

REQUEST FOR PROPOSAL DOCUMENT

Tender Document for
Electrical works on
B.O.T Basis

Udupi City Municipal Council Udupi

Disclaimer

The information contained in this tender document provided to the Tenderer(s), by or on behalf of Udipi C.M.C, (hereinafter referred to as "ULB") or any of their employees or advisors, is provided to the Tenderer(s) on the terms and conditions set out in this tender document and all other terms and conditions subject to which such information is provided.

The purpose of this tender document is to provide the Tenderer(s) with information to assist the formulation of their Tenders. This tender document does not purport to contain all the information each Tenderer may require. This tender document may not be appropriate for all persons, and it is not possible for ULB, their employees or advisors to consider the business/investment objectives, financial situation and particular needs of each tenderer who reads or uses this tender document. Each tenderer should conduct its own investigations and analysis and should check the accuracy, reliability and completeness of the information in this tender document and where necessary obtain independent advice from appropriate sources. ULB, their employees and advisors make no representation or warranty and shall incur no liability under any law, statute, rules or regulations as to the accuracy, reliability or completeness of the tender document.

ULB may, in their absolute discretion, but without being under any obligation to do so, update, amend or supplement the information in this tender document.

Tender Document

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Part - 1
Instructions to Tenderers

1. *C.M.C Udupi* now invites ‘Two Part’ sealed tenders from eligible Tenderers for the Contract for “Operation & Maintenance of street lighting system” at the designated locations in Udupi. The detailed scope of work for the project is set out in **Appendix–A.** under B.O.T Basis
2. ‘Two part’ Tender in which both ‘TECHNICAL BID’ and ‘FINANCIAL BID’ should be separately submitted in duplicate in separate sealed covers.
3. ULB invites tenders from interested parties to submit their tender to provide ‘services’. The Tenders would be evaluated on the basis of the criteria set out in this Tender Document.
4. Each Tenderer shall submit a maximum of one (1) tender against this enquiry. Any tenderer who submits more than one tender will be liable for disqualification.
5. The tenderer shall be responsible and shall pay for all of the costs associated with the preparation of the tender and participation in the tender process.
6. Tenderer is also advised to examine carefully the instructions, prequalification requirements, forms of tender quality issues and ‘approved listed materials’ for lamps & accessories for each of the items etc.
7. At any time prior to the last date of submission of tender Udupi C.M.C, for any reason, whether at its own initiative or in response to clarifications requested by any tenderer, modify the tender document by the issuance of addenda.
8. The Tender shall remain valid for a period of **six calendar months** from the last date of submission of the tender. ULB reserves the right to reject any Tender, which does not meet this requirement.
9. In case the tenderer is not actually a resident of the Udupi C.M.C, where the present O & M contract is proposed, the tenderer should highlight how he will be organizing day to day requirements involved in the proposed O &M contract, if awarded to him..
10. The tenderer should use the light fittings and accessories of Philips, Bajaj, Crompton, Greeves, Cona brands confirming to IS standards and as per technical specifications. The tenderer should submit proof from the manufacturer that this material confirms to IS standards.

11. Pre-Qualification Requirements

The Tenderer who participate in this tender enquiry need to have following pre-qualifying requirements failing which the tender will not be considered.

11.1 Tenderer should have:

- . valid license from Electrical inspectorate of Government of Karnataka or
- . Should be minimum Class I registered contractor or
- . at least one year experience in similar kind of jobs. or

IF any coordination with electrical contractor and advertising agency. Necessary document should be enclosed.

11.2 Tenderer and employees should have full knowledge of the street lighting system including technical experience on the lamp working system, control gear mechanism, protection etc.

11.3 The Tenderer among other things should produce the following along with tender document

- The Tenderer should provide the figures of Net Cash Accruals from its own audited financial statements and should be equivalent to at least 50% of the tendered cost.
- Enclose copies of the statement of accounts duly certified by a Chartered Accountant, indicating the total turn over for the previous three financial periods
- A statement indicating the net worth of the tenderer duly certified by a Chartered Accountant

The offer of the tenderer, who do not qualify for the above pre qualification norms will not be considered for further evaluation.

12 Earnest Money Deposit (EMD)

- 12.1 Each Tender shall be accompanied by EMD of Rs.50,000.00 (Fifty thousand).
- 12.2 The EMD shall be in the form of a crossed demand draft / banker's cheque drawn in favour of Commissioner C.M.C Udupi on any scheduled bank, payable at Udupi.
- 12.3 The EMD of every unsuccessful Tenderer would be returned within a period of eight weeks from the date of announcement of the Successful tenderer. The EMD submitted by the Successful Tenderer would be released upon furnishing of the Performance Security.

