

Request for proposal For Setting up of Water ATM for Safe Drinking Water including Designing, financing, constructing / installing, operating and maintaining of Water ATMs and vending of water from Water ATMs at Public Places through Public Private Partnership (PPP) at designated locations under “Smart City Mission” at Gandhinagar City.

### **Volume III: General Conditions of Contract**



**Gandhinagar Smart City Development Ltd,  
Gandhinagar, Gujarat**

## Gandhinagar, Gujarat

### GENERAL CONDITIONS OF CONTRACT

#### 1. SECURITY DEPOSIT

All compensation or other sums of money payable by the Concessionaire to GSCDL under the terms of his contract may be deducted from or paid by the sale of a sufficient part of his Security Deposit, or from interest arising there from, or from any sums, which may be due or may become due to the Concessionaire by GSCDL on any account whatsoever, and in the event of his Security Deposit being reduced by reason of any such deduction or sale as aforesaid, the Concessionaire shall within ten days thereafter, make good in cash or Bank Guarantee of Nationalized bank, as aforesaid, any sum or sums which may have been deducted from or raised by sale of his Security Deposit or any part thereof.

In case of Bank Guarantee of any Nationalized Bank is furnished by the Concessionaire to GSCDL, as part of the Security Deposit and the bank goes into liquidation or, for any reason is unable to make payment against the said Bank Guarantee, the loss caused thereby shall fall on the Concessionaire and the Concessionaire shall forthwith, on demand, furnish additional security to GSCDL to make good the deficit.

The liability or obligation of the bank under the Guarantee Bond shall not be affected or suspended by any dispute between the Engineer-in-Charge and the Concessionaire, and the payment, under the Guarantee Bond by the bank to GSCDL shall not wait till disputes are decided. The bank shall pay the amount under the Guarantee, without any demur, merely on a demand from GSCDL stating that the amount claimed is required to meet the recoveries due or likely to be due from the Concessionaire.

The demand, so made, shall be conclusive as regards to amount due and payable by the bank, under the guarantee limited to the amount specified in the Guarantee Bond. The guarantee will not be discharged due to the change in the constitution of the Bank or the Concessionaire. The Bank Guarantee shall remain valid up to the specified date unless extended on demand by the Engineer-in-Charge which shall include the period of completion of the contract and the defect removal period as per terms of the Agreement. Bank's liability shall stand automatically discharged unless a claim in writing is lodged with the Bank within the period stated in the Bank Guarantee including the extended period. After satisfactory completion of the contract and clearance of all dues by the Concessionaire,

GSCDL will discharge the Bank Guarantee after expiry of the original or the extended period, as the case may be. In case the date of expiry of the Bank Guarantee is a holiday, it will be deemed to expire on the close of the next working day. Authority is not concerned with any interest accruing to Concessionaire.

The Concessionaire on any form of Security(primary or collateral) lodged by him with the bank or any sums payable to sureties obtained by the Bank as counter guarantee to secure its own position. This will matters between the Bank and the Concessionaire

The Security deposit shall be forfeited in any of the following cases:

- a) If the successful Concessionaire modifies/ withdraws its Proposal
- b) If the Concessionaire withdraws its Proposal during the interval between the Proposal Due Date and expiration of the Proposal Validity Period; or
- c) If the Successful Concessionaire fails to provide the Performance Security within the stipulated time or any extension thereof provided by GSCDL or
- d) If any information or document furnished by the Concessionaire turns out to be misleading or untrue in any material respect.

## 2. COMPENSATION FOR DELAY

The successful bidder shall build the ATM at one location. Only after soliciting approval from GSCDL should the successful bidder begin the process for building the remaining ATMs at other locations.

The time allowed for carrying out the work as entered in the proposal, shall be strictly observed by the Concessionaire. If the Concessionaire does not commence the work within the period specified in the work order, he shall stand liable for the forfeiture of the amount of Earnest Money and Security Deposit. Besides, appropriate action may be taken by the Engineer-in-Charge/Competent authority to debar him from taking part in future proposals for specified period or black list him. The work shall, throughout the stipulated period of completion of the contract, be proceeded with all due diligence, time being essence of the contract, on the part of the Concessionaire. If all the ATMs are not commissioned in due period of the schedule given by the Concessionaire then an extension of one more month shall be considered with penalty of Rs 1000 per location per day and beyond that the project shall be scrapped with penalty to be levied to the Concessionaire for total capital cost of the number of not-completed Water ATMs.

### **3. EXTENSION OF TIME**

If the Concessionaire shall desire an extension of the time for completion of the work on the ground of his having been unavoidably hindered in its execution or on any other grounds, he shall apply, in writing, to the Engineer-in-Charge within 5 working days for each location of the date of the hindrance, on account of which he desires such extension as aforesaid, and the Authority Competent to grant extension under the rules/delegations of power or other duly authorized Engineer shall, if in his opinion, (which shall be final) reasonable grounds be shown therefore, authorize such extension of time, if any, as may, in his opinion, be necessary or proper, if the period of completion of contract expires before the expiry of the period of 5 days provided in this clause, the application for extension shall be made before the expiry of the period stipulated for completion of the contract.

