



# **MORBI MUNICIPAL CORPORATION**

**Tender for Design, Engineering,  
Procurement, Construction, Operation &  
Maintenance of Refuse Transfer Station  
(RTS) in East Zone of Morbi Municipal  
Corporation**

## **Volume II: Conditions of Contract**

**February 2026**

### **Morbi Municipal Corporation (MRMC)**

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## **Structure of the Bidding Documents**

<b>Sr.no.</b>	<b>Volume</b>	<b>Details</b>
1	Volume – I	Instruction to Bidders (ITB)
<b>2</b>	<b>Volume – II</b>	<b>Conditions of Contract</b>
3	Volume – III	Employer's Requirements, Scope of Work, & Technical Specifications
4	Volume – IV	Price Bid
5	Volume – V	Drawings

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## **A. General**

### **Definitions**

Terms for the purpose of execution of the contract are defined in the Condition of the Contract Capital initials are used to identify defined terms.

- **Acceptance Certificate** means the certificate issued by the Engineer-in-Charge confirming that the Works or a part thereof have been completed in accordance with the Contract and are acceptable for their intended use, subject to the Defects Liability Period.
- **Applicable Laws** means all laws, statutes, ordinances, rules, regulations, notifications, guidelines, by-laws, judgments, decrees, orders, permits, approvals, and directives of any governmental authority in force in the Republic of India, including amendments thereto.
- **Acceptance** means the date on which the Contract comes into existence upon receipt by the Contractor of the **Letter of Acceptance** issued by the Employer.
- The **Bid** means the complete set of documents submitted by the Bidder in response to this Tender, including technical and financial proposals
- **Bidding Documents** means the complete set of documents issued by the Employer for the purpose of inviting bids for execution of the Works, including amendments and clarifications issued thereto.
- **Commencement Date** means the date specified in the Notice to Proceed / Work order on which the Contractor shall commence execution of the Work.
- **Commissioner** means Municipal Commissioner of **Morbi Municipal Corporation, Morbi**.
- **Competent Employer** is the Person or Persons appointed by the Employer/Council and notified to the Contractor, who shall be responsible for supervising the Contractor, administering the Contract, certifying payments due to the Contractor, and awarding extensions of time. The Council may also appoint any Person or Persons to assist the Competent Employer and provide project management Operations for this Contract. Any Person or Persons appointed by the Council to carry out the responsibilities of the Competent Employer and assist it, shall be termed as the "Competent Employer's Representative".
- **Completion Certificate** means the certificate issued by the Employer certifying completion of the Works in accordance with the Contract
- **Completion Date** means the date on which the Works or Services are certified as completed by the Employer or deemed completed under the Contract.
- **Construction Period** means the period commencing from the Commencement Date and ending on the date of issuance of the Completion Certificate for the Works
- **Contract** means the agreement entered into between the Employer and the Contractor, together with all Contract Documents.
- **Contract Agreement** means the agreement entered into between the Employer and the Contractor, incorporating the terms and conditions governing execution of the Works.
- **Contract Data** defines the documents and other information given under this section which comprises the Contract.
- **Contract Period** means the total duration of the Contract, including the Construction Period and the Operation & Maintenance (O&M) Period, up to the Completion Date or Termination Date, as applicable.
- **Contractor** means the person, firm or company, whose Bid has been accepted by the Employer and who is responsible for the execution and completion of the Works, including its legal successors and permitted assigns.
- **Contractor's Bid** is the Comprehensive bidding document submitted by the Contractor to the Employer.

- **Council / Employer / MRMC** means **Morbi Municipal Corporation**.
- **Contract Price** means the lump sum price or contract value payable to the Contractor for execution and completion of the Works in accordance with the Contract, subject to adjustments as provided therein.
- **Days, Weeks, Months** mean calendar days, calendar weeks and calendar months respectively.
- **Defect** means any part of the Works or services not executed, completed or performed in accordance with the provisions of the Contract.
- **Defect Liability Period (DLP)** means the period specified in the Contract during which the Contractor remains responsible for rectification of Defects after completion of the Works
- **Defect Correction Period** means the time period specified in the Employer's notice within which the Contractor shall rectify the Defect.
- **Drawings** means all drawings, plans, layouts, diagrams, calculations, and details provided by the Employer or prepared by the Contractor and approved in accordance with the Contract.
- **Dry Garbage** means any recyclable garbage consisting of plastic, metal, thermocol, foam, glass, Rexene, battery cells, paper, cloth, etc. and as defined by the MSW Rules, 2016.
- **Employer** means **Morbi Municipal Corporation** which is the first party who will employ the Contractor/Contractors to carry out the Works.
- **Engineer-in-Charge** means the person or entity appointed by the Employer to act as the Engineer under the Contract and to perform the duties assigned therein, including any authorized representative.
- **Environmental Clearance** means any approval, consent, or authorization required from statutory authorities under applicable environmental laws for execution and operation of the Project.
- **Equipment** means all construction equipment, plant, machinery, vehicles, tools and appliances brought to or used at the Site by the Contractor for execution of the Works and O&M.
- **Facilities** means all the structures, systems, utilities, leachate collection systems, liner systems, roads, drains, buildings and installations constructed under this Contract.
- **Good Engineering Practices** means the standards, practices, methods and procedures as practiced in India and conforming to all technical requirements, law, directive, clearances and the requirements of any Employer and that degree of skill, diligence, prudence and foresight which would reasonably be expected from a skilled, prudent and experienced Contractor, engaged in the same type of undertaking under the same or similar circumstances as the Contractor pursuant to this Contract.
- **Intended Completion Date** means the date by which the Contractor is required to complete the Works, as specified in the Contract, subject to extensions granted.
- **Law** includes any constitutional provision, statutes, laws, decrees, ordinance, subordinate legislation, orders, rules or regulations having the force of law and rules of civil and common law and equity in the state of Gujarat and India.
- **Letter of Acceptance (LoA)** means the written notice issued by the Employer accepting the Bid of the Contractor.
- **Milestone** means a defined stage or event in the execution of the Works linked to time, performance, or payment obligations under the Contract.
- **MSW** means Municipal Solid Waste as defined under the Solid Waste Management Rules, 2016, excluding biomedical, hazardous, industrial and C&D waste unless specifically included.
- **Notice to Proceed (NTP)** means the written notice issued by the Employer directing the Contractor to commence the Works. Whenever possible the Notice to Proceed will be issued by the Employer immediately upon signing of the Contract, or as soon thereafter as is feasible considering the availability of the Site and other relevant factors.

- **Operation & Maintenance (O&M) Period** means the period commencing from the Completion Date during which the Contractor shall operate and maintain the Facility in accordance with the Contract.
- **Operations** means the maintenance of the Facilities and/or System including manning, operating, inspection, repair, redress of complaints and other operations required for fulfilling the Contractor's obligations under the Contract.
- **Operating Year** means each successive period, the first such period commencing on the date on which the operations period commences and ending three hundred and sixty-five (365) days later, and each subsequent period commencing on the expiration of the previous period and ending at the end of the duration mentioned above.
- **Party / Parties** means the Employer and/or the Contractor.
- **Performance Security** means the deposit provided by the Contractor, as a performance guarantee under this Contract.
- **Project** means the Design, Engineering, Procurement, Construction, Commissioning, Operation and Maintenance of the Refuse Transfer Station at Morbi
- **Project Execution Plan** means the plan submitted by the Contractor detailing methodology, schedule, resources and milestones
- **Person** means any natural person, firm, Council, company, voluntary association, partnership, joint venture, trust, incorporated organization, unincorporated organization, Employer or other entity, having legal capacity to sue and be sued in its name.
- **Residents** means all habitants of the area including but shall not be limited to residents/hotels and restaurants / shopkeepers / establishments / institutions including community places, open spaces, unoccupied houses etc./ industrialists and all such persons who are responsible for generation of Municipal Solid Waste.
- **Site or Service Area** means the land and locations provided by the Employer for execution of the Works as specified in the Tender Document
- **Site handing over Date** is the date upon which the Employer shall give possession of all parts of the Site to the Contractor.
- **Start Date** means the date on which the Contractor is permitted to commence the Works.
- **Successor Contractor** means the Council and any Person appointed by the Council to become the Contractor of the Facilities and/or System following the Termination Date or Completion Date, as the case may be.
- **Tax** means the Indian Tax, duty, levy, service charge and other charges whatsoever charged, imposed or levied by Central, State or Government of Gujarat or any Employer together with any interest and penalties in relation thereto.
- **Temporary Works** are works designed, constructed, installed, and removed by the Contractor which are needed for providing the conservancy and sanitation services in the area.
- **Termination Date** means the date on which the Contract is terminated by way of defaults of either the Council or the Contractor, or as a result of a Force Major event, or as indicated in these Conditions of Contract
- **Variation** is an instruction given by the Employer which varies the scope of services.
- **Wet Garbage** means any biodegradable garbage consisting of vegetable waste, food waste, garden waste, coconut shells, wood pieces, egg shells, bones, flesh, used cotton, dust, etc. and as defined by the MSW Rules, 2016.
- **Works** means all design, engineering, procurement, construction, testing, commissioning and related activities required for completion of the Refuse Transfer Station, including associated infrastructure, approvals, as per the Contract.

## **1. Interpretation**

- 1.1 In interpreting these Conditions of Contract, singular also means plural, male also means female, and vice versa. Headings and cross-references between clauses have no significance. Words have their

normal meaning under the language of the Contract unless specifically defined.

- 1.2 Several documents forming the contract are to be taken as mutually explanatory. Should there be any discrepancy inconsistency, error or omission in the contracts or any of Bidding document, the matter may be referred to the MRMC or its authorized representative including Engineer-in-charge who shall issue to the bidder instructions directing in what manner the work is to be carried out. The decision of the MRMC &/or its authorized persons including Engineer - in - charge shall be final and conclusive and the bidder shall carry out work in accordance with this decision.
- 1.3 Works shown upon the drawing but not mentioned in the specifications or described in the specifications without being shown on the drawings shall nevertheless be held to be included in the same manner as if they had been specifically shown upon the drawings and described in the specifications.
- 1.4 All headings and marginal notes to the clauses of these General and Important Conditions of Contract or to the specifications or to any other tendered document are solely for the purpose of giving a concise indication and not a summary of the contents thereof, and they shall never be deemed to be part thereof or be used in the interpretation or construction thereof of the contract.
- 1.5 Where any portion of the General Conditions of Contract is repugnant to or at variance with any provisions of the Important Conditions of Contract then, unless a different intention appears, the provisions of the important Conditions of Contract shall be deemed to over-ride the provisions of the General Conditions of Contract and shall to the extent of such repugnancy, or variations, prevail.
- 1.6 Where it is mentioned in the specifications that the Bidder shall perform certain work or provide certain facilities, it is understood that the bidder shall do so at his cost.
- 1.7 The materials, design and workmanship shall satisfy the relevant Indian Standard, the job specifications contained herein and codes referred to. Where the job specification stipulate requirements in addition to those contained in the standard codes and specifications, these additional requirements shall also be satisfied.

## **2. Language and Law**

- 2.1 The language of the Contract is English and the Law which shall govern the conduct of the Contract and according to which the Contract shall be construed is that in force in the **State of Gujarat**, India.

## **3. Notice**

- 3.1 Any notice, instruction or communication required or permitted to be given under this Contract ("Notice") shall be in writing and may be served on the Contractor or its duly authorized representative either at the Site or at its address stated herein, and on the Employer at the address stated herein. Proof of issue of any such notice shall be conclusive of the bidder having been duly informed of all contents therein;

### **Address of the Contractor:**

Name:

Address: \_\_\_\_\_

\_\_\_\_\_

### **Address of the Employer:**

**Municipal Commissioner,**

Morbi Municipal Corporation (MRMC)

Address: Gandhi Chowk, Morbi, Gujarat-363641.

Contact No.: (02822) 220551

Email: swm-mmc-mor@gujarat.gov.in | commi-mmc-mor@gujarat.gov.in



## **4. Delegation / Powers of Authority**

- 4.1 The Concern Officer, appointed by the Municipal Commissioner of the Employer and notified to the Contractor, is designated by the Employer to represent the Employer in all dealings with the Contractor concerning the operation/service, including administering the Contract, certifying payments due to the Contractor, issuing and valuing Variations to the Contract, awarding extensions of time, and valuing the Compensation Events. So far in this case the Municipal Commissioner, Morbi Municipal Corporation.
- 4.2 The Contractor shall designate in writing to the Employer a representative if the Authorized Signatory in whose name the Power of Attorney (POA) submitted in the Bid is not the same Person, to be its representative in all dealings with the Employer concerning the work.

4.3 Power of Entry:

- a) If the Bidder does not commence the Works in the manner prescribed in the Tender Documents, or if at any time, in the opinion of the MRMC or its authorized representative including the Engineer-in-Charge, the Bidder:
- fails to carry out the Works in conformity with the Contract Documents; or
  - fails to execute the Works in accordance with the prescribed time schedule; or
  - substantially suspends the Works for a continuous period of fourteen (14) days without authority from the MRMC and/or its authorized persons including the Engineer-in-Charge; or
  - fails to execute the Works to the satisfaction of the MRMC and/or its authorized persons including the Engineer-in-Charge; or
  - fails to supply sufficient or suitable construction plant, temporary works, labour, materials or other things required for execution of the Works; or
  - commits, suffers or permits any breach of any provision of the Contract to be performed or observed by the Bidder; or
  - persists in any of the aforesaid breaches even after fourteen (14) days' notice in writing has been given by the MRMC and/or its authorized persons including the Engineer-in-Charge requiring such breach to be remedied; or
  - abandons the Works; or
  - during the continuance of the Contract becomes bankrupt, makes any arrangement or composition with its creditors, permits any execution to be levied, or goes into liquidation, whether compulsory or voluntary

then, in any such case, the MRMC shall have the power to enter upon the Works and take possession thereof, including all materials, temporary works, construction plant and stock thereon, and to revoke the Bidder's right to use the same

- b) The MRMC may thereafter complete the Works by itself, through its agents, other bidders or workmen, or re-let the Works upon such terms and to such persons, firms or agencies as the MRMC may, in its absolute discretion, deem fit. For the aforesaid purpose, the MRMC may use or authorize the use of any materials, temporary works, construction plant and stock belonging to the Bidder
- c) In such circumstances, the Bidder shall have no right to any claim of any nature whatsoever against the MRMC. The Bidder shall remain responsible for the materials, temporary works, construction plant and stock, other than such items as may be certified in writing by the MRMC and/or its authorized persons including the Engineer-in-Charge to be unfit for use. The Bidder shall also be liable for any loss or damage thereto.
- d) If, by reason of the MRMC taking possession of the Works or completing the Works through other agencies, any excess cost is incurred (due account being taken of any work omitted), such excess

cost as certified by the MRMC and/or its authorized persons including the Engineer-in-Charge shall be deducted from any monies due or becoming due to the Bidder. In addition thereto, the Bidder shall indemnify the MRMC for any loss or damage actually incurred under the Contract and not otherwise recovered.