Format and Signing of Tender

- 13.1 The tenderer would provide all the information as per this tender enquiry. ULB would evaluate only those Tenders that are received in the required format and are complete in all respects. Each Tender shall comprise the following:

i. Qualification Submission

- a. Covering letter in the format set out in **Appendix B**
- a. Details of the tenderer in the format set out in **Appendix C**
- b. Technical bid as per format set out in **Appendix D**
- c. Proof of Purchase of the tender Document

ii. Financial Offer:

- a. Financial offer in the format set out in **Appendix E**

- 14.2 The Tenderer shall seal the "Technical bid" and the "Financial bid" separately in two envelopes, duly marking the envelopes as "Technical bid" and "Financial bid". These envelopes shall than be sealed in a single outer envelope.
- 14.3 The Tenderer shall prepare (1) one original and (1) one copy of the Tender, clearly marked "ORIGINAL" and "COPY" respectively. In the event of any discrepancy between the original and the copy, the original shall prevail.
- 14.4 The Tender, both the original and the copy, shall be typed or written in indelible ink and an authorised signatory of the tenderer shall initial each page. The person(s) signing the Tender shall also initial all the alterations, omissions, additions, or any other amendments made to the Tender.

15. Sealing and Marking of Tender

- 15.1 The tenderer shall seal the original and copy of the Bid in separate envelopes, duly marking the envelopes as "ORIGINAL" and "COPY". The envelopes shall then be sealed in a single outer envelope.
- 15.2 Each of the envelopes, both outer and inner, must be superscribed with the following information:
 - a. Name and Address of tenderer

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- b. Contact person and phone numbers
 - c. "Tender for the Project No. : [Insert the Tender Notification Number]"
 - d. TO BE OPENED IN THE PRESENCE OF TENDER EVALUATION COMMITTEE OR 'THE AUTHORISED PERSON' ONLY

15.3 If the envelope is not sealed and marked as instructed above, ULB assumes no responsibility for the misplacement or premature opening of the contents of the Tender submitted and such Tender, may, at the sole discretion of ULB, be rejected.

16 Tender Due Date

16.1 Tenders should be submitted before 1530 hours IST on [insert date], in the manner and form as detailed in this tender document. Tenders submitted by either facsimile transmission or telex will not be accepted.

16.2 ULB may, in exceptional circumstances, and at its sole discretion, extend the above Tender Due Date by issuing an Addendum.

17. Opening of Tenders and Clarifications

17.1 ULB would open the Tenders on any earliest convenient working day after the Tender Due Date for the purpose of evaluation.

17.2 ULB reserves the right to reject any Tender not submitted on time and which does not contain the information/documents as set out in this tender document.

17.3 To facilitate evaluation of Tenders, ULB may, at its sole discretion, seek clarifications in writing from any tenderer regarding its Tender.

18. Evaluation

18.1 As part of the evaluation, the Tenders shall be checked for eligibility criteria with the requirements of the tender and only those Tenders which are found to be responsive would be further evaluated in accordance with the criteria set out in this tender document

18.2 The Tender would be considered to be responsive if it meets the following conditions:

- a. it is received /deemed to be received by the Tender Due Date including any extension thereof.
- b. it is signed, sealed and marked as stipulated in Clause 14 and Clause 15.
- c. it contains all the information and documents as requested in the tender.
- d. it contains information in formats specified in this tender document along with a proof of pre-site visit in written format to acquaint with the area and scope of work etc., and to start up the maintenance work immediately after the award of the contract without any lapse of time,
- e. it mentions the validity period as set out in Clause 7.
- f. it provides information in reasonable detail. ("Reasonable Detail" means that, but for minor deviations, the information can be reviewed and evaluated by ULB without communication with the tenderer). ULB reserves the right to determine whether the information has been provided in reasonable detail.
- g. there are no inconsistencies between the Tender and the supporting documents.

