

MEMORANDUM
of
UNDERSTANDING
for
DEVELOPMENT OF NATIONAL WATERWAYS
in
THE STATE OF GOA
between
CAPTAIN OF PORTS, GOVERNMENT OF GOA,
and
MORMUGAO PORT TRUST
and
INLAND WATERWAYS AUTHORITY OF INDIA

at _____

on

_____2017

Memorandum of Understanding (MOU) between Inland Waterways Authority of India, Govt. of Goa and Mormugao Port Trust for Development of Waterways in the State of Goa.

Preamble

The Government of India has declared 106 Waterways in the country as National Waterways vide National Waterways Act 2016, and Gazette Notification No.17 dated 11th April 2016, in addition to the 5 existing waterways with a view to facilitate developing the waterway for shipping and navigation.

The declaration of National Waterways does not restrict the rights of state governments in any way and will not infringe upon their rights on minerals and water.

Whereas 6 rivers in the State of Goa have been declared as National Waterways as follows;

- (i) *Mandovi river (NW-68) from bridge at Usgao to the confluence of Mandovi river with Arabian sea at Reis Magos (41 km).*
- (ii) *Zuari river (NW-111) from Sanvordem bridge to Mormugao port (50 km).*
- (iii) *Cumbharjua canal (NW-27) from the confluence of Cumbharjua and Zuari river near Cortalim ferry terminal to the confluence of Cumbharjua and Mandovi river near Sao Matias Vidhan Parishad (17 km)*
- (iv) *Chapora river (NW-25) from bridge at State highway No 124 (1Km from Maneri village) to the confluence of Chapora river with Arabian sea at Morjim (33 km).*
- (v) *Mapusa river (NW-71) from the bridge on National Highway – 17 at Mapusa to the confluence point of Mapusa and Mandovi river at Porvorim (27 km) and.*
- (vi) *Sal river (NW-88) from Orlim Deusa bridge to the confluence with the Arabian sea at Mobor (14 km).*

This Memorandum of Understanding is made on the _____ 2017

BETWEEN

Inland Waterways Authority of India, a statutory body constituted vide of Inland Waterways Authority of India Act, 1985, having its head office at A-13, Sector-1, Noida (U.P) – 201301 (hereinafter referred to as “IWAI” which expression shall,

unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) as the first part.

AND

The State Government of Goa represented by the Captain of Ports, Government of Goa located at Panaji Goa (herein after referred to as "COP" which expression shall unless repugnant to the context or meaning thereof, includes its administrators, successors and permitted assigns) as the second part

AND

The Port of Mormugao, an autonomous body under the Major Port Trusts Act, 1963 functioning under Ministry of Shipping administered by a Board of Trustees set up by the Government of India (hereinafter referred to as "MPT" which expression shall unless repugnant to the context or meaning thereof, includes its administrators, successors and permitted assigns) as the third part;

General

1. WHEREAS IWAI is responsible for development and regulation of National Waterways for shipping and navigation. Accordingly, IWAI has statutory obligation for development and regulation of National Waterways in Goa.
 2. WHEREAS Captain of Ports is engaged in port infrastructure development, operations, cargo handling and day to day administration activities of rivers and ports which are strategically located at the confluence of all the Rivers of Goa and the Arabian Sea except the areas under the jurisdiction of MPT.
 3. WHEREAS MPT is engaged in port infrastructure development, operations, cargo handling and day to day administration of Mormugao port which is strategically located at the confluence of Zuari river with the Arabian sea.
 4. WHEREAS IWAI intends to finance the development of the National Waterways of Goa as stated aforesaid and seeks Participation of Govt. of Goa and MPT to carry out the works in the Project Development Activities on National Waterways.
 5. IWAI, Government of Goa with its representative Captain of Ports (COP) and MPT intend to collaborate within the framework of the present Memorandum of Understanding (hereinafter referred to as the "Memorandum") in development of National Waterways of Goa.
2. NOW THEREFORE, IWAI, COP and MPT (hereinafter referred to as the "Party" or collectively as "the Parties") hereby declare as follows:

