

1. Name of the Subject/Project:

Establishment of Special Purpose Vehicle (a 100% /wholly New Delhi Municipal Council owned Public Limited Company) under the provisions of section 12(z) of the New Delhi Municipal Council Act, 1994 in accordance with the provisions of the Companies Act, 2013, as required under the Smart Cities Mission of the Ministry of Urban Development, Government of India.

2. Name of the Department:

Project Department, New Delhi Municipal Council.

3. Brief history of the subject:

3.1 Government of India (GOI) Ministry of Urban Development (MoUD) launched Smart City Mission on 25th June, 2015 to develop 100 cities throughout the country as Smart Cities who will be given matching grant of Rs.500 crores each from the Government of India and same amount to be arranged by the Urban Local Body (ULB)/State. The mission is a centrally sponsored scheme launched and steered by the MoUD, GOI. To enable the building up of the equity base of the Special Purpose Vehicle (SPV) and to enable ULBs to contribute their share of the equity capital, GoI grants will be permitted to be utilized as ULBs share of equity capital in the SPV, subject to the conditions given in the Smart Cities Mission guidelines.

3.2 New Delhi Municipal Council (NDMC) has been selected by MoUD after due recommendations by the State Level High Powered Steering Committee (HPSC), Government of NCT of Delhi (GNCTD) to participate in the second stage – City Challenge Round 1 for selection, which was announced on 27th August 2015. In total 97 cities have been selected for participation in Stage 2 of City Challenge Round 1.

3.3 The Smart City Proposal (SCP) was to be submitted by 15.12.2015 for consideration in the Stage 2 of City Challenge Round 1 for grants of fund from MoUD after approval from Council and the HPSC.

3.4 A Smart City Proposal was prepared by NDMC, which was approved by the Council vide Resolution No.24 (W-01) dated 7.12.2015. This SCP was considered and approved by HPSC on 11.12.2015 with certain suggestions. The suggestions made by the HPSC were incorporated in the SCP, and the revised SCP was considered and approved by the Council on 15.12.2015 vide Resolution No. 24(W-01). The approved SCP was submitted to the MoUD on 15.12.2015.

3.5 NDMC has been selected as one of the 20 Cities by the MoUD under City Challenge Round 1 of the Smart City Mission of the GOI on 28th January, 2016.

4. Detailed proposal on the subject:

4.1 According to the Smart Cities Mission Guidelines of MoUD, a Special Purpose Vehicle (SPV) needs to be established each by the selected 20 cities for implementation of the Mission. The SPV will plan, appraise, approve, release funds, implement, manage, operate, monitor and evaluate the Smart City development projects.

4.2 The Council vide Resolution No.24 (W-01) dated 7.12.2015 and Resolution No.24 (W-01) dated 15.12.2015 has resolved that as per the NDMC Act, 1994, there are no enabling provisions for establishment an SPV and the Council resolved to

propose the following to the Ministry of Home Affairs to enable creation of the SPV and matters connected therewith:

- a) appropriate amendment to the NDMC Act, 1994 or
- b) directions by the Central Government under Section 395 of the NDMC Act, 1994 permitting establishment of such SPV.

Further, it was proposed that till the establishment of the SPV, the NDMC Council, being autonomous within the mandate given in the Act and financially self-sufficient, will perform the functions of the SPV. The role and functions of the CEO will be performed by the Secretary NDMC, who is an IAS officer. SPV will plan, appraise, approve, release funds, implement, manage, operate, monitor and evaluate the Smart City development projects.

- 4.3 The Ministry of Urban Development vide letter No. K-15016/61/2015-SC-I dated 28.1.2016 -**Annexure-1(See Page 65)** has invited the attention to the Smart Cities Mission Guidelines for creation of City Level Special Purpose vehicle (SPV) as a limited company incorporated under the Companies Act, 2013. The affairs of the company will be regulated by an Article of Association (**AoA**) which shall include structure and functions of the SPV. A Model Article of Association has been provided by the MoUD to enable the States / ULBs to prepare Article of Association for such SPV, and informed that this Article of Association shall be vetted by the State Government Departments, such as Law, etc. MoUD has asked for establishment of the SPV, which is to be informed to it in order to claim the first installment under the Smart Cities Mission.
- 4.4 Further, the MOUD vide D.O. letter No. K-15016/61/2015-SC-I dated 09.03.2016 -**Annexure-2(See Pages 66 – 73)** circulated an Advisory note no. 1 on the SPV to guide the establishment of SPV in NDMC and projectivization of the modules in the SCP.
- 4.5 The matter of establishment of the SPV is reconsidered, and it is observed that establishment of a Special Purpose Vehicle (a 100%/wholly Public Limited Company fully owned by NDMC) may be considered under the provisions of section 12(z) of the New Delhi Municipal Council Act, 1994. Section 12(z) of the NDMC Act, 1994 is reproduced as follows:

“12. Discretionary functions of the Council.- Subject to any general or special order of the Government, or the Central Government from time to time, the Council may provide either wholly or in part for all or any of the following matters, namely:-

*“...
(z) any measure not hereinbefore specifically mentioned, likely to promote, public safety, health, convenience or general welfare.”*

An Opinion from learner Ld. Additional Solicitor General of India, Sh. Sanjay Jain has also been sought on the above matter.

The operative part of the opinion rendered wide letter dated 22.04.2016-**Annexure-3 (See on Pages 74 - 82)** is reproduced as under:

*“...
9. First and foremost, it must be noted that NDMC is a body corporate under Section 3(2) of the NDMC Act. Section 3(2) of the NDMC Act reads as under*

“The Council Shall be a body corporate with the name of aforesaid having perpetual succession and a common seal with power...”