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- A Tender that is substantially responsive is one that conforms to the preceding requirements without material deviation or reservation. A material deviation or reservation is one
- i. which affects in any substantial way, the scope, quality, or performance of the contract, or
 - ii. which limits in any substantial way, inconsistent with the tender document, ULB's rights or the tenderer's obligations under the Agreement, or
 - iii. which would affect unfairly the competitive position of other tenderer presenting substantially responsive Tenders.
- 18.3 The responsive tenders shall be evaluated as per the criteria set out in **Appendix D**.
- 18.4 The 'Financial bids' of only the tenderer who meet the Qualification Criteria would be opened. The format for quoting the 'Financial bid' is set out in **Appendix E**.
- 18.5 The tenderer making the lowest "Financial bid" would be declared as the "Preferred Tenderer". ULB may either choose to accept the Tender of the "Preferred Tenderer" or invite him for negotiations.
- 18.6 In case there are two or more Tenderers quoting the same lowest Financial Offer. ULB may in such case call all such Tenderers for negotiations and select the 'preferred tenderer' on the outcome of the negotiations. The selection in such cases shall be at the sole discretion of ULB.
- 18.7 ULB reserves the right to reject any Tender, if:
- a. at any time, a material misrepresentation is made or discovered; or
 - b. the tenderer does not respond promptly and diligently to requests for supplemental information required for the evaluation of the Tender.
 - c. the tenderer does not enclose the proof form from the manufacturer regarding the brand satisfying the technical specifications and as per IS standards as mentioned branded company and the specifications mentioned in the tender document.
19. In the event of acceptance of the preferred tenderer with or without negotiations, ULB shall declare the 'Preferred Tenderer' as the Successful tenderer. ULB will notify the Successful Tenderer through a Letter of Award (LoA) that its Tender has been accepted.
20. The 'Successful tenderer' shall execute the Agreement within seven days of the issue of LoA or within such further time as ULB may agree to in its sole discretion.
21. The 'Successful tenderer' shall also furnish Performance Security by way of an irrevocable Bank Guarantee, as required under the Agreement.
22. Failure of the 'Successful tenderer' to comply with the requirements of Clause 20 or Clause 21 shall constitute sufficient grounds for the annulment of the LoA, and forfeiture of the EMD. In such an event, ULB reserves the right to.
- a. either invite the next lowest tenderer for negotiations
- or
- b. take any such measures as may be deemed fit in the sole discretion of ULB, including annulment of the tendering process.
23. Notwithstanding anything contained in this tender document, ULB reserves the right to accept or reject any Tender, or to annul the tender process or reject all Tenders, at any time without any liability or any obligation for such rejection or annulment, without assigning any reasons thereof.

26. ULB Decision

In respect of all matter, including the granting of extension, the ULB shall if required to do so by the TENDERER, give in writing a decisions. In all matters of difference of opinion in respect of

the contract, the decision of the “**Deputy Commissioner**” of the district shall be final and acceptable to the tenderer. This shall be part of the agreement.

Scope of Work for the Contract

1.0 The Scope of work of the contractor for providing street light in Ambagilu Kalsanka Road from N.H.17 Junction to Nittur School Under B.O.T Basis .

- Be fully responsible for providing street light in the road divider and set out in the tender document.
- a. The poles will be painted at least once in two years.
- b. The contractor will provide electrical cut out at each pole to isolate that particular pole in case of any electrical failure.
- c. The contractor not to advertise any message pertaining to liquor, prohibited goods, observe in nature or which any hurt the political or religious sentiments of the public.

2. Quality issues

- a. The 'Contractor' should use guaranteed quality items for better efficacy and performance standards for the lamps fittings and electrical materials used during the execution as well as maintenance .
- b. The light fittings/accessories need to be purchased from authorised manufacturers, the brand confirming to IS standards only. A proof of "source" of purchase place along with invoice and sales tax content need to be furnished until execution as well as maintenance.
- c. Contractors should use/replace the PVC insulated and sheathed copper and Aluminium wires / single core, Multi core, Multi stand / single stand cables of class 'A' of reputed make like – Finolex, Cobra, Wincap, Cauvery and Havells only of size 3/0.036" (3/20), 7/0/036" (7/20) and 4.0 sqmm.
- d. No extra compensation will be allowed and paid in case of short circuit due to externalities such as 'over voltage' resulting in mass fusing out of lamps, tube and connected accessories. If required, contractor can have an insurance policy for such situations at his cost, if available.

6.0 Supplementary Information for contractor

- a. Contractor should strictly follow the rules laid down by Electrical Inspectorate, Labour Commissioner. Local body will not be responsible for any dispute arising thereon between contractor & his employees and/or contractor, employees & public including accidents & claims thereon. All works shall be executed in accordance with the Indian Electricity Rules as in force from time to time, wherever they are applicable unless otherwise agreed to in writing by the 'ULB'.

Appendix B

Covering Letter

(On the Letter-head of the Bidders)

Date:

To: Commissioner
City Municipal Council Udupi

Sub:

Ref: Your Notification No: _____ dated _____

Sir/Madam,

Being duly authorised to represent and act on behalf of _____ (hereinafter referred to as “the Bidder”), and having reviewed and fully understood all of the Proposal requirements and information provided and collected, the undersigned hereby submits the Proposal on behalf of (*Name of Bidder*) for the Project in **one (1) original and one (1) DUPLICATE**, with the details as per the requirements of the RFP, for your evaluation.

We undertake that, in competing for (and, if the award is made to us, in executing) the above contract, we will strictly observe the laws against fraud and corruption in force in India namely “Prevention of Corruption Act 1988”. We hereby certify and confirm that in the preparation and submission of our Proposal, we have not acted in concert or in collusion with any other Bidder or other person(s) and also not done any act, deed or thing which is or could be regarded as anti-competitive.

