

[GATE PUMP MANUFACTURER]

With

MUNICIPAL CORPORATION OF GREATER MUMBAI

Addendum

Volume-4 Contract forms

COLLATERAL WARRANTY GATE PUMP MANUFACTURER

MITHI RIVER PACKAGE 3 - DESIGN-BUILD OPERATE CONTRACT

Law Agent

MUNICIPAL CORPORATION OF GREATER MUMBAI

THIS DEED is dated [], 20[] and made between:

- 1) [Gate Pump Manufacturer] having its registered office at [address] (the “**SPV**”).
- 2) [CONTRACTOR] having its registered office at [] (the **Contractor**).
- 3) MUNICIPAL CORPORATION OF GREATER MUMBAI having its principal office at Municipal Head Office Building, Mahapalika Marg, Fort, Mumbai – 400 001 (“the **Employer**”).

RECITALS:

- (A) By an agreement dated the [] day of 20[] and made between the Employer of the one part and [Contractor] of the other part for (the “Main Contract”) pursuant to the Contractor’s written tender (the “Tender Submission”) the Contractor agreed to design, construct, operation & maintenance and complete the Design-Build-Operation of the Works for the MITHI RIVER PACKAGE 3 - DESIGN-BUILD OPERATE CONTRACT (the “Works”) for the Employer.
- (B) The Contractor has taken supply of Gate Pumps from [the Contractor] in connection with the Works as provided for in the Main Contract.
- (C) The SPV acknowledges that it has a duty of care to the Employer notwithstanding the Contractor’s design obligations pursuant to the Main Contract and has agreed to enter into this Deed for the benefit of the Employer and its successors in title and assigns as provided for in the Main Contract.

OPERATIVE PROVISIONS

A. OBLIGATIONS OF THE SPV

(i) Level of Skill Required:

The SPV warrants and undertakes to the Employer that it has exercised and will continue to exercise all necessary skill, care and diligence in supplying, installing and implementing/commissioning of the Gate Pumps pursuant to the Tender Submission and the Main Contract in accordance with the terms of the Main Contract and without prejudice to the generality of the foregoing will devote all necessary resources to the performance of those services till end of 10th year of O&M period and will also support with the spares for the entire pump life.

(ii) Compliance with the Appointment:

The SPV further warrants and undertakes to the Employer that it will not seek to make nor accept any material variation to the terms of its obligations pursuant to the Tender Submission and the Main Contract without the prior written consent of the Employer. Also SPV will provide post sales service for pump life (15 years).

(iii) Performance Security

The SPV undertakes to provide a performance security in the form of Bank Guarantee issued on its behalf by a Bank acceptable to the Employer. The value of the security for this project shall be Rs. 74.77 SPV understands that the performance Security shall be released at the rate of 10% on successful completion of every year of operation.

B. INDEMNITY

- (i) Subject always to the provisions of Clauses B (ii) and B (iii) hereof, the SPV shall indemnify and keep indemnified the Employer against any damage, loss or expense incurred by it in consequence and of any breach of this Deed.
- (ii) The SPV shall not be liable for any consequential or indirect loss or damage (including loss of profit and/or loss of business) and shall be liable only for the cost of repair, renewal or reinstatement of any part or parts of the Works arising directly from its breach of the terms of this Deed and for the reasonable professional fees incurred by the Employer in respect of same.
- (iii) The SPV's liability is limited to that proportion of the costs and fees referred to in Clause B(i) which it would be just and equitable to require it to pay having regard to the extent of its responsibility for same and on the basis that the Contractor and each of the other consultants engaged by the Contractor in connection with the Works shall be deemed to have provided (whether or not they shall have done so) contractual undertakings on terms no less onerous than this Clause in respect of the performance of their services in connection with the Works and shall be deemed to have paid (whether or not they shall have done so) such proportion which it would be just and equitable for them to have to pay having regard to the extent of their responsibility.

C. MISCELLANEOUS PROVISIONS

(i) Notices:

All notices to be given or served under this Deed shall be in writing, addressed to the relevant party and may be delivered by hand or sent by prepaid registered post addressed in the case of a company to its registered office or in the case of an individual to the address shown on the first page of this deed.

Any such notice will be deemed to have been duly served or given in the case of delivery, at the time of delivery, or in the case of posting, forty eight hours after posting.

A notice or other communication received on a non-working day or after business hours in the place of receipt shall be deemed to be given or made on the next following working day in that place.

(ii) Common Law Rights:

Warranties and agreements contained in this Deed are given without prejudice either to any other liability of the SPV to the Employer or to any right of action which the Employer may have against the SPV arising out of or in relation to the Works at common law.

(iii) Assignment by the Employer:

The Employer may assign this Deed such assignment to be effective upon notice thereof being given to the SPV. Assignment by the SPV is not permitted.

(iv) Limitation Period:

The liability of the SPV under this Deed shall cease on the expiry of DBO period of Works following the date of issue of the Completion Certificate issued on foot of the Main Contract.

(v) Law and Jurisdiction:

This Deed shall be governed by and construed in accordance with Indian law.

The parties to this Deed irrevocably agree that the Indian Courts shall have jurisdiction to hear and determine any suit, action or proceeding, and to settle any dispute, which may arise out of or in connection with this Deed, and for such purpose the parties irrevocably submit to the exclusive jurisdiction of such Courts.

(vi) Warranty as to Legal Capacity:

The SPV warrants that it is a company duly incorporated under the laws of India with the power to perform its obligations on foot of this Deed and the necessary power and authority to enable it to execute and deliver this Deed.

IN WITNESS WHEREOF this Deed has been entered into on the date at the head of this document.

PRESENT when the Common Seal
of the SPV was affixed hereto:-

PRESENT when the Common Seal
of the Contractor was affixed hereto:-

PRESENT when the Common Seal
of Municipal Corporation of Greater Mumbai was affixed hereto:-
Deputy Municipal Commissioner (Infra)

Dated [], 20[]

Sd/-
(Ashok Mistry)
Chief Engineer
Storm Water Drains