

GUJARAT INFRASTRUCTURE DEVELOPMENT ACT, 1999.

Extra No. 13 REGISTERED NO. G/GNW2 -VOL XL Gujarat (Snuernmert EXTRAORDINARY PUBLISHED BY AUTHORITY TUESDAY, OCTOBER 5, 1999/ASVINA 13, 1921 Separate paging is given to this part in order that it may be filed as a Separate Compilation. PART- IV (6a;ette Acts of the Gujarat LegislatufT and Ordinances promulgated and Regulations made by the Governor. The following Act ofthe Gujarat Legislature, having been assented to by the Governor on the 2ndOctober, 1999 is hereby published for general information. KUM. H.K.JHAVERI Secretary to the Government ofGujarat , Legislative and Parliamentary Affairs Department. GUJARAT ACT NO. 11 OF 1999. (First published, after having received the assent of the Governor in the Gujarat. Government Gazette, on the 5th October, 1999). AN ACT to provide for a framework for participation by persons other than the State Government and Government agencies in financing, construction, inaintenance and operation of infrastructure projects and for that purpose to establish a Board and to provide for the matters connected therewith- It is hereby enacted in the Fiftieth Year ofthe Republic of India, as follows :- 1

CHAPTER I PRELIMINARY Short title, ex- (1) This Act may be called Vie Gujarat Infrastructure Development tent and com- Act, 1999. (2) It extends to the whole ofthe State of Gujarat. (3) It shall be deemed to haQe come into force on the 28tK April, 1999. TV-Ex. 13-1 13-1 13,2 GUJARAT GOVERNMENT GAZETTE, EX. 5-10-1999 In åis AR unlæs the canext [PART IV (a) 'Boar&' amas Gujarat Elfrastructure Bczrd establislrd 17; (b) a contract Of æ *fid in 11 a and State Goverunænt, a Governmat a—cy . Goverxzzmt relating to a prcÄ (c) a prsm wiff whom is iHO by State a apcy or a Goverunmt (d) a in which cash is or frtrn caressial agrænt, whiå cash is wiådrawn in such muna as •Governrnart acorporatim or a or by the Governmmnt- or auü.ority by or unda ary law and includes a authoriO-, C) "infrastructure" åilitiå savices prov;u by a (gi local auünriw" nÄns a lmmicipal corporatm *layat, municipal council, aræ committæ, district panchayat, taluka panchayat, village panchayat or such odzr (h) "manber " mans a number of tlz Bærd including Chairmaw Vice- Chairman Manber - screüry, (i) by rulß nzde fris C) "pr*ct" IIEans a project in Schüle I; (k) "reguiati'ns" r%ulaticu Ina& uner 38; (l) "rules" nuns rules made under Ectim 31; (m) "salior loan" mäns a in of which a claim asSÄS is prior to the claim on æ assets of and which is as such in agrænrm providing (n) Government agency" mans an agency consisüng of tie State (o) "State Government guarantee" means a guarantee givat by the State Governmzm to a provisims of Gujarat Stae G.j. Ag 1963; or 1963. (p) "subordinate loan" a in of a claim on assets is subsequen to claüm in is as ag-rÄÄü providil* (g) "subsidy*" rrmns financial assistEe in cash or kind providai by State a Governnnxt or a qecifid Governnnzt apry; - (r) "user chap" nuns armnt 11. PARI IVI GOJAIV,T GOVERNMENT GAZETTE, EX-, 5-10-1999 CHAPTER -INFRASTRUCTURE PROJECTS 3. Any m.y pagicipate in financing, constructiÖL maihteEancé and operation of a 4. (l) (a) A person rmay enter into a concession agreanent of the nature specified in Schedule wiff-the Staie Government: -a 'Government agency or a Specified Goverlimart agacy. (b) The såane for a concession shall be such-as rmy be prescnhd (2) Where the Board, having regard to nature of a pr*gt, is satisfied ülat it is so to do, it may permit combination of two or more agreements of the nature specified in Schedule 11 into agreement. (3) No cmcession agrænt shall provide Êr traxÊr of a project by a developer to the State Government, a Government agacy or a specified Government agency later than thirtpfive years from the date of aye-e.tnent_ (4) (a) The State by notification ere Oficial Gazette. add to Schedule 11 any other namre of and thereupon die nature of agreement so added shall be dæmed to be a nature _of agreeentnt specified in Schedule 11 for the purpos— Of this Act. 13-3 Particip in p ro». Conc—ieü 0) Every nmificatiai ur&r clause (a) laid before the State Legislature as sXm as be aner it is issud 5. (I)A by State Governnult, a Governrnent apcy or a Specified L agency mr participation by a other than die State Government, a by Government agency or a specified Government agency in financing, construction, maimerun:e and of the project, the cost of which such amount as may be prescnb4 be submitted to Board along-with proposed concession agræment thereto fir its consideration and amounts Of cost nuy be prBcribd for diffrå nature Of prejects. (2) The Bczrd shall consider prepcsal uld tlr proposd arEision to it under (l) or sub-section (l) of section IO and azy either or witbmxt mdificatiöns or reconrnzi, Or raurn pro—I and for ofæe Stde GO'ermmt, Governnzt Or, as nzy be, tlz GovernilÄlt Stale Gowramalt, a Govetnnrnt agar*' or a any provi& to a assistance in æ fflfollowing rmely.— (a) participation quity Ofur

