

**BEFORE THE NATIONAL GREEN TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI**

**I.A. No 330/331 of 2022**

**IN**

**OA 1002 of 2018**

**MEMO OF PARTIES**

**BETWEEN**

**ABHISHT KUSUM GUPTA**

**...APPLICANT**

**VERSES**

**STATE OF UTTAR PRADESH & ORS**

**...RESPONDENTS**

**AND IN THE MATTER OF:-**

**NTPC Ltd.**

**...Applicant**

**REPLY ON BEHALF OF THE APPLICANT TO THE  
APPLICATION FILED BY NTPC LIMITED  
(APPLICANT) FOR RECALLING AND  
MODIFICATION OF THE ORDER DATED 03.03.2022  
PASSED BY THIS HON'BLE TRIBUNAL IN OA 1002  
OF 2018.**

**MOST RESPECTFULLY SHOWETH:**

1. That the applicant above named begs to present this response to submission made by NTPC Ltd, Dadri and following are the fact of the case setout hereunder:
2. The Applicant is a resident of Gautambudhnagar wherein more than 150 major societies wherein 7-8 lacs approximately at present living.

3. The subject matter of the present Memorandum Application is to implement notification dated 05.03.2020 reference no 11/104/2015-Th-II (C.No. 228752) by the Ministry of power regarding **mandatory** use of STP water by Thermal Power Plants generated by Urban Local Bodies within 50 km. **Annexure-A-1.**

4. No construction of bridge is required (as claimed by the applicant) as the same already exists and can be used to lay 600mm of pipe which will hardly acquire 1 meter of space beside the service lane. The photograph of the bridge and service lane, along with the location has been attached for your kind perusal. **Annexure-A-2.**

5. Moreover, STP of sector 123 is near the bridge from where water can be diverted via bridge mention in point no 4 further saving the cost.

6. Since NTPC is using scarce fresh water, which clearly shows its failure to perform its statutory and constitutional obligations, despite it has 4 urban local bodies within 50 KM mentioned as below:-

A . Dadri Vikas Parishad

B. UPSIDA

C. Greater Noida

D. Noida

7. Post notification there is no need for any specific directions

for use of STP water and should have been self-driven which was not done. This has not happened, despite the word

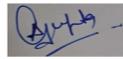
**Mandatory used** in the notification **Annexure-A-1**.

8. Post notification Memorandum of Understanding was signed between NOIDA Authority & NTPC Dadri for supply of secondary treated sewage water dated 14.06.2018 which itself shows that notification is binding on NTPC Dadri.

**PRAYER**

In view of the facts and circumstances of the present case it is most respectfully submitted that this Hon'ble Tribunal may be pleased to:

1. Issue order(s)/direction(s) to the NTPC/Noida to immediately take appropriate steps towards implementation the measures enumerated in the notification vis-à-vis memorandum of understanding without any further delay.
2. Pass any other/further order(s) as this Hon'ble Tribunal may deem fit in the interest of justice.



Applicant

ABHISHT KUSUM GUPTA  
R/O E-001, PARAMOUNT FLORAVILLE,  
SECTOR-137, NOIDA,  
UTTAR PRADESH.-201305

**VERIFICATION**

I, Abhisht Kusum Gupta aged major R/O E-001, Paramount Floraville, Sector-137, Noida, Uttar Pradesh.-201305 do hereby verify that the contents of Para 1 to 8 of the brief facts are true and correct to my personal knowledge and that I have not suppressed any material fact.



APPLICANT

ABHISHT KUSUM GUPTA  
R/O E-001, PARAMOUNT FLORAVILLE,  
SECTOR-137, NOIDA,  
UTTAR PRADESH.-201305

Date: 03.02.2024  
Place: New Delhi

Filed by

Abhisht Kusum Gupta  
(Petitioner-in-person)

BEFORE THE NATIONAL GREEN TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI

I.A. No 330/331 of 2022

IN

OA 1002 of 2018

MEMO OF PARTIES

BETWEEN

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...APPLICANT

VERSES

STATE OF UTTAR PRADESH & ORS

...RESPONDENTS

AND IN THE MATTER OF:-

NTPC Ltd.

...Applicant

AFFIDAVIT

I, Abhisht Kusum Gupta S/o Late Prabhat Kusum Gupta, R/O E-001, Paramount Floraville, Sector-137, Noida, Uttar Pradesh.-201305 do hereby solemnly affirm and declare as under:

1. That I am one of the applicant in the present case and as such fully conversant with the facts and circumstances of the present case and as such competent to swear the present affidavit.
2. That the contents of accompanying Original Application is drafted by myself as



06 FEB 2024

per the instruction and information and the contents thereof are true and correct to the best of my knowledge and record as per the legal advice received thereof.



06 FEB 2024

3. That the annexures annexed with the Original Application are respective copies of their originals.



DEPONENT  
ABHISHT KUSUM GUPTA

VERIFICATION

Verified at Delhi on this 3<sup>rd</sup> day of February, 2024 that the contents of the above affidavit are true and correct to the best of my knowledge and as the records and nothing material has been concealed therefrom.



DEPONENT  
ABHISHT KUSUM GUPTA



Attested  
  
PREM PRAKASH  
Notary Public  
IC 211

06 FEB 2024

**BEFORE THE NATIONAL GREEN TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI**

**I.A. No 330/331 of 2022**

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...APPLICANT

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...RESPONDENTS

**AND IN THE MATTER OF:-**

NTPC Ltd.