- e) Any deficiency remaining shall be paid forthwith by the Bidder to the MRMC. For recovery thereof, the MRMC shall have the power to sell, in such manner and at such price as it may think fit, all or any of the construction plant, materials or other items belonging to the Bidder and to appropriate the proceeds of such sale towards recoupment of such deficiency, in whole or in part

## **5. Communications**

5.1 Communications between parties which are referred to in the conditions are effective.

- a) For day to day works complaints and compliance by mobile phone etc. The expense related to the same shall be borne by the Contractor.
- b) For important matters a written communication will be sent.

5.2 Discrepancies between instructions:

- a) If any discrepancy arises between the instructions given to the Contractor, its agents, or staff, or if there is any doubt about the meaning of such instructions, or if any misunderstanding occurs between the Contractor's staff and MRMC or its authorized persons including the Engineer-in-Charge, the Contractor shall immediately refer the matter in writing to MRMC or its authorized persons including the Engineer-in-Charge. The decision of MRMC or its authorized persons including the Engineer-in-Charge shall be final and binding. No claim for losses arising from such discrepancies, doubts, or misunderstandings shall be admissible

## **6. Roles, Responsibilities and Contract Administration**

### **6.1 Employer's Rights and Obligations**

- 6.1.1 The Employer shall have the **right to enforce all provisions** of the Contract and to ensure that the Works are executed in accordance with the Tender Documents, Applicable Laws, and Good Industry Practice.
- 6.1.2 The Employer shall make available to the Contractor **access to the Site** to enable commencement and execution of the Works.
- 6.1.3 The Employer or the Engineer-in-Charge shall **review and approve submissions** made by the Contractor in accordance with the Contract. Such review or approval shall not relieve the Contractor of its responsibilities under the Contract.
- 6.1.4 The Employer shall **make payments** to the Contractor in accordance with the Contract, subject to certification, deductions, and conditions stipulated therein.
- 6.1.5 The Employer or its authorized representatives shall have the **right to inspect the Site**, Works, materials, plant, equipment, and records related to the execution of the Works at any reasonable time.
- 6.1.6 The Employer or the Engineer-in-Charge may **issue instructions necessary for proper execution** of the Works, including instructions for safety, quality, sequencing, and coordination, provided such instructions are consistent with the Contract.
- 6.1.7 The Employer shall have the **right to order Variations** to the Works in accordance with the provisions of the Contract, including changes in quantity, quality, or sequence of execution.
- 6.1.8 The Employer may **suspend the execution of the Works**, in whole or in part, in accordance with the Contract, without prejudice to its other rights and remedies.
- 6.1.9 The Employer shall have the right to **levy liquidated damages, penalties**, or other contractual remedies for delays, non-performance, or breach of the Contract, as provided therein.

## **6.2 Contractor's General Obligations**

- 6.2.1 The Contractor shall be **fully responsible** for the execution, completion, and rectification of the Works in accordance with the Contract Documents, Applicable Laws, and Good Industry Practice. Contractor shall provide all services and operations as given under scope of work as per the requirement and provisions of applicable rules, guidelines and laws.
- 6.2.2 The Contractor shall **comply with all provisions of the Contract** and shall ensure that the Works conform to the requirements specified in the Tender Documents and as per the instruction of the Employer or its authorised representative.
- 6.2.3 Except to the extent expressly stated otherwise in the Contract, the Contractor shall be responsible for the **design, engineering, procurement, construction, testing, commissioning, operation and maintenance** of the Works.
- 6.2.4 The Contractor shall determine and be **responsible for all construction methods, techniques, sequences, and procedures**, provided that the Works are executed in accordance with the Tender and as per the Good Engineering Practices.
- 6.2.5 The Contractor shall **provide all labor, materials, plant, equipment, supervision, and other resources** necessary for proper execution of the Works.
- 6.2.6 The Contractor shall prepare, submit, and maintain an updated **construction programme** and shall coordinate all activities to achieve timely completion of the Works.
- 6.2.7 The Contractor shall ensure that all Works are **executed with proper workmanship** and in accordance with the Specifications, Drawings, and approved submissions.
- 6.2.8 The Contractor shall be responsible for **ensuring the safety of persons, protection of property**, and prevention of environmental damage arising from the execution of the Works.
- 6.2.9 The Contractor shall carry out its operations and shall be fully responsible for carrying out the operations in **a safe and secure manner**, consistent with the law of the land, laws and regulations and directives of any Employer and permissions.
- 6.2.10 The Contractor shall **comply with all Applicable Laws**, including labour laws, safety regulations, and environmental regulations, and shall obtain all permits and approvals required to be obtained by the Contractor under the Contract.
- 6.2.11 The Contractor shall **comply with all relevant guidelines of Swachh Bharat Mission**, Swachh Survekshan and GFC star rating protocol published by MoHUA from time to time. The Contractor shall be required to submit all documents including list and details of workers, list and details of vehicles, sweeping and attendance log books/ registers etc. as per the requirement of Swachh Survekshan and Garbage Free City Assessments.
- 6.2.12 The Contractor shall **protect the Works, materials, plant, equipment, and adjacent property** from damage or loss until issuance of the Final Acceptance Certificate (FAC).
- 6.2.13 The Contractor shall be **responsible for any damage** occurring to the Municipal Corporation's property and general public, in case the cause is attributed to the workforce of the Contractor. The Contractor shall have to get the same rectified at his own cost and risk, or otherwise, the Authority at the risk and cost of the Contractor shall attend the same to.
- 6.2.14 The Contractor shall ensure that **none of his staff members indulges in any activity deemed illegal or unlawful**, during the working hours, the staff members shall always be dressed in acceptable uniforms. The Contractor shall ensure, at all times that his staff members do not misbehave with the Municipal Corporation's staff or general public while working. The personnel found misbehaving shall be immediately removed from the work at the risk of the contractor.
- 6.2.15 The Contractor shall be **fully and solely responsible for any injury/death to the staff members** deputed by the Contractor. It is the responsibility of the Contractor to ensure that his personnel follow the safety regulations strictly, which is in force from time to time. The Contractor shall obtain all

necessary approvals, permits and licenses to operate the said service. The Employer shall in no way be responsible for the loss occurring to the Contractor on this count.

- 6.2.16 The Contractor shall be absolutely and solely responsible for any and all kinds of injuries or damages to person and property of any description whatever may be caused by or result from the Operations carried out, whether these may have been carried out skilfully and carefully and strictly in conformity with the provisions of the specifications or not.
- 6.2.17 The Contractor shall **maintain records, logs, and reports** relating to the execution of the Works and shall submit the same as required under the Contract.
- 6.2.18 The Contractor shall promptly **rectify any defects**, deficiencies, or non-conformities identified during execution or during the Defects Liability Period.
- 6.2.19 Any review, approval, inspection, or instruction by the Employer or the Engineer-in-Charge shall **not relieve the Contractor of its obligations** or liabilities under the Contract.
- 6.2.20 The Contractor shall **indemnify and hold harmless the Employer** against losses, damages, claims, or liabilities arising out of the Contractor's performance or non-performance of the Contract, to the extent provided therein.
- 6.2.21 The Contractor shall **ensure that the vehicles/machineries to be used are registered**, insured and declared fit by the respective competent authority.
- 6.2.22 The Contractor shall use a **computerized system** of operation for keeping updated record related to the project. The Contractor shall develop and update an **online dashboard** displaying the real time or near real time updates / reports of the key performance indicators, and provide its access to the Employer and its authorised representative.
- 6.2.23 The Contractor shall **not modify or alter any operations / service delivery** without prior written permission of the Employer and its authorised representative.
- 6.2.24 The Contractor shall carry out its operations, so far as compliance with the requirement of the Contract permits, so as **not to interfere unnecessarily or improperly with the convenience of the public**.
- 6.2.25 All fossils, coins, articles of value or antiquity and structures and other remains or things of geological or archaeological interest discovered on the service area shall, as between the Employer and the Contractor be deemed to be the absolute property of the competent Authority. The Contractor shall take reasonable precautions to prevent its workmen or any other persons from removing or damaging any such article or thing and shall, immediately upon discovery thereof and before removal, acquaint the competent Authority of such discovery & carry out the competent Authority's instructions for dealing with the same.
- 6.2.26 The Contractor shall be responsible for deposition of all taxes applicable for execution work under this contract as per the laws of the land.
- 6.2.27 The Contractor shall execute the Works at the Site under conditions where other agencies may also be engaged simultaneously for execution of other works, including but not limited to site grading, filling and levelling, electrical works, mechanical works and allied activities. The Contractor shall coordinate with such agencies as required. No claim whatsoever shall be entertained on account of execution of the Works under such circumstances.

### **6.3 Contractor's Representative**

- 6.3.1 The Contractor's Representative shall have **full authority** to represent the Contractor, receive and issue communications, coordinate execution of the Works, and bind the Contractor in all matters relating to the Contract.
- 6.3.2 The Contractor's Representative shall be **available at the Site** during working hours and at such other times as may be reasonably required for proper execution and coordination of the Works.

- 6.3.3 The Contractor's Representative shall possess the **qualifications, experience, and competence** specified in the Contract Documents. Replacement of the Contractor's Representative shall be subject to prior approval of the Employer or the Engineer-in-Charge.
- 6.3.4 The Employer or the Engineer-in-Charge may require the Contractor to **replace the Contractor's Representative** if, in their reasonable opinion, the individual is incompetent, negligent, or guilty of misconduct. Such replacement shall be effected promptly and without prejudice to the Contractor's obligations.
- 6.3.5 All instructions, notices, and communications issued to the Contractor's Representative shall be **deemed to have been issued to the Contractor**.

## **6.4 Subcontractors**

- 6.4.1 Sub-contracting of the whole or part of the work defined under this Contract Agreement is not allowed by the Employer. During the execution of the Contract, if the Appointed Contractor is found to be sub-contracting the scope of work in whole or part thereof, the Authority shall reserve the right to terminate this Contract at its discretion.

## **6.5 Change in Constitution of the Bidder's firm**

- 6.5.1 Where the bidder is a partnership firm the prior approval, in writing, of the MRMC shall be obtained before any change is made in the constitution of the firm. Where the bidder is an individual or a Hindu undivided family business concern, such approval as aforesaid shall likewise be obtained before such bidder enters into any agreement with other parties where under, the reconstituted firm would have the right to carry out the work hereby undertaken by the bidder. In either case if prior approval as aforesaid is not obtained, the contract shall be deemed to have been allotted in contravention of condition of the contract hereof and the same action may be taken and the same consequence shall ensue as provided in the said clause.
- 6.5.2 The bidder shall remain solely responsible for the quality and proper expeditious executions of the works and the performance of all the conditions of the contract in all respects and cannot transfer any errors to any sub-bidders

## **7. Commencement of Works**

- 7.1 The Contractor shall commence execution of the Works within fifteen (15) days from the date of issuance of the Letter of Award or Work Order, or from the date of issuance of any other written instruction directing commencement of the Works by the Authority, as applicable.
- 7.2 The Contractor shall complete the Works, including all stages and milestones, within the time periods specified in the Time Schedule / Milestone Schedule forming part of the Contract, unless such time is extended in accordance with the provisions of the Contract.
- 7.3 Time shall be of the essence of the Contract with respect to commencement, achievement of milestones and completion of the Works.
- 7.4 The Contractor confirms that it has fully considered the stipulated construction period and milestone requirements at the time of submission of its Bid, and no request for revision of the construction period on account of oversight, misjudgement or lack of due diligence shall be entertained after award of the Contract.

## **8. Time Schedule and Project Milestones**

- 8.1 The overall time schedule, project milestones and submission requirements for the Project are specified in Volume III of the Tender Documents:
- a) Appendix 1 – Project Milestones during Design, Engineering, procurement, construction, commissioning stage
  - b) Appendix 2 – Submission Schedule.
- 8.2 The Contractor shall execute the Works strictly in accordance with the milestones, timelines and



submission schedules specified in the aforesaid Appendices, as reviewed and approved by MRMC and/or its authorized persons, including the Engineer-in-Charge. Any such review or approval shall not relieve the Contractor of his obligations, responsibilities or liabilities under the Contract, nor shall it be deemed to constitute acceptance of any deviation from the Contract requirements. The stipulated timelines shall be deemed to include all activities necessary for completion of the Works, including but not limited to design, approvals, testing, inspection, recertification (if any), re-testing and completion of the Works in all respects.

## **9. Key personnel and workers to be deployed**

- 9.1 The Contractor shall deploy required workforce to deliver the services / works proposed in this Contract Agreement. The Contractor shall ensure to keep record of the workforce deployed for the work proposed in the Contract Agreement.
- 9.2 All key personnel shall possess the qualifications, experience, and competence prescribed in the Contract Documents and shall be capable of performing their assigned duties effectively. Key personnel shall not be replaced without the prior written approval of the Employer or the Engineer-in-Charge, except in cases of death, permanent disability, or resignation, in which case a suitably qualified replacement shall be proposed without delay.
- 9.3 The Employer or the Engineer-in-Charge may require the Contractor to replace any key personnel whose performance is found to be unsatisfactory, incompetent, or negligent. Such replacement shall be effected promptly at no additional cost to the Employer.
- 9.4 Contractor is expected to carry out basic documentation and maintain updated records for each of the workforce employed / deployed for the work proposed in the Contract Agreement and submit the same as per the requirement, as and when required. Necessary and basic documents e.g. Aadhar card, driving license, Address proof (present & permanent address), PAN details, Bank account details, blood group, etc. shall be maintained for each of the employee deployed.
- 9.5 The Contractor shall be fully responsible and liability for the work performance of the workforce according to good industry practices and standards. The Contractor shall act as prime employer for all the workforce employed for the proposed work. The persons employed by the Contractor shall not in any case be treated as employees of the Employer nor is the Employer answerable to Contractor's staff. The Contractor's staff shall not stake / agitate for any claim/ benefits of employment with the Employer at any time within the Contract Period nor in future.
- 9.6 The Contractor shall be solely responsible for the payment of wages/ salary along with extending benefits such as Provident Fund (PF), Insurance and Bonus in accordance with the applicable Labour Welfare Act and Laws.
- 9.7 The Contractor shall be responsible to provide all its workers all safety precautions and a group insurance cover at its own risk & cost.

