation as an Escrow Agent.

9.2 Removal

Subject to clause 9.3, either of the Concession Agreement Parties may remove the Escrow Agent from its appointment hereunder with or without cause by giving at least thirty (30) Days’ prior written notice to that effect to the Escrow Agent (with a copy to the other Concession Agreement Party).

9.3 Consequences of Resignation / Removal of Escrow Agent

9.3.1 No resignation or removal of the Escrow Agent pursuant to clauses 9.1 or 9.2 shall be effective until:

(a) a successor to the Escrow Agent is appointed in accordance with (and subject to) the provisions of clause 9.3.2;

(b) the predecessor Escrow Agent has transferred to its successor, all of its rights and obligations in its capacity as an Escrow Agent (including any amounts standing to the credit of the Escrow Accounts in accordance with clause 9.3.3 below) under this Agreement; and

(c) the successor escrow agent, has executed and delivered an agreement to be bound by the terms of this Agreement and to perform all duties required of the Escrow Agent hereunder.

9.3.2 If the Escrow Agent has given notice of its resignation pursuant to clause 9.1 or if either of the Concession Agreement Parties gives the Escrow Agent notice of its removal pursuant to clause 9.2, then a successor to the Escrow Agent shall be appointed with the mutual consent of the Concession Agreement Parties within thirty (30) Days from the date of such notice
and thereafter, the Concession Agreement Parties shall provide the Escrow Agent account details of such a successor.

9.3.3 The Escrow Agent shall, within fifteen (15) Days of receipt of account details of the successor escrow agent under clause 9.3.2, transfer any amount standing to the credit of the Escrow Accounts to the successor escrow agent.

9.3.4 If the resignation or removal of the Escrow Agent is effective pursuant to clause 9.3.1:

(a) the predecessor Escrow Agent shall be discharged from any further obligation hereunder (but without prejudice to any accrued liabilities);

(b) the resignation pursuant to clause 9.1 or removal pursuant to clause 9.2 of the predecessor Escrow Agent notwithstanding, the provisions of this Agreement shall inure to the predecessor Escrow Agent’s benefit as to any actions taken or omitted to be taken by it under this Agreement while it was serving as an Escrow Agent; and

(c) the successor escrow agent and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor escrow agent had been a party of this Agreement from the Signing Date.

10. FEES AND EXPENSES

10.1 FEES AND EXPENSES

10.1.1 The Escrow Agent shall be entitled to receive its fee and expenses in such amount, and at such times, as may be agreed between the Escrow Agent and the Concessionaire. The Parties further agree that any and all amounts payable to the Escrow Agent in terms of this Agreement shall be on account of and payable by the Concessionaire.

10.1.2 The Parties agree that the Escrow Agent shall not be entitled to claim any costs from the Concessionaire, including but not limited to any out-of-pocket expenses incurred by the Escrow Agent (including, if applicable, all reasonable fees, costs and expenses of counsel) in connection with:

(a) the preparation, negotiation, execution and delivery of this Agreement and the administration and maintenance of the Escrow Accounts (whether or not the transactions contemplated hereby are consummated);

(b) any amendments, modifications or waivers of the provisions of this Agreement (whether or not the transactions contemplated hereby are consummated);

(c) the administration of this Agreement (whether or not the transactions contemplated hereby are consummated); and

(d) the enforcement, protection or preservation of its rights in connection with this Agreement.

11. INDEMNITIES

11.1 INDEMNITIES

11.1.1 The Escrow Agent shall have no duties, obligations or responsibilities other than those expressly set forth herein.

11.1.2 The Escrow Agent shall not be liable to the other Parties or to anyone else for any action taken or omitted to be taken by it in the exercise of its own best judgment.

11.1.3 The Escrow Agent shall not be bound by any notice or demand, or any waiver, modification, termination or rescission of this Escrow Agreement or any of the terms hereof, unless evidenced in writing and delivered to the Escrow Agent.
11.1.4 The Escrow Agent shall be indemnified and held harmless by the Concessionaire from and against any and all expenses, including counsel fees, costs and disbursements (it being understood that such fees, costs and disbursements include those incurred to enforce the provisions of this Agreement), or losses suffered by the Escrow Agent in connection with any action, suit or other proceeding or investigation involving any claim, or in connection with any claim or demand, which in any way, directly or indirectly, arises out of or relates to this Escrow Agreement, save as are caused by its own gross negligence, willful default or fraud. For the purposes hereof, the word “expense” and “loss” shall include all amounts paid or payable to satisfy any claim, demand or liability, or in settlement of any claim, demand, action, suit or proceeding settled with the express written consent of the Escrow Agent, and all costs and expenses, including, but not limited to, counsel fees, costs and disbursements, paid or incurred in investigating or defending against any such claim, demand, action, suit, proceeding or investigation.