...Applicant

**(VOLUME-II)**

**Index**

Sr. No.	Particulars	Pages
1.	True copy of notification submitted by Ministry of Power dated 05.03.2020 is annexed here as <b><u>Annexure-A-1</u></b> .	10-26
2.	Photograph of bridge over Hindon along with location is annexed here as <b><u>Annexure-A-2</u></b> .	27



**Filed by:  
Abhisht Kusum Gupta(Petitioner-in-  
Person)  
Euphorbia Tower 14, Flat No. 001,  
Paramount Floraville, Sector  
137Noida  
Mobile : 9958768689  
(Email: Abhisht88@gmail.com)**



Annexure-A-1

No. 11/104/2015-Th-II (C.No. 228752)  
Government of India  
Ministry of Power

Shram Shakti Bhawan, Rafi Marg,  
New Delhi, Dated: 05.03.2020

To,  
The Chairperson  
Central Electricity Authority,  
Sewa Bhawan, R.K. Puram,  
New Delhi.

Sub: Mandatory use of treated sewage water by the Thermal Power Plants as per the provisions of the Tariff Policy 2016 - Regarding.

The undersigned is directed to enclose herewith order no. 11/104/2015-Th-II dated 4<sup>th</sup> March, 2020 regarding Mandatory use of treated sewage water by the Thermal Power Plants as per the provisions of the Tariff Policy 2016 and to request to upload the same on Website of CEA.

2. It is also requested to communicate the above order to all the Principal Secretaries / Secretaries (Power / Energy) of the states, CMD/MDs of all state Gencos / Discoms, CMD of All CPSUs under control of MoP and Secretary (MoH&UA) under the intimation of the Ministry.

Encl: As above.

Yours faithfully,

(Anoop Singh Bisht)

Under Secretary to the Govt. of India  
Telefax: 2371-9710

No. 11/104/2015-Th-II

Government of India

Ministry of Power

Shram Shakti Bhawan, Rafi Marg,  
New Delhi, dated 4<sup>th</sup> March, 2020

**To**

- 1. Principal Secretaries / Secretaries (Power/Energy) of all the State Government /UTs**
- 2. CMD/MDs of all State Gencos / Discoms**
- 3. CMD of all CPSUs under administrative control of Ministry of Power**
- 4. Secretary, Ministry of Housing and Urban Affairs, New Delhi**

**Subject: Mandatory use of treated sewage water by the Thermal Power Plants as per the provisions of the Tariff Policy 2016 – regarding.**

The Tariff policy 2016 issued by Ministry of Power (copy enclosed) under the clause 6.2 (5) has mandated that the thermal power plant(s) including the existing plants located within 50 km radius of sewage treatment plant of a Municipality/local bodies/similar organization, shall in the order of their closeness to the sewage treatment plant, mandatorily use treated sewage water produced by these bodies and the associated cost on this account be allowed as a pass through in the tariff.

2. To facilitate use of treated sewage water by the power plants, a draft MOU (copy enclosed) between ULB and power plants was placed on CEA website addressed to all the power utilities. This document provided the flexibility to the ULBs to build the STP, and deliver the required water quality to the power plants after tertiary treatment. The power plants also had choice to construct their own tertiary treatment plant and associated transportation pipelines.

2.1 As per the present arrangements the cost of the STP is borne by the urban Local Body, and the cost of tertiary treatment, the pipeline for

transport of water and the pumping system for this purpose is to be borne by the Thermal Power Plant.

Thus; in the draft MoU:-

Part-A - which includes the raw sewage supply system from sources to STP, Sewage Treatment Plant (Primary and secondary-STP), supply of secondary treated sewage water from STP to inlet of TTP (Tertiary Treatment Plant) is the responsibility of the Urban Local Body; while

Part-B - which includes the Tertiary Treatment Plant, the Treated Sewage Water pumping station, the pipe line conveying the water upto point of delivery at power plant, is the responsibility of the thermal power plant.

3. It was clarified that irrespective of mode of investment explained above no payment would be made by power utility towards supply of secondary treated water from STP secondary treatment plant which acts as input water for the Tertiary Treatment Plant (TTP).

3.1 As regards the setting up of the system of Part B – the tertiary treatment plant, the pipeline and the pumping system is concerned, two options were given. One option was that the ULB will set it up and realize the cost thereof from the thermal power plant by levying a charge per Kilo Liter of water. The second option given was the thermal power plant may set up the system of Part B itself. It has been seen that where the first option was followed – the Municipal Body setting up the system of Part B and recovering the cost thereof by a tariff per KL of water, there were disputes regarding the rates at which charges were levied.

3.2 Considering this and the delays caused by this; the arrangement of treated water supply between STPs and power plants has been reviewed and to promote the use of treated sewage water by the Thermal Power Plants as per the provisions of the Tariff Policy 2016, it has been decided as under:

a) The treated sewage water transportation system may be constructed by the power plants and the cost of transportation of treated sewage water up to the power plant shall be borne by the end use power plant.

b) The Urban local bodies (ULBs) shall facilitate the power plants in obtaining the Right of way etc, for laying the water transportation pipeline by the power plant.

c) The tertiary treatment plant may be constructed by the power plants and consequently the cost of tertiary treatment plant may be borne by the end use power plant.

4. All Stake holders are requested to take necessary action in this regard

5. This issues with the approval of Minister of State (IC) (Power and New & Renewable Energy) & Minister of State (Skill Development and Entrepreneurship)

Enclosure: as above

  
(Vivek Kumar Dewangan)  
Joint Secretary  
Tele No: 23710171

Copy to:

1. Secretary, Central Electricity Regulatory Commission (CERC)
2. Secretaries of all State Electricity Regulatory Commissions (SERCs) / Joint Electricity Regulatory Commissions (JERCs)

Copy for information to:

PS to MOSP (IC), PPS to Secretary (Power), PPs to Additional Secretaries (MoP)/ All Joint Secretaries / EA /CE (OM &RR) and Directors /DS, MOP



**भारत का राजपत्र**  
**The Gazette of India**

असाधारण

EXTRAORDINARY

भाग I—खण्ड 1

PART I—Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं. 39]

नई दिल्ली, बृहस्पतिवार, जनवरी 28, 2016/माघ 8, 1937

No. 39]