Article 1 - Objectives

- 1.1 The purpose of this MOU is to express the willingness of all the Parties to closely cooperate and assist each other on related matters in order to achieve the common objectives, which include:
- (a) Development of viable navigation system on National Waterways mentioned under serial nos (i) to (vi) in the preamble, for the movement of cargo vessels of economical size and viable capacity. The development activities include
 - i) Fairway development of 182 km stretch which includes dredging, river training works, bank protection etc.
 - ii) Terminal construction and maintenance along with cargo handling facilities, off-shore structures and related infrastructure.
 - iii) Navigational aids including lighted buoys, DGPS, RIS/VTMS
 - (b) Project management, supervision, services including planning, designing, consultancy in respect of the works related to Fairway development, Construction, operation & maintenance of Terminals and other related infrastructure works on National Waterways mentioned under serial nos (i) to (vi) of the preamble and mentioned in para 1.1 (a) (I, ii & iii).
- 1.2 The Parties agree to work together in good faith, through joint and concerted cooperation in accordance with the provisions of this Memorandum, to achieve the objectives set forth above.

Article 2 - Scope of Memorandum

- 2.1 This Memorandum establishes a framework for cooperation between the Parties and determines the conditions and modalities within which the Parties will collaborate to achieve their common objectives. The Memorandum defines the areas, institutional arrangements, and general conditions that will govern the cooperation of the Parties.
- 2.2. The Memorandum constitutes the entire understanding of the Parties with respect to its subject matter and supersedes all oral communications and prior written documents.

Article 3 - Areas of Cooperation

An indicative list of obligations (expected deliverables) on the part of the Parties entering into MOU is mentioned below. Parties agree to carry out initiatives in the areas of cooperation identified below, which may alter/modify as the project evolves by written agreement of the Parties.

3.1 Responsibilities of IWAI

For development of National Waterways mentioned under preamble, serial nos. (i) to (vi), IWAI shall undertake the following responsibilities:

- i. To provide all the documents, surveys, studies including DPR's etc available with IWAI to MPT. Further survey, studies etc felt essential by MPT for development, planning & designing of fairway development, terminals and other infrastructures works will be undertaken by MPT with the approval of IWAI and COP.
- ii. To deposit the mutually agreed amount with MPT for making timely payments to the contractors. For this MPT will give demand of funds to IWAI & COP along with its justification and phasing from time to time.
- iii. The Agency charges payable to MPT for providing the technical support services including PMC services like Project management, supervision, monitoring of works shall be @ 5% of the awarded cost of the Project work. COP will also be paid service charges. @ 2% of the awarded cost of the project work for obtaining all necessary clearances from different departments, preparing EIA, acquiring land for the work rendered to the development of a project etc. All applicable taxes including GST shall be reimbursed to MPT on submission of proof of payment. No extra agency charges shall be paid to the MPT or service charges to COP on escalation of cost after award of work to the contractors.

3.2 Responsibilities of Government of Goa

For development of said National Waterways, Government of Goa shall undertake the following responsibilities:

- i) Administration of Rules & Regulation as permitted under IWAI Act, 1985.
- ii) Ensure Security and safety of the waterways
- iii) Identify projects for implementation in consultation with the IWAI.
- iv) Facilitate the project executing agency (MPT) to obtain all statutory clearances.
- v) Land acquisition as & when required for any development work on said NWs.
- vi) Remove any encroachments on the banks of the waterways
- vii) Facilitate last mile connectivity from the National waterways for seamless movement of goods and passengers

