

# INDIA NON JUDICIAL

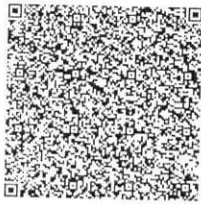
## Government of Uttar Pradesh

e-Stamp

RAJESH GOYAL  
Stamp Vendor, L.No.51  
Civil Court, AGRA  
'ic. Validity 202

329  
1-104

Certificate No. : IN-UP67535505725739U  
 Certificate Issued Date : 16-Aug-2022 02:40 PM  
 Account Reference : NEWIMPACC (SV)/ up14310504/ AGRA SADAR/ UP-AGR  
 Unique Doc. Reference : SUBIN-UPUP1431050427343946715854U  
 Purchased by : JEET CONSTRUCTION COMPANY  
 Description of Document : Article 5 Agreement or Memorandum of an agreement  
 Property Description : Not Applicable  
 Consideration Price (Rs.) :  
 First Party : JEET CONSTRUCTION COMPANY  
 Second Party : CEO AGRA SMART CITY LTD  
 Stamp Duty Paid By : JEET CONSTRUCTION COMPANY  
 Stamp Duty Amount(Rs.) : 100  
 (One Hundred only)



Please write or type below this line

### AGREEMENT

Today on this date 09/09/2022, this agreement is executed between  
**Part 1: Agra Smart City Ltd. (ASCL) having its registered head office at Building of Agra Nagar Nigam, M G Road Agra through its Chief Executive Officer, (here in after called as Authority/Client)**

And

**Part 2: Mr. Krishan Singh (Proprietor of M/s Jeet Construction Company, SCO-5 2nd floor, HUDA Market, Sector-10A, near Hero Honda Chowk, Gurgaon, 122001) (here in after called as contractor)**

It is evident that the minimum quoted bid for the project, "RFP for Design, Engineering and Construction for Redevelopment of under pass Bridge (Mughal Puliya), near Gobar Chowki at Fatehabad Road, Agra" has been received from "Mr. Krishan Singh (Proprietor of M/s Jeet Construction Company, SCO-5 2nd floor, HUDA Market, Sector-10A, near Hero Honda Chowk, Gurgaon, 122001), approval for the said project after due tendering procedures was obtained on 30.07.2022 for the amount of Rs.4,49,15,000.00 (excluding GST) and Letter of Intimation (LOI) was issued to M/s. Jeet Construction Company on



K.K.J  
K.K. JHA  
G. M. (Project)  
Agra Smart City Ltd.

R. K. Singh  
Nodal Officer  
Agra Smart City Limited

1

1  
Addl. CEO  
Agra Smart City Limited  
Chief Executive Officer  
Agra smart city

#### Statutory Alert:

- The authenticity of this Stamp certificate should be verified at [www.shrestamp.com](http://www.shrestamp.com) or using the Stamp Mobile App of Stock Holding
- Any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid.
- The onus of checking the legitimacy is on the users of the certificate
- In case of any discrepancy please inform the Competent Authority

JEET CONSTRUCTION COMPANY JEET CONSTRUCTION COMPANY JEET CONSTRUCTION COMPANY JEET CONSTRUCTION COMPANY JEET CONSTRUCTION COMPANY

30.07.2022. Total cost of project, approved on date 17.08.2022 is Rs. 4,49,1500.00 + 18% GST.

That the contractor, along with his representatives and successors have themselves bound through this agreement wherein, he has agreed and signed all the terms and conditions of Agra Smart City Ltd, as written in the document and that both parties have signed, is related to it.

1. All work shall be measured net by standard measure and according to the rules and customs of the Public Works Department and without reference to any local custom. Under no circumstances the contractor shall be entitled to claim enhanced rates for items in this contract.
2. That the contractor has submitted FDR/BG no. 50300636287200 amounting of Rs. 10,00,000.00 dated 13/06/2022 and FDR/BG no. 50300662010521 amounting of Rs. 12,45,750.00 dated 05/08/2022 pledged in the name of Chief Executive Officer, ASCL as security deposit to Agra Smart City Ltd. in order to regularize the work under this contract. The responsibility of validity of the same shall be that of the contractor.

3. RESPONSIBILITIES OF THE PARTIES

(A) **Agra Smart City Ltd (ASCL)** is the Special Purpose Vehicle constituted for implementing various smart city projects in Agra and comprehensively supervise the works and activities carried out by the contractor under the respective contract(s) in a manner that would ensure:

- a. Total compliance of technical specifications and various other requirements contained in the respective contract by the contractor;
- b. High standards of quality assurance system in the works and activities of the contractor.
- c. Proper verification of measurements and bills submitted by the contractor so that payments made by the ASCL against these bills truly reflect the actual work done at site complying with the requirements of the respective contract(s);

(B) **M/s. Jeet Construction Company**

- a. Ensure that the implementation of the main activities/tasks of the assignment, their content and duration, phasing and interrelations, milestones (including interim approvals by the Client), and delivery dates of the reports are done on time. The proposed work plan should be consistent with the technical approach.
- b. Submit all plans, designs, and specifications for ASCL review as mentioned in agreement and as per requirement from time to time.
- c. Contractor will have to submit the detail designs and BOQ and get it vetted from reputed institutions and submit to ASCL and based on finalization of design and drawings commence the work.
- d. The site is in Taj Trapezium Zone. The contractor will be responsible to



K.K.J

K.K. JHA  
G. M. (Project)  
Agra Smart City Ltd

R. K. Singh 2  
Nodal Officer  
Agra Smart City Limited

Addl. CEO  
Agra Smart City Limited

Chief Executive Officer  
Agra Smart City Limited

comply with relevant rules of Taj Trapezium Zone as well as follow all applicable pollution control rules and practices as laid down by concerned departments.

- e. The stair case may be shifted and relocated at suitable place after the construction of bridge if required.
- f. The water mains on both sides running parallel to the culvert should not be disturbed and all possible measures have to be taken to prevent any likely damage to the line and proper arrangements have to be done to ensure the water supply before relocated (if required).
- g. The open drains under the arch along with the under carriageway to be reconstruct if required.
- h. All permissions/NOCs for the construction of the culvert including, utility shifting and traffic diversion and all other clearance from various departments will be the sole responsibility of the selected contractor.
- i. Provision of site level ICCC for traffic regulation and site management including Public address system, IT based Smart solution.
- j. Proper interface and coordination among the ASCL, local bodies/ state government and all other stakeholders.
- k. Full documentation and reporting of the completed works including applications for various approvals
- l. The contractor shall undertake the following tasks including through relevant experts/consultant as per design parameters, Technical Specifications etc mentioned in RFP:

**I. Architectural Consultant** and all other works included in the scope of the work.

- i. Concept design – Prepare concept design and drawings
- ii. Prepare working drawing including Architectural, Elevations, Sections, External finishes
- iii. Prepare layout plan with details and specifications.

**II. Civil and Structural Consultant**

- i. Analysis configurations of the basic components of a structure
- ii. Calculate the pressures, stresses and strains that each components, such as beam or lintel, will experience from other parts of the structure due to human use or environmental pressures such as weather or earthquakes
- iii. Consider the strength of various materials e.g. timber, concrete, steel and brick, to see how their inclusion may necessitate a



**K.K. JHA** 3  
K.K. JHA (Project)  
Agra Smart City Ltd.

**K. Singh**  
Nodal Officer  
Agra Smart City Limited  
**Chief Executive Off.**  
Agra Smart City Limited

change of structural design

- iv. Liaise with other designers, including architects, to agree on safe design and their fit with the aesthetic concept of construction
- v. Examine structures at risk of collapse and advise how to improve their structural integrity, such as recommending removal or repair of defective part or rebuilding the entire structure

**III. Environmental Consultant**

- i. Provide technical support in developing and implementing environmental programs in industries.
- ii. Generate Environmental reports as per federal and state regulations
- iii. Stay updated with air, water and waste regulations as defined by state and federal laws
- iv. Review and recommend improvement to existing environmental program to reduce environmental damages.
- v. Oversee waste management and pollution control activity
- vi. Perform regular site surveys for environmental compliances
- vii. Assess potential environmental risks and develop mitigation plan
- viii. Provide assistance and job training to team member as needed.
- ix. Analyze root cause of environmental incidents and propose corrective action plans
- x. Prepare and maintain environmental documentations for reference purpose
- xi. Assist in environmental audits and implement audit recommendations
- xii. Assis in getting and maintaining environmental permits for industries



**IV. Electrical Consultant**

- i. MEP consultant to design and prepare the drawings for the project

4. The Contractor under this contract commits himself to use first class materials and

 **K.K. JHA**  
 G. M. (Project)  
 Agra Smart City Ltd.

 **R. K. Singh**  
 Nodal Officer  
 Agra Smart City Limited

 **Addl. C.E.O.**  
 Agra Smart City Limited

 **Chief Executive Officer**  
 Agra Smart City Limited

36

assumes full responsibility for the quality of all material incorporated or brought for incorporation in the work. The work shall be executed in accordance with best engineering practice and as per direction of Engineer. In all possible cases, sample approval shall be ensured by the Contractor from ENGINEER - IN - CHARGE before bringing in the materials in bulk at site and the approved sample shall be well preserved at site at the risk and cost of the Contractor as a ready reference

- 5. The project duration is for 5 months from the date of signing of contract. If the work is not completed within the stipulated period as per approved proposal, Agra Smart City Ltd. will not give any extra payment during the extended time period.
- 6. Defect liability period will be calculated from date of issue of completion certificate for a period of 2 years.
- 7. Terms of Payment of Contract Price will be as per schedule B of Annexure-3
- 8. That the detailed conditions of RFP (Attached as Annexure -1), presentation regarding approach and methodology (Attached as Annexure -2) and contract condition including all schedule (Attached as Annexure -3) shall be a part of this agreement and any violation of any terms and conditions mentioned therein shall be treated as breach of this contract.

Both the parties to this agreement put their signature in presence of the following witnesses

Witness

- 1.
- 2.

  
**Chief Executive Officer,**  
 Agra Smart City Ltd. (ASCL)

**Mr. Krishan Singh,**  
 Jeet Construction Company  
 (contractor)



  
 R. K. Singh  
 Nodal Officer  
 Agra Smart City Limited

  
 Addl. C.E.O.  
 Agra Smart City Limited

  
**K.K. JHA**  
 G. M. (Project)  
 Agra Smart City Ltd.  
 Addl. C.E.O.  
 Agra Smart City Limited

## Article 1

### Definitions and Interpretations

#### 1.1 Definitions

- (i) The words and expressions beginning with capital letters and defined in this Agreement shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.
- (ii) In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

**“Accounting Year”** means the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year;

**“Affected Party”** shall have the meaning set forth in Clause 21.1;

**“Affiliate”** means, in relation to either Party {and/or Members}, a person who controls, is controlled by, or is under the common control with such Party {or Member} (as used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise);

**“Agreement”** means this Agreement, its Recitals, the Schedules hereto and any amendments thereto, or any supplementary agreement made in accordance with the provisions contained in this Agreement;

**“Applicable Laws”** means all laws, brought into force and effect by the GOI or the State Government including rules, regulations and notifications made thereunder, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement;

**“Applicable Permits”** means all clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction, operation and maintenance of the Project Highway during the subsistence of this Agreement;



*[Signature]*  
A. K. Singh  
Nodal Officer  
Agra Smart City Limited

*[Signature]*  
Addl. C.E.O.6  
Agra Smart City Limited

*[Signature]*  
Chief Executive Officer  
Agra Smart City Limited

(314)

**“Appointed Date”** means the date of issue of work order

**“Arbitration Act”** means the Arbitration and Conciliation Act, 1996, with all its subsequent amendments;

**“Authority”** shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals, i.e. Agra Smart City Limited;

**“Authority Default”** shall have the meaning set forth in Clause 23.2;

**“Authority’s Engineer”** shall have the meaning set forth in Clause 23.2;

SmartCity Limited

**“Authority Representative”** means such person or persons as may be authorised in writing by the Authority to act on its behalf under this Agreement and shall include any person or persons having authority to exercise any rights or perform and fulfil any obligations of the Authority under this Agreement;

**“Bank”** means a bank incorporated in India and recognized by the Reserve Bank of India

**“Base Rate”** means the floor rate of interest announced by the State Bank of India for all its lending operations;

**“Base Date”** means the last date of the calendar month, which precedes the Bid Due Date by at least 28 (twenty eight) days;

**“Bid”** means the documents in their entirety comprised in the bid submitted by the [selected bidder/ Joint venture] in response to the Request for Proposal in accordance with the provisions thereof;

**“Change in Law”** means the occurrence of any of the following after the Base Date:

- (a) the enactment of any new Indian law;
- (b) the repeal, modification or re-enactment of any existing Indian law;
- (c) the commencement of any Indian law which has not come into effect until the Base Date; or
- (d) a change in the interpretation or application of any Indian law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the Base Date.

**“Change of Scope”** shall have the meaning set forth in Article 13;

**“Change of Scope Notice”** shall have the meaning set forth in Clause 13.2 (i);

**“Change of Scope Request”** shall have the meaning set forth in Clause 13.2 (ii);

**“Change of Scope Order”** shall have the meaning set forth in Clause 13.2 (iv);

R.K. Singh  
Nodal Officer  
Agra Smart City Limited



K.K. JHA

G. M. (Project)  
Agra Smart City Ltd.

70.1bbA  
Addl. C.E.O.  
Agra Smart City Limited  
Executive  
Agra Smart City Limited

“**Completion Certificate**” shall have the meaning set forth in Clause 12.2;

“**Construction**” shall have the meaning set forth in Clause 1.2 (e);

“**Construction Period**” means the period commencing from the Appointed Date and ending on the date of the Completion Certificate;

“**Contract Price**” means the amount specified in Clause 19.1 (i);

“**Contractor**” shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals;

“**Contractor Default**” shall have the meaning set forth in Clause 23.1;

“**Cure Period**” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall:

- (a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;
- (b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and
- (c) not in any way be extended by any period of Suspension under this Agreement; provided that if the cure of any breach default by the Contractor requires any reasonable action by the Contractor that must be approved by the Authority or the Authority’s Engineer hereunder, the applicable Cure Period shall be extended by the period taken by the Authority or the Authority’s Engineer to accord their approval;

“**Damages**” shall have the meaning set forth in paragraph (v) of Clause 1.2;

“**Defect**” means any defect or deficiency in Construction of the Works or any part thereof, which does not conform with the Specifications and Standards.

“**Defects Liability Period**” shall have the meaning set forth in Clause 17.1;

“**Dispute**” shall have the meaning set forth in Clause 26.1;

“**Dispute Resolution Procedure**” means the procedure for resolution of Disputes set forth in Article 26;

“**Drawings**” means all of the drawings, calculations and documents pertaining to the Project Highway, and shall include ‘as built’ drawings of the Project Highway;

“**Document**” or “**Documentation**” means documentation in printed or written form, or in tapes, discs, drawings, computer programmes, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form;



*K.K. Jha*  
**K.K. JHA**  
 G. M. (Project)  
 Agra Smart City Limited

*R. K. Singh*  
**R. K. Singh**  
 Nodal Officer  
 Agra Smart City Limited

8  
*[Signature]*  
**Addl. C.E.O.**  
**Agra Smart City Limited**

*[Signature]*  
**Chief Executive Officer**  
**Agra Smart City Limited**



**“Emergency”** means a condition or situation that is likely to endanger the safety or security of the individuals on or about the Project Highway, including Users thereof, or which poses an immediate threat of material damage to any of the Project Assets;

**“Encumbrances”** means, in relation to the Project Highway, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss to payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project Highway, where applicable herein but excluding utilities referred to in Clause 9.1;

**“EPC”** means engineering, procurement and construction;

**“Final Payment Certificate”** shall have the meaning set forth in Clause 19.8;

**“Final Payment Statement”** shall have the meaning set forth in Clause 19.6;

**“Force Majeure” or “Force Majeure Event”** shall have the meaning ascribed to it in Clause 21.1;

**“Good Industry Practice”** means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced contractor engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Contractor in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;

**“Government Instrumentality”** means any department, division or sub-division of the Government or the State Government and includes any commission, board, authority, agency or municipal and other local authority or statutory body including panchayat under the control of the Government or the State Government, as the case may be, and having jurisdiction over all or any part of the Project Highway or the performance of all or any of the services or obligations of the Contractor under or pursuant to this Agreement;

  
R. K. Singh  
Nodal Officer  
Agra Smart City Limited

**“IRC”** means the Indian Roads Congress;

**“Indemnified Party”** means the Party entitled to the benefit of an indemnity pursuant to Article 25;



**“Indemnifying Party”** means the Party obligated to indemnify the other Party pursuant to Article 25;

**“Indirect Political Event”** shall have the meaning set forth in Clause 21.3;

**“Insurance Cover”** means the aggregate of the maximum sums insured under the insurance taken out by the Contractor pursuant to Article 20, and includes all insurances required to be taken out by the Contractor under Clauses 20.1 and 20.8 but not actually taken, and when used in the context of any act or event, it shall mean



  
K.K. JHA  
E. M. (Project)  
Agra Smart City Ltd.

9  
  
Addl. Chief Executive Officer  
Agra Smart City Limited  
  
Chief Executive Officer  
Agra Smart City Limited

the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

**“Intellectual Property”** means all patents, trademarks, service marks, logos, get-up, trade names, internet domain names, rights in designs, blue prints, programmes and manuals, drawings, copyright (including rights in computer software), database rights, semi-conductor, topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;

**“Interim Payment Certificate”** or **“IPC”** means the interim payment certificate issued by the Authority’s Engineer for payment to the Contractor in respect of Contractor’s claims for payment raised in accordance with the provisions of this Agreement;

**“LOA”** or **“Letter of Acceptance”** means the letter of acceptance issued by the Authority.

**“Major Bridge”** means a bridge having a total length of more than 60 (sixty) metres between the inner faces of the dirt walls as specified in IRC:5;

**“Manual”** shall mean the Manual of Standards and Specifications for Project Highways;

**“Material Adverse Effect”** means a material adverse effect of any act or event on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party;

**“Materials”** comprise of all the supplies used by the Contractor used in the Works or for the maintenance of the Project Highway;

**“MORTH”** means the Ministry of Road Transport and Highways or any substitute thereof dealing with Highways;

**“Non-Political Event”** shall have the meaning set forth in Clause 21.2;

**“Parties”** means the parties to this Agreement collectively and **“Party”** shall mean any of the parties to this Agreement individually;

**“Performance Security”** shall have the meaning set forth in Clause 7.1;

**“Plant”** means the apparatus and machinery intended to form or forming part of the works of the Works;

**“Political Event”** shall have the meaning set forth in Clause 21.4;

**“Programme”** shall have the meaning set forth in Clause 10.1 (iii);

R. K. Singh  
Nodal Officer  
Agra Smart City Limited



K.K. JHA  
G. M. (Project)  
Agra Smart City Ltd.

Addl. C.E.O.  
Agra Smart City Limited

Chief Executive Officer  
Agra Smart City Limited

**“Project”** means the construction and maintenance of the Project Highway in accordance with the provisions of this Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Project;

**“Project Assets”** means all physical and other assets relating to (a) tangible assets such as civil works and equipment including foundations, embankments, pavements, road surface, interchanges, bridges, culverts, road over-bridges, drainage works, traffic signals, sign boards, kilometre-stones, [toll plaza(s)], electrical systems, communication systems, rest areas, relief centres, maintenance depots and administrative offices; and (b) Project Facilities situated on the Site;

**“Project Completion Date”** means the date on which the Completion Certificate is issued;

**“Project Completion Schedule”** means the progressive Project Milestones set forth in Schedule-B for completion of the Project Highway on or before the Scheduled Completion Date;

**“Project Highway”** means the said project of design, engineering and Construction for Redevelopment of under pass Bridge (Muhal Puliya), near Gobar Chohwki at Fatehabad Road, Agra

**“Project Milestone”** means the project milestone set forth in Schedule-B;

**“Quality Assurance Plan”** or **“QAP”** shall have the meaning set forth in Clause 11.2;

**“Re.”, “Rs.” or “Rupees” or “Indian Rupees” or “INR”** means the lawful currency of the Republic of India;

**“Retention Money”** shall have the meaning set forth in Clause 7.5;

**“Right of Way”** means and refers to the total land required and acquired for the project, both in its width and length, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for construction and maintenance of the Project Highway in accordance with this Agreement;

**“Safety Engineer”** shall have the meaning set forth in Clause 10.1;

**“Scheduled Completion Date”** shall be the date set forth in Clause 10.3;

**“Scheduled Construction Period”** means the period commencing from the Appointed Date and ending on Scheduled Completion Date;

**“Scope of the Project”** shall have the meaning set forth in Clause 2.1;

**“Section”** means a part of the Project Highway;

**“Site”** shall have the meaning set forth in RFP;

R.K. Singh  
Nodal Officer  
Agra Smart City Limited



K.K. JHA  
G. M. (Project)  
Agra Smart City Ltd.

Addl. C.E.O.  
Agra Smart City Limited

Chief Executive Officer  
Agra Smart City Limited

**“Specifications and Standards”** means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Project Highway, as set forth in Article 11, and any modifications thereof, or additions thereto, as included in the design and engineering for the Project Highway submitted by the Contractor to, and expressly approved by, the Authority;

**“Stage Payment Statement”** shall have the meaning set forth in Clause 19.3;

**“Structures”** means an elevated road or a flyover, as the case may be;

**“Sub-contractor”** means any person or persons to whom a part of the Works or the Maintenance has been subcontracted by the Contractor and the permitted legal successors in title to such person, but not an assignee to such person;

**“Suspension”** shall have the meaning set forth in Article 22;

**“Taxes”** means any Indian taxes including GST, excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, Materials, equipment and services incorporated in and forming part of the Project Highway charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

**“Termination”** means the expiry or termination of this Agreement;

**“Termination Notice”** means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;

**“Termination Payment”** means the amount payable by either Party to the other upon Termination in accordance with Article 23;

**“Tests”** means the tests set forth in Schedule-C to determine the completion of Works in accordance with the provisions of this Agreement;

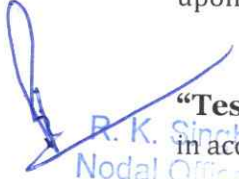
**“Time Extension”** shall have the meaning set forth in Clause 10.5;

**“User”** means a person who travels or intends to travel on the Project Highway or any part thereof in/on any vehicle;

**“Valuation of Unpaid works”** shall have the meaning set forth in Clause 23.5;

**“Works”** means all works including survey and investigation, design, engineering, procurement, construction, Plant, Materials, maintenance, temporary works and other things necessary to complete the Project Highway in accordance with this Agreement; and

**“WPI”** means the wholesale price index for various commodities as published by the Ministry of Commerce and Industry, GOI and shall include any index which

  
R. K. Singh  
Nodal Officer  
Agra Smart City Limited



  
K.K. Jha  
Chief Executive Officer  
Agra Smart City Limited

  
Addl. C.E.O.  
Agra Smart City Limited

  
Chief Executive Officer  
Agra Smart City Limited

substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the WPI published for the period ending with the preceding month.

