

Project Agreement

dated 2nd August 2012

between

KFW, Frankfurt am Main,
("KfW")

and the

GOVERNMENT OF ODISHA
acting by its Governor

and the

ODISHA URBAN INFRASTRUCTURE DEVELOPMENT FUND
("Project Executing Agency")

for

50,000,000.00 EUR

**Environment Related Urban Infrastructure Development Odisha /
Odisha Urban Infrastructure Development Fund**

(« Programme »)

The Government of the Federal Republic of Germany and the Government of India have agreed to promote environment related urban infrastructure development in Odisha (the "**Project**"). For this purpose KfW and India acting by its President (the "**Borrower**" and the "**Recipient**") decided to enter into two complementary agreements to be signed simultaneously: a loan agreement on a loan amount of EUR 50 million (the "**Loan Agreement**") and a financing agreement on a financial contribution of EUR 2.5 million (the "**Financing Agreement**").

By the Loan Agreement dated 2 August 2012 KfW has extended to the Borrower a loan (the "**Loan**") not exceeding a total of

EUR 50,000,000.00

and by the Financing Agreement dated 2 August 2012 a financial contribution (the "**Financial Contribution**") not exceeding

EUR 2,500,000.00.

On the basis of the Loan Agreement and the Financing Agreement the State of Odisha, the Project Executing Agency and KfW conclude the following Project Agreement.

Article 1

Purpose of the Loan and Financial Contribution

1.1 The Loan and Financial Contribution shall be channelled by the Borrower in full and on a back to back basis to the State of Odisha. The Government of Odisha shall pass 50% of the Loan as a capital grant for Urban Local Bodies (ULBs) to the Project Executing Agency. The remaining 50% of the funds will be passed as a loan (loan component) on a back to back basis to the Odisha Urban Infrastructure Development Fund (OUIDF) (the "**Project Executing Agency**"). The currency risk for this loan component will be born by the Project Executing Agency. The Project Executing Agency shall use the Loan (partial amounts of both being hereinafter also referred to as "Amounts") exclusively for the Project and, specifically, shall use the Loan to finance projects with a positive environmental impact by providing loans to environment related urban infrastructure sub-projects and to support sub-projects

with viability gap funding where necessary. The Project Executing Agency shall use the Financial Contribution exclusively for financing of technical assistance to support project preparation activities necessary for creating a shelf of bankable sub-projects including preparation of Urban Development Plans/City Development Plans, preparation of Feasibility Studies and Detailed Project Reports, Tender Documents and implementation consultancy and support for urban infrastructure projects supporting the creation of the Odisha Urban Infrastructure Development Fund (OUIDF). The Project Executing Agency and KfW shall determine the details of the Project and the goods and services to be financed from the Loan and from the Financial Contribution by a separate agreement.

- 1.2 Taxes and other public charges to be borne by the Project Executing Agency as well as import duties shall not be financed from the Loan and the Financial Contribution.

Article 2

Channelling of the Loan and Financial Contribution to the Project Executing Agency

- 2.1 According to Article 2 of the Loan Agreement the Borrower shall channel the Loan through the State of Odisha to the Project Executing Agency in accordance with the Borrower's standard arrangements for developmental assistance to the States of India. The Borrower shall pass the Loan to the State of Odisha at the same terms and conditions as set forth in Articles 4.5 and 5.1 of the Loan Agreement. The Government of Odisha shall pass 50% of the funds as a capital grant for ULBs to the Grant Fund of the Project Executing Agency. The remaining 50% of the funds will be passed as a loan (loan component) on a back to back basis to the Loan Fund of the Project Executing Agency. The currency risk for this loan component will be born by the Project Executing Agency.
- 2.2 Prior to the first disbursement from the Loan the Government of Odisha shall send KfW the confirmation on channeling of fund from Odisha Government to the Fund specified in Article 2.1.
- 2.3 The Government of Odisha will inform KfW of any subsequent changes on the terms and conditions under which the funds are passed on the Project Executing Agency as specified in Article 2.1

2.4 According to Article 2 of the Financing Agreement the Borrower shall channel the Financial Contribution to the Project Executing Agency as a non-repayable grant and free of charge.

Article 3

Disbursement

- 3.1 KfW shall disburse the Loan in accordance with the progress of the Project and upon request of the Project Executing Agency on an account specified by the Project Executing Agency for this purpose. By a separate agreement, the Project Executing Agency and KfW shall determine the disbursement procedure, in particular the evidence proving that the requested funds are used for the purpose stipulated in this Agreement.
- 3.2 KfW may refuse to make disbursements after December 29, 2017.