A body corporate has been defined under Section 2(11) of the Companies Act, 2013 as follows:

"2 (11) "body corporate" or "corporation" includes a company incorporated outside India, but does not include— (i) a co-operative society registered under any law relating to co-operative societies; and (ii) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf."

10. Therefore, being a body corporate, NDMC is well within its right to incorporate a company in the form of a SPV in accordance with the provisions of the Companies Act, 2013.

11. It is, however, important to bear in mind that since NDMC is a statutory body corporate and is a creation of the legislature, NDMC owes its existence to the NDMC Act, 1994 and not to the Companies Act of 1956 or 2013.

12. It thus emerges that NDMC, being a statutory body corporate has the innate power to form a SPV, albeit such power to form an SPV needs to be exercised within the four walls of the NDMC Act, 1994.

13. Section 12(z) of the NDMC Act, 1994 gives to NDMC powers wide enough to undertake any step in furtherance of the objects of the Act and to "promote public safety, health, convenience and public welfare". Section 12(z) is reproduced hereinbelow:

"12. Discretionary functions of the Council – Subject to any general or special order of the Government, or the Central Government from time to time, the Council may provide either wholly or in part for all or any of the following matters, namely:-

(z) any measure not hereinbefore specifically mentioned, likely to promote public safety, health, convenience or general welfare."

14. The Smart City Project is an endeavour by the Government of India to create cities with enhanced communication and digital capabilities to accommodate urban development, inter alia. Any activities undertaken under this Project is not only with the intention of improving public convenience, but also put India on the global map. Thus, on a perusal of all objectives enumerated in the Memorandum of Association ("MOU") of the prospective SPV, it is extremely clear that all actions and activities endeavoured to be undertaken will fall under the definition of "public safety, health convenience or general welfare" as provided for under Section 12(z) of the NDMC Act, 1994. For the sake of convenience, the objectives from the aforementioned MOU are enumerated below for ease of reference:

"1. To plan, design, develop, implement, manage, maintain, operate, and monitor the Smart City Development projects for the area under "New Delhi Municipal Council (NDMC)" in accordance with Smart City Mission of the Government of India and State Government.

"..."

15. While there may be no direct provision in the NDMC Act 1994 granting specific powers the Council, I opine that Section 12(z) is wide enough to encompass within its ambit all activities which may ultimately lead to creation of cities where public health, convenience, safety and general welfare activities are undertaken, which is essentially the aim and object the Smart City Project endeavours to achieve.

16. At this instance, I will also like to point out that, of the other cities selected within this Project, Pune and Bhuneshwar have also incorporated SPVs towards the execution of the Project.

17. Therefore, bearing in mind the rationale of the Project as well as relevant provisions of the NDMC Act, I am of the considered opinion that there exists no embargo for the NDMC in the creation of the SPV under the Smart City Project."

- 4.6 A draft Article of Association Annexure-4 (See Pages 83 - 127) has been prepared on the basis of Model Article of Association circulated by the MoUD based on the provisions of the Companies Act, 2013. The main features of the Article of Association, *inter-alia*, are as follows:

4.6.1 Key functions and responsibilities of the proposed SPV

The key functions and responsibilities of the proposed SPV will include:

- i) Approve and sanction the projects including their technical appraisal.
- ii) Execute the Smart City Proposal with complete operational freedom.
- iii) Take measures to comply with the requirements of the MoUD/ other Ministries/ Departments of the Government of India/ State Government Rules and Regulations, local laws etc. for implementation of the Smart Cities Mission.
- iv) Mobilize resources within timelines and take measures necessary for the mobilization of resources.
- v) Approve and act upon the reports of a third party Review and Monitoring Agency.
- vi) Oversee Capacity Building activities.
- vii) Develop and benefit from inter-linkages of academic institutions and organizations.
- viii) Ensure timely completion of projects according to set timelines.
- ix) Undertake review of activities of the Mission including budget, implementation of projects, preparation of Smart City Proposal (SCP) and co-ordination with other missions/schemes and activities of various Ministries/Departments.
- x) Monitor and review quality control related matters and act upon issues arising thereof.
- xi) Incorporation of joint ventures and subsidiaries and enter into Public Private Partnerships including with foreign entities as may be required for the implementation of the Smart Cities Mission.
- xii) Enter into contracts, partnerships and service delivery arrangements with Indian as well as foreign entity, as may be required for the implementation of the Smart Cities Mission.
- xiii) Collect user charges as authorized by the NDMC.
- xiv) Collect taxes, surcharges etc. as authorized by the NDMC.
- xv) Own, dispose and transfer assets.
- xvi) Any other functions as delegated by the Central Government/ State Government/NDMC within the scope of Smart Cities Mission.

4.6.2 Provisions for exercise of powers by the proposed SPV as delegated by the Council

The proposed SPV will exercise the following powers delegated by the NDMC subject to extent and as provided under the New Delhi Municipal Council Act, 1994:

- (i) The rights and obligations of the municipal body with respect to the smart city projects;
- (ii) Decision making powers available to the NDMC under the NDMC Act, 1994 / Government Rules by the Chief Executive Officer;
- (iii) Approval or decision making powers available to the NDMC by the Board of Directors of the proposed SPV.

4.6.3 Authorized Share Capital and minimum Paid Up Capital for the proposed SPV

NDMC shall always be in majority in total equity of the proposed SPV. The authorized Share Capital of the proposed SPV shall be Rs. Five Hundred crore (Rs.500.0 crore) as stated in clause 5 of the Memorandum of Association of the proposed SPV including amendments thereto if any. The minimum paid up capital of the proposed SPV shall be Rs. Two Hundred and Fifty crores (Rs.250 crore). The authorized Share Capital may be divided into several classes attaching

thereto any preferential rights, privileges or conditions, which could be altered, reclassified or increased from time to time, in accordance with the terms mentioned in the Article of Association and legislative provisions for the time being in force in this behalf.