We confirm that our Proposal is valid for a period of six calendar months from (*insert Proposal Due Date*).

Yours faithfully,

For and on behalf of (*Name of Bidder*)

*Duly signed by the Authorised Signatory of the Bidder
(Name, Title and Address of the Authorised Signatory)*

Details of Tenderer
(On the letter Head of the Tenderer)

1. (a) Name of tenderer

(b) Address of the Office(s)

(c) Date of incorporation and/or commencement of business
2. Brief description of the tenderer's main lines of business
3. Details of individual(s) who will serve as the point of contact/communications for municipality with the tenderer
 - (a) Name
 - (b) Designation
 - (c) Company/Firm
 - (d) Address
 - (e) Telephone Number
 - (f) E-mail address
 - (g) Fax number
 - (h) Mobile number
4. Name, Designation, address and phone numbers of authorised signatory of the Tenderer
 - (a) Name
 - (b) Designation
 - (c) Company/Firm
 - (d) Address
 - (e) Telephone Number
 - (f) E-mail address
 - (g) Fax number
 - (h) Mobile number

Signature of Authorised Person

Name of the Authorised Person

Date _____

Note:

On the letterhead of the Tenderer

**Technical Bid Form D - 2
Financial Capability**

The Tenderer shall have aggregate **Net Cash Accruals** for the last two completed financial years equal to Rs. _____ [*Rupees (insert amount in words)*]

(Rs. Lacs)

Year 1	Year 2	Total

The tenderer should provide the figures of Net cash Accruals from its own audited financial statements. The guiding factor for Net cash accruals could be considered at least 50% of the tendered cost.

Instructions:

- a. Net Cash Accruals = (Profit After Tax + Depreciation + Non-cash Expenses)

- b. The financial year would be the same as the one normally followed by the bidder for its annual report

- c. The Applicant shall provide the audited annual financial statements as required under this tender document. The financial statements shall be duly supported by a certificate from the statutory auditor of the firm/company, which shall clearly indicate the membership number and contact details of the statutory Auditor.

Signature and Name of Authorised Person

Date:

**Financial Offer
Original**

Date:

The Commissioner,
C.M.C Udupi

Sub:

Ref: Notification No:

Dear Sir,

Being duly authorized to represent and act on behalf of (the Bidder”), and having reviewed and fully understood all of the information provided in the Request for Proposal (RFP) document provided to us by Udupi CMC in respect of the captioned Project, the undersigned hereby submits the Proposal in response to the RFP.

We confirm that our Financial Offer (Concession Period Proposal) (and expression of Interest) for the Project is as set out below:

1) Concession Period <i>(Number of years in figure and words)</i>

We have reviewed all the terms and conditions of the Request for Proposal including the Draft Agreement and would undertake to abide by all the terms and conditions contained therein. We hereby declare that there are, and shall be, no deviations from the stated terms in the RFP Document.

Yours faithfully,

*Signature of the Bidder
&Address*

*Commissioner
CMC, Udupi*

**Financial Offer
Duplicate**

Date:

The Commissioner,
C.M.C Udupi

Sub:

Ref: Notification No:

Dear Sir,

Being duly authorized to represent and act on behalf of (the Bidder”), and having reviewed and fully understood all of the information provided in the Request for Proposal (RFP) document provided to us by Udupi CMC in respect of the captioned Project, the undersigned hereby submits the Proposal in response to the RFP.

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Yours faithfully,

*Signature of the Bidder
&Address*

*Commissioner
CMC, Udupi*

AGREEMENT

This **AGREEMENT** entered into on this the *[Insert date]* day of *[Insert Month]*, Two Thousand and *[Insert Year]* at *[Insert Place]*;

BETWEEN

[Insert name and address of ULB] acting through *[Insert name]*¹, (hereinafter referred to as “**ULB**” which expression shall unless excluded by or repugnant to the context, be deemed to include its successors and permitted assigns); OF THE ONE PART

AND

[Insert name and registered office address of the selected bidder], (hereinafter referred to as “**the Contractor**” which expression shall unless excluded by or repugnant to the context, be deemed to include its permitted successors and permitted assigns), OF THE OTHER PART

WHEREAS:

- A. The ULB have decided to off load the operation and maintenance of street lighting system to eligible contractors under which the eligible contractor would maintain the street lighting system on his own in the period of contract awarded.
- B. The ULB invited competitive tenders from eligible tenderers to carry out “Operation & Maintenance of street lighting system” (hereinafter referred as “**the Contract**”).
- C. In response thereto, the ULB has received tenders from several tenderers and after evaluation thereof, has accepted the tender submitted by the Service Provider.
- D. ULB hereby grants and authorises the Service Provider to implement the project in accordance with the terms, conditions and special conditions enclosed to this agreement.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively ascribed to them hereunder:

“**Agreement**” shall mean this Agreement, and includes any amendments hereto made in accordance with the provisions hereof.