11.1.5 The indemnities set out under this clause 11 are independent of and in addition to any other agreement, and shall survive the execution, modification, and amendment of this Agreement, and the provisions of any other indemnity. The Concession Agreement Parties acknowledge and agree that the Escrow Agent is an express third-party beneficiary of the Concession Agreement Parties’ obligations under this clause 11.

12. NOTICES

12.1 Notices

12.1.1 Notices with respect to amendments to Schedule A and/or Schedule B shall only be delivered either in person or by post to the Escrow Agent’s address set out in clause 12.1.2.

12.1.2 Unless otherwise stated, all notices or other communications to be given or made hereunder shall be in writing, addressed for attention of the person indicated below, and delivered personally or sent by registered or certified mail or facsimile. All notices shall be deemed delivered:

(a) when presented personally;

(b) if received on a Business Day of the receiving Party, when transmitted by facsimile to the receiving Party’s facsimile number (specified below) and, if received on a Day that is not a Business Day of the receiving Party, on the first Business Day of the receiving Party following the date transmitted by facsimile to the receiving Party’s facsimile number;

(c) one (1) Day after being delivered to a courier for overnight delivery, addressed to the receiving Party, at the address indicated below; or

(d) five (5) Days after being deposited in a regularly maintained receptacle for the postal service in Pakistan, postage prepaid, registered or certified, return receipt requested, addressed to the receiving Party, at the address indicated below.

Any notice given by facsimile shall be confirmed in writing, delivered personally or sent by registered or certified mail, but the failure to do so shall not void or invalidate the original notice if it is in fact received by the Party to which it is addressed. The address for service of each Party and its respective facsimile number shall be:

**Escrow Agent:**
- Attention: [●]
- Address: [●]
- Telephone Number: [●]
- Facsimile: [●]

**SEZMC:**
- Attention: Chief Technical Officer
- Address: 2nd Floor, Bahria Complex IV, Choudhry Khaliq Uz Zaman Road, Gizri Karachi.
Telephone Number: 021-99332220
Email: info@sezmc.gos.pk; cto@sezmc.gos.pk

Concessionaire:

Attention: [●]
Address: [●]
Telephone Number: [●]
Email: [●]

or such other addresses or facsimile number as either Party may have specified by written notice delivered to the other Parties at its address or facsimile number specified above (if applicable).

13. GOVERNING LAW

13.1 GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the Laws.

14. DISPUTE RESOLUTION

14.1 NEGOTIATION

The Parties agree to attempt to resolve any Dispute promptly, amicably, and in good faith. Each Party shall designate a representative who shall be entitled to enter into discussions to resolve by amicable agreement any Dispute in connection with this Agreement.

14.2 PUBLIC-PRIVATE PARTNERSHIP POLICY BOARD

Any Dispute that is not finally resolved between the Parties pursuant to the clause 14.1 within thirty (30) Days from the date on which a Party receives notice from the other Party that a Dispute exists, then the Parties shall endeavour to settle the dispute in an amicable manner by mediation administered by an independent and impartial person appointed by the Public-Private Partnership Policy Board. If any Dispute is not resolved between the Parties pursuant to this clause 14.2 within sixty (60) Days from the date on which the matter has been referred by the Public-Private Partnership Policy Board to an independent and impartial person so appointed, then such Dispute shall be settled exclusively and finally in accordance with the provisions of clause 14.3.

14.3 ARBITRATION

14.3.1 Each of the Parties unconditionally and irrevocably agrees in respect of a Dispute, which cannot be resolved by the Parties pursuant to clause 14.2:

(a) to the submission of such Dispute to binding arbitration governed by the Arbitration Act 1940, by appointment of a board of arbitrators, consisting of one (1) arbitrator appointed by each Party (the “Arbitrators”). Any arbitration proceedings commenced pursuant to this clause 14.3.1(a) shall be referred to as arbitration (“Arbitration”);

(b) not to claim any right it may have under the Laws to hinder, obstruct, or nullify the submission of the Dispute to Arbitration; and

(c) to accept the Award rendered by the Arbitrators and any judgment entered thereon by a court of competent jurisdiction as final and binding and not to hinder, obstruct or nullify the enforcement or execution of any decision rendered by the Arbitrators or court of competent jurisdiction.

14.3.2 The place of Arbitration shall be Karachi, Pakistan.
14.3.3 The language of Arbitration shall be English.

14.3.4 Any decision or award resulting from the Arbitration (“Award”) shall be final and binding upon the Parties.

14.3.5 The Parties hereby waive, to the extent permitted under the Laws, any rights to appeal or to review of such Award by any Competent Authority.

14.3.6 The fees and expenses of the Arbitrators and all other expenses relating to Arbitration shall be borne and paid by the respective Parties, unless the Award states otherwise. The Arbitrators may provide in the Award, for reimbursement to a Party, of its costs and expenses in bringing or defending the Arbitration claim, including legal fees and expenses incurred by such Party.