4.6.4 Raising and utilization of funds by the proposed SPV

The proposed SPV may raise additional finance to the extent permitted by law including but not limited to by means of (a) loans and subsidies, (b) by way of deposits; (c) User Charges (d) Grants by Central Government, State Government, Central/State Government Undertaking, NDMC (e) Grants by any other agency, (f) debentures and bonds, (g) Taxes and/or Surcharges as authorised by the NDMC. Such additional funds may be utilized by the proposed SPV for such purpose that the Board of Directors deems fit. Funds given by Central Government to the proposed SPV will be in the shape of tied grants. These funds given by the Central Government as "Tied Grants" will be kept in a separate Grant Fund. The Grant Fund will be utilized only for the purposes given in the Mission Statement and Guidelines of the Smart Cities Mission of the MoUD and subject to conditions laid down by the Central Government in this regard. The NDMC may request MoUD to permit utilization of Government of India grants as NDMC's equity contribution in the proposed SPV subject to the following conditions:

- (a) NDMC has made adequate contribution to the SPV out of its own funds.
- (b) The approval will be limited to the initial GOI grants that have already been released. Since future installments of Smart City grants are subject to performance and are not guaranteed, the NDMC will not be permitted to earmark future installments to meet its equity contribution.
- (c) The GOI contribution to Smart Cities is strictly in the form of grant and the NDMC is exercising its own discretion in utilizing these funds as its equity contribution to the proposed SPV.

4.6.5 Increase, Reduction and Alteration of Capital

The proposed SPV in General Meeting may, from time to time by an Ordinary Resolution alter the conditions of its Memorandum of Association as follows that is to say, it may increase its share capital by such amount as it thinks expedient by issuing new shares to private and other investors. Even in case private and other equity shareholders are inducted into the proposed SPV, the NDMC will always maintain a majority equity shareholding in the proposed SPV.

4.6.6 Constitution of the Board of Directors for proposed SPV

4.6.6.1 Number of Director

- i) The Board of Directors will comprise of minimum 3 (Three) Directors and maximum 15 (Fifteen) as per provisions of Section 149 of Companies Act, 2013 with at least 1/3 (One – Third) of the Board, being Independent Directors. Following persons shall act as Directors of the Company:
 - a) Chairperson, New Delhi Municipal Council (NDMC) ...Chairperson
 - b) Two members from amongst the officers of the Central Government or its undertakings, to be nominated by the Central Government ...Director
 - c) Two members from amongst the officers of the Government of NCT of Delhi or its undertakings, to be nominated by the Central Government ...Director
 - d) Secretary, New Delhi Municipal Council ...Director

- e) Financial Advisor, New Delhi Municipal Council ...Director
- f) Chief Executive Officer of the Company ...Director
- g) Independent Directors (five nos. of which atleast one will be women) ...Director

[Note:- The Board composition/board committee/appointment of directors has to be in compliance with Companies Act 2013 read with Companies (Appointment and Qualification of Directors) Rules 2014, depending on its paid up capital and other criteria prescribed]

ii) In addition to the Chief Executive Officer (CEO) and Functional Directors, Additional Directors may be taken on the Board if considered necessary.

iii) In case the NDMC modifies the composition of directors of the company by issuing new or fresh order(s), the composition of the Board shall be amended accordingly subject to retaining the representation of the Central Government and proportionate representation of Independent Directors.

iv) Except the Chairperson, one third of the director shall retire every year in accordance to the provisions of section 152 of the Act.

4.6.6.2 First Directors:

1. Shri Naresh Kumar, Chairperson, New Delhi Municipal Council
2. Ms. Chanchal Yadav, Secretary, New Delhi Municipal Council
3. Ms. Geetali Tare, Financial Advisor, New Delhi Municipal Council

4.6.6.3 Company may increase or reduce the number of Directors.

4.6.7 Appointment of Representatives of Central Government as Directors and Independent Directors

a) Representatives of the Central Government:

- (i) Notwithstanding anything to the contrary contained in these Articles, the representative of the Central Government will be a Director in the Board of the Company and nominated by the Central Government. He will hold office for the period as decided by the Central Government subject to the provisions of the Act.
- (ii) The Board of Directors of the Company shall have no power to remove from office the Representative of the Central Government. Representative of the Central Government shall not be required to hold any share qualification in the Company. Also Representative of the Central Government shall not be liable to retirement by rotation of Directors. Subject as aforesaid, the Representative of the Central Government shall be entitled to the same rights and privileges and be subject to the same obligations as any other Director of the Company.
- (iii) The Representative of the Central Government so appointed shall hold the said office for the period as decided by the Central Government.
- (iv) The Representative of the Central Government appointed under this Article shall be entitled to receive all notices of and attend all General Meetings, Board Meetings and all the Meetings of the Committee of which the Representative of Central Government is member as also the minutes of such meetings.