¹ Commissioner / Chief Officer etc.

“Applicable Law” shall mean all laws in force and effect, as of the date hereof, and which may be promulgated or brought into force and effect hereinafter in India including judgements, decrees, injunctions, writs or orders of any court of record, as may be in force and effect during the subsistence of this Agreement and applicable to the Project/the Contractor.

“Competent Authority or Authority” the “Mayor/ Commissioner / Municipal committees/Director of DMA / concerned Engineers/ President of local bodies and any other “Authority”” applicable in such as the case may be.

The **“Engineer”** shall mean “the Chief Engineer / Superintending Engineer / Executive Engineer/ Deputy Engineer/ Asst. Ex. Engineer / Engineers or authorised engineers” of the concerned local bodies.

“Engineer in-charge” means “the executive Engineer directly in-charge of the works or his authorised Engineers”

“Tenderer” means, “the person or persons, Firm or Consortium or Company submitting a tender for the work, contemplated either directly or through a duly authorised representative”.

The term **“The Contract”** shall mean the “invitation to tender, the instructions to tenders, the tendered/acceptance of Tender, ‘Particulars’ herein after defined and those general/ special conditions and schedule of contract form” that may be added.

This will include:

- a. Contract Agreement, General conditions of contract, schedule of contract form and all other documents
- b. Specifications of the equipment to be furnished under the contract
- c. CONTRACTOR’S TENDER proposal including the letter of clarifications thereto between the CONTRACTOR and the Purchaser or the Engineer prior to the award of “Contract”
- d. All the materials, literature, data and information of any sort given by the CONTRACTOR along with his TENDER, subject to the approval of the Purchaser or the Engineer
- e. Any agreed variations to the conditions of the documents and specifications and special terms, schedule of contract form and conditions

“Contractor” means “person or persons, Firm or consortium or Company who have entered into contract for the execution of the work and shall include the contractor’s legal, personal representatives, successors, assignees”.

The **“Sub-Contract”** shall mean “the person named in the contract of any part of the work or any person to whom any part of the contract has been sub-let with the consent in writing of the Engineer and the legal representatives, successors and assignees of such person”.

“Drawing” means the “drawing referred to in the tender documents and any modification of such drawing approved in writing by the Engineer, or such other drawing as from time to time be furnished or approved in writing by the Engineer”.

“Ward/Area” means, “lands and other places, on under, in or through which the works are to be executed carried out or any other lands or place provided by the “Authority” for the purposes of contract. These terms shall also include material stocking place and the area which the temporary structures are put in for works.

“Tests” means, “such tests as are required to be carried out either by the Contractor or by Engineer-in-charge from time to time and on completion as detailed in the specifications, before the work is certified as being satisfactory”

“Month” shall mean “a month as reckoned by English Calendar”

The term **“Material”** shall mean “anything used in the Lighting System”

The term **“the Store”** shall mean “what the area where tenderer agrees to supply under the contract as specified in the acceptance of tender”

“Commercial use” shall mean that “use of the work which the contract contemplates or of which it is to be capable of suing commercially”

“**Maintenance Period**” shall mean “a period of 24 (Twenty four) months commencing immediately after commissioning of each of the equipment”

“**Specification**” shall mean, “the instructions provisions, conditions, detailed requirements contained in the tender documents”

“**Work**” or “**Works**” shall mean and include “any or all and implement other tools of all description necessary for the execution of the work in safe and workman like manner”

“**Origin**” means “the place where the plant and materials or component parts thereof are produced”.

“**Writing**” shall include “any manuscript, typewritten or printed statement, under or over signature or seal as the case may be”

“**Persons**” shall include “firm company, organisation, corporation and other body of persons whether incorporated or not”

“**The Inspector**” shall mean “the “Authority” for the time being or such other person as may be duly authorised and appointed in writing by the “Authority” to act as an “Inspector” for the purpose of the contract”

“**Approved**” shall mean the “written approval of the “Authority” or Engineer or of the inspector” as the case may be

“**Commissioning**” shall mean “the first regular operation for commercial use”.

ARTICLE 2

GRANT OF CONCESSION

2.1 Grant of Concession

Subject to and in accordance with the terms and covenants set forth in this Agreement, the ULB hereby grants and authorises the Contractor to operate and maintain the street lighting system

Provided further that, subject to and in accordance with the terms and covenants set forth in this Agreement, the ULB grants and authorises the Contractor to operate and maintain street lighting system...

2.2 Concession Period

The Concession hereby granted is for a period of __ months [*insert period bid for by the Successful tenderer*] from the Appointed Date (hereinafter referred to as the "Concession Period").

