ROADS AND FLEET MANAGEMENT DEPARTMENT

TENDER NO. KWS/OT/RMLF/22/2020-2021

REHABILITATION AND PERFORMANCE BASED MAINTENANCE OF JUNCT D448-MT KENYA PHQS ROAD E606/ SIRIMON GATE-OLD MOSES ROAD UNCL MTK 3/ PARK HQS-MET STATION UNCL MTK 1/ KALALU FARM- SIRIMON GATE UNCL MTK 2

IN

MT. KENYA NATIONAL PARKS

NOVEMBER 2020

(Open to All)

HEAD, ROADS AND FLEET MANAGEMENT, KENYA WILDLIFE SERVICE, P.O.BOX 40241, NAIROBI	DIRECTOR GENERAL, KENYA WILDLIFE SERVICE, P.O.BOX 40241. NAIROBI

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Abbreviations and Acronyms

KWS	Kenya Wildlife Service
MoTIHUD	Ministry of Transport, Infrastructure, Housing and Urban Development
GCC	General Conditions of Contract
ITT	Introduction to Tenderers
M&T	Mechanical and Transport Division, MOTIHUD
PCC	Particular Conditions of Contract
STD	Standard Tender Document
PPRA	Public Procurement Regulatory Authority
ISO	International Organization for Standardization
JV	Joint Venture
NCA	National Construction Authority
GPN	General Procurement Notice
PBC	Performance Based Contract
PE	Procuring Entity
QCBS	Quality and Cost Based System
ROP	Reference Optimal Price
ETP	Evaluated Tender Price
No.	Number

Important Notice to Tenderers

1) This is PBC Tendering Document and has been prepared for the Procurement of Works under Performance Based Unit Rate Based Road Maintenance type of Contract. The contract covers an array of activities needed to achieve and maintain a Specified Service Level for road users, including many activities related to the **Management and Maintenance** (including Routine maintenance, spot improvement, emergency works and Periodic Maintenance) of the road network under contract.

2) This Standard Tender Document (STD) for Procurement of Road Maintenance Works under Performance Based Term Contract has been prepared for use by Procurement Entities in Kenya in the procurement of road maintenance works. Exclusive preference shall be given to citizen contractors using open tendering methods where the amounts are below the threshold set out in the Public Procurement and Disposal Act, 2015 and its attendant Regulations. Otherwise, any tender shall be through International Competitive Tendering (ICB) and National Competitive Tendering (NCB) procedures without discrimination.

3) In the Performance Based Contract (PBC), contractors compete among each, other during the tendering process, by essentially proposing fixed lump-sum prices for bringing the road to required service level and then maintaining it at that level for a specified period. Payments made to the contractors are not based on quantities of works measured by unit prices for works "inputs" or physical works, but on measured 'outputs' reflecting the specified and target conditions of the roads under contract. This is expressed through '**Service Levels'**, i.e., the Rehabilitation of the road to pre-defined standards (as required by the tendering documents), the maintenance service of ensuring specific Service Levels on the roads under contract, and specific improvements (as required by the tendering documents). All this represents outputs or outcomes. A monthly lump-sum remuneration paid to the Contractor will cover all physical and non-physical maintenance services provided by the Contractor, except for unforeseen emergency works which are remunerated separately as opposed to **traditional road construction and maintenance contracts, where** the Contractor is responsible for the execution of works which are normally defined by the Employer. The Contractor is paid on the basis of unit prices for different quantities of measured work items, i.e. a contract based on "inputs" to the works.

   For example, the contractor is not paid for removing 2 cubic metres of silt from a culvert (his actual work input) in a certain month, but for keeping the culvert clean and free of silt at all times (the output of his efforts). This means that in some months the Contractor will be paid the agreed standard monthly lump sum amount even though much work has not been done. In other words, it is possible that during some months, the contractor will have to carry out a rather large amount of physical works in order to comply with the required Service Levels and very little work during other months.

   The agreed monthly payment for maintenance works and services will be made to the Contractor if he has complied, during the month for which the payment is to be made, with the agreed Service Levels on the road network under contract. Together with his monthly invoice, the Contractor will report the result of his own evaluation of compliance with the required Service Levels, based on his own monitoring system which is mandatory. His statement will then be verified by the Employer or his representative (supervision consultant) through inspections. If the Service Levels are not met, payments are reduced, based on a schedule given in the contract. Payments may even be suspended, and the contract cancelled, if the contractor fails during an extended period to achieve specified minimum thresholds values of Service Levels. **This contract describes the formulas used to calculate payment reduction and potential contract suspensions.**

4) The unit rate based term contract on the hand include:
   a) Carrying out **Rehabilitation Works** to bring the Road up to pre-defined standards.
   b) **Improvement Works** specified by the Employer aiming at adding new characteristics to the Roads in response to new traffic, safety or other conditions.

c) **Emergency Works** needed to reinstate the Roads after damage has occurred as a result of natural phenomena with imponderable consequences under the conditions defined in the contract.

d) The Rehabilitation and Improvement Works which have been explicitly specified by the Employer in the contract are quoted on the basis of measurable output quantities and paid as performed. In order to be entitled to the monthly payment for maintenance services, the Contractor must ensure that the roads under contract comply with the Service Levels which have been specified in the tendering document.

5) When improvement, rehabilitation or emergency works are required, a well-designed bill of quantities defining specific outputs for tenderers to price and, later on, allow measurement and payment of the Contractor is provided. Emergency works, although impossible to quantify in advance, will occasionally be necessary. To allow tenderers to offer prices for Emergency Works, a unit price bill of quantities (similar for civil works under unit prices) / shall be prepared for tenderers to price for tender evaluation purposes. Later on, these unit prices and real measured volumes of Emergency Works executed will be used for payments.

6) Another major difference is that the Contractor is responsible for deciding on the works necessary to reach the required Service Levels, and the durability and performance of the roads over a longer period. Although the design of the Rehabilitation, Improvement and Emergency works to be carried out is under the responsibility of the Employer, a good preparatory engineering work is required to be prepared by the Contractor for the design produced by him and programming of the Works and Maintenance services. It is necessary to prepare comprehensive information on the actual condition of the roads covered by the contract.

7) Minimum road conditions and Service Levels are defined through service-level and performance measures, and these are used under the PBC to define and measure the desired performance of the Contractor. In the PBC, the defined performance measures are thus the accepted minimum thresholds for the quality levels of service on the roads for which the Contractor is responsible.

8) The performance criteria will cover all aspects of the contract and take account of the fact that different sub-areas within the contract area might require different measures of Service Levels. Criteria has been defined at three different service categories (although simpler contracts will not use all of the categories identified below)

(a) **Road Usability** measures,
(b) **Road User Comfort** measures,
(c) **Road Durability** measures,

9) A fundamental feature of the PBC is that any type of firm or business venture having the necessary technical, managerial and financial capacity to fulfill the contract is eligible and not necessarily the traditional works contractor. In any case, as stipulated in the Conditions of Contract, the contractor is responsible for designing and carrying out the works, services and actions he believes are necessary in order to achieve and maintain the Service Levels stated in the contract. The Service Levels are defined from a road user's perspective and may include factors such as average travel speeds, riding comfort, safety features, etc. If the Service Level is not achieved in any given month, the payment for that month may be reduced or even suspended.

10) Under the Performance based Contract (PBC), the Contractor has a strong financial incentive to be both efficient and effective whenever he undertakes work. In order to maximize profits, he is able to reduce his activities to the smallest possible volume of intelligently designed interventions, which nevertheless ensure that pre-defined indicators of Service Level are achieved and maintained over time. This type of contract makes it necessary for the Contactor to have a good management capacity. Here, "management" means the capability to define, optimize and carry out on a timely basis the physical interventions which are needed in the short, medium and long term. This is done in order to guarantee that the roads remain above the agreed Service Levels. In other words, within the contract limitations and those required to

comply with local legislation, technical and performance specifications and environmental and social regulations, the Contractor is entitled to independently define: (i) what to do, (ii) where to do it, (iii) how to do it, and (iv) when to do it. The role of the Road Administration and of the Employer is to enforce the contract by verifying compliance with the agreed Service Levels and with all applicable legislation and regulations.

11) Maintaining a road network includes both **routine** and **periodic** tasks. Routine maintenance consists of many different tasks frequently necessary to maintain the function of the road (such as pothole repairs, cleaning of drainage, sealing of cracks, cutting of vegetation, road marking, etc.). Periodic maintenance consists of predictable and more costly measures of a less frequent nature designed to avoid road degradation (such as grading, drainage work, resurfacing, asphaltic concrete overlays, etc.). Intelligent management, the timeliness of interventions and the adequacy of technical solutions are critical.

When Rehabilitation Works and Improvement Works are not specifically required in the tendering documents, it is expected that in order to comply with the contract, the Contractor will most likely have to carry out different types of works, including some small initial rehabilitation and improvements, routine maintenance activities and periodic maintenance works. The definition of the exact nature of the works, their timing, their costing and their implementation is left to the judgment of the Contractor. This means that his capacity must be above the usual capacity of a traditional civil works contractor. In fact, an essential attribute is the capacity to manage roads, while the actual physical execution may either be carried out by the Contractor himself, or by different specialized firms participating in a Joint Venture with the main contractor, or under subcontracts. Joint Ventures may include Engineering firms and medium, small and even micro-enterprises.

Tenderers will present their financial offer as appropriate for:

- the Performance Based **Maintenance Services** in the form of the amount of the monthly lump-sum payment demanded by the tenderer according to the conditions of contract (this will be a monthly amount applicable throughout the duration of the contract);
- the **Rehabilitation Works** (if so required in the Appendix to ITT), in the form of a lump-sum amount, while indicating the quantities of measurable outputs to be executed in order that the road achieves the performance standards specified in the tendering documents. Payments will be made in accordance with the progress in the execution of those measured outputs;
- the **Improvement Works** (if so required and for the improvements indicated in the tendering documents) in the form of unit prices for outputs of each type of improvement works; payments for improvements will be made in accordance with quoted unit prices for those outputs; and
- Unit prices for **Emergency Works** in the form of a traditional bill of quantities. Payments will be made for each emergency on a case-by-case basis, in the amount of a lump-sum value estimated by the Contractor and approved by the Employer, on the basis of the estimated quantities and on the quoted unit process.

12) Another important aspect in the Performance type of contract is for the contractor and Employer to enter into a long-term relationship whereby the contractor takes over more responsibility for managing the condition of the road and is rewarded by a longer term contract than is traditional; sometimes several years.

13) In case of any conflict between the provisions outlined in this standard tender document and The Public Procurement and Disposal Act, 2015 and its attendant Regulations 2006, the latter shall prevail.

PART 1: TENDERING PROCEDURES

SECTION I: INVITATION FOR TENDERS

INVITATION FOR TENDER

Tender Reference No. KWS/OT/RMLF/22/2020-2021

Tender Name: REHABILITATION AND PERFORMANCE BASED MAINTENANCE OF JUNCT D448-MT KENYA PHQS ROAD E606/SIRIMON GATE-OLD MOSES ROAD UNCL MTK 3/PARK HQS-MET STATION UNCL MTK 1/KALALU FARM- SIRIMON GATE UNCL MTK

Kenya Wildlife Service now invites eligible contractors to bid for the Works. Eligible contractors are those registered as road works contractors by the National Construction Authority (**NCA) Category 5,4,3,2, or 1 with current practicing license** for the maintenance work for the above roads in the **Mt Kenya National Park**. The works are to be funded through the Fuel Levy Fund (RMLF).

SCOPE OF WORK

The scope of works shall be as described in the tender document.

QUALIFICATION FOR TENDERING MANDATORY REQUIREMENTS

Eligible bidders must also submit the following among other eligibility requirements listed in the instruction to bidders;

i) Certified Copy of Certificate of Incorporation/Business Registration name under the Companies Act.

ii) A certified current copy of form CR12 for limited companies issued by the Registrar of Companies that clearly indicates the ownership of the companies (not older than 12 months).

iii) Copy of a valid Tax Compliance Certificate from Kenya Revenue Authority (K.R.A) as at the date of tender opening.

iv) Valid current annual NCA practicing license for each specified category.

v) A declaration that the bidder will not engage in any corrupt or fraudulent practice.

vi) A declaration that the bidder or her sub-contractors are not debarred from participating in procurement proceedings by Public Procurement Regulatory Authority (PPRA).

vii) Original Tender Security of **KES 550,000.** The tender security shall be ***issued*** in Kenya shillings or a freely convertible currency and in the form of bank guarantee or an insurance guarantee from insurance companies approved by PPRA / deposit taking microfinance institutions, SACCO societies, Youth Enterprise Development Fund or Women Enterprise Development Fund.

viii) The Tender Security shall be in the **standard format** provided in the tender document and valid for a period of 120 days from the date of tender opening.

ix) Bidders and their respective Directors shall bid for only ONE tender under the Tender Notice, and whoever does not heed these instructions shall be disqualified.

x) Bidders and their respective Directors having ongoing works with KWS that have not been substantially completed will not be eligible for bidding in this tender and will be disqualified.

xi) The bidders shall comply with all the instructions of the tender and submit a complete set of tender document as per the Instruction to bidders Clause 9.1 and also ensure that all the forms required are properly filled for completeness.

xii) All the pages of bid document **MUST** be sequentially serialized from the first page to the last. Bidders who fail to comply with this criterion will be disqualified.

Schedule of Roads Tenders and Tender documents containing detailed specifications can be downloaded for free at our website; www.kws.go.ke.

Communication in regard to the tender must be in writing through email address: hps@kws.go.ke.

All clarifications and/or amendments will be published in KWS website and tenderers are required to check for any addendums or amendments in the course of the bidding period prior to the closing date.

The complete tenders enclosed in sealed envelopes clearly marked with the appropriate **Tender Number and Road Name** shall be addressed to:

Director General,
Kenya Wildlife Service,
KWS, Headquarters, Langata Road,
P. O. Box 40241-00100,
NAIROBI, KENYA

and deposited in the Tender Box on Ground Floor, Main Reception on or **before 10.00 am on Monday 30th November, 2020.**

Opening of the Tenders will take place immediately thereafter in the KWS Conference Room in the presence of bidders' representatives who wish to attend

DIRECTOR GENERAL

SECTION II: INSTRUCTIONS TO TENDERERS

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GENERAL

1. Definitions

(a) "Tenderer" means any persons, partnership firm or company submitting a sum or sums in the Bills of Quantities in accordance with the Instructions to Tenderers, General Conditions of Contract, Particular Conditions of Contract, Specifications, Drawings and Bills of Quantities for the work contemplated, acting directly or through a legally appointed representative.

(b) "Approved tenderer" means the tenderer who is approved by the Procuring Entity

(c) Any noun or adjective derived from the word "tender" shall be read and construed to mean the corresponding form of the noun or adjective "tender". Any conjugation of the verb "tender" shall be read and construed to mean the corresponding form of the verb "tender."

(d) "Procuring Entity" means a Central Government Ministry, Local Authority, State Corporation or any other Public Institution.

(e) "corrupt practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;

(f) "fraudulent or collusive practice" is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;

2. Scope of Works

2.1. The Procuring Entity, as indicated in the Appendix, wishes to receive tenders for the Performance Based Road Maintenance services and Works as specified in the Appendix.

2.2. The extent of Works and Services under this tender will cover the Roads as indicated in the Appendix.

2.3. The successful Tenderer will be expected to complete the Works within the period stated in the Appendix from the date of commencement of the Works.

3. Eligibility and Qualification Requirements

3.1. Eligibility requirements

3.1.1. This invitation to tender is open to all tenderers who are legally registered or incorporated in the Republic of Kenya as of the time of Tender submission.

3.1.2. Mandatory registration with Annual practising licence with the National Construction Authority (NCA) as a contractor under category specified in the Invitation To Tender.

3.1.3. Tenderers shall not have a conflict of interest. Tenderers shall be considered to have conflict of interest, if they participated as a consultant in the preparation of the design, documentation or technical specifications of the works that are the subject of this bidding other than as far as required by the Procuring Entity.

3.2. Qualification Requirements

To be qualified for award of Contract, the tenderer shall provide evidence satisfactory to the Procuring Entity of their eligibility under Sub clause 3.1. above and of their capability and adequacy of resources to effectively carry out the subject Contract. To this end, the tenderer shall be required to update the following information already submitted during prequalification and as highlighted in the Appendix to Instruction to bidders:-

(a) Mandatory registration documents:

i. Certified copy of Certificate of incorporation /Business Registration

ii. Certified copy of Registration Certificate with National Construction Authority in Category specified in the appendix.
iii. Copy of valid Tax compliance certificate
iv. Certified copy of Certificate of registration for access to government procurement opportunities, from National Treasury or County Government, for women, youth and persons living with disability [where applicable]

(b) Details of experience and past performance of the tenderer on the works of a similar nature and details of current work on hand and other contractual commitments. Tenderers with a history of non-performance (termination of contracts in last two years) will be disqualified.
(c) The qualifications and experience of key personnel proposed for administration and execution of the contract, both on and off site.
(d) Major items of construction plant and equipment proposed for use in carrying out the Contract. Only reliable plant in good working order and suitable for the work required of it shall be shown on this schedule. The tenderer will also indicate on this schedule when each item will be available on the Works. Included also should be a schedule of plant, equipment and material to be imported for the purpose of the Contract, giving details of make, type, origin and CIF value as appropriate.
(e) Details of sub contractors to whom it is proposed to sublet any portion of the Contract and for whom authority will be requested for such subletting in accordance with clause 12 of the GCC.
(f) Methodology and Program of Works in the form of a bar chart and Schedule of Payment which shall form part of the Contract if the tender is accepted. Any change in the Program or Schedule shall be subjected to the approval of the Engineer.
(g) Details of any current litigation or arbitration proceedings in which the tenderer is involved as one of the parties.
(h) Financial information including audited accounts, financial statements and lines of credit.

3.3. **Joint Ventures**

Tenders submitted by a joint venture of two or more firms as partners shall comply with the following requirements:-

(a) The tender, and in case of a successful tender, the Form of Agreement, shall be signed so as to be legally binding on all partners.
(b) One of the partners shall be nominated as being in charge, and this authorization shall be evidenced by submitting a power of attorney signed by legally authorized signatories of all the partners
(c) The partner in charge shall be authorized to incur liabilities and receive instructions for an on behalf of any and all partners of the joint venture and the entire execution of the Contract including payment shall be done exclusively with the partner in charge.
(d) All partners of the joint venture shall be liable jointly and severally 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 Form of Tender and the Form of Agreement (in case of a successful tender)
(e) A copy of the agreement entered into by the joint venture partners shall be submitted with the Tender.

4. Cost of Tendering

4.1. The Tenderer shall bear all costs associated with the preparation and submission of his tender and the Procuring Entity will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.

4.3. The Procuring Entity shall allow the tenderer to view the tender document free of charge before purchase.

5. Site Visit

5.1. The tenderer is advised to visit and examine the Site and its surroundings and obtain for himself on his own responsibility, all information that may be necessary for preparing the tender and entering into a contract. The costs of visiting the Site shall be the tenderer's own responsibility

5.2. The tenderer and any of his personnel or agents will be granted permission by the Procuring Entity to enter upon premises and lands for the purpose of such inspection, but only upon the express condition that the tenderer, his personnel or agents, will release and indemnify the Procuring Entity from and against all liability in respect of, and will be responsible for personal injury (whether fatal or otherwise), loss of or damage to property and any other loss, damage, costs and expenses however caused, which but for the exercise of such permission, would not have arisen.

5.3 The Procuring Entity shall organize a site visit at a date as indicated in the Appendix. A representative of the Procuring Entity will be available to meet the intending tenderers at the Site. Tenderers must provide their own transport. The representative will not be available at any other time for site inspection visits.

5.4 Each tenderer shall complete the Certificate of Tenderer's Visit to the Site, whether he in fact visits the Site at the time of the organized site visit or by himself at some other time.

TENDER DOCUMENTS

6. Tender Documents

6.1. The Tender documents comprise the documents listed here below and should be read together with any Addenda issued in accordance with Clause 8 of these instructions to tenderers.

a. Form of Invitation for Tenders
b. Instructions to Tenderers
c. Appendix to Instruction to Tenderers
d. Form of Tender
e. Appendix to Form of Tender
f. Form of Tender Security/ Tender Securing Declaration Form
g. Form of performance security
h. Form of Power of Attorney
i. Form of Contract Agreement
j. Statement of Foreign Currency Requirements
k. Confidential Business Questionnaires
l. Details of Sub contractors
m. Schedules of Supplementary Information
n. General Conditions of Contract (GCC)
o. Particular Conditions of Contract (PCC)
p. Specifications
q. Bills of Quantities
r. Drawings
s. Declaration Form
t. Tender Addenda (Tender notices)

6.2. The tenderer is expected to examine carefully all instructions, conditions, forms, terms, specifications and drawings in the tender documents. Failure to comply with the requirements for tender submission will be at the tenderer's own risk. Pursuant to clause 23 of Instructions to Tenderers, tenders which are not substantially responsive to the requirements of the tender documents will be rejected.

6.3. All recipients of the documents for the proposed Contract for the purpose of submitting a tender (whether they submit a tender or not) shall treat the details of the documents as "private and confidential".

7. Inquiries by tenderers

7.1. A tenderer making an inquiry relating to the tender document may notify the Procuring Entity in writing as specified in the Invitation to Tender. The Procuring Entity will respond in writing to any request for clarification which he receives earlier than 7 days prior to the deadline for the submission of tenders.

Written copies of the Procuring Entity's response (including the query but without identifying the source of the inquiry) will be sent to all prospective tenderers who have purchased/downloaded the tender documents.

7.2. The Procuring Entity shall reply to any clarifications sought by the tenderer within 3 days of receiving the request to enable the tenderer to make timely submission of its tender.

8. Amendment of Tender Documents

8.1. At any time prior to the deadline for submission of tenders the Procuring Entity may, for any reason, whether at his own initiative or in response to a clarification requested by a prospective tenderer, modify the tender documents by issuing Addenda.

8.2. Any Addendum will be notified in writing or by e-mail to all registered prospective Tenderers who have purchased/downloaded the Tendering documents and will be tendering upon them. Prospective Tenderers shall promptly acknowledge receipt of each Addendum in writing or by e-mail to the Procuring Entity.

8.3. In order to allow prospective tenderers reasonable time in which to take the Addendum into account in preparing their tenders, the Procuring Entity may, at his discretion, extend the deadline for the submission of tenders.

PREPARATION OF TENDERS

9. Language of Tender

9.1. The tender and all correspondence and documents relating to the tender exchanged between the tenderer and the Procuring Entity shall be written in the English language. Supporting documents and printed literature furnished by the tenderer with the tender may be in another language provided they are accompanied by an appropriate translation of pertinent passages in the above stated language. For the purpose of interpretation of the tender, the English language shall prevail.

10. Documents Comprising the Tender

10.1. The tender to be prepared by the tenderer shall comprise of the Technical and Financial proposal: All forms SHALL be duly filled and signed. Any alterations made in the tender document must be countersigned.

10.1.1. The Technical proposal shall comprise of the following documents;

i. Tender Security /Tender Securing Declaration Form
ii. the information on eligibility and qualification in accordance to Clause 3.2
iii. any other none price information required to be completed and submitted in accordance with the Instructions to Tenderers.

10.1.2. The Financial Proposal shall comprise of the following documents;

i. Form of Tender and Appendix to Form of Tender,
ii. the Priced Bills of Quantities
iii. Schedule of basic rates

10.2. The Forms, Bills of Quantities and Schedules provided in the tender documents shall be used without exception (subject to extensions of the schedules in the same format and to the provisions of clause 14.1 regarding form of Tender Security).

11. Tender Prices

11.1. Unless explicitly stated otherwise in the Tendering documents, the contract shall be for the whole works as described in Sub-Clause 2.2, based on the basic unit rates and prices in the Bill of Quantities submitted by the Tenderer.

11.2. The Tenderer shall fill in rates and prices for all items of Works described in the Bills of Quantities, whether quantities are stated or not. Items against which no rate or price is entered by the tenderer will

not be paid for by the Employer when executed and shall be deemed covered by the rates for other items and prices in the Bills of Quantities.

11.3. All duties, taxes (including VAT) and other levies payable by the Contractor, or for any other cause shall be included in the rates and prices and the total tender prices submitted by the tenderer.