NEW DELHI, THURSDAY, JANUARY 28, 2016/MAGHA 8, 1937

विद्युत मंत्रालय

संकल्प

नई दिल्ली, 28 जनवरी, 2016

टैरिफ नीति

सं. 23/2/2005-आर एंड आर (खंड-IX).-1.0 प्रस्तावना

1.1 विद्युत अधिनियम, 2003 की धारा 3 का अनुपालन करते हुए, केंद्र सरकार ने दिनांक 6 जनवरी, 2006 को टैरिफ नीति अधिसूचित की। टैरिफ नीति में और संशोधन 31 मार्च, 2008, 20 जनवरी, 2011 और 08 जुलाई, 2011 को अधिसूचित किए गए थे। विद्युत अधिनियम, 2003 की धारा 3(3) के अंतर्गत प्रदत्त शक्तियों का प्रयोग करते हुए केंद्र सरकार एतदद्वारा भारत के राजपत्र में इस संकल्प के प्रकाशन की तारीख से प्रभावी किए जाने हेतु संशोधित टैरिफ नीति अधिसूचित करती है।

06 जनवरी, 2006 को अधिसूचित टैरिफ नीति के प्रावधानों के अंतर्गत तथा इसमें किए गए संशोधनों के अंतर्गत किसी भी किए गए कार्य अथवा की गई कार्रवाई अथवा तथाकथित किए गए अथवा किए जाने वाले कार्य के होते हुए भी, जहां तक कि इस नीति से असंगत नहीं हैं, उन्हें इस संशोधित नीति के प्रावधानों के अंतर्गत किया गया अथवा किया जाने वाला माना जाएगा।

1.2 राष्ट्रीय विद्युत नीति ने नयी उत्पादन क्षमता की अभिवृद्धि एवं प्रतिवर्ष विद्युत की प्रतिव्यक्ति उपलब्धता बढ़ाने का लक्ष्य निर्धारित किया है एवं न केवल ऊर्जा और व्यस्ततमकालीन कमी को दूर करने के लिए, बल्कि केंद्रीय विद्युत प्राधिकरण द्वारा निर्दिष्ट स्पिननिंग रिजर्व रखा जाना भी है। विद्युत क्षेत्र को आगामी पांच वर्षों में सभी घरों को सस्ती बिजली की उपलब्धता को सुगम बनाने हेतु चुनौती को भी पूरा करना है।

1.3 केन्द्र और राज्य सरकार, बजटीय संसाधनों से अपेक्षित धनराशि मुहैया कराने में असमर्थ हैं अतः विद्युत क्षेत्र में निवेश को आकर्षित करने के लिए निवेश पर उपयुक्त रिटर्न मुहैया कराना अनिवार्य है। देश के आर्थिक विकास में तेजी लाने और लोगों के जीवन स्तर में सुधार लाने का लक्ष्य प्राप्त करने हेतु

domestic coal supplied by CIL, vis-à-vis the assured quantity or quantity indicated in Letter of Assurance/FSA the cost of imported/market based e-auction coal procured for making up the shortfall, shall be considered for being made a pass through by Appropriate Commission on a case to case basis, as per advisory issued by Ministry of Power vide OM No. FU-12/2011-IPC (Vol-III) dated 31.7.2013.

## 6.2 Tariff structuring and associated issues

- (1) A two-part tariff structure should be adopted for all long-term and medium-term contracts to facilitate Merit Order dispatch. According to National Electricity Policy, the Availability Based Tariff (ABT) is also to be introduced at State level. This framework would be extended to generating stations (including grid connected captive plants of capacities as determined by the SERC). The Appropriate Commission shall introduce differential rates of fixed charges for peak and off peak hours for better management of load within a period of two years.

Power stations are required to be available and ready to dispatch at all times. Notwithstanding any provision contained in the Power Purchase Agreement (PPA), in order to ensure better utilization of un-requisitioned generating capacity of generating stations, based on regulated tariff under Section 62 of the Electricity Act 2003, the procurer shall communicate, at least twenty four hours before 00.00 hours of the day when the power and quantum thereof is not requisitioned by it enabling the generating stations to sell the same in the market in consonance with laid down policy of Central Government in this regard. The developer and the procurers signing the PPA would share the gains realized from sale, if any, of such un-requisitioned power in market in the ratio of 50:50, if not already provided in the PPA. Such gain will be calculated as the difference between selling price of such power and fuel charge. It should, however, be ensured that such merchant sale does not result in adverse impact on the original beneficiary(ies) including in the form of higher average energy charge vis-à-vis the energy charge payable without the merchant sale. For the projects under section 63 of the Act, the methodology for such sale may be decided by the Appropriate Commission on mutually agreed terms between procurer and generator or unless already specified in the PPA.

- (2) Power Purchase Agreement should ensure adequate and bankable payment security arrangements to the Generating companies. In case of persisting default on payment of agreed tariff as per PPA in spite of the available payment security mechanisms like letter of credit, escrow of cash flows etc. the generating companies may sell such power to other buyers.
- (3) In case of coal based generating stations, the cost of project will also include reasonable cost of setting up coal washeries, coal beneficiation system and dry ash handling & disposal system.
- (4) After the award of bids, if there is any change in domestic duties, levies, cess and taxes imposed by Central Government, State Governments/Union Territories or by any Government instrumentality leading to corresponding changes in the cost, the same may be treated as "Change in Law" and may unless provided otherwise in the PPA, be allowed as pass through subject to approval of Appropriate Commission.
- (5) The thermal power plant(s) including the existing plants located within 50 km radius of sewage treatment plant of Municipality/local bodies/similar organization shall in the order of their closeness to the sewage treatment plant, mandatorily use treated sewage water produced by these bodies and the associated cost on this account be allowed as a pass through in the tariff. Such thermal plants may also ensure back-up source of water to meet their requirement in the event of shortage of supply by the sewage treatment plant. The associated cost on this account shall be factored into the fixed cost so as not to disturb the merit order of such thermal plant. The shutdown of the sewage treatment plant will be taken in consultation with the developer of the power plant.