**1.2 Interpretation**

- (i) In this Agreement, unless the context otherwise requires,
  - (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
  - (b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
  - (c) references to a "person" and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
  - (d) the words "include" and "including" are to be construed without limitation and shall be deemed to be followed by "without limitation" or "but not limited to" whether or not they are followed by such phrases;
  - (e) references to "construction" or "building" include, unless the context otherwise requires, survey and investigation, design, developing, engineering, procurement, supply of plant, materials, equipment, labour, delivery, transportation, installation, processing, fabrication, testing, and commissioning of the Project Highway, including maintenance during the Construction Period, removing of defects, if any, and other activities incidental to the construction and "construct" or "build" shall be construed accordingly;
  - (f) references to "development" include, unless the context otherwise requires, drawing/construction, renovation, refurbishing, augmentation, up- gradation and other activities incidental thereto during the Construction Period, and "develop" shall be construed accordingly;

  
 K.K. Singh  
 Nodal Officer  
 Agra Smart City Limited



  
 K.K. JHA  
 G. M. (Project)  
 Agra Smart City Ltd.

  
 Addl. C.E.O.  
 Agra Smart City Limited

  
 Chief Executive Officer  
 Agra Smart City

- (g) any reference to any period of time shall mean a reference to that according to Indian standard time;
- (h) any reference to day shall mean a reference to a calendar day;
- (i) references to a "business day" shall be construed as a reference to a day (other than a Sunday) on which banks in Delhi are generally open for business;
- (j) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (k) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- (l) any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (m) the words importing singular shall include plural and vice versa;
- (n) references to any gender shall include the other and the neutral gender;
- (o) "lakh" means a hundred thousand (100,000) and "crore" means ten million (10,000,000);
- (p) "indebtedness" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (q) references to the "winding-up", "dissolution", "insolvency", or "reorganisation" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;


  
 R. K. Singh  
 Nodal Officer  
 Agra Smart City Limited

(r) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Clause shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;



(s) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Authority's Engineer shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party or the Authority's Engineer, as the case may be, in this behalf and not otherwise;

  
 K.K. JHA  
 G. M. (Project)  
 Agra Smart City Ltd.

  
 Addl. C.E.O.  
 Agra Smart City Limited

  
 Chief Executive Officer  
 Agra Smart City Limited

- (t) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (u) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears;
- (v) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty or liquidated damages (the "Damages"); and
- (w) time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended for the reasons specified in the Agreement, such extended time shall also be of the essence.
- (ii) Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Contractor to the Authority shall be provided free of cost and in three copies, and if the Authority is required to return any such Documentation with its comments and/or approval, it shall be entitled to retain two copies thereof.
- (iii) The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.
- (iv) Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act, 1897 shall not apply.

### 1.3 Measurements and arithmetic conventions


All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down.

### 1.4 Priority of agreements and errors/discrepancies

- (i) This Agreement, and all other agreements and documents forming part of or referred to in this Agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:

- (a) This Agreement; and

  
R.K. Singh  
Nodal Officer  
Agra Smart City

  
G. M. (Project)  
Agra Smart City Ltd.

  
Addl. C.E.O.  
Agra Smart City Limited

  
Chief Executive Officer  
Agra Smart City

  
Addl. C.E.O.  
Agra Smart City Limited

  
Addl. C.E.O.  
Agra Smart City Limited

205

- (b) All other agreements and documents forming part hereof or referred to herein; i.e. this Agreement at (a) above shall prevail over the agreements and documents at (b).
  
- (ii) Subject to the provisions of Clause 1.4 (i), in case of ambiguities or discrepancies within this Agreement, the following shall apply:
  - (a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
  - (b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
  - (c) between any two Schedules, the Schedule relevant to the issue shall prevail;
  - (d) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
  - (e) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
  - (f) between any value written in numerals and that in words, the latter shall prevail.



K.K.J

K.K. JHA  
G. M. (Project)  
Agra Smart City Ltd.

[Signature]

Addl. C.E.O.  
Agra Smart City Limited

[Signature]

Chief Executive Officer  
Agra Smart City

[Signature]

R. K. Singh  
Nodal Officer  
Agra Smart City Limited

Agra Smart City Limited



304

## Article 2 Scope of the Project

### 2.1 Scope of the Project

Under this Agreement, the scope of the Project (the “**Scope of the Project**”) shall mean and include:

- (a) Construction of the Project Highway on the Site and as specified in RFP and in conformity with the Specifications and Standards set forth in RFP and this agreement. The scope of work will be as per RFP which is also mentioned below:

Looking to the condition of the structures (masonry arch and RCC slabs) it is recommended that:

- 1) The site is in Taj Trapezium Zone. The bidder will be responsible to comply with relevant rules of Taj Trapezium Zone as well as follow all applicable pollution control rules and practices as laid down by concerned departments.
- 2) The stair case may be shifted and relocated at suitable place after the construction of bridge if required.
- 3) The water mains on both sides running parallel to the culvert should not be disturbed and due precautions have to be taken to avoid any likely damage to maintain the water supply before relocate.
- 4) The open drains under the arch along with the under carriageway to be reconstruct if required
- 5) All permissions related to construct, utility shifting and traffic diversion and all other clearance from various departments will be the sole responsibility of the selected bidder.


- (b) Performance and fulfilment of all other obligations of the Contractor in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Contractor under this Agreement.



K.K.L  
K.K. JHA  
G. M. (Project)  
Agra Smart City Ltd.

  
Addl. C.E.O.  
Agra Smart City Limited

  
Chief Executive Officer  
Agra Smart City

  
R. K. Singh  
Nodal Officer  
Agra Smart City Limited

### Article 3

#### Obligations of the Authority

##### 3.1 Obligations of the Authority

- (i) The Authority shall, at its own cost and expense, undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- (ii) The Authority shall be responsible for the correctness of the Scope of the Project, Project Facilities, Specifications and Standards and the criteria for testing of the completed Works.
- (iii) The Authority shall, upon submission of the Performance Security as per the RFP by the Contractor, shall provide to the Contractor:
  - (a) No less than 90% (ninety per cent) of the required Right of Way of the Construction Zone of total length of the Project Highway within a period of 30 (thirty) days from the date of this Agreement,
- (iv) The Authority agrees to provide support to the Contractor and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:
  - (a) upon written request from the Contractor, and subject to the Contractor complying with Applicable Laws, provide reasonable support to the Contractor in procuring Applicable Permits required from any Government Instrumentality for implementation of the Project;
  - (b) not do or omit to do any act, deed or thing which may in any manner violate any provisions of this Agreement;
  - (c) support, cooperate with and facilitate the Contractor in the implementation of the Project in accordance with the provisions of this Agreement; and

##### 3.2 Deemed Termination upon delay

Subject to the provisions of Clause 7.3, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, within 90 days of signing of the Agreement and submission of the full Performance Security by the Contractor, the Agreement shall be deemed to have been terminated. The Authority shall pay damages to the Contractor equivalent to 1% of the Contract Price (3% in case of standalone bridge projects). All other rights, privileges, claims and entitlements of the Contractor under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased. The Contractor shall hand over all information in relation to the Highway, including but not limited to any data, designs, drawings, structures, information, plans, etc. prepared by them for the Highway, to the Authority.

*[Handwritten signature]*  
 R. K. Singh  
 Nodal Officer  
 Agra Smart City Limited



*[Handwritten signature]*  
 K.K. JHA  
 G. M. (Project)  
 Agra Smart City Ltd.

*[Handwritten signature]*  
 Addl. C.E.O.  
 Agra Smart City Limited

*[Handwritten signature]*  
 Chief Executive Officer  
 Agra Smart City Limited


302

## Article 4

### Obligations of the Contractor

#### 4.1 Obligations of the Contractor

- (i) Subject to and on the terms and conditions of this Agreement, the Contractor shall undertake the survey, investigation, design, engineering, procurement, construction, and maintenance of the Project Highway and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- (ii) The Contractor shall comply with all Applicable Laws and Applicable Permits including TTZ and environmental norms (including renewals as required) in the performance of its obligations under this Agreement.
- (iii) Subject to the provisions of Clauses 4.1 (i) and 4.1 (ii), the Contractor shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- (iv) The Contractor shall remedy any and all loss, defects, or damage to the Project Highway from the Appointed Date until the end of the Construction Period at the Contractor's cost
- (v) The Contractor shall remedy any and all loss, defect or damage to the Project Highway during the Defects Liability Period at the Contractor's cost to the extent that such loss, defect or damage shall have arisen out of the reasons specified in Clause 17.3.
- (vi) The Contractor shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
  - (a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits set forth in Schedule-A including NoCs required at State and Local level from concerned department for utilities, traffic etc. and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;
  - (b) procure, as required, the appropriate proprietary rights, licences, agreements and permissions for Materials, methods, processes and systems used or incorporated into the Project Highway;
  - (c) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Sub-contractors in connection with the performance of its obligations under this Agreement;
  - (d) ensure and procure that its Sub-contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Contractor's obligations under this Agreement;
  - (e) not do or omit to do any act, deed or thing which may in any manner violate

  
 R.K. Singh  
 Nodal Officer  
 Agra Smart City Limited



  
 K.K. JHA  
 G. M. (Project)  
 Agra Smart City Ltd.

  
 Addl. C.E.O.  
 Agra Smart City Limited

  
 Chief Executive Officer  
 Agra Smart City Limited

any provisions of this Agreement;

- (f) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement;
- (g) ensure that the Contractor and its Sub-contractors comply with the safety and welfare measures for labour in accordance with the Applicable Laws and Good Industry Practice;
- (h) keep, on Site, a copy of this Agreement, publications named in this Agreement, the Drawings, Documents relating to the Project, and Change of Scope orders and other communications given under this Agreement. The Authority's Engineer and its authorised personnel shall have the right of access to all these documents at all reasonable times;
- (i) cooperate with other contractors employed by the Authority and personnel of any public authority; and
- (j) not interfere unnecessarily or improperly with the convenience of the public, or the access to and use and occupation of all roads and footpaths, irrespective of whether they are public or in the possession of the Authority or of others.

(vii) The Contractor shall undertake all necessary superintendence to plan, arrange, direct, manage, inspect and test the Works. The Contractor shall provide all necessary superintendence of the Works for the proper fulfilling of the Contractor's obligations under the Agreement. Such superintendence shall be given by competent person having adequate knowledge of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents) for the satisfactory and safe execution of the Works.

(viii) The Contractor shall provide the documents of the Contractor specified in the Agreement, and all Contractors' personnel; Goods, consumables and other things and services, whether of a temporary or permanent nature, required in and for the execution, completion of Works and remedying defects.

(ix) The Contractor shall perform the Works in conformity with the Project requirements and other requirements and standards prescribed under or pursuant to the Agreement.

(x) The Contractor shall carry out such work incidental and contingent to the original Scope of the Project to comply with Good Industry Practices.

(xi) The Contractor shall maintain required staff and necessary Contractor's equipment and materials within the reach of the Site during the Defects Liability Period so that any defects arising are promptly attended.

**4.2 Obligations relating to sub-contracts and any other agreements**

(i) The Contractor, whether Joint Venture or sole, shall not sub-contract any Works in

*K.K.JHA*  
**K.K. JHA**  
 G. M. (Project)  
 Agra Smart City Ltd.

*[Signature]*  
 Addl. C.E.O.  
 Agra Smart City Limited

*[Signature]*  
 Chief Executive Officer  
 Agra Smart City Limited

300

more than **49% (forty nine per cent)** of the Contract Price and shall carry out Works directly under its own supervision and through its own personnel and equipment in **at least 51% (fifty one per cent)** of the Contract Price. The Parties further agree that all obligations and liabilities under this Agreement for the entire project Highway shall at all times remain with the Contractor.

- (ii) The contractor cannot sublet any part of the work without permission of CEO of Authority who reserves the right to deny any such permission.
- (iii) In the event any sub-contract referred to in Clause 4.2 (ii) relates to a Sub- contractor who has, over the preceding 3 (three) years, not undertaken at least one work of a similar nature with a contract value exceeding 40% (forty per cent) of the value of the sub-contract to be awarded hereunder, and received payments in respect thereof for an amount equal to at least such 40% (forty per cent), the Authority may, no later than 15 (fifteen) business days from the date of receiving the communication from the Contractor, require the Contractor not to proceed with such sub-contract, and the Contractor shall comply therewith without delay or demur.
- (iv) It is expressly agreed that the Contractor shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the agreements with its Sub-contractors or any other agreement that may be entered into by the Contractor, and no default under any such agreement shall excuse the Contractor from its obligations or liability under this Agreement. However, in case of non-compliance of the Contractor towards his obligations for payments to the approved Sub-contractor(s), which is likely to affect the progress of works, the authority reserves the right to intervene and direct the Contractor to release such outstanding payments to approved Sub-contractor(s) out of the payments due for the completed Works in the interest of work.

#### 4.3 Employment of foreign nationals

The Contractor acknowledges, agrees and undertakes that employment of foreign personnel by the Contractor and/or its Sub-contractors and their sub- contractors shall be subject to grant of requisite regulatory permits and approvals including employment/ residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall always rest with the Contractor. Notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Contractor or any of its Sub-contractors or their sub-contractors shall not constitute a Force Majeure Event, and shall not in any manner excuse the Contractor from the performance and discharge it of its obligations and liabilities under this Agreement, and the Contractor's liabilities hereunder shall remain unaffected by such failure, refusal or inability.

R.V. Singh  
Nodal Officer  
Agra Smart City Limited

#### 4.4 Contractor's personnel

The Contractor shall ensure that the personnel engaged by it or by its Sub-contractors in the performance of its obligations under this Agreement are at all times appropriately and adequately qualified, skilled and experienced in their respective functions in conformity with Good Industry Practice.



K.K. JHA  
G. M. (Project)  
Agra Smart City Ltd.

21  
Addl. C.E.O.  
Agra Smart City Limited

- (ii) The Authority's Engineer may, for reasons to be specified in writing, direct the Contractor to remove any member of the Contractor's or Sub-contractor's personnel. Provided that any such direction issued by the Authority's Engineer shall specify the reasons for the removal of such person.
- (iii) The Contractor shall on receiving such a direction from the Authority's Engineer order for the removal of such person or persons with immediate effect. It shall be the duty of the Contractor to ensure that such persons are evicted from the Site within 10 (ten) days of any such direction being issued in pursuance of Clause 4.4 (ii). The Contractor shall further ensure that such persons have no further connection with the Works or Maintenance under this Agreement. The Contractor shall then appoint (or cause to be appointed) a replacement.

**4.5 Advertisement on Project Highway**

The Project Highway or any part thereof shall not be used in any manner to advertise any commercial product or services.

**4.6 Contractor's care of the Works**

The Contractor shall bear full risk in, and take full responsibility for, the care of the Works, and of the Materials, goods and equipment for incorporation therein, from the Appointed Date until the date of Completion Certificate, and shall employ all required security personal for it at his own cost.

**4.7 Electricity, water and other services**

The Contractor shall be responsible for procuring of all utilities as may be required, including without limitation, adequate power, water and other services.

**4.8 Unforeseeable difficulties**

Except as otherwise stated in the Agreement:

R. K. Nodal Officer

Agra Smart City Limited

- (a) the Contractor accepts complete responsibility for having foreseen all difficulties and costs of successfully completing the Works;
- (b) the Contract Price shall not be adjusted to take account of any unforeseen difficulties or costs; and
- (c) the Scheduled Completion Date shall not be adjusted to take account of any unforeseen difficulties or costs.



**4.9 Co-ordination of the Works**

- (i) The Contractor acknowledges that in addition to the Agreement, it is also aware of terms of the other Project contracts and other agreements the Authority has negotiated and entered into for performance of its obligations under the Agreement (copies of other contracts and other agreements are made available to the Contractor

K.K. JHA  
G. M. (Project)  
Agra Smart City Ltd.

Addl. C.E.O.  
Agra Smart City Limited

Chief Executive Office  
Agra Smart City

from time to time) and that the Contractor is fully aware of the consequences to the Authority which would or are likely to result from a breach by the Contractor of its obligations under the Agreement. In the event the actions of the Contractor result in the breach by the Authority of any or all of the other Project contracts and such breach imposes any liability on the Authority, the Contractor shall: (a) undertake all steps as may be possible to mitigate or neutralize the liability that has arisen, and (b) indemnify the Authority against any such liability and compensate the Authority to that extent.

- (ii) The Contractor shall be responsible for the co-ordination and proper provision of the Works, including co-ordination of other Contractors or Sub-contractors and government departments for the Project. The Contractor shall co-operate with the Authority in the co-ordination of the Works with the works under the other Project contracts. The Contractor shall provide all reasonable support for carrying out their work to:
  - (a) any other contractors employed by the Authority;
  - (b) the workmen of the Authority;
  - (c) the workmen of any Governmental Instrumentality who may be employed in the execution of work on or near the Site; and
  - (d) such other persons as is required in the opinion of the Authority for successful completion of the Project.

**4.10 Environmental Measures**

- (i) The Contractor agrees to conduct its activities in connection with the Agreement in such a manner so as to comply with the environmental requirements which includes, *inter alia*, all the conditions required to be satisfied under the environmental clearances and applicable law as well as TTZ norms and environmental pollution control measures as required by CPCB, UPPCB and other such authorities from time to time. Contractor assumes full responsibility for measures which are required to be taken to ensure such compliance.

*[Handwritten signature]*

H. K. Singh  
Nodal Officer

**4.11 Site Data**

- (i) The Contractor shall be deemed to have inspected and examined the Site and its surroundings and to have satisfied himself before entering into the Agreement in all material respects including but not limited to:

- (a) the form and nature of the Site (including, inter-alia, the surface and sub-surface conditions and geo-technical factors);
- (b) the hydrological and climatic conditions;
- (c) the extent and nature of the works already completed and Materials necessary for the execution and completion of the Works and the remedying of any defects that includes already executed part also.
- (d) the suitability and the adequacy of the Site for the execution of the Works;



*[Handwritten signature]*

K.K. JHA  
G. M. (Project)  
Agra Smart City Ltd.

*[Handwritten signature]*  
Addl. C.E.O.  
Agra Smart City Ltd.

Abd. C.E.O.  
Agra Smart City Limited

- (e) the means of access to the Site and the accommodation the Contractor may require;
- (f) arranging permits as required
- (g) Current location and condition of utilities and accommodation of the same in Project Highway.
- (h) all other factors and circumstances affecting the Contractor's rights and obligations under the Agreement, the Contract Price and Time for Completion.

**4.12 Sufficiency of Contract Price**

The Contractor shall have satisfied itself as to the correctness and sufficiency of the Contract Price. The Contract Price shall cover all its obligations under the Agreement, in addition to all risks the Contractor has agreed to undertake under the Agreement, including those associated with the performance of its obligations under the Agreement and all things necessary for the provision of the Works in a manner satisfactory to the Authority and in accordance with this Agreement.

**4.13 Clearance of the Site**

During the provision of the Works, and as a pre-condition to the issue of the Taking-Over Certificate, the Contractor shall clear away and remove from the Site, all Contractor's equipment, surplus material, wreckage, rubbish and temporary Works, and shall keep the Site free from all unnecessary obstructions, and shall not store or dispose of any Contractor's equipment or surplus materials on the Site. The Contractor shall promptly clear away and remove from the Site any wreckage, rubbish or temporary Works no longer required and leave the Site and the Works in a clean and safe condition to the sole satisfaction of the Authority.



*K.K.J*  
K.K. JHA  
G. M. (Project)  
Agra Smart City Ltd.

Chief Executive Office  
Agra Smart City

*R.K.S*  
R. K. Singh  
Nodal Officer  
Agra Smart City Limited

*L*  
Addl. C.E.O.  
Agra Smart City Limited




296

## Article 5

### Representations and Warranties

#### 5.1 Representations and warranties of the Contractor

- (i) The Contractor represents and warrants to the Authority that:
- (a) it is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
  - (b) it has taken all necessary corporate and/or other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
  - (c) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable against it in accordance with the terms hereof;
  - (d) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
  - (e) the information furnished in the Bid, Request for Qualification and Request for Proposals or otherwise and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
  - (f) the execution, delivery and performance of this Agreement will not conflict with, or result in the breach of, or constitute a default under, or accelerate performance required by any of the terms of its memorandum and articles of association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
  - (g) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
  - (h) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
  - (i) it has complied with Applicable Laws in all material respects and has not been

  
R. K. Singh  
Nodal Officer  
Agra Smart City Limited



  
K.K. JHA  
G. M. (Project)  
Agra Smart City Ltd.

  
Addl. C.E.O.  
Agra Smart City Limited

subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;

- (j) no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (k) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the contract or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith;
- (l) nothing contained in this Agreement shall create any contractual relationship or obligation between the Authority and any Sub- contractors, designers, consultants or agents of the Contractor;
- (m) it is adequately financed has the requisite knowledge, expertise, technical know-how, experience, resources, infrastructure, licenses, patents, copy rights, for designing, supplying/ procuring the goods and materials, and for providing the installation and construction services required for completing the construction of the Project Facilities; and

(ii) it represents the Authority that:

- (a) it owns or has the right to use all **“Intellectual Property”** necessary to perform the contractual obligations and to carry on the Works without conflict with the right of others;
- (b) All intellectual property rights necessary to perform the contractual obligations and to carry on the Works are in full force and effect and are vested in, and beneficially owned by the Contractor, and are free from encumbrances.
- (c) None of the intellectual property rights is being used, claimed, or posed or attacked by any other person, nor does the use of such intellectual property rights or any part of them infringe the intellectual property rights owned or enjoyed by any third party.
- (d) None of the intellectual property rights owned or used by the Contractor is the subject of any claim, opposition, attack, assertion or other arrangement of whatsoever nature which does or may impinge upon their use, validity, enforceability or ownership by the Parties, and there are no grounds or other circumstances which may give rise to the same.
- (e) No licenses or registered user or other rights have been granted or agreed to be granted to any third party in respect of such intellectual property rights.
- (f) No act has been done or has been omitted to be done to entitle any authority or person to cancel, forfeit or modify any intellectual property rights.

  
 R. K. Singh  
 Nodal Officer  
 Agra Smart City Limited



  
 K.K. JHA  
 G. M. (Project)  
 Agra Smart City Ltd.