11.4. A price or rate shall be entered in indelible ink against every item in the Bills of Quantities with the exception of items which already have Prime Cost or Provisional sums affixed thereto. The Tenderers are reminded that no "nil" or "included" rates or "lump-sum" discounts will be accepted. The rates for various items should include discounts if any. Tenderers who fail to comply will be disqualified.

11.5. The rates and prices quoted by the Tenderer are subject to adjustment during the performance of the contract in accordance with the provisions of Clause 48 in the GCC.

11.6. Where contract variation is allowed, the variation shall be as provided for in the Public Procurement and Asset Disposal Act and subsidiary regulations.

12. Currencies of Tender and Payment

12.1. Tenders shall be priced in Kenya Shillings and the tender sum shall be in Kenya Shillings.

12.2. Tenderers are required to indicate in the Statement of Foreign Currency Requirements, which forms part of the tender, the foreign currency required by them. Such currency should generally be the currency of the country of the tenderer's main office. However, if a substantial portion of the tenderer's expenditure under the Contract is expected to be in countries other than his country of origin, then he may state a corresponding portion of the contract price in the currency of those other countries. However, the foreign currency element is to be limited to two (2) different currencies and a maximum of 30% (thirty percent) of the Contract Price.

12.3. The rate or the rates of exchange used for pricing the tender shall be the selling rate or rates of the Central Bank ruling on the date thirty (30) days before the final date for the submission of tenders.

12.4. Tenderers must enclose with their tenders, a brief justification of the foreign currency requirements stated in their tenders.

13. Tender Validity

13.1. The tender shall remain valid and open for acceptance for a period of one twenty (120) days from the specified date of tender opening or from the extended date of tender opening (in accordance with clause 8.3 here above) whichever is the later.

13.2. In exceptional circumstances prior to expiry of the original tender validity period, the Procuring Entity may request the tenderer for a specified extension of the period of validity. The request and the responses thereto shall be made in writing or by cable, telex or facsimile. A tenderer may refuse the request without forfeiting his Tender Security. A tenderer agreeing to the request will not be required nor permitted to modify his tender, but will be required to extend the validity of his Tender Security correspondingly.

14. Tender Security

14.1. The tenderer shall furnish as part of his tender, a Tender Security in the amount and form stated in the Appendix.

14.2. The Tender Security shall be valid at least thirty (30) days beyond the tender validity period and beyond any period of extension subsequently requested under Sub-Clause 13.2."

14.3. Any tender not accompanied by an acceptable Tender Security will be rejected by the Procuring Entity as non-responsive.

14.4. The Tender Securities of unsuccessful tenderers will be returned as promptly as possible but not later than twenty eight (28) days after expiration of the tender validity period. The Tender Security of the successful tenderer will be returned upon the tenderer executing the Contract and furnishing the required Performance Security.

14.5. The Tender Security may be forfeited:

a) if a tenderer withdraws his tender during the period of tender validity: or
b) in the case of a successful tenderer, if he fails, within the specified time limit

i. to sign the Agreement, or
ii. to furnish the necessary Performance Security

c) if a tenderer does not accept the correction of his tender price pursuant to clause 24.

15. Alternative Offers

15.1. The tenderer shall submit an offer which complies fully with the requirements of the tender documents unless otherwise provided for in the Appendix.

Only one tender may be submitted by each tenderer. A tenderer who submits or participates in more than one tender will be disqualified.

15.2. The tenderer shall not attach any conditions of his own to his tender. The tender price must be based on the tender documents. The tenderer is not required to present alternative construction options and he shall use without exception, the Bills of Quantities as provided, with the amendments as notified in tender notices, if any, for the calculation of his tender price. Any tenderer who fails to comply with this clause will be disqualified.

15.3. Tenderers wishing to offer technical alternatives to the requirements of the tendering document must first price the Procuring Entity's design as described in the tendering document and shall further provide all information necessary for a complete evaluation of the alternative by the Procuring Entity, including drawings, design calculations, technical specifications, breakdown of prices, and proposed construction methodology and other relevant details.

Only the technical alternatives, if any, of the lowest evaluated Tenderer conforming to the basic technical requirements shall be considered by the Procuring Entity.

15.4. When specified in the Appendix, Tenderers are permitted to submit alternative technical solutions for specified parts of the Rehabilitation and/or Improvement Works, and such parts will be identified in the Appendix to the Instruction to Tenderers.

16. Pre-tender Meeting

16.1. If a pre-tender meeting is convened, the tenderer's designated representative is invited to attend at the venue and time in the Invitation to Tender. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.

16.2. The tenderer is requested as far as possible to submit any questions in writing or by cable, to reach the Procuring Entity not later than seven (7) days before the meeting. It may not be practicable at the meeting to answer questions received late, but questions and responses will be transmitted in accordance with the following:

(a) Minutes of the meeting, including the text of the questions raised and the responses given together with any responses prepared after the meeting, will be transmitted without delay to all purchasers of the tender documents. Any modification of the tender documents listed in Clause 10 which may become necessary as a result of the pre-tender meeting shall be made by the Procuring Entity exclusively through the issue of a tender notice pursuant to Clause 8 and not through the minutes of the Pre-Tender meeting.

(b) Non attendance at the pre-tender meeting will not be cause for disqualification of a tenderder.

17. Format and Signing of Tenders

17.1. For each proposal, the Tenderer shall prepare his tender as outlined in Clause 10 and submit the number of copies indicated in Appendix. Each Technical Proposal and Financial Proposal shall be marked

"ORIGINAL" or "COPY" as appropriate. If there are any discrepancies between the original and the copies of the proposal, the original shall govern.

17.2. The copy of the tender and Bills of Quantities shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the tenderer. All pages of the tender where amendments have been made shall be initialed by the person or persons signing the tender.

17.3. The complete tender shall be without alterations, interlineations or erasures, except as necessary to correct errors made by the tenderer, in which case such corrections shall be initialed by the person of persons signing the tender.

SUBMISSION OF TENDERS

18. Sealing and Marking of Tenders

18.1. The original Technical Proposal and Financial Proposal; shall be prepared in indelible ink. It shall contain no interlineations or overwriting, except as necessary to correct errors made by the firm itself. Any such corrections must be initialed by the persons or person authorized to sign the proposals.

18.2. The original and all copies of the Technical Proposal shall be placed in a sealed envelope clearly marked "TECHNICAL PROPOSAL," and the original and all copies of the Financial Proposal in a sealed envelope clearly marked "FINANCIAL PROPOSAL" and warning: "DO NOT OPEN WITH THE TECHNICAL PROPOSAL". Both envelopes shall be placed into an outer envelope and sealed. This outer envelope shall bear the submission address and other information indicated in the Appendix and is clearly marked, "DO NOT OPEN, EXCEPT IN PRESENCE OF THE OPENING COMMITTEE."

18.3. Where alternate offers are allowed, the original alternate and all copies of the Technical Proposal shall be placed in a sealed envelope clearly marked "ALTERNATE TECHNICAL PROPOSAL," and the original and all copies of the Financial Proposal in a sealed envelope clearly marked "ALTERNATE FINANCIAL PROPOSAL" and warning: "DO NOT OPEN WITH THE TECHNICAL PROPOSAL". Both envelopes shall be placed into an outer envelope and sealed. This outer envelope shall bear the submission address and other information indicated in the Appendix and is clearly marked, "DO NOT OPEN, EXCEPT IN PRESENCE OF THE OPENING COMMITTEE."

18.4. The tenderer shall seal the original and copy of the tender in separate envelopes, duly marking the envelopes as "ORIGINAL" ,"COPY" , "ALTERNATIVE" and "COPY OF ALTERNATIVE. The envelopes shall then be sealed in an outer separate envelope.

18.5. The inner and outer envelopes shall be addressed to the Procuring Entity at the address stated in the Appendix and bear the name and identification of the Contract stated in the said Appendix with a warning not to open before the date and time for opening of tenders stated in the said Appendix.

18.6. The inner envelopes shall each indicate the name and address of the tenderer to enable the tender to be returned unopened in case it is declared "late", while the outer envelope shall bear no mark indicating the identity of the tenderer.

18.7. If the outer envelope is not sealed and marked as instructed above, the Procuring Entity will assume no responsibility for the misplacement or premature opening of the tender. A tender opened prematurely for this cause will be rejected by the Procuring Entity and returned to the tenderer.

19. Deadline for Submission of Tenders

19.1. Tenders must be received by the Procuring Entity at the address specified in clause 18.2 and on the date and time specified in the Letter of Invitation, subject to the provisions of clause 8.3, 19.2 and 19.3.

Tenders delivered by hand must be placed in the "tender box" provided in the office of the Procuring Entity.

Proof of posting will not be accepted as proof of delivery and any tender delivered after the above stipulated time, from whatever cause arising will not be considered.

When so specified in the Appendix, Tenderers shall have the option of submitting their Tenders electronically. Tenderers submitting tenders electronically shall follow the electronic tender submission procedures as specified in the Appendix.

19.2. The Procuring Entity may, at his discretion, extend the deadline for the submission of tenders through the issue of an Addendum in accordance with clause 7, in which case all rights and obligations of the Procuring Entity and the tenderers previously subject to the original deadline shall thereafter be subject to the new deadline as extended.

19.3. Any tender received by the Procuring Entity after the prescribed deadline for submission of tender will be returned unopened to the tenderer.

20. Modification and Withdrawal of Tenders

20.1. The tenderer may modify or withdraw his tender after tender submission, provided that written notice of the modification or withdrawal is received by the Procuring Entity prior to prescribed deadline for submission of tenders.

20.2. The tenderer's modification or withdrawal notice shall be prepared, sealed, marked and dispatched in accordance with the provisions for the submission of tenders, with the inner and outer envelopes additionally marked "MODIFICATION" or "WITHDRAWAL" as appropriate.

20.3. No tender may be modified subsequent to the deadline for submission of tenders.

20.4. No tender may be withdrawn in the interval between the deadline for submission of tenders and the period of tender validity specified on the tender form. Withdrawal of a tender during this interval will result in the forfeiture of the Tender Security.

20.5. Subsequent to the expiration of the period of tender validity prescribed by the Procuring Entity, and the tenderer having not been notified by the Procuring Entity of the award of the Contract or the tenderer does not intend to conform with the request of the Procuring Entity to extend the period of tender validity, the tenderer may withdraw his tender without risk of forfeiture of the Tender Security.

TENDER OPENING AND EVALUATION

21. Tender Opening

21.1. The Procuring Entity will open the Technical Proposal in the presence of the tenderers' representatives who choose to attend at the time and location indicated in the Letter of Invitation to Tender. The tenderers' representatives who are present shall sign a register evidencing their attendance.

21.2. Tenders for which an acceptable notice of withdrawal has been submitted, pursuant to Clause 20, will not be opened. The Procuring Entity will examine the tenders to determine whether they are complete, whether the requisite Tender Securities have been furnished, whether the documents have been properly signed and whether the tenders are generally in order.

21.3. At the tender opening, the Procuring Entity will announce the tenderer's names, any alternative offer, Tender Security, withdrawals and modifications, if any, and such other details as the Procuring Entity, may consider appropriate, in the presence of the tenderers and such other details as the Procuring Entity, may consider appropriate. No tender shall be rejected at the tender opening except for late tenders.

21.4. The Financial Proposal shall remain sealed and deposited with the Accounting Officer of the procuring entity up to the time for public opening of financial proposals.

21.5. The Procuring Entity shall prepare minutes of the tender opening including the information disclosed to those present.

21.6. Tenders not opened and read out at the tender opening shall not be considered further for evaluation, irrespective of the circumstances.

22. Process to be Confidential

22.1. After the public opening of tenders, information relating to the examination, clarification, evaluation and comparisons of tenders and recommendations concerning the award of Contract shall not be disclosed to tenderers or other persons not officially concerned with such process until the award of Contract is announced.

22.2. Any effort by a tenderer to influence the Procuring Entity in the process of examination, evaluation and comparison of tenders and decisions concerning award of Contract may result in the rejection of the tenderer's tender.

23. Clarification of Tenders

23.1. To assist in the examination, evaluation and comparison of tenders, the Procuring Entity may ask tenderers individually for clarification of their tenders, including breakdown of unit prices. The request for clarification and the response shall be in writing or by e-mail, but no change in the price or substance of the tender shall be sought, offered or permitted except as required to confirm the correction of arithmetical errors discovered by the Procuring Entity during the evaluation of the tenders in accordance with clause 25.

23.2. No tenderer shall contact the Procuring Entity on any matter relating to his tender from the time of the tender opening to the time the Contract is awarded. If the tenderer wishes to bring additional information to the notice of the Procuring Entity, he shall do so in writing.

24. Determination of Responsiveness

24.1. The evaluation committee appointed by the Procuring Entity shall evaluate the proposals on the basis of their responsiveness to the requirements of the tender documents, applying the evaluation criteria as indicated in the Evaluation and Qualification Criteria and Appendix.

24.2. Where alternate offer has been submitted evaluators of Technical Proposals shall have no access to the alternate Technical and Financial Proposals until the successful tenderer is determined.

24.3. Evaluators of Technical Proposals shall have no access to the Financial Proposals until the technical evaluation is concluded.

24.4. For the purpose of this clause, a substantially responsive tender is one which conforms to all the terms, conditions and specifications of the tender documents without material deviation or reservation. A material deviation or reservation is one which affects in any substantial way the scope, quality, completion timing or administration of the Works to be undertaken by the tenderer under the Contract, or which limits in any substantial way, inconsistent with the tender documents, the Procuring Entity's rights or the tenderers obligations under the Contract and the rectification of which would affect unfairly the competitive position of other tenderers who have presented substantially responsive tenders.

24.5. Each price or unit rate inserted in the Bills of Quantities shall be a realistic estimate of the cost of completing the works described under the particular item including allowance for overheads, profits and the like. Should a tender be seriously unbalanced in relation to the Procuring Entity's estimate of the works to be performed under any item or groups of items, the tender shall be deemed not responsive.

24.6. A tender determined to be not substantially responsive will be rejected by the Procuring Entity and may not subsequently be made responsive by the tenderer by correction of the non-conforming deviation or reservation.

25. Correction of Errors

Tenders determined to be substantially responsive shall be checked by the Procuring Entity for any arithmetic errors in the computations and summations. Errors will be corrected by the Procuring Entity as follows:

(a) Where there is a discrepancy between the amount in figures and the amount in words, the amount in words will govern.

(b) Where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted will prevail, unless in the opinion of the Procuring Entity, there is an obvious typographical error, in which case adjustment will be made to the entry containing that error.

(c) In the event of a discrepancy between the tender amount as stated in the Form of Tender and the corrected tender figure in the main summary of the Bills of Quantities, the amount as stated in the Form of Tender shall prevail.

(d) The Error Correction Factor shall be computed by expressing the difference between the tender amount and the corrected tender sum as a percentage of the corrected builder's work (i.e. corrected tender sum less Prime Cost and Provisional Sums.

(e) The Error Correction Factor shall be applied to all builder's work (as a rebate or addition as the case may be) for the purposes of valuations for Interim Certificates and valuations of variations.

(f) The amount stated in the form of tender cannot be adjusted in accordance with the above procedure for the correction of errors and, with concurrence of the tenderer, shall be considered as binding upon the tenderer. If the tenderer does not accept the corrected amount, the tender may be rejected and the Tender Security may be forfeited in accordance with clause 14.

26. Conversion to Single Currency

26.1. For compensation of tenders, the tender price shall first be broken down into the respective amounts payable in various currencies by using the mean rate or rates of the Central Bank of Kenya ruling on the date of tender submission.

26.2. The Procuring Entity will convert the amounts in various currencies in which the tender is payable (excluding provisional sums but including Dayworks where priced competitively) to Kenya Shillings at the mean rates stated in clause 26.1.

27. Evaluation and Comparison of Tenders

27.1. The Procuring Entity will evaluate only tenders determined to be substantially responsive to the requirements of the tender documents in accordance with clause 24 and have met the minimum technical score as specified in the Appendix.

27.2. In evaluating tenders, the Procuring Entity will determine for each tender the evaluated tender price by adjusting the tender price as follows:

(a) Making any correction for errors pursuant to clause 25.

(b) Excluding Provisional Sums and provision, if any, for Contingencies in the Bills of Quantities, but including Day works where priced competitively.

27.3. The Procuring Entity reserves the right to accept any variation, deviation or alternative offer. Variations, deviations, alternative offers and other factors which are in excess of the requirements of the tender documents or otherwise result in the accrual of unsolicited benefits to the Procuring Entity, shall not be taken into account in tender evaluation.

27.4. Price adjustment provisions in the Conditions of Contract applied over the period of execution of the Contract shall not be taken into account in tender evaluation.

27.5. If the lowest evaluated tender is seriously unbalanced or front loaded in relation to the Engineer's estimate of the items of work to be performed under the Contract, the Employer may require the tenderer to produce detailed price analyses for any or all items of the Bills of Quantities, to demonstrate the relationship between those prices, proposed construction methods and schedules as per the Cost Estimation Manual. Where the demonstration confirms that the tender is unbalanced in relation to the Engineer's estimate of the works to be performed under any item or groups of items, the tender shall be deemed non responsive.

27.6. Firms incorporated in Kenya where indigenous Kenyans own 51% or more of the share capital shall be allowed a 10% preferential bias provided that they do not sub-contract work valued at more than 50% of the Contract Price excluding provisional sums to a non-indigenous sub-contractor.

27.7. Preference where allowed in the evaluation of tenders shall not exceed 15%.

27.8. The Procuring Entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.

27.9. The Procuring Entity shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.

27.10. A tenderer who gives false information in the tender document about its qualification or who refuses to enter into a contract after notification of contract award shall be considered for debarment from participating in future public procurement.

27.11. Poor past performance shall not be used as an evaluation criteria unless specifically provided for in the appendix.

AWARD OF CONTRACT

28. Award Criteria

28.1. Subject to Sub-clause 28.2, the Procuring Entity will award the Contract to the tenderer whose tender is determined to be substantially responsive to the tender documents and who has the highest score as per the Evaluation Criteria subject to possessing the capability and resources to effectively carry out the Contract Works as required in Sub-clause 3.1 and 3.2 here above.

28.2. The Procuring Entity reserves the right to accept or reject any tender, and to annul the tendering proceedings and reject all tenders, at any time prior to notification of award of Contract, without thereby incurring any liability to the affected tenderers or any obligation to inform the affected tenderers of the grounds for the Procuring Entity's action.

29. Negotiations

29.1. Prior to contract award, the Procuring entity shall hold a meeting for negotiations with the preferred tenderer which will be held at the same address as indicated in the Appendix.

29.2. Negotiations will be aimed at:

a) Resolving any outstanding issues including any ambiguities or shortcomings in the Tender documents or tender submission
b) Confirming details of the preferred tender and documenting specific intent where any potential misalignment is found
c) Resolving any risk issues
d) Clarification of any matters in regard to the identification of Tenderer's unsustainable pricing of rates or schedules, as perceived by the Procuring Entity.

29.3. Negotiations will include a discussion of the Technical Proposal, the proposed methodology (work plan), staffing and any suggestions made by the Tenderer to improve the Terms of Reference. The Procurement Entity and Tenderer will jointly prepare final work methodology, staffing, equipment and programme of works indicating activities, staff periods in the field and in the head office, staff-months, logistics and reporting. The agreed work plan and methodology will then be incorporated in the "Description of Services" and form part of the Contract. Special attention will be paid to getting the most the bidder can offer within the available budget and to clearly defining the inputs required from Procurement Entity to ensure satisfactory implementation of the assignment.

29.4. Having selected the Tenderer on the basis of, among other things, an evaluation of proposed key professional staff, Procurement Entity expects to negotiate a contract on the basis of the experts named in the bid. Before contract negotiations, Procurement Entity will require assurances that the experts will be

actually available. The Procurement Entity will not consider substitutions during contract negotiations unless both parties agree that undue delay in the selection process makes such substitution unavoidable or that such changes are critical to meet the objectives of the assignment. If this is not the case and if it is established that key staff were offered in the proposal without confirming their availability, the Tenderer may be disqualified.

29.5. The negotiations will conclude with a review of the draft Form of the Contract. To complete negotiations the Procurement Entity and the selected Tenderer will initial the agreed Contract. If negotiations fail, Procurement Entity will invite the Tenderer whose proposal received the second highest score to negotiate a contract.

30. Notification of Award

30.1. Prior to the expiration of the period of tender validity prescribed by the Procuring Entity, the Procuring Entity will notify the successful tenderer by e-mail and confirmed in writing by registered letter that his tender has been accepted. This letter (hereinafter and in all Contract documents called "Letter of Acceptance") shall name the sum (hereinafter and in all Contract documents called "the Contract Price") which the Procuring Entity will pay to the Contractor in consideration of the execution and completion of the Works as prescribed by the Contract.

30.2. At the same time that the Procuring Entity notifies the successful tenderer that his tender has been accepted, the Procuring Entity shall notify the other tenderers that the tenders have been unsuccessful.

30.3. Within 21 days of receipt of the notification of award, the successful Tenderer shall sign the Form of Agreement and return it to the Procuring Entity, together with the required performance security.

30.4. The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.

31. Performance Guarantee

31.1. Within twenty eight [28] days of receipt of the notification of award from the Procuring Entity, the successful tenderer shall furnish the Procuring Entity with a Performance Security in the amount stated in the Appendix and in the format stipulated in the Standard forms.

31.2. The Performance Security to be provided by the successful tenderer shall be an unconditional Bank Guarantee issued at the tenderer's option by a reputable Bank approved by the Procuring Entity and located in the Republic of Kenya and shall be divided into two elements namely, a performance security payable in foreign currencies and a performance security payable in Kenya Shillings. The value of the two securities shall be in the same proportions of foreign and local currencies as requested in the form of foreign currency requirements.

31.3. Failure of the successful tenderer to lodge the required Performance Security shall constitute a breach of Contract and sufficient grounds for the annulment of the award and forfeiture of the Tender Security and any other remedy under the Contract. The Procuring Entity may award the Contract to the next ranked tenderer.

32. Corrupt or fraudulent practices

32.1. The tenderers are required to observe the highest standard of ethics during the procurement process and execution of contracts. A tenderer shall sign a declaration that he has not and will not be involved in corrupt or fraudulent practices.

32.2. The Procuring Entity shall reject a tender if it determines that the Tenderer recommended for award has engaged in corrupt or fraudulent practices in competing for the contract.

32.3. The Procuring Entity may recommend to PPRA to declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded a government contract if it is determined that the firm has engaged in corrupt or fraudulent practices in competing for, or in executing, a government financed contract.

SECTION III: APPENDIX TO INSTRUCTION TO TENDERERS

Appendix to Instructions to Tenderers

The following appendix to instructions to tenderers shall complement or amend the provisions of the instructions to tenderers (Section II). Wherever there is a conflict between the provisions of the instructions to tenderers and the provisions of the appendix, the provisions of the appendix herein shall prevail over those of the instructions to tenderers.