## **10. Contractor's Risks, Responsibilities and Due Diligence**

- 10.1 The Contractor shall be responsible for the care of the Works, including all materials, plant, equipment, and temporary works, from the Commencement Date until issuance of the Final Acceptance Certificate.
- 10.2 The Contractor acknowledges that, notwithstanding the order of precedence set out in Clause 1.2, the obligations relating to examination of the Site and Tender Documents as set out in the Instructions to Bidders shall, to the extent applicable, continue to apply during the execution of the Contract and shall be deemed to form part of these General Conditions of Contract.
- 10.3 The Contractor shall bear all risks of loss, damage, injury, or death arising out of or in connection with the execution of the Works, except to the extent that such risks are expressly defined as Employer's Risks under the Contract, including but not limited to:
  - a) loss of or damage to the Works, materials, plant, or equipment prior to Taking Over;

- b) personal injury, illness, or death of any person employed by the Contractor or its subcontractors;
  - c) damage to property arising from the Contractor's acts or omissions;
  - d) delays, disruptions, or increased costs arising from the Contractor's methods, sequencing, or performance;
  - e) non-compliance with Applicable Laws, safety regulations, or environmental requirements; and
  - f) defects, deficiencies, or failures in the Works.
- 10.4 The Contractor shall be deemed to have independently obtained, prior to execution of the Contract, all information necessary for the purposes of executing and completing the Works in accordance with the Contract Documents and for assessing the Contract Price.
- 10.5 The Contractor shall be deemed to have examined and fully understood all Contract Documents, drawings, specifications, scope of work and other information made available by the Employer, and to have satisfied himself as to the correctness, adequacy and sufficiency thereof. Any error, omission, ambiguity or discrepancy in the description of quantities or other details in the Contract Documents shall not vitiate the Contract nor relieve the Contractor of his obligation to execute and complete the Works in accordance with the Contract Documents at the Contract Price.
- 10.6 The Contractor shall be deemed to have full knowledge of the scope, nature and magnitude of the Works, including all requirements relating to materials, labour, equipment, construction methods, temporary works and all incidental obligations necessary for the completion of the Works in accordance with the Contract.
- 10.7 The Contractor shall be deemed to have visited and examined the Site and its surroundings and to have satisfied himself as to the nature of the Site and existing conditions, including but not limited to:
- a) topography, sub-soil conditions and sub-soil water levels;
  - b) climatic conditions, rainfall, storms and prevailing winds;
  - c) availability of access, approach roads, transport facilities and utilities;
  - d) existing structures, if any;
  - e) availability and sources of construction materials;
  - f) locations for disposal of surplus materials; and
  - g) availability of land, accommodation, depots and facilities required for execution of the Works.
- 10.8 The Contractor shall be solely responsible for making all necessary local and independent inquiries in relation to the foregoing matters and all other conditions which may affect the execution and completion of the Works.
- 10.9 The Contractor shall be deemed to have acquainted himself with all applicable laws, regulations, statutory requirements, taxes, duties, royalties, levies and other charges imposed by Government or local authorities and shall be fully responsible for payment and compliance thereof.
- 10.10 Any neglect or failure on the part of the Contractor in obtaining necessary and reliable information relating to the Site, the Works or any other matters affecting the Contract shall not relieve the Contractor from any risks, liabilities or responsibilities for completion of the Works at the Contract Price and within the time specified in strict accordance with the Contract Documents.
- 10.11 No verbal agreement, representation or inference from any conversation with any officer or employee of the Employer, whether before or after execution of the Contract, shall in any way modify, vary or affect the terms and obligations of the Contract.

## **11. Employer's Risks**

- 11.1 The Employer shall be responsible for excepted risks which are (a) insofar as they directly affect the execution of the work in the Employer's country, the risks of war, hostilities, invasion, act of foreign enemies, rebellion, revolution, insurrection or military or usurped power, civil war, riot, commotion or

disorder (unless restricted to the Contractor's employees), and contamination from any nuclear fuel or nuclear waste or radioactive toxic explosive.

## **12. Insurance**

12.1 The Contractor shall effect and maintain at its own cost, during the Contract Period, such insurance(s) for such maximum sums as may be required under the Contract Agreement and the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice. The Contractor shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Employer as a consequence of any act or omission of the Contractor during the Contract Period. The Contractor shall procure that in each insurance policy, the Employer shall be a co-insured and that the insurer shall pay the proceeds of insurance as per instructions issued by the Employer, as the case may be

### **12.2 Employees State Insurance Act**

- a) The Contractor agrees to, and does hereby, accept full and exclusive liability for compliance with all obligations imposed by the Employees' State Insurance Act, 1948. The Contractor further agrees to defend, indemnify, and hold MRMC harmless from any liability or penalty which may be imposed by Central, State, or Local authorities by reason of any asserted violation by the Contractor or sub-contractors of the Employees' State Insurance Act, 1948, and also from all claims, suits, or proceedings that may be brought against MRMC arising under, growing out of, or by reason of the work provided for by this contract, whether brought by employees of the Contractor, third parties, or by Central or State Government authorities or any administrative sub-division thereof.
- b) The Contractor further agrees and undertakes to comply with all due procedures of law, including filing and submitting various forms, returns, documents, etc., with the concerned government department within the prescribed time, and to deposit the contributions thereunder within the prescribed time.
- c) The Contractor agrees to submit to the Employee's State Insurance Authority the declaration forms and all other forms which may be required in respect of the Contractor's or sub-contractors' employees engaged in the work provided under this contract or those covered by ESI from time to time under the Act. The Contractor shall deduct, and secure the agreement of the sub-contractors to deduct, the employees' contributions as per the First Schedule of the Employees' State Insurance Act from wages and affix the Employees' Contribution Cards at each wage payment interval. The Contractor shall remit, and secure the agreement of the sub-contractors to remit, to the Employee's State Insurance Authority Account, the employees' contributions as required by the Act.
- d) The Contractor agrees to maintain all cards and records as required under the Act in respect of employees and payments, and shall secure the agreement of the sub-contractors to maintain such records. Any expenses incurred for making contributions or maintaining records shall be borne by the Contractor or sub-contractors.
- e) MRMC shall retain such sum as may be necessary from the total contract value until the Contractor furnishes satisfactory proof that all contributions required under the Employees' State Insurance Act, 1948, have been duly paid.

### **12.3 Workman's Compensation and Employer's Liability Insurance**

- a) Before undertaking the work relating to this project, the Contractor agrees and undertakes to submit a copy of the insurance policy taken under the Workmen's Compensation Act, 1923. The Contractor shall ensure that the policy properly covers all employees in terms of number and type of employment, including skilled, semi-skilled, and unskilled workers. Insurance shall be maintained for all the Contractor's employees engaged in the performance of this contract.
- b) If any portion of the work is sublet, the Contractor shall require the sub-contractor to provide Workmen's Compensation and Employer's Liability insurance for those employees of the sub-



contractor who are not covered under the Contractor's insurance. The Contractor shall also insure his personnel under a personal accident cover policy, if required.

**12.4 Other Insurance Required Under Any Law or Regulation**

- a) The Contractor shall ensure that all other insurance policies required under any applicable law or regulation from time to time are carried and maintained. The Contractor shall also carry and maintain any other insurance as may be required by MRMC.

## **13. Indemnities**

### **13.1 General Indemnity**

13.1.1 The Contractor shall indemnify MRMC and every member, officer, employee, and consultant of MRMC, including MRMC's authorized persons, the Engineer-in-Charge and his staff, against all actions, proceedings, claims, demands, costs, and expenses whatsoever arising out of or in connection with the matters referred to herein or elsewhere in the contract documents, and against all actions, proceedings, claims, demands, costs, and expenses which may be made against MRMC for or in respect of, or arising out of, any failure by the Contractor in the performance of his obligations under the contract documents.

13.1.2 MRMC shall not be liable for, or in respect of, any demand or compensation payable under any law in respect of or in consequence of any accident or injury to any workman or other person in the employment of the Contractor or his sub-contractor, and the Contractor shall indemnify and keep indemnified MRMC against all such damages and compensations and against all claims, damages, proceedings, costs, charges, and expenses whatsoever in respect thereof or in relation thereto.

### **13.2 Payment of Claims and Damages**

13.2.1 Should MRMC be required to pay any money in respect of such claims or demands as aforesaid, the amount so paid and the costs incurred by MRMC shall be charged to and paid by the Contractor. The Contractor shall not be entitled to dispute or question the right of MRMC to make such payments, notwithstanding that the same may have been made without his consent or authority, or otherwise in law.

### **13.3 Workmen's Compensation**

13.3.1 In every case in which, by virtue of the provisions of Section 12, sub-section (1) of the Workmen's Compensation Act, 1923, or any other applicable provision of the said Act or any other law, MRMC is obliged to pay compensation to a workman employed by the Contractor in the execution of the works, MRMC shall recover from the Contractor the amount of compensation so paid. Without prejudice to the rights of MRMC under Section 12, sub-section (2) of the said Act, MRMC shall be entitled to recover such amount or any part thereof by deducting the same from the security deposit or from any sum due or becoming due to the Contractor under this contract or otherwise.

13.3.2 MRMC shall not be bound to contest any claim made under Section 12, sub-section (1) of the said Act, except upon the written request of the Contractor and upon his furnishing full security to MRMC for all costs for which MRMC may become liable in consequence of contesting such claim.

### **13.4 Indemnity for Intellectual Property Rights**

13.4.1 The Contractor shall indemnify and hold MRMC harmless against all third-party claims, demands, losses, damages, costs, and expenses arising out of or in connection with any infringement of patent, copyright, trademark, industrial design, or other intellectual property rights resulting from the execution of the Works or from the use of any plant, machinery, equipment, materials, designs, processes, or technology supplied or used by the Contractor under this contract.

## **14. Damage to Property**

14.1 The Contractor shall be responsible for making good, to the satisfaction of MRMC, any loss or damage to all structures and properties belonging to MRMC, or being executed or procured by MRMC, or by

other agencies within the premises of all MRMC works, if such loss or damage is due to the fault, negligence, willful acts, or omissions of the Contractor, its employees, agents, representatives, or sub-contractors.

- 14.2 The Contractor shall indemnify and keep MRMC harmless from all claims for damage to property other than MRMC's property arising under or by reason of this agreement, if such claims result from the fault, negligence, willful acts, or omissions of the Contractor, its employees, agents, representatives, or sub-contractors.
- 14.3 MRMC shall have no liability for any accident, if any, to any person involved in carrying out the work related to the project, or while handling, loading, unloading, carrying, dumping, excavating, etc., of any material, or for any loss or damage to vehicles engaged in such handling or carrying of material. It shall be the total responsibility of the Contractor to compensate for the same and meet all statutory liabilities arising therefrom.

## **15. Patents, Royalties and Intellectual Property Rights**

- 15.1 The Contractor shall be solely responsible for payment of all royalties, license fees and other charges payable in respect of any patent, design, trademark, copyright or other intellectual property right covering any equipment, machinery, materials, compositions, methods or processes used, supplied or employed in the performance of the Contract.
- 15.2 Where any equipment, machinery, materials, methods or processes to be used or supplied under the Contract are covered by a patent or other intellectual property right under which the Contractor is not licensed, the Contractor shall, prior to such use or supply, obtain the necessary licenses and pay all applicable royalties and fees required for performance of the Contract.
- 15.3 In the event of any claim, suit or proceedings for infringement of any patent or intellectual property right arising out of or in connection with the performance of the Contract, whether against the Contractor or the Employer, due to the Contractor's failure to obtain necessary licenses or pay applicable royalties, the Contractor shall, at its own cost and expense, defend such claim and indemnify and hold harmless the Employer against all damages, losses, costs and expenses arising therefrom.
- 15.4 The Contractor shall promptly notify the Employer if it becomes aware of any actual or potential infringement claim that may reasonably arise in respect of any equipment, machinery, materials, methods or processes supplied or used under this Contract.
- 15.5 The Contractor hereby grants to the Employer an irrevocable and royalty-free license to use, in any country, any invention made by the Contractor or its employees in the course of or as a result of the performance of the Contract. The Employer shall have the right to extend such license to any subsidiary of the Employee.
- 15.6 In respect of any permitted subcontracting, the Contractor shall obtain from each subcontractor an undertaking providing the Employer with the same level of patent protection and indemnity as set out in this Clause, and the Contractor shall remain fully responsible for compliance therewith.
- 15.7 The obligations of the Contractor under this Clause shall survive the completion, termination or expiry of the Contract.

## **16. Contractor to Provide the Service**

- 16.1 The Contractor shall provide the services and carry out the works strictly in accordance with the Scope of Work specified in the Volume-III of the Tender Documents, together with all drawings, specifications, and instructions issued from time to time under this Contract Agreement, all of which shall be deemed to form an integral part of this Contract.

## **17. Deliverables, Submissions and Execution Requirements**

- 17.1 The Contractor shall execute the Works in accordance with the milestones, timelines, and deliverables specified in the Volumes III and Volumes IV of the Tender Documents, which shall form an integral

part of this Contract Agreement.

- 17.2 All submissions, reports, drawings, designs, plans, schedules, and other documents required to be prepared and submitted by the Contractor shall be strictly in accordance with the Submission Schedule of Volume III, within the prescribed timelines, and in the manner specified therein.
- 17.3 The Contractor shall ensure timely submission, review, and approval of all deliverables by the competent authority of MRMC, and shall incorporate comments and revisions, if any, within the time period stipulated or as directed by MRMC.
- 17.4 The Contractor shall be solely responsible for planning, mobilization, deployment, and management of manpower, plant, machinery, equipment, vehicles, tools, and other resources necessary for execution of the Works, so as to achieve the milestones and deliverables within the stipulated timelines.
- 17.5 All costs related to manpower, plant and machinery, vehicles, equipment, logistics, workshops, storage, parking, and any other arrangements required for execution of the Works shall be borne entirely by the Contractor, and MRMC shall not be responsible for providing any such facilities, unless expressly stated otherwise in the Contract.
- 17.6 Failure to submit any deliverable within the stipulated timeline or failure to achieve any milestone shall attract actions, including penalties or other remedies, as specified in the relevant provisions of the Contract and Tender Documents

## **18. Labour Laws and Safety Regulations**

### **18.1 Labour Laws**

- 18.1.1 The Contractor shall comply with all Applicable Laws relating to employment, wages, working conditions, industrial relations, safety, health, and welfare of labour engaged for execution of the Works.
- 18.1.2 No labour below the age of eighteen years shall be employed on the work. Any violation shall be treated as a material breach of the Contract.
- 18.1.3 The Contractor shall pay wages not less than the minimum wages notified under Applicable Laws and shall ensure compliance with laws relating to working hours, overtime, leave, holidays, and other employment conditions. The Contractor shall, at its own expense, comply with all applicable labour laws and shall keep MRMC indemnified in respect thereof. The Contractor shall ensure compliance with the various provisions of labour laws as may be applicable and shall furnish necessary assurances and records to MRMC as required.