project not excise—nine per cent. of the equity, or) exceeding cent. of the cost of the project; (c) senior or subordinated (d) guarantee by the State Government, a Government agency or a specified Government agency in respect of liability of a Government agency arising out of a commission (e) saving and of account; (D) confirmation of a right to develop (g) in which, by State Government in form of from payment or payment of or fees levied by State law, or (O) in any other manner as fit 7. No concession agreement undertaking a project shall be entered into with any unless in 8 and 9 as the any 8 IO has allowed Government Goyamat 13-4 of by comparison GUJARAT GOVERNMENT GAZETTE EX. 5-10-1999 IPAXr Iv 8. (1) A concession agreement for a project may be entered into with a winner through a bidding provided in section 9 or by notification in (2) The matters relating to contract bidding as may be provided 9. (1) On advice of (2) of section 5, the State Government, the Government agency, or, as the case may be, the agency selected by the public bidding in manner (a) A public partner in undertaking project— (i) once in a week for two consecutive weeks in at least three two and a half months in circulation in form in which • • • • • (ii) by any other means of communication. (i) -Any to participate public to of a public public shall provide Information. With regard to his legal, technical, financial capacity to undertake the said project in such along with such or, as may be, a way. (ii) The case may be; agency shall examine suitably by person and sub-clause (i) & Cide suefi person fulfills the criteria for -as laid down by the State Government agency or, as the case may be, (iii) A person who fulfills the criteria as laid down under sub-clause (b) (i) Where after person who is a consortium in under clause (b) but before such person enters into a concession agreement Government, the Government agency or, the case may be, the Government Constituent of the consortium disassociates such consortium, the State Government, the Government agency or, as the case may be, Government shall upon consortium include, within days, such constituent in which as specified by it in relation of the State Government, Government agency or, as the case may be, the specified Government agency, the criteria to in sub-clause (ii) Of clause (ii) Where consortium fails to comply with the terms specified in sub-clause (i) the consortium shall be the pre-qualified person. (d) pre-qualified shall be permitted to submit their proposals to undertake the project in such form (containing technical and financial aspects) as may be specified by the State Government, the Government agency or, as the case may be, the specified Government agency. (2) On receipt of the proposal from the person or the State Government, the Government agency or, as the case may be, the specified Government shall evaluate the proposals from technical aspect. (3) In the proposals are in order from the technical aspect, the State Government, Government agency or, as the case may be, the specified Government agency proposals; the financial aspect, regard to the factors below in of different nature of in Schedule PART IV GUJARAT GOVERNMENT GAZETTE. 5-10-1999 (a) In relation to the build, operate and transfer agreement and the build, operate and transfer agreement, any of the following factors shall be taken into consideration for the purpose evaluation of proposal. (i) lowest bid in of the present value of user charges, where period of concession is fixed. (ii) the highest revenue share to the State Government, the Government agency or the specified Government agency; (iii) bid in terms of the shortest concession period; (iv) the lowest present value of subsidy, where the period of concession is (b) In relation to the build and transfer agreement and the build, lease and transfer agreement, the lowest net present value of the amortization payment from the State Government, the Government agency or the specified Government agency shall be taken into consideration (c) In relation to the lease management agreement, highest present value of the lease payment to the State Government, the Government agency or the specified Government agency shall be taken into consideration. (d) In relation to the management and service agreement, the lowest present value of the management fees to be paid by the State Government, the Government agency or the specified Government agency shall be taken into consideration. (e) In relation to any other nature of agreement, the State Government, the Government agency or the specified Government agency may consider such factors as may be recommended by the Board (4) Where (a) the proposals are evaluated under sub-section (3) from the financial aspect having regard to a relevant factor specified in that and referred to in the proposals, and (b) one of the proposals so evaluated satisfies the financial aspect having regard to the relevant factor, the State Government, the Government agency or, as the case may be, the specified Government agency, may enter into a concession agreement with the person who has submitted the proposal in accordance with clause (d) Of sub-section (15) Where no proposal stands the scrutiny from the technical or financial aspect, the competitive shall stand cancelled (6) Nothing in sub-section (5) shall prohibit State Government, the Government agency or, as the case may be, the specified Government