Table 3.1 Notes on the Appendix to Instructions to Tenderers

Clause	Description
3.1	Pursuant to clause 2.1 the following shall be mandatory. i) Properly filled, stamped, and signed Form of Bid ii) Valid Bid Security and in the standard format provided in this tender document iii) Completed Confidential Business questionnaire iv) Copy of proof of citizenship of all the director(s) in the company who must be Kenyan Nationals. v) Certified Copy of Form CR12(current within the last 12 months). This will be verified with the Registrar of Companies. vi) Certified copies of Certificate of incorporation/registration of business name or partnership deed vii) Valid tax compliance certificate as at the time of tender opening/closing. This will be verified with Kenya Revenue Authority. viii) Copies of Current annual NCA practicing license from National Construction Authority as a Roads contractor for NCA category **5,4,3,2 or 1** Category valid as at the date of tender closing/Opening. This will be verified with National Construction Authority. ix) Written power of attorney authorizing the signatory of the bid to commit the bidder x) Form of confirmation of participation and understanding of the scope of works. This form must be dully filled, stamped, signed by the bidder's representative, and be submitted as per the invitation to bid. xi) Information on Litigation and performance history as per schedule 10 xii) All the pages of bid document to be **Sequentially Serialized** from the first page to the last. xiii) Completeness of the tender document (**All the required forms including the BOQs are properly filled as per clause 10.1 and 10.2 of ITT and in the format Described in this Appendix to Instructions to Tenderers Clause 18**).
3.2	**Qualification Requirements** (a) Evidence of access to funds or financing agreement/lines of credit of at least 20% of tender sum and or availability of other financial resources. e.g. Bank Statement current within the last 6 months. The Line of credit must be current to the last **one (1)** month before the date of submission. (b) Financial predictions for the current year and the two subsequent years, including the effect of known commitments, (c) Current financial soundness and bidder's long-term profitability, Cash flow or equivalent positive working capital (d) Current Work commitments (e) Availability of critical equipment Major items of construction plant and equipment proposed for use in carrying out the Contract. (f) The qualifications and experience of key personnel proposed for administration and execution of the contract, both on and off site. (g) Bidders shall also submit proposals of work execution programme in sufficient detail to demonstrate the adequacy of the bidders' proposals to meet the technical specifications and the completion time referred to in Schedule 11. (h) Details of experience and past performance of the tenderer on the works of a similar nature. (i) Details of Non-performance of contract and any current litigation or arbitration proceedings in

Clause	Description
	which the tenderer is involved as one of the parties within the last Three (3) years prior to the deadline of the tender submission, based on all information on fully settled disputes or litigation.
3.3	Joint Ventures not allowed
5	Site visit is not Mandatory.
10.1	Delete the words in the first sentence "*…the Technical and Financial proposal.*" replace with *"…one document containing both technical and financial proposal."*
13.1	Tender validity period is 90 days **from the specified date of tender opening** or from the extended date of tender opening in accordance with ITT clause 7.3
14	The tender security shall be **KES 550,000**
14.3	Tender Security shall remain valid for a least 30 days beyond tender validity
16 (b)	The pre bid conference is Mandatory. Non-attendance at the pre-bid meeting shall be a cause for disqualification of a bidder
24.5, 27.5and 28.1	The total budget for these roads is KES 28,021,166.00 The procurement Entity shall award to the lowest evaluated tenderer, whose tender is substantially responsive to the tender document. Each price or unit rate inserted in the Bills of Quantities **shall be a realistic estimate of the cost** of completing the works described under the particular item including allowance for overheads, profits and the like. Should a tender be seriously unbalanced in relation to the Employer's estimate or current government cost estimation of such works, as per the Cost Estimation Manual, to be performed under any item or groups of items, the tender **shall be deemed not responsive**.

Clause	Description
18	**Tender Format, No of sets, Sealing and Marking of Tenders** The Tender shall be bound and divided clearly in descending order as listed below 1. Letter of Invitation to Tender 2. Instruction to Tenders 3. Appendix to Instruction to bidders 4. Form of Bid 5. Appendix to Form of Bid 6. Bid Security 7. Schedule of Supplementary Information for Eligibility 8-A1 Confidential Business Questionnaire 8-A2 Certificate of Incorporation/Registration 8-A3 Copy of Form CR12 8-A4 Copy of Valid Tax Compliance Certificate 8-A5 Copy of Current annual NCA practicing licence for NCA Category 5,4,3,2,1 8-B Form of Power of Attorney 8-C Knowledge of site Certificate 8-D Schedule of Major Items of Plant 8-E Schedule of Key Personnel and Signed CV 8-F Schedule of Road Works Completed Satisfactorily and Certified together with completion certificates or their proof of execution 8-G Schedule of ongoing Works 8-H A declaration that the bidder will not engage in any corrupt or fraudulent practice and 8-I A declaration that the person or his or her sub-contractors are not debarred from participating in procurement proceeding 9 Schedule of Supplementary Information on Financial standings 9-A Audited Financial Accounts. 9-B Construction Turnover. 9-C History of Non-Performance and Ligation History 10 Work Execution Programme. 11 Priced Bill of Quantities 12 Drawings 13 Specifications 14 Conditions of Contract.
18.2	The format indicated above **Shall** be used for submission of this tender.
18.3	**Original and one copy** to be submitted, Sealing and Marking of tenders will be as per clause 17 of ITT Copy must be replica of the original
24.5	**Examination of and Determination of Responsiveness** Determination of a Tender's responsiveness will be based on the contents of the Tender itself without recourse to extrinsic evidence
	(a) **Details of experience and past performance of the tenderer** The contractor must have: i. Successfully completed, as a prime contractor or subcontractor or management contractor, in the execution of at least ***two (2) contracts*** of a similar nature and comparable in complexity methods/technology or other characteristics to the proposed contract within ***the last Five (5) Years, each with a minimum value at least KES 40 Million (Kenya Shillings Forty Million Only) successfully and substantially completed*** ii. Average annual Construction Turnover of **KES. 300 Million**, calculated as total certified payments received for contracts in progress or completed, within the last three [3] years in the role of contractor, subcontractor, or management contractor prior to the applications submission deadline.
	The minimum qualification of key personnel are as listed: (i) **Ordinary Diploma** in Civil Engineering with minimum Seven (7) years' experience in road works for **Site Agent**. (ii) **Ordinary Diploma Engineering Survey** or Equivalent with minimum Five (3) years' experience in road works for the **surveyor** and

Clause	Description
	(iii) **Ordinary Diploma Civil Engineering/Building and Construction** with minimum 5 years' experience in road works for **Foreman**.
	(b) **Equipment Capabilities:** The bidder should list down, the major plants and equipment's as per schedule 4 of schedule of supplementary information. – Bidder must attach evidence of ownership, Lease agreement or any hiring arrangements. Bidders with proof of ownership of own equipment's will be awarded full marks, Leasing agreement will be awarded 75 % of full marks whereas proof of hiring will be awarded 50% of the full marks
	(c) **Financial Soundness;** i) The bidder should demonstrate that the firm has access to or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means sufficient to meet the construction cash flow for a period of 2 months, estimated at 20% of the estimated tender sum. ii) Signed and stamped Audited accounts, balance sheets and computed working capital for the last three (3) years should be submitted and must demonstrate the soundness of the Applicant's financial position iii) The bidder's financial information will be assessed in terms of ROCE return on equity, Liquidity Ratios, current ratio and the point scale criteria on their financial position given on this basis
	(d) Bidders shall also submit proposals of work execution programmed in sufficient detail to demonstrate the adequacy of the bidders' proposals to meet the technical specifications and the completion time
	(e) The bidder must provide most current history of litigation and non-performance.
	(f) The pass mark for Technical Evaluation shall be **75%**.
25	There shall be no correction of errors. Any errors in the submitted tender arising from a miscalculation of unit price, quantity, subtotal and total bid price shall be considered as a major deviation that affects the substance of the tender and shall lead to disqualification of tender as non-responsive.
30.3	Delete the entire paragraph and replace with, "Within fourteen [14] days of receipt of the notification of award from the Employer, the successful tenderer shall furnish the Employer with acceptance letter and Performance Security in the amount stated in the Appendix to Instructions to Tenderers and in the format stipulated in the Conditions of Contract"
31.2	
31.2	Delete the following statement. "…*and shall be divided into two elements namely, a performance security payable in foreign currencies (based upon the exchange rates determined in accordance with clause 60(5) of the Conditions of Contract) and a performance security payable in Kenya Shillings. The value of the two securities shall be in the same proportions of foreign and local currencies as requested in the form of foreign currency requirements."* The Performance security shall be issued only in Kenya Shillings
32	The procuring entity shall conduct verification before award and any bidder found to have given **false information or forged documents** shall be **disqualified and recommended for debarment.**

SECTION IV: QUALIFICATION AND EVALUATION CRITERIA

This Section contains the criteria that the Procuring Entity shall use to qualify and evaluate tenders. In accordance with tender notice, addendum(a),ITT 24 &27, no other factors, methods or criteria shall be used. The Tenderer shall provide all the information requested in the Tendering Forms and schedules included .

1.1. Qualification Criteria

This section contains all the factors the Procuring Entity shall use to evaluate Tenderers.

1.1. ELIGIBILITY						
Subject	**Requirement**	**Tenderer**				**Documentation Required**
		Single Entity	**Joint Venture**			
			All parties combined	**Each Party**	**One Party**	
1.1.1 **Nationality**	Nationality in accordance with ITT 3.1.1	Must meet requirement	N/A	N/A	N / A	Schedule 1-Part 2(a) or Part 2(b)
1.1.2 **Conflict of Interest**	No- conflicts of interests as described in ITT 3.1.3.	Must meet requirement	N/A	N/A	N / A	Schedule 1-Part 2(d)
1.1.3 **Tenderer's Ineligibility**	Having been declared ineligible by the Procuring Entity as described in ITT 3.1.	Must meet requirement	N/A	N/A	N / A	Schedule 14
1.1.4. **Incorporation and registration**	Submission of mandatory registration documents outlined in ITT 3.2 (a)	Must meet requirement	N/A	N/A	N / A	Certified Certificate of Incorporation/Business name Registration and Schedule 1

1.2. HISTORICAL CONTRACT NON-PERFORMANCE						
Subject	**Requirement**	**Te**				**Documentation Required**
		Single Entity	**Joint Venture**			
			All Parties	**Each Party**	**One Party**	
1.2.1 **History of non-performing contracts**	Non-performance of a contract did not occur within the last _three_ (3) years prior to the deadline for application submission, based on all information on fully settled disputes or litigation. A fully settled dispute or litigation is one that has been resolved in accordance with the Dispute Resolution Mechanism under the respective contract, and where all appeal instances available to the tenderer ITT 3.2(b)	Must meet requirement by itself or as Party to past or existing JV	N / A	N/A	N / A	Schedule 11 section 4
1.2.2 **Pending Litigation**	Information on current Litigation in which the tenderer is involved ITT3.2 (g)	Must meet requirement	N/A	N/A	N / A	Schedule 11 section 5

1.3 FINANCIAL SITUATION						
Subject	**Requirement**	**Tenderer**				**Documentation Required**
		Single Entity	**Joint Venture**			
			All Parties combined	**Each Party**	**One Party**	
1.3.1. **Average Annual Turnover**	Minimum average annual turnover of Three Hundred Million (300,000,000.00 calculated as total certified payments received for contracts in progress or completed, within the last three (3) years ITT 3.2(b &h)	Must meet requirement	N/A	N/A	N/A	Schedule 10
1.3.2 **Historical Financial Performance**	Submission of audited balance sheets and other financial statements acceptable to the Procuring Entity, for the last **three**[3] years to demonstrate the current soundness of the tenderers financial position and its prospective long term profitability ITT 3.2(h)	Must meet requirement	N / A	N/A	N / A	Schedule 11 with attachments.

1.4. FINANCIAL SITUATION						
Subject	**Requirement**	**Tenderer**				**Documentation Required**
		Single Entity	**Joint Venture,**			
			All Parties combined	**Each Party**	**One Party**	
1.4.1- **Financial Resources**	The Tenderer must demonstrate access to, or availability of, financial resources such as liquid assets, unencumbered real assets, lines of credit, and other financial means, other than any contractual advance payments to meet: ITT 3.2(h)	Must meet requirement	N/A	N/A	N/A	Provide attachments

1.5. EXPERIENCE						
Subject	**Requirement**	**Tenderer**				**Documentation Required**
		Single Entity	**Joint Venture,**			
			All Parties combined	**Each Party**	**One Party**	
1.5.1: **General Experience**	(a)Participation as contractor, management contractor, or subcontractor, in at least two (_2_) contracts within the last five (5) years, each with a value of at least forty million (40M), that have been successfully and substantially completed and that are similar to the proposed Works and Services. The similarity shall be based on the physical size, complexity, methods/technology or other characteristics as described in Section VIII, Procuring Entity's Requirements.ITT 3.2 (b)	Must meet requirement	N/A	N / A	N/A	Schedule 7 & 8 and copies of completion certificates
1.5.2 **Specific Experience**	b) For the above or other contracts executed during the period stipulated in 2.4.1(a) above, a minimum experience in the following key activities: I. Grading and Gravelling Works II. Drainage and culvert works III. PBC maintenance contracts	Must meet requirement	N/A	N/A	N/A	Schedule 7,&8 and copies of completion certificates

1.6. PERSONNEL CAPABILITY						
Subject	**Requirement**	**Tenderer**				**Documentation Required**
		Single Entity	**Joint Venture,**			
			All Parties combined	**Each Party**	**One Party**	
1.6.1:	Provide detailed CVs of all proposed key personnel & certified copies of certificates, practicing licenses and academic documents. The site staff shall possess minimum levels set below.ITT 3.2(c)	Must meet requirement	N/A	N/A	N/A	Schedule 6,
(a) Rehabilitation works						
a) Site Agent.	Minimum holder of; I. Diploma In civil Engineering II. PBC training Certificate III. 7 years experience in construction Supervision	Must meet requirement t	N/A	N/A	N/A	Schedule 6, Section (ii)
b) Site Foreman	Minimum holder of I. Ordinary Diploma In civil Engineering II. 3 years experience in construction Supervision	Must meet requirement t	N/A	N/A	N/A	Schedule 6, Section (ii)
c) Surveyor	Minimum holder of I. Ordinary Diploma In land/ Engineering Survey or equivalent II. 3 years experience in Surveying	Must meet requirement t	N/A	N/A	N/A	Schedule 6, Section (ii)

(b) Self Control Unit						
a) Road Manager (team leader).	Minimum holder of Ordinary I. Diploma In civil Engineering II. PBC training Certificate III. 7 years experience in construction Supervision	Must meet requirement	N/A	N/A	N/A	Schedule 6, Section (iii)
b) Road Inspector	Minimum holder of I. Certificate In civil Engineering or equivalent II. 3 years experience in construction Supervision	Must meet requirement	N/A	N/A	N/A	Schedule 6, Section (iii)

1.2. TECHNICAL EVALUATION CRITERIA

This Section shall apply to qualified tenderers from Qualification Criteria above. It contains all the factors, methods and criteria that the Procurement Entity shall use for the technical evaluation. The information to be provided in relation to each factor and the definitions of the corresponding terms are included in the respective Application Forms (Schedules).

The Technical Evaluation Committee shall examine tender documents and score them based on their validity, accuracy and quality. Where the tenderer fails to submit the mandatory requirement, the tenderer shall be disqualified.

Tenderers who provide all mandatory requirements and specified percentage score in technical evaluation and above shall proceed to the financial evaluation.

Technical Proposal

The Tenderer's Technical Proposal evaluation shall be as outlined in the following tables

TABLE 1: FINANCIAL CAPACITY					
Qualification Criteria			Compliance Requirement	Documentation	Score
No.	Subject	Requirement	Tenderer	Submission Requirements	
1.1	Audited Statements	Pursuant to Sub-Clause 3.2 (h), provide certified copies of Audited financial statements.	Must meet Requirement	Section V, Schedule 11	
1.2	Access to Financial Resources	Pursuant to Sub-Clause 3.2(h), provide documents evidencing access to financial resources e.g. Lines of Credit, Cash in Hand	Must meet requirement	Section V, Schedule 11	
1.3	Turnover	Provide documents evidencing Average Annual Turnover of 200Million	Must meet requirement	Section V, Schedule 10	
				Total Score	**Max 20**

TABLE 2: EXPERIENCE					
Qualification Criteria			Compliance Requirement	Documentation	Score
No.	Subject	Requirement	Tenderer	Submission Requirements	
2.1	General Experience	Completion certificate of contractual works in the past	Requirement	Section V, Schedule 7	
2.2	Specific Experience	Completion certificate of relevant/ related works in the past 2 years	Requirement	Section V, Schedule 7	
				Total Score	**Max 15**

TABLE 4: PERSONNEL					
Qualification Criteria			Compliance Requirement	Documentation	Score
No.	Subject	Requirement	Tenderer	Submission Requirements	
4.1	Key in-house personnel	List of professional and technical staff and their resume in accordance with Clause 19 of GCC section VIII and qualification criteria under this section and ITT 3.2(c) Provide a PBC certificate from KIHBT training on PBC works	Must meet Requirement	Section V, Schedule 6(a)	
				Total Score	**Max 14**

TABLE 5: EQUIPMENT					
Qualification Criteria			Compliance Requirement	Documentation	Score
No.	Subject	Requirement	Tenderer	Submission Requirements	
5.1	Equipment Holding	The following shall be the minimum equipment holding. • 1 No..Concrete Mixers and Vibrator • 4 No. 6 X 4 tippers payload 16 – 20 tones • 1 No. Water tankers (18,000 – 20,000lts. capacity) • 1No. Wheeled loaders (2m3) • 2No. Motor graders (93 - 205kW) • 1No. Crawler Dozer (D6 and above) or Excavator • 1No. Self-propelled single drum vibrating (10 tons) **Note**: Bidder shall provide; -Ownership list of required equipment and/ or -Authorization letter of hiring from M&T or reputable hiring company **Note**: In addition, attach proof of ownership in form of **clear copy** of Logbook together with a **certified copy of TIMS** account print out from NTSA Portal confirming ownership of the Equipment or any lease or hire agreement where applicable. ***Bidders with proof of ownership of own equipment's will be awarded full marks, Leasing agreement will be awarded 50% of full marks whereas proof of hiring will be awarded 25% of the full marks***	Must meet Requirement	Section V, Schedule 5	30
				Total Score	**Max 30**

TABLE 6: WORK METHODOLOGY					
Qualification Criteria			Compliance Requirement	Documentation	Score
No.	Subject	Requirement	Tenderer	Submission Requirements	
6.1	Program of Works	The Tenderer shall provide the following: 1.Work Program Chart 2.Proposal on work safety management 3. Environmental and Social Management	Must meet Requirement	Section V, Schedule 12-A	
6.2	Quality and Quantity Management	The Tenderer shall provide: -ISO9000/ISO 14000 certificate -Proposals on materials testing and Measurement	Requirement	Section V, Schedule 12-A	
6.3	Projected Cash Flow	The tenderer shall provide cash flow plan 1.On the value of work which will be carried out 2.On the net payments to which they will become entitled with due allowance for the advance payment and repayment, materials prepayments, and retention money, but excluding price adjustments for rise and fall and provisional sums for emergency works 3.The prospective successful tenderer may be required to submit full details to substantiate his estimates	Must meet Requirement	Section V, Schedule12-B	

TABLE 7: LITIGATION HISTORY					
Qualification Criteria			Compliance Requirement	Documentation	Score
No.	Subject	Requirement	Tenderer	Submission Requirements	
7.1	Contractual Misconducts and litigation	Record of contractual misconduct in the previous 5 years Record of litigation in the previous 5 years		Section V, Schedule 11	
				Total Score	**Max 1**

TECHNICAL SCORE SHEET

Technical Evaluation of Tender No……..in …….. National Park.

Item	Sub-Items			No Reqd	Distributed Score	Maxi Score	X	Y	Z
Required References to be submitted in Tendering Forms from Tender for evaluation as indicated in section (IV)							**Evaluated score for Each Bidder**		
Contractor's Capability to Execute Works	Equipment holding	Concrete Mixers and Vibrator		1	1	30			
		6 X 4 tippers payload 16 – 20 tonnes		4	8				
		Water tankers (18,000 – 20,000lts. capacity)		1	3				
		Wheeled loaders (2m3)		1	2				
		Motor graders (93 - 205kW)		2	10				
		Crawler Dozer (D6 and above) or Excavator		1	3				
		Self-propelled single drum vibrating (10 tons)		1	3				
	Key staff	Site Agent/Road Manager	Minimum Qualification Dip in Civil Eng.		2	14			
			PBC certificate from KIHBT training on PBC works		3				
			Exp. 7Yrs and above		1				
			Signed CV		1				
		Foreman/Inspector	Minimum Dip in Civil Eng.		2				
			Exp.5Yrs and above		1				
			Signed CV		1				
		Surveyor	Minimum Dip. Cert in Survey and above		1				
			Exp.3Yrs and above		1				
			Signed CV		1				
	Past relevant work	Completion Certificate for at least three similar Works @ > Kshs 40Million	>2 no. Projects of at least greater than 40M		10	15			
		Average annual Construction Turnover of KShs.300 Million.	Over last 3 years		5				
	Sworn affidavit on Contractual misconduct and litigation				1	1			
	Financial capability	Certified audited accounts for the last **Three 3yrs**	2016-2019 FY (3 Years)		3	20			
			2017-2019 FY(2 Years)		2				
			2018-2019 FY (1Years)		1				
		Current Financial	Financial ratios		6				

		Soundness ratios,	Bank Statement current 6 months or current Line of credit (Within the last one month)	8				
Technical Proposal (Work Execution Programme)	Mobilization management plan	Site lay plan out and material mobilization		0.5	2			
		Site Organization Chart		0.5				
		Equipment management plan		0.5				
		Personnel mobilization		0.5				
	Quality and quantity management	Methodology statement		2	8			
		Proposals on material testing		2				
		Proposals on measurements		2				
		Photographic Plan		2				
	Work scheduling	Work Programme charts		1	2			
		Cash flow plan		1				
	Work safety management	Traffic control, and accident prevention		2	4			
		Workers safety		2				
	Environmental and social management			4	4			
	TOTAL SCORE				100			

Bidders whose shall **score 75%** and above shall proceed to financial evaluation stage.

Prequalification Checklist for Completness and responsiveness

The bidder is provided with the following checklist to confirm if the bidders is complete and responsive.

Table 3.4: Prequalification Checklist for Completness and responsiveness

S/No.	Completeness and responsiveness criteria	References	Required
1	Form of Bid	Section IV	Amount must be indicated, properly filled, Stamped and signed. The tender sum should be valid for a period of ninety (90) calendar days from the specified date of tender opening
2	Bid Security	Section IV, ITT clause 12.	Unconditional guarantee, in the standard format provided in the tender document Must be valid for 120days
3	Eligibility	ITT clause 2.1	Provide all information requested,
4	Confidential Business Questionnaire	Section V, Schedule 1	Properly fill stamp and sign. and Provide all information requested., Conflict of Interest explicitly Stated Copy of National IDs or passports for all the directors and certified copy of Form CR12 (Current within the last 12 months)
5	Tax Compliance Certificate	ITT clause 2.1	Copy provided must be valid as at the date of Tender opening/closing
6	NCA practicing licence	ITT clause 2.1	Current annual NCA practicing licence for NCA Category 5,4,3,2,or 1
7	Certificate of Incorporation	ITT clause 2.1	Certified Copy of Incorporation certificate valid as at the date of Tender opening/Closing
8	Form of Power of Attorney	Section V, Schedule 2	Properly filled, signed and Stamped
9	Form of Participation in Pre bid conference and Knowledge of site conditions	Section V, Schedule 3	Fill and submit to procuring entity at least three days before the scheduled date of pre bid conference.
10	Schedule of Major Items of Plant	Section V, Schedule 4	Filled, stamped and signed properly in the format given. In addition, attach proof of ownership in form of **clear copy** of Logbook together with a **certified copy of TIMS** account print out from NTSA Portal confirming ownership of the Equipment or any lease or hire agreement where applicable.
11	Schedule of Key Personnel	Section V, Schedule 5	Properly fill and sign in the format given. Also attach signed CV and **Certified copies of qualification Certificates** as required
12	Declaration Form For Non – Corrupt Practices	Section V, Schedule 6	Fill properly in the format given stamp and sign
13	Declaration Form For Non – Debarment by PPRA	Section V, Schedule 12	Fill properly in the format given stamp and sign
14	Schedule of ongoing Works	Section V, Schedule 7	Fill properly in the format given stamp and sign
15	Road Works Completed Satisfactorily	Section V, Schedule 8	Fill properly in the format given, stamp and sign and attach copies of completion certificate
16	Basic Labour rates	Section V, Schedule 9	Fill properly in the format given stamp and sign
17	Schedule of other supplementary, information /Financial standings	Section V, Schedule 10	Fill properly in the format given stamp and sign
18	Litigation History	ITT clause 23.5	Fill properly in the format given stamp and sign
19	History of Non-performance	ITT clause 27.12	Fill properly in the format given stamp and sign
20	Work Execution Programme	Section V, Schedule 11 & Table 3.2, clause 23.5	Must be provided in the format given, brief and to the point

21	Priced Bill of Quantities	Section II, clause 11	Fill all rates, prices and amounts
22	Preparation and submission of the Tenders	Clause 9.1of the ITT	Submit a complete set of tender document as per the instruction to bidders Clause 9.1 and also ensure that all the forms BOQ and Schedules provided in the tender documents are properly filled for completeness
23	Copy of Bid Document	Section II, clause 10 17.3	Original and a copy.

Note: Where certification is a requirement, the bidder shall submit a clean replica of the original document certified by the Commissioner of Oaths who shall append his signature, stamp, and date.

SECTION V: TENDERING FORMS

FORM OF TENDER

Date:.....

Tender Number: .....

Contract No.:.....

To: .....

