

131



ଓଡ଼ିଶା ओडिशा ODISHA

10AA 341736

AGREEMENT

This Deed of Agreement is made on this 14th day of December 2020

BETWEEN

The Gangadhar Meher University, Sambalpur, Odisha, represented by its Registrar (hereinafter called "GMU" which expression shall unless repugnant to the context or meaning thereof, include its successor-in-interest and permitted assigns) of the **FIRST PARTY**.

AND

The Odisha State Police Housing & Welfare Corporation Ltd, for short, OPHWC, registered under the Companies Act, 1956 having its registered office at Bhoiagar, Janpath, Bhubaneswar represented by its Company Secretary, OSPH&WC, Bhubaneswar (hereinafter called "OPHWC" which expression shall unless repugnant to the context or meaning thereof, include its successor-in-interest and permitted assigns) of the **SECOND PARTY**.

WHEREAS, As per the Notification of Higher Education Department, Govt. of Odisha No.-HE-UNE-POLICY-0004-2020-17617/ H.E, Date:03.06.2020, "The Odisha State Police Housing and Welfare Corporation Limited (OPHWC)", a State

Girish Chandra Singh

1

REGISTRAR
GANGADHAR MEHER UNIVERSITY
SAMBALPUR

14.12.2020


Government Public Sector Undertaking under Administrative control of Home Department is the sole executing agency for all types of Civil and Electrical Infrastructure work (new work as well as repair/ renovation/ improvement/ maintenance work) of State Public Universities coming under administrative control of Higher Education Department of Odisha.

WHEREAS, The Registrar, the Gangadhar Meher University, Sambalpur, Odisha has requested OPHWC to take up new construction, repair & renovations works under World Bank & RUSA Grants in its Campus at Sambalpur.

1. That salient particulars of the project work are as follows: -
 - A. Detail of construction, repair & renovations works will be communicated by The Registrar, the Gangadhar Meher University, Sambalpur, Odisha from time to time.
 - B. Time period:
 - (i) Date of starting of the Work: the dates of work order for the particular project subject to availability free encumbrance land/ building.
 - (ii) Date of completion of the work: As per the date of issue of work order / hand over of free encumbrance of land whichever is later, with maximum 3 months extension.
 - C. Engineer-in-Charge (EIC) of the work: Project Manager or Jt. Manager & Dy. Manager, OPHWC
 - D. Authorized representative of the Gangadhar Meher University, Sambalpur, Odisha
2. That extension of time for completion of the project shall not be in any case more than 3 month(s) from the date of completion as per the work order issued subject to handover of site and other force majeure conditions.
 - 2.1. That, there shall be no escalation in the detailed estimated cost of the project when the extension is sought for by OPHWC during the agreed time period.
 - 2.2. If, however extension of time is required due to addition, alteration or extra item of work than, what is provided under the plan, the estimate for such additional and or extra item of work shall be as may be decided and or agreed upon by the parties to this agreement.
3. That the plan and revised estimate and the correspondences exchanged between the parties with regard to the project shall form a part of this agreement in order to ascertain the scope, ambit and meaning of the same.
 - 3.1. That it is further covenanted that the drawings, specifications, designs prepared, finalized and approved shall also form a part of this agreement.
4. That, OPHWC shall undertake the construction work of Building, Road, surface drainage and Electrification work etc. within the sanctioned or detailed estimated amount.

Girish Chandra Singh
REGISTRAR
GANGADHAR MEHER UNIVERSITY
SAMBALPUR
14.12.2020

1


Company Secretary & Jt. S.M. (Finance)
The Odisha State Police Housing
& Welfare Corporation Ltd.
Janapath, Bhubaneswar-22

(12A)