  
 Addl. C.E.O.  
 Agra Smart City Limited

  
 Chief Executive Officer  
 Agra Smart City Limited

  
 Addl. C.E.O.  
 Agra Smart City Limited

294

- (g) The Contractor shall notify the Authority of any adverse use of the intellectual property rights or confusingly or deceptively similar to the intellectual property rights.
  - (h) The Contractor shall recognize the Authority's ownership and title to the intellectual property rights and shall not at any time, either directly or indirectly, put to issue the validity or ownership of the intellectual property rights and it will not do any act or thing, either directly or indirectly, which in anyway impairs the validity and ownership of the intellectual property rights.
  - (i) The Contractor shall, promptly execute, acknowledge and deliver all documents which are requested by Authority to record with appropriate governmental agencies and authorities the fact that the Authority has the right to the use of the said intellectual property rights.
  - (j) The Contractor shall not, for any reason, object to, or interfere in any way with the ownership, registration or use of the intellectual property rights by the Authority (or its licensee or assigns) for any purpose whatsoever.
- (iii) The Contractor is fully aware that the Agreement is inter linked with the other Project contracts and the non-performance or deficient performance or default by the Contractor and/or any of the Contractor's personnel or Subcontractors under one among the said contracts will have bearing on the other contracts and the evaluation of the Contractor's performance under the Agreement and the Project itself.
- (iv) If at any time during the Defects Liability Period any item of the Works or Project Facilities or any part thereof, do not conform to the Authority requirements and Specifications and Standards, on being so notified by the Authority, the Contractor shall promptly rectify/remedy such nonconformity to the satisfaction of the Authority solely at the Contractor's expense; failing which the Authority may reject or revoke Taking-Over Certificate, and the Authority may proceed to correct the Contractor's nonconforming Work by the most expeditious means available, the costs of which shall be to the Contractor's account; or the Authority may retain the non-conforming Work and an equitable adjustment reducing the total Contract Price to reflect the diminished value of such non-conforming Work will be made by written amendment.

R. K. Singh  
Nodal Officer  
Agra Smart City Limited

(v) In addition to the other warranties, the Contractor represents and warrants as follows:

- (a) The Contractor has (or, if the technology does not currently exist, will have granted at the time of passing to The Employer) in and to the technology used in the equipment, materials, goods, Works, Contractor's documents, Drawings and Manuals ("**Technology**") -
  - i. all right, title and interest free of any lien, claim or restriction; and
  - ii. right to grant to the Authority the right to use the Technology for the purpose of this contract, free of any lien, claim or restriction and on the terms of license as required.
- (b) The Contractor has granted (or, if the technology does not currently exist, will grant at the time of passing to the Authority the property and title in and to



K.K. JHA  
G. M. (Project)  
Agra Smart City Ltd.

Addl. C.E.O.  
Agra Smart City Limited

Agra Smart City Limited  
Addl. C.E.O.

the equipment, materials, goods, Works, spares, Contractor's documents, Drawings and Manuals in which it is used) to the Authority the right to use the Technology, free of any lien, claim or restriction.

- (vi) In addition to the other Warranties, the Contractor represents and warrants as follows:
  - (a) No Technology contains any worm (i.e., a program that travels from one computer to another computer but does not attach itself to the operating system of the computer it enters), virus (i.e., a program that travels from one computer to another computer that attaches itself to the operating system it enters) or self-destruct capability.
  - (b) The Technology will not abnormally end or provide invalid or incorrect results as a result of date-dependent data.
  - (c) The Technology can accurately recognize, manage, accommodate, and manipulate date-dependent data, including single and multi-century formulas and leap years.
- (vii) No criminal proceedings instituted against any of the employees or Directors of the Contractor.
- (viii) Till date the services of the Contractor has not been terminated by any person for any breach or non-performance or negligence by the Contractor.

**5.2 Representations and warranties of the Authority**

The Authority represents and warrants to the Contractor that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- (b) it has taken all necessary actions under the Applicable Laws to authorise the execution, delivery and performance of this Agreement;
- (c) it has the financial standing and capacity to perform its obligations under this Agreement;
- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Authority's ability to perform its obligations under this Agreement;
- (f) it has complied with Applicable Laws in all material respects;

*[Handwritten Signature]*  
 K. K. Singh  
 Nodal Officer  
 Agra Smart City Limited



*[Handwritten Signature]*  
 K.K. JHA  
 G. M. (Project)  
 Agra Smart City Ltd.

*[Handwritten Signature]*  
 Addl. C.E.O.  
 Agra Smart City Limited

*[Handwritten Signature]*  
 28 Chief Executive Office  
 Agra Smart City

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any obligation of either Party under this Agreement.



K.K.J

K.K. JHA  
G. M. (Project)  
Agra Smart City Ltd.

R. K. Singh  
Nodal Officer  
Agra Smart City Limited

Addl. C.E.O.  
Agra Smart City Limited

## Article 6

### Disclaimer

#### 6.1 Disclaimer

- (i) The Contractor acknowledges that prior to the execution of this Agreement, the Contractor has, after a complete and careful examination, made an independent evaluation of the Request for Proposal, Scope of the Project, Specifications and Standards of design, construction and maintenance, Site, local conditions, physical qualities of ground, subsoil and geology, traffic volumes, suitability and availability of access routes to the Site and all information provided by the Authority or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. Save as provided in Clause 3.1 and Clause 5.2, the Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Contractor confirms that it shall have no claim whatsoever against the Authority in this regard.
- (ii) The Contractor acknowledges and hereby accepts to have satisfied itself as to the correctness and sufficiency of the Contract Price.
- (iii) The Contractor acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 6.1 (i) above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Contractor, or any person claiming through or under any of them, and shall not lead to any adjustment of Contract Price or Scheduled Completion Date.
- (iv) The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 6.1 (i) above shall not vitiate this Agreement, or render it voidable.

(v) In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 6.1 (i) above, that Party shall immediately notify the other Party, specifying the mistake or error.

(vi) Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Contractor; and the Authority shall not be liable in any manner for such risks or the consequences thereof.



*K.K. JHA*  
**K.K. JHA**  
 G. M. (Project)  
 Agra Smart City Ltd.

*[Signature]*

*[Signature]*

**30**  
 Addl. C.E.O.  
 Agra Smart City Limited

Chief Executive Office  
 Agra Smart City

*JEET CONSTRUCTION COMPANY*  
 Addl. C.E.O.  
 Agra Smart City Limited

290

## Article 7 Performance Security

### 7.1 Performance Security

- (i) (A) That the contractor has submitted BG no. 37802139461 amounting of Rs. 25,00,000.00 dated 06/08/2022 pledged in the name of Chief Executive Officer, ASCL as security deposit to Agra Smart City Ltd. in order to regularize the work under this contract as security deposit to Agra Smart City Ltd. in order to regularize the work under this contract. The responsibility of validity of the same shall be that of the contractor.

(B) The Performance Security shall be valid until 60(sixty) days after the Defects Liability Period. The Additional Performance Security shall be valid until 28 (twenty eight) days after Project Completion Date.

### 7.2 Extension of Performance Security

The Contractor may initially provide the Performance Security for a period of 2 (two) years; provided that it shall procure the extension of the validity of the Performance Security, as necessary, at least 2 (two) months prior to the date of expiry thereof. Upon the Contractor providing an extended Performance Security, the previous Performance Security shall be deemed to be released and the Authority shall return the same to the Contractor within a period of 7 (seven) business days from the date of submission of the extended Performance Security.

### 7.3 Appropriation of Performance Security

- (i) Upon occurrence of a Contractor's Default, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security as Damages for such Contractor's Default.

- (ii) Upon such encashment and appropriation from the Performance Security, the Contractor shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Contractor shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Authority shall be entitled to terminate the Agreement in accordance with Article 23. Upon replenishment or furnishing of a fresh Performance Security, as the case may be, as aforesaid, the Contractor shall be entitled to an additional Cure Period of 30 (thirty) days for remedying the Contractor's Default, and in the event of the Contractor not curing its default within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 23.

### 7.4 Release of Performance Security

- (i) The Authority shall return the Performance Security to the Contractor within 60

  
K.K. JHA  
G. M. (Project)  
Agra Smart City Ltd.

  
31  
Addl. C.E.O.  
Agra Smart City Limited

(sixty) days of the expiry of the Maintenance Period or the Defects Liability Period, whichever is later, under this Agreement. Notwithstanding the aforesaid, the Parties agree that the Authority shall not be obliged to release the Performance Security until all Defects identified during the Defects Liability Period have been rectified.

- (ii) The Authority shall be liable to pay interest @ 9% (nine per cent) per annum for any delay in the return of Performance Security and Additional Performance Security, if any, beyond the period prescribed above for the period of delay.

**7.5 Retention Money**

- (i) From every payment for Works due to the Contractor in accordance with the provisions of Clause 19.5, the Authority shall deduct 6% (six per cent) thereof as guarantee money for performance of the obligations of the Contractor during the Construction Period (the "**Retention Money**") subject to the condition that the maximum amount of Retention Money shall not exceed 5% (five per cent) of the Contract Price.
- (ii) Upon occurrence of a Contractor's Default, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to appropriate the relevant amounts from the Retention Money as Damages for such Contractor's Default.
- (iii) Within 15 (fifteen) days of the date of issue of the Completion Certificate, the Authority shall refund the balance of Retention Money remaining with the Authority after adjusting the amounts appropriated under the provisions of Clause 7.5 (ii).

The Parties agree that in the event of Termination of this Agreement, the Retention Money specified in this Clause 7.5 shall be treated as if they are Performance Security and shall be reckoned as such for the purposes of Termination Payment under Clause 23.6.



**K.K. JHA**  
G. M. (Project)  
Agra Smart City Ltd.

**R. K. Singh**  
Nodal Officer  
Agra Smart City Limited

**Addl. C.E.O.**  
Agra Smart City Limited

Chief Executive Officer  
Agra Smart City Limited



## Article 8

### Right of Way

#### 8.1 The Site

The site of the Project Highway (the "Site") shall comprise the site described in RFP

#### 8.2 Access to the Authority and the Authority's Engineer

- (i) The Contractor shall ensure, subject to all relevant safety procedures, that the Authority has un-restricted access to the Site during any emergency situation, as decided by the Authority's Engineer.

#### 8.3 Geological and archaeological finds

It is expressly agreed that mining, geological or archaeological rights do not form part of this Agreement with the Contractor for the Works, and the Contractor hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the Site shall vest in and belong to the Authority or the concerned Government Instrumentality. The Contractor shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform the Authority forthwith of the discovery thereof and comply with such instructions as the concerned Government Instrumentality may reasonably give for the removal of such property. For the avoidance of doubt, it is agreed that any reasonable expenses incurred by the Contractor hereunder shall be reimbursed by the Authority. It is also agreed that the Authority shall procure that the instructions hereunder are issued by the concerned Government Instrumentality within a reasonable period.



  
**K.K. JHA**  
 G. M. (Project)  
 Agra Smart City Ltd.

  
 A.S. Jha  
 Agra Smart City Limited

  
 A.S. Jha  
 Agra Smart City Limited

## Article 9 Utilities and Trees

### 9.1 Existing utilities and roads

Notwithstanding anything to the contrary contained herein, it shall be the responsibility of the Contractor to ensure that the respective entities owning the existing roads, right of way, level crossings, structures, or utilities on, under or above the Site are enabled by it to keep them in continuous satisfactory use, if necessary, by providing suitable temporary diversions with the authority of the controlling body of that road, right of way or utility.

### 9.2 Shifting of obstructing utilities

The Contractor shall, in accordance with Applicable Laws undertake the work of shifting of any utility (including electric lines, water pipes, gas pipelines and telephone cables) to an appropriate location or alignment, if such utility or obstruction adversely affects the execution of Works or Maintenance of the Project Highway in accordance with this Agreement at his own cost. In the event of any delay of such shifting on the part of the contractor, no extension of time for completion of the project and no claims, in any manner, shall be admissible on this account against the Authority.

The work of shifting of Utilities can be taken up by the Contractor any time after signing of the Agreement.

At completion of work, the contractor must ensure the proper functioning of all pre-existing utilities, even in case of unforeseen conditions, at its own cost.

### 9.3 New utilities

(i) The Contractor shall allow, subject to the permission from the Authority and such conditions as the Authority may specify, access to, and use of the Site for laying telephone lines, water pipes, electricity lines/ cables or other public utilities. Where such access or use causes any financial loss to the Contractor, it may require the user of the Site to pay compensation or damages as per Applicable Laws. For the avoidance of doubt, it is agreed that use of the Site under this Clause 9.3 shall not in any manner relieve the Contractor of its obligation to construct and maintain the Project Highway in accordance with this Agreement and any damage caused by such use shall be restored forthwith at the cost of the Authority.

(ii) The Authority may, by notice, require the Contractor to connect any adjoining road to the Project Highway, and the connecting portion thereof falling within the Site shall be constructed by the Contractor in accordance with Article 10.



  
**K.K. JHA**  
G. M. (Project)  
Agra Smart City Ltd.

  
**R. K. Singh**  
Nodal Officer  
Agra Smart City Limited  
**34**  
**ADDL. C.E.O.**  
Agra Smart City Limited

  
**Chief Executive Officer**  
Agra Smart City Limited

- (iii) The Authority may by notice require the Contractor to connect, through a paved road, any adjoining service station, hotel, motel or any other public facility or amenity to the Project Highway, whereupon the connecting portion thereof that falls within the Site shall be constructed by the Contractor
- (iv) In the event construction of any Works is affected by a new utility or works undertaken in accordance with this Clause 9.3, the Contractor shall be entitled to a reasonable Time Extension as determined by the Authority's Engineer.

#### 9.4 Dismantling of structures

The Contractor shall at its own cost dismantle the structures in the acquired lands including those on patta lands, abadi lands, assigned lands, etc. the compensation for which, was paid by the Authority to the land owners and the lands were handed over to the Contractor. The Contractor shall, at its own cost, dispose of the dismantled material in its sole discretion as deemed appropriate, while complying with all environmental guidelines and regulations and clear the Site for undertaking construction.

#### 9.5 Development Period

The Contractor may commence pre-construction activities like utility shifting, boundary wall construction or any other activity assigned to the Contractor by the Authority to enable construction of the Project Highway immediately after signing of the Agreement, to the extent that such work is ready for execution. The Parties agree that these works may be taken up and completed to the extent feasible by the Contractor, before declaration of the Appointed Date, but no claim against the Authority for delay shall survive during this period and that the undertaking of these works by the Contractor shall not count towards the Scheduled Construction Period of the project which starts counting only from the Appointed Date. No construction activity of the Project Highway shall be undertaken during the development period.



  
**K.K. JHA**  
 G. M. (Project)  
 Agra Smart City Ltd.

  
**R. K. Singh**  
 Nodeal Officer  
 Agra Smart City Limited

  
**Addl. C.E.O.**  
 Agra Smart City Limited

### Article 10

### Design and Construction of the Project Highway

#### 10.1 Obligations prior to commencement of Works

- (i) Within 07 (seven) days of the Appointed Date, the Contractor shall:
  - (a) appoint its representative, duly authorised to deal with the Authority in respect of all matters under or arising out of or relating to this Agreement;
  - (b) appoint a design director (the "Design Expert ") who will head the Contractor's design unit and shall be responsible for surveys including topographical survey, investigations including soil testing, collection of data, and preparation of preliminary and detailed designs;
  - (c) undertake and perform all such acts, deeds and things as may be necessary or required before commencement of Works under and in accordance with this Agreement, the Applicable Laws and Applicable Permits; and
  - (d) make its own arrangements for quarrying of materials needed for the Project Highway under and in accordance with the Applicable Laws and Applicable Permits.

(ii) Within seven days of the Appointed Date, the Contractor shall submit to the Authority and the Authority's Engineer a programme (the "Programme") for the Works, developed using MS projects/Primavera (latest version) , for review and consent of the Engineer, giving the following details:

(a) Part I : Contractor's organisation for the Project, the general methods and arrangements for design and construction, environmental management plan, Quality Assurance Plan including design quality plan, traffic management and safety plan covering safety of users and workers during construction (including use of 'ROBOTS' for diversion and control of traffic), Contractor's key personnel and equipment.

R. K. Singh  
Nodal Officer

Agra Smart City Limited

(b) Part II : Programme for completion of all stages of construction and Project Milestones of the Works as specified in Project Completion Schedule set forth in Schedule-B. The Programme shall include:

- i. the order in which the Contractor intends to carry out the Works, including the anticipated timing of design and stages of Works;
- ii. the periods for reviews under Clause 10.2;
- iii. the sequence and timing of inspections and tests by generating RFI.
- iv. the particulars for the pre-construction reviews and for any other submissions, approvals and consents including but not limited to approval of source of construction materials (sand, fine sand, fine aggregate, coarse aggregate, cement, steel, bricks, stone etc.), mix design of concrete M25/M30/M35/M40/M45/M50.



K.K. JHA  
G. M. (Project)  
Agra Smart City Ltd.

36  
Addl. C.E.O.  
Agra Smart City Limited

Chief Executive Officer  
Agra Smart City Limited

- 284
- v. BOQ, Estimate and work break down structure of the said project based on detailed design & drawing along with JMR, MB etc. This estimate once approved, shall form basis of valuation of works whenever required for implementation of provisions of this agreement.


The Contractor shall submit a revised Programme whenever the previous Programme is inconsistent with the actual progress or with the Contractor's obligations.

- (c) Part III : Monthly cash flow forecast with S-curve.
- (iii) The Contractor shall appoint a safety engineer on round-the -clock basis (the "**Safety Engineer**") to carry out a safety audit at the design stage of the Project Highway in accordance with the Applicable Laws and Good Industry Practice.
- (iv) A safety audit shall be carried out by the Safety Engineer in respect of on-site execution that have a bearing on safety of Users as well as pedestrians, animals and private/public property involved in or associated with accidents.
- (v) Weekly safety audit and severity reports shall be submitted to Authority by Contractor
- (vi) The recommendations of the Safety Engineer shall be incorporated in the design & construction phase of the Project Highway and the Contractor shall forward to the Authority's Engineer a certificate to this effect together with the recommendations of the Safety Engineer. avoidance of doubt, the Safety Engineer to be engaged by the Contractor shall be independent of the design and implementation team of the Contractor.

## 10.2 Design and Drawings

- (i) Design and Drawings shall be developed in conformity with the Specifications and Standards set forth in RFP. In the event, the Contractor requires any relaxation in design standards due to restricted Right of Way in any section, the alternative design criteria for such section shall be provided for review and approval of the Authority's Engineer.

- (ii) In respect of the Contractor's obligations with respect to the design and Drawings of the Project Highway, the following shall apply:

  
R. K. Singh  
Nodal Officer  
Agra Smart City Limited

- (a) The Contractor shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, two (2) copies each of the detailed design and Drawings including but not limited to calculations, crust design, mix design, Good for Construction drawings, structure drawings, bar bending schedule etc., duly vetted by reputed institutions Bove bending schedule, to the Authority's Engineer. Provided, however, that in respect of Major Bridges and Structures, the Authority's Engineer may require additional drawings for approval in accordance with Good Industry Practice.



- (b) by submitting the Drawings to the Authority's Engineer, the Contractor shall be deemed to have represented that it has determined and verified that the design and engineering, including field construction criteria related thereto,

  
K.K. JHA  
G. M. (Project)  
Agra Smart City Ltd.

  
Addl. C.E.O.  
Agra Smart City Limited

are in conformity with the Scope of the Project, the Specifications and Standards and the Applicable Laws;

- (c) if the observations of the Authority's Engineer indicate that the Drawings are not in conformity with the Scope of the Project or the Specifications and Standards, such Drawings shall be revised by the Contractor in conformity with the provisions of this Agreement and resubmitted to the Authority's Engineer. The Authority's Engineer shall give its observations, if any, within 10 (ten) days of receipt of the revised Drawings. In the event the Contractor fails to revise and resubmit such Drawings to the Authority's Engineer for review/approval as aforesaid, the Authority's Engineer may withhold the payment for the affected works in accordance with the provisions of Clause 19.4 (iv). If the Contractor disputes any decision, direction or determination of the Authority's Engineer hereunder, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure;
- (d) no review/approval and/or observation of the Authority's Engineer and/or its failure to review/approval and/or convey its observations on any Drawings shall relieve the Contractor of its obligations and liabilities under this Agreement in any manner nor shall the Authority's Engineer or the Authority be liable for the same in any manner; and if errors, omissions, ambiguities, inconsistencies, inadequacies or other Defects are found in the Drawings, they and the construction works shall be corrected at the Contractor's cost, notwithstanding any approval under this Article 10;
- (e) the Contractor shall be responsible for delays in submitting the Drawing caused by reason of delays in surveys and field investigations, and shall not be entitled to seek any relief in that regard from the Authority; and
- (f) the Contractor warrants that its designers, including any third parties engaged by it, shall have the required experience and capability in accordance with Good Industry Practice and it shall indemnify the Authority against any damage, expense, liability, loss or claim, which the Authority might incur, sustain or be subject to arising from any breach of the Contractor's design responsibility and/or warranty set out in this Clause.
- (g) the Contractor shall ensure that all the designs and drawings shall be approved from the Authority's Engineer within 15 days (fifteen) from the Appointed Date.

(iii) Any cost or delay in construction arising from review/approval by the Authority's Engineer shall be borne by the Contractor.

(iv) Works shall be executed in accordance with the Drawings provided by the Contractor in accordance with the provisions of this Clause 10.2 and the approval of the Authority's Engineer. Such Drawings shall not be amended or altered without prior written notice to the Authority's Engineer. If a Party becomes aware of an error or defect of a technical nature in the design or Drawings, that Party shall promptly give notice to the other Party of such error or defect.

(v) Before issue of Completion Certificate, the Contractor shall furnish to the Authority and the Authority's Engineer a complete set of as-built Drawings, in 2 (two) hard

*[Handwritten signature]*  
Nodal Officer  
Agra Smart City Limited



**K.K. JHA**  
G. M. (Project)  
Agra Smart City Ltd.

*[Handwritten signature]*  
Addl. C.E.O.  
Agra Smart City Limited

*[Handwritten signature]*  
Chief Executive Officer  
Agra Smart City Limited

202

copies and in micro film form or in such other medium as may be acceptable to the Authority, reflecting the Project Highway as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Project Highway and setback lines, if any, of the buildings and structures forming part of Project Facilities.