We, the undersigned, declare that:

(a) We have examined and have no reservations to the Tendering Document, including Addenda issued in accordance with clause 6 of ITT;

(b) Having examined the GCC, PCC, Specifications, Bill of Quantities, and Drawings for the execution of the above-named works we, the undersigned, offer to execute such works and remedy any defects therein in conformity with the said Bill of Quantities, GCC, PCC, Specifications and Drawings for the sum of; -

(Insert Amount in words)

.....

.....

(Insert amount in figures)

.....

(c) Our tender shall be valid for a period of 120 days from the date fixed for the tender submission deadline in accordance with the Tendering Document, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;

(d) If our tender is accepted, we commit to obtain a performance security in accordance with the Tendering Document;

(e) We, including any subcontractors or suppliers for any part of the contract, are eligible in accordance with ITT-3.1;

(f) We, including any subcontractors or suppliers for any part of the contract, do not have any conflict of interest in accordance with ITT-3.1.3;

(g) We are not participating, as a Tenderer or as a subcontractor, in more than one tender in this tendering process in accordance with ITT-14, other than alternative offers submitted in accordance with ITT-14;

(i) We, including any of our subcontractors or suppliers for any part of the contract, have not been declared ineligible by the Kenyan laws or official regulations.

(k) We understand that this tender, together with your written acceptance thereof included in your notification of award, **shall not** constitute a binding contract between us, until a formal contract is prepared and executed; and

(l) We understand that you are not bound to accept the lowest evaluated tender or any other tender that you may receive.

(m) We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf will engage in corrupt practices.

Name: ..... in the capacity of.....

Signed: .....

Duly authorized to sign the tender for and on behalf of:

.....

Dated on ..... day of ....., ...

APPENDIX TO FORM OF TENDER

This Appendix to form of tender forms part of the Agreement.(Note : with the exception of the items for which the employer's requirements have been inserted, the contractor shall complete the following information before submitting his offer.)

Description	Conditions of contract clause	Details
Tender security		KES 550,000.00
Employer		Kenya Wildlife Service
Engineer		Head of Roads and Fleet Management
Law of contract	4.1	The laws of the contract is that of the Republic of Kenya
Language of contract	4.1	The language of the contract shall be English.
Amount of performance security (unconditional Bank Guarantee)	40	The amount of performance Security is 10% of the Rehabilitation component
Time of completion	10.2 & 39	Rehabilitation 3 months PBC shall take 12 months
Programme to be submitted	17	Within 14 days after issuance of order to commence
Cash Flow Estimate	17	Within 14 days after issuance of order to commence
Minimum Amount of Third Party Insurance	34 & 35	1% of the contract sum
Period for commencement, from Engineers	10.1	14 days
Time for completion for Rehabilitation and improvement works.	10.2 &39	The time schedule for the achievement of specific service levels is 3 months
Amount of liquidated damages	39	0.2% of the contract sum per day upto a maximum of 10% of the contact sum
Limit of liquidated damages	40.4	The limit of liquidated damages is *10% of contract amount*
Taking over of sections or parts		Full length of the road
Defects liability period	41.2	The defects liability period for rehabilitation and improvement works shall be 1 month
Advance Payment	45.1	No Advance Payment Shall be made on this project
Minimum Amount of interim Payment Certificates	49.1	The minimum amount of interim payment certificate for rehabilitation work is 10% of contract sum
Retention money	51	The retention for Rehabilitation and improvement works is fixed at *5% of payment certificates*
Appointment of adjudicator Rules Place of Arbitration	6.3	Chairman, Chartered Institute of Arbitrators ,Kenya Branch CAP 49 of the Laws of Kenya KWS head quarters

Signature and stamp of Bidder.....Date.....

FORM OF TENDER SECURITY

(Note: The tenderer shall complete only this form of either *(cash/bank guarantee/insurance company guarantee /a guarantee from a financial institution*). No other Form of Tender Bond or any other forms of security will be accepted. Tenderers who fail to comply with this requirement will be disqualified).

WHEREAS [*Name of tenderer*]. .....

.....

(hereinafter called "the Tenderer") has submitted his tender dated ..... for the

Tender name

.....

.....

hereinafter called "the Tender"

KNOW ALL MEN by these presents that we [*Name of Bank*]

.....

.....

of [Name of Country] .....

having our registered offices at .....

(hereinafter called the Bank) are bound unto (*insert the name of Employer)*, (hereinafter called "the Employer") in the sum of

(in words Kshs) .....

.....

(In figures Kshs).....

for which payment will be well and truly made to the said Employer the Bank binds itself, its successors and assigns by these presents.

Signed for the said Bank this ..... day of .....

THE CONDITIONS of this obligation are:

1. If the tenderer withdraws his Tender during the period of tender validity specified by the Tenderer on the Tender Form; or
2. If the Tenderer having been notified of the acceptance of his tender by the Employer during the period of Tender Validity
   (i) fails or refuses to execute the Form of Agreement in accordance with the ITT when required or
   (ii) fails or refuses to furnish the Performance Security, in accordance with the ITT.

We undertake to pay to the Employer up to the above amount upon receipt of his first written demand, without the Employer having to substantiate his demand, provided that in his demand the Employer will note that the amount claimed by him is due to him owing to the occurrence of any of the above conditions, specifying the occurred condition or conditions.

This guarantee will remain in force up to and including 30 days after the date of expiration of the tender validity, as stated in the ITT.

At the request of the Employer the Tender validity period may be extended by mutual agreement between the Employer and the Tenderer and we undertake to extend the validity of this Security accordingly without you having to inform us of such an extension of the Tender validity period if within this period the Tenderer has been notified of the acceptance of his Tender. This Security shall remain valid up to the time the Contract Agreement has been executed.

SIGNATURE AND SEAL OF THE BANK .....

NAME OF THE SIGNATORY ..... DATE.....

TITLE OF THE SIGNATORY.....

NAME OF THE WITNESS .....

SIGNATURE OF WITNESS..... DATE .....

ADDRESS OF THE WITNESS .....

SCHEDULES OF SUPPLIMENTARY INFORMATION

Schedule 1: Confidential Business Questionnaire

Schedule 2: Form of Written Power of Attorney

Schedule 3: Certificate of Tenderer's Site visit

Schedule 4: Schedule of Basic Rates of Materials

Schedule 5: Major items of Construction Plant and Equipment

Schedule 6: Key Personnel

Schedule 7: Schedule of Road Works carried out by Tenderer in the Last Five Years

Schedule 8: Schedule of Ongoing Projects Schedule 9:

Schedule of Local Labour Basic Rates Schedule 10:

Financial Information/Current Commitments Schedule 11:

Other Supplementary Information

Schedule 12: Work Programme and Method Statement

Schedule 13: Schedule of Adjustment Data

Schedule 14: Self-declaration that the person/tenderer is not debarred in the matter of the Public Procurement and Asset Disposal Act 2015.

Schedule 15: Anti Corruption Declaration/ Commitment/ Pledge Form.

SCHEDULE 1: CONFIDENTIAL BUSINESS QUESTIONNAIRE

You are requested to give the particulars indicated in Part 1 and either Part 2 (a), 2(b) or 2(c) whichever applies to your type of business.

You are advised that it is a serious offence to give false information on this Form.

Part 1 - General:

Business Name: .....

Location of Business Premises .....

Plot No. ..... Street/Road .....

Postal Address ..... Tel No. .....

Nature of Business .....

Email

Address .....

..... Current Trade License No. ..... Expiring Date

..... Maximum value of Business which you can handle at any one time:

Kshs. .....

Name of your Bankers .....

Branch .....

Are you an agent of the Kenya National Trading Corporation? YES/NO

Part 2(a) - Sole Proprietor:

Your Name in full .....

Age: .....

Nationality ..... Country of Origin .....

*Citizenship details .....

Part 2(b) - Partnership:

Give details of partners as follows:

Name	Nationality	Citizenship Details*	Shares
1……	1……	1……	1……
2……	2……	2……	2……
3……	3……	3……	3……

Part 2(c) - Registered Company:

Private or Public .....

State the nominal and issued capital of the company: -

Nominal: Kshs. .....

Issued: Kshs. .....

Give details of all Directors as follows:

Name	Nationality	Citizenship Details*	Shares
1……	1……	1……	1……
2……	2……	2……	2……
3……	3……	3……	3……

Part 2 (d) Interest in the Firm:

Are there any person / persons in the Kenya Wildlife Service who has interest in this firm? Yes /No**

Date: .....Signature of Tenderer .....

** Delete as necessary

Note: Attach proof of citizenship (Compulsory) and Certified Copy of Form CR12 (Compulsory).

)

SCHEDULE 2: FORM OF WRITTEN POWER OF ATTORNEY

The Tenderer shall state here below the name(s) and address of his representative(s) who is/are authorized to receive on his behalf correspondence in connection with the Tenderer.

.....

(Name of Tenderer's Representative in block letters)

.....

(Address of Tenderer's Representative)

.....

(Signature of Tenderer's Representative)

Alternate:

.....

(Name of Tenderer's Representative in block letters)

.....

(Address of Tenderer's Representative)

.....

(Signature of Tenderer's Representative)

**To be filled by all Tenderers*
Both representative and alternate must attach copy of National Identification card or Passport.

SCHEDULE 3: FORM OF CONFIRMATION OF PARTICIPATION AND UNDERSTANDING OF THE SCOPE OF WORKS

1. This is to certify that

   [Name/s]……

   Being the authorized representative/Agent of [Name of Bidder]

   ……..….

   ……...…

   Wish to participate in the pre bid conference scheduled for the purposes of familiarizing myself on the tender document and site conditions in accordance with the instruction to Bidders, for purposes of bidding for the following Tender(s).

   ……

   ……

   ……

   ……

   ……

   ……

   ……

   ……

   ……

   ……

   [name and location of the project]

2. The official email address for use during the MANDATORY VIRTUAL PRE-BID CONFERENCE will be

   (Please print clearly) ……..……...…….

   Signed and Stamped…….……...…….

   (Bidder's Representative)

NOTE:
This form must be submitted three (3) days before the PRE BID CONFERENCE through the procuring entity's **email hps@kws.go.ke for the purposes of recording/registration and planning of pre-bid conference and opening of tenders in line with Covid-19 measures and guidelines.**

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SCHEDULE 4: SCHEDULE OF BASIC RATES OF MATERIALS

Tenderers shall complete the blank section of this schedule only, and shall make no alterations to any item nor insert any additional materials. The prices inserted shall be those prevailing 30 days before submission of Tenderers and shall be quoted in Kenya shillings using the exchange rates specified in the Tendering Data. The prices shall be supported by bona fide quotations.

Item no	Description	Name of Supplier	Country of origin	Unit	Rate	
					Kshs	Cts
1.	Cut-back Bitumen MC 30 in bulk			Litre		
2.	Cut-back Bitumen MC 30 in drums			Litre		
3.	Bitumen 80/100 in bulk			Kg		
4.	Bitumen 80/100 in drums			Kg		
5.	Bitumen Emulsion K1-60 in bulk			Litre		
6.	Bitumen Emulsion K1-60 in drums			Litre		
7.	Petrol, Regular Grade			Litre		
8.	Petrol, Premium/ super Grade			Litre		
9.	Automotive Diesel Fuel			Litre		
10.	Industrial Diesel Oil			Litre		
11.	Industrial Fuel Oil			Litre		
12.	Kerosene Fuel			Litre		
13.	Cement			Tonne		
14.	Flex beam Guardrail			Metre		
15.	Gabion Mesh			m^2		
16.	Reinforcing Steel			Tonne		
17.	Lime			Tonne		

I certify that the above information is correct.

Signature of Tenderer: ..... Date: .....

Name of Signatory .....

SCHEDULE 5: MAJOR ITEMS OF CONSTRUCTION PLANT AND EQUIPMENT

Item No.	Equipment Details	Minimum Number required for the contract execution	No. of Equipment owned by the Tenderer	No. of Equipment to be hired/purchased by the Tenderer	No. of equipment to be made available for the contract by the Tenderer
1.					
2.					
3.					
4.					

The Tenderer shall enter in this schedule all major items of plant and equipment which he proposes to bring to site. Only reliable plant in good working order, and suitable for the work, shall be shown on this Schedule. The Tenderer should attach proof of ownership or authorized letter of hire.
I certify that the above information is correct.

Signature of Tenderer..... Date .....

Name of Signatory .....

SCHEDULE 6: KEY PERSONNEL

a) Key in-house Personnel proposed by Tenderer

The Tenderer shall list in this schedule the in-house professional and technical personnel he will employ, list of their current workload together with their qualifications, experience, position held and nationality.

i.) Head Office Staff

Name Staff	Nationality	Qualification	Designation	Experience
1)_____ 2)_____ 3)_____ e.t.c_____				

ii.) Rehabilitation/ Improvement Works Team

Name Staff	Nationality	Qualification	Designation	Experience
1)_____ 2)_____ 3)_____ e.t.c_____				

iii.) Self-Control Unit (PBC Team)

Name Staff	Nationality	Qualification	Designation	Experience
1)_____ 2)_____ 3)_____ e.t.c_____				

Note: Bidders shall Attach ceritified copies of their academic qualification certificates for each staff proposed

b) Other Personnel

The Tenderer shall list in this schedule the qualified operators and labours he will from the Contractor's site office to direct and execute the work together with their qualifications, experience, position held, salary scale and condition of employment.

Name Staff	Nationality	Qualification	Designation	Experience
Operators 1)_____ 2)_____ 3)_____e.t.c **Labour** 1)_____ 2)_____ 3)_____e.t.c				

I certify that the above information is correct.

Signature of Tenderer.....Date .....

Note: Bidders shall provide CVs in the format below and signed by each staff proposed

Resume of Proposed Personnel FORMAT

Tenderer name:

Position			
Personnel information		**Name**	**Date of birth**
		Professional qualifications	
Present employment		**Name of Procurement Entity**	
		Address of Procurement Entity	
		Telephone	**Contact (manager / personnel officer)**
		Fax	**E-mail**
		Job title	**Years with present Procurement Entity**
		Current Work load *Summarize the current work load. Indicate particular (if any) the projects the staff is involved*	
From	**To**	**Company / Project / Position / Relevant technical and management experience**	
		(Summarize professional experience, in reverse chronological order. Indicate particular technical and managerial experience relevant to the project)	

Signature of Staff proposed…….. Date…….

SCHEDULE 7: SCHEDULE OF ROADWORKS CARRIED OUT BY THE TENDERER IN THE LAST FIVE YEARS

DESCRIPTION OF WORKS	VALUE OF WORKS (KShs) *	YEAR COMPLETED / REMARKS

I certify that the above works were successfully carried out by this Tenderer (Attach Completion Certificates)

Signature of Tenderer.....Date .....

- * Value in Kshs using Central Bank of Kenya mean exchange rate at the date of Tender submission.

SCHEDULE 8: SCHEDULE OF ONGOING PROJECTS

Tenderers should provide information on their current commitments on all contracts that have been awarded, or for which a letter of intent or acceptance has been received, or for contracts approaching completion, but for which an unqualified, full completion certificate has yet to be issued.

Name of Contract	Procurement Entity's contact address /fax	Date of commencement	Date of completion	Value of works (kshs)	Value completed up to date %	Physically completed up to date %

I certify that the above works are being carried out by me and that the above information is correct.

Signature of Tenderer.....Date .....

SCHEDULE 9: SCHEDULE OF LOCAL LABOUR BASIC RATES

The rates inserted in this schedule will be those used in determining changes in cost of local labour market.

LABOUR CATEGORY	MONTH/SHIFT/HOUR	UNIT	RATE (KShs)

NOTE: Categories to be generally in accordance with those used by the Kenya Building Construction Engineering and Allied Trade Workers Union and Ministry of East African Community, labour and Social Protection.

I certify that the above information is correct.

Signature of Tenderer.....Date .....

SCHEDULE 10: FINANCIAL INFORMATION/CURRENT COMMITMENTS

1. Submit copies of audited profit and loss statements and balance sheet for the last three calendar years and estimated projection for the next two years with certified English translation where appropriate.

2. Give turnover figures for each of the last three (3) financial years. Quote in millions and decimal thereof.

Type of \Work	Year	Year	Year
	Kshs.	Kshs.	Kshs.
Road works			
Other civil engineering works			
Other (specify)			
Total			

SUMMARY OF ASSETS AND LIABILITIES OF THE AUDITED FINANCIAL STATEMENTS OF THE LAST THREE (3) FINANCIAL YEARS.

	Year	Year	Year
	Kshs.	Kshs.	Kshs.
1. Total Assets			
2. Current Assets			
3. Bank credit Line Value			
4. Total Liabilities			
5. Current Liabilities			
6. Net worth (1-4)			
7. Working capital (2+3-4)			

(a) Name/Address of Commercial Bank providing credit line

.....

.....

(b) Total amount of credit line Kshs.....

Attach certified copies of financial bank statements of the last three years.

Attach a certified copy of Undertaking of the Bank to providing the credit.

SCHEDULE 11: OTHER SUPPLEMENTARY INFORMATION

1. Certified Copies of Audited Financial Statement for the last three years, balance sheets, profit and loss statements, auditors' reports etc. List them below and attach copies.

   .....

   .....

   .....

   .....

2. Evidence of access to financial resources to meet the qualification requirements. Cash in hand, lines of credit etc. List below and attach copies of supporting documents

   .....

   .....

   .....

   .....

3. Name, address, telephone, telex, fax numbers of the Tenders' Bankers who may provide reference if contacted by the Contracting Authority.

   .....

   .....

   .....

4. Information on History of Non performing contract in which the Tenderer is involved.

OTHER PARTY (IES)	CAUSE OF DISPUTE	AMOUNT INVOLVED (KShs)

5. Information on current Litigation in which the Tenderer is involved.

OTHER PARTY (IES)	CAUSE OF DISPUTE	AMOUNT INVOLVED (KShs)

I certify that the above information is correct (**Provide a sworn affidavit each for both 4 and 5 above).**

Signature of Tenderer .....Date .....

SCHEDULE 12: WORK PROGRAMME AND METHOD STATEMENT

1) SCHEDULE 12-A: Program of works method Statements

To demonstrate a clear understanding of the requirements of the Contract, tenderers shall provide the following:

a) A bar/gantt chart sub-divided into sections for each road showing the major activities to be carried out for Maintenance Services, Rehabilitation Works and Improvement Works, if any. The activities shall be shown against time, with linkages shown between related/sequential activities as far as possible and appropriate.
b) A bar chart or schedule showing the usage of major plant, including those listed in Schedule 5 (Contractor's Equipment).
c) Proposal on material testing and measurement
d) Proposal on work safety management
e) Environmental and social management

2) SCHEDULE 12-B: Projected Cash Flow

i. Tenderers shall tabulate below estimates, based on their preliminary work programme, of:

   a) On the expenditure side, the value of the work which will be carried out;

   b) On the revenue side, the net payments to which they will become entitled with due allowance for the advance payment and repayment, materials prepayments, and retention money, but excluding price adjustments for rise and fall and provisional sums for emergency works.

   c) The projected net cash flow during the contract period.

ii. The prospective successful tenderer may be required to submit full details to substantiate his estimates.

3) SCHEDULE 12-C: Site Organization

Tenderers shall give below full particulars of the organization they propose to establish, direct, and administer the performance of the Contract. In particular, tenderers shall indicate the location of site camps, stockyard location and the resources they intend to allocate to Self Control Units for planning and monitoring purposes. The Tenderer should provide:

SITE ORGANIZATION CHART
NARRATIVE DESCRIPTION OF SITE ORGANISATION CHART
SELF CONTROL UNIT

4) SCHEDULE 12-D: Subcontractor/Partners

Tenderers shall list below those parts of the Works and Services which they propose to subcontract, and state the approximate value of those parts and the names and addresses of the proposed subcontractors, if those are known at tendering stage. Tenderers shall also list other business partners involved in the execution of the contract and their respective roles and responsibilities.

Part of Works / Services:
Approximate value:
Name and address of proposed subcontractor / partner:

SCHEDULE 13: SCHEDULE OF ADJUSTMENT DATA

[In the Table below, the Tenderer shall (a) indicate its amount of local currency payment, and (b) derive its proposed weightings for local payment. In the case of very large and/or complex contracts, it may be necessary to specify several families of price adjustment formulae corresponding to the different works involved.]

Table A. Local Currency

Index description*	**Source of index***	**Base value and date***	**%range of weighting**	**Tenderer's Proposed weighting weighting**
"Fixed A"	Employer	Prevailing on the 28 days prior to the date for submission of tenders	To be specified by the Employer (not less than 15%)	To be provided by tenderers in conformity to % range of weighting.
Labour	KNBS		To be specified by the Employer	To be provided by tenderers in conformity to % range of weighting.
Equipment (to be specified by the Employer)	KNBS		To be specified by the Employer	To be provided by tenderers in conformity to % range of weighting.
Materials (to be specified by the Employer)	KNBS		To be specified by the Employer	To be provided by tenderers in conformity to % range of weighting.
Total			100%	100%

SCHEDULE 14: SELF DECLARATION THAT THE PERSON/TENDERER IS NOT DEBARRED IN THE MATTER OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT 2015.

I, ... of P.O. Box .....being a resident of .....in the Republic of .....do hereby make a statement as follows: -

1. ..... THAT I am the Company Secretary/ Chief Executive/Managing Director/Principal Officer/Director of ..... (insert name of the Company) who is a Tenderer in respect of **Tender No .....** for (insert tender title/description) for ..... (insert name of the Employer) and duly authorized and competent to make this statement.

2. ..... THAT the aforesaid Tenderer, its Directors and subcontractors have not been debarred from participating in procurement proceeding under Part IV of the Act.

3. ..... THAT what is deponed to hereinabove is true to the best of my knowledge, information and belief.

(Name) .....

(Title) ..... (Signature) ..... (Date).....

Tenderer Official Stamp

SCHEDULE 15: ANTI CORRUPTION DECLARATION/ COMMITMENT/ PLEDGE FORM

I, ... of P. O. Box ..... being a resident of .....in the Republic of ..... do hereby make a statement as follows: -

1. ..... THAT I am the Company Secretary/Chief Executive/Managing Director/Principal Officer/Director of ..... (insert name of the Company) who is a Tenderer in respect of **Tender No. .....** for ..... (insert tender title/description) for ..... (insert name of the Employer) and duly authorized and competent to make this statement.

2. ..... THAT the aforesaid Tenderer, its servants and/or agents /subcontractors will not engage in any corrupt or fraudulent practice and has not been requested to pay any inducement to any member of the Board, Management, Staff and/or employees and/or agents of ..... (insert name of the Employer) which is the Employer.

3. ..... THAT the aforesaid Tenderer, its servants and/or agents /subcontractors have not offered any inducement to any member of the Board, Management, Staff and/or employees and/or agents of ..... (insert name of the Employer)

4. ..... THAT the aforesaid Tenderer will not engage /has not engaged in any corrosive practice with other Tenderers participating in the subject tender

5. ..... THAT what is deponed to hereinabove is true to the best of my knowledge information and belief.

(Name) .....

(Title) ..... (Signature) ..... (Date).....

Tenderer's Official Stamp

LETTER OF ACCEPTANCE

[letterhead paper of the Employer]

..... [date]

To:
..... [name of the Contractor]

..... [address of the Contractor]

Dear Sir,

This is to notify you that your Tender dated ..... for the execution of

..... [name of the Contract and identification number, as given in the Tender documents] for the Contract Price of

Kshs. ..... [amount in figures]

Kshs. .....

..... (amount in words)] in accordance with the Instructions to Tenderers is hereby accepted.

You are hereby instructed to proceed with the execution of the said Works in accordance with the Contract documents.

Authorized Signature .....

Name and Title of Signatory .....

Attachment: Agreement

SECTION VI: -BILL OF QUANTITIES

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1. Preamble to Bill of Quantities

a) The Bill of Quantities shall form part of the Contract Documents and is to be read in conjunction with the Instructions to Tenderers, General Conditions of Contract (GCC), Particular Conditions of Contract (PCC), Specifications and Drawings.

b) The brief description of the items in the Bill of Quantities is purely for the purpose of identification, and in no way modifies or supersedes the detailed descriptions given in GCC, PCC and Specifications for the full direction and description of the Works and Maintenance Services.

c) The quantities set forth in the Bill of Quantities for the Works are estimated and provisional, representing substantially the Works to be carried out, and are given to provide a common basis for tendering and comparison of Tenders. There is no guarantee to the Contractor that he will be required to carry out all the quantities of Works indicated under any one particular item or group of items in the Bill of Quantities. The basis of payment shall be the Contractor's rates and the quantities of Works actually done in fulfilment of his obligation under the Contract.

d) The prices and unit rates in the Bills of Quantities are to be the full and all-inclusive value of the work described under the items, including all costs and expenses which may be necessary and all general risks, liabilities and obligations set forth or implied in the documents on which the tender is based. All duties, taxes and other levies payable by the Contractor under the Contract, or for any other cause prior to the deadline for submission of tenders, shall be included in the rates and prices and the total Tender Price submitted by the tenderer.