Article 4

Suspension of Disbursements and Premature Repayment

- 4.1 KfW may not suspend disbursements unless
- a) the Borrower fails to perform payment obligations to KfW as and when due,
 - b) obligations under this Agreement, under the Loan Agreement or under the Financing Agreement between KfW and India or under the separate agreement pertaining to these agreements have been violated,
 - c) the Borrower or the Project Executing Agency is unable to prove that the proceeds from the Loan have been used for the stipulated purpose or
 - d) extraordinary circumstances arise that preclude or seriously jeopardize the implementation, the operation or the purpose of the Project, or the performance of the payment obligations assumed by the Borrower under this Agreement.

- 4.2 If any of the situations specified in Article 4.1 a), b), and c) has occurred and has not been eliminated within a period specified by KfW, which shall, however, be at least 30 days, KfW may,
- a) in the cases specified in Article 4.1 a), demand the immediate repayment of all disbursed amounts as well as the payment of all interest accrued and all other incidental charges;
 - b) in the case specified in Article 4.1 b) demand the immediate repayment of the Financial Contribution and all outstanding Loan amounts as well as payment of all interest accrued and all other incidental charges;
 - c) in the case specified in Article 4.1 c), demand the immediate repayment of such Amounts as the Borrower or the Project Executing Agency is unable to prove to have been used for the stipulated purpose.

Article 5

Validity of this Agreement and Representation

- 5.1 The Secretary to the Government of Odisha and such persons as designated by him or her to KfW and authorized by specimen signatures authenticated by him or her shall represent the Government of Odisha in the execution of this Agreement. The Chairperson of the Board of Trustees of the Project Executing Agency and such persons as designated by him or her to KfW and authorized by specimen signatures authenticated by him or her shall represent the Project Executing Agency in the execution of this Agreement. The powers of representation shall not expire until its express revocation by the representatives authorized at the time has been received by KfW.
- 5.2 Amendments or addenda to this Agreement and any notices and statements delivered by the contracting parties under this Agreement shall be in writing. Any such notice or statement shall have been received once it has arrived at the following address of the corresponding contracting party or at such other address of the corresponding contracting party as notified to the other contracting party:

For KfW:

KfW
Attn: LE b/3
Postfach 11 11 41
60046 Frankfurt am Main
Federal Republic of Germany
Phone: +49 69 7431 -0
Fax: +49 69 74 31 3609

For the Government
of Odisha:

Government of Odisha
Secretary to the Government of Orissa
Finance Department

For the Project-
Executing Agency:

Odisha Urban Infrastructure Development Fund.
Secretary to the Government of Orissa
Housing and Urban Development Department

Article 6

The Project

6.1 The Project Executing Agency

- a) shall prepare, implement, operate and maintain the Project in conformity with sound financial and engineering practices and substantially in accordance with Project conception agreed upon between the Project Executing Agency and KfW;
- b) shall assign the preparation and supervision of the Sub-Project to independent, qualified consultants;
- c) furnish any and all information and reports requested by KfW on the contractually agreed utilization of the Loan and the Financial Contribution and on the implementation of the Project;
- d) of its own accord promptly inform KfW of any changes in its corporate charter, its by-laws and any other regulations governing it, of any changes in its management as well as of any and all circumstances precluding or seriously jeopardizing the attainment of the purpose of the Agreement;

- e) submit to KfW, immediately upon their completion, however in any event no later than six months after the close of each fiscal year, the Project Executing Agency's annual reports and the pertinent certified balance sheets and profit and loss accounts together with the necessary explanatory notes;
- f) shall maintain, or cause to be maintained, books and records unequivocally showing all costs of goods and services required for the Project and clearly identifying the goods and services financed from the Loan and Financial Contribution;
- g) shall enable the representatives of KfW at any time to inspect said books and records as well as any and all other documentation relevant to the implementation of the Project, and to visit the Project and all installations related thereto;
- h) shall furnish to KfW any and all such information and reports on the Project and its further progress as KfW may request;
- i) shall of its own accord promptly inform KfW of any and all circumstances precluding or seriously jeopardizing the implementation, the operation or the purpose of the Project;
- j) shall adopt and establish an Environmental, Climate-Change, and Social Framework (ECSF). The ECSF shall incorporate the overall approach of the national and state policy and regulatory framework, as well as the environment, climate, and social safeguard requirements of the Borrower, the Government of Odisha and KfW. Sub-projects shall comply with all national and state laws and regulations in respect to environment, climate as well as social aspects including involuntary resettlement.