14.3.7 This Agreement and the rights and obligations of the Parties shall remain in full force and effect pending the Award for any Arbitration, which Award, if appropriate, shall determine whether and when any termination shall become effective.

14.4 Excluisive Jurisdiction

No Party shall have the right to, nor shall they, commence or maintain any legal proceedings in or outside of Pakistan, concerning a Dispute, until the Dispute has been resolved in accordance with clauses 14.2 and 14.3, and then only to enforce or execute an Award.

14.5 Obligations Continuing

Unless otherwise agreed in writing, the existence of a Dispute shall not relieve any Party from the performance of its obligations under this Agreement not the subject of the Dispute.

15. General

15.1 Assignment

This Agreement shall be binding upon and inure solely for the benefit of the Parties and their respective successors and assigns. Other than as expressly contemplated in this Agreement, neither the Concession Agreement Parties nor, save as expressly provided in this Agreement, the Escrow Agent, may transfer or assign any of its rights or obligations under this Agreement without the prior written consent of the other Parties.

15.2 Amendment

This Agreement may be amended only with the prior written consent of the Parties.

15.3 No Waiver

A waiver of rights under this Agreement may only be granted by the Party whose rights are being waived and shall be notified to the other Parties in writing and in accordance with clause 12. The waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any other provision thereof, and any extension of time for the performance of any obligation shall not be deemed to be an extension of time for the performance of any other obligation.

15.4 Entire Agreement

15.4.1 Each of the Concession Agreement Parties acknowledges and agrees that:

(a) the duties, responsibilities and obligations of the Escrow Agent shall be limited to those expressly set forth in this Agreement;

(b) the Escrow Agent shall not be responsible for any other agreements referred to or described herein, or for determining or compelling compliance therewith, and shall not otherwise be bound thereby;
this Agreement shall constitute the entire agreement of the Parties with respect to
the subject matter and supersedes all prior oral and written agreements in regard
thereto; and

the Escrow Agent shall not be required to expend or risk any of its own funds or
otherwise incur any financial or other liability in the performance of any of its duties
hereunder.

15.4.2 The Concession Agreement Parties acknowledge the existence of the Concession
Agreement, and acknowledge and agree that as between them (but not the Escrow Agent)
the terms of the Concession Agreement shall continue to apply and are not excluded or
superseded by virtue of this clause 15.4.

15.5 **SURVIVAL**

15.5.1 The termination of this Agreement:

(a) shall not relieve any Party of any obligations hereunder which expressly or by
implication survives termination hereof; and

(b) except as otherwise provided in any provision of this Agreement expressly limiting
the liability of any Party, shall not relieve any Party of any obligations or liabilities
for loss or damage to the other Party(ies) 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.

15.6 **PAYMENTS**

15.6.1 On each date on which any sum is due to be paid by any Party(ies) under this Agreement,
the Party(ies) shall pay such sum before 11:00 a.m. Pakistan Standard Time on that date by
payment in PKR in immediately available funds by crediting the relevant Escrow Account
and/or the Designated Account (as applicable).

15.6.2 Any payment hereunder which would otherwise fall due on a Day which is not a Business
Day shall instead fall due on the immediately preceding Business Day.

15.7 **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, illegal or unenforceable, the validity, legality or enforceability
of the remaining provisions shall not be affected in any manner, and the Parties will
negotiate in good faith with a view to agreeing upon one or more provisions which may be
substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable.

15.8 **LANGUAGE**

All notices required to be given under this Agreement and all communications,
documentation and proceedings which are in any way relevant to this Agreement shall be in
writing and in the English language.

15.9 **EXCLUSION OF IMPLIED WARRANTIES**

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

15.10 **COUNTERPARTS**
The Parties may execute this Agreement in counterparts, which shall, in the aggregate, when signed by the Parties constitute one and the same instrument; and thereafter, each counterpart shall be deemed to be an original instrument as against the Party who has signed it.

16. CONFIDENTIALITY

16.1 CONFIDENTIALITY OBLIGATION

During the term of this Agreement and after termination or expiry of this Agreement for any reason whatsoever a Party shall:

(a) keep the Confidential Information confidential;

(b) not disclose the Confidential Information to any other person who is not a Party other than:

(i) with the prior written consent of the other Parties; or

(ii) in accordance with clause 16.2; and

(c) not use the Confidential Information for any purpose other than the performance of its obligations under this Agreement.