agency from inviting persons to participate in competitive public bidding in respect of the proposal which stands cancelled under that sub-section after, if necessary, revising the same. - 10. (1) Where— (i) a proposal for participation by a person for undertaking a project and a proposed concession agreement have not been prepared by the State Government, a Government agency or a specified Government agency for being submitted to the Board under sub-section (1) of section 5, and (ii) a proposal for undertaking a project and a proposed concession agreement prepared by a person are submitted to the State Government, a Government agency or a specified Government agency; the State Government, the Government agency or, as the case may be, the specified Government agency may— (a) consider the proposal for the proposed concession agreement from all aspects (including technical and financial) and if necessary, the same. 13-6 Aarwunt 'G rged goods GUJARAT GOVERNMENT GAZETTE, EX_, 5-10-1999 [PART AV the proposal and the concession agreement; and (b) submit the proposal for the proposed concession agreement to the Board, if— (i) the cost of the project exceeds the limit prescribed under sub-section (1) of section 5, and (ii) the undertaking of the project does not require financial assistance in the form of subsidy from the State Government, the Government agency or the specified Government Agency. (2) On acceptance of the recommendation of the Board made under sub-section (2) of section 5, the State Government, the Government agency or, as the case may be, the specified Government agency shall adopt the proposal as the basis for selecting a person with whom concession agreement for undertaking the project may be entered into, and for selecting such person, the State Government, the Government agency or, as the case may be, the specified Government agency shall follow procedure of competitive public bidding specified in section 9. (3) Where a person is selected by following the procedure of the competitive public bidding' (hereinafter referred to as 'the selected person'), the proposal of the selected person shall be compared with the proposal which is earlier submitted by a person to the State Government, the Government agency or, as the case may be, the specified Government agency under sub-section (1) (hereinafter to as "the earlier proposer"). (4) Where the proposal of the earlier proposer is not preferable to the proposal of selected person, the earlier proposer shall be given an opportunity to make his proposal competitive with that of the selected person within a period of thirty days from the date on which he has been given the opportunity and where the earlier proposer fails to do so within the said period, the State Government, the Government agency or, as the case may be, the specified Government agency may enter into a contract with the selected person. (a) Where a concession agreement has not been entered into with the earlier proposer the cost of preparation of proposal and the concession agreement incurred by him shall be reimbursed by the State Government, the Government agency or, as the case may be, the specified Government agency and on such reimbursement, the proposal and concession agreement submitted by the earlier proposer shall be the property of the State Government, the Government agency or, as the case may be, specified agency. cost of preparation of the proposal and the concession agreement shall be determined in such manner as may be prescribed. 11. in pursuance of a concession agreement with the State Government, the Government agency or, as the case may be, the specified Government agency,— (a) (i) the developer has constructed a project for providing goods or services; and (ii) the project vests in the developer for a period specified in the concession agreement; and (iii) on expiry of such period, the project is to vest in the State Government, the Government agency or specified Government agency, the developer may charge such amount specified in agreement for providing goods or services by the project continues to vest in him, or (b) an existing project is vested to a person to renovate, operate and maintain, the developer may charge such amount as specified in agreement for providing goods or services by the project so long as the project continues to vest in him (2) A concession agreement may provide that the developer may, having regard to the rate of inflation, variation in the rate of the Foreign exchange and such other factors as may be prescribed, revise the amount referred to in sub-section (1) in such manner, as may be prescribed; PART GUJARAT 13-7 Where is made in a concession agreement requiring the developer to Financial security for maintain project constructed by him for a specified period, the agreement,— (a) there shall be opened a special account by the developer; (b) the money out of project, which shall be expended for the maintenance of project in accordance with the provisions of the contract, shall be deposited in the account; (c) the State Government, the Government agency or, as the case may be, the specified Government agency or (b) the developer shall execute a bond in favour of the State Government, the Government agency or, as the case may be, the specified Government agency binding himself to make payment of such amount of money as is tied to the bond to the