- viii) **Government of Goa** will identify and propose the various development projects to be carried out in the Rivers and the same will be financed by IWAI and executed by MPT taking into consideration the Technical/ Financial/ Environmental/ Public sensitivities of the State into account. **IWAI and MPT will implement projects in the rivers in agreement with Government of Goa.**
- ix) The Parties agree that the right over the waters of all the rivers, the River beds, the River Banks, existing infrastructure and the Riverine land will be vested with the Captain of Ports Department, Government of Goa as before.
- x) The COP will be totally free to carry out independently any infrastructure development in the National Waterways utilizing its own finances and the revenue generated thereof will only accrue to the State Government. Also, all the existing revenues that are being collected will be solely accrued to COP, Government of Goa only.
- xi) Ensure unrestricted development and utilization of National Waterways by regulating the existing fishing activities carried through stake net fishing, barrier net, River gill, river cages and fishing by any registered gear. Views of local fishermen area shall however be taken into consideration before finalization of a site for development by COP and IWAI.
- xii) Before the finalization, i.e work of a construction, dredging of river, training wall construction bund, necessary EIA if applicable shall be carried out and the effect on the ecology and other organisms shall be disclosed before tendering the work. The expenses for conducting the EIA will be funded by IWAI.
- xiii) Regulate horizontal and vertical clearance over cross structures across these National Waterways according to IWAI (classification of Inland Waterways) regulation 2006 and OMs issued by IWAI clarifying each NW as prescribed therein.
- xiv) Any development work commenced by the Department of Fisheries for the development of fisheries infrastructure shall be exempted from the Captain of Ports dues and any other dues which will be imposed by COP and IWAI from time to time.
- xv) NOC for all Fishing related Infrastructure proposed by Department of Fisheries should be issued by COP and such development work by Fisheries will not require IWAI approval provided development carried out does not create any hindrance in smooth navigation and shipping on the National Waterways.

- xvi) Exigency work related to security, safety of navigation, environment protection and matters of public interest which require immediate attention will be attended to by COP and IWAI will be informed subsequently.
- xvii) Final Work Completion Certificate for all projects will be issued by MPT only after COP gives the necessary clearance. For this reason, a Nodal Officer from COP to be appointed who will jointly inspect all project works as far as possible with IWAI and MPT representative/Nodal Officer so as to ensure works are carried out to the entire satisfaction and requirements of the COP in conformity.
- xviii) Authority to grant permission/ NOC for all constructions in the NWs and on the banks of the NWs will rest with COP however before construction of any cross structures in or across these waterways, necessary clearance from IWAI will have to be taken as per IWAI regulations.

3.3 Responsibilities of Mormugao Port Trust (MPT)

For development of National Waterways mentioned above, Mormugao Port (MPT) Trust shall undertake the following responsibilities:

- i. To prepare Expression of Interest (EOI) / Request for Proposal (RFP) / Estimate, Tender document, its publication conducting pre-bid meeting, evaluation, finalization of tender and all related works on behalf of IWAI for the development of fairway and bank protection works wherever required. Providing all the Project Management Consultant (PMC) services like supervision/monitoring, taking measurements, scrutinising bills, certification with recommendation for release of payment by IWAI.
- ii. To prepare estimate, tender document, its publication conducting pre-bid meeting, evaluation, finalization of tender and all related works on behalf of IWAI for the planning, designing, development and maintenance of IWT terminals at the places decided by the Captain of Ports and IWAI wherever required. Also, the planning & designing of Navigational Aids DGPS, RIS/VTMS system wherever required. Providing all the Project Management Consultant (PMC) services like supervision / monitoring, taking measurements, scrutinising bills, and recommendation for release of payment by IWAI.
- iii. To ensure all the documents relating to the execution of project are properly maintained so that the same can be produced whenever required for Government Audit.
- iv. Maintaining constant coordination / liaison with COP, Government of Goa and other departments concerned for the development of National Waterways mentioned in preamble, on behalf of IWAI. To prepare and submit fortnightly reports of progress of works and other activities / events happening at site to COP and IWAI.

- v. MPT shall be responsible for the quality of works, financial control and successful completion of works assigned to MPT.
- vi. MPT shall be available for all discussion / meeting between IWAI, Government of Goa or any other concerned Departments / Ministries of GOI.
- vii. To submit to IWAI and COP quarterly reports on the expenditure incurred and the audited final statement of account for all works undertaken by MPT.

3.4 Joint Responsibilities of IWAI, Government of Goa and MPT

- (i) Getting necessary clearances/ approvals from Concerned Ministries and Central / State Government for execution of development works. All environment, forest, local issues shall be addressed by IWAI, Government of Goa and MPT jointly and acquisition shall be the responsibility of Government of Goa.
- (ii) Preparing annual budget estimates after consultation with all the parties.

