

**Memorandum
of
Understanding between
Government of Bihar
and
ODR COLLABORATIVE**

MEMORANDUM OF UNDERSTANDING

Between

Collector Madhepura District. BIHAR

and

Mahindra Foundation & Mahindra Consulting Engineers

Limited

The KOSI CALAMITY that struck the Districts of Supaul, Madhepura, Saharsa, Purnea and Araria in the last week of August, 2008 has left behind a trail of devastation, incalculable loss of life and property and has snatched away the livelihood of lakhs of people. There is an urgent need for rehabilitation and reconstruction in the Calamity affected area of Madhepura district.

This MoU is being entered into between the Collector of Madhepura district [hereinafter referred to as **FIRST PART**] and Mahindra Foundation(hereinafter referred to as MF), is a registered charitable trust under Bombay Public Trusts Act, 1950, registration number E-4198 (BOM) having its registered office at Gateway Building, Apollo Bunder, Mumbai -400001 & WHEREAS M/s. Mahindra Consulting Engineers Ltd., (hereinafter referred to as MACE) belonging to the Mahindra Group incorporated under

Companies Act having its registered office at Gateway Building, Apollo Bunder, Mumbai - 400 001 [hereinafter collectively referred to as **SECOND PART**], who jointly wish to respond to specific objectives as per the rehabilitation and reconstruction policy enunciated by the Government of Bihar.

MF & MACE has identified an area of 5.58 Acres covering survey numbers 2136, 2137, 2138, 2145, 2151, 2152 and 2153 of Revenue Village No. 205 in Pattori Gram Panchayat, Singheswar Block, Madhepura District where it intends to support rehabilitation and reconstruction initiatives

MoU Government of Bihar as per the guidelines specified by the Government of Bihar

NOW THIS MEMORANDUM OF UNDERSTANDING WITNESSETH AS FOLLOWS:

NATURE AND SCOPE OF THE WORK

(1) The **SECOND PART** undertakes to construct approximately 45 number of permanent houses and / or associated infrastructural facilities such as Water Supply, Sanitation, Waste Water/Solid Waste Management, Rain Water Harvesting facilities, other ecological features, Roads, Community center , School Buildings , Fish and Farm Produce Market yards , Village Information / Communication

Centers, etc. as set out more particularly in the Schedule to this Memorandum of Understanding to the families of the victims affected by Kosi Calamity in accordance with the type, design and habitat layout of such quality as approved by the District Collector in consultation with the beneficiaries especially women based on the overall technical guidelines for disaster resistant buildings specified by the Department of Planning and Development. The **FIRST PART** undertakes the responsibility of providing water, power, road and other utility connections as may be found expedient with respect to the site conditions up to the periphery of the habitats as per the existing rules and regulations in force.

ENGAGEMENT OF AGENCIES

(2) It shall be the responsibility of the **SECOND PART** to engage only construction agencies with qualified Engineering Personnel with past experience in construction activities and to build the permanent houses in accordance with the rules /regulations/guidelines as laid down by the Department of Planning and Development and the **SECOND PART** will undertake the construction of the houses along with the Infrastructure facilities in accordance with the layout or building plan approved by the Collector.

INVOLVEMENT OF FACILITATING AND TECHNICAL SUPPORT ORGANISATIONS;

(3) The **SECOND PART** shall be at liberty to identify and engage such NGOs or voluntary organizations with proven expertise and track record in construction activity and / or in socially productive work with community participation in similar projects elsewhere in the State or country for the purpose of achieving the task as a joint exercise in a transparent and participative manner. The **SECOND PART** shall also be at liberty to involve similar technical support organizations which have developed and proved their expertise in livelihood issues and/or in constructing special type of houses or buildings which are earthquake/flood resistant and shall also educate the potential beneficiaries to undertake such repairs as may be warranted in Course of their occupation of the building after the allotment.