Each price or unit rate inserted in the Bills of Quantities should be a realistic estimate for completing the activity or activities described under that particular item and the tenderer is advised against inserting a price or rate against any item contrary to this instruction.

Every rate entered in the Bills of Quantities, whether or not such rate be associated with a quantity, shall form part of the Contract. The Employer shall have the right to call for any item of work contained in the Bills of Quantities, and such items of work to be paid for at the rate entered by the tenderer and it is the intention of the Employer to take full advantage of unbalanced low rates.

e) The prices and rates inserted in the Bills of Quantities will be used for valuing work executed, and the Engineer will measure the whole of the Works executed in accordance with this Contract. The Maintenance Services will not be measured. However, price reduction will be carried out for not achieving the defined Service levels as inspected by the Engineer under Formal Inspection.

f) A price or rate shall be entered in ink against every item in the Bill of Quantities with the exception of items, which already have provisional sums, affixed thereto. The Tenderers are reminded that no "nil" or "included" rates or "lump-sum" discounts will be accepted. The rates for various items should include discounts if any. Tenderers who fail to comply will be disqualified.

g) Provisional sums (including Day works) in the Bill of Quantities shall be expended in whole or in part at the discretion of the Engineer in accordance with Clause 60, 61 and 62 of the GCC.

h) The price and rates entered in the Bill of Quantities shall, except insofar as it is otherwise provided under the Contract, include all constructional plant to be used, labour, insurance, supervision, compliance, testing, materials, erection, maintenance or works, overheads and profits, taxes and duties together with all general risks, liabilities and obligations set out or implied in the Contract, transport, electricity and telephones, water, use and replenishment of all consumables, including those required under the Contract by the Engineer and his staff.

Bill of Quantities for Rehabilitation Works

TENDER NO KWS/OT/RMLF/22/2020-2021					
INSTRUCTED WORKS KALALU FARM-SIRIMON GATE-9KM					
Item	**Description of Work Item**	**Unit**	**Quantity**	**Rate (KES)**	**Amount (KES)**
01-60-009	Provide, erect and maintain publicity signs as directed by the engineer	KS	1		
01-80-026	Allow a prime cost sum for the RE's miscellaneous account	KS	1	100,000	100,000.00
01-80-027	Extra over 01-80-026 for profits and overheads	%	100,000		
01-80-028	Allow prime cost sum for off road environmental mitigation	PC SUM	1	150,000	150,000.00
01-80-029	Extra over 01-80-028 for profits and overheads	%	150,000		
01-80-034	Allow prime cost sum for HIV/AIDS awareness on site	PC SUM	1	50,000	50,000.00
01-80-035	Extra over 01-80-034 for profits and overheads	%	50,000		
07-50-116	Gabion mesh 2.0x1.0x1.0m	NO	25		
07-50-177	Rock fill to Gabions	M^3	50		
08-60-003	Culvert Cleaning- Fully blocked - 900mm	MT	240		
08-60-025	Culvert Installation 600 mm with surround	MT	7		
08-70-006	Construction Of scour checks (concrete)	NO	20		
10-50-003	Light grading as instructed by the Engineer	M^2	108,000		
10-60-001	Provide gravel wearing course-excavation,free haul, spread, water and compact gravel to specifications.	M^3	2000		
I	**Total carried to Summary page**				

TENDER NO KWS/OT/RMLF/22/2020-2021					
INSTRUCTED WORKS JUNCT D448-PHQS E606-10KM					
Item	**Description of Work Item**	**Unit**	**Quantity**	**Rate (KES)**	**Amount (KES)**
04-50-004	Light bushing clearing	M^2	16,000		
08-60-003	Culvert Cleaning- Fully blocked - 600mm	MT	70		
08-60-025	Culvert Installation 600 mm with surround	METERS	35		
10-50-003	Light grading as instructed by the Engineer	M^2	60,000		
10-60-001	Provide gravel wearing course- excavation, free haul, spread, water and compact gravel to specifications.	M^3	2,000		
II	**Total carried to Summary page**				

TENDER NO KWS/OT/RMLF/22/2020-2021

PERFORMANCE BASED MAINTENANCE SERVICES-(JNCT D448-PHQ'SROAD E606) -10KM, KALALU FARM-SIRIMON GATE 9KM (TOTAL 19KM)-

UNPAVED SECTION

Bill 4 Site Clearance/Vegetation control		**UNITS**	**QTY**	**RATE**	**AMOUNT (KES)**
04-50-004	**Light Bush clearing:** Cut grass from shoulders, slopes,inlet ditches, and side ditches including back slopes turnouts and culvert outlets	M^2	71,250		
04-50-008	**Clearing of obstruction:** Clear any obstruction including debris or boulders out of the road carriage way.	M^2	400		
Bill 8 Culverts and Drainage Works					
08-50-002	**Ditch cleaning**: Desilt,grade to shape inlets and outfalls,side drains/catch water drains to free flow.	M	2,992		
08-60-003	Culvert Cleaning- Partially blocked - 600mm	M	145		
08-60-004	Culvert Cleaning- Partially blocked - 900mm	M	140		
Bill 10 Grading and Gravelling Works.					
10-50-003	**Light grading as instructed by the Engineer:** Trim with motor grader existing carriageway to camber,including slopes and ditches	M^2	228,000		
10-60-001	**Gravel patching:** Provide gravel wearing course-excavation,free haul, spread, water and compact gravel to specifications	M^3	1,000		
Sub-total to summary page					
III. TOTAL PBC WORKS					
	Duration of the PBC contract(months)	**12**	**COST/MONTH**		
	Length of Road/s(km)	**19**	**COST/MONTH/KM**		

BILL OF QUANTITIES FOR PBC MAINTENANCE SERVICES

TENDER NO KWS/OT/RMLF/22/2020-2021

PERFORMANCE BASED MAINTENANCE SERVICES-(PHQ'SROAD -MET STATION E606) - 10 KM, SIRIMON GATE-OLD MOSES 9.8 KM (TOTAL 19.8KM)

PAVED SECTION

Item No	Description	Unit	Nominal Quantity	Rate (KES)	Amount (KES)
26-50-004	Performance Based Routine Maintenance on and off paved carriageway	Km - Month	216		
IV	Total carried to Summary page				

EMERGENCY / DAY WORKS					
ITEM	DESCRIPTION	Unit	Nominal Quantity	Rate KES	Amount KES
	PLANT AND EQUIPMENT: The rates included herein are to include all operational and maintenance costs, fuel, oil, grease, operator charges, wages, supervision, overheads and profits. Only time employed upon the work will be measured and the rates shall include for idle time spent travelling and overtime in accordance with clause (.....) of the specifications. All items of the plant and Equipment must be priced				
22.67.110	Chip spreader	hr	10		
22.67.004	Bitumen Sprayer H/Operated	hr	30		
22.64.001	Pedestrian Roller: 700 - 1000 Kg.	hr	20		
22.64.005	Pneumatic Roller: 10T, 130 HP Hour	hr	10		
22-50-151	Motor grader complete with scarifier: a-80-110kw rated flywheel power	hr	12		
22-50-190	Rollers,vibratory single drum ,rubber tyred,self propelled 8.3t - 10.5t unballasted weight	hr	8		
22-50-083	Craw loaders: b-1.31-1.90m3 SAE rated capacity	hr	8		
22-65-003	Concrete Mixer : 300 - 450 L	hr	6		
22-80-020	Poker vibrator for concrete diesel	hr	8		
22-61-009	Truck, Tipper : 15 Tonnes	hr	24		
22-50-210	Van,pickup or similar utility vehicle 1.1 - 2.6t carrying capacity	hr	24		
22-76-018	Backhoe Loader	Hr	10		
22-80-025	Water tanker/bowser self propelled 5000-10000 lts capacity	hr	12		
	LABOUR				
	Note: The rate included herein shall include all costs of labour,as well as overtime, travelling time and cost of accomodation,social security contributions, use and maintenance of small tools of trade, supervision insurance, overheads,profits and any other cost.				
22-50-002	Unskilled Labour	PD	60		
22-50-040	Artisan	PD	12		
22-90-029	Labour c) Plant operator	PD	42		
22-50-015	Driver Asistant (Turn boy)	PD	8		
22-90-030	Labour d) Driver	PD	8		
22-90-031	Labour e) Foreman.	PD	8		
	MATERIALS				
	All items of materials must be priced in accordance with the requirements of clause 2202 (c) of the specifications				
22-70-001	Provide 14/20 mm precoated chipping	M^3	30		
22-70-002	Providel 6/10 mm precoated chipping	M^3	30		
22-70-003	Prime Coat (MC-30 cutback	litre	200		

EMERGENCY / DAY WORKS					
ITEM	DESCRIPTION	Unit	Nominal Quantity	Rate KES	Amount KES
	bitumen)				
22-70-004	80/100 Pen grade bitumen	litre	200		
22-70-005	Ordinary portland cement	KG	1,000		
22-70-006	Shuttering timber class F2 finish	M^2	50		
22-70-007	Fine aggregates(sand)	Ton	7		
22-70-008	Graded aggregates (ballast)	Ton	7		
22-70-009	Precast concrete culvert - 600mm	M	8		
22-70-010	Precast concrete culvert - 900mm	M	8		
22-70-011	Hardcore	M^3	27		
22-70-012	Gravel material (murram)	M^3	600		
22-70-013	Weldmesh BRC A142	M^2	2		
22-70-014	Binding wire	KG	15		
22-70-015	Gabion box 2 x 1 x 1m	M^2	30		
V. TOTAL EMERGENCY/DAY WORKS					

TENDER NO KWS/OT/RMLF/22/2020-2021		
SUMMARY PAGE		
ITEM	DESCRIPTION OF WORK ITEM	AMOUNT (KES)
I	INSTRUCTED WORKS KALALU FARM-SIRIMON GATE-9KM	
II	INSTRUCTED WORKS JNCT D448-PHQ'SROAD E606-10 KM	
III	PERFORMANCE BASED MAINTENANCE SERVICES-(JNCT D448-PHQ'SROAD E606) -10KM, KALALU FARM-SIRIMON GATE 9KM-UNPAVED ROAD SECTION	
IV	PERFORMANCE BASED MAINTENANCE SERVICES-(PHQ'SROAD -MET STATION E606) -10 KM, SIRIMON GATE-OLD MOSES 9.8 KM -PAVED ROAD SECTION	
V	EMERGENCY / DAY WORKS	
A	SUB TOTAL (I) , (II), (III), (IV) , & (V),	
B	ADD 5% CONTIGENCIES	
C	SUB TOTAL (A+B)	
D	ADD 14% VAT	
	TOTAL CARRIED FORWARD TO FORM OF TENDER(C+D)	

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A. CONTRACT AND INTERPRETATION

1. Definitions

1.1 Boldface type is used to identify defined terms

Bill of Quantities means the priced and completed Bill of Quantities forming part of the Contractor's Tender.

The **Certificate of Completion** is a document issued by the Engineer upon completion of Rehabilitation Works, Improvement Works and Emergency Works, or parts thereof, as applicable, in accordance with GCC 54.1

The **Completion Date** is the date of completion of the Maintenance Services and Works as certified by the Engineer, in accordance with GCC Sub-Clause 10.2.

The **Contract** is the agreement between the Employer and the Contractor to perform the Maintenance Services to be provided by the Contractor, and to execute, complete, and maintain the Works. It consists of the documents listed in Clause 3 below.

The **Contractor** is a person or corporate body whose Tender to carry out the Works and Maintenance Services has been accepted by the Employer.

The **Contractor's Tender** is the completed tendering document submitted by the Contractor to the Employer.

The **Contract Price** is the price stated in the Letter of Acceptance and thereafter as adjusted in accordance with the provisions of the Contract.

Days are calendar days; **months** are calendar months.

A **Defect** is any part of the Works and Maintenance Services not completed in accordance with the Contract.

The **Defects Liability Certificate** is the certificate issued by Engineer upon correction of defects by the Contractor.

The **Defects Liability Period** is the period specified in the Contract and is applicable for Rehabilitation Works and Improvement Works, with exclusions identified in the Particular Conditions of Contract (hereinafter "PCC"), if any.

Drawings include calculations and other information provided by the Contractor for the execution of the Contract.

Emergency Works is a set of necessary and sufficient activities to reinstate the Road and reconstruct its structure or right of way strip damaged as a result of natural phenomena with imponderable consequences, such as strong storms, flooding and earthquakes. The need for execution of Emergency Works is jointly identified by the Employer and the Contractor and for starting of execution of Emergency Works the

Employer shall issue a Work Order.

The **Employer** is the party who employs the Contractor to carry out the Works and Maintenance Services

Equipment is the Contractor's machinery and vehicles brought temporarily to the Site to construct the Works and to carry out the Maintenance Services.

Improvement Works consists of a set of interventions that add new characteristics to the Road in response to existing or new traffic, safety or other conditions, as defined in the Specifications.

Rehabilitation Works are specific and clearly defined civil works the Contractor is required to carry out under the conditions of the Contract, as defined in the Specifications. Rehabilitation Works quantities were estimated by the Contractor to achieve the performance standards defined by the Service Levels and offered at a Lump-Sum price.

The **Intended Completion Date** is the date on which it is intended that the Contractor shall complete the Works and Maintenance Services. The Intended Completion Date is specified in the PCC. The Intended Completion Date may be revised only by the Engineer by issuing an extension of time.

Materials are all supplies, including consumables, used by the Contractor for incorporation in the Works and for provision of Maintenance Services.

The **Engineer** is the person named in the PCC, appointed by the Employer to be responsible for the overall administration of the Contract on behalf of the Employer, and the supervision of works and Maintenance Services to be performed thereunder. The Engineer may delegate through a written instrument some of his functions to any other competent person, retaining however the overall responsibility for the actions of that person. The Engineer may not delegate the overall administrative control of the Contract.

Road means the road or network of roads for which the Works and Maintenance Services are contracted under the Contract.

The **Road Management Office** is the location indicated by the Contractor from which the Road Manager operates, and where the Contractor shall receive notifications.

The **Road Manager** is a person appointed by the Contractor who is in charge of managing all activities of the Contractor under the Contract. He is also the Contractor's Representative for the purposes of this contract

Maintenance Services means all interventions on the Road under the Contract and all activities related to the management and evaluation of the Road which shall be carried out by the Contractor in order to achieve and keep the Road Performance Standards as defined by the Service Levels, and to receive full payment of the monthly fee under the contract

Service Levels are the minimum performance standards for the level of quality of conditions of the Road defined in the Specifications which the Contractor shall comply with.

The **Site** is the area defined as such in the PCC

Site Investigation Reports are those that were included in the tendering documents and are factual and interpretative reports about the surface and subsurface conditions at the Site.

The **Start Date** is the date when the Contractor has started the physical execution of the Works and Maintenance Services on the site. It does not necessarily coincide with any of the Site Possession Dates.

A **Subcontractor** is a person or corporate body who has a contractual agreement with the Contractor to carry out certain activities related to the Maintenance Services to be provided under the contract, which may include work on the Site.

Specifications means the detailed description of the Works and Maintenance Services included in the Contract and any modification or addition made or approved by the Engineer.

A **Variation** is an instruction given by the Engineer which varies the Works or Maintenance Services.

The **Works** are what the Contract requires the Contractor to construct, install, and turn over to the Employer, as covered under Rehabilitation Works, Improvement Works and Emergency Works.

Work Order is an order issued by the Engineer to the Contractor authorizing the execution of Improvement Works and Emergency Works, as provided for in GCC Clause 27 hereunder.

2 **Interpretation** 2.1 In interpreting these GCC, singular also means plural, male also means female or neuter, and vice versa. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Engineer will provide instructions clarifying queries about these GCC.

3 **Documents Forming the Contract** 3.1 The documents forming the Contract shall be interpreted in the following order of priority:

1. Agreement
2. Letter of Acceptance
3. Notification of Award
4. Form of Tender and Appendix to Form of Tender
5. Particular Conditions of Contract
6. General Conditions of Contract
7. Performance Specifications
8. Standard Specifications
9. Drawings
10. Bills of Quantities
11. Any other document listed in the PCC as forming part of the

If any ambiguity or discrepancy is found in the documents the Engineer will provide instructions clarifying the position.

4 **Language and Law**

4.1 The language of the Contract and the law governing the Contract are stated in the PCC.

5 **Notices**

5.1 Unless otherwise stated in the Contract, all notices to be given under the Contract shall be in writing, and shall be sent by personal delivery, airmail post, special courier, fax or E-mail to the address of the relevant party set out in the PCC, with the following provisions:

5.1.1 Any notice sent by fax or E-mail shall be confirmed within two (2) days after dispatch by notice sent by airmail post or special courier, except as otherwise specified in the Contract.

5.1.2 Any notice sent by airmail post or special courier shall be deemed (in the absence of evidence of earlier receipt) to have been delivered ten (10) days after dispatch. In proving the fact of dispatch, it shall be sufficient to show that the envelope containing such notice was properly addressed, stamped and conveyed to the postal authorities or courier service for transmission by airmail or special courier.

5.1.3 Any notice delivered personally or sent by fax or E-mail shall be deemed to have been delivered on date of its dispatch.

5.1.4 Either party may change its postal, fax or E-mail address or addressee for receipt of such notices by ten (10) days' notice to the other party in writing.

5.2 Notices shall be deemed to include any approvals, consents, instructions, orders and certificates to be given under the Contract.

5.3 The Contractor shall provide at its own cost, and maintain in operation permanently during the duration of the Contract, such communications equipment which ensures that both written (fax or E-mail) and oral (voice) communications can be established at all times

(a) between the Road Manager and his senior field staff;

(b) between the Engineer and the Road Manager;

(c) between the public telephone system and the Road Manager;

(d) The equipment to be provided and maintained includes the equipment located at the Engineer's office.

5.4 At the Start Date of the Contract, the Contractor must communicate to the Employer the address of his office, including the postal, fax and E-mail address, which for the purposes of this contact is called the Road Management Office, where Notices will be addressed to. The Employer may require that the physical location of the Road Management Office is within the close geographical area of the Road. If the Contractor fails to communicate the address of his Road Management Office, and the Employer is otherwise unable to locate the Road Manager, all

notifications to the Contractor shall be valid if they are deposited at a designated location within the office of the Engineer, and if a copy is sent to the Contractor's legal address.

6 **Settlement of Disputes**

6.1 Engineer's Decision

If a dispute of any kind whatsoever arises between the Employer and the Contractor in connection with, or arising out of, the Contract or the execution of the Works, whether during the execution of the Works or after their completion and whether before or after repudiation or other termination of the Contract, including any dispute as to any opinion, instruction, determination, certificate or valuation of the Engineer, the matter in dispute shall, in the first place, be referred in writing to the Engineer, with a copy to the other party. Such reference shall state that it is made pursuant to this Clause.

No later than the eighty-fourth (84^{th}) day after the day on which he received such reference the Engineer shall give notice of his decision to the Employer and the Contractor. Such decision shall state that it is made pursuant to this Clause. Unless the Contract has already been repudiated or terminated, the Contractor shall, in every case, continue to proceed with the Works with all due diligence and the Contractor and the Employer shall give effect forthwith to every such decision of the Engineer unless and until the same shall be revised, as hereinafter provided, in an amicable settlement or an arbitral award.

If either the Employer or the Contractor be dissatisfied with any decision of the Engineer, or if the Engineer fails to give notice of his decision on or before the eighty-fourth day after the day on which he received the reference, then either the Employer or the Contractor may, on or before the seventieth day after the day on which he received notice of such decision, or on or before the seventieth day after the day on which the said period of 84 days expired, as the case may be, give notice to the other party, with a copy for information to the Engineer, of his intention to commence arbitration, as hereinafter provided, as to the matter in dispute. Such notice shall establish the entitlement of the party giving the same to commence arbitration, as hereinafter provided, as to such dispute and, subject to Sub-Clause 6.4, no arbitration in respect thereof may be commenced unless such notice is given.

If the Engineer has given notice of his decision as to a matter in dispute to the Employer and the Contractor and no notice of intention to commence arbitration as to such dispute has been given by either the Employer or the Contractor on or before the seventieth day after the day on which the parties received notice as to such decision from the Engineer, the said decision shall become final and binding upon the Employer and the Contractor.

6.2 Amicable Settlement

Where notice of intention to commence arbitration as to a dispute has been given in accordance with Sub-Clause 6.1, the parties shall attempt to settle such dispute amicably before the commencement of arbitration. Provided that, unless the parties otherwise agree, arbitration may be commenced on

or after the fifty-sixth day after the day on which notice of intention to commence arbitration of such dispute was given, even if no attempt at amicable settlement thereof has been made.

6.3 Arbitration

Any dispute in respect of which:

(a) the decision, if any, of the Engineer has not become final and binding pursuant to Sub-Clause 6.1, and

(b) amicable settlement has not been reached within the period stated in Sub-Clause 6.2,

shall be finally settled, unless otherwise specified in the Contract, under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed under such Rules. The said arbitrator/s shall have full power to open up, review and revise any decision, opinion, instruction, determination, certificate or valuation of the Engineer related to the dispute. Neither party shall be limited in the proceedings before such arbitrator/s to the evidence or arguments put before the Engineer for the purpose of obtaining his said decision pursuant to Sub-Clause 6.1. No such decision shall disqualify the Engineer from being called as a witness and giving evidence before the arbitrator/s on any matter whatsoever relevant to the dispute.

Arbitration may be commenced prior to or after completion of the Works, provided that the obligations of the Employer, the Engineer and the Contractor shall not be altered by reason of the arbitration being conducted during the progress of the Works.

6.4 Failure to Comply with Engineer's Decision

Where neither the Employer nor the Contractor has given notice of intention to commence arbitration of a dispute within the period stated in Sub-Clause 6.1 and the related decision has become final and binding, either party may, if the other party fails to comply with such decision, and without prejudice to any other rights it may have, refer the failure to arbitration in accordance with Sub-Clause 6.3. The provisions of Sub-Clauses 6.1 and 6.2 shall not apply to any such reference.

B ASSIGNMENT OF RESPONSIBILITIES

7 Scope of Works and Maintenance Services

7.1 Unless otherwise expressly limited in the Specifications, the Contractor's obligations cover the Design, the carrying out of all Works and the performance of all Maintenance Services required for keeping the Road in accordance with the Service Levels defined in the Specifications, while at the same time respecting the plans, procedures, specifications, drawings, codes and any other documents as identified in the Specifications. Such specifications include, but are not limited to, the provision of supervision and engineering Maintenance Services; the supply of labour, materials, equipment; Contractor's Equipment; construction utilities and supplies; temporary materials, structures and facilities; transportation (including, without limitation, unloading and hauling to, from and at the Site); and storage, except for those supplies, works and Maintenance Services that

will be provided or performed by the Employer, if any, as set forth in the corresponding Specifications.

7.2 The Contractor shall, unless specifically excluded in the Contract, perform all such work, Maintenance Services and/or supply all such items and materials not specifically mentioned in the Contract but that can be reasonably inferred from the Contract as being required for attaining the Performance Standards (as specified in Clause 24 of GCC) as if such work, Maintenance Services and/or items and materials were expressly mentioned in the Contract.

8 **Design Responsibility**

8.1 Unless otherwise specified in the PCC, the Employer shall be responsible for the design of Rehabilitation, Improvement and Emergency Works.

The Contractor shall be responsible for the design produced by him and programming of the Works and Maintenance Services, and for the accuracy and completeness of the information used for that design and programming in accordance with the requirements established in the Specifications.

8.2 Specifications and Drawings

8.2.1 The Contractor shall implement the basic and detailed design and the engineering work in compliance with the provisions of the Contract and the Specifications, or where not so specified, in accordance with standard engineering practice.

The Contractor shall be responsible for any discrepancies, errors or omissions in the specifications, drawings and other technical documents that it has prepared, whether such specifications, drawings and other documents have been approved by the Engineer or not, provided that such discrepancies, errors or omissions are not because of inaccurate information furnished in writing to the Contractor by or on behalf of the Employer.

8.2.2 The Contractor shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof, provided or designated by, or on behalf of, the Employer, by giving a notice of such disclaimer to the Engineer.