Article 4 - Term, effectiveness and validity of Memorandum

4.1 This Memorandum shall become effective from the date of its execution and shall remain in force till the completion of the project including finalization of accounts or up to a period of five (5) year(s) from the date of execution whichever is later, unless the period is extended with the mutual consent of the parties.

4.2 No amendment, modification or waiver of any provision of the MOU shall be effective unless the same has been made in writing and signed by the authorized officers of IWAI and other parties.

4.3 Except for Article 8 which shall be binding on the Parties, the Parties acknowledge that this Memorandum is not intended to create any legally binding obligations unless it is followed by definite binding agreements / documents as per Article 4 above to aid the execution of the project envisaged therein

Article 5 - Focal points

5.1 For the purpose of facilitating the day-to-day implementation of this Memorandum, direct contacts will be made between representatives of the Parties.

5.2 IWAI, Government of Goa and MPT each shall, on mutual consent, assign a focal point, a Nodal Officer, who shall be responsible for coordinating all communication and the implementation of the Memorandum.

- 5.3 The respective Nodal Officers shall report to the higher management of the parties and on day to day basis shall update the management with the progress of the projects highlighting the local, project related issues.

Article 6 - Public Announcements

The IWAI and COP only have the right to issue press releases or make public announcements relating to this MOU.

Article 7 - General Conditions

- 7.1 Liability and Status: Nothing in or relating to this Memorandum will be construed as establishing a legal partnership (such as, by way of clarification, partnership liability), joint venture, agency, or other similar relationship between IWAI, Government of Goa and MPT.
- 7.2 Assignment: The Parties will not assign, transfer, pledge or make other disposition of the present Memorandum or any part thereof or of any of their rights, claims or obligations under the present Memorandum except with the prior written approval of the other Parties. Any of the aforementioned actions taken without such written approval will not be valid.
- 7.3 Sharing of Expenses: The Parties shall bear their own administrative and other costs incurred in connection with the discussions /negotiations and execution of this Memorandum and thereafter in relation to the relevant binding agreements / documents to aid the execution of the project envisaged herein.
- 7.4. Amendment: This Memorandum may be amended in writing only by the mutual consent of the Parties.
- 7.5 IWAI will provide the full funding for providing any facilities like Hydrographic survey, EIA, Dredging, River Training, Aids to Navigation including channel marking, Construction / up gradation of terminals and jetties.
- 7.6. All projects developed by IWAI will be maintained by IWAI and the operation of the project will be under COP.

Article 8 - Governing Law and Settlement of Disputes

- 8.1 The present Memorandum will be construed in accordance with the laws of India.
- 8.2 In the event of a dispute, controversy or claim arising out of or relating to this Memorandum, the Parties will use their best efforts to promptly settle such dispute.
- 8.3 Any dispute that is not settled within sixty (60) days from the date a Party has notified the other parties of the nature of the dispute and of the measures that

should be taken to rectify it, will be resolved through consultation between the executive heads of the Parties or their duly authorized representatives.

8.4 If any term of this Memorandum is found to be invalid, illegal or unenforceable, it is the intention of the Parties that the remainder of this Memorandum will not be affected thereby; provided, however, that no Party's rights under this Memorandum have been materially adversely affected.

Article 9 – Notification

Focal point and the addresses for service of notices under the present Memorandum shall be:

IWAI: -----

A-13, Sector 1, Noida, Uttar Pradesh 201301

Phone: 0120 252 1684

Government of Goa -----

Captain of Ports, D.B. Marg

Panaji, Goa

MPT: -----

Mormugao Port Trust,

Headland, Sada, Goa

Article 10 – Authority

The PARTIES confirm that they have executed this Memorandum through their respective representatives who have the requisite authority to execute and bind the respective PARTIES.

IN WITNESS WHEREOF the Parties have by their authorized representatives, hereunto subscribed and set their respective hands on the ___ day of _____ 2017.

**1. For and on behalf of
Inland waterways Authority of India**

Name:

Title:

Date:

Place:

**2. For and on behalf of
Mormugao Port Trust**

Name:

Title:

Date:

Place:

3. For and on behalf of

Captain of Ports, Government of Goa

Name:

Title:

Date:

Place

Witness

1.

2.

Witness

1.

2.