- (v) The Company shall pay the Representative of the Central Government sitting fees and expenses which the other Directors of the Company are entitled, subject to provisions of Schedule V of the Act.
- (vi) Provided that if any such Representative of the Central Government is an officer of the Government, the sitting fees, in relation to such Representative of the Central shall also accrue to the Central Government and the same shall accordingly be paid by the Company directly to the Central Government.
- (vii) Provided also that in the event of the Representative of the Central Government being appointed as whole-time Director such Representative of the Central Government shall exercise such powers and duties as are usually exercised or available to a whole-time Director, in the management of the affairs of the Company. Such Representative of the Central Government shall be entitled to receive such remuneration, fees, commissions and monies as approved by the Board of Directors and in compliance with the approved policy of the Government regarding receipt of remuneration, fees, commission or monies by its representatives in force at the relevant time.

b) Independent Directors:

- (i) The Company and shareholders will comply with the provision of the Act with respect to induction of independent Directors. The Independent Directors may be selected from the data bank maintained by Ministry of Corporate Affairs. Preference will be given to those who have served as Independent Directors fulfilling conditions of the SEBI (Listing obligations and disclosure requirements), Regulations, 2015 or any other notified website.
- (ii) The Independent Director may be appointed for a term of up to five consecutive years on the Board. However, in case of his reappointment for further five years, then special resolution passed in general meeting and disclosure of such appointment is made in Board's report is required.
- (iii) The Independent Director shall not be entitled to any stock options. He may receive remuneration by way of sitting fee, reimbursement of expenses incurred for participation in the Board and other committee meetings and profit related commissions as may be approved by the members as provided under Section 197 (5) of the Act.
- (iv) An independent director shall be held liable only in respect of such acts of omission or commission by company which had occurred with knowledge, attributable through Board processes and with his consent or connivance or where he had not acted diligently.
- (v) The Independent Directors shall abide by code of conduct as per Schedule IV of the Act.

4.6.8 Quorum

No business shall be transacted at any Board meeting unless a quorum is present at the beginning of and throughout the meeting. The quorum for a meeting of the Board shall be one third of its total strength (any fraction contained in that one-third being rounded off as one) or two Directors, whichever is higher. In case of failure to hold a meeting on account of insufficient quorum, the meeting would stand adjourned till the same day at the same time the following week or some other later date and notice thereof would be given to all the Director. If at such adjourned meeting, a quorum is not present within one-half an hour of the time appointed for the meeting, then the Directors present not being less than two shall constitute quorum and the business at such meeting shall be confined to the remaining items as specified in the agenda for such meeting and no general

matter other than specific matters set out in the agenda may be decided at such meeting.

All decision to be taken by the Board shall be duly and validly taken by resolution adopted by the affirmative vote of a majority of the Directors present at the meeting, whether by show of hands or by concurrence to a resolution in any other form.

4.6.9 Appointment, tenure and responsibilities of the Chief Executive Officer (CEO) of the proposed SPV

The CEO (Chief Executive Officer) is the executive head of the proposed SPV subject to the supervision and control of the Board of Directors of the proposed SPV. The CEO is the link between the Board of Directors and Management and also acts as the chief communicator on behalf of the proposed SPV to shareholders, employees, Government authorities, other stakeholders and the public. The CEO will be appointed with the approval of the MoUD / MHA. The CEO will be appointed for a fixed term of 3 years and can be removed from his position only with prior approval of the MoUD / MHA. Broadly duties and responsibilities of the CEO may include the following:

- (a) Supervising, overseeing and managing day-to-day operations of the proposed SPV subject to the supervision and control of the Board of Directors;
- (b) Help Board of Directors in development of the proposed SPV's Strategy; Oversee the implementation of the proposed SPV's long and short term plans in accordance with its strategy;
- (c) Entering into contracts or arrangements for and on behalf of the proposed SPV in all matters within the ordinary course of the proposed SPV's business;
- (d) To formulate and submit to the Board of Directors for approval, a Human Resource Policy that will lay down procedures for creation of staff positions, qualifications of staff, recruitment procedures, compensation and termination procedures and have the authority to implement the approved arrangement.
- (e) Ensure that Directors are properly informed and that adequate information is provided to the Board to facilitate appropriate decision making;
- (f) Supervising the work of all employees and managers of the proposed SPV and the determination of their duties, responsibilities and authority;
- (g) In consultation with the Chairman, prepare Board meeting agendas; fix schedules of meeting in consultation with the Chairman;
- (h) Assist Board of Directors in preparation of the Budget and ensure that expenditures of the proposed SPV are within the authorized budget of the proposed SPV;
- (i) To ensure that all public disclosures as mandated by the Law are made with full integrity;
- (j) Ensure that effective internal controls and management information systems are in place;
- (k) Ensure compliance to all statutory provisions of various Acts, Rules and Regulations in force at the relevant time.
- (l) Any other work assigned by the Board relating to affairs of the proposed SPV.

4.6.10 Dividends

- i. The Shareholder shall procure that the Board in making any decision in relation to the declaration of dividends and the appropriation of surplus shall consider the following factors:
 - (i) the maintenance of prudent and proper reserves including allowance for future working capital, provisions for tax, and other restrictions required by local law;

- (ii) the due and prudent provisions for all actual and carried forward losses of the Company;
 - (iii) the due and prudent provision for the payment of all indebtedness, borrowings and loans owed by the Company to the Shareholders or to banks and financial institutions as unsecured creditors; and
 - (iv) any other factors which the Shareholders may agree to be taken into account.
- ii. The Shareholders shall procure any dividend recommended by the Board to be approved by the Shareholders and distributed by the Company not later than 30 (thirty) days of such approval at a General Meeting. The right to dividends will vest on the date of the General Meeting approving such dividends and dividends will be paid on each Share, which was registered with the Company on the record date. The record date for determining entitlement to any such dividend shall be a date 30 days prior to the date of the General Meeting to recommend such dividend.