### **18.2 Health and Sanitary Arrangements for Workers**

- 18.2.1 In respect of all labour directly or indirectly employed in the works for the performance of the Contractor's part of this Agreement, the Contractor shall comply with, and shall cause to be complied with, all rules and regulations of the local sanitary and other authorities, or as prescribed by MRMC from time to time, for the protection of health and for ensuring proper sanitary arrangements for all workers.

### **18.3 Safety Regulations**

- 18.3.1 The Contractor shall provide adequate welfare facilities, including drinking water, sanitation, first aid, personal protective equipment (PPE), and medical facilities, in accordance with Applicable Laws and safety regulations.
- 18.3.2 The Contractor is responsible for the safety of all its activities on the Site including safety and security of its workforce
- 18.3.3 In respect of all labour, directly or indirectly employed in the work for the performance of the Contractor's part of this Agreement, the Contractor shall, at his own expense, arrange for all safety

provisions in accordance with the safety codes of CPWD, Indian Standards Institution, the Electricity Act, the Mines Act, and such other applicable Acts.

- 18.3.4 The Contractor shall observe and comply with all fire and safety regulations of MRMC. Before commencing construction work, the Contractor shall consult with MRMC and shall make good, to the satisfaction of MRMC, any loss or damage due to fire to any portion of the work done or to be done under this Agreement, or to any existing property of MRMC.

## **18.4 Safety Code**

### **18.4.1 General**

- a) The Contractor shall adhere to safe construction practices, guard against unsafe working conditions, and comply with MRMC's safety rules as set forth herein.
- b) Smoking is strictly prohibited at the construction site and in all designated restricted or hazardous areas. Any violation of the no-smoking rules shall result in immediate removal of the person from the site

### **18.4.2 First Aid, Medical facilities and Industrial Injuries**

- a) The Contractor shall maintain first-aid facilities for its employees and those of its sub-contractors.
- b) The Contractor shall make external arrangements for ambulance services and for the treatment of industrial injuries. The names of the emergency service providers and their telephone numbers shall be prominently displayed in the Contractor's site office.
- c) All critical injuries shall be reported promptly to MRMC, and a copy of the Contractor's report covering each personal injury requiring the attention of a physician shall be furnished to MRMC

### **18.4.3 Site Barricading, Access Control and Protection of Property**

- a) The Contractor shall erect and maintain all barricades required in connection with its operations to guard or protect:
  - i. Excavations;
  - ii. Hoisting areas;
  - iii. Areas adjudged unsafe by the Contractor's or MRMC's representatives;
  - iv. Existing property of MRMC subject to damage due to the Contractor's operations;
- b) Barricades and unsafe areas adjacent to, but not located on, normal routes of travel shall be clearly marked with red flasher lanterns during night hours.

### **18.4.4 Scaffolding, Ladders and Work at Height**

- a) Suitable scaffolding shall be provided for workers for all works that cannot be safely performed from the ground or from solid construction, except for short-duration works that can be safely executed from ladders. When ladders are used, an additional worker shall be engaged to hold the ladder. If ladders are used for carrying materials, suitable footholds and handholds shall be provided, and the ladder inclination shall not be steeper than 1 in 4 (one horizontal to four vertical)
- b) Scaffolding or staging more than 4 meters above ground or floor level, whether suspended or supported, shall be provided with guard rails at least 1 meter high, securely attached, braced, and extending along the entire length and ends, except for necessary openings for material delivery. Such scaffolding shall be properly fastened to prevent swaying.
- c) Working platforms, gangways, and stairways shall be constructed so as not to sag unduly or unevenly. Where their height exceeds 4 meters above ground or floor level, they shall be closely boarded, of adequate width, and securely fastened as described above.
- d) Every floor opening or opening in a working platform shall be provided with suitable fencing or railing, with a minimum height of 1 meter, to prevent the fall of persons or materials

- e) Safe means of access shall be provided to all working platforms and work areas. All ladders shall be securely fixed. No portable single ladder shall exceed 9 meters in length. The minimum width between side rails shall be 30 cm for ladders up to 3 meters in length, increasing proportionately for greater lengths. Step spacing shall not exceed 30 cm. Adequate precautions shall be taken to prevent hazards from electrical equipment.
- f) Materials shall not be stacked in a manner that may cause danger or inconvenience. The Contractor shall provide all necessary fencing and lighting to prevent accidents and shall bear all costs arising from any legal proceedings due to non-compliance with these precautions.

#### **18.4.5 Excavation and Trenching**

- a) All trenches 1.2 meters or more in depth shall be provided at all times with at least one ladder for every 50 meters of trench length or part thereof.
- b) Ladders shall extend from the bottom of the trench to at least 1 meter above ground level. Trenches exceeding 1.5 meters in depth shall be properly sloped or supported with timber bracing to prevent collapse. Excavated material shall not be placed within 1.5 meters of the trench edge or within half the trench width, whichever is greater. Excavation shall proceed from top to bottom, and under no circumstances shall undermining or undercutting be permitted.

### **19. Discoveries**

- 19.1 Anything of historical or other interest or of significant value unexpectedly discovered on the Site is the property of the Employer or the Competent Employer. The Contractor shall notify the Employer of such discoveries and carry out the Employer's instructions for dealing with them.
- 19.2 All gold, silver, minerals of any description, precious stones, coins, treasure, relics, antiquities, and other similar items found in, under, or upon the Site shall be the property of MRMC. The Contractor shall properly preserve and safeguard such items and immediately report them to MRMC. All such items shall be handed over to MRMC as per their instructions

### **20. Performance Security**

#### **20.1 Criteria for Performance Security**

- 20.1.1 Contractor shall have to pay amount equivalent to 5% (five per cent) of the final and negotiated total Contract value of the whole Contract as Security deposit ("Performance Security") in the form of FDR or Bank Guarantee ("BG") from any Nationalized or Scheduled Bank as per list of Government of Gujarat (GoG Finance Department's Circular No. FD/MSM/e-file/4/2023/0057/D.M.O. Date 21/04/2023 or as per their latest amendment), payable at Morbi in favour of "Deputy Municipal Commissioner, Morbi Municipal Corporation"
- 20.1.2 Further, in case of bids mentioned below, the successful Bidder, along with the Performance Security, shall also furnish to the Authority an irrevocable and unconditional guarantee from a Bank in the same form as an Additional Performance Security (The "Additional Performance Security") for an amount calculated as under:
  - a) If the Contract Price offered by the Selected Bidder is lower than 10% but upto 20% of the Estimated Project Cost, then the Additional Performance Security shall be calculated @ 20% of the difference in the (i) Estimated Project Cost (as mentioned in Bid Document) - Minus 10% of the Estimated Project Cost and (ii) Contract Price offered by the selected Bidder.
  - b) If the Contract Price offered by the Selected Bidder is lower than 20% of the Estimated Project Cost, then the Additional Performance Security shall be calculated @ 30% of the difference in the (i) Estimated Project Cost (as mentioned in Bid Document) - Minus 10% of the Estimated Project Cost and (ii) Contract Price offered by the selected Bidder.
  - c) This Additional Performance Security shall be treated as part of the Performance Security
- 20.1.3 The Performance Security (including additional performance security) shall remain valid for a period equivalent to the contract period + 60 days

- 20.1.4 Failure of the successful Bidder to comply with the requirement of Sub-Clause 20.1 shall constitute sufficient grounds for cancellation of the award and forfeiture of the Bid Security
- 20.1.5 Employer shall return the EMD not later than 45 days of furnishing BG towards Security Deposit.
- 20.1.6 In case the Contractor fails to render services as per scope of work defined the Contract Agreement or breaches any terms and conditions of the Agreement, the Employer shall forfeit the Performance Security Deposit by encashing the BG and shall terminate the Contract Agreement.
- 20.1.7 Appropriation of Security Deposit
- a) Upon occurrence of a Contractor default or non-payment of taxes, duties, fees, charges, bills, etc. of said premises, by due date, to the concerned authorities, the Employer shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to invoke and appropriate the relevant amounts from the security deposit ("EMD, or SD") as damages for such Contractor default. Upon such invocation and appropriation from the security deposit, the Contractor shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, the security deposit to its original level, and in case of appropriation of the entire security deposit provide a fresh security deposit, as the case may be, and the Contractor shall, within the time so granted, replenish or furnish fresh security deposit as aforesaid failing which the Employer shall be entitled to terminate the Contract Agreement in accordance with clause 20.1. Upon replenishment or furnishing of a fresh security deposit, as the case may be, as aforesaid, the Contractor shall be entitled to an additional Cure period of 30 (thirty) days for remedying and Contractor default, and in the event of the Contractor not curing its default within such cure period, the Employer shall be entitled to encash (SD - BG) and appropriate such security deposit as damages, and to terminate Contract Agreement in accordance with relevant provisions for Termination.
- 20.1.8 Release of Security Deposit
- a) The Security Deposit shall be returned as specified terms and condition under Clause 20 of the Contract Agreement. The Employer shall return the Bank Guarantee to the Contractor within 30 (thirty) days after having successfully completed the Contract or from the date of issuance of completion certificate, whichever is later. No interest shall be paid on any Security Deposit payable under this Contract Agreement.
  - b) If the Contract Agreement is terminated due to any event other than Contractor event of default, the Performance Security deposit shall subject to the Employer's right to receive or recover amounts if any due from Contractor under this Agreement, be duly discharged and released to the Contractor.

## **21. Access to the Site**

- 21.1 The Contractor shall allow any person authorized by the Employer access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out.

## **22. Deleted**

## **23. Deleted**

## **24. Disputes**

### **24.1 Amicable Settlement**

- 24.1.1 **Employer's Decision:** If any dispute of any kind whatsoever arises between the Employer or its authorised representative including Engineer-in-charge and the Contractor in connection with, or arising out of, the Contract or the execution of the operations/services or after their completion, and before or after repudiation or other termination of the Contract, including any dispute as to:
- (a) The meaning of the instructions herein before mentioned,



- (b) The quality of the works / services rendered,
- (c) Any opinion, instruction, determination, certificate or valuation of the Employer, or
- (d) Any other question, claim, right matter or anything whatsoever in any way arising out of or relating to the contract, instructions, conditions, orders or the failure to execute the same.

24.1.2 The dispute shall be referred in writing to the **Municipal Commissioner, Morbi Municipal Corporation** who has jurisdiction over the operations/services specified in the Contract, with a copy to the other party. Such reference shall state that it is made pursuant to this Clause. The **Municipal Commissioner, Morbi Municipal Corporation** shall give written notice of his decision to the Contractor. Such decision shall state that it is made pursuant to this Clause. Subject to the other forms of settlement hereinafter provided, the **Employer's** decision in respect of every dispute or difference so referred shall be final and binding upon the Contractor. Unless the Contract has already been repudiated or terminated, the Contractor shall, in every case, continue to proceed with the work with all due diligence and the Contractor shall give effect forthwith to every such decision of the **Employer's** until or unless the same shall be revised in an amicable settlement.

24.1.3 **Arbitration process:** In case the decision of the authority is not acceptable to the service provider, the dispute settlement shall be carried out in accordance with the Gujarat Public Work Contracts Dispute Arbitration Tribunal Act, 1992

## **24.2 Dispute Settlement**

- 24.2.1 In the event if the dispute is not settled amicably, the matter shall be referred to the Tribunal.
- 24.2.2 The disputes relating to this contract, whether they arise during the progress of work or after the completion or abandonment thereof, shall be referred to the Arbitration Tribunal, Gujarat State
- 24.2.3 The provision of Section-2 of the GPWD disputes Arbitration Tribunal Act 1992, & order issued by the government in connection with this Act will now apply for Arbitration. (as per government in N. & W.R.D letter no. SUT/1090/2679/K2 dated. 9/2/94)
- 24.2.4 The provision of Arbitration Act shall in so far as they are inconsistent with the provision of this act cease of to apply to any dispute arising from a works contract and all arbitration proceedings in relation to such dispute before an arbitration, court of authority shall stand transferred to the tribunal.
- 24.2.5 The awards declared by the arbitrator should be speaking award, giving reasons, and calculations for every items of claims. The decision will have to be implemented by all the departments of the state government and public sector enterprises of Gujarat (Resolution F.D.NO. PB/1088/735/KT/Sachivalaya/Gandhinagar 5th October 1988.)
- 24.2.6 In case of dispute leading to the contractor or Government of Gujarat approaching to Court of Law, it shall be within the jurisdiction where the site of work is situated
- 24.2.7 The reference to the arbitration proceedings under this clause shall not:
  - a) Preclude the authority from removing the contractor's equipment, machineries, materials, etc. to other place, during the period the work is stopped or suspended in pursuance of notice if any, given to the contractor
  - b) Entitle the contractor to stop the progress of the work or carrying out the additional or altered work as directed by the authority.

## **B. Time Control**

### **25. Contract Period**

- 25.1 The total Contract Period shall be comprising the periods for Design, Engineering, Procurement and, Construction (including Testing and Commissioning), and Operation and Maintenance (O&M), subject to extensions granted in accordance with the provisions of the Contract
- 25.2 The stage-wise breakup of the Contract Period shall be as follows.
- (a) **Construction Stage (including design, engineering, supply, construction, testing and Commissioning):** A period of **ten (10) months** commencing from the date of receipt of work order, for completion of supply, construction, testing and commissioning of the Works
  - (b) **Operation and Maintenance (O&M) Stage:** A period of **five (5) years** commencing from the date of issuance of the Provisional Acceptance Certificate, during which the Contractor shall operate and maintain the Facility in accordance with the Contract
- 25.3 Any extension of time for completion of the Works under the Design, Engineering, or Construction Stages shall be governed by the provisions of **Clause 26 (Extension of Time)**. No extension of the Contract Period shall be deemed granted unless expressly approved in writing by MRMC and/or its authorized persons, including the Engineer-in-Charge.
- 25.4 The duration of the Operation and Maintenance (O&M) Stage may be extended by the Employer on mutually agreed terms and conditions, subject to satisfactory performance of the Contractor and in accordance with the provisions of the Contract

### **26. Extension of Intended Completion Date**

- 26.1 If the Contractor desires an extension of time for completion of the Works on the grounds that he has been unavoidably hindered in their execution, including due to Force Majeure events, Variations or on any other grounds, he shall apply in writing to MRMC and/or its authorized persons, including the Engineer-in-Charge, **within ten (10) days** from the date of occurrence of such hindrance or delay on account of which the extension is sought.
- 26.2 Employer and/or its authorized persons, including the Engineer-in-Charge, shall, if in his opinion believe that there are reasonable grounds for granting an extension and subject to the provisions of the relevant clauses of the contract, authorize such extension of time as may, in his opinion, be necessary or proper. The decision of the Engineer-in-charge/Employer in this matter shall be final and binding on the Contractor.