### **4. WORK TO BE OPEN TO INSPECTION: CONCESSIONAIRE TO BE PRESENT**

All work, under or in course of execution or executed in pursuance of the contract shall, at all times, be opened to inspection and supervision of the GSCDL, and his subordinates and any other authorized agency of GSCDL and the Concessionaire shall, at all times during the usual working hours, and at all other times at which reasonable notice of the intention of the Engineer-in-charge or his subordinate and any other authorized agency of GSCDL to visit the works shall have been given to the Concessionaire, either himself be present to receive orders and instructions or have a responsible agent duly accredited in writing, present for the purpose. Orders given to the Concessionaire's agent shall be considered to have the same force as if they had been given to the Concessionaire himself.

### **5. SETTLEMENT OF DISPUTES**

#### **5.1. Amicable Resolution:**

- (a) Save where expressly stated contrary to this terms and conditions and the RFP, any dispute, difference or controversy of whatever nature between the parties, howsoever arising under, out of or in relation to this Agreement (the "Dispute") shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth below.
- (b) Either Party may require such Dispute to be referred to the Chairperson, GSCDL and the Chief Executive Officer/Partner of the Concessionaire for the time being, for amicable settlement. In respect of disputes of a technical nature the Parties may engage an Expert.

Upon such reference, the two shall meet at the earliest mutual convenience and in any event within 15 days of such reference to discuss and attempt to amicably resolve the Dispute. If the dispute is not amicably settled within 15 (fifteen) days of such meeting between the two, either Party may refer the Dispute to arbitration in accordance with the provisions of Article below.

## **5.2. Arbitration:**

In case, a dispute is referred to arbitration, the arbitration shall be under the Arbitration and Conciliation Act (Amendment Act),2015 and any statutory modification or re-enactment thereof.

If during the subsistence of this Contract or thereafter, any dispute between the Parties hereto arising out of or in connection with the validity, interpretation, implementation, material breach or any alleged material breach of any provision of this Contract or regarding any question, including as to whether the termination of this Contract by one Party hereto has been legitimate, the Parties hereto shall endeavor to settle such dispute amicably and/or by Conciliation to be governed by the Arbitration and Conciliation Act, 1996 or as may be agreed to between the Parties. The attempt to bring about an amicable settlement is considered to have failed as soon as one of the Parties hereto, after reasonable attempts; which attempt shall continue for not less than thirty (30) days, gives thirty (30) day notice to refer the dispute to arbitration to the other Party in writing.

The Arbitration proceedings shall be governed by the Arbitration and Conciliation Act 1996 and any statutory modification or re-enactment thereof The Arbitration proceedings shall be held in Gandhinagar in Gujarat State, India.

The Arbitration proceeding shall be governed by the substantive laws of India. The proceedings of Arbitration shall be in Hindi/English language. Except as otherwise provided elsewhere in the contract if any dispute, difference, question or disagreement arises between the parties hereto or their respective representatives or assignees, at any time in connection with construction, meaning, operation, effect, interpretation or out of the contract or breach thereof the same shall be referred to a Tribunal of three (3) Arbitrators, constituted as per the terms of and under the (Indian) Arbitration and Conciliation Act 1996,. Each party to the contract shall appoint/ nominate one Arbitrator each, the two Arbitrators so appointed/ nominated by the Parties herein shall together choose the third Arbitrator, who shall be the Presiding Arbitrator of the Tribunal. The consortium of the three Arbitrators shall form the Arbitral Tribunal.

In case, a party fails to appoint an arbitrator within 30 days from the receipt of the request to do so by the other party or the two Arbitrators so appointed fail to agree on the appointment of third Arbitrator within 30 days from the date of their appointment upon request of a party, the Chief Justice of the Gandhinagar High Court or any person or institution designated by him shall appoint the Arbitrator/Presiding Arbitrator upon request of one of the parties.

Any letter, notice or other communications dispatched to Concessionaire relating to either arbitration proceeding or otherwise whether through the post or through a representative on the address last notified to the Authority by Concessionaire shall be deemed to have been received by Concessionaire although returned with the remarks, refused 'undelivered' where about not known or words to that effect or for any other reasons whatsoever

If the Arbitrator so appointed dies, resigns, incapacitated or withdraws for any reason from the proceedings, it shall be lawful for the Authority to appoint another person in his place in the same manner as aforesaid. Such person shall proceed with the reference from the stage where his predecessor had left if both parties consent for the same; otherwise, he shall precede.

It is a term of the contract that the party invoking arbitration shall specify all disputes to be referred to arbitration at the time of invocation of arbitration and not thereafter.