4.6.11 Specific enabling provision for

- i) Audit of accounts of the proposed SPV in such manner as may be decided by the MoUD;
- ii) making exemption available to Government Companies under Companies Act, 2013 to have overriding effect over the Articles of Association of the proposed SPV;
- iii) Grant to be from the Central Government or the State Government or the Central Government Undertaking or the State Government Undertaking or New Delhi Municipal Council or any other agency to the proposed SPV;

4.6.12 Other provisions as provided in the Model Article of Association by the MoUD.

4.7 A draft Memorandum of Association **Annexure 5 (see page 128 - 133)** has also been prepared. The main features of the Memorandum of Association, *inter-alia*, are as follows:

4.7.1 Object of the proposed SPV to be pursued by it on its incorporation

- (i) To plan, design, develop, implement, manage, maintain, operate, and monitor the Smart City Development projects for the city of "New Delhi Municipal Council (NDMC)" in accordance with Smart City Mission of the Government of India and Government of NCT of Delhi.
- (ii) To carry on in India or abroad the business of planning, developing, constructing, establishing, commissioning, consulting, setting up, operating, maintaining, altering, pulling down and restoring structures, levying and collecting user charges, cess, fees, taxes, selling floor area ratio (FAR) / floor space index (FSI) and development rights etc. as delegated powers of NDMC, either alone or jointly with any other companies or persons, joint ventures, public private partnerships, Government, firms, associations authorities, bodies, trusts, agencies, societies or any other person or persons engaged in or in connection with either directly or indirectly and whether wholly or in part, for the purposes of retrofit, infrastructure development work or providing infrastructure facility or engaged in infrastructure activities, which shall include work or facility or providing of services in relation to or in connection with urban planning, building permission, development permission, development control regulations, land use planning, setting up, development, construction, operation, maintenance, modernization, expansion and improvement of any infrastructure project or facility including but not limited to roads, knowledge parks, information technology parks, smart information and communication technology solutions, e-governance, citizen services, urban mobility, transit oriented development, highways, railways, mass public transit, non-motorized transport, multi-level car

parkings, affordable housing, real estate development, waterways, transport systems, sustainable environment, solar energy, energy efficiency, street lighting, public wi-fi, bridges, tele-communication and other communication systems, systems for generation or storage or transmission or distribution of power, sewerage, water supply, sanitation, open spaces, green areas, employment generation, skill development centres, health, tourism, heritage and conservation, leisure and recreation activities, culture, education, gas (excluding exploration), food and agriculture infrastructure etc.

4.7.2 Authorised Share Capital of the proposed SPV

Authorised Share Capital of the proposed SPV will be Rs.5,00,00,00,000/- (Rupees Five Hundred Crores only) divided into 50,00,00,000 (Fifty Crore) Equity Shares of Rs.10/- (Rupees Ten) each.

4.7.3 Registered office of the proposed SPV will be in Delhi.

4.7.4 Liability of the members defined under section 2(55) of the Companies Act, 2013 is limited.

4.7.5 Details of persons alongwith shareholding who will the holding shares in the proposed SPV

The following seven persons will hold the share of the Company:

Name, address, description and occupation of the Subscribers	No. of shares taken
1. New Delhi Municipal Council, represented by _____ (name), Secretary, NDMC Address: _____ D.O.B.: _____ Occupation: _____	24,99,99,994 (Twenty Four Crore, Ninety Nine lakh, Ninety Nine Thousand, Nine Hundred and Ninety Four)
2. _____(name), Designation, New Delhi Municipal Council as nominee of and as trustee of NDMC Address: _____ D.O.B.: _____ Occupation: _____	1 (One)
3. _____(name), Designation, New Delhi Municipal Council as nominee of and as trustee of NDMC Address: _____ D.O.B.: _____ Occupation: _____	1 (One)
4. _____(name), Designation, New Delhi Municipal Council as nominee of and as trustee of NDMC Address: _____ D.O.B.: _____ Occupation: _____	1 (One)
5. _____(name), Designation, New Delhi Municipal Council as nominee of and as trustee of NDMC Address: _____ D.O.B.: _____ Occupation: _____	1 (One)
6. _____ (name), Designation, New Delhi Municipal Council as nominee of and as trustee of NDMC Address: _____ D.O.B.: _____ Occupation: _____	1 (One)

7. _____ (name), Designation, New Delhi Municipal Council as nominee of and as trustee of NDMC Address: _____ D.O.B.: _____ Occupation: _____	1 (One)
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The above mentioned persons at Sl. No. 2 to 7 will be selected by the Chairperson, NDMC.