If any complaints are received by the **FIRST PART** on the role of these Subcontracted agencies in terms of quality of works, schedule not being met and anti social activities carried on, and only after these complaints are duly verified by the First Part, then the **SECOND PART** agrees to make

alternative arrangements to replace such agencies. The decision of the **FIRST PART** In this regard shall be final.

LAND AND OWNERSHIP:

(4) The **FIRST PART** shall provide the land required for the purpose of construction of the permanent houses and / or associated Infrastructure free of cost to the **SECOND PART** to enable them to construct houses for the victims affected by the Kosi Calamity in the above mentioned location. The ownership of the land shall vest With the Government of Bihar and the **FIRST PART** shall reserve the right to transfer the ownership of the land to the victims in such manner and at such time as it deems fit. In case where land belongs to beneficiaries themselves, the **FIRST PART** shall facilitate handing over of such sites, in consultations with them, to the **SECOND PART**.

IDENTIFICATION OF THE BENEFICIARIES:

(5) The **FIRST PART** shall identify and hand over the list of beneficiaries to the **SECOND PART**, within three months from date of signing this MoU and the decision of the **FIRST PART** with respect to the selection of beneficiaries shall be final and the **SECOND PART** shall not withdraw from the commitment made on that ground or any other

ground that militates against the noble purpose of associating the public spirited bodies with the rehabilitation and reconstruction measures of Kosi Calamity victims. The **FIRST PART** shall take into account the views of the local Panchayat or any other local body or the committee for supervising rehabilitation and reconstruction formed by the Collector at the Panchayat / Ward level in finalizing the list of beneficiaries. The **FIRST PART** shall, as far as practicable, identify the prospective owners in advance and link them with specific sites so that the beneficiaries can also participate in the construction activities to the extent possible.

EOUAL TREATMENT to ALL:

(6) The **SECOND PART** shall not insist on providing permanent houses or infrastructure facilities in the selected and allotted areas only to certain class or classes of families on ground of caste, community, creed, religion, language etc. and shall be bound to undertake the project without any discrimination.

FUNDS FOR THE PROJECT:

(7) The **SECOND PART** shall invest upto Rs 3.29 Crores to undertake the above house construction activity and the

provision of infrastructure facilities in terms of resolution of the Department of Planning and Development and agree to abide by all such conditions and covenants as may be stipulated by the Government of Bihar from time to time in the larger interest of the welfare of the Kosi Calamity victims. Without prejudice to any other guidelines in this regard, the **SECOND PART** shall involve the local beneficiaries in the programme and make use of locally available materials to the extent feasible.

SEPARATE BANK ACCOUNT AND ACCOUNTS OF THE PROJECT:

(8) The **SECOND PART** shall open a separate bank account and maintain separate statement of accounts for funding the above mentioned activities and be subject to audit by a qualified Chartered Accountant or by a firm of Chartered Accountants acceptable to both parties.

SCHEDULE OF ACTIVITIES:

(8) The **SECOND PART** shall give a "**schedule of plan of OF ACTIVITIES**" indicating the time of the commencement of the work, various time bound and preset milestones of achievement either in the form of '**PERT**' chart or in any form of work plan with an undertaking to abide by the target date of completion of the work. The **FIRST PART** shall have the right to review the schedule of

the activities or PERT chart so presented by the **SECOND PART** and modify or vary or alter the schedule of activities in consultation with the **SECOND PART** and fix the time of commencement, course of progress and completion of work/project as may be warranted and the decision of the **FIRST PART** shall be binding on the **SECOND PART**.

ACCESS TO INSPECTION OF THE WORKS:

(10) The rebuilding activities of the affected area shall be commenced and completed within the time, as may be stipulated by the **FIRST PART** and the **FIRST PART** shall have a right of inspection of the progress of the work and quality of the materials used in the construction either by himself or through any authorised person/persons with prior notice to the **SECOND PART** as the circumstances may demand and the **SECOND PART** is bound to provide all facilities and access to such Inspection.