### 10.3 Construction of the Project Highway

- (i) The Contractor shall construct the Project Highway as specified in RFP and this agreement and in conformity with the Specifications and Standards set forth in RFP and this agreement. The Contractor shall be responsible for the correct positioning of all parts of the Works, and shall rectify any error in the positions, levels, dimensions or alignment of the Works. The 150th day from the Appointed Date shall be the scheduled completion date (the “**Scheduled Completion Date**”) and the Contractor agrees and undertakes that the construction shall be completed on or before the Scheduled Completion Date, including any extension thereof.
- (ii) The Contractor shall construct the Project Highway in accordance with the Project Completion Schedule set forth in Schedule-B. In the event that the Contractor fails to achieve any Project Milestone or the Scheduled Completion Date within a period of 03 (three) days from the date set forth in Schedule-B, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the Authority, it shall pay Damages to the Authority of a sum calculated at the rate of 0.05% (zero point zero five percent) of the Contract Price for delay of each day reckoned from the date specified in Schedule -B and until such Project Milestone is achieved or the Project Highway is completed; provided that if the period for any or all Project Milestones or the Scheduled Completion Date is extended in accordance with the provisions of this Agreement, the dates set forth in Schedule-B shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule-B has been amended as above; provided further that in the event the Project Highway is completed within or before the Scheduled Completion Date including any Time Extension, applicable for that work or section, the Damages paid under this Clause 10.3 (ii) shall be refunded by the Authority to the Contractor, but without any interest thereon.

- (iii) The Authority shall notify the Contractor of its decision to impose Damages in pursuance with the provisions of this Clause 10.3. Provided that no deduction on account of Damages shall be effected by the Authority without notifying the Contractor of its decision to impose the Damages, and taking into consideration the representation, if any, made by the Contractor within 05 (five) days of such notice. The Parties expressly agree that the total amount of Damages under Clause 10.3 (ii) shall not exceed 10% (ten percent) of the Contract Price. If the damages exceed 10% (ten percent) of the Contract Price, the Contractor shall be deemed to be in default of this agreement having no cure and the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice in accordance with the provisions of Clause 23.1 (ii).

- (iv) In the event that the Contractor fails to achieve the Project Completion within a

R. K. Singh  
Nodal Officer  
Agra Smart City Limited

K.K. JHA  
G. M. (Project)  
Agra Smart City Ltd.

Addl. C.E.O.  
Agra Smart City Limited

period of 60 (sixty) days from the Schedule Completion Date set forth in Schedule-B, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the Authority, the contractor shall be deemed to be ineligible for bidding any future projects of the Authority, both as the sole party or as one of the parties of Joint Venture/ Consortium during the period from Scheduled Completion Date to issuance of Completion Certificate.

- (v) Contractor should survey the current access routes used by various vehicular modes and pedestrians and accommodate the same through alternative routes during construction work as well as in the final design of Project Highway.
- (vi) Contractor should survey current location and condition of utilities and accommodate the same in Project Highway.
- (vii) The Contractor shall maintain detailed Joint Measurement Record and Measurement Book and have it duly verified by Authority's Engineer during execution on regular basis for record purpose.
- (viii) Before commencement of any construction activity the Contractor shall raise Request for Inspection in proper format.
- (ix) The Contractor shall maintain a Site Hindrance Register, Site Instruction Register duly signed by Authority.

**10.4 Maintenance during Construction Period**

- (i) During the Construction Period, the Contractor shall maintain, at its cost, the existing lane(s) of the Project Highway so that the traffic worthiness and safety thereof are at no time materially inferior as compared to their condition on Appointed Date, and shall undertake the necessary repair and maintenance works for this purpose; provided that the Contractor may, at its cost, interrupt and divert the flow of traffic if such interruption and diversion is necessary for the efficient progress of Works and conforms to Good Industry Practice; provided further that such interruption and diversion shall be undertaken by the Contractor only with the prior written approval of the Authority's Engineer which approval shall not be unreasonably withheld. For the avoidance of doubt, it is agreed that the Contractor shall at all times be responsible for ensuring safe operation of the Project Highway. It is further agreed that in the event the Project includes construction of a bypass or tunnel and realignment of the existing carriageway, the Contractor shall maintain the existing highway in such sections until the new Works are open to traffic.

R. K. Singh  
Nodal Officer

Agra Smart City Limited

- (ii) Notwithstanding anything to the contrary contained in this Agreement, in the event of default by the Contractor in discharging the obligations specified in Clause 10.4 (i) above, the Authority shall get these maintenance works completed in the manner recommended by the Authority's Engineer to avoid public inconvenience at the risk and cost of the Contractor in order to keep the road in traffic worthy condition.



**10.5 Extension of time for completion**

- (i) Without prejudice to any other provision of this Agreement for and in respect of extension of time, the Contractor shall be entitled to extension of time in the Project

K.K. JHA  
G. M. (Project)  
Agra Smart City Ltd.

40  
Addl. C.E.O. O.S.O. Ibb  
Agra Smart City Limited Chief Executive Office  
Agra Smart City



200

Completion Schedule (the “**Time Extension**”) to the extent that completion of any Project Milestone is or will be delayed by any of the following, namely:

- (a) Change of Scope (unless an adjustment to the Scheduled Completion Date has been agreed under Article 13);
  - (b) occurrence of a Force Majeure Event;
  - (c) any other cause or delay which entitles the Contractor to Time Extension in accordance with the provisions of this Agreement.
- (ii) The Contractor shall, no later than 15 (fifteen) business days from the occurrence of an event or circumstance specified in Clause 10.5 (i), inform the Authority’s Engineer by notice in writing, with a copy to the Authority, stating in reasonable detail with supporting particulars, the event or circumstances giving rise to the claim for Time Extension in accordance with the provisions of this Agreement. Provided that the period of 15 (fifteen) business days shall be calculated from the date on which the Contractor became aware, or should have become aware, of the occurrence of such an event or circumstance.


Provided further that notwithstanding anything to the contrary contained in this Agreement, Time Extension shall be due and applicable only for the Works which are affected by the aforesaid events or circumstances and shall not in any manner affect the Project Completion Schedule for and in respect of the Works which are not affected hereunder.


- (iii) On the failure of the Contractor to issue to the Authority’s Engineer a notice in accordance with the provisions of Clause 10.5 (ii) within the time specified therein, the Contractor shall not be entitled to any Time Extension and shall forfeit its right for any such claims in future. For the avoidance of doubt, in the event of failure of the Contractor to issue notice as specified in this clause 10.5 (iii), the Authority shall be discharged from all liability in connection with the claim.
- (iv) The Authority’s Engineer shall, on receipt of the claim in accordance with the provisions of Clause 10.5 (ii), examine the claim expeditiously within the time frame specified herein. In the event the Authority’s Engineer requires any clarifications to examine the claim, the Authority’s Engineer shall seek the same within 03 (three) days from the date of receiving the claim. The Contractor shall, on receipt of the communication of the Authority’s Engineer requesting for clarification, furnish the same to the Authority’s Engineer within 3 (three) days thereof. The Authority’s Engineer shall, within a period of 15 (fifteen) days from the date of receipt of such clarifications, forward in writing to the Contractor its determination of Time Extension.

Provided that when determining each extension of time under this Clause 10.5, the Authority’s Engineer shall review previous determinations and may increase, but shall not decrease, the total Time Extension.

- (v) If the event or circumstance giving rise to the notice has a continuing effect:

  
K. K. Singh  
Nodal Officer  
Agra Smart City Limited

  
K.K. JHA  
G. M. (Project)  
Agra Smart City Ltd.

  
41  
Addl. C.E.O. Agra Smart City Limited

- (a) a fully detailed claim shall be considered as interim;
- (b) the Contractor shall, no later than 10 (ten) days after the close of each month, send further interim claims specifying the accumulated delay, the extension of time claimed, and such further particulars as the Authority's Engineer may reasonably require; and
- (c) the Contractor shall send a final claim within 15 (fifteen) days after the effect of the event or the circumstance ceases.

Upon receipt of the claim hereunder, the Authority's Engineer shall examine the same in accordance with the provisions of Clause 10.5 (iv) within a period of 30 (thirty) days of the receipt thereof

**10.6 Incomplete Works**

In the event the Contractor fails to complete the Works in accordance with the Project Completion Schedule, including any Time Extension granted under this Agreement, the Contractor shall endeavour to complete the balance work expeditiously and shall pay Damages to the Authority in accordance with the provisions of Clause 10.3 (ii) for delay of each day until the Works are completed in accordance with the provisions of this Agreement. Recovery of Damages under this Clause shall be without prejudice to the rights of the Authority under this Agreement including the right to termination under Clause 23.1.

**10.7 As-Built Records**

The Contractor shall prepare, and keep up-to-date, a complete set of as built records of the execution of the Works, showing the exact as built locations, sizes and details on the Works as executed with cross references to all relevant specifications and data sheets. These records shall be kept on the Site and shall be used exclusively for the purpose of this Sub-Clause 10.6. The Contractor shall provide 2 (two) copies of as built records to the Authority prior to the commencement of the Tests on Completion.

**10.8 Contractor's Use of Authority's Documents**

Intellectual property in the Authority's requirements and Specifications and Standards and all other documents and materials issued by the Authority or the Authority's Representative to the Contractor shall (as between the parties) remain the property of the Authority. The Contractor may, at its cost, copy, use and communicate any such documents for the purposes of the Contract. They shall not, without the consent of the Authority, be used, copied or communicated to a third party by the Contractor, except as necessary for the purposes of the Works under the Agreement.

*R.K. Singh*  
 Nodal Officer  
 Agra Smart City Limited



*K.K. JHA*  
 K.K. JHA  
 G. M. (Project)  
 Agra Smart City Ltd.

*[Signature]*

42  
 Addl. C.E.O.  
 Agra Smart City Limited

*[Signature]*

Chief Executive Office  
 Agra Smart City

Agra Smart City Limited  
 Addl. C.E.O.

278

## Article 11 Quality Assurance, Monitoring and Supervision

### 11.1 Quality of Materials and workmanship

The Contractor shall ensure that the Construction, Materials and workmanship are in accordance with the requirements specified in this Agreement, MoRTH, PWD, IRC, RFP Specifications and Standards, and Good Industry Practice.

The Contractor shall ensure superior quality makes of all materials duly adhering to relevant IS Standards. Cement shall be of superior list of makes such as Birla/Ultratech/Jaypee/ACC. Steel(TMT Bars) should be of superior make not less than Fe500.

### 11.2 Quality control system

- (i) The Contractor shall establish a quality control mechanism to ensure compliance with the provisions of this Agreement (the **“Quality Assurance Plan”** or **“QAP”**).
- (ii) The Contractor shall, within 15(fifteen) days of the Appointed Date, submit to the Authority’s Engineer its Quality Assurance Plan which shall include the following:
  - (a) Organization (including staffing and list of machinery), duties and responsibilities, procedures, inspections and documentation;
  - (b) Quality (including strengthening and list of machinery ) control mechanism including sampling and testing of Materials, test frequencies, standards, acceptance criteria, testing facilities, reporting, recording and interpretation of test results, approvals, check list for site activities, and proforma for testing and calibration in accordance with the Specifications for Road and Bridge Works issued by MORTH, relevant IRC specifications and Good Industry Practice; and
  - (c) internal quality audit system.

The Authority’s Engineer shall convey its approval to the Contractor within a period of 07 (seven) days of receipt of the QAP stating the modifications, if any, required, and the Contractor shall incorporate those in the QAP to the extent required for conforming with the provisions of this Clause 11.2.

The Contractor shall procure all documents, apparatus and instruments, fuel, consumables, water, electricity, labour, Materials, samples, and qualified personnel as are necessary for examining and testing the Project Assets and workmanship in accordance with the Quality Assurance Plan.


The cost of testing of Construction, Materials and workmanship under this Article 11 shall be borne by the Contractor.

- (v) The contractor shall set up a fully equipped laboratory with calibrated equipment on site for all testing requirements at its own cost with 10 (ten) days from appointed.

  
 R. K. Singh  
 Nodal Officer  
 Agra Smart City (iii)



43

  
 Addl. C.E.O.  
 Agra Smart City Limited

### 11.3 Methodology

The Contractor shall, within 15 (fifteen) days of the Appointed Date, submit to the Authority's Engineer for review and consent the methodology proposed to be adopted for executing the Works, giving details of equipment to be deployed, traffic management and measures for ensuring safety. The Authority's Engineer shall complete the review and convey its consent to the Contractor within a period of 07 (seven) days from the date of receipt of the proposed methodology from the Contractor.

### 11.4 Inspection and technical audit by the Authority

The Authority or any representative authorised by the Authority in this behalf may inspect and review the progress and quality of the construction of Project Highway and issue appropriate directions to the Authority's Engineer and the Contractor for taking remedial action in the event the Works are not in accordance with the provisions of this Agreement.

### 11.5 External technical audit

- (i) At any time during construction, the Authority may appoint an external technical auditor to conduct an audit of the quality of the Works. The Auditor in the presence of the representatives of the Contractor and the Authority's Engineer shall carry out the tests and/ or collect samples for testing in the laboratory. The timing, the testing equipment and the sample size of this audit shall be as decided by the Authority. The findings of the audit, to the extent accepted by the Authority, shall be notified to the Contractor and the Authority's Engineer for taking remedial action in accordance with this Agreement.
- (ii) After completion of the remedial measures by the Contractor, the Auditor shall undertake a closure audit and this process will continue till the remedial measures have brought the works into compliance with the Specifications and Standards. The Contractor shall provide all assistance as may be required by the auditor in the conduct of its audit hereunder. Notwithstanding anything contained in this Clause 11.5, the external technical audit shall not affect any obligations of the Contractor or the Authority's Engineer under this Agreement.

R. K. Singh  
Nodal Officer

Agra Smart City Limited

### 11.6 Inspection of construction records

The Authority shall have the right to inspect the records of the Contractor relating to the Works.

### 11.7 Progress reports

- I. The Contractor has to submit comprehensive documentation of each stage of activity including before and after photography/videography, survey, registers etc.
- II. The Contractor shall also submit Daily Progress Report, Daily Labour Report and Weekly Progress Report as per format approved by Authority's Engineer.
- III. During the Construction Period, the Contractor shall, no later than 10 (ten) days



Addl. C.E.O. balimi  
Agra Smart City Limited


Chief Executive Officer  
Agra Smart City Limited


276

after the close of each month, furnish to the Authority and the Authority's Engineer a monthly report on progress of the Works and shall promptly give such other relevant information as may be required by the Authority's Engineer.

The Contractor agrees that reporting under this Clause 11.7 shall continue until the date of the completion of the Works. Each report shall include:


- (a) an executive summary;
- (b) charts showing the status of Contractor's documents, construction and manufacturing and environmental works;
- (c) details of work subcontracted and the performance of Sub-contractors;
- (d) for the construction of each main part of the Works, the extent of progress (both quantity and percentage of the whole), the actual or expected dates of commencement, anticipated completion date of the activity, Contractor's inspections and tests;
- (e) records of manpower and Contractor's equipment on the Site;
- (f) copies for that month of quality assurance documents, test results and certificates;
- (g) safety statistics, accident data collection including details of any hazardous incidents and activities relating to environmental aspects and public relations;
- (h) comparisons of actual and planned progress, with details of any aspects which may jeopardise the completion in accordance with the Agreement, and the measures being (or to be) adopted to overcome such aspects;
- (i) The Contractor shall also submit Daily Progress Report, Daily Labour Report and Weekly Progress Report as per format approved by Authority's Engineer
- (j) details of any revision to the cash flow estimate, together with a copy of the revised cash flow estimate;
- (k) status of various Applicable Permits and compliance of conditions therein;
- (l) details of various royalty payment and insurances required to be taken by the Contractor; and
- (m) such other reports as may be required by the Authority for enabling the Authority to comply with its obligations under the other Project contracts.
- (n) details of defects by the Authority;
- (o) change in emission of any sewage or effluent of any nature whatsoever, whether qualitatively or quantitatively;
- (p) any Material Adverse Effect;
- (q) declaration towards compliance with Applicable Laws including but not limited to environmental and labour legislations;
- (r) declaration specifying compliance with all Manuals provided to the Contractor; and
- (s) any change in the flow of traffic in the existing Project Highway.

  
R. K. Singh  
Nodal Officer  
Agra Smart City Limited



K.K. JHA  
G. M. (Project)

45

  
Addl. C.E.O.  
Agra Smart City Limited

### 11.8 Inspection

- (i) The Authority's Engineer and its authorised representative shall at all reasonable times:
  - (a) have full access to all parts of the Site and to all places from which natural Materials are being obtained for use in the Works; and
  - (b) during construction at the Site and at the place of production, be entitled to examine, inspect, measure and test the Materials and workmanship, and to check the Materials.
- (ii) The Contractor shall give the Authority's Engineer and its authorised officials access, facilities and safety equipment for carrying out their obligations under this Agreement.
- (iii) The Contractor shall supply, will maintain and operate a four-wheeler (six seater) in safe and good working condition for the Authority to conduct site inspections upto monthly limit of 3000km.

### 11.9 Samples


The Contractor shall submit the following samples of Materials and relevant information to the Authority's Engineer for pre-construction review:

- (a) manufacturer's test reports and standard samples of manufactured Materials; and
- (b) samples of such other Materials as the Authority's Engineer may require.


### 11.10 Tests

- (i) For determining that the Works conform to the Specifications and Standards, the Authority's Engineer shall require the Contractor to carry out or cause to be carried out tests, at such time and frequency and in such manner as specified in this Agreement, and in accordance with Good Industry Practice for quality assurance. The test checks by the Authority's Engineer shall comprise at least 50% (fifty percent) of the quantity or number of tests prescribed for each category or type of test for quality control by the Contractor.

- (ii) In the event that results of any tests conducted under this Clause 11.10 establish any Defects or deficiencies in the Works, the Contractor shall carry out remedial measures and furnish a report to the Authority's Engineer in this behalf. The Authority's Engineer shall require the Contractor to carry out or cause to be carried out tests to determine that such remedial measures have brought the Works into compliance with the Specifications and Standards, and the procedure shall be repeated until such Works conform to the Specifications and Standards. For the avoidance of doubt, the cost of such tests and remedial measures in pursuance thereof shall be solely borne by the Contractor.

  
K. K. Singh  
Nodal Officer  
Agra Smart City Limited



  
G. M. (Project)  
Agra Smart City Ltd.

  
Addl. C.E.O.  
Agra Smart City Limited

46  
  
Chief Executive Office  
Agra Smart City Limited

274

### 11.11 Examination of work before covering up

In respect of the work which the Authority's Engineer is entitled to examine, inspect, measure and/or test before it is covered up or put out of view or any part of the work is placed thereon, the Contractor shall give notice to the Authority's Engineer whenever any such work is ready and before it is covered up. The Authority's Engineer shall then either carry out the examination, inspection or testing without unreasonable delay, or promptly give notice to the Contractor that the Authority's Engineer does not require to do so. Provided, however, that if any work is of a continuous nature where it is not possible or prudent to keep it uncovered or incomplete, the Contractor shall notify the schedule of carrying out such work to give sufficient opportunity, not being less than 3 (three) business days' notice, to the Authority's Engineer to conduct its inspection, measurement or test while the work is continuing. Provided further that in the event the Contractor receives no response from the Authority's Engineer within a period of 3 (three) business days from the date on which the Contractor's notice hereunder is delivered to the Authority's Engineer, the Contractor shall be entitled to assume that the Authority's Engineer would not undertake the said inspection.

### 11.12 Rejection

If, as a result of an examination, inspection, measurement or testing, any Plant, Materials, design or workmanship is found to be defective or otherwise not in accordance with the provisions of this Agreement, the Authority's Engineer shall reject the Plant, Materials, design or workmanship by giving notice to the Contractor, with reasons. The Contractor shall then promptly make good the Defect and ensure that the rejected item complies with the requirements of this Agreement.

If the Authority's Engineer requires the Plant, Materials, design or workmanship to be retested, the tests shall be repeated under the same terms and conditions, as applicable in each case. If the rejection and retesting cause the Authority to incur any additional costs, such cost shall be recoverable by the Authority from the Contractor; and may be deducted by the Authority from any monies due to be paid to the Contractor.

### 11.13 Remedial work

(i) Notwithstanding any previous test or certification, the Authority's Engineer may instruct the Contractor to:

- (a) remove from the Site and replace any Plant or Materials which are not in accordance with the provisions of this Agreement;
- (b) remove and re-execute any work which is not in accordance with the provisions of this Agreement and the Specification and Standards; and
- (c) execute any work which is urgently required for the safety of the Project Highway, whether because of an accident, unforeseeable event or otherwise; provided that in case of any work required on account of a Force Majeure Event, the provisions of Clause 21.6 shall apply.

R. K. Singh

Nodal Officer

Agra Smart City Limited



K.K. JHA

G. M. (Project)

Agra Smart City Ltd.

47

47

Abd. C.E.O.  
Agra Smart City Limited

- (ii) If the Contractor fails to comply with the instructions issued by the Authority's Engineer under Clause 11.13 (i), within the time specified in the Authority's Engineer's notice or as mutually agreed, the Authority's Engineer may advise the Authority to have the work executed by another agency. The cost so incurred by the Authority for undertaking such work shall, without prejudice to the rights of the Authority to recover Damages recoverable from the Contractor and may be deducted by the Authority from any monies due to be paid to the Contractor.

**11.14 Delays during construction**

Without prejudice to the provisions of Clause 10.3 (ii), in the event the Contractor does not achieve any of the Project Milestones or the Authority's Engineer shall have reasonably determined that the rate of progress of Works is such that Completion of the Project Highway is not likely to be achieved by the end of the Scheduled Completion Date, it shall notify the same to the Contractor, and the Contractor shall, within 5 (five) days of such notice, by a communication inform the Authority's Engineer in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve the Project Completion Date.

**11.15 Quality control records and Documents**

The Contractor shall hand over a copy of all its quality control records and documents to the Authority's Engineer before the Completion Certificate is issued pursuant to Clause 12.2.

**11.16 Video recording**

During the Construction Period, the Contractor shall provide to the Authority for every calendar quarter, a video recording, which will be compiled into a 3 (three)-hour compact disc or digital video disc, as the case may be, covering the status and progress of Works in that quarter. The video recording shall be provided to the Authority along with monthly progress report.

**11.17 Suspension of unsafe Construction Works**

- (i) Upon recommendation of the Authority's Engineer to this effect, the Authority may by notice require the Contractor to suspend forthwith the whole or any part of the Works if, in the reasonable opinion of the Authority's Engineer, such work threatens the safety of the Users and pedestrians.

- (ii) The Contractor shall, pursuant to the notice under Clause 11.17 (i), suspend the Works or any part thereof for such time and in such manner as may be specified by the Authority and thereupon carry out remedial measures to secure the safety of suspended works, the Users and pedestrians. The Contractor may by notice require the Authority's Engineer to inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may

R. K. Singh  
Nodal Officer  
Agra Smart City Limited

*K.K.J.*  
**K.K. JHA**  
G. M. (Project)  
Agra Smart City Ltd

*[Signature]*  
**Abdl. C.E.O.**  
Agra Smart City Limited

*[Signature]*  
**Chief Executive Officer**  
Agra Smart City Limited



272

be revoked. Upon receiving the recommendations of the Authority's Engineer, the Authority shall either revoke such suspension or instruct the Contractor to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Authority, and the procedure set forth in this Clause 11.17 shall be repeated until the suspension hereunder is revoked.