4.7.6 Matters which are necessary for furtherance of the objects specified in Para 4.7.1 above

- (i) To pay out of the funds of the proposed SPV all expenses which the proposed SPV may lawfully pay with respect to the promotion, formation and registration of the proposed SPV or the issue of its capital including brokerage and commission for obtaining application for or taking, placing or underwriting or procuring the underwriting of shares, debentures or other securities of the proposed SPV and to pay for any rights or property acquired by the proposed SPV and to remunerate any person or company for services rendered or to be rendered in placing of or assisting to place or guaranteeing the placing of shares in the proposed SPV's capital or any debentures, debenture-stock, or other securities of the proposed SPV or in or about the formation or promotion of the proposed SPV, or the acquisition of property by the proposed SPV or the conduct of its business, or otherwise for any of the purposes of the proposed SPV, whether by cash payment, or by the allotment of shares, debentures, or other securities of the proposed SPV, credited as paid up in full or part or otherwise.
- (ii) To amalgamate, enter into partnership or into any arrangement for sharing profits or losses, union of interest, co-operation, joint venture or reciprocal concession, or with any person or company carrying on or engaged in or about to carry on or engage in, any business or transaction which the proposed SPV is authorised to carry on or engage in, or which can be carried on in conjunction therewith or which is capable of being conducted so as directly or indirectly to benefit the proposed SPV and to give or accept by way of consideration for any of the acts or things aforesaid or property acquired, any share, debentures, debenture-stock, or securities that may be agreed upon, and to hold and retain, or to sell, mortgage and deal with any shares, debentures, debentures-stock or securities so received.
- (iii) To appoint directors or managers of any subsidiary company or other company in which the proposed SPV is or may be interested and to take part in the management, supervision and control of the business or operation of any Company or undertaking valuation, including mergers and acquisition.
- (iv) To establish, provide, maintain, conduct research into all problems relating to investment, and business management, distribution, marketing, selling and to collect prepare and distribute information and statistics generally to act as market research consultants and carry out publications and hold seminars, training programs, surveys.
- (v) To acquire and take over any going concern's business dealing in the products of the company & their intermediates and such other products at any place or places, as carried on by them as a partnership firm, proprietary concern, with all or any of the assets and liabilities of the said concern including imports and other quota, rights, licenses, permits, telephone and all other properties movable immovable and all trades connected thereto, to adopt, become parties to and to enter into such agreements or other deeds, instruments and writing as may be deemed proper and advisable and to agree to make such modification and to give or acquire know-how, technical information, specification data, methods of analysis to or from any Indian/ Foreign, person/s, Firm/s, Company/ Companies in any part of the world and to establish business branches, offices, research centers, import/ export

- houses and/or to acquire, purchase, hire, manage control superintend either solely or jointly or in collaboration with any Indian and/ or Foreign person/s, Firm/s, Industry/ies, Company/ companies business shop, factory in any part of the world for the purpose of carrying out the objects of the proposed SPV.
- (vi) To take all the necessary or proper steps in any legislature (centre or state) or with the authorities, Government, local or municipal bodies or otherwise of any place in which the proposed SPV may have interests and to carry on any negotiations or operations for the purpose of directly carrying out the objects of the proposed SPV or effecting any modifications in the construction of the proposed SPV or furthering interests of its members and to oppose any steps taken by any person, proposed SPV which may be considered directly or indirectly to prejudice to all, to be prejudicial to the interests of the proposed SPV or its members. But the proposed SPV must not act as a trade union.
 - (vii) To give directly and indirectly any loan to any person or other body corporates, to give any guarantee or provide security in connection with a loan to any other body corporate or person and to acquire by way of subscription, purchase or otherwise the securities of any other body Corporate in terms of the provisions of the Companies Act.
 - (viii) To carry on activities through branches or through agency or any subsidiary company or companies and to enter into any arrangements for taking the profits and bearing the losses of any business or branch or to make any other arrangement which may seem desirable under reference including power to close any such business or activity at any time either temporarily or permanently.
 - (ix) To buy, sell, transfer, obtain, lease, mortgage, grant licenses, easements and other rights in any manner and also deal with or dispose of the undertaking, property, business, assets, rights and effects of the proposed SPV or any part thereof, for such consideration as the proposed SPV may think fit.
 - (x) To let on lease or on hire the whole or any part of the real and/or intangible property of the proposed SPV on such terms as the proposed SPV shall determine. To enter into such arrangements as the proposed SPV may think proper with any public authority for buildings, chawls and tenements either for the employees of the proposed SPV or other and upon such terms as the proposed SPV may think proper.
 - (xi) To make donations to such persons or institutions and in such cases and either of cash or any other assets as may be though directly or indirectly conducive to any of the proposed SPV's objects or otherwise expedient and in particular to remunerate any person or corporation introducing business to this proposed SPV, and also to subscribe, contribute or otherwise assist or guarantee money for charitable, scientific, religious or benevolent, national, public, cultural, educational or rural upliftment.
 - (xii) To establish and maintain or procure the establishment and maintenance of any contributory or non-contributory pension or super-annuation funds for the benefit of, and give or procure the giving of donations, gratuities, pensions allowances or emoluments to any persons who are or were at any time in the employment or service of the proposed SPV, or of any company which is a subsidiary of the proposed SPV, or of its predecessors in business or of persons having dealings with the proposed SPV or with any such subsidiary company, or who are or were at any time Directors or officers of the proposed SPV or of any such other company as aforesaid and the wives, widows, families, dependants and connections of any such persons, and to also establish and subscribe to any institutions, associations, clubs or funds calculated to be for the benefit of or to advance the interests and well being of the proposed SPV or of any such other company as aforesaid, and make payments to or towards the insurance of any such persons as aforesaid and do any of the matters aforesaid either alone or in conjunction with any such other company as aforesaid.
 - (xiii) To invest and deal with the surplus moneys for the proposed SPV in such manner as may from time to time be determined.