8.3 Codes and Standards

Wherever references are made in the Contract to codes and standards in accordance with which the Contract shall be executed, the edition or the revised version of such codes and standards current at the date twenty-eight (28) days prior to date of tender submission shall apply unless otherwise specified. During Contract execution, any changes in such codes and standards shall be applied after approval by the Employer and shall be treated in accordance with GCC Clause 63.

8.4 Approval/Review of Technical Documents by Engineer

8.4.1 For those Works specified in the PCC, the Contractor shall prepare (or cause its Subcontractors to prepare) and furnish to the Engineer

the documents listed in the Specifications (List of Documents for Approval or Review) for its approval or review.

Unless otherwise specified in the PCC, the Contractor shall be required to submit, for the Employer's approval, the Design or other technical documents concerning the Maintenance Services remunerated through monthly lump-sum payments.

Any part of the Works covered by or related to the documents to be approved by the Engineer shall be executed only after the Engineer's approval thereof.

GCC sub-clauses 8.4.2 through 8.4.7 shall apply only to those documents requiring the Engineer's approval, but not to those furnished to the Engineer for his information or review only.

8.4.2 Within fourteen (14) days after receipt by the Engineer of any document requiring the Engineer's approval in accordance with GCC sub-clause 8.4.1, the Engineer shall either return one copy thereof to the Contractor with its approval endorsed thereon or shall notify the Contractor in writing of its disapproval thereof and the reasons therefore and the modifications that the Engineer proposes.

If the Engineer fails to take such action within the said fourteen (14) days, then the said document shall be deemed to have been approved by the Engineer.

8.4.3 The Engineer shall not disapprove any document, except on the grounds that the document does not comply with some specified provision of the Contract or that it is contrary to standard engineering practice.

8.4.4 If the Engineer disapproves the document, the Contractor shall modify the document and resubmit it for the Engineer's approval in accordance with GCC sub-clause 8.4.2. If the Engineer approves the document subject to modification(s), the Contractor shall make the required modification(s), whereupon the document shall be deemed to have been approved.

8.4.5 If any dispute or difference occurs between the Employer and the Contractor in connection with or arising out of the disapproval by the Engineer of any document and/or any modification(s) thereto that cannot be settled between the parties within a reasonable period, then such dispute or difference may be referred to an arbitrator for determination in accordance with GCC sub-clause 6.3 hereof. If such dispute or difference is referred to the arbitrator, the Engineer shall give instructions as to whether and if so, how, performance of the Contract is to proceed. The Contractor shall proceed with the Contract in accordance with the Engineer's instructions, provided that the arbitrator upholds the Contractor's view on the dispute and the Employer has not given notice under GCC sub-clause 6.1. hereof. In this case, the Contractor shall be reimbursed by the Employer for any additional costs incurred by reason of such instructions and shall be relieved of such responsibility or liability in connection with the dispute and the execution of the instructions, and the Time for Completion shall be

extended accordingly.

8.4.6 The Engineer's approval, with or without modification of the document furnished by the Contractor, shall not relieve the Contractor of any responsibility or liability imposed upon it by any provisions of the Contract except to the extent that any subsequent failure results from modifications required by the Engineer.

8.4.7 The Contractor shall not depart from any approved document unless the Contractor has first submitted to the Engineer an amended document and obtained the Engineer's approval thereof, pursuant to the provisions of this GCC sub-clause 8.4.
If the Engineer requests any change in any already approved document and/or in any document based thereon, the provisions of GCC Clause 63.2 shall apply to such request.

9 **Copyright**

9.1 The copyright in all drawings, documents and other materials containing data and information furnished by the Employer to the Contractor herein shall remain vested in the Employer or, if they are furnished to the contractor directly or through the Employer by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party.

10 **Start Date and Completion**

10.1 The Contractor shall start the Works and Maintenance Services within the period specified in the PCC.

10.2 The Contractor shall attain the required Service Levels and the Completion of the Rehabilitation and Improvement Works (or of a part where a separate time for Completion of such part is specified in the Contract) within the time schedules included in the PCC and the Specifications, or within such extended time to which the Contractor shall be entitled under GCC Clause 64 hereof

11 **Contractor's Responsibilities**

11.1 The Contractor shall design and carry out the Works and Maintenance Services (including associated purchases and/or subcontracting) necessary to comply with the requirements established in the Specifications with due care and diligence in accordance with the Contract.

11.2 The Contractor confirms that it has entered into this Contract on the basis of a proper examination of the data relating to the Works and Maintenance Services required, including any data and tests provided by the Employer, and on the basis of information that the Contractor could have obtained from a visual inspection of the Site and of other data readily available to it relating to the Road as of the date specified in the PCC prior to tender submission. The Contractor acknowledges that any failure to acquaint itself with all such data and information shall not relieve its responsibility for properly estimating the difficulty or cost of successfully performing the Works and Maintenance Services.

11.3 The Contractor shall acquire in its name all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the country of the Employer that are necessary for the performance of the Contract, including, without limitation, visas for the Contractor's and Subcontractor's personnel and entry permits for all

imported Contractor's Equipment. The Contractor shall acquire all other permits, approvals and/or licenses that are not the responsibility of the Employer under GCC Sub-Clause 14.3 hereof and that are necessary for the performance of the Contract.

11.4 The Contractor shall comply with all laws in force in the country of the Employer and where the Works and Maintenance Services are carried out. The laws will include all local, state, national or other laws that affect the performance of the Contract and bind upon the Contractor. The Contractor shall indemnify and hold harmless the Employer from and against any and all liabilities, damages, claims, fines, penalties and expenses of whatever nature arising or resulting from the violation of such laws by the Contractor or its personnel, including the Subcontractors and their personnel, but without prejudice to GCC Sub-Clause 14.1 hereof.

12 **Subcontracting**

12.1 The Contractor may subcontract the activities listed in the PCC. Subcontracting shall not alter the Contractor's obligations nor relieve the Contractor from any liability or obligation under the Contract and he shall be responsible for the acts, defaults and neglects of any Subcontractor, his agents, servants or workmen as fully as if they were the acts, defaults or neglects of the Contractor, his agents, servants or workmen. Any subcontracting must be approved by the Employer.

13 **Assignment of Contract**

13.1 Neither the Employer nor the Contractor shall, without the express prior written consent of the other party (which consent shall not be unreasonably withheld), assign to any third party the Contract or any part thereof, or any right, benefit, obligation or interest therein or there under, except that the Contractor shall be entitled to assign either absolutely or by way of charge any monies due and payable to it or that may become due and payable to it under the Contract.

14 **Employer's Responsibilities**

14.1 The Employer shall apply due diligence to ensure the accuracy of all information and/or data to be supplied to the Contractor as described in the Specifications, except when otherwise expressly stated in the Contract.

14.2 The Employer shall be responsible for acquiring and providing legal and physical possession of the Site and access thereto, and for providing possession of and access to all other areas reasonably required for the proper execution of the Contract, including all requisite rights of way, as specified in the corresponding Specifications. The Employer shall give full possession of and accord all rights of access thereto on or before the date(s) specified in the PCC.

14.3 The Employer shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the country where the Site is located, when such authorities or undertakings require the Employer to obtain them in the Employer's name, are necessary for the execution of the Contract, and are specified in the corresponding Specifications.

14.4 If requested by the Contractor, the Employer shall use its best endeavours to assist the Contractor in obtaining in a timely and expeditious manner all permits, approvals and/or licenses necessary for the execution of the Contract from all local, state or national government authorities or public

service undertakings that such authorities or undertakings require the Contractor or Subcontractors or the personnel of the Contractor or Subcontractors, as the case may be, to obtain.

14.5 The Employer shall be responsible for the continued operation of the Road after Completion, in accordance with GCC Clause 28, and shall be responsible for facilitating the Guarantee Test(s) for the Road, in accordance with GCC Clause 20.

14.6 All costs and expenses involved in the performance of the obligations under this GCC Clause 14 shall be the responsibility of the Employer, save those to be incurred by the Contractor with respect to the performance of Guarantee Tests, in accordance with GCC Clause 20.

15 **Confidential Information**

15.1 The Employer and the Contractor shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following termination of the Contract. Notwithstanding the above, the Contractor may furnish to its Subcontractor(s) such documents, data and other information it receives from the Employer to the extent required for the Subcontractor(s) to perform its work under the Contract, in which event the Contractor shall obtain from such Subcontractor(s) an undertaking of confidentiality similar to that imposed on the Contractor under this GCC Clause 15.

15.2 The Employer shall not use such documents, data and other information received from the Contractor for any purpose other than the operation and maintenance of the Road. Similarly, the Contractor shall not use such documents, data and other information received from the Employer for any purpose other than the design, procurement of Plant and Equipment, construction or such Works and Maintenance Services as are required for the performance of the Contract.

15.3 The obligation of a party under GCC Sub-Clauses 15.1 and 15.2 above, however, shall not apply to that information which

(a) now or hereafter enters the public domain through no fault of that party;
(b) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party hereto;
(c) otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.

15.4 The above provisions of this GCC Clause 15 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Works and Maintenance Services or any part thereof.

15.5 The provisions of this GCC Clause 15 shall survive termination, for whatever reason, of the Contract.

C EXECUTION OF WORKS AND MAINTENANCE SERVICES

16 **Representatives-** **16.1** Engineer

If the Engineer is not named in the Contract, then within fourteen (14) days of the issuance of the Letter of Acceptance by the Employer, the Employer shall appoint and notify the Contractor in writing of the name of the Engineer. The Employer may from time to time appoint some other person as the Engineer in place of the person previously so appointed, and shall give a notice of the name of such other person to the Contractor without delay. No such appointment shall be made at such a time or in such a manner as to impede the progress of the Works and Maintenance Services. Such appointment shall only take effect upon receipt of such notice by the Contractor. The Engineer shall represent and act for the Employer at all times during the period of the Contract. All notices, instructions, orders, certificates, approvals and all other communications under the Contract shall be given by the Engineer, except as herein otherwise provided.

All notices, instructions, information and other communications given by the Contractor to the Employer under the Contract shall be given to the Engineer, except as herein otherwise provided.

The Engineer may delegate any of his duties and responsibilities to other people, except to the Adjudicator, after notifying the Contractor, and may cancel any delegation after notifying the Contractor.

16.2 Road Manager

16.2.1 If the Road Manager is not named in the Contract, then the Contractor shall appoint the Road Manager before the Start Date and shall request the Employer in writing to approve the person so appointed. If the Employer makes no objection to the appointment within fourteen (14) days, the Road Manager shall be deemed to have been approved. If the Employer objects to the appointment within fourteen (14) days giving the reason therefore, then the Contractor shall appoint a replacement within fourteen (14) days of such objection, and the foregoing provisions of this GCC Sub-Clause 16.2.1 shall apply thereto.

16.2.2 The Road Manager shall represent and act for the Contractor at all times during the period of the Contract and shall give to the Engineer all the Contractor's notices, instructions, information and all other communications under the Contract. The Road Manager shall be in charge of the day-to-day management of the works and Maintenance Services to be provided under the contract on behalf of the Contractor, and shall have legal and all other faculties to take all necessary decisions related to the execution of the contract.

All notices, instructions, information and all other communications given by the Employer or the Engineer to the Contractor under the Contract shall be given to the Road Manager or, in its absence, its deputy, except as herein otherwise provided.

The Contractor shall not revoke the appointment of the Road Manager without the Employer's prior written consent, which shall not be unreasonably withheld. If the Employer consents thereto, the

Contractor shall appoint some other person as the Road Manager, pursuant to the procedure set out in GCC Sub-Clause 16.2.1.

16.2.3 The Road Manager may, subject to the approval of the Employer (which shall not be unreasonably withheld), at any time delegate to any person any of the powers, functions and authorities vested in him or her. Any such delegation may be revoked at any time. Any such delegation or revocation shall be subject to a prior notice to the Engineer signed by the Road Manager, and shall specify the powers, functions and authorities thereby delegated or revoked. No such delegation or revocation shall take effect unless and until a copy thereof has been delivered to the Engineer.

Any act or exercise by any person of powers, functions and authorities so delegated to him or her in accordance with this GCC Sub-Clause 16.2.3 shall be deemed to be an act or exercise by the Road Manager.

16.2.4 From the Start Date until Completion, the Road Manager shall supervise all work and Maintenance Services done at the Site by the Contractor and shall be present at the Site throughout normal working hours except when on leave, sick or absent for reasons connected with the proper performance of the Contract. Whenever the Road Manager is absent from the Site, a suitable person shall be appointed to act as his or her deputy.

16.2.5 The Employer may by notice to the Contractor object to any representative or person employed by the Contractor in the execution of the Contract who, in the reasonable opinion of the Employer, may behave inappropriately, may be incompetent or negligent, or may commit a serious breach of the Site regulations provided under the Specifications. The Employer shall provide evidence of the same, whereupon the Contractor shall remove such person from the Site

16.2.6 If any representative or person employed by the Contractor is removed in accordance with GCC Sub-Clause 16.2.5, the Contractor shall, where required, promptly appoint a replacement.

17 Work Program

17.1 Contractor's Organization

The Contractor shall supply to the Engineer a chart showing the proposed organization to be established by the Contractor for carrying out the Works and Maintenance Services. The chart shall include the identities of the key personnel together with the curricula vitae of such key personnel to be employed as included in the Contractor's Tender. The Contractor shall promptly inform the Engineer in writing of any revision or alteration of such an organization chart.

17.2 Program of Performance

Not later than the Start Date, the Contractor shall prepare and supply to the Engineer a program of performance of the Contract, made in the form specified in the Specifications and showing the sequence in which it proposes to design and carry out the Works and Maintenance Services, as

well as the date by which the Contractor reasonably requires that the Employer shall have fulfilled its obligations under the Contract so as to enable the Contractor to execute the Contract in accordance with the program and to achieve Completion in accordance with the Contract. The Contractor shall update and revise the program as and when appropriate, but without modification in the Times for Completion given in the PCC and any extension granted in accordance with GCC Clause 64, and shall supply all such revisions to the Engineer.

17.3 Progress Report

The Contractor shall monitor progress of all the activities specified in the program referred to in GCC Sub-Clause 17.2 above, and supply a progress report to the Engineer every month together with his Monthly Statement. The progress report shall be in a form acceptable to the Engineer in accordance with the Specifications.

17.4 Progress of Execution

If at any time the Contractor's actual progress falls behind the program referred to in GCC Sub-Clause 17.2, or it becomes apparent that it will so fall behind, the Contractor shall prepare and supply to the Engineer a revised program, taking into account the prevailing circumstances, and shall notify the Engineer of the steps being taken to expedite progress so as to attain Completion of the Works and Execution of Maintenance Services activities within the Time for Completion under GCC Sub-Clause 10.2, any extension thereof entitled under GCC Sub-Clause 64, or any extended period as may otherwise be agreed upon between the Employer and the Contractor.

17.5 Work Procedures

The Contract shall be executed in accordance with the Contract Documents and the procedures given in the Specifications.

18 **Execution of Works**

18.1 Setting Out/Supervision/Labour

18.1.1 *Bench Mark.* The Contractor shall be responsible for the true and proper setting-out of the Works in relation to bench marks, reference marks and lines provided to it in writing by or on behalf of the Employer.

If, at any time during the progress of execution of the Works, any error shall appear in the position, level or alignment of the Works, the Contractor shall forthwith notify the Engineer of such error and, at its own expense, immediately rectify such error to the reasonable satisfaction of the Engineer. If such error is based on incorrect data provided in writing by or on behalf of the Employer, the expense of rectifying the same shall be borne by the Employer.

18.1.2 *Contractor's Supervision.* The Contractor shall give or provide all necessary supervision during the execution of the Works, and the Road Manager or its deputy shall be on the Site to provide full-time

supervision of the execution. The Contractor shall provide and employ only technical personnel who are skilled and experienced in their respective callings and supervisory staff who are competent to adequately supervise the work at hand.

18.2 Contractor's Equipment

18.2.1 All contractors' Equipment brought by the Contractor onto the Site shall be deemed to be intended to be used exclusively for the execution of the Contract. The Contractor shall not remove the same from the Site without informing the Engineer.

18.2.2 Unless otherwise specified in the Contract, upon completion of the Works and Maintenance Services, the Contractor shall remove from the Site all Equipment brought by the Contractor onto the Site and any surplus materials remaining thereon.

18.2.3 The Employer will, if requested, use its best endeavours to assist the Contractor in obtaining any local, state or national government permission required by the Contractor for the export of the Contractor's Equipment imported by the Contractor for use in the execution of the Contract that is no longer required for the execution of the Contract.

18.3 Site Regulations and Safety

The Employer and the Contractor shall establish Site regulations setting out the rules to be observed in the execution of the Contract at the Site and shall comply therewith. The Contractor shall prepare and submit to the Employer, with a copy to the Engineer, proposed Site regulations for the Employer's approval, which approval shall not be unreasonably withheld.

Such Site regulations shall include, but shall not be limited to, rules in respect of security, safety, traffic control, accident response, gate control, sanitation, medical care, and fire prevention.

18.4 Access to site for Other Contractors

The Contractor shall, upon written request from the Employer or the Engineer, give site access to other contractors employed by the Employer on or near the site.

18.5 Site Clearance

18.5.1 *Site Clearance in Course of Execution*: In the course of carrying out the Contract, the Contractor shall keep the Site reasonably free from all unnecessary obstruction, store or remove any surplus materials, clear away any wreckage, rubbish or temporary works from the Site, and remove any Contractor's Equipment no longer required for execution of the Contract.

18.5.2 *Clearance of Site after Completion*: After Completion of all parts of the Works and Maintenance Services, the Contractor shall clear away and remove all wreckage, rubbish and debris of any kind from

the Site, and shall leave the Site and the Road clean and safe.

18.6 Watching and Lighting

The Contractor shall provide and maintain at its own expense all lighting, fencing, and watching when and where necessary for the proper execution and the protection of the Works and Maintenance Services, for the protection of his own installations and his equipment, for the safety of the owners and occupiers of adjacent property and for the safety of the public.

18.7 Access to the Site

The Contractor shall allow the Engineer and any person authorized by the Engineer access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out.

18.8 Management Meetings

18.8.1 Either the Engineer or the Contractor may require the other to attend a management meeting. The business of a management meeting shall be to deal with matters raised by either the Contractor or the Employer.

18.8.2 The Engineer shall record the business of management meetings and provide copies of the record to those attending the meeting and to the Employer. The responsibility of the parties for actions to be taken shall be decided by the Engineer either during or after the management meeting and stated in writing to all who attended the meeting.

19 **Staff and Labour** **19.1** The Contractor shall employ the key personnel named in the Contractor's Tender, to carry out the functions stated in the Specifications or other personnel approved by the Engineer. The Engineer will approve any proposed replacement of key personnel only if their relevant qualifications and abilities are substantially equal to or better than those of the personnel listed in the Contractor's Tender.

19.2 Labour

(a) The Contractor shall provide and employ on the Site for the execution of the Works and Maintenance Services such skilled, semi-skilled and unskilled labour as is necessary for the proper and timely execution of the Contract. The Contractor is encouraged to use local labour that has the necessary skills.

(b) Unless otherwise provided in the Contract, the Contractor shall be responsible for the recruitment, transportation, accommodation and catering of all labour, local or expatriate, required for the execution of the Contract and for all payments in connection therewith.

(c) The Contractor shall be responsible for obtaining all necessary permit(s) and/or visa(s) from the appropriate authorities for the entry of all labour and personnel to be employed on the Site into the country where the Site is located.

(d) The Contractor shall at its own expense provide the means of

repatriation to all of its Subcontractor's personnel employed on the Contract at the Site to their various home countries. It shall also provide suitable temporary maintenance of all such persons from the cessation of their employment on the Contract to the date programmed for their departure. In the event that the Contractor defaults in providing such means of transportation and temporary maintenance, the Employer may provide the same to such personnel and recover the cost of doing so from the Contractor.

(e) The Contractor shall at all times during the progress of the Contract use its best endeavors to prevent any unlawful, riotous or disorderly conduct or behavior by or amongst its employees and the labour of its Subcontractors.

(f) The Contractor shall provide lodging, medical assistance, alimentation and sanitary installations for the employees living in the contractor's base camps to comply with the Social, Sanitary and Health Conditions of Labour requirements established in the Specifications.

(g) The Contractor shall, in all dealings with its labour and the labour of its Subcontractors currently employed on or connected with the Contract, pay due regard to all recognized festivals, official holidays, religious or other customs and all local laws and regulations pertaining to the employment of labour

(h) Occupational, Safety and Health. The Contractor shall at all times take the necessary precautions to protect all staff and labour employed on the site from insect nuisance, rats and other pests and reduce the dangers to health and the general nuisance occasioned by the same. The Contractor shall, so far as is reasonably practical, having regard to local conditions, provide on the site an average supply of drinking and other water for the use the staff and labour.
The Contractor shall maintain records of occupational safety and health records and submit the records as the employer may from time to time prescribe.

The scope of occupational safety and health shall be as specified in the PCC.

The Contractor shall allow in his prices and be responsible for the cost of all site welfare arrangements.

19.3 Removal of staff

If the Engineer asks the Contractor to remove a person who is a member of the Contractor's staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within seven days and has no further connection with the work in the Contract.

19.4 Work at Night and on Holidays

Unless otherwise provided in the Contract, if and when the Contractor considers it necessary to carry out work at night or on public holidays so as to meet the Service Levels and the Time for Completion, and requests the Employer's consent thereto (if such consent is needed), the Employer shall not unreasonably withhold such consent.

20 **Test and** **20.1** The Contractor shall at its own expense carry out on the Site all such tests and/or inspections as are specified in the Specifications, and in accordance

Inspection

with the procedures described in the Specifications.

20.2 The Employer and the Engineer or their designated representatives shall be entitled to attend the aforesaid test and/or inspection

20.3 For tests to be carried out on the initiative of the Contractor, whenever the Contractor is ready to carry out any such test and/or inspection, he shall give a reasonable advance notice of such test and/or inspection and of the place and time thereof to the Engineer. The Contractor shall provide the Engineer with a signed report of the results of any such test and/or inspection.

20.4 If the Employer or Engineer (or their designated representatives) fails to attend a scheduled test and/or inspection, or if it is agreed between the parties that such persons shall not attend, then the Contractor may proceed with the test and/or inspection in the absence of such persons, and may provide the Engineer with a signed report of the results thereof.

20.5 The Engineer may require the Contractor to carry out any test and/or inspection not required by the Contract, provided that the Contractor's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impede the progress of the works and/or the Contractor's performance of its other obligations under the Contract, due allowance will be made in respect of the Time for Completion and the other obligations so affected.

20.6 If Rehabilitation Works, Improvement Works or Emergency Works fail to pass any test and/or inspection, the Contractor shall either rectify or replace such works and shall repeat the test and/or inspection upon giving a notice under GCC Sub-Clause 20.3.

20.7 If any dispute or difference of opinion shall arise between the parties in connection with or arising out of the test and/or inspection of the Works and Maintenance Services, or part of them, that cannot be settled between the parties within a reasonable period of time, it may be referred to the arbitrator for determination in accordance with GCC Sub-Clause 6.3.

20.8 The Contractor agrees that neither the execution of a test and/or inspection of the Works and Maintenance Services or any part of them, nor the attendance by the Employer or the Engineer, nor the issue of any test certificate pursuant to GCC Sub-Clause 20.4, shall release the Contractor from any other responsibilities under the Contract.

20.9 No part or foundations shall be covered up on the Site without the Contractor carrying out any test and/or inspection required under the Contract. The Contractor shall give a reasonable notice to the Engineer whenever any such part or foundations are ready or about to be ready for test and/or inspection; such test and/or inspection and notice thereof shall be subject to the requirements of the Contract.

20.10 The Contractor shall uncover any part of the Works or foundations, or shall make openings in or through the same as the Engineer may from time to time require at the Site, and shall reinstate and make good such

part or parts.

If any parts of the Works or foundations have been covered up at the Site after compliance with the requirement of GCC Sub-Clause 20.9 and are found to be executed in accordance with the Contract, the expenses of uncovering, making openings in or through, reinstating, and making good the same shall be borne by the Employer, and the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been delayed or impeded in the performance of any of its obligations under the Contract.