It is also a term of the contract that neither party to the contract shall be entitled for any interest on the amount of the award.

The Arbitrator shall give reasoned award and the same shall be final, conclusive and binding on the parties.

The fees of the arbitrator, costs and other expenses incidental to the arbitration proceedings shall be borne equally by the parties.

## **6. DEFINITION OF ENGINEER-IN-CHARGE**

The term “Engineer-in-charge” means the designated person of GSCDL who shall supervise and be in charge of the work on behalf of GSCDL

## **7. CONCESSIONAIRE TO ADHERE TO LABOUR LAWS/REGULATION**

7.1. The Concessionaire shall adhere to the requirements of the Workmen's Compensation Act and Labour Legislation in force from time to time and be responsible for and shall pay any compensation to his workmen which would be payable for injuries under the Workmen's Compensation Act, here-in-after called the said Act. If such compensation is paid by the State as Principal employer under Sub Section (1) of section 12 of the said

Act, on behalf of the Concessionaire, it shall be recoverable by the State from the Concessionaire under Sub Section (2) of the said section.

7.2. Registration under Tax, Labour Laws, Electrical Laws, etc.

7.3. The Applicant should have a registered number of:

- i. GST
- ii. Income Tax PAN;
- iii. The ESI & EPF registration as per Labour Laws;
- iv. Registration of other Labour Licenses, as applicable.

## 8. COST OF WATER CONNECTION, EXECUTION OF WORK

The cost of all water connections, necessary for the execution of work, and the cost of water consumed and hire charges of meters and the cost of electricity consumed in connection with the execution of work, shall be paid by the Concessionaire on commercial rates, except where otherwise specifically indicated.

## 9. FAIR WAGE CLAUSE

a) The Concessionaire shall pay not less than fair wages/minimum wages to labourers engaged by him on the work as revised from time to time by Authority, but Authority shall not be liable to pay anything extra for it .

**Explanation:** "Fair Wage" means minimum wages for time or piece work, fixed or revised, under Minimum Wages Act, 1948 (Amended in 2015).

b) The Concessionaire shall, notwithstanding the provisions of any contract to the contrary, cause to be paid fair wages to labourers indirectly engaged on the work, including any labour engaged by his Sub-Concessionaire in connection with the said work as if the labourers have been immediately or directly employed by him.

c) In respect of all labourers immediately or directly employed on the work, for the purpose of the Concessionaire part of this agreement, the Concessionaire shall comply with or cause to be complied Authorities' Contract's Labour Regulations made, or that may be made by Authority, from time to time, in regard to payment of wages, wages period, deductions from wages, recovery of wages not paid, and unauthorized deductions, maintenance of wages register, wage card, publication or scale of wages and other terms of employment, inspection and submission of periodical returns and other matters of a like nature.

d) The Engineer-in-charge shall have right to deduct from the security money due to the Concessionaire any sum required or estimated to be required for making good the loss

suffered by a worker or workers, by reasons of non-fulfilment of the conditions of the contract, for the benefit of the worker or workers, non-payment of wages or of deductions made there from, which are not justified by the terms of the contract, or as a result of non-observance of the aforesaid regulations.

- e) The Concessionaire shall be primarily liable for all payments to be made and for the observance of the regulations aforesaid, without prejudice to his right to claim indemnity from his Sub-Concessionaire.
- f) The regulations, aforesaid, shall be deemed to be part of this contract and any breach, thereof, shall be deemed to be breach of the Contract.

## **10. SAFETY CODE**

The Concessionaire shall follow the safety code (s) of Authority and as specified in special conditions of contract.

## **11. RETIRED GAZETTED OFFICERS BARRED FOR 2 YEARS**

No Engineer of Gazetted rank or other Gazetted officer, employed in Engineering or Administrative duties in GSCDL or Government of Gujarat, is allowed to work as a Concessionaire for a period of 2 years of his retirement from Government service without the previous permission of GSCDL /Government of Gujarat. This contract is liable to be cancelled, if either the Concessionaire or any of his employees is found, at any time, to be such a person, who had not obtained the requisite permission, as aforesaid, before submission of the proposal or engagement in the Concessionaire's service, as the case may be.

## **12. QUALITY CONTROL**

Authority shall have the right to exercise proper Quality Control measures. The Concessionaire shall provide all assistance to conduct such tests.

## **13. FORCE MAJEURE**

Neither party shall be liable to each other, for any loss or damage, occasioned by or arising out of acts of God such as unprecedented floods, volcanic eruptions, earthquake or other invasion of nature and other acts.



## 14. JURISDICTION OF COURT

In the event of any dispute arising between the parties hereto, in respect of any of the matters comprised in this agreement, the same shall be settled by a competent Court having jurisdiction over the place, where agreement is executed and by no other court, after completion of proceedings.