16.2 DISCLOSURE

During the term of this Agreement and after termination or expiry of this Agreement for any reason, a Party may disclose the Confidential Information:

(a) in the case of the SEZMC, to any of its civil servants, directors, officers and employees, and in the case of the Concessionaire, to its direct shareholders, directors, officers or employees (each a “Recipient”) to the extent necessary to achieve the purposes of this Agreement, provided that:

(i) the disclosing Party shall procure that each Recipient is made aware of and complies with all the disclosing Party's obligations of confidentiality under this Agreement as if the Recipient was a party to this Agreement; and

(ii) in no circumstances shall disclosure to the public be permitted pursuant to this clause 16.2(a);

(b) if, and only to the extent, required to disclose such information by judicial, regulatory or administrative process or otherwise in accordance with any law or the rules of any recognised stock exchange applicable to the disclosing Party;

(c) with the consent of the other Parties (not to be unreasonably withheld), in the interests of attracting equity financing for the Project, provided that prior to making such disclosure, the disclosing Party obtains an appropriate confidentiality undertaking from the person to whom the Confidential Information is to be disclosed;

(d) to its Contractors, provided that prior to making such disclosure, the disclosing Party obtains an appropriate confidentiality undertaking from the person to whom the Confidential Information is to be disclosed;

(e) to its legal, financial and/or technical advisors, provided that prior to making such disclosure, the disclosing Party obtains an appropriate confidentiality undertaking from the person to whom the Confidential Information is to be disclosed;

(f) in a legal action or proceeding brought by the disclosing Party in pursuit of its rights or in exercise of its remedies; and/or

(g) to its insurers, provided that prior to making such disclosure, the disclosing Party
obtains an appropriate confidentiality undertaking from the person to whom the Confidential Information is to be disclosed.

16.3 **Exceptions**

The obligations contained in clauses 16.1 and 16.2 shall not apply to any Confidential Information which:

(a) is at the Signing Date in, or at any time after the Signing Date comes into, the public domain other than through breach of this Agreement by the disclosing Party or any Recipient;

(b) can be shown by the disclosing Party to the reasonable satisfaction of the other Parties to have been known to the disclosing Party independently; and/or

(c) on, before or after the Signing Date has come lawfully into the possession of the disclosing Party from a third party.

16.4 **Press Releases**

This prohibition shall not forbid a Party, with the prior written consent of the other Parties, from issuing press releases containing Confidential Information in relation to the progress of the Project.

16.5 **Definition**

For the purposes of this clause 16, “Confidential Information” means this Agreement and all information concerning the Project and the other Parties (or its Affiliates), whether:

(a) in writing, verbally or by any other means; or

(b) acquired directly or indirectly before or after the Signing Date.

17. **Term and Termination**

17.1 **Term**

Unless extended or terminated earlier in accordance with the terms hereof, this Agreement shall remain in full force and effect from the Signing Date until ninety (90) Days from the Handover Date (the “Term”).

17.2 **Termination**

17.2.1 This Agreement may be terminated at any time with the mutual written consent of the Parties.

17.2.2 In the event of termination of the Concession Agreement, this Agreement shall automatically terminate on the completion of the obligations of the Escrow Agent required to be performed by it upon such termination.
## SCHEDULE A - AUTHORISED REPRESENTATIVES

### SEZMC

<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
<th>Specimen signature</th>
<th>Telephone number</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
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<td></td>
<td></td>
</tr>
</tbody>
</table>

### Concessionaire

<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
<th>Specimen signature</th>
<th>Telephone number</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## SCHEDULE B - DESIGNATED ACCOUNTS

<table>
<thead>
<tr>
<th>SEZMC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Account Number</td>
</tr>
<tr>
<td>----------------</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Concessionaire</th>
</tr>
</thead>
<tbody>
<tr>
<td>Account Number</td>
</tr>
<tr>
<td>----------------</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>
IN WITNESS WHEREOF, the Parties, intending to be legally bound, have caused this Agreement to be executed by their duly authorised representatives as of the date first written above.

SINDH ECONOMIC ZONES MANAGEMENT COMPANY,
THROUGH [●]

Signature

Name (block capitals)

Title

In the presence of:

Witness signature

Witness name
(block capitals)

Witness signature

Witness name
(block capitals)

THE CONCESSIONAIRE

Signature

Name (block capitals)

Title

In the presence of:

Witness signature

Witness name
(block capitals)

Witness signature

Witness name
(block capitals)
THE ESCROW AGENT

Signature

Name (block capitals)

Title
In the presence of:

Witness signature

Witness name (block capitals)