21	**Rehabilitation Works**	21.1	If so indicated in the PCC, specific Rehabilitation Works shall be carried out explicitly in accordance with the Specifications and as specified in the tendering documents and in the Contractor's Tender. Input quantities for Rehabilitation Works were estimated by the Employer to achieve the performance criteria for Rehabilitation Works given in the Specifications. The specific Rehabilitation Works were offered by the Contractor at a Lump-Sum price.
22	**Improvement Works**	22.1	If so indicated in the PCC, Improvement Works are required and will consist of a set of interventions that add new characteristics to the roads in response to new traffic and safety or other conditions. Improvement Works quantities were offered at unit prices included in the Bill of Quantities.
		22.2	The execution of Improvement Works shall be requested by the Engineer, who will issue a Work Order defining the requested works to be carried out by the Contractor, based on the activities priced in the Bill of Quantities. The Work order shall specify the activities to be carried out and the corresponding price. The Road Manager shall confirm his acceptance by signing the Work Order.
23	**Maintenance Services**	23.1	Maintenance Services are those activities necessary for keeping the Road in compliance with the Performance Standards pursuant to GCC Clause 24. Maintenance Services shall include all activities required to achieve and keep the Road Performance Standards and Service Levels. These Maintenance Services will be remunerated by Lump-Sum amount for the period of the contract paid in fixed monthly payments during the entire Contract period.
24	**Performance Standards**	24.1	The Contractor shall carry out the Maintenance Services to achieve and keep the Road complying with the Service Levels defined in the Performance Specifications. He will carry out all Works in accordance with the performance standards indicated in the Standard Specifications.
25	**Contractor's Self-Control of Quality and Safety**	25.1	The Contractor shall, throughout the execution and completion of the Works and Maintenance Services, maintain a System which shall ensure that the work methods and procedures are adequate and safe at all times and do not pose any avoidable risks and dangers to the health, safety and property of the workers and agents employed by him or any of his subcontractors, of road users, of persons living in the vicinity of the roads under contract, and any other person who happens to be on or along the roads under contract.

25.2 Unless specified otherwise in the PCC, the Contractor shall establish, within his own organizational structure, a Self-Control Unit staffed with qualified personnel, whose task is to verify continuously the degree of compliance by the Contractor with the required Service Levels. That Unit will also be responsible for the generation and presentation of the information needed by the contractor for the documentation required as defined in the Specifications. The Unit will be responsible for maintaining a detailed and complete knowledge of the condition of the Road and to provide to the Road Manager all the information needed in order to efficiently manage and maintain the Road. The Unit shall also carry out, in close collaboration with the Engineer, the verifications on the Service Levels.

25.3 The Contractor's Self-Control Unit mentioned in GCC Sub-Clause 25.2 shall report the level of compliance with the required Service Levels in the standard format presented in the Specifications

26 **Environmental and Safety Requirements**

26.1 The Contractor shall, throughout the design, execution and completion of the Works and Maintenance Services, and the remedying of any defects therein:

(a) have full regard for the safety of all persons employed by him and his subcontractors and keep the Site (so far as the same is under his control) in an orderly state appropriate to the avoidance of danger to such persons;

(b) provide and maintain at his own cost all guardrails, fencing, warning signs and watching, when and where necessary or required by Sub-Clause 18.3 of the Contract or by any duly constituted authority, for the protection of the Works and Maintenance Services or for the safety and convenience of his workers and road users, the public or others; and

(c) take all reasonable steps to protect the environment (both on and off the Site) and to limit damage and nuisance to people and property resulting from pollution, noise and other results of his operations.

27 **Work Orders for Improvement Works and Emergency Works**

27.1 Improvement Works and Emergency Works shall be executed by the Contractor on the basis of Work Orders issued by the Engineer.

27.2 Work Orders shall be issued in writing and shall include the date on which the Work Order was issued and the signature of the Engineer. Two copies of the Work Order shall be transmitted by the Engineer to the Contractor, who shall immediately countersign one copy, including the date of acceptance, and return it to the Engineer.

27.3 If the Contractor has any objection to a Work Order, the Road Manager shall notify the Engineer of his reasons for such objection within ten (10) days of the date of issuing the Work Order. Within five (5) days of the Road Manager's objection, the Engineer shall cancel, modify or confirm the Work Order in writing.

28 **Taking Over Procedures**

28.1 When the whole of the Works and Maintenance Services have been substantially completed and have satisfactorily passed any Tests on Completion prescribed by the Contract, the Contractor may give a notice to that effect to the Engineer, accompanied by a written undertaking to

finish with due expedition any outstanding work during the Defects Liability Period. Such notice and undertaking shall be deemed to be a request by the Contractor for the Engineer to issue a Taking-Over Certificate in respect of the Works and Maintenance Services. The Engineer shall, within twenty-one (21) days of the date of delivery of such notice, either issue to the Contractor a Taking-Over Certificate, stating the date on which the Works and Maintenance Services were substantially completed in accordance with the Contract, or give instructions in writing to the Contractor specifying all the conditions to be complied with and all the work which is required to be done by the Contractor before the issue of such Certificate. The Engineer shall also notify the Contractor of any defects in the Works and Maintenance Services affecting substantial completion that may appear after such instructions and before completion of Taking-Over Certificate within twenty-one (21) days of completion, to the satisfaction of the Engineer, of the Works and Maintenance Services so specified and remedying any defects so notified.

28.2 Similarly, in accordance with the procedure set out in GCC Sub-Clause 28.1, the Contractor may request and the Engineer shall issue a Taking-Over Certificate in respect of:

(a) any Section in respect of which a separate Time for Completion is provided in the contract,

(b) any substantial part of the Works and Maintenance Services which has been both completed to the satisfaction of the Engineer and, otherwise than as provided for in the Contract, occupied or used by the Employer, or

(c) any part of the Works and Maintenance Services which the Employer has elected to occupy or use prior to completion (where such prior occupation or use is not provided for in the Contract or has not been agreed by the Contractor as a temporary measure).

29 **Emergency Works**

29.1 The need for execution of Emergency Works is jointly identified by the Employer and the Contractor and the starting of the execution of Emergency Works shall always require a Work Order issued by the Engineer

29.2 The execution of Emergency Works shall be requested by the Contractor based on losses or damages occurred as a result of natural phenomena (such as strong storms, flooding or earthquakes) with imponderable consequences, or on the possibility of damages or losses occurring, or the safety of individuals, works, Maintenance Services or equipment being at risk as result of the natural phenomena. In order to characterize the Emergency Works, the Contractor shall forward a Technical Report to the Engineer requesting the execution of Emergency Works and characterizing the situation. On the basis of the said report, and of his own judgment of the situation, the Engineer may issue a Work Order to the Contractor.

29.3 The Employer or even Government authorities may declare an Emergency Situation on the basis of local legislation. In those cases, the Engineer may issue a Work Order for Emergency Works to the Contractor even without

a request by the Contractor.

29.4 If the Contractor is unable or unwilling to do such work immediately, the Employer may do or cause such work to be done as the Employer may determine necessary in order to prevent damage to the Road. In such event the Employer shall, as soon as practicable after the occurrence of any such emergency, notify the Contractor in writing of such emergency, the work done and the reasons therefore. If the work done or caused to be done by the Employer is work that the Contractor was liable to do at its own expense under the Contract, the reasonable costs incurred by the Employer in connection therewith shall be paid by the Contractor to the Employer. Otherwise, the cost of such remedial work shall be borne by the Employer.

30 **Quality of materials used by Contractor**

30.1 The quality of materials used by the Contractor for the execution of the Contract shall be in compliance with the requirements of the Specifications. If the Contractor is of the opinion that materials of higher quality than those stated in the Specifications need to be used in order to ensure compliance with the Contract, he shall use such better materials, without being entitled to higher prices or remunerations.

30.2 Under no circumstances may the Contractor make any claim based on the insufficient quality of materials used by him, even if the material used was authorized by the Engineer.

30.3 The Contractor shall carry out at his own cost the laboratory and other tests that he needs to verify if materials to be used comply with the Specifications, and shall keep records of such tests. If requested by the Engineer, the Contractor shall hand over the results of the tests.

31 **Signalling and demarcation of work zones and bypasses**

31.1 To ensure the safety of road users, including non-motorized road users and pedestrians, the Contractor is responsible to install and maintain at his cost the adequate signalling and demarcation of work sites, which in addition must comply with the applicable legislation.

31.2 If the execution of Works and Maintenance Services under the contract is likely to interfere with traffic, the Contractor shall take at his cost the measures necessary to limit such interference to the strict minimum, or any danger to the workers or others. For that purpose, he is entitled to install, within the right-of-way of the road, temporary bypasses, structures or other modifications to be used by traffic during the execution of works and Maintenance Services. The Contractor shall notify the Engineer of any such temporary installations.

31.3 If the execution of the Works and Maintenance Services by the Contractor makes it necessary to temporarily close a road section, and a traffic detour has to be implemented over other public roads or streets, the Contractor shall be responsible for the adequate signalling of the detour, under the same conditions as stated in GCC Sub-Clause 31.1.

31.4 The Contractor shall inform the local authorities and the local police about such activities to be carried out by him which may cause any significant interruptions or changes to the normal traffic patterns. Such information shall be made in writing and at least seven (7) days before the beginning of such activities. Upon request from the Contractor, the Employer shall

assist the Contractor in the coordination with the local authorities and the local police.

D ALLOCATION OF RISKS

32 **Employer's Risks** 32.1 From the Start Date until the Defects Correction Certificate has been issued, the following are Employer's risks insofar as they directly affect the execution of the Works and Maintenance Services included in this Contract:

(a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies;
(b) rebellion, revolution, insurrection, military or usurped power, or civil war;
(c) ionizing radiations, contamination by radioactivity from any nuclear fuel, or any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
(d) riot, commotion or disorder, unless solely restricted to employees of the Contractor or of his Subcontractors and arising from the conduct of the Works and Maintenance Services;
(e) loss or damage due to the use or occupation by the Employer of any unfinished Section or part of the Works, except as may be provided for in the Contract;
(f) any operation of the forces of nature against which an experienced contractor could not reasonably have been expected to take precautions.

33 **Contractor's Risks** 33.1 The Employer carries the risks which this Contract states are Employer's risks, and the remaining risks are the Contractor's risks.

34 **Loss of or Damage to Property; Accident or Injury to Workers; Indemnification** 34.1 Subject to GCC Sub-Clause 34.3, the Contractor shall indemnify and hold harmless the Employer and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, in respect of the death or injury of any person or loss of or damage to any property arising in connection with the execution and by reason of the negligence of the Contractor or its Subcontractors, or their employees, officers or agents, except any injury, death or property damage caused by the negligence of the Employer, its contractors, employees, officers or agents.

34.2 If any proceedings are brought or any claim is made against the Employer that might subject the Con tractor to liability under GCC Sub-Clause 34.1, the Employer shall promptly give the Contractor a notice thereof and the Contractor may at its own expense and in the Employer's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

If the Contractor fails to notify the Employer within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Employer shall be free to conduct the same on its own behalf. Unless the Contractor has so failed to notify the Employer within the twenty-eight (28) day period, the Employer shall make no admission that may be prejudicial to the defense of any such

proceedings or claim.

The Employer shall, at the Contractor's request, afford all available assistance to the Contractor in conducting such proceedings or claim, and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing.

34.3 The Employer shall indemnify and hold harmless the Contractor and its employees, officers and Subcontractors from any liability for loss of or damage to property of the Employer, other than the Works not yet taken over, that is caused by fire, explosion or any other perils, in excess of the amount recoverable from insurances procured under GCC Clause 35, provided that such fire, explosion or other perils were not caused by any act or failure of the Contractor.

34.4 The party entitled to the benefit of an indemnity under this GCC Clause 34 shall take all reasonable measures to mitigate any loss or damage which has occurred. If the party fails to take such measures, the other party's liabilities shall be correspondingly reduced.

35 **Insurance**

35.1 To the extent specified in the PCC, the Contractor shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurances set forth below in the sums and with the deductibles and other conditions specified in the said PCC. The identity of the insurers and the form of the policies shall be subject to the approval of the Employer, who should not unreasonably withhold such approval.

(a) *Loss of or damage to the Plant and Materials*
Covering loss or damage occurring prior to Completion.
(b) *Third Party Liability Insurance*
Covering bodily injury or death suffered by third parties (including the Employer's personnel) and loss of or damage to property occurring in connection with Works and Maintenance Services.
(c) *Automobile Liability Insurance*
Covering use of all vehicles used by the Contractor or its Subcontractors (whether or not owned by them) in connection with the execution of the Contract.
(d) *Workers' Compensation*
In accordance with the statutory requirements applicable in any country where the Contract or any part thereof is executed.
(e) *Employer's Liability*
In accordance with the statutory requirements applicable in any country where the Contract or any part thereof is executed.
(f) *Other Insurances*
Such other insurances as may be specifically agreed upon by the parties.

35.2 The Employer shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GCC Sub-Clause 35.1, except for the Third Party Liability, Workers' Compensation and Employer's Liability Insurances, and the Contractor's Subcontractors shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GCC Sub-Clause 35.1 except for the Cargo Insurance During Transport, Workers' Compensation and Employer's Liability Insurances. All insurers' rights of subrogation against such co-insured for losses or

claims arising out of the performance of the Contract shall be waived under such policies.

35.3 The Contractor shall deliver to the Employer certificates of insurance (or copies of the insurance policies) as evidence that the required policies are in full force and effect. The certificates shall provide that no less than twenty-one (21) days' notice shall be given to the Employer by insurers prior to cancellation or material modification of a policy.

35.4 The Contractor shall ensure that, where applicable, its Subcontractor(s) shall take out and maintain in effect adequate insurance policies for their personnel and vehicles and for work executed by them under the Contract, unless such Subcontractors are covered by the policies taken out by the Contractor.

35.5 If the Contractor fails to take out and/or maintain in effect the insurances referred to in GCC Sub-Clause 35.1, the Employer may take out and maintain in effect any such insurances and may from time to time deduct from any amount due the Contractor under the Contract any premium that the Employer shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Contractor.

35.6 Unless otherwise provided in the Contract, the Contractor shall prepare and conduct all and any claims made under the policies affected by it pursuant to this GCC Clause 35, and all monies payable by any insurers shall be paid to the Contractor. The Employer shall give to the Contractor all such reasonable assistance as may be required by the Contractor. With respect to insurance claims in which the Employer's interest is involved, the Contractor shall not give any release or make any compromise with the insurer without the prior written consent of the Employer. With respect to insurance claims in which the Contractor's interest is involved, the Employer shall not give any release or make any compromise with the insurer without the prior written consent of the Contractor.

36 **Unforeseen Conditions**

36.1 If, during the execution of the Contract, the Contractor shall encounter on the Site any physical conditions (other than climatic conditions) or artificial obstructions that could not have been reasonably foreseen prior to the date of the Contract Agreement by an experienced contractor on the basis of reasonable examination of the data relating to the Road (including any data and tests provided by the Employer), and on the basis of information that it could have obtained from a visual inspection of the Site or other data readily available to it relating to the Road, and if the Contractor determines that it will in consequence of such conditions or obstructions incur additional cost and expense or require additional time to perform its obligations under the Contract that would not have been required if such physical conditions or artificial obstructions had not been encountered, the Contractor shall promptly, and before performing additional work or using additional Plant and Equipment or Contractor's Equipment, notify the Engineer in writing of:

(a) the physical conditions or artificial obstructions on the Site that could not have been reasonably foreseen;

(b) the additional work and/or Plant and Equipment and/or Contractor's Equipment required, including the steps which the Contractor will or

proposes to take to overcome such conditions or obstructions;

(c) the extent of the anticipated delay;

(d) the additional cost and expense that the Contractor is likely to incur.

On receiving any notice from the Contractor under this GCC Sub-Clause 36.1, the Engineer decides upon the actions to be taken to overcome the physical conditions or artificial obstructions encountered. Following such consultations, the Engineer shall instruct the Contractor, with a copy to the Employer, of the actions to be taken.

36.2 Any reasonable additional cost and expense incurred by the Contractor in following the instructions from the Engineer to overcome such physical conditions or artificial obstructions referred to in GCC Sub-Clause 36.1 shall be paid by the Employer to the Contractor as an addition to the Contract Price.

36.3 If the Contractor is delayed or impeded in the performance of the Contract because of any such physical conditions or artificial obstructions referred to in GCC Sub-Clause 36.1, the Time for Completion shall be extended in accordance with GCC Clause 64.

37 **Change in Laws and Regulations**

37.1 If, after the date twenty-eight (28) days prior to the date of Tender submission, in the country where the Site is located, any law, regulation, ordinance, order or by-law having the force of law is enacted, promulgated, abrogated or changed (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the costs and expenses of the Contractor and/or the Time for Completion, the Contract Price shall be correspondingly increased or decreased, and/or the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced costs shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with the PCC.

38 **Force Majeure**

38.1 "Force Majeure" shall mean any event beyond the reasonable control of the Employer or of the Contractor, as the case may be, insofar as they directly affect the execution of the Maintenance Services and Works included in this Contract and which is unavoidable notwithstanding the reasonable care of the party affected, and shall include, without limitation, the following:

(a) war, hostilities or warlike operations (whether a state of war be declared or not), invasion, act of foreign enemy and civil war;

(b) rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion and terrorist acts;

(c) confiscation, nationalization, mobilization, commandeering, requisition by or under the order of any government or de jure or de facto authority or ruler or any other act or failure to act of any local state or national government authority;

(d) strike, sabotage, lockout, embargo, import restriction, port congestion,

lack of usual means of public transportation and communication, industrial dispute, shipwreck, shortage or restriction of power supply, epidemics, quarantine and plague;

(e) earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other inclement weather condition, nuclear and pressure waves or other natural or physical disaster;

(f) shortage of labour, materials or utilities where caused by circumstances that are themselves Force Majeure.

38.2 If either party is prevented, hindered or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances thereof within fourteen (14) days after the occurrence of such event.

38.3 The party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such party's performance is prevented, hindered or delayed. The Time for Completion shall be extended in accordance with GCC Clause 64.

38.4 The party or parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect thereof upon its or their performance of the Contract and to fulfill its or their obligations under the Contract, but without prejudice to either party's right to terminate the Contract under GCC Sub-Clause 38.6.

38.5 No delay or nonperformance by either party hereto caused by the occurrence of any event of Force Majeure shall

(a) constitute a default or breach of the Contract;
(b) give rise to any claim for damages or additional cost or expense occasioned thereby;

if and to the extent that such delay or non-performance is caused by the occurrence of an event of Force Majeure

38.6 If the performance of the Contract is substantially prevented, hindered or delayed for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of one or more events of Force Majeure during the currency of the Contract, the parties will attempt to develop a mutually satisfactory solution, failing which either party may terminate the Contract by giving a notice to the other, but without prejudice to either party's right to terminate the Contract under GCC Clause 59.

38.7 In the event of termination pursuant to GCC Sub-Clause 38.6, the rights and obligations of the Employer and the Contractor shall be as specified in GCC Sub-Clauses 59.1.2 and 59.1.3.

38.8 Notwithstanding GCC Sub-Clause 38.5, Force Majeure shall not apply to any obligation of the Employer to make payments to the Contractor herein.

E GUARANTEES AND LIABILITIES

39 Completion Time Guarantee and Liability

39.1 The Contractor guarantees that it shall attain specified Service Levels and the Completion of Rehabilitation and Improvement Works (or a part for which a separate time for completion is specified in the PCC) within the time schedules specified in the PCC and the Specifications, pursuant to GCC Sub-Clause 10.2, or within such extended time to which the Contractor shall be entitled under GCC Clause 64 hereof.

39.2 If the Contractor fails to attain specified Service Levels within the contractually agreed time schedules as given in the Specifications, the contractor shall receive reduced payments for Maintenance Services, for such default and not as a penalty, in accordance with the Specifications.

39.3 If the Contractor fails to attain the Completion of Rehabilitation and Improvement Works (or a part for which a separate time for completion is specified in the PCC clause 39.1) within the contractually required time schedules, the contractor shall pay to the Employer liquidated damages for such default and not as a penalty, in accordance with the PCC and the Specifications.

39.4 The payment reductions and liquidated damages indicated in GCC 39.2 and 39.3 shall be the only monies due from the Contractor for such defaults, and they will be applied for every day of delay, in accordance with the PCC and the Specifications. The aggregate amount of such liquidated damages and payment reductions shall in no event exceed the "aggregate liability" in accordance with GCC Clause 42. The payment or deduction of such sums shall not relieve the Contractor from his obligation to complete the Works and Maintenance Services, or from any other of his obligations and liabilities under the Contract.

40 Performance Guarantee and Liability

40.1 The Contractor guarantees that during the Performance Tests or Inspections for Rehabilitation and Improvement Works, and for Emergency Works, the Road and all parts thereof shall attain the Performance Standards specified in the corresponding Specifications.

40.2 If, for reasons attributable to the Contractor, the minimum level of the Performance Standards specified in the corresponding Specifications are not met either in whole or in part, the Contractor shall at its cost and expense make such changes, modifications and/or additions to the Road or any part thereof as may be necessary to meet at least the minimum level of such Standards. The Contractor shall notify the Employer upon completion of the necessary changes, modifications and/or additions, and shall request the Employer to repeat the Test or Inspection until the minimum level of the Standards has been met. If the Contractor eventually fails to meet the minimum level of Performance Standard, the Employer may consider termination of the Contract, pursuant to GCC Sub-Clause 59.2.2.

40.3 If, for reasons attributable to the Contractor, the Performance Standards relating to Rehabilitation and Improvement Works specified in the corresponding Specifications are not attained either in whole or in part, the Contractor shall, at the Contractor's choice, either

(a) make such changes, modifications and/or additions to the Works and Maintenance Services or any part thereof that are necessary to attain the Performance Standards at its cost and expense, and shall request the

Employer to repeat the Test, or

(b) pay liquidated damages to the Employer in respect of the Works and Maintenance Services which fail to meet the Performance Standards in accordance with the provisions in the corresponding Specifications.

40.4 The payment of liquidated damages under GCC Sub-Clause 40.3, up to the limitation of liability specified in the PCC, shall completely satisfy the Contractor's guarantees under GCC Sub-Clause 40.1, and the Contractor shall have no further liability whatsoever to the Employer in respect thereof. Upon the payment of such liquidated damages by the Contractor, the Engineer shall issue the Certificate of Completion for the Works or any part thereof in respect of which the liquidated damages have been so paid.

41 **Defect Liability**

41.1 The Contractor warrants that the Works and Maintenance Services or any part thereof shall be free from defects in the design, engineering, materials and workmanship of the Works and Maintenance Services executed.

41.2 The Defect Liability Period shall as specified in the PCC from the date of Taking Over for Rehabilitation Works

If during the Defect Liability Period any defect should be found in the design, engineering, materials and workmanship of the Works and Maintenance Services executed by the Contractor, the Contractor shall promptly, in consultation and agreement with the Employer regarding appropriate remedying of the defects, and at its cost, repair, replace or otherwise make good (as the Contractor shall, at its discretion, determine) such defect as well as any damage to the Road caused by such defect. The Contractor shall not be responsible for the repair, replacement or making good of any defect or of any damage to the Road arising out of or resulting from improper operation or maintenance of the Road by the Employer after taking over.

41.3 The Contractor's obligations under this GCC Clause 41 shall not apply to

(a) any works or materials that have a normal life shorter than the Defect Liability Period stated herein;

(b) any designs, specifications or other data designed, supplied or specified by or on behalf of the Employer or any matters for which the Contractor has disclaimed responsibility herein;

(c) any other materials supplied or any other work executed by or on behalf of the Employer, except for the work executed by the Employer under GCC Sub-Clause 41.6.

41.4 The Employer shall give the Contractor a notice stating the nature of any such defect together with all available evidence thereof, promptly following the discovery thereof. The Employer shall afford all reasonable opportunity for the Contractor to inspect any such defect.

41.5 The Employer shall afford the Contractor all necessary access to the Site to enable the Contractor to perform its obligations under this GCC Clause 41. The Contractor may remove from the Site any Plant and Equipment that are defective if the nature of the defect is such that repairs cannot be expeditiously carried out at the Site.

41.6 If the Contractor fails to commence the work necessary to remedy such defect or any damage to the Road caused by such defect within a reasonable time (which shall in no event be considered to be less than fifteen (15) days), the Employer may, following notice to the Contractor, proceed to do such work, and the reasonable costs incurred by the Employer in connection therewith shall be paid to the Employer by the Contractor or may be deducted by the Employer from any monies due the Contractor or claimed under the Performance Security.