## 15. OPERATION & MAINTENANCE

- a. The Concessionaire shall operate and maintain the ATMs in accordance with the RFP.
- b. The Concessionaire shall, during the Operations Period:
  - i. Have requisite organization and designate and appoint suitable officers/representatives as it may deem appropriate to supervise the Project Facilities, to deal with the personnel deployed by GSCDL for monitoring proper operations and maintenance of the Project, consistent with requirements of the RFP, and to be responsible for all necessary exchange of information required pursuant to this Agreement;
  - ii. Provide GSCDL access to their application software/platform for ensuring the real time monitoring of water quality parameters.
  - iii. Provide exception reports in case of non-compliance with quality or operational requirements. In case the quality of water does not meet the IS 10500 : 2012 requirement on any event, GSCDL will impose a penalty as per penalty clause.
- c. In the event, the Concessionaire has failed to operate and maintain the ATMs in accordance with the RFP, and such failure has not been remedied despite a notice to that effect issued by the GSCDL (“Notice to Remedy”), GSCDL may, without prejudice to any of its other rights/remedies under this Agreement, be entitled to cause the repair and maintenance of the ATMs at the risk and cost of the Concessionaire.

The Concessionaire shall reimburse one and half times the costs incurred by GSCDL on account of such repair and maintenance within 7 days of receipt of GSCDL’ claim therefor.
- d. The Concessionaire shall be deemed to be in material breach of requirements of the RFP, if GSCDL , acting reasonably and in accordance with the provisions of this Agreement, has determined that due to breach of its obligations by the Concessionaire;
- e. the maintenance of the ATMs or any part thereof has deteriorated to a level which is below the acceptance level prescribed by the RFP;
- f. There has been a serious or persistent breach in adhering to the requirements of the RFP and thereby the ATMs or any part thereof is not safe for operations;

- g. Upon occurrence of a Material Breach of requirements of the RFP, GSCDL shall, without prejudice to and notwithstanding any other consequences provided therefor under this Agreement, be entitled to terminate this agreement.

### **SPECIAL CONDITIONS of CONTRACT (PART - A)**

#### **1. DEFINITIONS**

- i. **“GSCDL”** means the Gandhinagar Smart City Development Limited.
- ii. **“Materials”** means things of all kinds (other than equipment) intended to form or forming part of the permanent works, including the supply of materials to be supplied by the Concessionaire under the contract.
- iii. **“Equipment”** means the apparatus, machinery, articles and things of all kinds to be provided under the contract or intended to form or forming part of the permanent works.
- iv. **“Concessionaires documents”** means the calculations, drawings, manuals, models, other software, drawings, manuals, models and other documents of the technical nature supplied by the Concessionaire under the contract.
- v. **“Specifications”** means the specification according to which the works are to be executed as referred to in the agreement documents and any other specifications agreed thereon.
- vi. **“Plant(s)”** means Water ATMs wherever referred
- vii. **“Authorized Representative”** refers to Representative Appointed by GSCDL
- viii. **“Contract rate(s)”** means the item rate quoted in the proposal/or for which acceptance is given later by the Applicant.
- ix. **“Scope of Work”** means the number of Water ATMs to be installed & their operations and maintenance for 10 years. However the general principals given in the scope of work in Volume II and the specifications shall be applicable for all work orders given.
- x. **“Contract Period”** Means the duration from Commencement Date up to satisfactory Completion of Operation and Maintenance Period.

#### **2. COMMUNICATION BETWEEN GSCDL AND THE CONCESSIONAIRE**

##### **2.1 Addresses for notices**

Notices with legal and contractual issues shall be addressed to the Managing Director, Gandhinagar Smart City Development Limited, c/o GMC, near Pathik Ashram bus stop, Sector 11 Gandhinagar-382007

All certificates, notices given by the Concessionaire under terms of the contract shall be sent by post, courier, email, or fax to or left at the office of the Managing Director,

Gandhinagar Smart City Development Limited, c/o GMC, near Pathik Ashram bus stop,  
Sector 11 Gandhinagar-382007

All certificates, notices or instructions to be given to the Concessionaire by the Authority under the terms of the contract shall be sent by post, courier, email, or fax to or left at the Concessionaires principal address or the addresses as the Concessionaire shall indicate for this purpose only. It shall be essential for the Concessionaire to obtain a receipt of authorized officer otherwise the notice shall be treated as “null and void”.

### **3. CONTRACT**

#### **Type of contract**

The works described in this proposal document is considered to be a Public Private Partnership (PPP) work. The Concessionaire(s) shall be responsible for Designing, financing, constructing / installing, operating and maintaining of Water ATMs and vending of water from Water ATMs at Public Places through Public Private Partnership (PPP) at given site within the region in each ward(s)/habitations where installations are done, monitoring reporting-repair and testing of all installations done/supplied made by them during the contract period including defect liability period as defined in these proposal document .

#### **3.1 Priority of contract**

The documents forming part of the agreement are to be taken as mutually explanatory documents of one another. In case of discrepancies they shall be explained and adjusted by the Engineer in charge. The priority of the contract documents shall be as follows.