## 6.3 Harnessing captive generation

Captive generation is an important means to making competitive power available. Appropriate Commission should create an enabling environment that encourages captive power plants to be connected to the grid.

Such captive plants could supply surplus power through grid subject to the same regulation as applicable to generating companies. Firm supplies may be bought from captive plants by distribution licensees using the guidelines issued by the Central Government under section 63 of the Act taking into account second proviso of para 5.2 of this Policy.

The prices should be differentiated for peak and off-peak supply and the tariff should include variable cost of generation at actual levels and reasonable compensation for capacity charges.

Wheeling charges and other terms and conditions for implementation should be determined in advance by the respective State Commission, duly ensuring that the charges are reasonable and fair.

Grid connected captive plants could also supply power to non-captive users connected to the grid through available transmission facilities based on negotiated tariffs. Such sale of electricity would be subject to relevant regulations for open access including compliance of relevant provisions of rule 3 of the Electricity Rules, 2005.

## 6.4 Renewable sources of energy generation including Co-generation from renewable energy sources:



भारत सरकार  
Government of India  
विद्युत् मंत्रालय  
Ministry of Power  
केन्द्रीय विद्युत् प्राधिकरण  
Central Electricity Authority  
तापीय परियोजना योजना एवं विकास प्रभाग  
Thermal Project Planning & Development Division

संख्या: 252/ सीवेज ट्रीटमेंट वाटर/टी.पी.पी.डी./ के. वि. प्रा./2017/

दिनांक : 17.10.2017

To,  
All Power Utility

विषय : टैरिफ नीति, 2016 के अनुसार सीवेज ट्रीटमेंट प्लांट्स से थर्मल पावर प्लांट्स में इलाज किए गए जल के अनिवार्य उपयोग के लिए पावर यूटिलिटी और नगर निगम के बीच प्रारूप प्रारूप - के बारे में

Subject: Draft Model Agreement between Power Utility and Municipal Corporation for the mandatory use of treated water in thermal power plants from sewage treatment plants as per Tariff Policy, 2016 – Regarding.

As per Tariff Policy dated 28.01.2016 (under para 6.2(5)) notified by Government of India, the treated sewage water is to be used by Thermal power Plants (located within 50 km radius of sewage treatment plant) for cooling purpose.

In this connection, a Draft Model Agreement has been prepared to assist the Power Utility and Municipal Corporation regarding supply/usage of sewage treated water for thermal power plants. The Model Agreement (enclosed as Annex) is general in nature and can be suitably amended as per requirements. Thermal Power Plants are requested to tie with the local municipal body for the usage of Sewage Treated Water located in your vicinity.

Encl: As above.

(फूल चंद्रा)  
मुख्य अभियंता

Annex

**AGREEMENT BETWEEN ----- (Utility) AND ----- (Municipality)  
FOR SUPPLY OF TREATED SEWAGE WATER**

THIS AGREEMENT ("Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2017, between the ----- Municipal Corporation (-MC) and ----LTD).

**RECITALS**

- A. -MC desires to deliver treated sewage water to ----LTD for its ----- Super Thermal Power Plant for Non-potable application after treatment of raw municipal sewage through its usual primary and secondary treatment plant and additional tertiary treatment plant required for attaining quality standard of power plant.
- B. ----LTD desires to accept treated sewage water ---- for its ----- Super Thermal Power Plant for Non-potable application on payment basis to facilitate MC for recovery of the additional investment made by MC towards constructing tertiary treatment plant and associated pipe conveying system upto power plant, operating and maintaining the same. Alternatively, ----LTD desires to accept treated sewage water ---- for its ----- Super Thermal Power Plant for Non-potable application by making investment itself towards construction of tertiary treatment plant and associated pipe conveying system upto power plant and also operating and maintaining the same by power utility.

**AGREEMENT****1. DEFINITIONS**

- 1.1 "Daily Amount" means -- MLD of treated sewage water.
- 1.2 "Emergency" means an unanticipated event, which causes a malfunction of either Party's facilities, preventing either the delivery or the acceptance of water.
- 1.3 "Joint Oversight Committee" (JOC) means that committee comprised of six members, three representatives each from -MC / ----LTD (as given **Annexure-II**) established to share information and coordinate to fulfil each Party's interest as per agreement.
- 1.4 "Point-of-Delivery" means the point at which -MC delivers water in the forebay of circulating water system ----LTD of the power station. The exact location and design of the Point-of-Delivery shall be specified in the technical specification and tender drawing during tender stage.
- 1.5 "Project completion" means that point in time when the Project (STP and TTP along with delivery system) has been constructed, tested and commissioned successfully in accordance with Project specifications, the facilities are put under full operation, and the Project has been accepted in writing by the JOC.
- 1.6 "Third Party" means any person or entity (governmental, semi government or private) other than -MC or ----LTD.
- 1.7 "Raw Sewage" means sewage water received at inlet of STP for treatment.
- 1.8 "Secondary Treated Sewage" means output from STP which are input to TTP

- 1.9 "Treated Sewage Water" means treated sewage water from tertiary treatment plant of -MC located at----- meeting quality requirements as per **Annexure-I**
- 1.10 "Sewage Treatment Plant" (STP) means Sewage Treatment plant constructed by -MC at ----
- 1.11 "Tertiary Treatment Plant" (TTP) means Tertiary Treatment plant constructed by -MC at ---
- 1.12 "-MC" means ----- Municipal Corporation.
- 1.13 "----LTD" means ----Power Plant utility -----
- 1.14 "Power Plant" means Thermal Power Plant of ----LTD at -----.
- 1.15 "MLD" means Million Litre per day.
- 1.16 "MM<sup>3</sup>" means Million Cubic Meter.
- 1.17 "Part-A" means and includes Raw sewage supply system from sources to STP, Sewage Treatment Plant (Primary and secondary-STP), supply of secondary treated sewage from STP to inlet of TTP. Refer scheme at **annexure -III**.
- 1.18 "Part- B" means and includes TTP, Treated Sewage Water pumping station, conveying pipe line upto point of delivery at ----LTD, Refer scheme at **annexure-III**.