5. That, while OPHWC will undertake and supervise the work, the Gangadhar Meher University, Sambalpur, Odisha or their authorized representative will be at liberty to inspect the said work at site or with the help of a Team of Technical experts and shall record their comments in the "Site Order Book". The Site Order Book shall be maintained by OPHWC and the comments of the Gangadhar Meher University, Sambalpur, Odisha or their authorized representative or the team of experts shall be obtained therein duly verified and signed.
- 5.1. The comments of the Gangadhar Meher University, Sambalpur, Odisha / their authorized representative will be duly complied if within the norms of the plan, designs, estimate and specifications approved for the work.
6. That OPHWC shall execute various items of work as per the Bill of Quantities (BOQ) and the approved specifications. In the event of non-availability of specified quality and brand of the building material, OPHWC in consultation with the Gangadhar Meher University, Sambalpur, Odisha shall make alternative arrangement.
7. That the Gangadhar Meher University, Sambalpur, Odisha shall allow free ingress and egress of the servants/employees, sub-contractors and all other officials of the OPHWC to the site between 6:00 A.M to 6 :00 P.M on every day for execution of the work. the Gangadhar Meher University, Sambalpur, Odisha shall allow servants, employees and sub-contractors to work on site beyond the above stipulated working hours in writing, if required.
8. That the Gangadhar Meher University, Sambalpur, Odisha shall deposit the detailed estimated cost of the project with OPHWC in such installments/tranches as are indicated under the heading "Mode of Payment" as per Notification of Higher Education Department, Govt. of Odisha No.-HE-UNE-POLICY-0004-2020-17617/ H.E, Date:03.06.2020.
- 8.1. Utilization certificate on funds deposited as well as physical progress of the project will be submitted by the OPHWC within 10th day of every month after commencement of the work.
9. That if any constructional or structural defect is found by the Gangadhar Meher University, Sambalpur, Odisha in the project which is attributable to the deficiency of OPHWC within 1(one) year of the date of handing over the work, OPHWC shall rectify the same at its own cost.
10. That the Gangadhar Meher University, Sambalpur, Odisha shall be bound to take over the project building, completed in all respect within a fortnight from the date of intimation after depositing the balance dues failing which OPHWC shall not be responsible for watch and ward of the completed building.
11. That in the event of any dispute arising between the parties with regard to the interpretation of the terms and conditions of this agreement or purported failure or breach or meaning thereof, such dispute shall be referred to a sole arbitrator who shall be nominated by the Gangadhar Meher University, Sambalpur, Odisha from out of a panel of 3 names selected by the CMD, OPHWC. The panel shall be constituted of retired

Girish Chandra Singh
REGISTRAR 14.12.2020
GANGADHAR MEHER UNIVERSITY
SAMBALPUR

Secretary & Jt. G.M. (Finance)
Odisha State Police Ho
welfare Corpora... Ltd.

(28)

District Judge of Odisha. The arbitration shall be conducted at Bhubaneswar within the meaning and provisions of the Arbitration and Conciliation Act, 1996.

12. That, OPHWC shall execute the work strictly as per the drawings, specifications and designs prepared by the OPHWC and approved and finalized by the Gangadhar Meher University, Sambalpur, Odisha. If any change in the drawing and specification is made as per written suggestion of the Gangadhar Meher University, Sambalpur, Odisha, the quantity of work done to physical extent at the time of final measurement will be final and the final bill will be prepared accordingly. the Gangadhar Meher University, Sambalpur, Odisha will settle the extra dues of OPHWC as per the final bill.
13. That, during execution of the project, OPHWC will submit statement of expenditure as well as physical progress of the project to the Gangadhar Meher University, Sambalpur, Odisha who will monitor both physical and financial progress from time to time.
14. That, in the event of any problem of technical nature that may arise in the execution of the project, the same shall be mutually discussed and decided by the parties, notwithstanding the provisions of condition no.12.
15. That the OPHWC shall maintain accounts of the project to be retained in its office and furnish details of such accounts to the Gangadhar Meher University, Sambalpur, Odisha as and when required. Such accounts of expenditure incurred will be submitted to the Gangadhar Meher University, Sambalpur, Odisha within three months from the date of completion of the work.
16. That OPHWC shall be liable to pay for any damage caused to the project work on account of any imperfection or deficiencies pointed out by the Gangadhar Meher University, Sambalpur, Odisha within one year from the date of handing over the project in case such deficiencies are not rectified within the meaning of condition no.9 above.
17. That OPHWC shall submit final bill (in shape of revised estimate) incorporating the quantity of deviation or extra/substituted work during execution and adding the statutory increase of labour and tax rate, if any.
18. That the Gangadhar Meher University, Sambalpur, Odisha shall bear differential cost in case of cost escalation as per Government of Odisha Works Department guidelines from time to time and additional works executed during the course of construction over and above the approved estimated cost.
19. That the OPHWC shall not be liable for any damages to the structure due to natural calamities, force majeure, litigations or any other reason which is beyond the control of OPHWC.
20. **MODE OF PAYMENT:** (As per Notification of Higher Education Department, Govt. of Odisha No.- HE-UNE-POLICY-0004-2020-17617/H.E, Date:03.06.2020).