FACILITIES BY THE DISTRICT ADMINISTRATION:

(11) The **SECOND PART** will be provided by the **FIRST PART** all non-monetary facilities such as local body / Government agency clearances for the purpose of accomplishing the above noble task without any violation of the existing rules and regulations with respect to the construction and building activities.

JOINT REVIEW OF PROGRESS:

(12) The **FIRST PART** and **SECOND PART** shall jointly review the progress of work at such periodicity as may be found convenient and expedient in the interest of the progress of the work preferably once in a fortnight and in any case the interval between two successive reviews should not be more than a month. The **SECOND PART** shall provide all such information in relation to this project as per terms of this MoU as may be sought for by the **FIRST PART** in such a format as may be prescribed by the First Part either at such interval of time or at any time as may be required by the First Part.

INCOMPLETE WORKS AND COST RECOVERY:

(13) In the unlikely event of the **SECOND PART** not performing the committed obligations such as non-completion of work as per the agreed schedule under this Memorandum of Understanding within such time as may be prescribed by the **FIRST PART** **for reasons solely attributable to** **SECOND PART** and in such a manner as may be laid down, it shall be lawful for the **FIRST PART** to take over the incomplete work under "as is where is" condition sans any liability on the **FIRST PART** after issue of notice not

exceeding **thirty days** after giving proper hearing and chance to remedy or clear any defects.

INSPECTION AND TAKING OVER:

(14)The **SECOND PART** shall intimate the completion of the construction of houses with provision of infrastructure facilities agreed to be undertaken to the **FIRST PART** within the time as may be laid down by the **FIRST PART** and shall arrange to remove all the debris and building materials scattered around the construction area and dispose of them at its cost and shall take steps to keep the project area clean and neat. The **FIRST PART** shall cause inspection of the constructed houses and the infrastructure established and only on being satisfied of the construction, will arrange to take over the building and infrastructure from the **SECOND PART** with the handing / taking over certificate in writing and signed by both the parts in the presence of the Mukhia of the Panchayat or any other public representative as may be decided by the **FIRST PART**.

MAINTENANCE OF PUBLIC PEACE AND COMMUNAL HARMONY:

(15)The **SECOND PART** or anyone claiming to possess due authorization of **SECOND PART** shall not indulge, either by

himself / herself or through any agencies or organization or bodies of individuals or in any mode or form of any organization, in any kind of religious or political or communal activities, especially such activities that will incite or will have the potential to cause hatred or disharmony or both in the minds of the residents or beneficiaries of the area on ground that the **SECOND PART** has invested in the construction of the permanent houses with or without associated infrastructure for the benefit of the allottees of the houses.

(16) The **SECOND PART** shall not be permitted to construct any places of worship of any size and in any manner or form in the village allotted to the **SECOND PART** for the above mentioned purpose. In the event of any violation of this condition, the **FIRST PART** shall immediately terminate the work being done by the **SECOND PART** and shall take appropriate action to complete the remaining work without any liability for the work done.

FURNISHING OF FALSE INFORMATION:

(17) If any information furnished by the **SECOND PART** is found to be false or incorrect at any time during the course of the implementation of the above project, the **FIRST PART** shall have the right to terminate the Memorandum of

Understanding with prior notice not exceeding thirty days and in the interest of the Rehabilitation and Reconstruction measures to step in and take over the unfinished work including the associated infrastructure facilities without any legal liability to the **FIRST PART** and carry on the above noble task from such resources or by such agencies as may be deemed expedient in the given circumstances.

MATTERS NOT COVERED BY THE MOU:

(18) With respect to all residuary matters not specifically covered by the MoU, the instructions of the Department of Planning and Development shall be final and binding on both the parties.