6.2 The Project Executing Agency and KfW shall set forth the details pertinent to Article 6.1 in a separate agreement.

- 6.3 The State of Odisha and the Project Executing Agency shall
- a) ensure the full financing of the Project and, upon request, furnish to KfW evidence proving that the costs not paid from this Loan are covered and
 - b) of its own accord promptly inform KfW of any and all circumstances precluding or seriously jeopardizing the implementation, the operation or the purpose of the Project.

Article 7

Miscellaneous Provisions

- 7.1 The State of Odisha and the Project Executing Agency shall ensure that the persons charged by the same with the preparation and implementation of the Project, the award of the contract on the supplies and services to be financed and with requesting disbursements of loan amounts do not demand, assume, render, grant, promise or obtain a promise of unlawful payments or other advantages in connection with these tasks.
- 7.2 KfW is entitled to furnish the Federal Republic of Germany with information in connection with the conclusion and the execution of this Project Agreement. Both KfW and the Federal Republic of Germany have the right to pass on information on the Loan and the Financial Contribution and the Project including the award of the contracts for the supplies and services to be financed from the Loan and the Financial Contribution to international organisations engaged in the collection of statistical data, particularly in connection with aspects of debt service and/or the collection and publication of data related to the award of the contracts for the supplies and services to be financed from the Loan and the Financial Contribution. The above right to forward information to international organisations also includes the right to directly pass on such information to members of such organisations.
- 7.3 The Project Executing Agency shall promptly make available to KfW on demand all information and documents which KfW requires to fulfil its obligations to prevent money laundering and terrorism financing as well as for the continuous monitoring of the business relationship with the Project Executing Agency, which is necessary for this purpose.

In entering into and implementing this Agreement and any agreement relating hereto, the Project Executing Agency act in their own name and for their own account. With regard to German law or the law of the country of incorporation of the Project Executing Agency

- a) the Project Executing Agency's own resources or the amounts invested in the financing of the Project will not be of illicit origins and, in particular, this list being non-exhaustive, will not be linked to drug trafficking, corruption, organised criminal activity or terrorism;
- b) the shareholder capital of the Project Executing Agency will not at any time be of illicit origins and, in particular, this list being non-exhaustive, will not at any time be related to drug trafficking, corruption, organised crime or terrorism;
- c) the Project Executing Agency will not be engaged in the acquisition, possession or use of property that is of illicit origins and, in particular, this list being non-exhaustive, will not at any time be related to drug trafficking, corruption, organised crime or terrorism; and
- d) the Project Executing Agency will not be engaged in financing terrorism.

7.4 A change of ownership or other status of the Project Executing Agency will not release the State of Odisha of its obligation vis-à-vis the Project and its implementation.

7.5 If any of the provisions of this Agreement is invalid, all other provisions shall remain unaffected thereby. Any gap resulting therefrom shall be filled by a provision consistent with the purpose of this Agreement.

7.6 Neither the State of Odisha nor the Project Executing Agency may assign or transfer, pledge or mortgage any claims from this Agreement.

7.7 All claims of KfW under this Agreement expire after five years from the end of the year in which any such claim has accrued and in which KfW has become aware of the circumstances constituting such claim or could have become aware of them without gross negligence.

7.8 This Agreement shall be governed by German law. The place of performance shall be Frankfurt am Main.

7.9 All disputes arising out of or in connection with the present Agreement shall be settled exclusively and finally by an arbitration tribunal. In this regard, the following will apply:

- a) The arbitration tribunal will consist of one or three arbitrators who will be appointed and will act in accordance with the Arbitration Rules of the International Chamber of Commerce (ICC) applicable from time to time.
- b) The arbitration proceedings will be conducted in Frankfurt am Main. The proceedings will be held in the English language.


Done in three originals in English.

Bhubaneswar, 2nd August 2012

this _____


KFW

Bhubaneswar,

this _____ 
02/8/12

GOVERNMENT OF ODISHA

Bhubaneswar,

this _____  02/8/12

ODISHA URBAN
INFRASTRUCTURE
DEVELOPMENT FUND