- (xiv) To commence the business of broker, sub-broker, market maker, arbitrager, hedger, investor and trading and dealing in all types of shares, bonds, debentures and all other types of securities of any Company or Corporation including all types of Agri and Non-agri commodities, bullions, metals, rubbers, tyres, petroleum and energy products and such other units as are permitted for trade by any recognized stock and/or commodity exchange in India whether for cash, spot or with futures and options with or without delivery.
- (xv) To open current, Demat or other accounts with any banks or merchants, to pay money into and draw money from such accounts and to draw, make, accept, endorse, discount, execute and issue bills of exchange, promissory notes, bills of lading, warrants, debentures and other negotiable or transferable instruments or securities.
- (xvi) To undertake and execute any trusts and also to undertake and execute the offices of Executor of the will of any deceased persons, Administrators of any deceased persons, trustee for debenture-holders or debenture-stock holders of any company and of receiver, Treasurer, to appoint trustees to hold securities on behalf and to protect the interests of the proposed SPV.
- (xvii) To enter into any arrangements with any Governments or authorities or companies, firms, banks, insurers that may seem conducive to the attainment of the proposed SPV's objects or any of them, and to obtain from any such Governments or authority, any rights, privileges, licenses and concessions, which the company may consider necessary or desirable to obtain, and to carry out, exercise, use of comply with any such arrangements, rights, privileges or concessions.
- (xviii) To insure the whole or any part of the property of the proposed SPV either fully or partially to protect and indemnify the proposed SPV from liability or loss in any respect either fully or partially, and also to insure, and to protect and indemnify any part or portion thereof either on mutual principal or otherwise.
- (xix) To exercise all or any of its corporate powers, rights and privileges and to conduct its business in all or any of its branches in the Union of India and in an or all states, territories, possessions, colonies and dependencies thereof and in any or all foreign countries and for this purpose to have and maintain and to discontinue such number of offices and agencies therein as may be convenient.
- (xx) To appear before any court and appoint legal practitioners, experts and to sue, defend, compound or refer to arbitration any case, dispute of the proposed SPV and to appoint legal and technical advisers, as directors may think fit and to appoint bankers, auditors, and such other persons as employees, officers or agents or advisers of the proposed SPV as the Directors may deem and think fit, and to pay out of the funds of the proposed SPV the necessary expenses of the same.
- (xxi) To collect, acquire, preserve, tabulate, distribute, disseminate and publish information and statistics connected with any trade or industry throughout all markets or territories with or without observations, comments, notes or explanation thereon.
- (xxii) To arrange Seminars, Workshops, Guest Lectures in India and abroad for training and capacity building activities in the fields of Smart City, Urban Management, Smart Solutions, Management, Information and Technology, Engineering, Scientific, Commercial, Financial, Legal, Secretarial and other nature.
- (xxiii) To remunerate any person or company for services rendered or to be rendered in placing or assisting to place or guaranteeing the placing of any of the shares in the company's capital, or any debentures, debenture stock or other securities of the proposed SPV or in or about the formation or promotion of the company or the conduct of its business.
- (xxiv) To enter into an agreement with different persons, firms, body corporate or companies, regarding the payment of salary or managerial, executive and

other staff by such person, firm, body corporate or companies when their services are given at their disposal.

- (xxv) To undertake and execute any trust, the undertakings of which may seem to the proposed SPV desirable and either gratuitously or otherwise.
- (xxvi) To acquire and undertake the whole or any part of the goodwill, business, concern undertaking, property rights, assets and liabilities of any person, firm, association, society, Company or corporation carrying on any business which the proposed SPV is authorised to carry on or possessed of property suitable for the purpose of this proposed SPV or by cash or otherwise, or partly in one way and partly in another or other, and to conduct, expand and develop or wind up and liquidate such business and to purchase and take steps for the acquisition of existing and new licenses in connection with the main business of the Company.
- (xxvii) To enter into any contracts of guarantee or indemnity, in respect of performance or non-performance of any contract or engagement to which any person, firm, body corporate, company or corporation is party, whether the proposed SPV is not a party thereon and to subsidise or otherwise assist any person, firm, body corporate, corporation or company, and to guarantee the payment of interest and dividends and repayment of capital in respect of the shares or stock of any corporation or company.
- (xxviii) To establish, promote, subsidise, and/or otherwise assist any company or companies having similar objects, association or other concern for the purpose of setting up any industry or running any industrial undertaking, acquiring any property for furthering any of the objects of this proposed SPV.
- (xxix) To draw, make, accept, endorse, discount, execute, issue, and negotiate bills of exchange, promissory notes, bills of lading, warrants, debentures and other negotiable or transferable instruments.
- (xxx) To hold all or any of the things and the matters aforesaid in any part of the world and act as principles, agents, contractors, trustees or otherwise, and by or through trustees, agents or otherwise and either along or in conjunction with other.
- (xxxi) To apply for, purchase or otherwise acquire and prolong and renew in any part of the world any patents, patent rights, brevets of inventions, trade marks, designs, licenses, protections, concessions and all conferring any exclusive or non-exclusive or limited right to their use of information to any invention process or privileges which may seem capable of being used for any of the purpose or privileges of the proposed SPV and to use, exercise, develop or grant licenses or privileges in respect of the property, rights and information so acquired and to carry on any business in any way connected therewith.
- (xxxii) To carry out search, research, scientific experiments, investigations, testing and works so as to develop products or processes or improve the quality or reduce cost and/or to pay, contribute or do all such acts and things for the purpose of securing any process, patent or invention which the proposed SPV may acquire or propose to acquire or deal with.
- (xxxiii) Subject to the provisions of the Companies Act, 2013 to lend money to such persons and on such terms and conditions as may seem expedient with or without security and in particular to customers and others having dealing dealings with the proposed SPV and to give any guarantee or indemnity as may seem expedient. But the proposed SPV will not do banking business as defined under the Banking Regulations Act, 1949.
- (xxxiv) Subject to the provisions of Section 73 and other relevant sections of the Companies Act 2013 and rules made there under and Directives of Reserve Bank of India to receive money on deposit with or without allowances of interest, to borrow or raise money with or without security and/or secure the payment of money by mortgage or by the issue of bond mortgages, hypothecation, lien or any other security founded or based or charged upon all or any of the property or rights of the company or in such other manner as the proposed SPV shall think fit and for the purposes aforesaid to charge all

or any of the proposed SPV's property or assets movable or immovable liquid or otherwise present secure and securities of the proposed SPV by a trust deed or other assurance and redeem, purchase or pay off any such security, provided that the proposed SPV shall not do banking business as defined in the Banking Regulations Act, 1949.