ACTS OF GOD AND SUPERVENING IMPOSSIBILITIES:

(19) "**Force majeure**" clause: Neither party shall be liable to the other for any loss, delay, or any damage occasioned by or arising out of acts of God such as but not restricted to unprecedented flood, volcanic eruptions, earth-quake or any other convulsion of nature and other acts such as but not restricted to riots and civil disturbances, invasion, act of foreign countries, hostilities, or warlike operations before or after the declaration of war, rebellion, military or usurpation of power which prevents performance under the

MoU and which could not have been foreseen or avoided.

AMENDMENTS TO MOU:

(20) It shall be lawful for the **FIRST PART** to amend, vary, alter, modify, change, revise and redraw either in part or in full any terms and conditions of the MOU, in the interest of the project works, with the mutual discussion and consent of the **SECOND PART**.

THIRD PARTY ADJUDICATION:

(21) Should there arise any dispute or difference of opinion with respect to any issue connected with the above mentioned activities, it shall be referred to the Empowerment committee headed by the Department Commissioner the decision of which shall be final and be binding on the both the parts. None of the provisions of Arbitration Act shall be applicable in case of any disputes.

Period of MoU

(22) This MoU is for a period till the activities mentioned in the MoU are carried out.

Additional Clause

(23) The proposed allied site infrastructure development as part of the said rehabilitation programme by THE **SECOND PART** shall be restricted only within the designated area and any

infrastructure development requirement beyond the designated area shall be carried out by THE FIRST PART at its own cost and shall not be borne by THE SECOND PART

(24) In the event any overrun, as decided by THE SECOND PART , during the execution of the rehabilitation programme warranting THE SECOND PART to reduce envisaged rehabilitation, THE SECOND PART shall be free to do so, so as to contain rehabilitation programme to the fixed budget of Rs. 3.29 crores.

(25) It is contemplated to complete the said rehabilitation facilities by March 2010 and THE FIRST PART shall provide necessary support as mentioned in this MoU for accomplishing the same

(26) That during the course of execution of works and other activities of project, THE FIRST PART shall provide necessary security and protection to the officials and personnel of THE SECOND PART working at the site and in Camp Office through its local administration.

(27) That during the course of execution of work, THE FIRST PART shall provide necessary assistance and co-operation

through its administration to THE SECOND PART officials and personnel involved/engaged in the implementation programme in the event of local hurdles in execution, stoppage of work by local people, undue interference or any other act affecting the implementation. THE FIRST PART shall act as facilitator and solution provider.

(28) For the purpose of smooth processing and functioning, THE FIRST PART shall be provide necessary logistical support to the officials of THE SECOND PART for example, place for meetings, staying arrangement in Government Rest House facility of local transport, etc. as per the Govt. rate to be borne by the Second Part.

(29) The list of beneficiaries will be provided by a particular time by the THE FIRST PART and on completion and handing over to Government of Bihar the facilities will then to be handed over to the specified beneficiaries.

(30) The specific guideline applicable to the area shall be intimated within one week to the Second Part by the First Part.

(31) While the primary responsibility of Mahindra Foundation is to provide Rs. 3.29 crores towards the proposed rehabilitation scheme, Mahindra Consulting Engineers Limited shall be

responsible for fulfilling the obligations of the Second Part as per this MoU.

(32) The Second Part is at liberty to terminate if the First part fails to fulfill its obligations. In the unlikely event of the FIRST PART not performing the committed obligations as per the agreed schedule under this Memorandum of Understanding and in such a manner as may be laid down, it shall be lawful for the SECOND PART to terminate this MoU.

IN WITNESS WHEREOF the parties hereto have set and subscribed their respective hands and seals the day,..... and year.....

On behalf of Mahindra Foundation On behalf of Government
Bihar

Authorized Signatory Collector of Madhepura District.

On behalf of Mahindra Consulting Engineers Limited

Authorized Signatory

Date:

Place:

WITNESSES:

1) Name & Designation

SIGNATURE

Full Address:

2) Name & Designation Full Address:

**Memorandum
of
Understanding between
Commissioner,
KOSI Division, SAHARSA
and
ODR COLLABORATIVES**