- I. Letter of award
- II. Special conditions of contract part A & part B Instructions to Bidders
- III. General conditions of contract
- IV. Scope of work and technical specifications
- V. Drawings
- VI. Schedule of prices

#### **3.2 Agreement**

Successful Bidder shall to execute an agreement in the prescribed form on non-judicial stamp paper of Rs. 100 or as revised by GSCDL on the date of agreement, with the any other officer authorized by GSCDL within a period of 10 days of the date of issue of letter of acceptance/ work order. The expenses of completing and stamping the agreement shall be paid by Concessionaire. The Successful shall submit following documents with proposal/agreement. However, where the delay in execution of agreement on bonafied grounds, GSCDL can condone such delay. The firm shall submit following documents with

proposal/agreement.

- i. All pages of the rate contract/letter of acceptance copy including amendment and terms & conditions of the NIT duly signed.
- ii. Notarized copy of Article of Associations and Memorandum/ Partnership deed (if not provided with proposal).
- iii. In case of partnership firm, notarized copy of registration certificate issue by registrar of firms.
- iv. Notarized copy of power of attorney to authorized signatory to execute agreement and copy of resolution of directors of board (in case of limited company). Power of Attorney should be signed by all partners in case of partnership firm (if not provided with proposal).
- v. Copy of valid S.T. clearance certificate attested by notary public valid at the time of opening of first envelope (if not provided with proposal).
- vi. Copies of list of fixed assets and balance sheet duly notarized (if not provided with proposal) for the latest preceding financial year for which returns have been submitted.

3.3 If the bid is submitted by a consortium/group of firms, that is, Joint Venture (maximum Two firms (Lead member + 1 Other Members) the sponsoring firm, shall submit complete information required in the forms pertaining to each firm in the group and state along with the Bid as to which of the firms shall have the responsibility for tendering and completion of the Contract document and furnish evidence admissible in law in respect of the authority assigned to such firm on behalf of the group of firms for tendering and for completion of the Contract documents. Full information and satisfactory evidence pertaining to the participation and responsibility of each member of the group of firm in the Tender shall be furnished along with the tender. A certified copy of the Joint Venture Agreement in prescribed form (specified at Form-I) shall be submitted along with the Tender.

3.4 The tender documents uploaded in the name of an individual applicant shall not be used by a Joint Venture. Joint venture shall have to upload the tender document in the name of JV only, if he wants to apply.

### 3.5 JOINT VENTURE CONSORTIUM (JV)

Joint venture consortium of Maximum Two firms/ members / companies, as partners shall be allowed for the works.

All the Members of the JV shall be jointly and severally responsible for this Contract. The Member of the JV holding highest stake shall be the Lead Partner. The JV shall comply with the following requirements:

(a) A Joint venture agreement must be submitted along with the documents in which minimum share of lead member shall have to be 60% and share of other members, individually shall not be less than 15%.

(b) All the members of the Joint Venture firms shall have to collectively satisfy all the criteria mentioned.

**Note:** In case, the applicant/JV partner has achieved physical & financial performance for the criteria mentioned above in past, in joint venture with other Contractor (other than present JV partner), the portion of the work (physically and financially) of the contractor included in their Joint Venture Agreement in original contract work shall only be considered for evaluation purpose.

In joint venture consortium the lead partner shall only be an Indian citizen, Indian partnership firm or Indian private/ public limited company.

(c) The individual members who join in JV shall have to give an undertaking that they will maintain status-quo till the completion of the work is awarded to the JV Consortium, the same JV Consortium shall be maintained till the satisfactory completion of the work. This undertaking shall be submitted on Stamp paper Rs. 100. Duly signed by authorized signatory, which shall be notarized.

(d) In case of Bidder participating as a Joint Venture, on his selection for award of contract, all the partners/members of the Joint Venture will have to sign the Contract with the employer and will be jointly and severally liable for performance of the contract. Award of Contract will be in the name of Joint Venture consortium which will be considered as "Legal Entity" as far as this Bid/ Contract is concerned.

(e) The Bid, and in case of a successful bid, the Form of Contract Agreement, shall be signed with the name of Joint Venture which will be legally binding on all the partners;

(f) Lead partner shall be declared as Prime Bidder authorized to be in charge; and this authorization shall be evidenced by submitting a Power of Attorney signed by legally authorized signatories of all the partners;

(g) The member in charge shall be authorized to incur liabilities, receive payments and receive instructions for and on behalf of any or all partners of the Joint Venture and the entire execution of the contract including defect liability period;

(h) All members of the Joint Venture shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms, and a relevant statement to

this effect shall be included in the Authorization mentioned under (b) above as well as in the Bid Form and the Form of Contract Agreement (in case of a successful Bid); and,

- (i) A copy of the stamped and notarized agreement entered into by the Joint Venture partners shall be submitted with the Bid. Roles, responsibilities and financial stakes of all members of the Joint Venture consortium shall be clearly and unambiguously prescribed in the Joint Venture agreement. In case of non prescription, the JV agreement will be declared as invalid and the bid will be treated as non responsive.
- (j) In case of Joint Venture financial strengths of each of the JV members individually shall not be less than minimum qualifying criteria worked out in proportionate to their financial stakes in the JV.