- (iii) Subject to the provisions of Clause 21.6, all reasonable costs incurred for maintaining and protecting the Works or part thereof during the period of suspension (the "**Preservation Costs**"), shall be borne by the Contractor; provided that if the suspension has occurred as a result of any breach of this Agreement by the Authority, the Preservation Costs shall be borne by the Authority.
- (iv) If suspension of Works is for reasons not attributable to the Contractor, the Authority's Engineer shall determine any Time Extension to which the Contractor is reasonably entitled.

### 11.18 Staff and Labour

(i) Engagement of Staff and Labour

- (a) The Contractor shall make its own arrangements for the engagement of all personnel and labour, local or otherwise, and for their payment, housing, feeding and transport.
- (b) The Contractor has verified/ shall verify the identity and address of all its employees and officials related to the Works by collecting necessary documentary proof.
- (c) The Contractor shall seek a self-declaration from its employees that they have not been convicted of any criminal offence by any court and if any criminal proceedings/charge-sheets have been pending/filed against them. The Contractor shall not employ persons with criminal track record on the project. In cases where it comes to notice later that the employee concerned has concealed any such fact in his self-declaration or commits a criminal offence during the course of his employment, the Contractor shall remove such person from the project
- (d) The employees and personnel of the Contractor shall work under the supervision, control and direction of the Contractor and the Contractor shall be solely responsible for all negotiations with its employees and personnel relating to their salaries and benefits, and shall be responsible for assessments and monitoring of performance and for all disciplinary matters. All employees / personnel, executives engaged by the Contractor shall be in sole employment of the Contractor and the Contractor shall be solely responsible for their salaries, wages, statutory payments, etc and under no circumstances the personnel shall be deemed to be the employees of the Authority. Under no circumstances the Authority shall be liable for any payment or claim or compensation of any nature to the employees and personnel of the Contractor.

F.K. Singh  
Modul Officer  
Agra Smart City Limited



K.K.L

K.K. JHA  
G. M. (Project)  
Agra Smart City Ltd.

49  
Addl. C.E.O.  
Agra Smart City Limited

(ii) Returns of Labour

- (a) The Contractor shall deliver to the Authority a detailed return in such form and at such intervals as the Authority may prescribe, showing the details including names, payment details and terms of appointment of the several classes of labour employed by the Contractor from time to time for the Works. The Contractor shall, in its returns certify that all dues of the workers or labour have been fully paid.
- (b) The Authority is entitled to witness labour payments made or to be made by the Contractor. If the Contractor defaults in its obligations for making any payments under the labour laws, the Employer may make the relevant payments. Any sum equal to any amount paid by the Employer under this Sub-Sub-Clause 9.2 shall be immediately due as a debt from the Contractor to the Employer and until payment/ set off shall carry interest at 18% per annum. For this purpose it is agreed between the parties that debt due aforesaid shall be set off immediately out the running account bills of the Contractor under this Agreement.

(iii) Persons in the Service of Others

The Contractor shall not recruit, or attempt to recruit from amongst persons in the service of the Authority.

(iv) Labour Laws

- (a) The Contractor shall obtain all relevant labour registrations and comply with all relevant labour laws applying to its employees, and shall duly pay them and afford to them all their legal rights.
- (b) The Contractor shall make all deductions of tax at source and all contributions to the Payment of Gratuity, Provident Fund (including Employees' contribution) and Employees' State Insurance Scheme as may be required by Applicable Laws and deposit the aforesaid contributed amount with the appropriate authority/(s).
- (c) The Contractor shall require all personnel engaged in the Works to obey all Applicable Laws and regulations. The Contractor shall permit Authority to witness labour payments for the Contractors direct labour, or the Subcontractors labour. The Contractor shall ensure that all its Subcontractors strictly comply with all labour laws.
- (d) Documentary evidence confirming compliance with Sub-Clause 12.4, as may be required from time to time, shall be provided to the Employer's Representative.
- (e) The Employer shall not be liable for any delay/default of the Contractor in compliance of the labour laws.

R. K. Singh  
Nodal Officer

Agra Smart City Limited



K.K. JHA  
G. M. (Project)  
Agra Smart City Ltd.

Addl. C.E.O.  
Agra Smart City Limited

50 Chief Executive Officer  
Agra Smart City Limited  
O.E.O. IbbA  
Agra Smart City Limited

२१०

(v) Facilities for Staff and Labour

The Contractor shall provide and maintain all necessary accommodation including toilet and drinking water and welfare facilities for personnel engaged for the Works. The Contractor shall not permit any personnel engaged for the Works to maintain any temporary or permanent living quarters within the structures forming part of the Works.

(vi) Health And Safety

All necessary precautions shall be taken by the Contractor to ensure the health and safety of staff and labour engaged for the Works. The Contractor shall, in collaboration with and to the requirements of the local health authorities, ensure that para-medical staff, first aid facilities, ambulance service are available on the Site at all times, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics. The Contractor shall appoint a safety officer to be responsible for the safety of personnel on the Site. This safety officer shall be qualified for his work and shall have the authority to issue instructions concerning safety and take protective measures to prevent accidents. The Contractor shall maintain records and make reports concerning health, safety and welfare of personnel, and damage to property, in such manner as the Authority may reasonably require.

(vii) Contractor's Personnel

The Contractor shall employ only personnel who are appropriately qualified, skilled and experienced in their respective trades or occupations. The Authority may require the Contractor to remove any personnel engaged for the Works, who in the opinion of the Authority:

- (a) has engaged in any misconduct;
- (b) is incompetent or negligent in the performance of his duties;
- (c) fails to conform with any provisions of the Contract;
- (d) engages in any conduct which is prejudicial to safety, health, or the protection of the environment; or
- (e) makes errors in the discharge of his functions.



R. K. Singh

Nodal Officer

Agra Smart City Limited

If appropriate and required by the Employer, the Contractor shall then appoint (or cause to be appointed) a suitable replacement person.

(viii) Disorderly Conduct

The Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst its personnel, and to preserve peace and protection of people and property in the neighbourhood of the Works.



**K.K. JHA**  
G. M. (Project)  
Agra Smart City Ltd.



51  
Addl. C.E.O.  
Agra Smart City Limited

51  
Addl. C.E.O.  
Agra Smart City Limited

## Article 12 Completion Certificate

### 12.1 Tests on Completion

- (i) At least 15 (fifteen) days prior to the likely completion of the Project Highway, or a Section thereof, the Contractor shall notify the Authority's Engineer of its intent to subject the Project Highway or a Section thereof, to Tests. The date and time of each of the Tests shall be determined by the Authority's Engineer in consultation with the Contractor, and notified to the Authority who may designate its representative to witness the Tests. The Contractor shall either conduct the Tests as directed by the Authority's Engineer or provide such assistance as the Authority's Engineer may reasonably require for conducting the Tests. In the event of the Contractor and the Authority's Engineer failing to mutually agree on the dates for conducting the Tests, the Contractor shall fix the dates by giving not less than 10 (ten) days' notice to the Authority's Engineer.
- (ii) All Tests shall be conducted in accordance with Schedule-C. The Authority's Engineer shall either conduct or observe, monitor and review the Tests conducted by the Contractor, as the case may be, and review the results of the Tests to determine compliance of the Project Highway or a Section thereof, with Specifications and Standards and if it is reasonably anticipated or determined by the Authority's Engineer during the course of any Test that the performance of the Project Highway or Section or any part thereof, does not meet the Specifications and Standards, it shall have the right to suspend or delay such Test and require the Contractor to remedy and rectify the Defect or deficiencies. Upon completion of each Test, the Authority's Engineer shall provide to the Contractor and the Authority copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Authority's Engineer may require the Contractor to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Project Highway or Section thereof with the Specifications and Standards.
- (iii) The Authority may at its discretion, from a committee involving other departments for final testing & acceptance of all works executed, reinstatement/ functioning of all pre-existing utilities. The contractor will be bound to rectify defects/ suggestion within the time limit specified for the same.

### 12.2 Completion Certificate

Upon completion of all Works forming part of the Project Highway, and the Authority's Engineer determining the Tests to be successful and after the receipt of all documents (including but not limited to QA/QC documents, as-built drawings etc.). Authority shall, at the request of the Contractor forthwith issue to the Contractor and the Authority a certificate substantially in the form set forth in Schedule-D (the "Completion Certificate").

- (ii) Upon receiving the Completion Certificate, the Contractor shall remove its equipment, materials, debris and temporary works from the Site within a period of 10 (ten) days thereof, failing which the Authority may remove or cause to be removed, such

R. K. Singh  
Nodal Officer  
Agra Smart City Limited



K.K. JHA  
G. M. (Project)  
Agra Smart City Ltd.

Addl. C.E.O.  
Agra Smart City Limited

Chief Executive Officer  
Agra Smart City Limited

equipment, materials, debris and temporary works and recover from the Contractor an amount equal to 120% (one hundred and twenty per cent) of the actual cost of removal incurred by the Authority.

- (iii) Without prejudice to the obligations of the Contractor specified in Articles 17, the property and ownership of all the completed Works forming part of the Project Highway shall vest in the Authority.

**12.3 Rescheduling of Tests**

If the Authority's Engineer certifies to the Authority and the Contractor that it is unable to issue the Completion Certificate, as the case may be, because of events or circumstances on account of which the Tests could not be held or had to be suspended, the Contractor shall be entitled to re-schedule the Tests and hold the same as soon as reasonably practicable.



*K.K.J*

**K.K. JHA**  
G. M. (Project)  
Agra Smart City Ltd.

*R.K.S*

**R. K. Singh**  
Nodal Officer  
Agra Smart City Limited

*[Signature]*

**Addl. C.E.O.**  
Agra Smart City Limited

## Article 13 Change of Scope

### 13.1 Change of Scope

- (i) The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the Contractor to make modifications/ alterations to the Works ("**Change of Scope**") within a period of two months counted from the Appointed Date. Upon the Authority making its intention known to the Contractor for the specific Change of Scope, be it positive or negative, the Contractor shall submit his proposal for the said Change of Scope involving additional cost or reduction in cost. Any such Change of Scope shall be made and valued in accordance with the provisions of this Article 13.
- (ii) The Change of Scope shall mean the following:
  - (a) change in specifications of any item of Works;
  - (b) omission of any work from the Scope of the Project; provided that, subject to Clause 13.5, the Authority shall not omit any Work under this Clause in order to get it executed by any other authority; and  
/ or
  - (c) any additional Work, Plant, Materials or services which are not included in the Scope of the Project,


### 13.2 Procedure for Change of Scope

- (i) In the event of the Authority determining that a Change of Scope is necessary, it may direct the Authority's Engineer to issue to the Contractor a notice specifying in reasonable detail the Works and services contemplated thereunder (the "**Change of Scope Notice**"). The Contractor shall submit a detailed proposal as per Clause 13.2 (iii) within 07 days from the receipt of Change of Scope Notice.
- (ii) If the Contractor determines, not later than 60 days from the Appointed Date, that a Change of Scope to the Works is required, it shall prepare a proposal with relevant details as per Clause 13.2 (iii) at its own cost and shall submit to the Authority to consider such Change of Scope (the "**Change of Scope Request**").
- (iii) Upon receipt of a Change of Scope Notice, the Contractor shall, with due diligence, provide to the Authority and the Authority's Engineer such information as is necessary, together with detailed proposal in support of:


- (a) the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the works or services are required to be carried out during the Construction Period; and

- (b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including the following details:

- i. break-up of the quantities, unit rates and cost for different items of work; and

  
R. K. Singh  
Nodal Officer



  
G. M. (Project)  
Agra Smart City Ltd.

  
Addl. C.E.O.  
Agra Smart City Limited

  
Chief Executive Officer  
Agra Smart City Limited

- 266
- ii. proposed design for the Change of Scope;
  - iii. proposed modifications, if any, to the Project Completion Schedule of the Project Highway.

For the avoidance of doubt, the Parties expressly agree that, subject to the provisions of Clause 13.4 (ii), the Contract Price shall be increased or decreased, as the case may be, on account of any such Change of Scope.

(iv) The parties agree that costs and time for implementation of the proposed Change of Scope shall be determined as per the following:

- (a) For works where Schedule of Rates (SOR) of concerned circle of State's Public Works Department are applicable at the Base Date are available, the same shall be applicable for determination of costs. In case of non-availability of Schedule of Rates at the Base Date, the available Schedule of Rates shall be applied by updating the same based on WPI. In case the Contract Price is lower/ higher than the Estimated Project Cost as per RFP, then the SOR rates shall be reduced/ increased in the same proportion accordingly.
- (b) For item of Works not included in Schedule of Rates as mentioned in sub-para (a) of Clause 13.2 (iv) above, the cost of same shall be derived on the basis of market rate.
- (c) The design charges shall be considered only for new works or items (i.e. the Works or items not similar to the works or items in the original scope) @ 1% (one per cent) of cost of such new works or items.
- (d) The costs of existing works or items, which are being changed/ omitted shall also be valued as per above procedure and only net cost shall be considered.
- (e) The reasonable time for completion of works to be taken under Change of Scope shall be determined by the Authority's Engineer on the basis of Good Industry Practice and if such time exceeds the Scheduled Completion Date, the issue of Completion Certificate shall not be affected or delayed on account of construction of Change of Scope items/ works remaining incomplete on the date of Tests.

(v) Upon consideration of the detailed proposal submitted by the Contractor under the Clause 13.2 (iii), the Authority, within 15 (fifteen) days of receipt of such proposal, may in its sole discretion either accept such Change of Scope with modifications, if any, and initiate proceedings thereof in accordance with this Article 13 or reject the proposal and inform the Contractor of its decision and shall issue an order (the "**Change of Scope Order**") requiring the Contractor to proceed with the performance thereof.

For the avoidance of doubt, the Parties agree that the Contractor shall not undertake any Change of Scope without the express consent of the Authority, save and except any works necessary for meeting any Emergency, that too with verbal approval of Authority which shall be confirmed in writing in next 3 (three) days. In the event that the Parties are unable to agree, the Authority may:



R. K. Singh  
Nodal Officer

Agra Smart City Limited



K.K.L

K.K. JHA  
G. M. (Project)  
Agra Smart City Ltd.

- (a) issue a Change of Scope Order requiring the Contractor to proceed with the performance thereof at the rates and conditions approved by the Authority till the matter is resolved in accordance with Article 26;  
or
- (b) proceed in accordance with Clause 13.5.
- (vi) The provisions of this Agreement, insofar as they relate to Works and Tests, shall apply *mutatis mutandis* to the Works undertaken by the Contractor under this Article 13.

### 13.3 Payment for Change of Scope

Payment for Change of Scope shall be made in accordance with the payment schedule specified in the Change of Scope Order.

### 13.4 Restrictions on Change of Scope

- (i) No Change of Scope shall be executed unless the Authority has issued the Change of Scope Order save and except any Works necessary for meeting any Emergency.
- (ii) The total value of all Change of Scope Orders shall not exceed 10% (ten per cent) of the Contract Price.
- (iii) Notwithstanding anything to the contrary in this Article 13, if any change is necessitated because of any default of the Contractor in the performance of its obligations under this Agreement, the same shall not be deemed to be Change of Scope, and shall not result in any adjustment of the Contract Price or the Project Completion Schedule.

### 13.5 Power of the Authority to undertake Works

- (i) In the event the Parties are unable to agree to the proposed Change of Scope Orders in accordance with Clause 13.2, the Authority may, after giving notice to the Contractor and considering its reply thereto, award such Works or services to any person or agency on the basis of open competitive bidding. It is also agreed that the Contractor shall provide assistance and cooperation to the person or agency who undertakes the works or services hereunder. The Contractor shall not be responsible for rectification of any Defects, but the Contractor shall carry out maintenance of such works after completion of Defect Liability Period of work by other person or agency during the remaining period of this agreement without any extra payment.

- (ii) The Works undertaken in accordance with this Clause 13.5 shall conform to the Specifications and Standards and shall be carried out in a manner that minimises the disruption in operation of the Project Highway. The provisions of this Agreement, insofar as they relate to Works and Tests, shall apply *mutatis mutandis* to the Works carried out under this Clause 13.5.



  
K.K. JHA  
G. M. (Project)  
Agra Smart City Ltd.

  
Addl. C.E.O. 56  
Agra Smart City Limited

  
Chief Executive Officer  
Agra Smart City Limited



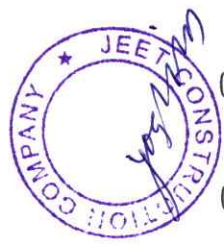
264

**Article 14  
Maintenance  
Deleted  
Article 15  
Supervision and Monitoring during maintenance  
Deleted**

**Article 16  
Traffic Regulation**

**16.1 Traffic regulation by the Contractor**

- (i) The Contractor shall take all the required measures and make arrangements for the safety of Users during the Construction and Maintenance of the Project Highway or a Section thereof in accordance with the provisions of MORTH Specifications. It shall provide, erect and maintain all such barricades, signs, markings, flags, and lights as may be required by Good Industry Practice for the safety of the traffic passing through the Section under construction or maintenance.
- (ii) All works shall be carried out in a manner creating least interference to traffic passing through the Project Highway or a Section thereof. In sections where construction or maintenance Works on the carriageway are taken up, the Contractor shall ensure that proper passage is provided for the traffic. Where it is not possible or safe to allow traffic on part width of the carriageway, a temporary diversion of proper specifications shall be constructed by the Contractor at its own cost. 'ROBOTS' may be used for diversion and control of traffic during Construction. The Contractor shall take prior approval of the Authority's Engineer for any proposed arrangement for traffic regulation during Construction and Maintenance, which approval shall not be unreasonably withheld.
- (iii) The contractor shall deploy sufficient manpower on site on round the clock basis for traffic management.
- (iv) The Contractor shall establish a control room on site along with public address system to regulate and monitor traffic.



*K.K.J*

**K.K. JHA**  
G. M. (Project)  
Agra Smart City Ltd.

*R.K.S*

**R. K. Singh**  
Notified  
Agra Smart City

*L*

**Addl. C.E.O.**  
Agra Smart City Limited

**Article 17**

**Defects Liability**

**17.1 Defects Liability Period**

- (i) The Contractor shall be responsible for all the Defects and deficiencies, except usual wear and tear in the Project Highway or any Section thereof, till the expiry of a period of two years commencing from the date of Completion Certificate (the "**Defects Liability Period**")

The Defects Liability Period shall commence from the date of the Completion Certificate.

**17.2 Remedying Defects**

Contractor shall repair or rectify all Defects and deficiencies observed by the Authority or Authority's Engineer during the Defects Liability Period within a period of 07 (seven) days from the date of notice issued by the Authority or Authority's Engineer in this behalf, or within such reasonable period as may be determined by the Authority or Authority's Engineer at the request of the Contractor, in accordance with Good Industry Practice.


**17.3 Cost of remedying Defects**

Any repair or rectification undertaken in accordance with the provisions of Clause 17.2, including any additional testing, shall be carried out by the Contractor at its own risk and cost, to the extent that such rectification or repair is attributable to:

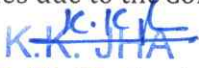
- (a) the design of the Project;
- (b) Plant, Materials or workmanship not being in accordance with this Agreement and the Specifications and Standards;
- (c) improper maintenance during construction of the Project Highway by the Contractor; and/ or
- (d) failure by the Contractor to comply with any other obligation under this Agreement.

**17.4 Contractor's failure to rectify Defects**

If the Contractor fails to repair or rectify such Defect or deficiency within the period specified in Clause 17.2, the Authority shall be entitled to get the same repaired, rectified or remedied at the Contractor's cost to make the Project Highway conform to the Specifications and Standards and the provisions of this Agreement. All costs consequent thereon shall, after due consultation with the Authority and the Contractor, be determined by the Authority's Engineer. The cost so determined and an amount equal to 20% (twenty percent) of the cost as Damages shall be recoverable by the Authority from the Contractor and may be deducted by the Authority from any monies due to the Contractor.

  
 R. K. Singh  
 Nodal Officer  
 Agra Smart City Limited



  
 G. M. (Project)  
 Agra Smart City Ltd.

58  
 Addl. C.E.O.  
 Agra Smart City Limited

  
 Chief Executive Officer  
 Agra Smart City Limited

**17.5 Extension of Defects Liability Period**

The Defects Liability Period shall be deemed to be extended till the identified Defects under Clause 17.2 have been remedied or rectified.



*K.K.J*

**K.K. JHA**  
G. M. (Project)  
Agra Smart City Ltd.

*R.S.*

R. S. Singh  
Nodal Officer  
Agra Smart City Limited

*[Signature]*

**Addl. C.E.O.**  
Agra Smart City Limited



**Article 18  
Authority's Engineer  
Deleted**

**Article 19  
Payments**

**19.1 Contract Price**

- (i) The Authority shall make payments to the Contractor for the Works on the basis of the lump sum price accepted by the Authority in consideration of the obligations specified in this Agreement for an amount of INR Rs. 4,49,15,000.00+18%GST. (the "**Contract Price**"), which shall be subject to adjustments in accordance with the provisions of this Agreement. The Parties further agree that save and except as provided in this Agreement, the Contract Price shall be valid and effective until issue of Completion Certificate.
- (ii) The Contract Price includes all duties, taxes, royalty, cess, charges, and fees that may be levied in accordance with the laws and regulations in force as on the Base Date on the Contractor's equipment, Plant, Materials and supplies acquired for the purpose of this Agreement and on the services performed under this Agreement. Nothing in this Agreement shall relieve the Contractor from its responsibility to pay any tax including any tax that may be levied in India on profits made by it in respect of this Agreement.
- (iii) The Contract Price shall not be adjusted for any change in costs stated in Clause 19.1 (ii) above, except as stated in Clauses 19.10 and 19.17.
- (iv) The Contract Price shall not be adjusted to take account of any unforeseen difficulties or costs, unless otherwise provided for in this Agreement.
- (v) Unless otherwise stated in this Agreement, the Contract Price covers all the Contractor's obligations for the Works under this Agreement and all things necessary for the Construction and the remedying of any Defects in the Project Highway.
- (vi) All payments under this Agreement shall be made in Indian Rupees.

**19.2 Procedure for estimating the payment for the Works**

- (i) The Authority shall make interim payments to the Contractor as certified by the Authority's Engineer on completion of a stage, in a length, number or area as specified and valued in accordance with the proportion of the Contract Price assigned to each item and its stage in Schedule-B.
- (ii) The Contractor shall base its claim for interim payment for the milestone achieved valued in accordance with Schedule B, supported with necessary particulars and documents in accordance with this Agreement.
- (iii) Any reduction in the Contract Price arising out of Change of Scope shall not affect the amounts payable for the items or stage payments thereof which are not affected by

*R. K. Singh*  
Nodal Officer  
Agra Smart City



*K.K. JHA*  
**K.K. JHA**  
G. M. (Project)  
Agra Smart City Ltd.