### **27. Suspension of Service**

- 27.1 Employer may at any time by written notice to the Contractor suspend further performance of the services, whereupon the Contractor shall suspend further performance of the services to the extent specified and shall properly ensure and protect all services in progress. Such suspension shall remain in force till resumption of services is notified by the employer during the Contract Period. The Employer may at any time give notice of resumption of the suspended operations/services, in whole or in part, whereupon the Contractor shall resume its performance of that portion of the services.

### **28. Management / Review Meetings**

- 28.1 The Contractor shall have to ensure that its Authorized Representative attends a management/review meetings conducted periodically by the Employer.



## **C. Quality Control**

### **29. Performance of Work**

#### **29.1 Execution of Work**

- 29.1.1 All works shall be executed in strict conformity with the provisions of the Contract Documents and with such explanatory details, drawings, specifications, and instructions as may be furnished from time to time to the Contractor by the MRMC and/or its authorised persons, including the Engineer-in-Charge, whether or not expressly mentioned in the Contract.
- 29.1.2 The Contractor shall be responsible for ensuring that the works are executed throughout in a substantial, proper, and workmanlike manner, and that the quality of materials and workmanship strictly conforms to the specifications of the items mentioned in the Tender.

#### **29.2 Work in Monsoon and Dewatering**

- 29.2.1 The completion of the work may require execution during the monsoon season and during other adverse weather conditions. The Contractor shall maintain the minimum labour force required for the job and shall plan and execute the construction and erection works in accordance with the prescribed schedule. During the monsoon and other periods, it shall be the responsibility of the Contractor to keep the construction site free from water at its own cost. No extra payment or rate shall be admissible for work carried out during the monsoon or for dewatering activities.

#### **29.3 Working hours and labour management**

- 29.3.1 The normal working time shall be 48 hours per week. Shift working, up to a maximum of two shifts per day, shall be permitted, unless otherwise provided in the Tender document. The Contractor shall consider this while formulating the quoted rates. No extra claims on this account shall be entertained by the MRMC.
- 29.3.2 The Contractor shall arrange the deployment of workers in such a manner that any delay in completion of the work, or any part thereof, for any reason whatsoever, does not affect their proper employment. The MRMC shall not entertain any claim for idle time payments under any circumstances.

#### **29.4 Setting out of works**

- 29.4.1 The bidder shall be shown only the main boundaries of the work site and a level bench mark. The bidder shall set out the works, provide efficient staff for this purpose, and shall be solely responsible for the accuracy of such setting out.
- 29.4.2 The contractor shall provide, fix, and maintain all stakes, templates, level marks, profiles, and other similar items. The contractor shall take all necessary precautions to prevent their removal or disturbance and shall be responsible for the consequences of any such removal or disturbance, including their timely and proper reinstatement. The contractor shall also be responsible for the maintenance of all existing survey marks, boundary marks, distance marks, and centre line marks, whether existing or supplied and fixed by the contractor. The works shall be set out strictly in accordance with the details shown in the drawings.
- 29.4.3 Before commencement of the works, the contractor shall, at his own cost, provide all necessary reference and level posts, pegs, bamboos, flags, ranging rods, strings, and other materials required for proper layout of the works in accordance with the approved scheme. The centre, longitudinal, face, and cross lines shall be marked by small masonry pillars. Each pillar shall have a distinct centre mark to enable accurate setting out. The bidder shall also provide all labour, materials, and facilities required for checking of the layout and inspection of points during construction.
- 29.4.4 Geodetic pillars or marks located at the site of works under construction shall be protected and fenced by the contractor. Upon completion of the works, the contractor shall submit the geodetic documents based on which the works were executed

## **29.5 Action where no specification is issued**

- 29.5.1 In case of any class of work for which no specifications are supplied by the MRMC as mentioned in the tender documents, such work shall be carried out in accordance with Indian Standard Specifications. If the Indian Standard Specifications do not cover the work, it shall be carried out as per standard engineering practice.

## **29.6 Responsibility for level and alignment**

- 29.6.1 The contractor shall be entirely and exclusively responsible for the horizontal and vertical alignment, the levels and correctness of every part of the work and shall rectify effectively any errors or imperfections therein. Such rectification shall be carried out by the contractor at his own cost.

## **29.7 Materials to be supplied by the bidder**

- 29.7.1 The contractor shall procure and provide all materials of the quality and specifications as approved by the MRMC and required for construction, including M.S. rods, cement, other building materials, tools, tackles, construction plant, and equipment necessary for completion and maintenance of the works. The bidder shall make his own arrangements for procuring and transporting all such material.

## **29.8 Materials Procured with Assistance of MRMC**

- 29.8.1 No material shall be procured with the assistance of MRMC, nor shall any material be supplied by MRMC.

## **29.9 Materials Obtained from Dismantling**

- 29.9.1 If, during the execution of the work, the Contractor is required to dismantle any part of the work for reasons other than those specified in this Contract, the materials obtained from such dismantling shall be reported and disposed of in consultation with MRMC

## **29.10 Tests for Quality of Works**

- 29.10.1 All workmanship shall be of the respective kinds described in the contract documents and shall, from time to time, be subjected to such tests at the contractor's cost as may be directed, either at the manufacturer's or fabricator's site, on-site, or at any other place. The contractor shall provide all assistance, instruments, labor, and materials normally required for examining, measuring, and testing the workmanship as may be selected and required. All tests necessary in connection with the execution of the work shall be carried out at laboratories prescribed by the MRMC, and all expenses incurred shall be borne by the contractor.

## **29.11 Possession prior to completion**

- 29.11.1 The MRMC shall have the right to take possession of, or use, any completed or partially completed work or part thereof. Such possession or use shall not be deemed to be acceptance of the work as completed in accordance with the Contract.

## **29.12 Care of Works**

- 29.12.1 From the commencement of the works until their completion, the contractor shall take full responsibility for the care of all works, including all temporary works.
- 29.12.2 If any damage, loss, or injury occurs to the works or any part thereof, or to any temporary works, from any cause whatsoever, the contractor shall, at his own cost, repair and make good the same.
- 29.12.3 At completion, the works shall be in good order and in full conformity with the requirements of the contract.

## **30. Alterations and Variation in Works**

- 30.1 The Engineers of MRMC shall have the power to make any alterations in or addition to the original specifications, drawings, designs, and instructions that may appear to them to be necessary or advisable during the progress of the work. The bidder shall be bound to carry out the work in

accordance with any instructions in this connection given to him in writing and signed by the Engineer-in-Charge. Such alterations shall not invalidate the contract, and any additional work that the bidder may be directed to do in the manner specified above as part of the work shall be carried out by the bidder on the same conditions in all respects on which he agreed to do the main work, and at the same rates as specified in the tender for the main work.

- 30.2 The quantities shown in the Tender are approximate and no claim shall be entertained for quantities of work executed being less than those entered in the Tender.
- 30.3 In case of increase in the quantities, for each individual BOQ item, quantities executed up to one hundred and thirty percent (130%) of the quantity specified in the BOQ shall be paid at the rates quoted by the Contractor in the Tender for that item. Where the quantity executed for any individual BOQ item exceeds 130% of the BOQ quantity, the quantity executed in excess of such 130% threshold shall be paid at the Schedule of Rates (SOR) applicable for the year in which the execution of such excess quantity is first commenced, and such rate shall remain fixed for the entire excess quantity, irrespective of the period over which the excess quantity is executed or paid.
- 30.4 When the quantity of any item exceeds the quantity specified in the tender, the bidder shall consult with the Engineers of MRMC. If found appropriate, the work shall be carried out, and the bidder shall be paid for the same at the rates specified in the Schedule of Rates in the financial bid document of the tender.
- 30.5 If the additional or altered work includes any class of work for which no rate is specified in this contract, then such class of work shall be carried out as under;
- (a) At the rate derived from the item within the contract which is comparable to the one involving additional or altered class of work; where there are more than one comparable items, the item of the contract which is nearest in comparison with regard to class or classes of the work involved shall be selected and the decision of the Municipal Commissioner, MRMC as to the nearest comparable item shall be final and binding on the contractor
  - (b) If the rate cannot be derived in accordance with (a) above, such class of works shall be carried out at the rate entered in the Schedule of Rates of the R&B Morbi Division for the year in which the tender was received, increased or decreased by the percentage by which the tender amount is more or less as compared to the amount arrived at the rates in the "Schedule of Rates" of the Division in the year in which the tender was received. If the Schedule of rates of the R&B Morbi Division does not contain all the items, the percentage increase or decrease of the tender shall be calculated considering such items which were included in the "Scheduled Rates" of the division for the year and for materials consumed on such item the rate to be charged would be the basic rate taken into account for fixing the rate in S.O.R. referred to above.
  - (c) If it is not possible to arrive at the rate from (a) and (b) above, such class of work shall be carried out at the rate decided by the competent authorities on the basis of detailed rate analysis submitted by the contractor.
- 30.6 If the additional or altered work, for which no rate is entered in the "Schedule of Rates" of the R&B Morbi Division is ordered to be carried out before the rate is agreed upon, then the contractor shall within seven days of the date of receipt by him of the order to carry out the work, inform the Engineer-in-charge of the rate, which it is his intention to charge for such class of work and if the Engineer in charge does not agree to this rates, he shall by notice in writing be at liberty to cancel his order to carry out such class of work and arrange to carry it out in such manner as he may consider it advisable, provided always that if the contractor shall commence work or incur any expenditure in regard thereof before the rates shall have been determined as lastly herein before mentioned, then in such cases he shall only be entitled to be paid in respect of the work carried out or expenditure incurred by him prior to the date of the determination of the rate as aforesaid according to such rate or rates as shall be fixed by the Engineer-in-charge. In the event of the dispute, the decision of the Municipal Commissioner, MRMC shall be final.
- 30.7 Where, however, the work is to be executed according to the designs, drawings and specifications recommended by the contractor and accepted by the competent authority, the alternation above

referred to shall be within the scope of such designs, drawings and specifications appended to the tenders.

- 30.8 The time limit for the completion of the work shall be extended in the proportion that the increase in the cost occasioned by alterations bears to the cost of the original work and the certificate of the Engineer-in-charge as to such proportion shall be final and conclusive.

### **31. Defect Liability**

- 31.1 The Defects Liability obligations of the Contractor shall commence from the date of issuance of the Provisional Acceptance Certificate (PAC) upon satisfactory completion of construction.
- 31.2 The bidder shall guarantee the installation/work for a period of **five years** from the date of issuance of the PAC. The Defects Liability Period shall be co-terminus with the Operation and Maintenance (O&M) Period of five (5) years commencing from the date of issuance of the Provisional Acceptance Certificate. If the O&M period is extended by the Employer, the defect liability period shall also extend for the same period.
- 31.3 Any defect, damage, or fault that arises within this **five years** period, or which was undiscovered at the time of the PAC, and is connected in any way with the design, engineering, equipment, materials supplied, or workmanship, shall be rectified or replaced by the bidder at his own expense.
- 31.4 If the bidder fails to rectify or replace the defect, the MRMC may have it made good by other workmen and deduct the costs from any sums due to the bidder, from his Security Deposit, or from the proceeds of sale thereof.
- 31.5 The certificate of the MRMC regarding the cost of rectification shall be final and binding upon the contractor.

### **32. Identification of Defects**

- 32.1 The Employer through the Designated Officer, shall check the Contractor's work and notify the Contractor of any deficiencies which are found. Such checking does not affect the Contractor's responsibilities.

### **33. Defects prior to taking over**

- 33.1 If, at any time prior to the taking over of the Works or any part thereof, MRMC determines that any work executed or materials supplied by the Contractor or any of its sub-contractors are defective, deficient, non-conforming, or otherwise not in accordance with the requirements of the Contract (hereinafter referred to as "Defects"), MRMC shall notify the Contractor accordingly.
- 33.2 MRMC shall, as soon as reasonably practicable, provide the Contractor with written notice specifying the nature and particulars of such Defects.
- 33.3 Upon receipt of such notice, the Contractor shall, at its own cost and risk and with due diligence and expedition, rectify and make good the specified Defects within the Defect Correction Period stated in the notice or as provided under the Contract.

### **34. Defects after taking over**

- 34.1 After the Works or any part thereof have been taken over, the Contractor shall be responsible for rectifying, at its own cost and with all reasonable speed, any Defect arising from defective materials, workmanship, design (if applicable), or from any act, omission, or non-compliance under the Contract that is noticed or develops during the Defects Liability Period.
- 34.2 The period allowed for carrying out such rectification shall be the Defect Correction Period specified in the notice issued by MRMC, which shall normally not exceed one (1) month, unless otherwise specified in the Tender Documents or extended by MRMC based on the nature of the Defect.
- 34.3 Rectification of Defects under this Clause shall be deemed complete only upon verification and

certification by MRMC or its Authorized/Designated Office.

### **35. Correction of Defects and Compliant Redressal**

- 35.1 If any defect, deficiency, non-conformity, or failure in the Works or any part thereof is observed during execution or within the Defects Liability Period, the Employer or its Authorized/Designated Officer shall notify the Contractor in writing or through any other accepted mode of communication.
- 35.2 Upon issuance of such notice, the Contractor shall, at its own cost and risk, rectify the notified defect within the Defect Correction Period specified in the notice or as provided in the Tender Documents.
- 35.3 The Contractor shall also be responsible for identifying and rectifying, at no additional cost to the Employer, any defects noticed by the Contractor during execution of the Works or within the Defects Liability Period, whether or not such defects have been formally notified by the Employer.
- 35.4 If the Contractor fails to rectify the notified defects within the prescribed Defect Correction Period, the Employer shall, without prejudice to any other rights or remedies available under the Contract:
  - (a) levy penalties and/or liquidated damages as specified in the Tender Documents; and/or
  - (b) get the defects rectified through a third party at the risk and cost of the Contractor, with such costs recoverable from the Contractor.
- 35.5 Rectification of defects shall be deemed complete only upon verification and certification by the Employer or its Authorized/Designated Officer that the defects have been satisfactorily corrected in accordance with the Contract.