## 2. QUANTITY

### 2.1 "Demand by ----LTD and Supply by-- -MC"

----LTD needs -- MLD of treated sewage water for its power plant (-----MW) at ----- by year 20----. -MC is constructing/has constructed a -- MLD STP at --- and the same will be operational/ has been operational from----- (year). -MC will further construct a TTP at - ---- with the above input which will give an output of -- MLD. Accordingly -MC will be able to supply -- MLD of Treated Sewage Water to ----LTD. Piping system shall be designed to supply ---MLD Treated Sewage Water to ----LTD -----.

## 3. "QUALITY"

----LTD shall use tertiary treated sewage water for power plant. Physical, biological and chemical characteristics of Treated Sewage Water shall be mutually decided between MC and TPP.

## 4. "COST & PAYMENT"

The job shall be executed on PPP/EPC model with full investment by PPP operator of ---MC/the power utility (as the case may be). Selection of PPP Operator by -MC or EPC contractor by power utility shall be done through transparent open competitive bidding. The work will be executed/divided in two parts- Part-A and Part-B. In case Part-A is already operational or Part-A is already awarded and under execution by -MC then only Part-B will be executed by ---MC/Power Utility as the case may be. In either event i.e., PPP mode of investment by -MC or EPC mode of investment by power utility, separate tendering shall be done for each part. Cost of Part-A shall be completely borne by -MC and that of Part-B shall be completely borne by Power Utility. In PPP mode of investment by ---MC, cost of treated water per cubic meter basis (Both capex and opex incurred by the PPP partner of -MC) shall be discovered. MC will be accordingly charging the power utility based on the above discovered prices of capex and opex as awarded to its PPP partner and the same will be paid by Utility on regular basis. If the number of qualified

bidders are less than three (3) the work will be retendered. An escalation at the rate of 3% per annum shall be applicable for supply of treated sewage water for 25 years.

----LTD shall pay the amount on monthly basis based on actual drawl.

However, only fixed cost component will be paid, if MC is available to supply water but Thermal power plant utility (---LTD) does not have any requirement. In case MC is unable to deliver Treated Sewage Water, then the fixed cost component will not be paid to MC except the agreed days of maintenance period per annum.

In case Thermal power plant utility (---LTD) has to draw make-up water from the other source, due to MC not delivering the agreed quantity, then the penalty levied by irrigation authority shall be charged to MC for the quantity of short-supply from the nominated quantity. Detailed payment term shall be finalized between Thermal power plant utility (--LTD) & MC, before the award of tender.

Irrespective of mode of investment explained above (PPP/EPC) no payment will be made by power utility towards supply of secondary treated water from STP secondary treatment plant which acts as input water for TTP.

**5. "PERIOD OF AGREEMENT"**

The minimum period of agreement for supply of Treated Sewage Water shall be for 25 years from date of agreement or power plant utility economic life whichever is later. Renewal of agreement shall be upon mutually agreed terms.

**6. "END USE OF TREATED SEWAGE WATER"**

----LTD will have all rights for end use of Treated Sewage Water of agreed quantity at specified quality for any non-potable application. Surplus secondary treated water meeting quality level as per relevant prevalent norms of concerned statutory authority (ies) shall be discharged into water bodies. Disposal of surplus secondary treated sewage water shall be the responsibility of MC and shall not be treated as liability of ---utility. This surplus secondary treated water can be due to (i) excess production in STP or (ii) less drawl of Treated Sewage Water for Power Plant use based on its requirement.

-----Ltd will have the right to refuse drawl of treated sewage in case -----MC fails to deliver water of agreed quality as per JOC's findings.

**7. "RIGHTS, PERMISSIONS, STATUTORY OBLIGATIONS"**

-MC shall be responsible for all the rights permissions and statutory obligations, the norms of state or central pollution control board or water right issues with water resources department or any other government department.

**8. DESIGN AND CONSTRUCTION OF THE WORK**

In case of PPP mode of investment by MC, following is applicable:

- 8.1 -MC shall be responsible for the design, supply and construction of all systems including Technology selection for TTP so as to deliver water of specified quantity and quality to ---Ltd.. Final scheme shall be shared with ----LTD.
- 8.2 -MC shall prepare complete engineering plans and specifications for each system of the work.

- 8.3 -MC shall be responsible for submission of quarterly progress report to ----LTD during the execution and also shall be responsible for the physical progress of the work as per schedule (Refer Annexure- ).

In case of EPC mode of investment, all the above responsibilities will be assumed by power plant utility. However the responsibility of construction, installation, commissioning and O&M of Part-A shall continue to be of MC.

## 9. DELIVERY AND ACCEPTANCE OF WATER

- 9.1 Upon commencement of operations, -MC shall deliver to ----LTD at the Point-of-Delivery, the daily amount of water as agreed in this document except for supply interruption as set forth in clause-15 or excused as provided in Clause-14.

- 9.2 For the purpose of measuring the Parties' compliance with this section, the day shall be the twenty-four hours period commencing on 12.00 noon on the first day of the month following Commencement of Operations. Quality parameter and quantity delivered shall be measured at ----LTD power plant end and shall be considered for acceptance & payment purpose. JOC will maintain all records related to quality and quantity of treated sewage water supplied to ---Ltd. The instruments for measurements of quantity and quality shall be regularly checked for correct calibration once in every month by JOC.

In Case of EPC investment, No payment shall be made by power utility for secondary treated water by MC.

## 10. QUALITY OF WATER

- 10.1 ----LTD shall have access to -MC facilities and records for the purpose of either testing or verifying the quality of the Treated Sewage Water.