*[Signature]*  
**Addl. C.E.O.**  
Agra Smart City Limited

*[Signature]*  
**Chief Executive Officer**  
Agra Smart City Limited

260

such Change of Scope or withdrawal. For avoidance of doubt and by way of illustration, the Parties agree that if the amount assigned to Major Bridges is reduced from Rs. 100 crore to Rs. 80 crore owing to Change of Scope or withdrawal of work, the reduction in payment shall be restricted to relevant payments for Major Bridges only and the payment due in respect of all other stage payments under the item Major Bridges shall not be affected in any manner. The Parties further agree that the adjustments arising out of the aforesaid modifications shall be carried out in a manner that the impact of such modifications is restricted to the said Change of Scope or withdrawal, as the case may be, and does not alter the payments due for and in respect of items or stage payments which do not form part of such Change of Scope or withdrawal.

### 19.3 Stage Payment Statement for Works

The Contractor shall submit a statement (the “**Stage Payment Statement**”), in 3 (three) copies, to the Authority’s Engineer in the form set forth in Schedule-E, showing the amount due in accordance with Clause 19.2 to which the Contractor considers himself entitled for completed stage(s) of the Works. The Stage Payment Statement shall be accompanied with the progress reports and any other supporting documents (including RFI, Pour Card, Site Instruction Register, Site Hindrance Register, Material Test Certificate, Progress reports, JMR, MB, Test reports, Inspection reports, reports of remedial action, Before and After Photographs etc. The Contractor shall not submit any claim for payment of incomplete stages of work.

### 19.4 Stage Payment for Works

(i) Within 07 (seven) days of receipt of the Stage Payment Statement from the Contractor pursuant to Clause 19.3, the Authority’s Engineer shall broadly determine the amount due to the Contractor and recommend the release of 90 (ninety) percent of the amount so determined as part payment against the Stage Payment Statement, pending issue of the Interim Payment Certificate by the Authority’s Engineer. Within 10 (ten) days of the receipt of recommendation of the Authority’s Engineer, the Authority shall make electronic payment directly to the Contractor’s bank account.

(ii) Within 05 (five) days of the receipt of the Stage Payment Statement referred to in Clause 19.3, the Authority’s Engineer shall determine and shall deliver to the Authority and the Contractor an IPC certifying the amount due and payable to the Contractor, after adjusting the payments already released to the Contractor against the said statement. For the avoidance of doubt, the Parties agree that the IPC shall specify all the amounts that have been deducted from the Stage Payment Statement and the reasons therefor.

(iii) In cases where there is a difference of opinion as to the value of any stage, the Authority’s Engineer’s view shall prevail and interim payments shall be made to the Contractor on this basis; provided that the foregoing shall be without prejudice to the Contractor’s right to raise a Dispute.

(iv) The Authority’s Engineer may, for reasons to be recorded, withhold from payment:

- (a) the estimated value of work or obligation that the Contractor has failed to perform in accordance with this Agreement and the Authority's Engineer had notified the Contractor; and
  - (b) the estimated cost of rectification of work done being not in accordance with this Agreement.
- (v) Payment by the Authority shall not be deemed to indicate the Authority's acceptance, approval, consent or satisfaction with the work done.

### 19.5 Payment of Damages

- (i) The Contractor may claim Damages due and payable to it in accordance with the provisions of this Agreement.
- (ii) The Authority's Engineer shall issue the IPC within 15 (fifteen) days of the receipt of the claim under Clause 19.5 (i), after making adjustments in accordance with the provisions of this Agreement. The Authority shall pay to the Contractor the amount due under any IPC within a period of 30 (thirty) days from the date of the submission of the claim under this Clause 19.5.

### 19.6 Final Payment Statement

- (i) Within 30 (thirty) days after receiving the Completion Certificate under Clause 12.2, the Contractor shall submit to the Authority's Engineer for consideration 2 (two) copies of a Final Payment Statement (the "**Final Payment Statement**") for Works, with supporting documents including those required for stage payment showing in detail, in the form prescribed by the Authority's Engineer:
  - (a) the summary of Contractor's Stage Payment claims for Works as submitted in accordance with Clause 19.3;
  - (b) the amounts received from the Authority against each claim; and
  - (c) any further sums which the Contractor considers due to it from the Authority.

If the Authority's Engineer disagrees with or cannot verify any part of the Final Payment Statement, the Contractor shall submit such further information as the Authority's Engineer may reasonably require. The Authority's Engineer shall deliver to the Authority:

- i. an IPC for those parts of the Final Payment Statement which are not in dispute, along with a list of disputed items which shall then be settled in accordance with the provisions of Article 26; or
- ii. a Final Payment Certificate in accordance with Clause 19. if there are no disputed items.

(ii) If the Authority's Engineer does not prescribe the form referred to in Clause 19.6 (i) within 15 (fifteen) of the date of issue of the Completion Certificate, the Contractor shall submit the statement in such form as it deems fit.

  
R. K. Singh  
Nodal Officer  
Agra Smart City Limited



  
K.K. JHA  
G. M. (Project)  
Agra Smart City Ltd.

  
Addl. C.E.O.  
Agra Smart City Limited

  
Chief Executive Officer  
Agra Smart City Limited

258

### 19.7 Discharge

Upon submission of the Final Payment Statement for Works, the Contractor shall give to the Authority, with a copy to the Authority's Engineer, a written discharge confirming that the total of the Final Payment Statement represents full and final settlement of all monies due to the Contractor in respect of this Agreement for all the Works arising out of this Agreement, except for any monies due to either Party on account of any Defect. Provided that such discharge shall become effective only after the payment due has been made in accordance with the Final Payment Certificate.

### 19.8 Final Payment Certificate

- (i) Within 30 (thirty) days after receipt of the Final Payment Statement for Works, and the written discharge under Clause 19.7, and there being no disputed items of claim, the Authority's Engineer shall deliver to the Authority, with a copy to the Contractor, a final payment certificate (the "**Final Payment Certificate**")

stating the amount which, in the opinion of the Authority's Engineer, is finally due under this Agreement or otherwise. For the avoidance of doubt, before issuing the Final Payment Certificate, the Authority's Engineer shall ascertain from the Authority all amounts previously paid by the Authority and for all sums to which the Authority is entitled, the balance, if any, due from the Authority to the Contractor or from the Contractor to the Authority, as the case may be.

- (ii) The Authority shall, pay to the Contractor the amount which is stated as being finally due in the Final Payment Certificate.

### 19.9 Change in law

- (i) If as a result of Change in Law, the Contractor suffers any additional costs in the execution of the Works or in relation to the performance of its other obligations under this Agreement, the Contractor shall, within 15 (fifteen) days from the date it becomes reasonably aware of such addition in cost, notify the Authority with a copy to the Authority's Engineer of such additional cost due to Change in Law.

- (ii) If as a result of Change in Law, the Contractor benefits from any reduction in costs for the execution of this Agreement or in accordance with the provisions of this Agreement, either Party shall, within 15 (fifteen) days from the date it becomes reasonably aware of such reduction in cost, notify the other Party with a copy to the Authority's Engineer of such reduction in cost due to Change in Law.

- (iii) The Authority's Engineer shall, within 15 (fifteen) days from the date of receipt of the notice from the Contractor or the Authority, determine any addition or reduction to the Contract Price, as the case may be, due to the Change in Law.


### 19.10 Correction of Interim Payment Certificates

The Authority's Engineer may by an Interim Payment Certificate make any correction or modification in any previous Interim Payment Certificate issued by the Authority's

  
R. K. Singh  
Nodal Officer  
Agra Smart City Limited



  
K.K. JHA  
G. M. (Project)  
Agra Smart City Ltd.

  
Addl. C.E.O.  
Agra Smart City Limited

  
Chief Executive Officer  
Agra Smart City Limited

Engineer.

**19.11 Authority's claims**

If the Authority considers itself to be entitled to any payment from the Contractor under any Clause of this Agreement, it shall give notice and particulars to the Contractor 20 (twenty) days before making the recovery from any amount due to the Contractor, and shall take into consideration the representation, if any, made by the Contractor in this behalf, before making such recovery.



K.K.

**K.K. JHA**  
G. M. (Project)  
Agra Smart City Ltd.

R. K. Singh  
Nodal Officer  
Agra Smart City Limited

**Addl. C.E.O.**  
Agra Smart City Limited

**Chief Executive Officer**  
Agra Smart City Limited



256

## Article 20

### Insurance

#### 20.1 Insurance for Works and Maintenance

- (i) The Contractor shall effect and maintain at its own cost the insurances as per the requirements under the Applicable Laws.
- (ii) Subject to the provisions of Clause 21.6, the Authority and the Contractor shall, in accordance with its obligations as provided for in this Agreement, be liable to bear the cost of any loss or damage that does not fall within the scope of this Article 20 or cannot be recovered from the insurers.
- (iii) Contractor shall, save and except as provided for in this Agreement, fully indemnify, hold harmless and defend the Authority from and against any and all losses, damages, costs, charges and/or claims with respect to:
  - (a) the death of or injury to any person; or
  - (b) the loss of or damage to any property (other than the Works);  
that may arise out of or in consequence of any breach by the Contractor of this Agreement during the execution of the Works or the remedying of any Defects therein.
- (iv) Without prejudice to the obligations of the Parties as specified under Clauses 20.1 (iii), the Contractor shall maintain or effect such third party insurances as may be required under the Applicable Laws.
- (v) The Contractor shall provide to the Authority, within 30 days of the Appointed Date, evidence of professional liability insurance maintained by its Design Director and/or consultants to cover the risk of professional negligence in the design of Works. The professional liability coverage shall be for a sum of not less than [3% (three per cent)] of the Contract Price and shall be maintained until the end of the Defects Liability Period.

#### 20.2 Notice to the Authority

No later than 15 (fifteen) days after the date of this Agreement, the Contractor shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 20. Within 15 (fifteen) days of receipt of such notice, the Authority may require the Contractor to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

#### 20.3 Evidence of Insurance Cover

All insurances obtained by the Contractor in accordance with this Article 20 shall be

R. K. Singh  
 Nodal Officer  
 Agra Smart City Limited



K.K. JHA  
 G. M. (Project)  
 Agra Smart City Ltd.

Add. C.E.O.  
 Agra Smart City Limited

Chief Executive Officer  
 Agra Smart City Limited

maintained with insurers on terms consistent with Good Industry Practice. Within 10 (ten) days from the Appointed Date, the Contractor shall furnish to the Authority notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty-five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Contractor to the Authority. The Contractor shall act in accordance with the directions of the Authority. Provided that the Contractor shall produce to the Authority the insurance policies in force and the receipts for payment of the current premia.

- (ii) The Contractor shall ensure the adequacy of the insurances at all times in accordance with the provisions of this Agreement.

**20.4 Remedy for failure to insure**

If the Contractor shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the Authority shall have the option to either keep in force any such insurances, and pay such premia and recover the costs thereof from the Contractor, or in the event of computation of a Termination Payment, treat an amount equal to the Insurance Cover as deemed to have been received by the Contractor.

**20.5 Waiver of subrogation**

O.E.O. IbbA  
beff-

All insurance policies in respect of the insurance obtained by the Contractor pursuant to this Article 20 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, inter alia, the Authority, and its assigns, successors, undertakings and their subsidiaries, Affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

**20.6 Contractor's waiver**

The Contractor hereby further releases, assigns and waives any and all rights of subrogation or recovery against, inter alia, the Authority and its assigns, undertakings and their subsidiaries, Affiliates, employees, successors, insurers and underwriters, which the Contractor may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Contractor pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.



**20.7 Accident or injury to workmen**

Notwithstanding anything stated in this Agreement, it is hereby expressly agreed between the Parties that the Authority shall not be liable for or in respect of any

K.K. JHA  
G. M. (Project)  
Agra Smart City Ltd.

R. K. Singh  
Nodal Officer  
Agra Smart City Limited

66  
Addl. C.E.O.  
Agra Smart City Limited

Chief Executive Officer  
Agra Smart City Limited

284

damages or compensation payable to any workman or other person in the employment of the Contractor or Sub-contractor, save and except as for death or injury resulting from any act, omission or wilful default of the Authority, its agents or servants. The Contractor shall indemnify and keep indemnified the Authority from and against all such claims, proceedings, damages, costs, charges, and expenses whatsoever in respect of the above save and except for those acts, omissions or wilful defaults for which the Authority shall be liable.

## 20.8 Insurance against accident to workmen

The Contractor shall effect and maintain during the Agreement such insurances as may be required to insure the Contractor's personnel and any other persons employed by it on the Project Highway from and against any liability incurred in pursuance of this Article 20. Provided that for the purposes of this Clause 20.8, the Contractor's personnel/any person employed by the Contractor shall include the Sub-contractor and its personnel. It is further provided that, in respect of any persons



  
**K.K. JHA**  
G. M. (Project)  
Agra Smart City Ltd.

  
**R. K. Singh**  
Nodal Officer  
Agra Smart City Limited

  
**Addl. C.E.O.**  
Agra Smart City Limited

  
**Chief Executive Officer**  
Agra Smart City Limited

employed by any Sub-contractor, the Contractor's obligations to insure as aforesaid under this Clause 20.8 shall be discharged if the Sub-contractor shall have insured against any liability in respect of such persons in such manner that the Authority is indemnified under the policy. The Contractor shall require such Sub-contractor to produce before the Authority, when required, such policy of insurance and the receipt for payment of the current premium within 10 (ten) days of such demand being made by the Authority.

**20.9 Application of insurance proceeds**

The proceeds from all insurance claims, except for life and injury, shall be applied for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project Highway and the provisions of this Agreement in respect of construction of works shall apply *mutatis mutandis* to the works undertaken out of the proceeds of insurance.

**20.10 Compliance with policy conditions**

Each Party hereby expressly agrees to fully indemnify the other Party from and against all losses and claims arising from its failure to comply with conditions imposed by the insurance policies effected in accordance with this Agreement.

**20.11 General Requirements of Insurance Policies**

The Contractor must:

- (a) immediately deposit copies of the policies or certificates of any insurance which it is required to effect under the Contract, together with receipts for the premiums;
- (b) effect all insurances for which the Contractor is responsible with an insurer approved by the Authority;
- (c) make no material changes to the terms of any insurance without the Authority's approval;
- (d) in all respects comply with any conditions stipulated in the insurance policies which the Contractor is required to effect under the Agreement or which the Authority has effected in relation to the Facility and notified to the Contractor; and shall provide all assistance to the Authority in the application for, and finalization of, such comprehensive insurance package;
- (e) regardless of the extent of settlement of claims by the underwriters or the time taken for settlement of claims, the Contractor shall make good any loss, or damage at its own cost promptly;
- (f) provide all assistance to the Authority in the application for, and finalization of, such comprehensive insurance package;
- (g) pay the Contractor's share of the insurance premiums for insurance premiums allocated under such comprehensive insurance package policy to

Abd. C.E.O.  
Agra Smart City Limited



K.K. JHA  
G. M. (Project)  
Agra Smart City Ltd.

R. K. Singh  
Nodal Officer  
Smart City Limited

68  
Addl. C.E.O.  
Agra Smart City Limited  
Executive Officer  
Agra Smart City Limited

282

the insurances directly to the insurance provider promptly on demand. In case the Contractor fails to make such payment in time, the Authority may elect to pay the Contractor's share and adjust it against amounts payable to the Contractor under this Agreement;

- (h) in the case of occurrence of any event leading to an insurance claim, promptly follow the procedures specified by the insurance provider, and provide full cooperation and access to the insurance provider or its representative, to settle the claim expeditiously;
- (i) require all the Sub-Contractors providing equipment and materials or services to the Contractor or the Authority to obtain, maintain and keep in force during the time in which they are involved in the performance of the Works hereunder insurance coverage consistent with the Contractor's insurance obligations hereunder and the Contractor shall also be responsible for fulfillment of this requirement; and
- (j) the required insurance coverage and the Contractor's obligations-referred to shall in no way affect or limit the Contractor's liability with respect to its performance of the Works. Nothing in this Section shall limit or relieve the Contractor of its liabilities and obligations under this Agreement.



*K.K.J*  
**K.K. JHA**  
 G. M. (Project)  
 Agra Smart City Ltd.

*[Signature]*  
**R. K. Singh**  
 Nodal Officer  
 Agra Smart City Limited

*[Signature]*  
**Addl. C.E.O.**  
**Agra Smart City Limited**

*[Signature]*  
**Chief Executive Office:**  
**Agra Smart City Limited**

**Agra Smart City Limited**  
**Addl. C.E.O.**

**Article 21  
Force Majeure**

**21.1 Force Majeure**

As used in this Agreement, the expression "Force Majeure" or "Force Majeure Event" shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 21.2, 21.3 and 21.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the "Affected Party") of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

**21.2 Non-Political Event**

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 ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- (b) strikes or boycotts (other than those involving the Contractor, Sub-contractors or their respective employees/ representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project Highway for a continuous period of 24 (twenty-four) hours and an aggregate period exceeding 10 (ten) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 21.3;
- (c) any failure or delay of a Sub-contractor but only to the extent caused by another Non-Political Event;
- (d) any judgement 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 Authority;
- (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.

**21.3 Indirect Political Event**

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



*K.K. Jha*  
**K.K. JHA**  
G. M. (Project)  
Agra Smart City Limited

*R. Singh*  
**R. Singh**  
Addl. C.E.O.  
Agra Smart City Limited

*[Signature]*  
**Chief Executive Officer**  
Agra Smart City Limited

- 250
- (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 10 (ten) days in an Accounting Year;
  - (c) any civil commotion, boycott or political agitation which prevents construction of the Project Highway by the Contractor for an aggregate period exceeding 10 (ten) days in an Accounting Year;
  - (d) any failure or delay of a Sub-contractor to the extent caused by any Indirect Political Event;
  - (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.

#### 21.4 Political Event

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 Clause 19. 10;
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Contractor or of the Sub-Contractors;
- (c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Contractor or any of the Sub-contractors to perform their respective obligations under this Agreement; provided that such delay, modification, denial, refusal or revocation did not result from the Contractor's or any Sub-contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;
- (d) any failure or delay of a Sub-contractor but only to the extent caused by another Political Event; or
- (e) any event or circumstances of a nature analogous to any of the foregoing.

#### 21.5 Duty to report Force Majeure Event

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

  
 K.K. JHA  
 G. M. (Project)  
 Agra Smart City Ltd.

  
 O.E.O. Singh  
 Agra Smart City Limited  
 Agra Smart City Lim.

  
 Add'l C.E.O. Chief Executive Officer  
 Agra Smart City Limited

- (a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 21 with evidence in support thereof;
  - (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its 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
  - (d) any other information relevant to the Affected Party's claim.
- (ii) The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than 10 (ten) 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.
- (iii) 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 with regular (and not less than weekly) reports containing information as required by Clause 21.5 (i), and such other information as the other Party may reasonably request the Affected Party to provide.

**21.6 Effect of Force Majeure Event on the Agreement**

- (i) Upon the occurrence of any Force Majeure after the Appointed Date, the costs incurred and attributable to such event and directly relating to this Agreement (the "**Force Majeure costs**") shall be allocated and paid as follows:
- (a) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure costs and neither Party shall be required to pay to the other Party any costs thereof;
  - (b) upon occurrence of an Indirect Political Event, all Force Majeure costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event, shall be borne by the Contractor, and to the extent Force Majeure costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Authority to the Contractor for the Force Majeure events; and
  - (c) upon occurrence of a Political Event, all Force Majeure costs attributable to such Political Event shall be reimbursed by the Authority to the Contractor.
  - (d) For the avoidance of doubt, Force Majeure costs may include costs directly attributable to the Force Majeure Event, but shall not include debt repayment obligations, if any, of the Contractor.
- (ii) Save and except as expressly provided in this Article 21, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost,



*K.K.J*  
**K.K. JHA**  
 G. M. (Project)  
 Agra Smart City Ltd.

*R.K.S*  
 72  
**R. K. Singh**  
 Addl. C.E.O. /  
 Agra Smart City Limited

*[Signature]*  
**Addl. C.E.O.**  
 Chief Executive Officer  
 Agra Smart City Limited



248

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.

- (iii) Upon the occurrence of any Force Majeure Event during the Construction Period, the Project Completion Schedule for and in respect of the affected Works shall be extended on a day for day basis for such period as performance of the Contractor's obligations is affected on account of the Force Majeure Event or its subsisting effects.

### 21.7 Termination Notice for Force Majeure Event

- (i) If a Force Majeure Event subsists for a period of 60 (sixty) days or more within a continuous period of 120 (one hundred and twenty) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 21, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days' time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

### 21.8 Termination Payment for Force Majeure Event

- (i) In the event of this Agreement being terminated on account of a Non-Political Event, the Termination Payment shall be an amount equal to the sum payable under Clause 23.5.

Provided that in the event Termination occurs during the Maintenance Period, the Authority's Engineer shall only determine the value of Works associated with Maintenance.

- (ii) If Termination is on account of an Indirect Political Event, the Termination Payment shall include:

- (a) any sums due and payable under Clause 23.5; and  
(b) the reasonable cost, as determined by the Authority's Engineer, of the Plant and Materials procured by the Contractor and transferred to the Authority for use in Construction or Maintenance, only if such Plant and Materials are in conformity with the Specifications and Standards;

Provided that in the event Termination occurs during the Maintenance Period, the Authority's Engineer shall only determine the value of Works associated with Maintenance.

- (iii) If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Contractor in an amount that would be payable under Clause 23.6 (ii) as if it were an Authority Default.

**21.9 Dispute resolution**

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.

**21.10 Excuse from performance of obligations**

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.



*K.K.J*  
**K.K. JHA**  
G. M. (Project)  
Agra Smart City Ltd.

*R.N. Singh*  
**R.N. Singh**  
Chief Officer  
Agra Smart City Limited

*[Signature]*  
**Addl. C.E.O.**  
Agra Smart City Limited

*[Signature]*  
**Chief Executive Officer**  
Agra Smart City Limited

246

## Article 22

### Suspension of Contractor's Rights

#### 22.1 Suspension upon Contractor Default

Upon occurrence of a Contractor Default, the Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (i) suspend carrying out of the Works or Maintenance or any part thereof, and (ii) carry out such Works or Maintenance itself or authorise any other person to exercise or perform the same on its behalf during such suspension (the "**Suspension**"). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Contractor and may extend up to a period not exceeding 90 (ninety) days from the date of issue of such notice.