### **36. Uncorrected Defects**

- 36.1 If the Contractor fails to rectify any Defect within the Defect Correction Period specified in the notice issued by MRMC under Clause 34 or Clause 35, MRMC shall be entitled, without prejudice to any other rights or remedies available under the Contract, to arrange for such Defect to be rectified through a third party at the risk and cost of the Contractor.
- 36.2 MRMC shall give the Contractor a minimum of two (2) days' written notice of its intention to engage a third party for rectification of the Defect. If the Contractor fails to rectify the Defect within such notice period, MRMC may proceed to have the Defect rectified through a third party.
- 36.3 All costs and expenses incurred by MRMC in connection with such rectification, including administrative and supervision charges, shall be recoverable from the Contractor and may be deducted from any amounts due or becoming due to the Contractor, including Running Account Bills, Retention Money, Performance Security, or any other security, without prejudice to MRMC's right to recover the balance, if any, as a debt due.
- 36.4 Rectification of Defects through a third party shall not relieve the Contractor of its obligations, liabilities, or responsibilities under the Contract, including those relating to the Defects Liability Period.

### **37. Deleted**

## **D. Cost Control**

### **38. Payments and Certificates**

#### **38.1 Schedule of Rates**

- 38.1.1 The prices and rates quoted by the Contractor shall be firm and fixed until issuance of the final certificate and shall not be subject to escalation, except as expressly provided under the Contract. The Schedule of Rates shall be deemed to be fully inclusive and sufficient for complete execution of the Works.
- 38.1.2 The Contractor shall be deemed to have fully examined and understood the nature, scope, magnitude, extent and requirements of the Works, whether or not fully detailed in the Contract Documents, and shall have made adequate provision in the Schedule of Rates for all works, services, materials and obligations reasonably necessary for proper completion of the Works.
- 38.1.3 The Schedule of Rates shall be deemed to include, without limitation, the cost of:
- all construction plant, machinery, equipment, temporary works, pumps, tools and appliances;
  - all materials, labour, supervision, fuel, stores, insurance and incidentals;
  - execution, completion and maintenance of the Works in accordance with the Contract Documents and instructions issued during the Contract Period.
- 38.1.4 The Schedule of Rates shall also be deemed to include the cost of all royalties, rents, licence fees and charges, including those relating to patented or proprietary materials, processes or articles used in the Works, and shall include an indemnity to MRMC against all claims, actions, damages, costs and expenses arising therefrom. Any local authority or similar charges on materials, equipment or machinery brought to site shall be borne by the Contractor.
- 38.1.5 The rates quoted shall exclude GST, which shall be payable extra, if applicable, in accordance with Applicable Laws.
- 38.1.6 The Schedule of Rates shall be deemed to include and cover the risk of all delays and interferences, from whatever cause arising, including instructions or orders of MRMC, extensions of time granted for any reason, and all other foreseeable or unforeseeable causes of delay.
- 38.1.7 The Schedule of Rates shall not be altered due to any modification, alteration, extension, reduction or omission of the Works, except as expressly provided elsewhere in the Contract. The rates represent fully inclusive unit rates agreed by the Parties and shall remain binding

#### **38.2 Payment Conditions**

- 38.2.1 The payments to the Contractor under this Contract shall be governed by the Payment Conditions and Payment Schedules specified in Volume IV of the Tender Documents, which shall form an integral and binding part of this Contract.
- 38.2.2 Payments during the **Design, Engineering, Procurement, Supply, Construction, Testing and Commissioning** stages shall be made **only on a milestone basis**, in accordance with the applicable payment milestones and subject to fulfilment of the eligibility conditions, certifications and requirements specified in Volume III and Volume IV of the Tender document.
- 38.2.3 Payments during the **Operation and Maintenance (O&M)** Phase shall be made on a **monthly**, performance-based basis, subject to compliance with the operational requirements, Key Performance Indicators (KPIs), reporting obligations and certification conditions specified in Volume IV of the Tender document.
- 38.2.4 All payments shall be subject to applicable retention, deductions, recoveries, penalties, liquidated damages, statutory dues and withholdings, as provided under the Contract and the Tender Documents



38.2.5 No advance payment or interest on delayed, withheld or retained amounts shall be payable, except as expressly provided in the Tender Documents

38.2.6 Any payment made by the Employer shall not be deemed to constitute acceptance of the Works or O&M services, nor shall it relieve the Contractor of any obligations, responsibilities or liabilities under the Contract

### **38.3 Effect of Payments**

38.3.1 Any payment made by the Employer under this Contract, including milestone payments or O&M payments, shall be treated as an interim payment only and shall not be deemed to constitute acceptance of the Works or O&M services, nor shall it relieve the Contractor of any obligations, responsibilities or liabilities under the Contract, or affect the rights of MRMC with respect to defects, variations, final settlement of accounts or any other matter arising under the Contract.

38.3.2 The final bill, if applicable, shall be submitted by the Contractor in accordance with the provisions of the Contract.

### **38.4 Notice of Claims for additional payments**

38.4.1 If the Contractor considers himself entitled to any additional payment, compensation or to make any claim whatsoever in respect of the Works, he shall give written notice to MRMC stating that he intends to claim such additional payment and/or compensation.

38.4.2 Such notice shall be submitted to MRMC within **ten (10) days** from the date of ordering of the work or the occurrence of the event on which the claim is based, and shall include full particulars of the nature of the claim, along with complete details and the amount claimed.

38.4.3 Failure of the Contractor to submit such notice with the required particulars within the time specified above shall constitute an absolute waiver of such claim.

38.4.4 No omission by MRMC to reject any such claim, and no delay in dealing with the same, shall be deemed to be a waiver by MRMC of any of its rights in respect thereof

### **38.5 Milestone Completion Certificate**

#### **38.5.1 Application for Milestone Completion Certificate**

- a) Upon achievement of any milestone specified in Volume III of the Tender Documents, the Contractor shall be eligible to apply for a Milestone Completion Certificate for such milestone.
- b) The Contractor shall submit the application for Milestone Completion Certificate along with all documents, deliverables, reports, drawings, test results, statutory approvals and other records linked to the relevant milestone, as specified in the Tender Documents.

### **38.6 Issuance of Milestone Completion Certificate**

- a) MRMC and/or its authorized persons, including the Engineer-in-Charge, shall, within the time period specified in the Contract, verify the submissions and, upon being satisfied that the relevant milestone has been achieved in accordance with the Contract and Tender Documents, issue the Milestone Completion Certificate.
- b) Issuance of a Milestone Completion Certificate shall entitle the Contractor to raise an invoice for payment of the corresponding milestone, in accordance with the payment provisions of the Contract.

### **38.7 Effect of Milestone Completion Certificate**

Issuance of a Milestone Completion Certificate shall not be deemed to constitute;

- a) acceptance of the Works or any part thereof,
- b) completion of the Project or any stage thereof, or
- c) waiver of any rights, claims or remedies of MRMC under the Contract.

The Contractor shall remain fully responsible for compliance with the Contract, including rectification of defects and fulfilment of subsequent obligations

### **38.8 Completion Documents**

38.8.1 For the purpose of verification and issuance of a Milestone Completion Certificate, the Contractor shall submit documents relevant to the concerned milestone, which may include, as applicable:

- a) Design, engineering and technical documents in accordance with which the Works have been executed;
- b) Drawings, calculations and reports, including revised or updated drawings where applicable;
- c) Certificates for embedded or covered-up works, where relevant;
- d) Test certificates, inspection reports and quality control records;

### **38.9 Final Completion and Takeover**

38.9.1 The Milestone Completion Certificate shall be distinct from and without prejudice to the issuance of the **Provisional Acceptance Certificate** or **Final Acceptance Certificate**, which shall be governed by the relevant provisions of the Contract.

### **38.10 Other payment terms**

38.10.1 Payments shall be made based on the Contractor's achievement of the defined scope of work, in accordance with the approved payment milestones and the final negotiated Price Bid.

38.10.2 The Municipal Commissioner shall have right to finalize the amount of penalties or liquidated damages levied for the month considered under the bill or other penalties / liquidated damages levied in previous months but not recovered.

38.10.3 Payments shall be subject to the Employer's right to deduct appropriate amount as damages/performance penalties as described in relevant section of this document.

38.10.4 Deductions from the Payment will be made towards Income Tax and other applicable taxes as per provisions of the statutory authorities, in force from time to time in the State of **Gujarat**. The Contractor is expected to include all such charges at the time of bidding submission.

38.10.5 Fuel escalation: There shall be no fuel escalation payable by the Employer to the Contractor for any increase in fuel cost applicable to the Contractor.

38.10.6 In case the Employer decides to appoint an Independent third-party inspection agency to monitor the project performance and Contractor's services, the Employer shall inform Contractor to report them and get their bills verified by third party inspection agency. The cost for third party inspection agency shall be borne by the Employer.

## **39. Liens and Claims**

39.1 If, at any time, there is evidence of any lien or claim for which the MRMC might have become liable and which is chargeable to the Contractor, the MRMC shall have the right to retain, out of any payment then due or thereafter becoming due, an amount sufficient to fully indemnify the MRMC against such lien or claim.

39.2 If any such lien or claim is valid, the MRMC may pay and discharge the same and deduct the amount so paid from any money which is or may become due and payable to the Contractor.

39.3 If any lien or claim remains unsettled after all payments have been made, the Contractor shall refund and make good to the MRMC, or pay to the MRMC, all monies that the MRMC may be compelled to pay in discharging such lien or claim, including all costs and reasonable expenses incurred in connection therewith.

## **40. Tax**

40.1 The amount quoted by the Contractor at the time of bidding shall be inclusive of all taxes applicable



as on date of submission excluding GST. Any increase in such taxes inclusive or any new tax imposition during the Contract Period by the Employer, State Government or Central Government departments related to the operations of the contractor shall be borne by the Contractor. Good and Service Tax (GST) shall be paid to the Contractor by the Employer, as applicable from time to time.

- 40.2 The Contractor agrees to, and does hereby, accept full and exclusive liability for the payment of any and all types of taxes, duties, royalties, octroi, etc., now or hereafter imposed, increased, or modified, and all duties, octroi, etc., now in force and hereafter increased, imposed, or modified from time to time in respect of works and materials, and all contributions and taxes for unemployment compensation, insurance, and old-age pensions or annuities now or hereafter imposed by any Central or State Government authorities which are imposed with respect to or covered by the wages, salaries, or other compensation paid to the persons employed by the Contractor. The Contractor shall be responsible for compliance with all obligations and restrictions imposed by the labour law as may be applicable to the Contractor and MRMC, or any other law affecting the employer–employee relationship. The Contractor further agrees to comply, and to secure the compliance of all sub-contractors, with all applicable Central, State, Municipal, and local laws, regulations, and requirements of any Central, State, or Local Government agency or authority.
- 40.3 The Contractor further agrees to defend, indemnify, and hold harmless MRMC from any liability or penalty which may be imposed by the Central, State, or Local authorities by reason of any violation by the Contractor or sub-contractors of such laws, regulations, or requirements, and also from all claims, suits, or proceedings that may be brought against MRMC arising under, growing out of, or by reason of the work provided for by this contract, by third parties, or by any Central or State Government authority or any administrative sub-division thereof

## **41. Security**

- 41.1 A Security Deposit shall be provided to the Employer in accordance with the relevant Clause of the Tender document.
- 41.2 On Completion of the whole of the Contract, if Employer is satisfied that during the contract period and no damage is caused to any public facility as a result of operation of the contract by the Contractor or any of his employee then total amount retained as Security Deposit shall be repaid to the Contractor on completion of the Contract.
- 41.3 If the performance security deposit was submitted by the Contractor, then the same shall be returned to the Contractor without any interest in accordance with the procedure specified in the Clause 20 of the Contract Agreement.
- 41.4 The Employer may claim against the surety if any of the following occurs for 14 days or more:
- (a) the Contractor is in breach of the Contract and the Employer has notified him that he is; or
  - (b) The Contractor has not paid an amount due to the Employer; or
  - (c) The Contractor has not corrected a defect as informed by the Employer; or
  - (d) The Contractor has not extended the validity of securities and insurance cover within required time limit.

## **42. Liquidated Damages**

- 42.1.1 Liquidated Damages, if any, payable by the Contractor for delay or non-performance shall be levied strictly in accordance with the provisions contained in Volume IV of the Tender Documents, which shall form an integral part of this Contract.

## **43. Accident / Damages / Claims / Liabilities**

- 43.1 In the event of any accident/damage while the vehicles are in the service of the corporation, the corporation shall be completely free from any liability of any nature occurred with the accidents happened. The contractor will be fully and exclusively responsible for any damage to his vehicles or

any of his equipment attached with the vehicles or dumpers including driver and helpers.

- 43.2 The Contractor will be fully and solely responsible for any death or body injury to his staff member or any of the people/person in the employment of the Contractor. This includes any third-party claims.
- 43.3 The Contractor will be solely responsible for any consequences under laws, arising out on any accident caused by his vehicles, Machinery or his employees to the property or personnel of the MRMC.
- 43.4 The MRMC shall not be responsible for any claim/compensation that may arise due to damages / injury / death / pilferage to the Contractor's Vehicles, Machinery, property or staff under any circumstances while providing services under the Contract.
- 43.5 Loss or damage to any public property between the Start Date and the End of the Contract Period is to be mended by the Contractor at the Contractor's cost, if the loss or damage arises from the Contractor's acts or omissions.

## **E. Completion of the Contract**

### **44. Completion**

- 44.1 The Contractor shall request the Engineer-in-charge to issue a Certificate of Completion of the works and the Engineer will do so upon deciding that the work is completed.

### **45. Taking Over**

- 45.1 The Employer shall take over the Site and Works immediately within **seven days** of the Engineer issuing a certificate of Completion.

### **46. Final Account**

- 46.1 The Contractor shall supply to the Employer a detailed account of the total amount which it considers is payable to them under the Contract before the end of the successful completion of work. The Employer is to certify any final payment which is due to the Contractor within 30 days of receiving the Contractor's account provided it is correct and Comprehensive. If it is not, the Employer shall issue a schedule which states the scope of the corrections or additions which are necessary. The Security Deposit / withheld amount / retention money shall be released to the Contractor as per clause 20.1.8.