- 10.2 If the Treated Sewage Water quality do not meet the quality performance set for the tertiary treatment plant or at the delivery point of ----LTD plant for whatsoever reason then ----LTD shall not accept the water to be supplied for Power Plant. In this circumstances no payment shall be applicable.

In Case of EPC investment, MC will be responsible for supply of correct quality of treated secondary water from its STP to power plant utility as per the extant norm of treated effluent from STP of statutory regulations.

## 11. JOINT OVERSIGHT COMMITTEE (JOC)

- 11.1 The parties shall establish the JOC. The goal of the JOC shall be to achieve maximum efficiency of the overall work. The representative of -MC and ---Ltd shall occupy the position of Chairman of JOC by rotation after each period of one calendar year.

- 11.2 Each party shall designate its representative within 10 days following execution of this Agreement and each Party shall provide notice to the others pursuant to clause 32.

- 11.3 The JOC shall keep written minutes of its meetings.

- 11.4 Each party may, by written or oral notice to the other Party, designate an alternate or substitute to act as its representative in the absence of any of its regular members or to act on specified occasions with respect to specific matters.

## 12. DUTIES OF JOINT OVERSIGHT COMMITTEE (JOC)

- 12.1 Each party shall have two members in JOC. At least one authorized representative each from -MC & ----LTD shall be present at all meetings.

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- 12.2 The JOC shall share information between the Parties and coordinate the operations of the parties in order to achieve the objectives of these agreement and resolve disputes between the Parties. However, JOC will not have any right to verify the design and supervise the quality of construction works. This will be the sole responsibility of -MC.
- 12.3 The JOC shall be responsible for the periodic review of the water quality parameters as given in **Annexure-I**. Sampling protocol shall be established by the JOC.
- 12.4 The JOC shall meet whenever requested by a member of the JOC.
- 12.5 If the JOC is unable to act on any issue raised by a member of the JOC, the JOC shall refer the issue to mediation.

### 13. FORCE MAJEURE

- 13.1 No Party shall be considered to be in default in the performance of any of its obligations when a failure to perform is due to or materially contributed to by an act of God, war, fire, earthquake, windstorm, flood, and other natural catastrophe, civil disturbance or disobedience, labor disputes, vandalism, sabotage, terrorism, restraint by order of a court or administrative agency with jurisdiction, which such Party could not reasonably have been expected to avoid and which by exercise of due diligence has been unable to overcome.
- 13.2 The Party whose performance is affected by force majeure shall, as soon as practicable, but in any event no later than 14 days thereafter, give written notice of the event of force majeure to the other Party.
- 13.3 The Parties shall use their best efforts and cooperate with each other to mitigate the effects of force majeure.

### 14. SUPPLY INTERRUPTIONS

- 14.1 To allow maintenance or in an Emergency, the JOC may authorize an interruption of delivery and acceptance of water. The Party who is in emergency situation shall inform the other immediately over phone/SMS and tackle the emergency situation expeditiously and shall not wait till formal meeting of JOC. The Parties' respective duty to deliver and accept water under this Agreement is temporarily suspended during a supply/acceptance (use) interruption authorized by the JOC.
- 14.2 The Parties shall use their best efforts to minimize the length of supply/acceptance (use) interruption.

### 15. OBLIGATIONS AND RELATIONSHIP OF THE PARTIES

#### A) Obligations of -MC

- i. -MC shall be responsible for arranging all permissions for laying of Treated Sewage Water supply pipeline upto point of delivery at ----LTD Power Plant.
- ii. -MC shall be responsible for maintaining the quality and quantity of the Secondary Treated Sewage at TTP inlet and also Treated Sewage Water at TTP outlet.
- iii. -MC shall prepare the design of the TTP according to its needs and complete the construction in a timely manner.
- iv. -MC shall be the lawful owner of all assets in the Project for part A and Part B ( in case of investment by its PPP partner) and shall be responsible for the construction, operation and maintenance of the Project of his Part(s).However if power utility makes the

investment for Part-B then ----Ltd shall be the lawful owner of all assets in the Project for Part B and shall be responsible for the construction, operation and maintenance of the Project of his Part.

- v. -MC will be responsible for the construction, operation and maintenance of the Tertiary Treatment Plant and shall be responsible for maintaining the uniform flow rate on per hour basis of Treated Sewage Water as requested by ---Ltd based on its process requirement and the generation schedule which may change with Time of the Day or may not change at all for considerable duration for months together (in case of investment by its PPP partner).

**B. Obligations of ----LTD**

- i. ----LTD shall make payments regularly to -MC on the date agreed in this Agreement ( in case of investment by its PPP partner)..
- ii. ----LTD shall use the Treated Sewage Water for its power plant or any other purpose as decided at a later date.

**C. General Obligations**

- i. Each Party shall use its best efforts and work diligently, in good faith, and in a timely manner to carry out the duties and obligations imposed by this Agreement.
- ii. Each Party shall provide to the other Party services to permit efficient and reliable operations under this Agreement as follows:
- iii. The obligations, rights and liabilities of the Parties under this Agreement are intended to be several and not joint or collective, and nothing herein is intended to create an association, joint venture, trust, or partnership, or to impose a trust or partnership obligation or liability on or with regard to -MC or ----LTD.
- v. Except as expressly provided for in this Agreement or any other agreements, no Party shall be deemed the agent of or have the right or power to bind any other Party.
- vi. – (In case of PPP mode of investment ) MC shall not award the work before the CERC approval for purchase of treated sewage water from --MC and ---Ltd has to communicate the status of approval by CERC to --MC. --MC shall provide necessary assistance and justification for the queries raised by CERC.