Provided, in the event of Termination, the Concession Period shall mean and be limited to the period commencing from the Appointed Date and ending with the Termination Date.

ARTICLE 3

OBLIGATIONS OF THE CONTRACTOR

In addition to and not in derogation or substitution of any of its other obligations under this Agreement, the Contractor shall have the following obligations:

3.1 Operation and Maintenance of Street Lighting System

- a. The Contractor shall within the agreement Period operate and maintain the street lighting system in accordance with the O & M Requirements set out in **Appendix A**, without any liability to the ULB.
- b. In performance of its obligations under (a) hereinabove, the Contractor shall, without any liability to the ULB, undertake to:
 - i. bear all costs towards procurement of materials and equipment for installation and erection, commissioning and maintenance of the street lighting system
 - ii. bear all costs towards manpower, and other related activities.

3.2 General Obligations

- i. allow the local authority/ Engineer to inspect the status of street lighting system at any area/ward and at any time in accordance with the provisions of this Agreement.

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- ii. allow the local authority/ Engineer to inspect the stock godown at any time in accordance with the provisions of this Agreement.
 - iii. Allow the ward committee members to inspect and inform the status of lamps burning to the ULB once in a month or so.
 - iv. comply with the recommendations of the local authority with regard to operation and maintenance of the street lighting system in accordance with the provisions of this Agreement.
 - v. procure all the Applicable Permits and be in compliance thereof at all times during the period of this Agreement.
 - vi. conform and comply with Applicable Laws at all times during the period of this Agreement.

ARTICLE 4

ULB's OBLIGATIONS

4.1 Handover of Street Lighting System

The ULB shall, within 7 days from the Appointed Date, handover the awarded area of street lighting system on as-is-where-is basis, for the purpose of implementing the Project.

4.2 Engineer or any other competent authority

- a. The ULB shall within 7 days of the Appointed Date, nominate any field engineer or any other competent authority for the purposes of co-ordinating, supervising and monitoring the operation and maintenance of the street lighting system.
- b. The engineer or any other competent authority shall ensure that the street lighting system is operated and maintained as per the Operation and Maintenance Requirements during the tenure of the Concession.
- c. In case of replacement of the Engineer or any other competent authority, the ULB shall intimate to the Contractor within 7 days thereof.

4.3 General Obligations

ULB shall:

- a. where appropriate, provide necessary assistance to the Contractor in securing Applicable Permits.
- b. observe and comply with all its obligations set forth in this Agreement.

ARTICLE 5

HANDBACK REQUIREMENTS

5.1 Ownership

Without prejudice and subject to the Concession, the ownership of the street lighting system, including all improvements made therein by the Contractor, shall at all times remain that of ULB.

5.2 Obligations of Parties

(a) Contractor's Obligations

- i. The Contractor shall on the date of expiry of the agreement Period, hand back peaceful possession of the street lighting system to the ULB.
- ii. At least three months before the expiry of the Concession Period, the Engineer or any other competent authority and the Contractor shall undertake a joint inspection of the street lighting system. The ULB, shall within 15 days of such inspection furnish to the Contractor of the detail of works, if any, to be carried out so as to conform to the O & M Requirements. The Contractor shall promptly undertake and complete such works at least one month prior to the expected expiry of the Concession Period and ensure that the Project Facility continue to meet such requirements until the same are handed back to the ULB.
- iii. The Contractor hereby acknowledges ULB's rights specified in Article 7.3 enforceable against it upon Termination and its corresponding obligations arising therefrom. The Contractor undertakes to comply with and discharge promptly all such obligations.
- iv. At least 3 months prior to the expiry of the Concession Period, the Contractor shall, for due performance of its obligations relating to handback of the Project Facility, submit to ULB a bank guarantee, in the form as set forth in Appendix - I ("Handback Guarantee"), from a bank acceptable to ULB. The Handback Guarantee shall be kept valid for a period of six (6) months.

(b) ULB's Obligations

The ULB shall, subject to ULB's right to deduct amounts towards;

- i. carrying out works listed under Article 5.2(a)(ii), which have not been carried out by the Contractor,
- ii. any outstanding dues, which may have accrued in respect of the Project Facility during the period of the Concession.

ARTICLE 6

FORCE MAJEURE

6.1 Force Majeure Event

Any of the following events resulting in Material Adverse Effect shall constitute Force Majeure Event:

- a. earthquake, flood, inundation, landslide;

-
- b. fire caused by reasons not attributable to the Contractor or any of the employees, contractors or agents appointed by the Contractor for purposes of the Project;
 - c. acts of terrorism, war, invasion, rebellion, riots, military action or civil war;
 - d. Over voltage and/or any other power quality problems

Save and except as expressly provided in the Agreement, neither Party hereto shall be liable in any manner whatsoever to the other Party in respect of any loss / damage relating to or arising out of occurrence or existence of any Force Majeure Event. However, the Contractor shall be entitled to receive and appropriate the proceeds of any insurance obtained by it.