#### 22.2 Authority to act on behalf of Contractor

During the period of Suspension hereunder, all rights and liabilities vested in the Contractor in accordance with the provisions of this Agreement shall continue to vest therein and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Contractor under and in accordance with this Agreement shall be deemed to have been done or taken for and on behalf of the Contractor and the Contractor undertakes to indemnify the Authority for all costs incurred during such period. The Contractor hereby licences and sub-licences respectively, the Authority or any other person authorised by it under Clause 22.1 to use during Suspension, all Intellectual Property belonging to or licensed to the Contractor with respect to the Project Highway and its design, engineering, construction and maintenance, and which is used or created by the Contractor in performing its obligations under the Agreement.

#### 22.3 Revocation of Suspension

(i) In the event that the Authority shall have rectified or removed the cause of Suspension within a period not exceeding 60 (sixty) days from the date of Suspension, it shall revoke the Suspension forthwith and restore all rights of the Contractor under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Authority may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

(ii) Upon the Contractor having cured the Contractor Default within a period not exceeding 60 (sixty) days from the date of Suspension, the Authority shall revoke the Suspension forthwith and restore all rights of the Contractor under this Agreement.

#### 22.4 Termination

(i) At any time during the period of Suspension under this Article 22, the Contractor may by notice require the Authority to revoke the Suspension and issue a Termination Notice. The Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 23.



  
K.K. JHA  
G. M. (Project)  
Agra Smart City Ltd.

  
Addl. C.E.O.  
Agra Smart City Limited

75

  
Chief Executive Officer  
Agra Smart City Limited

(ii) Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 90 (ninety) days from the date of Suspension hereunder, the Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by the Authority upon occurrence of a Contractor Default.





**K.K. JHA**  
G. M. (Project)  
Agra Smart City Ltd.



**R. K. Singh**  
Nodal Officer  
Agra Smart City Limited



**Addl. C.E.O.**  
Agra Smart City Limited



**Chief Executive Officer**  
Agra Smart City Limited

**Addl. C.E.O.**  
Agra Smart City Limited

244


## Article 23

### Termination


#### 23.1 Termination for Contractor Default

- (i) Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Contractor fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 60 (sixty) days, the Contractor shall be deemed to be in default of this Agreement (the "**Contractor Default**"), unless the default has occurred solely as a result of any breach of this Agreement by the Authority or due to Force Majeure. The defaults referred to herein shall include:
- (a) the Contractor fails to provide, extend or replenish, as the case may be, the Performance Security in accordance with this Agreement;
  - (b) after the replenishment or furnishing of fresh Performance Security in accordance with Clause 7.3, the Contractor fails to cure, within a Cure Period of 30 (thirty) days, the Contractor Default for which the whole or part of the Performance Security was appropriated;
  - (c) the Contractor does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule-B, subject to any Time Extension, and continues to be in default for 45 (forty five) days;
  - (d) the Contractor abandons or manifests intention to abandon the construction or Maintenance of the Project Highway without the prior written consent of the Authority;
  - (e) the Contractor fails to proceed with the Works in accordance with the provisions of Clause 10.1 or stops Works and/or the Maintenance for 30 (thirty) days without reflecting the same in the current programme and such stoppage has not been authorised by the Authority's Engineer;
  - (f) the Project Completion Date does not occur within the period specified in Schedule-B for the Scheduled Completion Date, or any extension thereof;
  - (g) the Contractor fails to rectify any Defect, the non-rectification of which shall have a Material Adverse Effect on the Project, within the time specified in this Agreement or as directed by the Authority's Engineer;
  - (h) the Contractor subcontracts the Works or any part thereof in violation of this Agreement or assigns any part of the Works or the Maintenance without the prior approval of the Authority;
  - (i) the Contractor creates any Encumbrance in breach of this Agreement;
  - (j) an execution levied on any of the assets of the Contractor has caused a Material Adverse Effect;

Abd. C.E.O.  
Agra Smart City Limited

  
R. K. Singh  
Nodal Officer  
Agra Smart City Limited



  
K.K. JHA  
G. M. (Project)  
Agra Smart City Ltd.

  
Addl. C.E.O.  
Agra Smart City Limited  
  
Chief Executive Officer  
Agra Smart City Limited

- (k) 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 that has a material bearing on the Project;
- (l) 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 Authority, a Material Adverse Effect;
- (m) a resolution for winding up or insolvency of the Contractor is passed, or any petition for winding up or insolvency of the Contractor is admitted by a court of competent jurisdiction and a provisional liquidator or receiver or interim resolution professional, as the case may be, is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Contractor is ordered to be wound up by court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Contractor are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Contractor under this Agreement; and provided that:
  - i. the amalgamated or reconstructed entity has the capability and experience necessary for the performance of its obligations under this Agreement; and
  - ii. the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and has a credit worthiness at least as good as that of the Contractor as at the Appointed Date;
- (n) any representation or warranty of the Contractor herein contained which is, as of the date hereof, found to be false or the Contractor is at any time hereafter found to be in breach or non-compliance thereof;
- (o) the Contractor submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;
- (p) the Contractor has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement; or
- (q) the Contractor commits a default in complying with any other provision of this Agreement if such a default causes a Material Adverse Effect on the Project or on the Authority.
- (r) gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward:
  - i. for doing or forbearing to do any action in relation to the Contract, or
  - ii. for showing or forbearing to show favour or disfavour to any person in relation to the Contract,

or if any of the Contractor's personnel, agents or subcontractors gives or offers to give (directly or indirectly) to any person any such inducement or reward as is described in this sub-paragraph (s). However, lawful



K.K. Jha  
G. M. (Project)  
Agra Smart City Ltd.

78  
R.K. Singh  
Nodal Officer  
Agra Smart City Limited

79  
Addl. C.E.O.  
Agra Smart City Limited  
Chief Executive Officer  
Agra Smart City Limited

242

inducements and rewards to Contractor's Personnel shall not entitle termination.

- (ii) Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Contractor Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Contractor; provided that before issuing the Termination Notice, the Authority 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.
- (iii) The following shall apply in respect of cure of any of the defaults and/ or breaches of the Agreement:
- (a) The Cure Period shall commence from the date of the notice by the Authority to the Contractor asking the latter to cure the breach or default specified in such notice;
  - (b) The Cure Period provided in the Agreement shall not relieve the Contractor from liability for Damages caused by its breach or default;
  - (c) The Cure Period shall not in any way be extended by any period of suspension under the Agreement;
  - (d) If the cure of any breach by the Contractor requires any reasonable action by the Contractor that must be approved by the Authority hereunder the applicable Cure Period (and any liability of the Contractor for damages incurred) shall be extended by the period taken by the Authority to accord its required approval.
- (iv) After termination of this Agreement for Contractor Default, the Authority may complete the Works and/or arrange for any other entities to do so. The Authority and these entities may then use any Materials, Plant and equipment, Contractor's documents and other design documents made by or on behalf of the Contractor.

### 23.2 Termination for Authority Default

- (i) In the event that any of the defaults specified below shall have occurred, and the Authority fails to cure such default within a Cure Period of 60 (sixty) days or such longer period as has been expressly provided in this Agreement, the Authority shall be deemed to be in default of this Agreement (the "**Authority Default**") unless the default has occurred as a result of any breach of this Agreement by the Contractor or due to Force Majeure. The defaults referred to herein shall include:

- (a) the Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Contractor;



K.K. JHA  
K.K. JHA  
G. M. (Project)  
Agra Smart City Ltd.

79 Adil C.E.O.  
Adil C.E.O.  
Chief Executive Officer  
Agra Smart City Limited

- (b) the Authority has failed to make payment of any amount due and payable to the Contractor within the period specified in this Agreement;
  - (c) the Authority becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with its creditors, or carries on business under a receiver, trustee or manager for the benefit of its creditors, or if any act is done or event occurs which (under Applicable Laws) has a similar effect;
  - (d) the Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement;
  - (e) the Authority's Engineer fails to issue the relevant Interim Payment Certificate within 60 (sixty) days after receiving a statement and supporting documents; or
  - (f) the whole work is suspended by Authority beyond 120 (one hundred twenty) days for any reason which is not attributed to the Contractor.
- (ii) Without prejudice to any other right or remedy which the Contractor may have under this Agreement, upon occurrence of an Authority Default, the Contractor shall be entitled to terminate this Agreement by issuing a Termination Notice to the Authority; provided that before issuing the Termination Notice, the Contractor shall by a notice inform the Authority of its intention to issue the Termination Notice and grant 15 (fifteen) days to the Authority 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.

If on the consideration of the Authority's representation or otherwise, the contractor does not issue the Termination Notice on such 15<sup>th</sup> (fifteenth) day and prefers to continue with the project, it is deemed that the cause of action of the Termination Notice has been condoned by the Contractor and he would be deemed to have waived any claim and forfeited any right to any other remedy on that count or in relation to such action or omission.

**23.3 Termination for Authority's convenience**

Notwithstanding anything stated hereinabove, the Authority may terminate this Agreement for convenience. The termination shall take effect 30 (thirty) days from the date of notice provided to the Contractor.

**23.4 Requirements after Termination**

Upon Termination of this Agreement in accordance with the terms of this Article 23, the Contractor shall comply with and conform to the following:

*[Signature]*  
R. K. Singh  
Noted Officer  
Agra Smart City Limited



*[Signature]*  
K.K. JHA  
G. M. (Project)  
Agra Smart City Ltd.

*[Signature]*  
Addl. C.E.O.  
Agra Smart City Limited  
*[Signature]*  
Chief Executive Officer  
Agra Smart City Limited



- 240
- (a) deliver all relevant records, reports, Intellectual Property and other licences pertaining to the Works, Maintenance, other design documents;
  - (b) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws; and
  - (c) vacate the Site within 15 (fifteen) days.

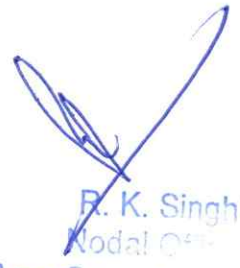
### 23.5 Valuation of Unpaid Works


- (i) Within a period of 45 (forty-five) days after Termination under Clause 23.1, 23.2 or 23.3, as the case may be, has taken effect, the Authority's Engineer shall proceed to determine as follows the valuation of unpaid Works (the "**Valuation of Unpaid Works**"):
  - (a) value of the completed stage of the Works, less payments already made;
  - (b) reasonable value of the partially completed stages of works as on the date of Termination, only if such works conform with the Specifications and Standards; and
  - (c) value of Maintenance, if any, for completed months, less payments already made, and shall adjust from the sum thereof (i) any other amounts payable or recoverable, as the case may be, in accordance with the provisions of this Agreement; and (ii) all taxes due to be deducted at source.
- (ii) The Valuation of Unpaid Works shall be communicated to the Authority, with a copy to the Contractor, within a period of 30 (thirty) days from the date of Termination.

### 23.6 Termination Payment

- (i) Upon Termination on account of Contractor's Default under Clause 23.1, the Authority shall:
  - (a) encash and appropriate the Performance Security, Additional Performance Security if any and Retention Money, or in the event the Contractor has failed to replenish or extend the Performance Security and Additional Performance Security if any, claim the amount stipulated in Clause 7.1, as agreed pre-determined compensation to the Authority for any losses, delays and cost of completing the Works and Maintenance, if any;
  - (b) encash and appropriate the Bank Guarantee, if any, for and in respect of the outstanding Advance Payment and interest thereon; and
  - (c) pay to the Contractor, by way of Termination Payment, an amount equivalent to the Valuation of Unpaid Works after adjusting any other sums payable or recoverable, as the case may be, in accordance with the provisions of this Agreement.

Upon Termination on account of an Authority Default under Clause 23.2 or for Authority's convenience under Clause 23.3, the Authority shall:

  
R. K. Singh  
Nodal Officer  
Agra Smart City Ltd.

  
K.K. JHA  
G. M. (Project)  
Agra Smart City Ltd.

81   
Addl. C.E.O. Chief Executive Officer  
Agra Smart City Limited Agra Smart City Limited

- (a) return the Performance Security, Additional Performance Security and Retention Money forthwith;
- (b) encash and appropriate the bank guarantee, if any, for and in respect of the outstanding Advance Payment; and
- (c) pay to the Contractor, by way of Termination Payment, an amount equal to:
- i. Valuation of Unpaid Works;
  - ii. the reasonable cost of temporary works, as determined by the Authority's Engineer; and
  - iii. 10% (ten per cent) of the cost of the Works and Maintenance that are not commenced or not completed,
- and shall adjust from the sum thereof (i) any other amounts payable or recoverable, as the case may be, in accordance with the provisions of this Agreement, and (ii) all taxes due to be deducted at source.
- (iii) Termination Payment shall become due and payable to the Contractor within 30 (thirty) days of a demand being made by the Contractor to the Authority with the necessary particulars, and in the event of any delay, the Authority shall pay interest at Bank Rate + 3% per annum, on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.
- (iv) The Contractor expressly agrees that Termination Payment under this Article 23 shall constitute a full and final settlement of all claims of the Contractor on account of Termination of this Agreement and that it shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

### 23.7 Other rights and obligations of the Parties

Upon Termination for any reason whatsoever:

- (a) property and ownership in all Materials, Plant and Works and the Project Highway shall, as between the Contractor and the Authority, vest in the Authority in whole; provided that the foregoing shall be without prejudice to Clause 23.6;
- (b) risk of loss or damage to any Materials, Plant or Works and the care and custody thereof shall pass from the Contractor to the Authority; and
- (c) the Authority shall be entitled to restrain the Contractor and any person claiming through or under the Agreement from entering upon the Site or any part of the Project, which have not been vested in the Authority in accordance with the provisions of this Agreement.

R. K. Singh  
Nodal Officer  
Agra Smart City Limited



K.K. JHA  
K.K. JHA  
G. M. (Project)  
Agra Smart City Ltd.

82  
Addl. C.E.O.  
Agra Smart City Limited  
Chief Executive Officer  
Agra Smart City Limited

238

## 23.8 Survival of rights


Notwithstanding anything to the contrary contained in this Agreement any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or Agreement. All rights and obligations of either Party under this Agreement, including Termination Payments, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

## 23.9 Foreclosure with mutual consent

- (i) Without prejudice to any provision of this Agreement, the Authority and Contractor may foreclose this Agreement by mutual consent in circumstances which does not constitute either party's default without any liability or consequential future liability for either party.
- (ii) Should a Party intend to foreclose this Agreement by mutual consent, the intending Party shall issue a notice to the other Party and upon issuance of such notice, the other Party may within 15 days from receipt of such notice either agree to such foreclosure or raise objection(s) to the same by intimating either of the two possible positions to the intending Party in writing.
- (iii) In either case of the other Party agreeing to the proposed foreclosure or otherwise, the Parties may negotiate the proposed foreclosure and sign a Supplementary Agreement for foreclosure to the main Contract Agreement within 30 (thirty) days of the date agreeing by both Parties. Foreclosure shall not come into effect unless and otherwise Supplementary Agreement is signed.
- (iv) Any attempt or endeavor for foreclosure by mutual agreement shall be without prejudice to the rights and obligations of the Parties herein and the factum of such an attempt or exercise shall not stop either of the Parties from discharging their contractual obligations under this Agreement.
- (v) For the avoidance of doubt, it is clarified that such foreclosure will be without prejudice to the Contractor and shall not affect the Contractor in any way if it wishes to bid in future projects of the Authority.

R. K. Singh  
Nodal Officer  
Agra Smart City Limited



  
K.K. JHA  
G. M. (Project)  
Agra Smart City Ltd.

  
Addl. C.E.O.  
Agra Smart City Limited

  
Chief Executive Officer  
Agra Smart City Limited

## Article 24

### Assignment and Charges

#### 24.1 Restrictions on assignment and charges

This Agreement shall not be assigned by the Contractor to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

#### 24.2 Hypothecation of Materials or Plant

Notwithstanding the provisions of Clause 24.1, the Contractor may pledge or hypothecate to its lenders, any Materials or Plant prior to their incorporation in the Works. Further, the Contractor may, by written notice to the Authority, assign its right to receive payments under this Agreement either absolutely or by way of charge, to any person providing financing to the Contractor in connection with the performance of the Contractor's obligations under this Agreement. The Contractor acknowledges that any such assignment by the Contractor shall not relieve the Contractor from any obligations, duty or responsibility under this Agreement.



*K.K.J*  
K.K. JHA  
G. M. (Project)  
Agra Smart City Ltd.

*R.K.Singh*  
R. K. Singh  
Nodal Officer  
Agra Smart City Limited

*[Signature]*  
Addl. C.E.O.  
Agra Smart City Limited

*[Signature]*  
Chief Executive Officer  
Agra Smart City Limited

256

## Article 25

### Liability and Indemnity

#### 25.1 General indemnity

(i) The Contractor will indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Government Instrumentalities and Government owned and/or controlled entities/enterprises, (the "**Authority Indemnified Persons**") against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Contractor of any of its obligations under this Agreement or from any negligence under the Agreement, including any errors or deficiencies in the design documents, or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Authority Indemnified Persons.

#### 25.2 Indemnity by the Contractor

(i) Without limiting the generality of Clause 25.1, the Contractor shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

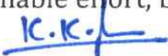
- (a) failure of the Contractor to comply with Applicable Laws and Applicable Permits;
- (b) payment of taxes required to be made by the Contractor in respect of the income or other taxes of the Sub-contractors, suppliers and representatives; or
- (c) non-payment of amounts due because of Materials or services furnished to the Contractor or any of its Sub-contractors which are payable by the Contractor or any of its Sub-contractors.

(ii) Without limiting the generality of the provisions of this Article 25, the Contractor shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Contractor or by the Sub-contractors in performing the Contractor's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Contractor shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation

R.K. Singh  
Nodal Officer  
Agra Smart City Limited




K.K. JHA  
G. M. (Project)  
Agra Smart City Ltd.



85  
Addl. C.E.O.  
Agra Smart City Limited



Chief Executive Officer  
Agra Smart City Limited



or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Project Highway, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Contractor shall promptly make every reasonable effort to secure for the Authority a licence, at no cost to the Authority, authorising continued use of the infringing work. If the Contractor is unable to secure such licence within a reasonable time, the Contractor shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process or modify the same so that it becomes non-infringing.

**25.3 Notice and contest of claims**

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 25 (the "Indemnified Party") it shall notify the other Party (the "Indemnifying Party") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. If the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

**25.4 Defence of claims**

(i) The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 25, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

(ii) If the Indemnifying Party has exercised its rights under Clause 25.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

*(Handwritten signature)*  
R.K. Singh  
Agra Smart City Limited



*(Handwritten signature)*  
K.K. JHA  
G. M. (Project)  
Agra Smart City Ltd.

86  
*(Handwritten signature)*  
Addl. C.E.O.  
Agra Smart City Limited  
*(Handwritten signature)*  
Chief Executive Officer  
Agra Smart City Limited

234

(iii) If the Indemnifying Party exercises its rights under Clause 25.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

- (a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party; or
- (b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action; or
- (c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or
- (d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
  - i. that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
  - ii. that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (b), (c) or (d) of this Clause 25.4 (iii) shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

#### 25.5 Survival on Termination

The provisions of this Article 25 shall survive Termination.



*K.K.L*  
**K.K. JHA**  
G. M. (Project)  
Agra Smart City Ltd.

*[Signature]*  
**R. K. Singh**  
Addl. C.E.O.  
Agra Smart City Limited

*[Signature]*  
**Addl. C.E.O.**  
Agra Smart City Limited

*[Signature]*  
**Chief Executive Officer**  
Agra Smart City Limited

## Article 26

### Dispute Resolution

#### 26.1 Dispute Resolution

- (i) Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "**Dispute**") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 26.2.
- (ii) The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

#### 26.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Authority's Engineer, or such other person as the Parties may mutually agree upon (the "**Conciliator**") to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Conciliator or without the intervention of the Conciliator, either Party may require such Dispute to be referred to the Chairman of the Authority and the Chairman of the Board of Directors of the Contractor for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) business days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 30 (thirty) business day period or the Dispute is not amicably settled within 30 (thirty) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 26.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 26.3 but before resorting to such arbitration, the parties agree to explore conciliation by the Conciliation Committees of Independent Experts set up by the Authority in accordance with the procedure decided by the panel of such experts and notified by the Authority on its website including its subsequent amendments. In the event of the conciliation proceedings being successful, the parties to the dispute would sign the written settlement agreement and the conciliators would authenticate the same. Such settlement agreement would then be binding on the parties in terms of Section 73 of the Arbitration Act. In case of failure of the conciliation process even at the level of the Conciliation Committee, either party may refer the Dispute to arbitration in accordance with the provisions of Clause 26.3.

#### 26.3 Arbitration

- (i) Any dispute which remains unresolved between the parties through the mechanisms available/ prescribed in the Agreement, irrespective of any claim value, which has not

R. K. Singh  
Nodal Officer  
Agra Smart City Limited



K.K. JHA  
G. M. (Project)  
Agra Smart City Ltd.

88  
Addl. C.E.O.  
Agra Smart City Limited

Chief Executive Officer  
Agra Smart City Limited



282

been agreed upon/ reached settlement by the parties, will be referred to the Arbitral Tribunal as per the Arbitration and Conciliation Act.


- (ii) The Arbitral Tribunal shall make a reasoned award (the "Award"). Any Award made in any arbitration held pursuant to this Article 26 shall be final and binding on the Parties as from the date it is made, and the Contractor and the Authority agree and undertake to carry out such Award without delay.
- (iii) The Contractor and the Authority agree that an Award may be enforced against the Contractor and/or the Authority, as the case may be, and their respective assets wherever situated.
- (iv) This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder. Further, the parties unconditionally acknowledge and agree that notwithstanding any dispute between them, each Party shall proceed with the performance of its respective obligations, pending resolution of Dispute in accordance with this Article.
- (v) In the event the Party against whom the Award has been granted challenges the Award for any reason in a court of law, it shall make an interim payment to the other Party for an amount equal to 75% (seventy five per cent) of the Award, pending final settlement of the Dispute. The aforesaid amount shall be paid forthwith upon furnishing an irrevocable Bank Guarantee for a sum equal to 120 % (one hundred and twenty per cent) of the aforesaid amount. Upon final settlement of the Dispute, the aforesaid interim payment shall be adjusted and any balance amount due to be paid or returned, as the case may be, shall be paid or returned with interest calculated at the rate of 10% (ten per cent) per annum from the date of interim payment to the date of final settlement of such balance.

**26.4 Adjudication by Regulatory Authority, Tribunal or Commission**

In the event of constitution of a statutory regulatory authority, tribunal or commission, as the case may be, with powers to adjudicate upon disputes between the Contractor and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 26.3, be adjudicated upon by such regulatory authority, tribunal or commission in accordance with the Applicable Law and all references to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or court of competent jurisdiction, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law.