Girish Uandana Singh
REGISTRAR 14.12.2020
GANGADHAR MEHER UNIVERSITY
SAMBALPUR

3
[Signature]
Company Secretary & Jt. G.M. (Finance)
The Odisha State Police Housing
& Welfare Corporation Ltd.
Janapath, Bhubaneswar-22

12/1

1. The Corporation shall initiate execution of work after advance deposit of 33% of the Project cost by the University as first Installment.
2. The balance 67% should be released in two equal installments.
3. Release of 2nd and 3rd installments will be subject to submission of utilization certificate of at least 75% of the funds released earlier by the University.
- 20.1. Since time is the essence of the Contract, it is covenanted by the Gangadhar Meher University, Sambalpur, Odisha that it shall pay the amount as stipulated above timely and regularly at all stages indicated above. Failure to adhere to the mode and manner of payment will tantamount to a fundamental breach of the terms and conditions of the contract.
21. That OPHWC shall draw up a work programme of the project in consultation with the Gangadhar Meher University, Sambalpur, Odisha
22. That the Gangadhar Meher University, Sambalpur, Odisha reserves the right to close or terminate this agreement by a written notice of 1 (one) month in advance to OPHWC for breach of any conditions of the contract on or after payment and settlement of all dues.
- 22.1. That, similarly, OPHWC may also stop and abandon the project work upon service of a 1(one) month notice in advance if and when the Gangadhar Meher University, Sambalpur, Odisha commits neglect or default in making payment of the dues and does not adhere to the mode of such payment as outlined under clause 20.
23. That, OPHWC shall supply at its own cost all tools, plants, equipments, appliances like pumps, vibrator, concrete mixture, water tanker and the likes of it in the execution of the project. The source of water and Electricity will be provided by the 1st party.
24. That, OPHWC is obliged to step out of the project site once all its dues are paid and settled on completion of the project with all materials, equipment's men and machineries deployed at site.
25. That, in case of any deviation in the quantities of items of work beyond Bill of Quantities (BOQ), the same shall be brought to the notice of the Gangadhar Meher University, Sambalpur, Odisha
26. That, the deviation beyond contractual work value shall not be allowed unless and otherwise it is badly required to complete the project in all respect. In this case, prior approval is required which shall be finalized within 7 working days on the asking of it.
27. That, the Gangadhar Meher University, Sambalpur, Odisha shall provide adequate space for a site office and storage shed for storing materials by OPHWC at its own cost. No rent is chargeable for site office and storage shed.
28. That, the project cost of the above work is limited to the detailed estimated value which includes applicable GST and supervision charges. The Corporation will take supervision charges @ 8% of actual expenditure. In

Girish Chandra Singh
REGISTRAR 14/12/2020
GANGADHAR MEHER UNIVERSITY
CAMPUS PIR


receive additional incentive of 2% as per Notification of Higher Education Department, Govt. of Odisha No.-HE-UNE-POLICY-0004-2020-17617/ H.E, Date:03.06.2020.

100

29. That the Gangadhar Meher University, Sambalpur, Odisha University is responsible for selection of site, land acquisition and handing over of encumbrance free sites to OPHWC for execution of the project.
30. That, if, however, any delay arises for any cause or default of the Gangadhar Meher University, Sambalpur, Odisha in making payment in due time of any money payable under the work order, then further time shall be allowed to the Gangadhar Meher University, Sambalpur, Odisha for such purpose. The OPHWC shall charge escalation cost as per actual over and above the estimated cost if the completion of work is delayed due to reasons mentioned above. the Gangadhar Meher University, Sambalpur, Odisha shall also pay the escalation cost due to enhancement of statutory dues.
31. That, it has been agreed by both the parties that at least 33% out of the detailed estimated cost will be given to OPHWC as mobilization advances. Release of subsequent funds will be made by the Gangadhar Meher University, Sambalpur, Odisha to OPHWC in a phased manner as per requisition of OPHWC and considering the physical and financial progress as indicated under Clause no.20.
32. That OPHWC will furnish utilization certificate duly signed by F.A or Joint G.M(F) or any other officer authorized by CMD (in absence of F.A).
33. That OPHWC will submit final bill of the project within 6 months from the date of completion of the work.
34. That all the payments made to OPHWC by the Gangadhar Meher University, Sambalpur, Odisha shall be kept in a separate account and the interest incurred will be adjusted in the project at the later part. The advances so released shall be adjusted against the Utilization Certificate/final bill referred to above.
35. That the project in question shall be handed over and taken over after joint inspection of the parties of both the parts within a fortnight from the date of intimation by the party of the SECOND PARTY failing which the party of the SECOND PARTY shall not be responsible for watch and ward of the competed project.
36. **SURVIVAL**
 - A. Termination of this agreement shall not relieve the Gangadhar Meher University, Sambalpur, Odisha of any obligations devolved hereunder which expressly or by necessary implication survives termination hereof; and
 - B. Except as otherwise provided in any provisions of this agreement expressly limiting the liability of either party, shall not relieve either party of any obligations or liability for loss or damage to the other party arising out of or caused by acts or omissions of such party prior to the effective date of termination (Date of completion) or arising out of such termination.