In case of physical criteria, either of the JV members shall meet the qualifying requirement in any single completed project without taking into account their financial stake in the JV agreement.

Each JV member shall have required registration certificate, solvency certificate, project manager having 5 years experience, existence of company as per tender requirement. Each member shall satisfy these requirements separately.

- (k) The contractors participating in the name and form of a Joint Venture consortium shall have to clearly and unambiguously define the role, responsibilities and financial stake of each of the partners, the lead partner shall also have to be defined. On award of contract to such a Joint Venture consortium, each of the members of the Joint Venture consortium shall have to sign the Contract. Each member of the JV shall be jointly and severally responsible for the performance of the contract.
- (l) In case of conflict between the terms in contract agreement and the Joint Venture documents, the terms in the contract agreement shall prevail.
- (m) The JV partners shall also need to be registered anywhere in India.

## **4. MONTHLY REPORTS & MEETINGS**

### **4.1 Monthly reports**

Monthly progress reports shall be prepared by the Concessionaire and submitted to the GSCDL. The first report shall cover the period up to the end of the first calendar month following the commencement date. Reports shall be submitted monthly thereafter, each within two working days after the last day of the month to which it related.

Reporting shall continue during both construction and operation period. Each report shall include the following but shall not be limited to:

- i. Installation Reports for the work done in last month.
- ii. Proposed locations where the installations are proposed in next month.
- iii. Photographs of typical installation in field.
- iv. Inspections, tests reports.
- v. Copies of quality assurance documents, test results.
- vi. Comparisons of actual and planned progress, with the details of any events or circumstances which may jeopardize the completion in accordance with the contract, and the measures being (or to be) adopted to overcome delays.

The reporting format shall be developed by the Concessionaire in consultation with the Engineer-in-charge (and consultants appointed if any) within 10 days of commencement. In consultation with Authority, the report format may evolve as required during the course of execution.

### **4.2 Meetings**

Meetings shall be held in the office of Engineer-in-Charge or at other places as mutually fixed in advance. The proposed agenda for the meetings shall be exchanged at least two days in advance. It is required that a decision-maker of the Concessionaire is present at the meetings so that binding decisions can be taken about outstanding issues. Generally, the following issues shall be discussed.

- i. Progress of the work, difficulties
- ii. Revision of time schedule
- iii. Payment issues
- iv. Disputes
- v. Claims

### **4.3 Concessionaire's General Obligations**

The Concessionaire shall be responsible to Designing, financing, constructing/installing, operating and maintaining of Water ATMs and vending of water from Water ATMs at Public Places through Public Private Partnership (PPP) with appropriate arrangements as per the

scope of work given in Volume II of the proposal document, so as to provide potable water of “OUTPUT PARAMETERS” at the outlet(s) of all Water ATMs installed under the contract. The “OUTPUTPARAMETERS” are defined in Special Condition of contract Part “B” of this volume.

The Concessionaire shall build the ATM at one location. Only after soliciting approval from GSCDL should the successful bidder begin the process for building the remaining ATMs at other locations.

After the successful commissioning of the Water ATMs, the Concessionaire is required to take-up the O&M of the Water ATMs as per the scope of work given in Tender document or during the extended period. The work includes monitoring, testing, repairs or replacement, reporting and other activities as detailed in scope of work and as written in the proposal document. The Concessionaire is also required to maintain the record of performance and activities for the installed Water ATMs both in paper and electronic formats and provide them to GSCDL on paper as well as approved electronic media.

Finally the Concessionaire is required to provide an acceptable system to provide good hygienic conditions around the installed Water ATM and to maintain this system during Ten Years comprehensive maintenance.

The O&M period for a Water ATM shall start from the date of successful installation of Water ATMs and shall continue for Ten Years and for any extended period, as defined in RFP. The Water ATMs are proposed to be installed as per the list given in this RFP. The final location of installation within the ward/habitation shall be given by the Engineer in-charge or his authorized representative, during the contract. **However, concessionaire is required to do location survey and which capacity of ATM suitable for particular location. The ATM locations will be decided in consultation with GSCDL and PMC at the time of execution.**

The Concessionaire shall design a system in consideration to the quality of water in the selected source of installation and general design consideration for the Water ATM given in volume II of the proposal document. The design shall be approved by the Engineer-in-charge, but such approval by the GSCDL shall not relieve the Concessionaire from his responsibility regarding performance of the Water ATMs as per the parameters given in the proposal document. The Concessionaire so as to achieve the objective of providing water of OUTPUT PARAMETER may have to propose additional equipment/material/systems. Unless specified otherwise, no additional payment shall be made on the account of providing the additional equipment/material/system, and it shall be deemed that the cost of such eventuality has been accounted for rate offered in proposals.