6.2 Performance Obligations

- a. As soon as practicable and in any case within 7 days of the date of occurrence of a Force Majeure Event or the date of knowledge thereof, the Concessionaire shall notify the engineer or any other local authority of the same setting out in reasonable detail the nature of such Force Majeure Event.
- b. If the Concessionaire is rendered wholly or partially unable to perform any of its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such obligations to the extent it is unable to perform the same on account of such Force Majeure Event provided that due notice of the Force Majeure Event has been given as required by the preceding sub-clause.

ARTICLE 7

EVENTS OF DEFAULT AND TERMINATION

7.1 Events of Default

Event of Default means either Contractor Event of Default or ULB Event of Default or both as the context may admit or require.

a. Contractor Event of Default

Any of the following events shall constitute an event of default by the Contractor (“**Contractor Event of Default**”), unless caused by a ULB Event of Default of a Force Majeure Event:

- i. The Contractor has not started his work of operation and maintenance of the Project Facilities, or any part thereof, within 10 days from the contract award Period.
- ii. The Contractor has failed to adhere to the operation and maintenance Requirements for of the street lighting system, in accordance with **Appendix - A**, in the assessment of the local authority.
- iii. The Contractor has not maintained the street lighting system in accordance with the operation and Maintenance Requirements for a period exceeding 7 days, except where performance has been prevented by a Force Majeure Event.
- iv. The Contractor has not remedied the defects identified by the local authority or the engineer in accordance with the O & M Requirements, except where performance has been prevented by a Force Majeure Event.

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- v. The Contractor has repudiated or abandoned the Project;

b. ULB Event of Default

Any of the following events shall constitute an event of default by the ULB ("**ULB Event of Default**"), unless caused by a Contractor Event of Default or a Force Majeure Event:

- i. ULB has failed to handover the street lighting system from previous contractor within the stipulated period as set out in Clause 4.1, and more than 90 days have elapsed from the Appointed Date.
- ii. ULB has repudiated this Agreement

7.2 Termination due to Event of Default

a. Termination for Contractor Event of Default

Without prejudice to any other right or remedy which the ULB may have in respect thereof under this Agreement, upon the occurrence of a Contractor Event of Default, the ULB may terminate this Agreement by issuing a Termination Notice setting out the underlying Event of Default and the Termination Date. The Contractor shall continue to perform its obligations under the Agreement till Termination Date.

b. Termination for ULB Event of Default

Without prejudice to any other right or remedy which the Contractor may have in respect thereof under this Agreement, upon the occurrence of ULB Event of Default, the Contractor shall be entitled to terminate this Agreement by issuing Termination Notice.

c. Termination Payments

Upon Termination of this Agreement on account of Contractor Event of Default, the Contractor would not be entitled to any compensation from the ULB and the Performance Security, if subsisting, shall be forfeited.

Upon Termination of this Agreement on account of ULB Event of Default the Concessionaire shall be entitled to receive from ULB, balance payment for the completed duration.

7.3 Rights of ULB on Termination

- (a) Upon Termination of this Agreement for any reason whatsoever, ULB shall upon making the Termination Payment, if any, to the Contractor have the power and authority to:
 - i. take possession and control of the Project Facility forthwith;
 - ii. prohibit the Contractor and any Person claiming through or under the Contractor from dealing with the Project Facility;
- (b) Notwithstanding anything contained in this Agreement, ULB shall not, as a consequence of Termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularisation of employment, absorption or re-employment on any ground, in relation to any Person in the

employment of or engaged by the Contractor in connection with the Project, and the handback of the Project Facility by the Contractor to ULB shall be free from any such obligation.

7.4 Accrued Rights of Parties

Notwithstanding anything to the contrary contained in this Agreement, Termination pursuant to any of the provisions of this Agreement shall be without prejudice to accrued rights of either Party including its right to claim and recover money damages and other rights and remedies which it may have in law or contract. The rights and obligations of either Party under this Agreement, including without limitation those relating to the Termination Payment, shall survive the Termination but only to the extent such survival is necessary for giving effect to such rights and obligations.

ARTICLE 8

DISPUTE RESOLUTION

8.1 Amicable Resolution

Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to this Agreement, shall in the first instance be attempted to be resolved amicably by meetings between the Parties.

8.2 Arbitration

Any dispute which is not resolved amicably shall be finally settled by binding arbitration, with the District Commissioner serving as the sole Arbitrator. The place of arbitration shall ordinarily be the District Commissioner's office. The Parties agree that the decision or award resulting from arbitration shall be final and binding upon the Parties.