Witness signature

Witness name (block capitals)
**APPENDIX 13: ESCROW PAYMENT MILESTONES**

<table>
<thead>
<tr>
<th>S.No</th>
<th>Payment Milestones</th>
<th>Allocated Percentage (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Approach road, boundary wall, gates, watch towers.</td>
<td>5%</td>
</tr>
<tr>
<td>2</td>
<td>External utilities works</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- power supply</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- water supply</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- gas supply</td>
<td>15%</td>
</tr>
<tr>
<td>3</td>
<td>Internal sewerage network system</td>
<td>5%</td>
</tr>
<tr>
<td>4</td>
<td>Internal water supply &amp; storage network system</td>
<td>5%</td>
</tr>
<tr>
<td>5</td>
<td>Grading &amp; earth works</td>
<td>15%</td>
</tr>
<tr>
<td>6</td>
<td>Internal storm water drain system</td>
<td>5%</td>
</tr>
<tr>
<td>7</td>
<td>Internal electrification works system</td>
<td>15%</td>
</tr>
<tr>
<td>8</td>
<td>Internal gas network system</td>
<td>2%</td>
</tr>
<tr>
<td>9</td>
<td>Internal fire fighting works system</td>
<td>2%</td>
</tr>
<tr>
<td>10</td>
<td>Internal road works including foot path &amp; retaining wall</td>
<td>20%</td>
</tr>
<tr>
<td>11</td>
<td>Common effluent treatment facility / plant (cetp)</td>
<td>6%</td>
</tr>
<tr>
<td>12</td>
<td>Internal building works &amp; parks</td>
<td>5%</td>
</tr>
</tbody>
</table>

Payment milestones percentages construction works - total. 100%
“Handover Conditions” means the criteria for handover as follows:

(a) where the Construction Completion Date is not achieved, Project will be in a condition of maintenance, cleanliness and appearance that is consistent with the standards required in this Agreement (including as set out in appendix 1);

(b) where the Construction Completion Date has been achieved, Project is in the same condition (disrepair by reasonable ordinary wear and tear excepted) as on the Construction Completion Date;

(c) the Site shall be:
   (i) free and clear from obstructions, impediments placed by the Concessionaire, used consumables and waste, and Hazardous Substances;
   (ii) neat and tidy; and
   (iii) made safe and secure in accordance with Good Industry Practices;

(d) in case of transfer to SEZMC or its nominee, free and clear of all liens and Encumbrances, at no cost to the SEZMC, require the Concessionaire to:
   (i) take all steps to ensure transfer on the Handover Date all of the Concessionaire’s right, title and interest in the Project and all of the Concessionaire’s right, title and interest in:
       (A) all raw materials, consumables and spare parts;
       (B) all tangible personal property;
       (C) all intangible personal property, including any Intellectual Property Rights;
       (D) all buildings and fixtures;
       (E) computerised and non-computerised records, reports, data, files, and information;
       (F) all drawings, test results, and documents relating to the Project;
       (G) all warranties of equipment, materials and work;
       (H) all contract rights and Insurance Policies;
       (I) all work in progress under contracts with vendors, suppliers, contractors and subcontractors;
       (J) any insurance proceeds payable to or for the account of the Concessionaire, but unpaid at the date of termination of the Agreement (to the extent such amounts are not adjusted as part of the Deductible Termination Amount), in respect of the Concessionaire’s right, title and interest in the Project; and
   (ii) execute such deeds of conveyance, documents and other writings as reasonably required for conveying, handing over, novation and/or assigning all the rights, title and interest of the Concessionaire in the Project to the SEZMC or its nominee, free and clear of all Encumbrances, at no cost to the SEZMC, including: (A) Lease Agreement; (B) any Allotment Letters; and/or (C) the Sub-Lease Agreements, (as may be applicable and required by the SEZMC).

(e) in case of transfer of Shares (notwithstanding whether the same have been listed on the stock exchange) to the SEZMC or its nominee, free and clear of Encumbrances, at no cost to the SEZMC, require the Concessionaire to:
   (i) resolve any Disputes;
(ii) obtain consent of the financiers (if any) with respect to a possible transfer of Shares to the SEZMC, during the period that any financing due is outstanding; and

(iii) settle outstanding payments and accounts of the Concessionaire with regards to any due and payable payments under the Agreement, as verified by the Independent Appointees.
PROVINCIAL SUPPORT AGREEMENT

BETWEEN

(1) THE GOVERNOR OF SINDH
(THROUGH THE INVESTMENT DEPARTMENT, GOVERNMENT OF SINDH)

- and -

(2) SINDH ECONOMIC ZONES MANAGEMENT COMPANY LIMITED

- and -

(3) [THE CONCESSIONAIRE]

relating to the
MARBLE CITY KARACHI

Dated [●]
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5. ** Dispute Resolution ** .......................................................... 6
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This Provincial Support Agreement is made on [insert details] day of [insert details] 202[●] at Karachi, Pakistan (the “Agreement”).