Gireesh Chandra Singh
REGISTRAR 14.12.2020
GANGADHAR MEHER UNIVERSITY
SAMBALPUR

5


Company Secretary, P.O. GM (Finance)
The Odisha State Police Housing
& Welfare Corporation Ltd.
Janapath, Bhubaneswar-22

125

37. **AMENDMENTS**

The document, if any together constitute a complete and exclusive statement of terms and conditions of agreement between the parties on the subject hereof and no amendment or modification, alterations, additions hereto shall be valid and effective unless, agreed to by the parties and evidenced in writing.

38. **WAIVER**

A. Waiver by either party of any default by the other party in the observance and performance of any provision of or obligations of under this Agreement:

- i) Shall not operate or be construed as a waiver of any other or substitute default hereof or other provisions or obligations under this Agreement.
- ii) Shall not be effective unless it is in writing and executed by a duly authorized representative of such party; And
- iii) Shall not affect the validity and enforceability of this agreement in any manner.

B. Neither the failure by either party to insist on any occasion upon the performance of the terms, conditions and provisions of this agreement or any obligations there under nor time or indulgence granted by a party to the other party, shall be treated or deemed as a waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

39. **STEP OUT OBLIGATION**

Upon expiry of the contract/agreement which is inclusive of extended period, if any or termination thereof, the OPHWC shall handover the vacant and peaceful possession of the project, project site including site office and storage shed to the OWNER.

40. **EXCLUSION OF IMPLIED WARRANTIES**

This agreement expressly excludes any warranty condition or other undertaking implied by law or custom or otherwise arising out of any other agreement between the parties or any representation by any party not contained in a binding legal agreement executed by the parties.

41. **FORCE MAJEURE**

Any delay in or failure of performance by a PARTY shall not constitute default hereunder or give rise to any claims for damages against said PARTY if and to the extent caused by reasons which are beyond the control of the said PARTY, including but not limited to acts of God, statutory authorities,

Girish Chandra Singh
REGISTRAR 14.12.2020
GANGADHAR MEHER UNIVERSITY
SAMRAI DIH

(24)

strikes or other concerted acts of workman, power cuts, fires, floods, explosions, riots, war (declared or undeclared), rebellion, sabotage, extra ordinary severe weather, civil commotion and criminal acts of third parties.

Force Majeure means any act or event which wholly or partially prevents or delays the performance of obligations by either party of such act or event is not reasonably within the control of and not caused by the fault or negligence of the non-performing party.

If either party is wholly or partially unable to perform its obligations because of a Force Majeure event that party shall be excused from whatever performance is affected by the Force Majeure event to the extent so affected provided that:

- i) Non performing party gives a written notice to the other party of the occurrence of the Force Majeure event immediately on its occurrence and in any case within a period of 15 (fifteen) days of the occurrence. Further, regular reports indicating the position will be furnished by the non-performing party to the other during Force Majeure.
- ii) Non-performing party shall make all reasonable efforts to continue to perform its obligation herewith.
- iii) Suspension of performance shall be limited to that aspect of performance which is affected by Force Majeure and shall be of no greater magnitude or duration than that imposed by Force Majeure.

42. **SEVERABILITY**

If for any reason whatsoever any provision of this Agreement becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, then the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the parties will negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions as early as practicable.

IN WITNESS WHEREOF the parties of the first party and the other party hereby subscribe their hands this 14th day of December, 2020 as above written.

FIRST PARTY

Girish Chandra Singh
REGISTRAR
GANGADHAR MEHER UNIVERSITY
Gangadhar Meher University,
Sambalpur, Odisha

Govt. of Odisha

WITNESS

1. *Uma Charan Patra*
Dt. Registrar
G. M. Meher University, Sambalpur
DEPUTY REGISTRAR
GANGADHAR MEHER UNIVERSITY
SAMBALPUR

SECOND PARTY

[Signature]
Represented by its Company
Secretary, The Odisha State Police
Housing & Welfare Corporation
Limited, Bhubaneswar

2. *[Signature]*
(S. Bhaskaran)
Project Manager (Engg.)
OSPH&WC, Sambalpur Division