



October 25, 2016

To Whom It May Concern:

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### **Notice Regarding the Filing of an Incidental Appeal**

This is to notify that Sumitomo Heavy Industries, Ltd. (hereinafter referred to as “the Company” or “SHI”) has filed an incidental appeal in response to the appeal by the City of Kyoto (hereinafter referred to as “the City”). The appeal by the City was filed with the Osaka High Court on June 10, 2016, regarding the District Court’s decision on the City’s lawsuit against the Company, which was previously disclosed in the “Notice Regarding the Filing of a Lawsuit (Appeal) Against the Company”, dated July 15, 2016.

#### **1. Historical Background of the Incidental Appeal**

- (1) On March 18, 2005, the Company and the City entered into a construction contract (hereinafter referred to as the “Contract”) relating to the “Plant/Equipment Installation for the Kyoto City Incinerated Ash Melting Facility (Provisional Name) Construction Works”.
- (2) During the construction of the Incinerated Ash Melting Facility, several defects were discovered. At that point, the Company commenced a full-scale inspection of the facility, reviewed different corrective measures based on the results of the inspection, and received approval from the City to carry out such measures. Moreover, in July 2012, the Company and the City agreed to extend the project handover date to August 13, 2013 in order to provide enough time to implement these corrective measures.
- (3) The first trial run was completed in June 2013. At the same time, the works passed the first phase performance verification tests. Through this, the Company was able to confirm that the performance of the facility was satisfactory.
- (4) In the same month, the second trial run was carried out. At this time, it was discovered that un-melted residue (dust) was accumulating at the point where the slag from the melting furnace and un-melted waste is separated.
- (5) The Company submitted a report that analyzed the reasons for this problem as well as outlined corrective measures to the City and requested that it be allowed to implement such measures and re-commence commissioning activities. However, the “Performance Evaluation Committee” which was set up by the City, which comprises of technical staff and experts, concluded that it was not able

to verify the effectiveness of such measures and denied the Company's request.

- (6) While not approving the Company's request to implement corrective measures and re-commence commissioning activities, in August 2013 the City announced that handover of the project would not be made before the deadline and moved to terminate the Contract on the 5th of August (since a full month of operations is required to complete the second trial run, unless such activities commence on the 1st of the month, it would be impossible to handover the project prior to the deadline).
- (7) However, in the Contract there is no stipulation that requires that a "Performance Evaluation Committee" verify the effectiveness of any corrective measure. Of course, as the project principal, the City has the right to make its opinions as needed basis during the performance of the Contract and also to establish a "Performance Evaluation Committee" to review any corrective measures proposed by the Company. The Company also worked hard to incorporate the requests and wishes of the City as much as possible during the performance of the Contract. Nonetheless, SHI feels strongly that the project handover date should have been extended in line with the time required for the "Performance Evaluation Committee" to complete their review.
- (8) Moreover, the project handover could have been completed by the deadline, if the simple and easy-to-implement corrective measures proposed by the Company had been carried out.
- (9) In the Contract, there is a stipulation that states that if there are any disputes between the City and the Company regarding the performance of the Contract, a resolution will be sought out via mediation or conciliation through the Committee for the Adjustment of Construction Work Disputes as outlined in the Construction Industry Act. In accordance with this clause, on December 26, 2013, the Company submitted a conciliation request to the Central Committee for the Adjustment of Construction Work Disputes in regards to this dispute. However, the City stood firm on its stance to say that resolution via conciliation is not possible unless the Company abdicate the conciliation claim and responds favorably to its claim for compensation. Further, the City filed the lawsuit against the Company on March 20, 2014 without showing any posture to solve the dispute via conciliation.
- (10) Conciliation by the Central Committee for the Adjustment of Construction Work Disputes was terminated on July 31, 2014 because the City refused to participate in the conciliation.
- (11) The Company attempted to commence the second trial run for the plant that was almost complete, but the City refused to allow it, and the Company was thus prevented from carrying out one of the final steps of the Contract. As such, the Company still retains the right to claim payment for the outstanding balance of the Contract. The Company has filed the counterclaim against the City claiming payment for the outstanding balance of the Contract.
- (12) On May 27, 2016, the District Court of Kyoto (the court of first instance) rendered a decision dismissing all of the City's claims along with SHI's counterclaim.
- (13) On June 10, 2016, the City disagreed with the decision to dismiss the claims and filed an appeal with the Osaka High Court.

## 2. Court Where the Incidental Appeal is Pending and the Date of the Incidental Appeal

Osaka High Court, October 25, 2016

### 3. Adverse Party to the Incidental Appeal

- (1) Name: The City of Kyoto
- (2) Address: 488 Kami-Honnoji-Mae-Cho, Oike-agaru, Teramachi-dori, Nakagyo-ku, Kyoto city, Kyoto, Japan
- (3) Name of Representative: Mr. Daisaku Kadokawa, Mayor of the City of Kyoto

### 4. Details of the Incidental Appeal and the Amount of the Claims

- (1) The Company requests the revocation of those parts of the decision in the first instance that dismissed the Company's counterclaim and determined the Company should bear all court costs incurred as a result of the Company's counterclaim.
- (2) The Company requests that the City pay the outstanding balance of the Contract in the amount of JPY 1,398,637,000 and the 3% per annum delinquency charge for the period from December 28, 2013 until the payment is made.
- (3) The Company requests that the City bear all court costs of the first and the second instances incurred as a result of the Company's counterclaim.

### 5. Future Outlook

In the appellate proceedings, SHI continues to assert the validity of its assertions. If an event that requires disclosure does occur during the appellate proceedings in the future, SHI will provide a notification as soon as possible.

END

<References: Material made available to the public in the past>

- <http://www.shi.co.jp/english/info/2013/6kgpsq0000001jv0-att/6kgpsq0000001jvi.pdf>
- <http://www.shi.co.jp/english/info/2013/6kgpsq0000001jy0-att/6kgpsq0000001jyi.pdf>
- <http://www.shi.co.jp/english/info/2013/6kgpsq0000001kg0-att/6kgpsq0000001kgi.pdf>
- <http://www.shi.co.jp/english/info/2013/6kgpsq0000001ko0-att/6kgpsq0000001koi.pdf>
- <http://www.shi.co.jp/english/info/2014/6kgpsq0000001kw0-att/6kgpsq0000001kwi.pdf>
- <http://www.shi.co.jp/english/info/2014/6kgpsq0000001lj0-att/6kgpsq0000001lji.pdf>
- <http://www.shi.co.jp/english/info/2016/6kgpsq0000001nua-att/6kgpsq0000001nus.pdf>
- <http://www.shi.co.jp/english/info/2016/6kgpsq0000001nz0-att/6kgpsq0000001nzi.pdf>