**16. DEFAULT**

If either Party to this Agreement defaults in respect to any of its obligations or under any of the clauses of this Agreement, the non-defaulting Party may notify the defaulting Party in writing, setting out in what respects the non-defaulting Party deems the defaulting Party to be in default. If within thirty (30) days or such other period as agreed to by the Parties in writing after receipt of notice, the defaulting Party has corrected the default alleged by the non-defaulting Party, the defaulting Party shall no longer be in default. Neither the service of notice, nor the doing of acts by the defaulting Party aimed to correct any or all of the alleged defaults, shall be deemed an admission or presumption that the defaulting Party has failed in any respect to perform its obligations hereunder. If the defaulting Party fails to correct all or any of the alleged defaults within the allowable time, the non-defaulting Party, after having exhausted the required mediation procedures shall have the option to declare the defaulting Party in breach of this Agreement or seek specific performance as provided in Section-26.

**17. DISPUTE RESOLUTION**

- 17.1 At the first instance the disputes should be resolved by mutual discussion between the parties failing which through ESC (Expert settlement committee) as per Annexure-IV.
- 17.2 If the dispute is still unresolved that the same shall be resolved by Arbitration in accordance with Arbitration & Conciliation Act 1996, by a sole Arbitrator appointed by mutual consensus of --MC and ---Ltd. The seat and venue of the Arbitration shall be (city and state where the plant is located), India. The language in the arbitral proceedings shall be English. The Court of (city and state where the plant is located), India shall have exclusive jurisdiction.

**18. SPECIFIC PERFORMANCE**

In addition to other remedies upon default, the non-defaulting Party may obtain specific performance of this Agreement, including a temporary restraining order and preliminary injunction to prevent a default of this Agreement or to compel performance by the defaulting party.

**19. NO COMPENSATION**

The representatives of each Party to this Agreement shall serve without compensation except for reimbursements made in accordance with this Agreement or as expressly agreed to, in writing, by both Parties.

**20. ASSIGNMENTS**

No Party shall assign, either in whole or in part, any of the rights, duties or obligations created or imposed under this Agreement without the prior written consent of the other Party, except to another Party to this Agreement or to a subsidiary, affiliate or any other entity succeeding to all or substantially all of the affected interests and assets of the Party provided that such subsidiary, affiliate or succeeding Party shall assume the assigning Party's obligations hereunder in writing. No delegation of any obligation owed, or of the performance of any obligation, by any Party, may be made without the prior written permission of the other Party. Any attempted assignment or delegation shall be wholly void and totally ineffective for all purposes unless made in conformity with this Section-26. Consent may be withheld, refused, or conditioned if the economic viability of the other Party is a concern; provided, however, that consent may not be unreasonably withheld, conditioned or delayed.

**21. INDEMNITY**

- 21.1 -MC's Responsibilities: -MC shall, to the fullest extent permitted by law, defend, indemnify and hold harmless ----LTD, its present and future members, officers, directors, employees and agents from and against (a) any and all liabilities and losses resulting from claims or causes of action by any third party to the extent that claims or causes of action arise out of, or are in any way related to, -MC's active negligence or willful misconduct in the performance of -MC's responsibilities under this Agreement, and (b) the consequences of -MC's violation or alleged violation of permits, statutes, ordinances, orders, rules or regulations of any government entity to the extent that a violation or alleged violation arises out of, or is in any way related to, -MC's responsibilities.
- 21.2 ----LTD's Responsibilities: ----LTD shall, to the fullest extent permitted by law, defend, indemnify and hold harmless -MC, their present and future members, officers, directors, employees and agents from and against (a) any and all liabilities and losses resulting from claims or causes of action by any third party, to the extent that claims or causes of action

arise out of, or are in any way related to, ----LTD's active negligence or willful misconduct in the performance of ----LTD's responsibilities under this Agreement, and (b) the consequences of ----LTD's violation or alleged violation of permits, statutes, ordinances, orders, rules or regulations of any governmental entity to the extent that a violation or alleged violation arises out of, or is in any way related to ----LTD's responsibilities.

- 21.3 Notwithstanding anything contained herein, neither party shall be responsible to the other for consequential or indirect damages.

**22. NO DEDICATION OF FACILITY**

Any undertaking by a Party under any provision of this Agreement is rendered strictly as an accommodation and shall not constitute the dedication of any facility by the undertaking Party to the public, to the other Party or to any Third Party. -MC shall have no interest in any facility owned or operated by ----LTD and shall not be responsible for any shutdown, abandonment or cleanup of any facility. ----LTD shall have no interest in -MC's facilities and shall not be responsible for any repairs, shutdown, abandonment or cleanup of any -MC facilities.

**23 NO THIRD PARTY BENEFICIARIES**

None of the promises, rights or obligations contained in this Agreement shall inure to the benefit of any person or entity not a Party to this Agreement.

**24. GOVERNING LAW**

This Agreement shall be governed by the laws of the ---- State & Union of India without reference to its conflict of laws rules.

**25. ENTIRE AGREEMENT**

This Agreement represents and contains the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersedes any and all prior oral and written agreements and understandings. No promises, agreements, or warranties additional to this Agreement shall be deemed to be a part hereof, nor will any alteration, amendment or modification hereto be effective unless confirmed in writing by both Parties.

**26. TERMINATION OF AGREEMENT AND TERMINATION PAYMENT**

**26.1 ---- Ltd may terminate this Agreement if:**

- 26.1.1 -MC fails to deliver at least 80 percent of three times the Annual amount as reduced pursuant to Sections 9.1 and 9.2 in any 36-month period; or
- 26.1.2 -MC fails to deliver at least 50 percent of one -fourth of the Annual Amount as reduced pursuant to Sections 9.1 and 9.2 in any three -month period;
- 26.1.3 CERC disallow this purchase of Sewage water in tariff as decided for-----thermal power plant under section 62 and section 79(1) (a) of Electricity Act 2003 either for the agreed quantity or the rate of payment of water both variables and fixed component or either of these as provided in Section 1.19 and 1.20. (v1) The ---ltd shall get such clearance from CERC before the PPP tender is accepted by the -MC.