BETWEEN

(1) THE GOVERNOR OF SINDH (through the Secretary, Investment Department, Government of Sindh) having its place of business located at Block B, 1st Floor, Finance and Trade Center, Shahrah-e-Faisal, Karachi, Pakistan, for and on behalf of the Government of Sindh (the “GoS”, which expression shall, unless excluded by or repugnant to the context, be deemed to include its successors and assigns);

(2) SINDH ECONOMIC ZONES MANAGEMENT COMPANY LIMITED, a public limited company incorporated under the laws of Pakistan having its place of business located at 2nd Floor, Bahria Complex IV, Choudhry Khaliq Uz Zaman Road, Gizri, Karachi, Pakistan, through its duly authorized representative, the Chief Executive Officer (the “SEZMC” which expression shall, unless excluded by or repugnant to the context, be deemed to include its successors in interest, administrators and permitted assigns); and

(3) [INSERT NAME OF THE CONCESSIONAIRE], a company incorporated under the laws of Pakistan, having its registered office located at [insert address] (the “Concessionaire”, which expression shall, unless excluded by or repugnant to the context, be deemed to include its successors in interest, administrators and permitted assigns),

(the GoS, the SEZMC, and the Concessionaire shall hereinafter be individually referred to as a “Party” and collectively as the “Parties”).

RECITALS

A. WHEREAS, the SEZMC is desirous of setting up an industrial park at the Site by the name of “Marble City Karachi” through public-private partnership, and for this purpose, requires a private party to establish, develop and operate the Project on a DBFOMT basis;
B. WHEREAS, in terms of the Concession Agreement, the SEZMC has agreed to procure the GoS to enter into this Agreement to support its obligations, and for the GoS to guarantee and backstop the contractual (including financial) obligations of the SEZMC under the Concession Agreement;

C. AND WHEREAS, the Parties have agreed to execute this Agreement for implementation of the terms of the Concession Agreement in accordance with the terms and conditions provided herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

I. DEFINITIONS AND INTERPRETATION

1.1. DEFINITIONS

Unless specified otherwise herein in this Agreement (including the Recitals), all capitalized terms shall have the meanings assigned to them under the Concession Agreement. In addition, the following terms shall have the following meanings, unless the context otherwise requires:

“Agreement” has the meaning given to it in the Preamble;

“Arbitration” has the meaning given to it in clause 5.3.1(a);

“Arbitrators” has the meaning given to it in clause 5.3.1(a);

“Award” has the meaning given to it in clause 5.3.4;

“Concession Agreement” means the agreement titled “Concession Agreement” dated [●]. and entered into between the SEZMC and the Concessionaire;

“Concessionaire” has the meaning given to it in the Preamble;

“Dispute” means a dispute, controversy, difference or claim between the Parties arising out of or in relation to this Agreement or the Parties’ performance or non-performance of this Agreement;

“GoS” has the meaning given to it in the Preamble;

“Parties” or “Party” has the meaning given to it in the Preamble;

“Preamble” means the preamble of this Agreement;

“PSA Effective Date” has the meaning given to it in the Preamble;

“Set-Off Amount” has the meaning given to it in clause 2.1.2;

“SEZMC” has the meaning given to it in the Preamble;

“SEZMC Due Amount” has the meaning given to it in clause 2.1.2;

“SEZMC Obligation Due Date” has the meaning given to it in clause 2.1.2; and

“SEZMC Obligation Failure” has the meaning given to it in clause 2.1.2.

1.2. INTERPRETATION

The rules of interpretation set out in the Concession Agreement shall be applied in the interpretation of the terms and provisions of this Agreement. Unless the context otherwise requires, any reference to this Agreement or to any other instrument is a reference to this Agreement or that instrument as amended, supplemented or novated from time to time and
includes a reference to any instrument which amends, waives, is supplemental to, novates or is entered into, made or given pursuant to or in accordance with any of the terms of this Agreement or any such other instrument.

2. **GOs Obligations**

2.1. **Guaranteeing SEZMC Obligations**

2.1.1 Subject to clause 2.1.2, the GoS hereby covenants and undertakes in pursuance of this Agreement to:

(a) procure and ensure that the SEZMC meets its contractual (including financial) obligations in accordance with the Concession Agreement; and/or

(b) allocate and make sufficient funds available to the SEZMC or make relevant payment to the Concessionaire directly (as the GoS may determine in its discretion) so as to ensure that the SEZMC meets its contractual (including financial) obligations in accordance with the Concession Agreement.

2.1.2 In the event the SEZMC fails to: (a) meet any of its obligations (“SEZMC Obligation Failure”); or (b) pay any amounts due and payable (excluding any corresponding amounts determined by the Independent Auditor to be due and payable by the Concessionaire to the SEZMC under the Concession Agreement (“Set-Off Amount”)) (“SEZMC Due Amount”), in each case at the date such obligation is due under the Concession Agreement (“SEZMC Obligation Due Date”), the Concessionaire shall be entitled to issue a notice to the GoS, along with a certificate issued by the Independent Appointees (in respect of any SEZMC Obligation Failure and/or SEZMC Due Amount) certifying to the GoS (as applicable):

(i) the SEZMC Obligation Failure;

(ii) the SEZMC Due Amount (if any); and

(iii) the SEZMC Obligation Due Date.