### **47. Force Majeure**

#### **47.1 Force Majeure**

- 47.1.1 Any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in respective Clauses, which is beyond the control of the Party claiming to be affected thereby ("Affected Party") and which the Affected Party has been unable to overcome or prevent despite exercise of due care and diligence, and results in Material Adverse Effect shall constitute Force Majeure Event:

#### **47.2 Non-Political Event**

- 47.2.1 A Non-Political Event shall mean one or more of the following acts or events:

- a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionizing radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Project Site);
- b) strikes or boycotts (other than those involving the Contractor and/or their respective employees / representatives and / or attributable to any act or omission of any of them) interrupting supplies and services to the Project Site for a continuous period exceeding 7 (seven) days, and not being an Indirect Political Event set forth in Clause 47.3;
- c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Contractor by or on behalf of such Contractor;
- d) any judgment or order of any court of competent jurisdiction or statutory authority made against the Contractor in any proceedings for reasons other than (i) failure of the Contractor to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Employer;
- e) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
- f) any event or circumstances of a nature analogous to any of the foregoing.

#### **47.3 Indirect Political Event**

- 47.3.1 An Indirect Political Event shall mean one or more of the following acts or events:

- a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- b) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty-four) hours and exceeding an aggregate period of 7 (seven) days in a Financial Year
- c) any civil commotion, boycott or political agitation which prevents the Contractor to perform its O&M and Service Level requirement for an aggregate period exceeding 7 (seven) days in a Financial Year;
- d) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Contractor by or on behalf of such Contractor;
- e) any Indirect Political Event that causes a Non-Political Event; or
- f) any event or circumstances of a nature analogous to any of the foregoing.

#### **47.4 Political Event**

47.4.1 A Political Event shall mean one or more of the following acts or events by or on account of any Government Instrumentality:

- a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of this Agreement as regards Change in Law and its effect, in financial terms, the decision of the Municipal Commissioner of the Employer shall be final and binding on the Contractor;
- b) unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, license, permit, authorization, no objection certificate, consent, approval or exemption required by the Contractor to perform its obligation under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation result from the Contractor's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, license, authorization, no objection certificate, exemption, consent, approval or permit;
- c) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Contractor by or on behalf of such Contractor; or
- d) any event or circumstance of a nature analogous to any of the foregoing.

#### **47.5 Duty to report Force Majeure Event**

47.5.1 Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party(s) forthwith. Any notice pursuant hereto shall include full particulars of;

- (a) the nature and extent of each Force Majeure Event, which is the subject of any claim for relief in obligations only upon submitting necessary evidence in support thereof;
- (b) the estimated duration and the effect or probable effect which such Force Majeure obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and

47.5.2 The Affected Party shall not be entitled to any relief in its obligations for or in respect of a Force Majeure Event unless it shall have notified the other Party(s) of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

47.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party(s) with regular (and not less than weekly) reports containing

information as required by Clause 47.5.1, and such other information as the other Party(s) may reasonably request the Affected Party to provide.

#### **47.6 Effect of Force Majeure Event on the Contractor**

- 47.6.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.
- 47.6.2 At any time after the Appointed Date, if any Force Majeure Event occurs before start of the Contract Period and the dates set forth for various project milestones shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists.
- 47.6.3 In case, any Force Majeure Event occurs after start of the Contract Period,
- (a) Force Majeure events occurring during the **Construction Period** shall entitle the Contractor to an extension of time for completion of the Works in accordance with Clause 25, but shall not entitle the Contractor to any additional payment or compensation.
  - (b) Force Majeure events occurring during the **O&M / Service Period** shall relieve the Contractor from performance of the affected obligations for the duration of such Force Majeure, without imposition of penalties or liquidated damages

#### **47.7 Allocation of costs arising out of Force Majeure**

- 47.7.1 Upon occurrence of any Non-Political or Indirect Political or Political Force Majeure Event before starting of Contract Period or during the Contract Period, the costs incurred upon occurrence of the event(s), the Parties shall bear their respective “**Force Majeure Costs**” and neither Party shall be required to pay to the other Party(s) any costs thereof;
- 47.7.2 Save and except as expressly provided in this Clause 47, neither Party shall be liable in any manner whatsoever to the other Party(s) in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

#### **47.8 Termination Notice for Force Majeure Event**

- 47.8.1 If a Force Majeure Event subsists for a period of 120 (one hundred twenty) days or more at a stretch, MRMC reserves the right to terminate this Agreement by issuing a Termination Notice to the contractor without being liable in any manner whatsoever, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith.

#### **47.9 Termination Payment for Force Majeure Event**

- 47.9.1 Upon occurrence of any force majeure event, the parties shall bear their respective costs and no party shall be required to pay to the other party any costs thereof. Neither party shall be liable in any manner whatsoever to the other party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any force majeure event or exercise of any right pursuant hereto

#### **47.10 Dispute resolution**

- 47.10.1 In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

#### **47.11 Excuse from performance of obligations**

- 47.11.1 If the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure Event; provided that:

- (a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- (b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
- (c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

#### **47.12 Liability for other losses, damages etc.**

47.12.1 Save and except as expressly provided in this clause, neither Party hereto shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event. The Employer shall propose amendments to this Agreement so as to place the Contractor in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the Additional Cost, reduction in return or other financial burden as aforesaid. Upon notice by the Contractor, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement. Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the decision of the Municipal Commissioner shall be final and binding on the Contractor.

### **48. Termination**

#### **48.1 Termination for Contractor Default**

48.1.1 Save as otherwise expressly provided in this Agreement, in the event that any of the defaults specified below shall have occurred the Authority shall issue a written notice to the Contractor. If the Contractor fails to cure the default within the Cure Period of 30 days or such period as mentioned in the notice, the Contractor shall be deemed to be in default of this Contract Agreement (“**Contractor’s default**”). The defaults referred to herein shall include following:

- i. the Contractor fails to replenish or provide fresh or renew Security Deposit within a stipulated period by the Employer;
- ii. subsequent to the replenishment or furnishing of fresh Security Deposit in accordance with relevant provision of this Agreement, the Contractor fails to cure, within a Cure Period of 30 (thirty) days, the Contractor default for which whole or part of the Security Deposit was appropriated;
- iii. the Contractor abandons or manifests intention to abandon the Project without prior written consent of the Employer;
- iv. the Contractor has failed to make any payment towards damages to any user or any utility within the period specified in this Agreement;
- v. the Contractor repudiates this Contract Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Contract Agreement;
- vi. change in management control of the Contractor which according to the Employer may have material adverse effect towards the Project;
- vii. the Contractor is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Contractor or for the whole or material part of its assets at any time before the Scheduled end date of Contract Period;
- viii. the Contractor has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Employer, a Material Adverse Effect;

- ix. the Contractor has failed to fulfil any of the conditions mentioned in this Tender;
- x. the Contractor commits a material default in complying with any other provision of this Agreement.
- xi. Deleted;
- xii. Deleted;
- xiii. the Contractor disposes the waste at undesignated site or burns the waste items;
- xiv. the Contractor breaches any labour laws;
- xv. Deleted
- xvi. the Contractor repeatedly fails to follow any instruction of given by the Authority;
- xvii. the Contractor does not execute the work in confirmation with SWM Rules 2016
- xviii. where the Contractor is an individual and dies during the subsistence of the Contract, the Contract shall be deemed to be terminated, the accounts shall be settled in accordance with this Agreement within a reasonable period of time, and the legal heirs, successors or nominees of the Contractor shall have no right whatsoever to continue or claim performance of the remaining work under this Contract.
- xix. Corrupt or prohibited practices: the Contractor, its employees, agents or representatives, directly or indirectly, offers, gives, promises or agrees to give any bribe, gratification, gift, loan, fee, reward or advantage of any kind to any public officer or employee of the Authority or any Government Instrumentality in relation to this Contract.
- xx. Unauthorized assignment or subletting: the Contractor assigns, transfers or sublets the whole or any part of the Contract without prior written approval of the Authority.
- xxi. if the bidder commences any proceeding to get himself be adjudicated an insolvent or make any compromise with his creditors, or attempt to do so, the authority may, by notice in writing terminate the contract in accordance with tender provisions.

48.1.2 If work performed under the scope of this tender is found unsatisfactory or in case of occurrence of defaults specified under Clauses 48.1.1 (xviii), (xix), (xx) or (xxi), the Authority shall directly issue Termination Notice as per clause 48.2. In this case, decision of Municipal Commissioner for forfeiture of Security deposit/EMD etc. and debarring/ blacklisting the agency shall be binding to the Contractor.

48.1.3 Notwithstanding, if contractor stop / leave the work by his own discretion, SD/ EMD Amount pending in running bill etc. shall be forfeited and additional expenditure for execution of remaining work shall be recovered, and Agency shall be debarred / blacklisted subject to approval of competent authority.

## **48.2 Procedure to issue Termination Notice**

48.2.1 Without prejudice to any other rights or remedies which the Employer may have under this agreement, upon occurrence of a Contractor default, the Employer shall be entitled to terminate this Contract Agreement by issuing a Termination Notice to the Contractor; provided that before issuing the termination notice, the Employer shall by a notice inform the Contractor of its intention to issue such termination Notice and grant 15 (fifteen) days to the Contractor to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the termination notice.

## **48.3 Effect of Termination**

48.3.1 Upon termination as per clause 48.1, the Contractor hereby acknowledges that no payment shall be due or payable by the Employer. Contractor acknowledges that within 10 days of termination, the Contractor shall handover all the assets of the employer, if any, under its possession to the employer. Employer at its own discretion may repay the consideration already paid by the Contractor after adjusting for any direct or indirect losses that Employer might have incurred due to delay in completion of the Project. No liability with respect to the land or assets shall devolve on Employer.



#### **48.4 Other Rights and Obligations of the Employer**

- 48.4.1 Upon termination of the Contract for any reason whatsoever, MRMC shall, without prejudice to any other rights or remedies available under the Contract or under law:
- (a) be deemed to have taken possession and control of the Works, Works-in-progress, Site, materials, Plant, equipment, documents, and all other assets related to the execution of the Works, as existing on the date of termination; and
  - (b) be entitled to invoke and/or forfeit the Performance Security, Security Deposit, and any other securities or deposits furnished by the Contractor, as applicable.
  - (c) Upon termination during the Contract period, MRMC may, at its sole discretion, appoint another contractor for completion of the remaining Works. Such appointment may be made from among the bidders who had participated in the original tender process and were found technically qualified, in the order of their **financial ranking (L2, L3, and so on)**, at the **rates quoted by the original Contractor (L1 rates) or the rates quoted by such bidder, whichever is lower**, subject to the consent of the selected bidder
  - (d) MRMC shall offer the work first to the bidder ranked **next to L1**. If such bidder does not provide its written consent within **fifteen (15) days** from the date of offer, MRMC may proceed similarly with the next ranked bidder, until a bidder agrees to undertake the Works or until the list of qualified bidders is exhausted. Nothing herein shall restrict MRMC's right to invite fresh tenders or adopt any other method permissible under law
- 48.4.2 Upon termination of the Contract on account of Contractor Default or rescission under this Agreement, the Security Deposit shall stand forfeited and shall be absolutely at the disposal of the Employer. Further, the Contractor shall not be entitled to claim or recover any payment whatsoever, including for any part of the Works or Services executed prior to such termination, and the same consequences shall ensue as provided under this Agreement upon termination for Contractor Default.
- 48.4.3 No Relief or Compensation: No action taken by the Employer under this Clause 48, including issuance of notices, termination of this Contract Agreement, forfeiture or invocation of Security Deposit, or taking over of the Works, shall:
- a) relieve the Contractor of any of its liabilities or obligations under this Contract Agreement;
  - b) give rise to any right in favour of the Contractor to claim compensation, damages or any other relief.

### **49. Alterations, Variations and Omission of Works**

#### **49.1 Authority's Right to Alter or Omit Work**

- 49.1.1 The Authority shall have the right, at any time during the execution of the Contract, to make alterations, additions to or omissions from the Works or any part thereof, or to vary the quantities or scope of the Works, as it may consider necessary or expedient, by issuing written instructions to the Contractor. The Contractor shall carry out such instructions in accordance with the Contract.

#### **49.2 No Compensation for Omission or reduction of work**

- 49.2.1 If at any time from the commencement of the work the MRMC shall for any reason whatsoever not require the whole or part thereof as specified in the tender to be carried out, the bidder shall follow the instructions given and not execute the work which is not required. The bidder in this case shall have no claim whatsoever on account, of any profit or advantage which he might have derived from the execution of the work in full but which he did not derive in consequence of the full amount of the work not having been carried out; neither shall he have any claim for damages by reason of any alterations having been made in the original specifications, drawings, designs and instructions which shall involve any curtailment of the work as originally contemplated nor for any additional cost incurred by him/it for the execution of the said work.



### **49.3 Variations**

- 49.3.1 The Employer and/or its authorised persons, including the Engineer-in-Charge, shall have the right at any time during the currency of the Contract to instruct the Contractor, in writing, to carry out variations in the scope, nature, quantity, quality, design, alignment, location, dimensions, levels, sequence, or method of execution of the Works, or any part thereof
- 49.3.2 No variation shall be valid or binding unless instructed or approved in writing by the Employer. The Contractor shall not make any change or deviation from the Contract without such written instruction or approval.
- 49.3.3 Upon receipt of a Variation instruction, the Contractor shall, within such time as may be specified by the Employer, submit a detailed proposal setting out the impact of the Variation, if any, on the Contract Price, time for completion, design and O&M obligations.
- 49.3.4 Any adjustment to the **Contract Price** and/or **Intended Completion Date** arising from a Variation shall be made strictly in accordance with the procedures specified in the Contract, and shall take effect only upon written approval by the Employer.
- 49.3.5 Pending agreement or determination of the valuation of a Variation, the Contractor shall proceed with the execution of the Variation as instructed by the Employer, without prejudice to his right to have such Variation valued in accordance with the Contract.
- 49.3.6 No claim for additional payment or extension of time shall be admissible unless the Variation has been duly instructed or approved in writing by the Employer in accordance with this Clause
- 49.3.7 A Variation shall not, by itself, constitute a Force Majeure event or entitle the Contractor to suspend or abandon the Works

## **50. Non-waiver and Employer's rights**

- 50.1 In any case where any of the powers vested in the MRMC become exercisable but are not exercised, such non-exercise shall not constitute a waiver of any of the conditions of the Contract. These powers shall remain exercisable in the event of any subsequent default by the Bidder, for which the Bidder may be declared liable to pay compensation, including compensation up to the full amount of the Security Deposit. The Bidder's liability for past and future compensation shall remain unaffected.
- 50.2 If the MRMC enforces any of the powers vested under the preceding clauses, it may, at its discretion, take possession of all or any tools, plants, materials, and stores available at or upon the Works or the Site, belonging to the Bidder or procured by the Bidder for execution of the Works or any part thereof. The MRMC may account for such items at the Contract Rates or, where such rates are not applicable, at current market rates as certified by the MRMC and/or its authorized persons, including the Engineer-in-Charge, whose certification shall be final and binding.
- 50.3 Alternatively, the MRMC and/or its authorized persons, including the Engineer-in-Charge, may issue a written notice to the Bidder or its authorized representative requiring removal of such tools, plants, materials, or stores from the Site within the time specified in the notice. If the Bidder fails to comply with such notice, the MRMC may remove the same at the Bidder's risk and cost, or sell them by public auction or private sale on account of the Bidder, without any further notice as to the date, time, or place of sale.
- 50.4 The certificate of the MRMC and/or its authorized persons, including the Engineer-in-Charge, regarding the expenses incurred for removal and the proceeds and expenses of such sale shall be final and conclusive and binding upon the Bidder.