**26.2 --MC may terminate this agreement if:**

- 26.2.1 ----LTD defaults in payment of due amount for a period of more than 6 continuous month.

26.2.2 ----LTD defaults in accepting the tertiary treated sewage water for a period more than 3 months.

In case of such termination The ----LTD shall pay the Termination payments to --MC which shall be the book value of assets on the date of termination with interest of SBI BR + 2% for the number of days from the date of termination to the date of actual payment.

**26.3 Procedure for termination** - The party wishing to terminate the agreement for the default of the other party; shall follow the procedure as laid down in clause 16 'Default'

**26.4 Rights of the ----LTD on Termination**

Upon Termination of this Agreement for any reason whatsoever, ----LTD shall upon making the Termination Payment, if any, to the --MC, subject to the provisions of the Agreement, have the power and authority to:

- i. enter upon and take possession and control of the part-B of the Project forth with;
- ii. Prohibit the --MC and any person claiming through or under the --MC from entering upon/ dealing with the part-B of the Project.

Notwithstanding anything contained in this Agreement, ----LTD shall not, as a consequence of Termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularization of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the --MC in connection with the Project, and the handback of the Project facilities shall be Handed Over to ----LTD by the --MC free from any such obligation except that the ----LTD shall pay the mutually agreed lease rent of the land belonging to --MC occupied under the part-B of the Project

**27. COMPLIANCE WITH LAWS**

Both Parties shall comply with all applicable federal, state, and local laws and the rules and regulations of any federal, state, local or other government agency having jurisdiction over the activities and operations conducted pursuant to this Agreement.

**28. SEVERABILITY**

This agreement shall be irreversible agreement. In the event that any term, covenant or condition of this Agreement or the application of any such term, covenant or condition shall be held invalid as to any person, entity or circumstance by any court or agency having jurisdiction, such term, covenant or condition shall remain in force and effect to the extent not held invalid, and all other terms, covenants and conditions of this Agreement and their application shall not be affected thereby but shall remain in full force and effect unless a court holds that such provisions are not severable from the other provisions of this Agreement.

**29. WAIVER**

Any waiver at any time by a Party of its rights with respect to any matter arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent matter. Any waiver must be in writing.

**30. AMENDMENT AND MODIFICATION**

This Agreement may be amended or modified in any way at any time by an instrument in writing signed by the Parties hereto.

**31. NOTICES**

31.1 Any and all notices or other communications required or permitted by this Agreement or by law to be delivered to, served on by mail or fax, or given to either Party to this Agreement shall be dated and in writing and shall be deemed properly delivered, served, or given when personally delivered or faxed to the Party to whom it is directed or, five business days after postal mail, first-class postage prepaid, addressed to the Parties as follows:

**Party**

**Address**

-MC of -----

Attn.: Municipal Commissioner

----LTD ----- STPP

Attn. GGM

31.2 Any Party hereto may change its address for the purpose of Section 31.1 by giving written notice of such change in the manner prescribed by Section 31.1 to the other Party to this Agreement.

**32. RECORDATION**

This Agreement may be recorded by either Party, after \_\_\_\_\_ or any other dated agreed to in writing by the Parties.

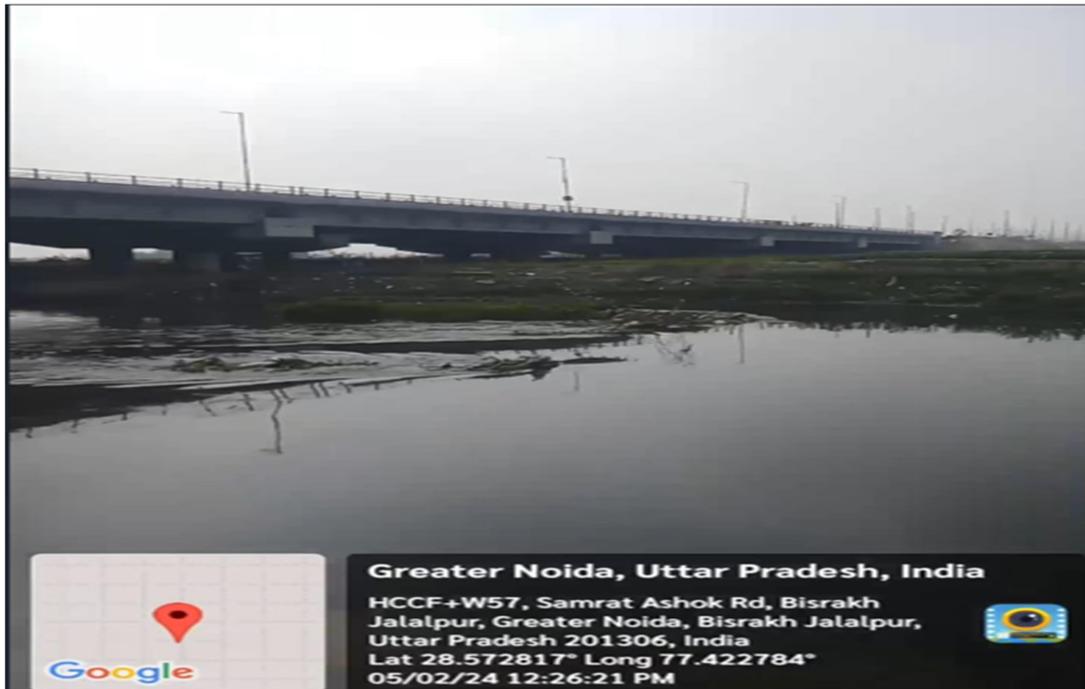
IN WITNESS WHEREOF, both Parties have executed this Agreement the day and year first above written.

----- MUNICIPAL CORPORATION

----LTD

**Note:** The Annexure mentioned in the Model Agreement is project specific and may vary from project to project. The power project developer may frame the annexure as per their requirement.

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**Annexure-A2****Bridge crossing Hindon in Noida****Service road for above bridge**