The Parties agree that the Concessionaire’s obligation to pay the Set-Off Amount shall be discharged upon payment of the SEZMC Due Amount by the GoS. For the avoidance of doubt, the SEZMC Due Amount and the Set-Off Amount shall exclude any amounts disputed under the Project Agreements and such amounts shall become due and payable upon resolution of such dispute.

2.1.3 The GoS shall, within forty-five (45) Days of receipt of the certification by the Independent Appointees (in respect of any SEZMC Obligation Failure), comply with its obligations as set out in clause 2.1.1.

2.1.4 In addition to the foregoing, where the GoS provides funds to the SEZMC for payment of the SEZMC Due Amount, the SEZMC hereby undertakes that it shall, within thirty (30) Days of compliance by the GoS of its undertaking in clause 2.1.1, make payment of the SEZMC Due Amount to the Concessionaire.

3. **Mutual Representations and Warranties**

3.1. **Mutual Representations & Warranties**

3.1.1. Subject to the terms of this Agreement, each of the Parties hereby represents and warrants that:

(a) it is duly organized and validly existing under the Laws, and that it has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;

(b) it has taken all necessary actions under the Laws to:
authorize the execution, delivery and performance of this Agreement; and

(ii) validly exercise its rights and perform its obligations under this Agreement; and

(c) this Agreement and all obligations contained herein constitutes its legal, valid and binding obligations, enforceable against it in accordance with the terms hereof.

4. GOVERNING LAW AND DISPUTE RESOLUTION

4.1 GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the Laws.

5. DISPUTE RESOLUTION

5.1 NEGOTIATION

The Parties agree to attempt to resolve any Dispute promptly, amicably, and in good faith. Each Party shall designate a representative who shall be entitled to enter into discussions to resolve by amicable agreement any Dispute in connection with this Agreement.

5.2 PUBLIC-PRIVATE PARTNERSHIP POLICY BOARD

Any Dispute that is not finally resolved between the Parties pursuant to the clause 5.1 within thirty (30) Days from the date on which a Party receives notice from the other Party that a Dispute exists, then the Parties shall endeavor to settle the dispute in an amicable manner by mediation administered by an independent and impartial person appointed by the Public-Private Partnership Policy Board. If any Dispute is not resolved between the Parties pursuant to this clause 5.2 within sixty (60) Days from the date on which the matter has been referred by the Public-Private Partnership Policy Board to an independent and impartial person so appointed, then such Dispute shall be settled exclusively and finally in accordance with the provisions of clause 5.3.

5.3 ARBITRATION

5.3.1. Each of the Parties unconditionally and irrevocably agrees in respect of a Dispute, which cannot be resolved by the Parties pursuant to clause 5.2:

(a) to the submission of such Dispute to binding arbitration governed by the Arbitration Act 1940, by appointment of a board of arbitrators, consisting of one (1) arbitrator appointed by each Party (the “Arbitrators”). Any arbitration proceedings commenced pursuant to this clause 5.3.1(a) shall be referred to as arbitration (“Arbitration”);

(b) not to claim any right it may have under the Laws to hinder, obstruct, or nullify the submission of the Dispute to Arbitration; and

(c) to accept the Award rendered by the Arbitrators and any judgment entered thereon by a court of competent jurisdiction as final and binding and not to hinder, obstruct or nullify the enforcement or execution of any decision rendered by the Arbitrators or court of competent jurisdiction.

5.3.2. The place of Arbitration shall be Karachi, Pakistan.

5.3.3. The language of Arbitration shall be English.

5.3.4. Any decision or award resulting from the Arbitration (“Award”) shall be final and binding upon the Parties.
5.3.5. The Parties hereby waive, to the extent permitted under the Laws, any rights to appeal or to review of such Award by any Competent Authority.

5.3.6. The fees and expenses of the Arbitrators and all other expenses relating to Arbitration shall be borne and paid by the respective Parties, unless the Award states otherwise. The Arbitrators may provide in the Award, for reimbursement to a Party, of its costs and expenses in bringing or defending the Arbitration claim, including legal fees and expenses incurred by such Party.

5.3.7. This Agreement and the rights and obligations of the Parties shall remain in full force and effect pending the Award for any Arbitration, which Award, if appropriate, shall determine whether and when any termination shall become effective.

5.4 **EXCLUSIVE JURISDICTION**

No Party shall have the right to, nor shall they, commence or maintain any legal proceedings in or outside of Pakistan, concerning a Dispute, until the Dispute has been resolved in accordance with clauses 5.2 and 5.3, and then only to enforce or execute an Award.

5.5 **OBLIGATIONS CONTINUING**

Unless otherwise agreed in writing, the existence of a Dispute shall not relieve either Party from the performance of its obligations under this Agreement, provided such obligations are not the subject of the Dispute.