## **51. Other Conditions**

### **51.1 Payment of Commission, Gratuities, Rebates, Gifts**

- 51.1.1 The Contractor shall have to undertake that no fees, gratuities, rebates, gifts, commissions or other payments, other than those shown in the Bid, have been given or received in connection with the payment process or in the contract execution.

## **51.2 Storage of Equipment, Parking of Vehicles & Workshop space**

- 51.2.1 The Contractor shall, at its own cost and risk, identify and arrange suitable space for storage of materials and equipment, parking of vehicles, and establishment of workshops required for execution of the Works and performance of Operation and Maintenance obligations, preferably within the jurisdiction of the Employer.
- 51.2.2 The Contractor shall be solely responsible for the establishment, operation, maintenance and removal of such storage areas, parking spaces and workshop facilities. The Employer shall have no obligation to provide any land, space or facilities for such purposes, unless expressly agreed otherwise in writing.
- 51.2.3 Notwithstanding the above, subject to availability and at the sole discretion of the Employer, space may be permitted to the Contractor on a temporary and chargeable basis, on such terms and conditions as may be specified by the Employer. In such cases:
- the Contractor shall pay applicable rent, electricity charges, taxes and other dues;
  - the Employer shall be entitled to recover such amounts from any payments due to the Contractor under the Contract.
- 51.2.4 Any space so provided by the Employer may be required to be vacated by the Contractor at short notice, as directed by the Employer, and the Contractor shall comply without any claim for compensation or extension of time.
- 51.2.5 The safe custody, security and protection of all materials, equipment, vehicles and installations shall be the sole responsibility of the Contractor. The Employer shall not be liable for any loss, theft or damage thereto, and no claim whatsoever in this regard shall be entertained

## **51.3 Operation and Maintenance of Equipment**

- 51.3.1 It shall be the responsibility of the contractor to arrange for fuel, lubricant, oil and other required tools/materials/workforce for O&M of the machineries and developed facility. All repairs and maintenance of the equipment shall remain the responsibility of the contractor.
- 51.3.2 All vehicles and equipment used in the work shall be kept reasonably clean, aesthetically acceptable to the public and well maintained.

## **51.4 Safety, Security and Protection of the Environment**

- 51.4.1 The Contractor shall take all necessary precautions against pollution of drinking water, underground water. Should any pollution arise from the Contractor's activities he shall clean up the affected area immediately at his own cost and to the satisfaction of the Sanitation staff of the Authority.

## **51.5 Protection of Trees and Vegetation**

- 51.5.1 The Contractor shall ensure that no trees or shrubs or waterside vegetation are felled or harmed without the permission of the Employer. The Contractor shall protect trees and vegetation from damage to the satisfaction of the Employer. No tree shall be removed without the prior approval of the Employer and any competent authorities.

## **51.6 Fire Prevention and Fire Safety**

- 51.6.1 The Contractor shall take all necessary and adequate precautions to prevent the occurrence of fire at the RTS, including but not limited to the waste handling areas, storage space, plant and equipment areas, workshops, offices, and any other part of the Site. The Contractor shall ensure strict control over any activity that may pose a fire hazard, including handling of flammable materials, hot works, electrical installations, and disposal of combustible waste.
- 51.6.2 The Contractor shall develop, implement, and maintain an effective Fire Prevention and Fire Safety Plan in accordance with applicable laws, codes, and standards, and shall provide and maintain adequate firefighting equipment, fire detection systems, trained personnel, and emergency response arrangements throughout the Contract Period.

- 51.6.3 In the event of any fire or fire-related incident at the Site, the Contractor shall immediately take all necessary actions to control and extinguish the fire, deploy its emergency response resources, and coordinate with the local fire services or other emergency authorities as required. All such actions shall be undertaken on a priority basis to minimize risk to life, property, and the environment.
- 51.6.4 The Contractor shall promptly inform MRMC of any fire incident, submit an incident report detailing the cause, response actions taken, and corrective and preventive measures, and shall bear all costs and liabilities arising from such incidents, except where such fire is caused solely due to reasons attributable to MRMC.

## **51.7 Interference with Traffic and Adjoining Properties**

- 51.7.1 In case any operation connected with the works necessitates diversion, obstruction or closure of any road, railway, waterway or any other right of way, the approval of the Employer or his Representative and the respective competent authorities shall be obtained well in advance by the Contractor.

## **51.8 Transport of Contractor's Equipment or Temporary Works**

- 51.8.1 Where the Contractor intends to use a particular route for the haulage of large quantities of materials the Contractor shall consult well in advance with any affected communities and submit in advance for the Employer or his authorized representative's approval. The approval will not remove the Contractor's obligations under this Sub-Clause to prevent and repair damage to roads or his liability for compensation for any accidents caused by his vehicles.

## **51.9 Fair Wages**

- 51.9.1 The Contractor shall pay not less than fair wage / minimum wages to the workers engaged by him on the work as revised from time to time by the Government of Gujarat.
- 51.9.2 "Fair wage" means minimum wages for time or piece work, fixed or revised, as established by the Gujarat Minimum Wages, Rules, 1961 and the Minimum Wages Act, 1948.
- 51.9.3 The Contractor shall, notwithstanding to any provisions of this Contract to the contrary, cause to be paid fair wages to labourers indirectly engaged on the work, including any Sanitation Workers (Labour) engaged by his sub-Contractors in connection with the said work, as if the labourers have been immediately or directly employed by him.
- 51.9.4 In respect of all labourers, immediately or directly employed on the work, for the purpose of the Contractor's part of this agreement, the Contractor shall comply with or cause to be complied with, Contract Labour Regulations' made, or that may be made, by the Government, from time to time, in regard to payment of wages, wage period, deductions from wages, recovery of wages not paid, and unauthorised deductions, maintenance of wages register, wage card, publication of scale of wages and other terms of employment, inspection and submission of periodical returns, and all other matters of a like nature.
- 51.9.5 The employer shall have the right to deduct, from the money due to the Contractor, any sum required or estimated to be required for making good the loss suffered by a worker or workers by reasons of non-fulfilment of the conditions of the Contract for the benefit of the worker or workers, non-payment of wages or of deductions made there from, which are not justified by the terms of the Contract or as a result of non-observance of the aforesaid regulations.
- 51.9.6 The regulations, aforesaid, shall be deemed to be part of this Contract and any breach thereof, shall be deemed to be breach of the Contract.

## **51.10 Protective Clothing and Footwear**

- 51.10.1 The Contractor shall, at his own expense, provide protective clothing and equipment to all staff and labour engaged on the contract to the satisfaction of the employer, and on his failure to do so the Employer shall be entitled to provide the same and recover the cost from the Contractor. Such clothing and equipment shall include, at minimum, protective footwear and gloves for workmen undertaking work of sweeping, waste removal and other allied works related to activities envisaged in the Contract.

### **51.11 First-Aid Services**

51.11.1 The Contractor shall, at his own expense, provide first aid equipment at its Office and all vehicles, as applicable to the satisfaction of the Authority.

### **51.12 Health and Pests**

51.12.1 The Contractor shall at his own expense and throughout the period of the Contract ensure that suitable arrangements are made for the prevention of all necessary welfare and hygiene requirements for his staff and labour; and shall comply with all the regulations and requirements of the local health authorities with respect to disease prevention and control. The Contractor shall warn its staff and labour of the dangers of communicable diseases including those transmitted by insects, water, faecal/oral contact and sexual activity.

### **51.13 Supply of Drinking Water, Sanitation**

51.13.1 The Contractor shall be reasonable, having regard to local conditions, an adequate supply of drinking water for the use of Contractor's staff, and provision of sanitary facilities (wherever not public convenience is not available in vicinity) within the work area.

### **51.14 Festivals and Religious Customs**

51.14.1 The Contractor shall in all dealings with workers in his employment have due regard to all recognized festivals, days of rest and religious or other customs.

### **51.15 Disorderly Conduct**

51.15.1 The Contractor shall at all times take reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst his employees and for the preservation of peace and protection of persons and property in the neighbourhood of the works against the same.

51.15.2 "Disorderly conduct" shall include but not be limited to harvesting of natural resources such as firewood or fish by the Contractor's workers when this is done to the detriment of pre-existing local interests.

### **51.16 Records of Labour and Accidents**

51.16.1 The Contractor shall maintain working hours and wages of labour, safety, health and welfare of persons, accidents, and damage to property and make such reports on these matters to the Employer as he may from time to time prescribe.

### **51.17 Public Awareness / Information Display**

51.17.1 The Contractor shall, at his own cost, arrange to provide, erect and maintain necessary display boards/ banners etc. at selection points of service area for giving such information as considered necessary for public awareness/ information/ safety as directed by the employer

### **51.18 No Personal Liability of Officers**

51.18.1 The Municipal Commissioner, officers, officials, employees of the MRMC and/or its technical consultants shall not, in any manner whatsoever, be personally bound or liable for the acts, obligations or liabilities of the MRMC under this Contract Agreement, nor shall they be personally answerable for any default or omission in the performance or observance of any of the terms, conditions, covenants or obligations contained herein

### **51.19 MRMC not bound by Personal Representation**

51.19.1 The bidder shall not be entitled to any increase on the schedule rates or any other right or claim whatsoever by reason of any representation, explanation or statement or alleged representation, promise or guarantees given or alleged to have been given to him by any person

## **51.20 Assistance to the Engineer**

51.20.1 The contractor shall arrange for all necessary field instruments and assistance in checking of setting out of works and taking measurements of work.

## Annexure 1 – Format of Bank Guarantee for Performance Security

To,  
**The Municipal Commissioner,**  
Morbi Municipal Corporation,  
Gandhi Chowk, Morbi, Gujarat – 363641

WHEREAS \_\_\_\_\_ (name and address of the Contractor) (hereinafter called “the Contractor”) has undertaken, in pursuance of Contract No. \_\_\_\_\_ dated \_\_\_\_\_, to execute \_\_\_\_\_ (name of the Contract and brief description of the Works) (hereinafter called “the Contract”);

AND WHEREAS it has been stipulated by you in the said Contract that the Contractor shall furnish you with a Bank Guarantee from a recognized bank for the sum specified therein as security for compliance with his obligations in accordance with the Contract;

AND WHEREAS we have agreed to give the Contractor such a Bank Guarantee;

NOW THEREFORE, we hereby affirm that we are the Guarantor and are responsible to you on behalf of the Contractor up to a total of \_\_\_\_\_ (amount of guarantee) \_\_\_\_\_ (in words), such sum being payable in the types and proportions of currencies in which the Contract Price is payable, and we undertake to pay you, upon your first written demand and without cavil or argument, any sum or sums within the limits of \_\_\_\_\_ (amount of guarantee) as aforesaid, without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

We hereby waive the necessity of your demanding the said debt from the Contractor before presenting the demand to us.

We further agree that no change or addition to, or other modification of, the terms of the Contract or of the Works to be performed thereunder, or of any of the Contract Documents, which may be made between you and the Contractor, shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition, or modification.

This guarantee shall be valid until 60 (Sixty) days from the date of expiry of the Contract between the Contractor and Morbi Municipal Corporation for the said Works.

[Signature and Seal of the Guarantor]

[Name of Bank]

[Address]

[Date]

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*\*An amount shall be inserted by the Guarantor, representing the percentage the Contract price specified in the Contract denominated in Indian Rupee*

## Annexure 2 – Draft Contract Agreement

This Agreement is made on the \_\_\_\_\_ day of \_\_\_\_\_, between

\*\* \_\_\_\_\_ \*\* (name and address of the Employer) (hereinafter called “the Employer”) of the one part,

and

\*\* \_\_\_\_\_ \*\* (name and address of the Contractor) (hereinafter called “the Contractor”) of the other part.

WHEREAS, the Employer is desirous that the Contractor execute \_\_\_\_\_ (name and identification number of the Contract) (hereinafter called “the Works”), and the Employer has accepted the Bid submitted by the Contractor for the execution and completion of such Works and the remedying of any defects therein, at a contract price of Rs. \_\_\_\_\_.

### NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to, and they shall be deemed to form and be read and construed as part of this Agreement.
2. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Employer to execute and complete the Works and remedy any defects therein, in conformity in all respects with the provisions of the Contract.
3. The Employer hereby covenants to pay the Contractor, in consideration of the execution and completion of the Works and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract, at the times and in the manner prescribed by the Contract.
4. The following documents shall be deemed to form and be read and construed as part of this Agreement, namely:
  - i) Letter of Acceptance;
  - ii) Notice to Proceed with the Works;
  - iii) Contractor’s Bid
  - iv) Conditions of Contract
  - v) All volumes of Tender Document
  - vi) Bill of Quantities; and
  - vii) Any other documents listed in the Contract Data as forming part of the Contract

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed on the day, month, and year first above written,

For and on behalf of the Employer

The Common Seal of

\_\_\_\_\_ was hereunto affixed in the presence of:

Signature: \_\_\_\_\_

Name: \_\_\_\_\_



Designation: \_\_\_\_\_

Binding Signature of Employer

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**For and on behalf of the Contractor**

Signed, sealed, and delivered by the said

\_\_\_\_\_

In the presence of:

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Designation: \_\_\_\_\_

Binding Signature of Contractor