  
 R. K. Singh  
 Nodal Officer  
 Agra Smart City Limited



  
 K.K. JHA  
 G. M. (Project)  
 Agra Smart City Ltd.

  
 Addl. C.E.O.  
 Agra Smart City Limited

  
 Chief Executive Officer  
 Agra Smart City Limited

## Article 27

231

### Miscellaneous

#### 27.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts at [Delhi] shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.


#### 27.2 Waiver of immunity


Each Party unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

#### 27.3 Waiver

- (i) Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:-

  
R. K. Singh  
Nodal Officer  
Agra Smart City Limited



  
K.K. JHA  
G. M. (Project)  
Agra Smart City Ltd.

  
Addl. C.E.O.  
Agra Smart City Limited

  
Chief Executive Officer  
Agra Smart City Limited

  
Addl. C.E.O.  
Agra Smart City Limited

- 230
- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
  - (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
  - (c) shall not affect the validity or enforceability of this Agreement in any manner.
- (ii) Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

#### 27.4 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

- (a) no review, comment or approval by the Authority or the Authority's Engineer of any Document or Drawing submitted by the Contractor nor any observation or inspection of the construction, or maintenance of the Project Highway nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Contractor from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and
- (b) the Authority shall not be liable to the Contractor by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

#### 27.5 Exclusion of implied warranties etc.

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by either Party not contained in a binding legal agreement executed by both Parties.

#### 27.6 Survival

(i) Termination shall:

- (a) not relieve the Contractor or the Authority, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

R.K. Singh  
Nodal Officer  
Agra Smart City Limited  
JEET

K.K. JHA  
G. M. (Project)  
Agra Smart City Ltd.

91

Chief Executive Officer  
Addl. C.E.O. Agra Smart City Limited  
Agra Smart City Limited

- (ii) All obligations surviving Termination shall only survive for a period of 3 (three) years following the date of such Termination.

**27.7 Entire Agreement**

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn. For the avoidance of doubt, the Parties hereto agree that any obligations of the Contractor arising from the Request for Qualification or Request for Proposals, as the case may be, shall be deemed to form part of this Agreement and treated as such.

**27.8 Severability**

If for any reason whatever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement or otherwise.

**27.9 No partnership**

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

**27.10 Third parties**

This Agreement is intended solely for the benefit of the Parties and their respective successors and permitted assigns, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement.

  
R. K. Singh  
Nodal Officer  
Agra Smart City Limited

**27.11 Successors and assigns**

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns.



  
K.K. JHA  
G. M. (Project) 92  
Agra Smart City Ltd.

  
Addl. C.E.O.  
Agra Smart City Limited

  
Chief Executive Officer  
Agra Smart City Limited

228

**27.12 Notices**

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall:

- (a) in the case of the Contractor, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Contractor may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside Agra may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the person as the Contractor may from time to time designate by notice to the Authority;
- (b) in the case of the Authority, be given by facsimile or e-mail and by letter delivered by hand and be addressed to the CEO of the Authority with a copy delivered to the Authority Representative or such other person as the Authority may from time to time designate by notice to the Contractor; provided that if the Contractor does not have an office in Agra it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier; and
- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

**27.13 Language**

All notices required to be given by one Party to the other Party and all other communications, Documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

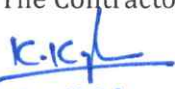
**27.14 Counterparts**


This Agreement may be executed in two counterparts, each of which, when executed and delivered, shall constitute an original of this Agreement.


**27.15 Confidentiality**

The Parties shall treat the details of this Agreement as private and confidential, except to the extent necessary to carry out obligations under it or to comply with Applicable Laws. The Contractor shall not publish, permit to be published, or disclose any

  
R. K. Singh  
Nodal Officer  
Agra Smart City Limited  


  
K.K. JHA  
G. M. (Project)  
Agra Smart City Ltd.

  
Addl. C.E.O.  
Agra Smart City Limited

  
Chief Executive Officer  
Agra Smart City Limited

particulars of the Works in any trade or technical paper or elsewhere without the previous agreement of the Authority.

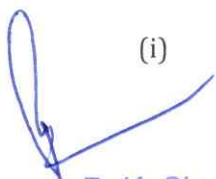
**27.16 Copyright and Intellectual Property rights**

- (i) As between the Parties, the Contractor shall retain the copyright and other Intellectual Property rights in the Contractor's documents and other design documents made by (or on behalf of) the Contractor. The Contractor shall be deemed (by signing this Agreement) to give to the Authority a non-terminable transferable non-exclusive royalty-free licence to copy, use and communicate the Contractor's documents, including making and using modifications of them. This licence shall:
  - (a) apply throughout the actual or intended working life (whichever is longer) of the relevant parts of the Works;
  - (b) entitle any person in proper possession of the relevant part of the Works to copy, use and communicate the Contractor's documents for the purposes of completing, operating, maintaining, altering, adjusting, repairing and demolishing the Works; and
  - (c) in the case of Contractor's documents which are in the form of computer programs and other software, permit their use on any computer on the Site and other places as envisaged by this Agreement, including replacements of any computers supplied by the Contractor.
- (ii) The Contractor's documents and other design documents made by (or on behalf of) the Contractor shall not, without the Contractor's consent, be used, copied or communicated to a third party by (or on behalf of) the Authority for purposes other than those permitted under this Clause 27.16.
- (iii) As between the Parties, the Authority shall retain the copyright and other intellectual property rights in this Agreement and other documents made by (or on behalf of) the Authority. The Contractor may, at its cost, copy, use, and obtain communication of these documents for the purposes of this Agreement. They shall not, without the Authority's consent, be copied, used or communicated to a third party by the Contractor, except as necessary for the purposes of the contract.

**27.17 Limitation of Liability**

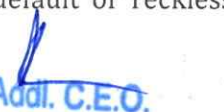
(i) Neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with this Agreement, save and except as provided under Articles 23 and 25.

(ii) The total liability of one Party to the other Party under and in accordance with the provisions of this Agreement, save and except as provided in Articles 23 and 25, shall not exceed the Contract Price. For the avoidance of doubt, this Clause shall not limit the liability in any case of fraud, deliberate default or reckless misconduct by the defaulting Party.

  
R. K. Singh  
Model Officer  
Agra Smart City



  
K.K. JHA  
G. M. (Project)  
Agra Smart City Ltd

  
Addl. C.E.O.  
Agra Smart City Limited  
Chief Executive Officer  
Agra Smart City Limited

226

## 27.18 Care and Supply of Documents

- (i) Each of the Contractor's documents shall be in the custody and care of the Contractor, unless and until taken over by the Authority. Unless otherwise stated in the Agreement, the Contractor shall supply to the Authority 2 (two) copies of the each of the Contractor's documents.
- (ii) The Contractor shall keep, on the Site, a copy of the Agreement, publication named in the Authority's requirements, the Contractor's documents, and variations and other communications given under the Agreement. The Authority's personnel shall have the right of access to all these documents at all reasonable times.
- (iii) If a Party becomes aware of an error or defect of a technical nature in a document which was prepared for use in executing the Works, the Party shall promptly give notice to the other party of such error or defect.

## 27.19 Authority's Use of Contractor's Documents.

- (i) As between the Parties, the Contractor shall retain the copyright and other Intellectual Property rights in the Contractor's Documents and other design documents made by (or on behalf of) the Contractor.
- (ii) The Contractor hereby gives to the Authority a non-terminable transferable nonexclusive royalty-free license to copy, use and communicate the Contractor's Documents, including making and using modifications of them. This license shall:
  - (a) apply through out the actual or intended working life (whichever is longer) of the relevant parts of the Works,
  - (b) entitle any person in proper possession of the relevant part of the Works to copy, use and communicate the Contractor's Documents for the purposes of completing, operating, maintaining, altering, adjusting, repairing and demolishing the Works, and
  - (c) in the case of Contractor's Documents which are in the form of computer programs and other software, permit their use on any computer on the Site and other places as envisaged by the Contractor, including replacements of any computers supplied by the Contractor.

- (iii) The Contractor's Documents and other design documents made by or on behalf of the Contractor shall not, without the Contractor's consent, be used, copied or communicated to a third party by (or on behalf of) the Authority for purposes other than those permitted under this Sub-Clause.

## 27.20 Contractor's Use of Authority's Documents

As between the Parties, the Authority shall retain the copyright and other intellectual property rights in the Authority's requirements and other Documents made by (or on behalf of) the Authority. The Contractor may, at its cost copy, use, and obtain communication of these documents for the purpose of the Agreement. They shall not



K.K. JHA  
G. M. (Project)  
Agra Smart City Ltd.

5  
Addl. C.E.O.  
Agra Smart City Limited  
Chief Executive Officer  
Agra Smart City Limited

without the Authority's consent, be copied, used or communicating to a third party by the Contractor, except as necessary for the purposes of the Agreement.

**27.21 Access to the Site by Others**

The Contractor shall, at all times, afford access to the Site to the authorized representatives of the Authority, the Authority's Engineer and anyone else authorized by the Authority to access the site and to the persons duly authorized by any Governmental Agency having jurisdiction over the Project, including those concerned with safety, security or environmental protection to inspect the Project Highway and to investigate any matter within their authority and upon reasonable notice, the Contractor shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions with minimum disruption to the construction, operation and maintenance of the Project Highway consistent with the purpose for which such persons have gained such access to the Site.

**27.22 Term**

This Agreement shall come into force and effect from the date first hereinabove written and shall remain in force and effect till the Termination Date i.e. the Parties perform all their respective obligations or is terminated by any of the Parties for the reasons and in the manner provided for in the Agreement.

**27.23 Amendments**

The Agreement may not be supplemented, amended, modified or changed except by an instrument in writing signed by the Contractor and the Authority and expressed to be a supplement, modification or change to the Agreement.

**27.24 Representation and Bribes**

The Contractor represents and warrants to the Authority that:

- (a) No representation or warranty by the Contractor contained herein or in any other document furnished by it to the Authority, or to any Governmental Instrumentality in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; and
- (b) It warrants that no sums, in cash or kind, have been paid or will be paid by or on behalf of the Contractor, to any person by way of fees, commission or otherwise for securing or entering into the Contractor for influencing or attempting to influence any officer or employee of the Authority or GOI in connection therewith.

**27.25 No Agency**

The Agreement does not constitute either Party as the agent, partner or legal representative of the other for any purposes whatsoever, and neither Party shall have any express or implied right or authority to assume or to create any obligation or responsibility on behalf of or in the name of the other Party.

*R.K. Singh*  
 Nodal Officer  
 Agra Smart City Limited



*K.K. Jha*  
 K.K. JHA .O.E.O. IbbA  
 G. M. (Project)  
 Agra Smart City Ltd.

*[Signature]*  
 Addl. C.E.O.  
 Agra Smart City Limited

*[Signature]*  
 Chief Executive Officer  
 Agra Smart City Limited



224

## Schedule - A

### Applicable Permits

#### 1. Applicable Permits

- (i) The Contractor shall obtain, as required under the Applicable Laws, the following Applicable Permits:
- (a) Permission of the State Government for extraction of boulders from quarry;
  - (b) Permission of Village Panchayats and Pollution Control Board for installation of crushers;
  - (c) Licence for use of explosives;
  - (d) Permission of the State Government for drawing water from river/reservoir;
  - (e) Licence from inspector of factories or other competent Authority for setting up batching plant;
  - (f) Clearance of Pollution Control Board for setting up batching plant;
  - (g) Clearance of Village Panchayats and Pollution Control Board for setting up asphalt plant;
  - (h) Permission of Village Panchayats and State Government for borrow earth;
  - (i) Clearance of Pollution Control Board for installation of diesel generator sets;
  - (j) Fire safety clearance from fire authorities;
  - (k) Permission of State Government for cutting of trees;
  - (l) Permit for employing unskilled/semiskilled labour during day/night;
  - (m) Permit for dismantling/ reconstruction/ underpinning/ strengthening of affected structures, disposal of solid waste/ excess material or soil, setting up of temporary campus on government/ private/ leased land;
  - (n) Clearance for any urban structure affecting the landscape/ environment from the concerned authority;
  - (o) Permission from Archaeological Survey of India for construction of any structure within the prescribed radius of protected monuments;
  - (p) Permissions from the public utilities for diversion of utilities including reinstatement/reconstruction to original specifications;
  - (q) Approvals for electric supply/distributions;
  - (r) Approval of Traffic Police for diversions and running of vehicles on specified routes; and
  - (s) Any other permits or clearances required under Applicable Laws.
- (ii) Applicable Permits, as required, relating to environmental protection and conservation shall have been procured by the Authority in accordance with the provisions of this Agreement.

  
R. K. Singh  
Nodal Officer  
Agra Smart City Limited



  
K.K. JHA  
G. M. (Project)  
Agra Smart City Ltd.

  
Addl. C.E.O.  
Chief Executive Officer  
Agra Smart City Limited

**Schedule - B**

223

**Project Completion Schedule**

D= Date of issue of work order/ appointed date

S.No.	Activity/Deliverables	Duration (in days)	Payment due at Stage Completion (% of Contract Price)
1 <sup>st</sup> Milestone	Survey and Investigation. Submission of Work Programme, QAP, duly vetted detailed design drawings. Setting up of site office, traffic control room, laboratory, clearance and other preparation of site. Procuring required NOCs for commencement of work. Approval by Authority.	D+15	5%
2 <sup>nd</sup> Milestone	Securing of existing utilities and drains. Excavation, construction and completion of sub-structure.	D+45	30%
	Raising of walls/abutment for widened road width on both sides of existing bridge. Casting of slab for widened road width on both sides of existing bridge. Finishing of widened road-with complete quality and safety measures and opening of traffic flow on same after due approvals.	D+75	
3 <sup>rd</sup> Milestone	Dismantling of existing bridge and removal of debris from site. Raising of walls/abutment. Casting of slab. Clearance of underpass for pedestrian and vehicular traffic flow.	D+120	35%
4 <sup>th</sup> Milestone	Finishing of works of Underpass Finishing of road works Final testing and commissioning of utilities and drains to the satisfaction of concerned departments Opening unobstructed traffic flow in underpass and overbridge complete with all quality and safety requirements.	D+150 (Scheduled Completion Date)	30%  Final payment will be done as per conditions of agreement
R. K. Singh	After completion of Defect Liability period of 2 years		Performance Security

*(Handwritten signature)*

R. K. Singh  
Nodal Officer

Agra Smart City Limited



*(Handwritten signature)*

K.K. JHA  
G. M. (Project)  
Agra Smart City Ltd.

*(Handwritten signature)*  
Addl. C.E.O.  
Agra Smart City Limited

*(Handwritten signature)*  
Chief Executive Officer  
Agra Smart City Limited

222

## Schedule - C

### Tests on Completion

#### 1. Schedule for Tests

- (i) The Contractor shall, no later than 30 (thirty) days prior to the likely completion of construction, notify the Authority's Engineer and the Authority of its intent to subject the Project Highway to Tests, and no later than 10(ten) days prior to the actual date of Tests, furnish to the Authority's Engineer and the Authority detailed inventory and particulars of all works and equipment forming part of Works.
- (ii) The Contractor shall notify the Authority's Engineer of its readiness to subject the Project Highway to Tests at any time after 10 (ten) days from the date of such notice, and upon receipt of such notice, the Authority's Engineer shall, in consultation with the Contractor, determine the date and time for each Test and notify the same to the Authority who may designate its representative to witness the Tests. The Authority's Engineer shall thereupon conduct the Tests itself or cause any of the Tests to be conducted in accordance with Article 12 and this Schedule-K.

#### 2. Tests

- (i) Visual and physical test: The Authority's Engineer shall conduct a visual and physical check of construction to determine that all works and equipment forming part thereof conform to the provisions of this Agreement. Other tests: The Authority's Engineer may require the Contractor to carry out or cause to be carried additional tests, in accordance with Good Industry Practice, for determining the compliance of the Project Highway with Specifications and Standards, except tests as specified in clause 5, but shall include measuring the reflectivity of road markings and road signs; and measuring the illumination level (lux) of lighting using requisite testing equipment.
- (ii) Environmental audit: The Authority's Engineer shall carry out a check to determine conformity of the Project Highway with the environmental requirements set forth in Applicable Laws and Applicable Permits.
- (iii) Safety Audit: The Authority's Engineer shall carry out, or cause to be carried out, a safety audit to determine conformity of the Project Highway with the safety requirements and Good Industry Practice.

#### 3. Agency for conducting Tests

All Tests set forth in this Schedule-K shall be conducted by the Authority's Engineer or such other agency/contractor or person as it may specify in consultation with the Authority.

#### 4. Completion Certificate

Upon successful completion of Tests, the Authority's Engineer shall issue the Completion Certificate in accordance with the provisions of Article 12.

  
**K.K. JHA**  
G. M. (Project)  
Agra Smart City Ltd.

  
99 **Chief Executive Officer**  
Agra Smart City Limited



  
**R. K. Singh**  
Nodal Officer

Agra Smart City Limited

Schedule - D

224

Completion Certificate

- 1 I, ..... (Name of the Authority's Engineer), acting as the Authority's Engineer, under and in accordance with the Agreement dated.....(the "Agreement"), for [construction of the \*\*\*\*section (km \*\* to km \*\*) of National Highway No. \*\*\*] (the "Project Highway") on Engineering, Procurement and Construction (EPC) basis through..... (Name of Contractor), hereby certify that the Tests in accordance with Article 12 of the Agreement have been successfully undertaken to determine compliance of the Project Highway with the provisions of the Agreement, and I am satisfied that the Project Highway can be safely and reliably placed in service of the Users thereof.
- 2 It is certified that, in terms of the aforesaid Agreement, all works forming part of Project Highway have been completed, and the Project Highway is hereby declared fit for entry into operation on this the ..... day of ..... 20... , Scheduled Completed Date for which was the ..... day of .....20.....

SIGNED, SEALED AND DELIVERED

For and on behalf of the Authority's Engineer by:

(Signature)

(Name)

(Designation) (Address)

  
 R.K. Singh  
 Manager  
 Agra Smart City Limited

  
 Addl. C.E.O.  
 Agra Smart City Limited

  
 K.K. JHA  
 G. M. (Project)  
 Agra Smart City Ltd.

  
 Addl. C.E.O.  
 Agra Smart City Limited

  
 Chief Executive Officer  
 Agra Smart City Limited

220

## Schedule - E

### Forms of Payment Statements

#### 1. Stage Payment Statement for Works

The Stage Payment Statement for Works shall state:

- (a) the estimated amount for the Works executed in accordance with Clause 19.3 (i) subsequent to the last claim;
- (b) amounts reflecting adjustments in price for the aforesaid claim;
- (c) the estimated amount of each Change of Scope Order executed subsequent to the last claim;
- (d) amounts reflecting adjustment in price, if any, for (c) above in accordance with the provisions of Clause 13.2 (iii) (a);
- (e) total of (a), (b), (c) and (d) above;
- (f) Deductions:
  - i. Any amount to be deducted in accordance with the provisions of the Agreement except taxes;
  - ii. Any amount towards deduction of taxes; and
  - iii. Total of (i) and (ii) above.
- (g) Net claim: (e) – (f) (iii);
- (h) The amounts received by the Contractor upto the last claim:
  - i. For the Works executed (excluding Change of Scope orders);
  - ii. For Change of Scope Orders, and
  - iii. Taxes deducted

(i) All other documents as stated in agreement and required by Authority

#### 2. Contractor's claim for Damages

**Note:** The Contractor shall submit its claims in a form acceptable to the Authority.

R. K. Singh  
Nodal  
Agra Smart  
O.E.O.  
Agra Smart City Limited



K.K.JHA  
K.K. JHA  
G. M. (Project)  
Agra Smart City Ltd.

Addl. C.E.O.  
Agra Smart City Limited

Chief Executive Officer  
Agra Smart City Limited

## Schedule - F

219

### Insurance

#### 1. Insureduring Construction Period

- (i) The Contractor shall effect and maintain at its own cost, from the Appointed Date till the date of issue of the Completion Certificate, the following insurances for any loss or damage occurring on account of Non Political Event of Force Majeure, malicious act, accidental damage, explosion, fire and terrorism:
- (a) insurance of Works, Plant and Materials and an additional sum of [15 (fifteen)] per cent of such replacement cost to cover any additional costs of and incidental to the rectification of loss or damage including professional fees and the cost of demolishing and removing any part of the Works and of removing debris of whatsoever nature; and
- (b) insurance for the Contractor's equipment and Documents brought onto the Site by the Contractor, for a sum sufficient to provide for their replacement at the Site.
- (ii) The insurance under sub para (a) and (b) of paragraph 1(i) above shall cover the Authority and the Contractor against all loss or damage from any cause arising under paragraph 1.1 other than risks which are not insurable at commercial terms.

#### 2. Insurance for Contractor's Defects Liability

The Contractor shall effect and maintain insurance cover of not less than 15% of the Contract Price for the Works from the date of issue of the Completion Certificate until the end of the Defects Liability Period for any loss or damage for which the Contractor is liable and which arises from a cause occurring prior to the issue of the Completion Certificate. The Contractor shall also maintain other insurances for maximum sums as may be required under the Applicable Laws and in accordance with Good Industry Practice.

#### 3. Insurance against injury to persons and damage to property

- (i) The Contractor shall insure against its liability for any loss, damage, death or bodily injury, or damage to any property (except things insured under Paragraphs 1 and 2 of this Schedule or to any person (except persons insured under Clause 20.8), which may arise out of the Contractor's performance of this Agreement. This insurance shall be for a limit per occurrence of not less than the amount stated below with no limit on the number of occurrences.

The insurance cover shall be not less than: Rs. [\*\*\*\*\*]

R. K. Singh  
Node! C  
Agra Smart City



K.K. JHA  
G. M. (Project)  
Agra Smart City Ltd.

Addl. C.E.O.  
Agra Smart City Limited  
Chief Executive Officer  
Agra Smart City Limited

210

- (ii) The insurance shall be extended to cover liability for all loss and damage to the Authority's property arising out of the Contractor's performance of this Agreement excluding:
  - (a) the Authority's right to have the construction works executed on, over, under, in or through any land, and to occupy this land for the Works; and
  - (b) Damage which is an unavoidable result of the Contractor's obligations to execute the Works.

**4. Insurance to be in joint names**

The insurance under paragraphs 1 to 3 above shall be in the joint names of the Contractor and the Authority.



*K.K.J*

**K.K. JHA**  
G. M. (Project)  
Agra Smart City Ltd.

*B.K. Singh*  
**B. K. Singh**  
Nodal Officer  
Agra Smart City Limited

*[Signature]*  
**Add. C.E.O.**  
Agra Smart City Limited

*[Signature]*  
**Chief Executive Officer**  
Agra Smart City Limited

**Add. C.E.O.**  
Agra Smart City Limited