State Government, the Government agency or, as the case may be, specified agency. in case he fails to maintain the project with the provisions made in the concession agreement with the State Government: the Government agency or, as the case may be, the specified Government agency

13. A developer shall provide at his expense, training to the employees of State Government, the Government agency or, as the case may be, the specified Government agency in respect of maintenance or operation of the project in accordance with the provisions made in the concession agreement or in any other agreement made by the State Government, the Government agency or, as the case may be, the specified agency", 14. is transferred to the State Government, the Government agency or the specified Government agency according to the provisions of the concession rights. agreement, the rights of the developer in respect of the project shall stand transferred to the State Government, the Government agency or, as the case may be, the specified Government agency. (2) Where a concession agreement is terminated by the State Government, the Termination Government agency or, as the case may be, the specified agency with the or concession consent of the developer or absence of any default of the developer shall be entitled to such amount of compensation for such termination as specified in the concession agreement. (2) A concession agreement provide that if a default specified therein is committed by the developer, the State Government, the Government agency or, as the case may be, the specified Government agency shall, after giving to the developer an opportunity of being heard in such as may be prescribed, be entitled to terminate the concession agreement and— (a) take over the project without repaying the amount invested by the developer in equity and shall assume the liability of the developer towards loans taken by him in respect of the project; or (b) enter into a concession agreement with another person whose name is recommended by the Lenders of the developer and approved by State Government, the Government agency or, as the case may be, specified agency, on same terms and conditions as are specified in the concession agreement so 16. (1) State Government may, by notification in the Official Gazette, add to Schedule power to add any other project which falls within the executive of the State and thereupon the project so added shall be deemed to be a project specified in Schedule I for the purposes of this Act (2) Every notification issued under sub-section (1) shall be laid before the State Legislature as soon as may be after it is issued. 13-8 GUJARAT GOVERNMENT GAZETTE. EX. 5-104999 CHAPTER ESTABLISHMENT AND CONSTITUTION OF BOARD. Establishment 17. As soon as may be after the commencement of this Act the State Government may, or may, by notification in the Official Gazette, establish a Board to be called the Gujarat Infrastructure Development Board With effect from such date as may be specified in 18. The headquarters of the Board shall be at Gandhinagar or at such other place as the State Government may, by notification in the Official Gazette, specify. 19. The Board shall consist of Chairman, Vice-Chairman, Member-secretary appointed by the State Government and such number of other members not exceeding who shall be appointed by the State Government. Term of office 20. Every member shall hold office during the pleasure of State Government or members Filling up casual Meetings of Board. Temporary persons with in Tortation Constitution' of the. Officers and servants or be valid, 21. If any vacancy arises in Board or any committee thereof by death, resignation or otherwise, the same shall be filled up by the State Government as soon as possible: 22. The Board shall meet at such time and place and shall observe such rules of procedure in regard to transaction of its business at its meeting (including the quorum at such as may be provided by regulations