6. **MISCELLANEOUS**

6.1 **GENERAL OBLIGATIONS**

The GoS, without affecting the SEZMC’s obligations, shall be liable for all obligations, amounts committed, promised, or undertaken by the GoS under this Agreement as a sole principal debtor, to the extent applicable, and not merely as a surety. It is clarified that the GoS shall not have any other obligation as surety for the SEZMC, and the obligations of the GoS are limited specifically to the obligations in terms of this Agreement. Accordingly, the obligations of the GoS shall not be discharged, nor shall its liability under this Agreement be affected, by:

(a) any time extension, indulgence, waiver or consent at any time given to the SEZMC or any other person;

(b) any amendment to any provision of the Concession Agreement;

(c) the making or absence of any demand on the SEZMC or any other person for payment;

(d) the enforcement or absence of enforcement of the Concession Agreement;

(e) the release of any security (if applicable);

(f) the dissolution, amalgamation, reconstruction or reorganization of the SEZMC or any other person; or

(g) the illegality, invalidity or unenforceability of, or any defect in any provision of the Concession Agreement, or any of the SEZMC’s obligations under the Concession Agreement.

6.2 **OBLIGATIONS CONTINUING**

Subject to and in accordance with the terms of this Agreement and unless expressly stated otherwise in this Agreement, the respective obligations of the GoS under this Agreement are and shall remain in full force and effect until the Handover Date, provided all obligations
under the Concession Agreement and this Agreement are fulfilled and all outstanding payments have been made. Furthermore, those obligations of the GoS are additional to, and not in lieu of any security at any time existing in favor of any person, whether from the GoS or otherwise.

6.3 **TERM AND TERMINATION**

This Agreement shall remain in full force and effect from the PSA Effective Date until the Handover Date, provided however, all contractual including financial obligations are fulfilled, and any outstanding amount owed to the Concessionaire by the SEZMC under the provisions of the Concession Agreement is paid.

6.4 **ASSIGNMENT**

Subject to the provisions set out in the Concession Agreement, the Parties shall not assign or transfer all or any part of their rights or obligations hereunder without the prior written consent of the other Parties.

6.5 **SUCCESSIONS**

This Agreement shall be binding upon and inure to the benefit of the GoS, the SEZMC and the Concessionaire and the respective successors and permitted assigns of each.

6.6 **NOTICES**

All notices or other communications to be given or made hereunder shall be in writing, addressed for attention of the person indicated below, and delivered personally or sent by registered or certified mail or facsimile. All notices shall be deemed delivered:

(a) when presented personally;

(b) if received on a Business Day of the receiving Party, when transmitted by facsimile to the receiving Party’s facsimile number (specified below) and, if received on a Day that is not a Business Day of the receiving Party, on the first Business Day of the receiving Party following the date transmitted by facsimile to the receiving Party’s facsimile number;

(c) one (1) Day after being delivered to a courier for overnight delivery, addressed to the receiving Party, at the address indicated below; or

(d) five (5) Days after being deposited in a regularly maintained receptacle for the postal service in Pakistan, postage prepaid, registered or certified, return receipt requested, addressed to the receiving Party, at the address indicated below.

Any notice given by facsimile shall be confirmed in writing delivered personally or sent by registered or certified mail, but the failure to do so confirm shall not void or invalidate the original notice if it is in fact received by the Party to which it is addressed. The address for service of each Party and its respective facsimile number shall be:

**GoS:**

- Attention: 
- Address: 
- Telephone Number: 
- Facsimile: 

**SEZMC:**

- Attention: Mr. Fareed Ahmed
- Address: 2nd Floor, Bahria Complex IV, Choudhry Khaliq Uz Zaman Road, Gizi Karachi.
- Telephone Number: 021-99332220
- Email: info@sezmc.gos.pk
CONCESSIONAIRE:

Attention:  
Address: 
Telephone Number:  
Email: 

or such other addresses or facsimile number as either Party may have specified by written notice delivered to the other Parties at its address or facsimile number specified above (if applicable).

7. SEVERABILITY

7.1 SEVERABILITY

If any term or provision contained in this Agreement is held or found to be invalid, illegal, or unenforceable in any respect, the remaining provisions of this Agreement shall remain in full force and effect and will not be affected by such invalidity, illegality or unenforceability in any way.
IN WITNESS WHEREOF, the Parties, intending to be legally bound, have caused this Agreement to be executed by their duly authorised representatives as of the PSA Effective Date.

GOVERNOR OF SINDH, THROUGH SECRETARY, INVESTMENT DEPARTMENT, GOVERNMENT OF SINDH

Signature

Name (block capitals)

Title

In the presence of:

Witness signature

Witness name (block capitals)

Witness signature

Witness name (block capitals)
| **SIGNATURE** | ................................. |
| **NAME (BLOCK CAPITALS)** | ................................. |
| **TITLE** | ................................. |
| **IN THE PRESENCE OF:** | ................................. |
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**THE CONCESSIONAIRE**

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