- (xxxv) Subject to the provisions of the Companies Act, 2013 to distribute as bonus shares amongst the members or reserve or otherwise apply as the proposed SPV may from time to time determine any money received in payment of dividends accrued on forfeited shares and money released from the sale by the company of the forfeited shares and money received in payment of dividends accrued on forfeited shares and many released from the sale by the proposed SPV of the forfeited shares or any money received by way of premium on shares or debentures issued at a premium by the proposed SPV to invest any surplus money of the company in such investments (including shares of stock on the company) as may be thought proper and to hold, sell or otherwise deal with such investment.
- (xxxvi) Subject of the provisions of Section 182 of the Companies Act, 2013 to subscribe or otherwise to assist or to guarantee money to charitable, benevolent, religious, scientific national, public or other institution or objects which shall have any moral or other claims to support or aid by the company either by reasons of locality of operations or of public general utility.

5. Financial implication of the project:

The SPV (a public limited company) will be 100% /wholly owned by the NDMC. The total estimated financial implication for establishment of the SPV is around Rs.500 crores, out of which implication of matching amount equal to the amount to be received from the Ministry of Urban Development, Government of India in the financial year 2016-17 to the proposed SPV in terms of the Smart Cities Missions Guidelines is expected, if required.

6. Comments of Finance Department:

Finance Department comments are placed at Annexure 6 (See pages 134 – 146).

7. Comments of the Department on comments of Finance Department:

Comments of the Department on comments of Finance Department are placed at Annexure 6.

8. Legal Implication on the subject/project:

The proposed SPV need to follow the rules and regulations, including the provisions of the Company Act, 2013.

9. Details of previous Council Resolution, existing law of Parliament and Assembly on the subject:

Council's Resolution No. 24(W-01) dated 7.12.2015 and Resolution No.24(W-01) dated 15.12.2015.

10. Comments of the Law Department on the subject/project:

Law Department informed that Article of Association and Memorandum of Association appears to be correct subject to the opinion of Ld. Additional Solicitor General.

11. Comments of the Department on the comments of Law Department:

No comments.

12. Certification by the Department that all Central Vigilance Commission (CVC) guidelines have been followed while processing the case:

Not applicable.

13. Recommendation:

As the New Delhi Municipal Council (NDMC) has been selected as one of the cities for the Smart Cities Mission of the Government of India, MoUD on 28 January 2016, approval of the Council is sought for:

- (iii) establishing a SPV (a Public Limited Company) 100% /wholly owned by the NDMC under the provisions of section 12(z) of the NDMC Act,1994;
- (iv) Article of Association placed at Annexure-4 (See Page 83 - 127) for such SPV;

- (v) Memorandum of Association placed at Annexure-5 (see page 128 - 33) for such SPV;
- (vi) Authorizing Chairperson, NDMC to select persons as nominee of and as trustee for NDMC mentioned at Sl. No. 2 to 7 of Para 4.7.5 above;
- (vii) Appointing a Chartered Accountant/ Consultant Firm on nomination basis by the Chairperson to assist NDMC in establishment, including registration, of SPV and to handle matters associated thereof, considering the urgency of the matter;
- (viii) Transfer of funds of Rs.500 crore as proposed in Para 5 above from NDMC to the proposed SPV, as and when required; and
- (ix) NDMC requesting MoUD to allocate the funds to the proposed SPV in terms of the Smart Cities Missions Guidelines.

14. Draft resolution:

The Council resolved to accord the permission for:

- (i) establishing a SPV (a Public Limited Company) 100% /wholly owned by the NDMC under the provisions of section 12(z) of the NDMC Act,1994;
- (ii) Article of Association placed at Annexure-4 for such SPV;
- (iii) Memorandum of Association placed at Annexure-5 for such SPV;
- (iv) Authorizing Chairperson, NDMC to select persons as nominee of and as trustee for NDMC mentioned at Sl. No. 2 to 7 of Para 4.7.5 above;
- (v) Appointing a Chartered Accountant/ Consultant Firm on nomination basis by the Chairperson to assist NDMC in establishment, including registration, of SPV and to handle matters associated thereof, considering the urgency of the matter;
- (vi) Transfer of funds of Rs.500 crore as proposed in Para 5 above from NDMC to the proposed SPV, as and when required; and
- (vii) NDMC requesting MoUD to allocate the funds to the proposed SPV in terms of the Smart Cities Missions Guidelines.

It is further resolved that the Department may initiate immediate action in anticipation of confirmation of the minutes by the Council.

COUNCIL'S DECISION

Resolved by the Council to accord permission for:

- (i) Establishing a Special Purpose Vehicle (SPV), a Public Limited Company) 100% /wholly owned by the NDMC under the provisions of section 12(z) of the NDMC Act,1994;
- (ii) Article of Association for such SPV as annexed to the agenda item;
- (iii) Memorandum of Association for such SPV as annexed to the agenda item;
- (iv) Authorizing Chairperson, NDMC to select persons as nominee and as trustee for NDMC mentioned at Sl. No. 2 to 7 of Para 4.7.5 of the agenda item;
- (v) Appointing a Chartered Accountant/ Consultant Firm on nomination basis by the Chairperson to assist NDMC in establishment, including registration, of SPV and to handle matters associated thereof, considering the urgency of the matter;
- (vi) Transfer of funds of Rs.500 crore as proposed in Para 5 of the agenda item from NDMC to the proposed SPV, as and when required; and
- (vii) Request Ministry of Urban Development, Government of India to allocate the funds to the proposed SPV in terms of the Smart Cities Missions Guidelines.

It was further resolved by the Council that the department may initiate further necessary action in anticipation of confirmation of the minutes of the Council.