23. The Board may associate with itself any person whose assistance or advice is required in performing any of its functions under this Act 24. The Board may obtain the information with regard to the project which was submitted to it sub-section (1) of section 5 or which was undertaken as the provisions of section 10 from the State Government, a Government agency or a specified Government agency 25. The Board may constitute an Executive Committee and such other committees consisting of such number of members, for performing such of its functions, as may be provided by regulations 26. (1) Board may appoint such officers and servants as it may consider necessary for the efficient discharge of its functions. (2) remuneration. allowances and other service of the officers and servants of the Board shall be such as may be by the regulations 27. No act or proceeding of the Board or of any of its committees be invalid merely by reason of— (a) any vacancy therein or (b) any defect in the constitution thereof. or its proceedings not the case, p ART IVI 28. 29

30. GUJARAT GOVERNMENT GAIE' CHAPTER FUNCTIONS OF BOARD. EX__ s_iU-1999

1956. The functions of &'ard Shan as namely (a) to participation ofa in financing, maintenance and operation of any project irrespective of cost; (b) to tie State Government, a Government agency or a specified Government agency on matters of policy of participatim referred to In clause (a); (O to lay down priorities of projects to be undertaken by State Government, a Government agency or a specified Government agency ; (d) to consider the proposal for undertaking a project and the proposed cooceSsion agreement submitted to it and to recommmd with or without modifications or not recommend or return the proposal and proposed concession agrcernent for reconsiderahon of the State Governrnt, the Government agalcy Or, as the case may be, specified Governnvnt aFwy ; (e) to elicit informntion relating to National and International Financial Institutions and to ensure co-operatim of such Institutions, (f) to co-ordinate monitor projecÜ un&rtüal in State; (g) to assist in &vemng caxcpts of pr*cts by umkztakirz pre&aslbihty feasibilio• studies oft}r (h)to undertake such projæi as may bc to it by State Government; (G) to perfÜ-m sech other rmay be attrustedtoitbythe Slate Gov•ermnent- CHAPTER V FINANCE, ACCOUNTS, AUDIT AND ANNUAL REPORT. (1) The Board Shall] have its own fund. (2) sums which may, from time to time, be paidto the •Board by the State Government or by any body and the amount charged by the Board under section 32 •shall be carried to the fund of Bczrd and all paymats skull made therefrO•nv (3) Burd may such sums as it thinks fit for Of its fiurtims un&r this and such sums shall tx trated expaditure payable out Of tIE fuzzzi of Board. (l) accounts ofthe Board pr.arai and maintained in such form and in such nunner as may be provided by (2) The shall to eac.h financial Faran annual State- nient of accounts in such form as may be provided by r.lations. (3) The accounts ofthe Board shall be audited by an auditOr dulyqualified to act as auditor of the cunpanics under swtion 226 of the Companies Act, 1956. (4) auditor shall send a copy Of the rept together with an audited copy of accounts to Btzrd which shali as soon as may be after the receipt of the audit forward sux to State Governnrut. (5) State Governmwrt shali caur the audit with audital of accarnts to laid bcßre State IAislature as may the Of sub-ectim (4)_ (l) Bærd shall during e.aa financial yar prqare such firm ami at such 31. time as may be provided by regulations, an annual report giving a aue and full account of its activities during previous financial yer and an account of the activities likely to be undertakal by it in curran financial and copies of report shall be forwarded to State Government. (2) The State Government cvuy such report to be laid before the State Legislature as as may be aner reciqt of report under sub- secticm 13-9 Fund or AccounB and Annul rept•t. 13-10 Arwunt by •nd Protection or ectioø in faith. Arbitr.ti0L Pubuc Dispu itra Tribunal Act, 1992 appV. Power to make GUJARAT GOVERNMENT GAZEITE, 5-10-1999 • CHAPTER Sri MISCELLANEOUS. [PAM uV 32. Board npy 'h.rge such ammult as may be determin&i by it fix considering the proposal and concessim agræ:nalt sub—sectial (2) Of sectim 5 _ 93. Ali me+rs and officers and servants ofæe shall, while acting or purporting to act in bursuanc of the provisions ofthis Act orany rules or regulations made thereunder, be deemed to be public within the tÄning pf 21 of the bidian Pena! 45 of 1860