#### **4.4 Concessionaire's Representative**

The Concessionaire shall appoint the Concessionaire's representative in consultation with the GSCDL and shall give them all authority necessary to act on the Concessionaire's behalf under the contract. He shall similarly submit the name and particulars of other persons appointed for the work. The Concessionaire shall not, without the prior consent of the GSCDL, revoke the appointment of the Concessionaire's representative or appoint a replacement. The Concessionaire's representative shall, on behalf of the Concessionaire, receive instructions. The Concessionaire's representative may delegate any powers, functions, and authority to any person, and may at any time revoke the delegation. Any delegation or revocation shall not take effect until the GSCDL has received prior notice signed by the Concessionaire's representative, naming the person and specifying the powers, functions and authority being delegated or revoked.

#### **4.5 Setting Out**

The Concessionaire shall set up the water ATMs in relation to original points, lines and levels of reference specified in the RFP.

#### **4.6 The Safety Procedures**

The Concessionaire shall:

- i. Comply with all applicable safety regulations,
- ii. Take care for the safety of all person's entitled to be on the site,
- iii. Choose reasonable efforts to keep the site and work clear of Unnecessary obstruction so as to avoid danger to these persons,
- iv. Provide any temporary works (including road ways, foot ways, guards and fences) which may be necessary, because of the execution of works, for the use and protection of the public and of owners and occupy a server adjacent land.

#### **4.7 Quality Assurance**

In addition to the provisions of agreement of general conditions of contract, the Concessionaire shall institute a quality assurance system to demonstrate compliance with requirements of the RFP. The system shall be in accordance with the details stated in the contract and the quality assurance program will be got approved from the competent authority. GSCDL shall be entitled to audit any aspect of the system.

Compliance with the quality assurance system shall not relieve the Concessionaire of any of his duties, obligations or responsibilities under the contract.

#### **4.8 Un-Foreseeable Difficulties**

- i. The Concessionaire shall be deemed to have obtained all necessary information as to risk, contingencies and other circumstances that may influence or affect the works;

- ii. By signing the contract, the Concessionaire accepts the total responsibility for having sustained all difficulties and costs of successfully completing the work and
- iii. The contract rates shall not be adjusted to take account of any unforeseen difficulties or costs.

#### **4.9 Rights of Way and Facilities**

The Concessionaire shall bear all costs and charges for special and/or temporary rights of way, which he may require, including those for access to the site. The Concessionaire shall also obtain, at risk and costs, any additional facilities outside the site which he may require for further purposes of the works.

#### **4.10 Avoidance of Interference**

The Concessionaire shall not interfere unnecessarily or improperly with:

- i. The convenience of the public, or
- ii. In the access to and use and occupation of all roads and other land, irrespective of whether they are public or in the possession, of the GSCDL or others.

The Concessionaire shall indemnify and hold the GSCDL free against any form of damages, losses and expenses (including legal fees and expenses) resulting from any omission or commission of Concessionaire during the period of the concession.

#### **4.11 Security of the Site**

Unless otherwise stated in particular conditions:

- i. The Concessionaire shall be responsible for keeping unauthorized persons off the site offices, campus etc. within the scope of work and
- ii. Authorized person's shall be limited to the Concessionaire personnel and the GSCDL's personnel; and to any other personnel notified to the Concessionaire, by (or on behalf of) the GSCDL.

#### **4.12 Concessionaire's operations On-Site**

The Concessionaire shall confine his operations to the site, and to any additional areas which may be obtained by the Concessionaire and agreed by the GSCDL as working areas. The Concessionaire shall take all necessary precautions to keep Concessionaire's equipment and Concessionaire personnel within the site and these additional areas, and to keep them off adjacent land. The Concessionaire shall keep the site free from all unnecessary obstruction, and shall store or dispose of any Concessionaire's equipment or surplus materials. The Concessionaire shall clear away and remove from the site any wreckage, rubbish and temporary works which are no longer required.

## **5. REFUND OF SECURITY DEPOSIT**

The security deposit submitted by the Successful Bidder would be released upon furnishing of the Performance Security in the form and manner stipulated in the Concession Agreement.

## **6. OPERATION AND MAINTENANCE MANUALS**

Prior to the commencement of the tests on completion, the Concessionaire shall supply to the GSCDL provisional operation & maintenance manuals in sufficient detail as specified in **Vol. II of the RFP**. The work shall not be considered to be completed for the purposes of completion of works until the GSCDL has received final operation & maintenance manuals in such detail.