Pending the submission of and/or decision on a dispute, the parties shall continue to perform their respective obligations under this Agreement without prejudice to a final adjustment in accordance with such arbitration award.

ARTICLE 9

MISCELLANEOUS

9.1 Governing Law and Jurisdiction

This Agreement shall be governed by the laws of India and courts of the District Head Quarters will have jurisdiction relating to all matters arising from this Agreement.

9.2 Amendments

This Agreement and the Schedules together constitute a complete and exclusive understanding 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 agreed to by all the Parties hereto and evidenced in writing.

IN WITNESS WHEREOF THE, PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

SIGNED SEALED AND DELIVERED

For and on behalf of THE ULB by

(Signature)

(Name)

(Designation)

SIGNED, SEALED AND DELIVERED

For and on behalf of the Contractor by:

In the presence of.

- 1)
- 2)

HANDBACK GUARANTEE
(PROFORMA OF BANK GUARANTEE)

THIS DEED OF GUARANTEE executed on this the _____ day of _____ at _____ by _____ (Name of the Bank) having its Head/Registered office at _____ hereinafter referred to as “the Guarantor” which expression shall unless it be repugnant to the subject or context thereof include successors and assigns;

In favour of

[Insert the name of the ULB], represented by the Commissioner, having its office at *[insert address of the ULB]*, hereinafter referred to as “ULB”, which expression shall, unless repugnant to the context or meaning thereof include its administrators, successors or assigns.

WHEREAS

- A. By the Agreement entered into between ULB and _____, a company incorporated under the provisions of the Companies Act, 1956/firm having its registered office at _____ (“the Contractor”) the Company/firm had been granted the Concession to implement the Project, as defined under the Agreement mentioned hereinabove.
- B. In terms of Article 4.2 or 4.3 as the case may be, of the Agreement, the Contractor is required to furnish to ULB, an unconditional and irrevocable bank guarantee for an amount of Rs. _____ *[insert amount in figures and words]* as security for due and punctual performance/discharge of its obligations under the Agreement, relating to handback of the Project Facility.
- C. At the request of the Contractor, the Guarantor has agreed to provide guarantee, being these presents, guaranteeing the due and punctual performance/discharge by the Contractor of its obligations under the Agreement relating to handback of the Project Facility.

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS :

1. Capitalised terms used herein but not defined shall have the meaning assigned to them respectively in the Agreement.
2. The Guarantor hereby irrevocably guarantees the due and punctual performance by M/s. _____ (hereinafter called “the Contractor”) of all its obligations relating to handback of the Project Facility.
3. The Guarantor shall, without demur, pay to ULB sums not exceeding in aggregate Rs. _____ *[insert amount in figures and words]*, within five (5) calendar days of receipt of a written demand therefor from ULB stating that the Contractor has failed to meet its performance obligations relating to handback of the Project Facility. The Guarantor shall not go into the veracity of any breach or failure on the part of the Contractor or validity of demand so made by ULB and shall pay the amount specified in the demand notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Contractor or any other Person. The Guarantor’s obligations hereunder shall subsist until all such demands are duly met and discharged in accordance with the provisions hereof.

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4. In order to give effect to this Guarantee, ULB shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Agreement or other documents or by the extension of time for performance granted to the Contractor or postponement/non exercise/ delayed exercise of any of its rights by ULB or any indulgence shown by ULB to the Contractor and the Guarantor shall not be relieved from its obligations under this Guarantee on account of any such variation, extension, postponement, non exercise, delayed exercise of any of its rights by ULB or any indulgence shown by ULB, provided nothing contained herein shall enlarge the Guarantor's obligation hereunder.
 5. This Guarantee shall be irrevocable and shall remain in full force and effect until _____² unless discharged/released earlier by ULB in accordance with the provisions of the Agreement. The Guarantor's liability in aggregate be limited to a sum of Rs _____ [insert amount in figures and words].
 6. This Guarantee shall not be affected by any change in the constitution or winding up of the Contractor/the Guarantor or any absorption, merger or amalgamation of the Concessionaire/the Guarantor with any other Person.
 7. The Guarantor has power to issue this guarantee and discharge the obligations contemplated herein, and the undersigned is duly authorised to execute this Guarantee pursuant to the power
 - 8.
 9. granted under _____.

IN WITNESS WHEREOF THE GUARANTOR HAS SET ITS HANDS HEREUNTO
ON THE DAY, MONTH AND YEAR FIRST HEREINABOVE WRITTEN.

SIGNED AND DELIVERED

by _____ Bank

by the hand of Shri _____

its _____ and authorised official.

²12 months from the date of issue of the Handback Guarantee in accordance with Article 5.2 of the agreement