34. No suit, prosecution or other lie shall lie against the Board or any member and office or servant of the Board for anything which is in good faith done or intended to be done in pursuance of this Act or any rules and regulations made thereunder.

31 A concession agreement shall contain an arbitration clause providing that— (a) all parties to shall submit to arbitration any dispute which may arise between them out of the provisions of agreement, place of arbitration be at or any place in agreed to by parties; and (c) the dispute referred to in clause (a) shall be decided in accordance with law for the time in force in India. 361 Nothing contained in the Gujarat Public Works Contracts Disputes Arbitration Act, 1992

shall apply notwithstanding anything to the contrary contained in any agreement entered into by the State Government or a Government agency with a developer. 37.) The State Government may, by notification in the Official Gazette, make rules for carrying out of this Act. Chapter 7 particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the matters, namely (a) for concession agreements under clause (b)

of sub-section (1) of section 4; (b) "amount of cost of a project exceeding a proposed amount shall be determined under sub-section (1) of section 5; and different amounts of costs for different nature of projects; (e) matters relating to competitive public bidding and direct negotiation under sub-section (2) of section 5; (d) manner in which cost of preparation of the proposal and the concession shall be determined under sub-section (5) of section 1 (j); (e) the manner in which charges be revised and manner in which they may be revised under sub-section (2) of section 1 (i); (f) the manner in which an opportunity of being given to the developer under sub-section (2) of section 1 (i); (g) any other matter which may be necessary or expedient for carrying out the purposes of this Act. " -C) All rules made under this section shall be laid before the State Legislature and shall, as soon as possible after they are made, be subject to the approval of the State Legislature. GUJARAT GAZETTE: EXTRAORDINARY. Part II. Section 3. rescission by Legislature or as the State may make during the session in which are so held. 31. The State may, by notification in the Official Gazette, make rules for carrying out of this Act. (4) Any rescission or modification made by the State Legislature, in the Official Gazette, and shall have effect from the date of its publication. (1) The Board may make regulations inconsistent with the provisions of this Act and the rules made thereunder, for enabling it to discharge its functions under the Gujarat Infrastructure Development Act, 1999. (2) particular and without prejudice to the foregoing power, such regulations may provide for all or any of the following matters, time and the place at which the Board shall meet and the rules under the Board shall serve in regard to of its business under section 22; (b) the committees which the Board may constitute and the members which the executive committee and other may consist of and the functions of the Board which they may perform under section 25; (c) the remuneration, allowances and other benefits of the members of the Board under section (2) of section 26; and manner in which the Board shall be financed and maintained under section (i) of section 30; (e) the form in which the annual accounts of the Board be prepared under sub-section (2) of section 30;

During the operation of the project, he shall undertake to train employees of the State Government, the Government agency or, as the case may be, the specified Government agency to operate the project. 2 _
Joint venture Agreement - 'An agreement whereby the State Government, a Government agency or a specified Government agency enters into an agreement with a developer to jointly finance, construct, operate and maintain a project for a period specified in the agreement after the expiry of which the project is required to be transferred to the State Government, the Government agency or, as the case may be, the specified Government agency. GOVERNMENT CENTRAL PRESS' r_iANDHINAGAR. 1v