## **7. PERFORMANCE GUARANTEE OF SERVICES**

The bidder shall guarantee that the services of each Water ATM shall comply with the agreed requirements and that the units installed will operate satisfactory at the time of commissioning and thereafter during period and also at that time of handing over, with the desired performance level.

## **8. BANK GUARANTEE AGAINST PERFORMANCE OF CONTRACT**

### **(Performance Guarantee)**

Bidder has to provide contract performance guarantee in the form of Bank guarantee as mentioned in Contract.

## **9. FORFEITURE OF PERFORMANCE SECURITY**

Security amount in full or part may be forfeited in the following cases:-

- a) When any terms and conditions of the contract is breached.
- b) When the Applicant fails to make complete work/ O&M satisfactorily.

## **10. CHANGE IN CONSITUTION OF FIRM**

- a) Any change in the constitution of the firm/company etc. shall be notified forthwith by the firm in writing to the GSCDL within a period of 30 days from the date of its occurrence & such changes shall not relive any new member or the member of the firm at the time of proposal from any liability under the contract.
- b) No new partner/partners shall be accepted in the firm/company by the Applicant in respect of the contract unless he/they agree(s) to abide by all its terms and

conditions and deposit with the GSCDL on a written agreement to this effect. The firm's receipt of acknowledgement or that of any partner(s) subsequently accepted as above shall bind all of them and will be sufficient to discharge any liability under this contract.

## **11. REPUDIATION OF CONTRACT**

The contract for the installation & O&M of Water ATMs can be repudiated at anytime by the GSCDL after giving an opportunity to the Concessionaire of being heard, if the work is not completed or maintained to its satisfaction. The reasons for repudiation shall be recorded by the GSCDL.

## **12. LEGAL PROCEEDINGS**

All Legal proceedings, if necessary arises to institute may by any of the parties (Government or Concessionaire) shall have to be lodged in Court situated in Gandhinagar and not elsewhere.

## **13. FAILURE OR BREACH OF CONTRACT**

In case of breach of the contract, full/part of Performance guarantee can be forfeited and the action against defaulting firms may be taken like Black listing, suspension of business, banning of business etc. along with termination of the contract by GSCDL, without any compensation to the Concessionaire.

## **14. OUTPUT PARAMETERS OF TREATED WATER**

The water from the A TMs should be as per IS 10500 : 2012 standards mentioned in Tender and none of the prescribed parameters for potable water defined in IS 10500 : 2012 should exceed under any circumstances.

## **15. OPERATIONS**

### **15.1 Variability of output**

The GSCDL shall not consider any variation in the output quality of water except for the conditions during Natural Calamity or where the chemical parameters of input water are considered abnormally high. In this case GSCDL may ask to shift the installation and the Concessionaire shall shift the installed unit at location given by the GSCDL without any additional payment.

In case quality of the water received by the Bidder at ATM is not of IS 10500 : 2012 standards, the Bidder shall immediately inform/ bring to notice of the Engineer-Charge. In this case, it will be the responsibility of GSCDL to take appropriate decisions in this regard.

## 16. TERMINATION

### 16.1 Concessionaire's default

The GSCDL shall be entitled to terminate this Contract for the following reasons attributable to the Bidder, unless arising as a result of a Force Majeure Event,

- a) Non-performance of material obligations or failure to perform material obligations under this Contract i.e. for not maintaining the desired output parameters of water
- b) Not providing timely repairs resulting in non-functioning ATM
- c) Not providing the required lab & testing facilities or if it is established that the intentional false reporting is done by the Concessionaire
- d) Repeated non-performance even after giving notices.

### 16.2 Consequences of termination by GSCDL

If the GSCDL, with reasonable grounds, terminates the contract under **Clause 16.1** above, the Security Deposit, and any other sums of the Concessionaire with the GSCDL, shall be forfeited and action shall be taken against him as per General Conditions of Contract, if deemed appropriate.

## 17. INDEMNIFICATION

The Concessionaire to indemnify the GSCDL against the following:

- a) The Concessionaire shall at its own expense make good any physical loss or damage to the units occasioned by it in the course of the performance of its obligations under this Contract if and to the extent such loss or damage is caused by the wilful misconduct or failure to follow Good Engineering Practices of the Concessionaire,
- b) The Bidder shall indemnify, defend and hold harmless the GSCDL and its officers, employees, agents and affiliates against any and all claims of loss, damage and expense of whatever kind and nature, including all related costs and expenses incurred in connection therewith, in respect of personal injury to or death of third parties and in respect of loss of or damage to any third party to the extent that the same arises out of:
  - i. Any breach by the Concessionaire of its obligations hereunder,

- ii. Any negligent act or omission on the part of the Concessionaire, its sub Concessionaires or their respective agents or employees, and
- iii. Any wilful misconduct or breach of statutory duty on the part of the Bidder, its sub Concessionaires or their respective agents and employees.
- iv. Any other event where such indemnification has been expressly mentioned in this Conditions of Contract for Operation and Maintenance.