41.7 If the Road or any part thereof cannot be used by reason of such defect and/or making good of such defect, the Defect Liability Period of the Road or such part, as the case may be, shall be extended by a period equal to the period during which the Road or such part cannot be used because of any of the aforesaid reason.

41.8 Except as provided in GCC Clauses 40 and 41, the Contractor shall be under no liability whatsoever and howsoever arising, and whether under the Contract or at law, in respect of defects in the Road or any part thereof, the Plant and Equipment, design or engineering or work executed that appear after Completion of the Works and Maintenance Services, except where such defects are the result of the gross negligence, fraud, criminal or wilful action of the Contractor.

42 **Limitation of Liability**

42.1 Except in cases of criminal negligence or willful misconduct,

(a) the Contractor shall not be liable to the Employer, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Contractor to pay liquidated damages to the Employer and

(b) the aggregate liability of the Contractor to the Employer, whether under the Contract, in tort or otherwise, shall not exceed the limit specified in the PCC.

43 **Liability for Damages through Traffic Accidents and Traffic Interruptions**

43.1 The Contractor cannot be held liable for losses or damages of any kind arising out of traffic accidents on the roads included in the Contract, unless those traffic accidents have been caused directly by potholes or other major defects of the Road covered by the Contract he failed to repair in a timely manner, criminal acts, wilful misconduct or gross negligence of the Contractor.

43.2 Under no circumstances can the Contractor be held liable for losses or damages of any kind and to anyone arising out of interruptions of traffic or traffic delays on the road included in the Contract, including any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs.

F PAYMENT

44 **Contract Price**

44.1 The Contract Price shall be as specified in the Form of Contract Agreement to be paid in the currencies as indicated in the PCC.

44.2 Unless indicated otherwise in the PCC, and except in the event of a Change as provided for in the Contract, the Contract Price shall be:

(a) For Rehabilitation Works, a fixed lump sum not subject to any alteration, to be paid according to work progress;

(b) For Maintenance Services, a fixed lump sum to be paid in monthly instalments;

(c) For Improvement Works, the total price stated in the Bill of Quantities for this item;

(d) For Emergency Works, the Provisional Sum reserved for this purpose.

44.3 The Contractor shall be deemed to have satisfied itself as to the correctness and sufficiency of the Contract Price, which shall, except as otherwise provided for in the Contract, cover all its obligations under the Contract.

45. Advance Payment

45.1 The Employer shall make advance payment to the Contractor of the amounts and by the date stated in the PCC, against provision by the Contractor of an Unconditional Bank Guarantee in a form and by a bank acceptable to the Employer in amounts and currencies equal to the advance payment. The Guarantee shall remain effective until the advance payment has been repaid, but the amount of the Guarantee shall be progressively reduced by the amounts repaid by the Contractor. Interest will not be charged on the advance payment.

45.2 The Contractor is to use the advance payment only to pay for Equipment, Plant, Materials, and mobilization expenses required specifically for the execution of the Contract. The Contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices or other documents to the Engineer.

45.3 The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the Contractor, following the schedule of completed percentages of the Works and Maintenance Services on a payment basis as indicated in the PCC.

46. Bill of Quantities

46.1 The Bill of Quantities shall contain items for Groups of Activities which include the provision of Maintenance Services (measured by performance standards) and Works (measured by unit of outputs or of products). The Bill of Quantities for Works shall include, where applicable, the lump-sum and unit price for Rehabilitation Works, and unit rates for Improvement Works and for Emergency Works.

46.2 Maintenance Services shall be measured and billed separately and will be remunerated by lump-sum amount for the period of the contract, and paid in fixed monthly payments during the entire Contract period. The values for remuneration of the Maintenance Services are those stated in the Bill of Quantities.

46.3 Rehabilitation Works will be remunerated by Lump-Sum amount for the period of the contract, however, indicating the quantities of measurable outputs to be executed in order that the Road achieves the performance standards specified in the tendering documents. Payments will be made in accordance with the execution of those measured outputs paid by executed works output. The prices shall be those stated in the Bill of Quantities.

46.4 Improvement Works will be remunerated after acceptance by the Employer and shall be paid according to the product unit price using the prices included in the Bill of Quantities.

46.5 Each Emergency Work Order issued by the Engineer will include a lump-sum price for the works to be performed. The Lump-Sum price for the Emergency Works will be submitted by the Contractor to the Engineer in each emergency pursuant to GCC Clauses 29 and 61 and will be prepared based on the Specifications and on the unit prices included in the Bill of Quantities for Emergency Works, and will remunerate all Emergency Activities. The prices include compliance with all Performance Indices described in the Specifications. Once approved, Emergency Works will be paid as lump sum in accordance with the schedule of payment proposed by the Contractor for the specific Emergency and approved by the Employer.

46.6 The Bill of Quantities is used to calculate the Contract Price. The amounts for Maintenance Services and Rehabilitation Works are the Lump-Sum prices offered in the Contractor's Tender. The Improvement Works amount included in the Contract is an estimate on the basis of the unit prices included in the Contractor's Tender. The Provisional Sum included in the Contract Price is an estimate for use when authorized by the Employer for Emergency Works and contingencies.

47. Measurement

47.1 Maintenance Services will not be measured in volume; however, its payment will be affected by compliance with the Performance Standards pursuant to GCC Clause 24. Maintenance Services shall be billed in fixed monthly amounts as per the Bill of Quantities Lump-Sum amount for Maintenance Services, beginning from the Start Date. Payments will be made with Reductions if the Performance Standards are not achieved, as defined in the Specifications. The Reductions for non-compliance with the Performance Standards will be applied on a daily basis for the period under which the Road does not achieve the Performance Standards, in accordance with the methodology specified in the Specifications.

47.2 Rehabilitation Works will be measured on the basis indicated in the PCC, based on the quantity of actual work outputs as defined in the Specifications, concluded by the Contractor and approved by the Engineer. The prices shall be those stated in the Bill of Quantities.

47.3 Improvement Works will be measured on the basis indicated in the PCC and in accordance with the unit of measurement used for product unit price included in the Bill of Quantities. The prices shall be those stated in the Bill of Quantities.

47.4 Emergency Works will not be measured and shall be billed in accordance with the Schedule of Payments agreed for each specific Emergency Work as approved by the Employer.

48. Price Adjustments

48.1 Prices shall be adjusted for fluctuations in the cost of inputs only if provided for in the PCC. If so provided, the amounts certified in each payment certificate, after deducting for Advance Payment, shall be adjusted by applying the respective price adjustment factor to the payment amounts due in each currency. A separate formula of the type indicated

below applies to each Contract currency:

$$P_n = A + b\frac{Ln}{Lo} + c\frac{Mn}{Mo} + d\frac{En}{Eo} + etc.$$

where:

P_n is the price adjustment factor to be applied to the amount in each specific currency for the payment of the work carried out in the subject month

A is a constant, specified in the Appendix to Form of Tender, representing the non-adjustable portion in contractual payments;

b, c, d, etc., are weightings or coefficients representing the estimated proportion of each cost element (labour, materials usage, etc.) in the Works or sections thereof, net of Provisional Sums, as specified in the Appendix to Form of Tender; the sum of A, b, c, d, etc., shall be one;

L_n, M_m, E_n, etc., are the current cost indices or the reference prices for the period "**n**" expressed in the relevant currency of payment each of which is applicable to the relevant tabulated cost element on the date 28 days prior to the last day of the period (to which a particular Payment Certificate relates) and;

L_o, M_o, E_o, etc., are the base cost indices or reference prices expressed in the currency of payment each of which is applicable to the relevant tabulated cost element on the Base Date.

48.2 If the value of the index is changed after it has been used in a calculation, the calculation shall be corrected and an adjustment made in the next payment certificate. The index value shall be deemed to take account of all changes in cost due to fluctuations in costs.

49. Monthly Statements and Payments

49.1 The Contractor shall submit to the Engineer monthly statements in the format indicated in the Specifications, of the estimated value of Maintenance Services, Rehabilitation Works, Improvement Works, and Emergency Works in separated items covering the Works and Maintenance Services for the corresponding month.

49.2 The Engineer shall check the Contractor's monthly statement and certify within fourteen (14) days the amount to be paid to the Contractor.

49.3 The value of Maintenance Services executed shall be certified by the Engineer taking into account the monthly amount included in the Bill of Quantities for Maintenance Services and the achievement of the Performance Standards for the Maintenance Services adjusted for any payment reductions in accordance with GCC Sub-Clause 47.1.

49.4 The value of Works executed shall be certified by the Engineer taking into account the value of the quantities of products executed and the prices in the Bill of Quantities.

49.5 The Engineer may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.

50	Payments	50.1	Payments shall be adjusted for deductions for advance payments, retention, and reductions for not achieving Performance Standards for Maintenance Services. The Employer shall pay the Contractor the amounts certified by the Engineer in accordance with GCC Clause 49, within twenty-eight (28) days of the date of each certificate. If the Employer makes a late payment, the Contractor shall be paid interest on the late payment in the next payment. Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the prevailing rate of interest for commercial borrowing for each of the currencies in which payments are made.
		50.2	If an amount certified is increased in a later certificate or as a result of an award by the Adjudicator or an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute. The interest rate shall be determined as per GCC Sub-Clause 50.1
		50.3	Unless otherwise stated, all payments and deductions will be paid or charged in the proportions of currencies comprising the Contract Price.
		50.4	Items of the Works for which no rate or price has been entered in the Bill of Quantities will not be paid for by the Employer and shall be deemed covered by other rates and prices in the Contract.
51	Retention and Reductions	51.1	The Employer shall retain the percentage indicated in the PCC from each payment due to the Contractor for Rehabilitation Works and Improvement Works, except for the types of works specified in the PCC. The regular monthly lump-sum payments for performance-based Maintenance Services will not be subject to retentions, unless indicated in the PCC.
		51.2	On completion of the Rehabilitation and Improvement Works, half the total amount retained shall be repaid to the Contractor and the other half after the issuance of Defects Liability Certificate and the Engineer has certified that all Defects notified by the Engineer to the Contractor have been corrected before the end of this period.
		51.3	Reduction of monthly payments for Maintenance Services due to non-compliance with the Service Levels will be made as indicated in GCC Sub-Clause 47.1. The amount of Reduction for the days in which the Road was not complying with the Performance Standards will not be paid or repaid, even after the Contractor re-establishes the quality levels to the standards required by the contract
52.	Taxes and Duties	52.1	Except as otherwise specifically provided in the Contract, the Contractor shall bear and pay all taxes, duties, levies and charges assessed on the Contractor, its Subcontractors or their employees by all municipal, state or national government authorities in connection with the Works and Maintenance Services in and outside of the country where the Site is located.
		52.2	If any tax exemptions, reductions, allowances or privileges may be available to the Contractor in the country where the Site is located, the Employer shall use its best endeavors to enable the Contractor to benefit

from any such tax savings to the maximum allowable extent.

52.3 For the purpose of the Contract, it is agreed that the Contract Price specified in the Form of Agreement is based on the taxes, duties, levies and charges prevailing at the date twenty-eight (28) days prior to the date of tender submission in the country where the Site is located (hereinafter called "Tax"). If any rates of Tax are increased or decreased, a new Tax is introduced, an existing Tax is abolished, or any change in interpretation or application of any Tax occurs in the course of the performance of the Contract, which was or will be assessed on the Contractor, Subcontractors or their employees in connection with performance of the Contract, an equitable adjustment of the Contract Price shall be made to fully take into account any such change by addition to the Contract Price or deduction therefrom, as the case may be, in accordance with GCC Clause 37 hereof.

53. Securities

53.1 Issuance of Securities

The Contractor shall provide the securities specified below in favor of the Employer at the times, and in the amount, manner and form specified below.

53.2 Advance Payment Security

53.2.1 The Contractor shall, within twenty-eight (28) days of the notification of contract award, provide a security in an amount equal to the advance payment calculated in accordance with the corresponding PCC to the Contract Agreement, and in the same currency or currencies

53.2.2 The security shall be in the form provided in the tendering documents or in another form acceptable to the Employer. The amount of the security shall be reduced in proportion to the value of the Works and Maintenance Services executed by and paid to the Contractor from time to time, and shall automatically become null and void when the full amount of the advance payment has been recovered by the Employer. The security shall be returned to the Contractor immediately after its expiration.

53.3 Performance Security

53.3.1 The Contractor shall, within twenty-eight (28) days of the notification of contract award, provide a security for the due performance of the Contract in the amount specified in the PCC.

53.3.2 The security shall be denominated in the currency or currencies of the Contract, or in a freely convertible currency acceptable to the Employer, and shall be in one of the forms of guarantees provided in the tendering documents, as stipulated by the Employer in the PCC, or in another form acceptable to the Employer.

53.3.3 The security shall automatically become null and void, upon issuance of the Defects Liability Certificate, provided however, that if the Defects Liability Period has been extended on any

part of the Works pursuant to GCC Sub-Clause 41.8 hereof, the Contractor shall issue an additional security in an amount proportionate to the Contract Price of that part. The security shall be returned to the Contractor immediately after its expiration.

54. Certificate of Completion

54.1 The Contractor shall request the Engineer to issue a Certificate of Completion of the Rehabilitation Works, Improvement Works and Emergency Works, or parts thereof, as applicable, and the Engineer will do so upon deciding that the work is completed.

55 Final Statement

55.1 The Contractor shall supply the Engineer with a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Engineer shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within fifty-six (56) days of receiving the Contractor's account if it is correct and complete. If it is not, the Engineer shall issue within fifty-six (56) days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Engineer shall decide on the amount payable to the Contractor and issue a payment certificate.

56 Discharge

56.1 Upon submission of the Final Statement, the Contractor shall give to the Engineer, a written discharge confirming that the total of the Final Statement represents full and final settlement of all monies due to the Contractor arising out of or in respect of the Contract. Provided that such discharge shall become effective only after payment due under the Final Payment Certificate issued pursuant to GCC Clause 55 has been made and the performance security referred to in GCC Sub-Clause 53.3, if any, has been returned to the Contractor.

57. As Built Drawings and Manuals

57.1 If "as built" Drawings and/or manuals are required, the Contractor shall supply them by the dates stated in the PCC.

57.2 If the Contractor does not supply the Drawings and/or manuals by the dates stated in the PCC, or they do not receive the Engineer's approval, the Engineer shall withhold the amount stated in the PCC from payments due to the Contractor.

G. REMEDIES

58 Suspension

58.1 The Employer may request the Engineer, by notice to the Contractor, to order the Contractor to suspend performance of any or all of its obligations under the Contract. Such notice shall specify the obligation of which performance is to be suspended, the effective date of the suspension and the reasons therefore. The Contractor shall thereupon suspend performance of such obligation (except those obligations necessary for the care or preservation of the Site and Works) until ordered in writing to resume such performance by the Engineer.

If, by virtue of a suspension order given by the Engineer, other than by reason of the Contractor's default or breach of the Contract, the Contractor's performance of any of its obligations is suspended for an aggregate period of more than ninety (90) days, then at any time thereafter and provided that at that time such performance is still suspended, the

Contractor may give a notice to the Engineer requiring that the Employer shall, within twenty-eight (28) days of receipt of the notice, order the resumption of such performance or request and subsequently order a change in accordance with GCC Sub-Clause 63.1, excluding the performance of the suspended obligations from the Contract.

If the Employer fails to do so within such period, the Contractor may, by a further notice to the Engineer, elect to treat the suspension as termination of the Contract under GCC Sub-Clause 59.1.

58.2 If

(a) the Employer has failed to pay the Contractor any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to the Contract, or commits a substantial breach of the Contract, the Contractor may give a notice to the Employer that requires payment of such sum, with interest thereon as stipulated in GCC Sub-Clause 50.1, requires approval of such invoice or supporting documents, or specifies the breach and requires the Employer to remedy the same, as the case may be. If the Employer fails to pay such sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, or fails to remedy the breach or take steps to remedy the breach within fourteen (14) days after receipt of the Contractor's notice; or

(b) the Contractor is unable to carry out any of its obligations under the Contract for any reason attributable to the Employer, including but not limited to the Employer's failure to provide possession of or access to the Site, or failure to obtain any governmental permit under the Employer's responsibility and necessary for the execution and/or completion of the Works and Maintenance Services,

then the Contractor may by fourteen (14) days' notice to the Employer suspend performance of all or any of its obligations under the Contract, or reduce the rate of progress.

58.3 If the Contractor's performance of its obligations is suspended or the rate of progress is reduced pursuant to this GCC Clause 58, then the Time for Completion shall be extended in accordance with GCC Clause 64, and any and all additional costs or expenses incurred by the Contractor as a result of such suspension or reduction shall be paid by the Employer to the Contractor in addition to the Contract Price, except in the case of suspension order or reduction in the rate of progress by reason of the Contractor's default or breach of the Contract.

58.4 During the period of suspension, the Contractor shall not remove from the Site any Plant and Equipment or any Contractor's Equipment, without the prior written consent of the Employer.

59. Termination

59.1 Termination for Employer's Convenience

59.1.1 The Employer may at any time terminate the Contract for any reason by giving the Contractor a notice of termination that refers

to this GCC Sub-Clause 59.1.

59.1.2 Upon receipt of the notice of termination under GCC Sub-Clause 59.1.1, the Contractor shall either immediately or upon the date specified in the notice of termination

(a). cease all further work, except for such work as the Employer may specify in the notice of termination for the sole purpose of protecting that part of the Works and Maintenance Services already executed, or any work required to leave the Site in a clean and safe condition,

(b). terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d) (ii) below,

(c).remove all Contractor's Equipment from the Site, repatriate the Contractor's and its Subcontractors' personnel from the Site, remove from the Site any wreckage, rubbish and debris of any kind, and leave the whole of the Site in a clean and safe condition.

(d). In addition, the Contractor, subject to the payment specified in GCC Sub-Clause 59.1.3, shall

(i) deliver to the Employer the parts of the Works executed by the Contractor up to the date of termination,

(ii) to the extent legally possible, assign to the Employer all right, title and benefit of the Contractor to the Works and Maintenance Services and to the Plant and Equipment as of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors

(iii) deliver to the Employer all non-proprietary drawings, specifications and other documents prepared by the Contractor or its Subcontractors as at the date of termination in connection with the Works.

59.1.3 In the event of termination of the Contract under GCC Sub-Clause 59.1.1, the Employer shall pay to the Contractor the following amounts:

(a) the Contract Price, properly attributable to the parts of the works and Maintenance Services executed by the Contractor as of the date of termination,

(b) the costs reasonably incurred by the Contractor in the removal of the Contractor's Equipment from the Site and in the repatriation of the Contractor's and its Subcontractors' personnel,

(c) any amounts to be paid by the Contractor to its Subcontractors in connection with the termination of any subcontracts, including any cancellation charges,

(d) the costs incurred by the Contractor in protecting and leaving the Site in a clean and safe condition pursuant to paragraph (a) of GCC Sub-Clause 59.1.2,

(e) the cost of satisfying all other obligations, commitments and claims that the Contractor may in good faith have undertaken with third parties in connection with the Contract and that are not covered by paragraphs (a) through (d) above.

59.2 Termination for Contractor's Default

59.2.1 The Employer, without prejudice to any other rights or remedies it may possess, may terminate the Contract forthwith in the following circumstances by giving a notice of termination and its reasons therefore to the Contractor, referring to this GCC Sub-Clause 59.2:

(a) if the Contractor becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, if the Contractor is a corporation, a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Contractor takes or suffers any other analogous action in consequence of debt;

(b) if the Contractor assigns or transfers the Contract or any right or interest therein in violation of the provision of GCC Clause 13;

(c) if the Contractor, in the judgment of the Employer has engaged in corrupt, fraudulent, collusive or coercive practices in competing for or in executing the Contract.

For the purpose of this Sub-Clause:

(i) "corrupt practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;

(ii) "fraudulent practice" is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;

(iii) "collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;

(iv) "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;

(v) "obstructive practice" is

(aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede Employer's investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to

the investigation or from pursuing the investigation, or

(bb) acts intended to materially impede the Employer's inspection and audit rights

59.2.2 If the Contractor

(a) has abandoned or repudiated the Contract

(b) has without valid reason failed to commence work on the Road promptly or has suspended (other than pursuant to GCC Sub-Clause 58.2) the progress of Contract performance for more than twenty-eight (28) days after receiving a written instruction from the Employer to proceed,

(c) persistently fails to execute the Contract in accordance with the Contract, such failure being defined in the PCC, or persistently neglects otherwise to carry out its obligations under the Contract without just cause,

(d) refuses or is unable to provide sufficient materials, Maintenance Services or labour to execute and complete the Works and Maintenance Services in the manner specified in the program furnished under GCC Clause 17 at rates of progress that give reasonable assurance to the Employer that the Contractor can attain completion of the works and Maintenance Services by the Time for Completion as extended,

then the Employer may, without prejudice to any other rights it may possess under the Contract, give a notice to the Contractor stating the nature of the default and requiring the Contractor to remedy the same. If the Contractor fails to remedy or to take steps to remedy the same within fourteen (14) days of its receipt of such notice, then the Employer may terminate the Contract forthwith by giving a notice of termination to the Contractor that refers to this GCC Sub-Clause 59.2.

59.2.3 Upon receipt of the notice of termination under GCC Sub-Clauses 59.2.1 or 59.2.2, the Contractor shall, either immediately or upon such date as is specified in the notice of termination,

(a) cease all further work, except for such work as the Employer may specify in the notice of termination for the sole purpose of protecting that part of the Works and Maintenance Services already executed, or any work required to leave the Site in a clean and safe condition

(b) terminate all subcontracts, except those to be assigned to the Employer based on the Employer's written request,

(c) deliver to the Employer all drawings, specifications and other documents prepared by the Contractor or its Subcontractors as of the date of termination in connection with the Works

and Maintenance Services.

59.2.4 The Contractor shall be entitled to be paid the Contract Price attributable to the Works and Maintenance Services executed as of the date of termination, and the costs, if any, incurred in protecting and in leaving the Site in a clean and safe condition pursuant to paragraph (a) of GCC Sub-Clause 59.2.3. Any sums due the Employer from the Contractor accruing prior to the date of termination shall be deducted from the amount to be paid to the Contractor under this Contract.

59.3 Termination by Contractor

59.3.1 If

(a) the Employer has failed to pay the Contractor any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to GCC Clause 50, or commits a substantial breach of the Contract, the Contractor may give a notice to the Employer that requires payment of such sum, with interest thereon as stipulated in GCC Sub-Clause 50.2, requires approval of such invoice or supporting documents, or specifies the breach and requires the Employer to remedy the same, as the case may be. If the Employer fails to pay such sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, fails to remedy the breach or take steps to remedy the breach within fourteen (14) days after receipt of the Contractor's notice, or

(b) the Contractor is unable to carry out any of its obligations under the Contract for any reason attributable to the Employer, including but not limited to the Employer's failure to provide possession of or access to the Site or other areas or failure to obtain any governmental permit under the Employer's responsibility and necessary for the execution and/or completion of the Works and Maintenance Services,

then the Contractor may give a notice to the Employer thereof, and if the Employer has failed to pay the outstanding sum, to approve the invoice or supporting documents, to give its reasons for withholding such approval, or to remedy the breach within twenty-eight (28) days of such notice, or if the Contractor is still unable to carry out any of its obligations under the Contract for any reason attributable to the Employer within twenty-eight (28) days of the said notice, the Contractor may by a further notice to the Employer referring to this GCC Sub-Clause 59.3.1, forthwith terminate the Contract.

59.3.2 The Contractor may terminate the Contract forthwith by giving a notice to the Employer to that effect, referring to this GCC Sub-Clause 59.3.2, if the Employer becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, being a corporation, if a resolution is passed or order

is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Employer takes or suffers any other analogous action in consequence of debt.

59.3.3 If the Contract is terminated under GCC Sub-Clauses 59.3.1 or 59.3.2, then the Contractor shall immediately

(a) cease all further work, except for such work as may be necessary for the purpose of protecting that part of the Road already executed, or any work required to leave the Site in a clean and safe condition,

(b) terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d) (ii),

(c) remove all Contractor's Equipment from the Site and repatriate the Contractor's and its Subcontractors' personnel from the Site.

(d) In addition, the Contractor, subject to the payment specified in GCC Sub-Clause 59.3.4, shall

(i) deliver to the Employer the parts of the Road executed by the Contractor up to the date of termination,
(ii) to the extent legally possible, assign to the Employer all right, title and benefit of the Contractor to the Road and to the Plant and Equipment as of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors,
(iii) deliver to the Employer all drawings, specifications and other documents prepared by the Contractor or its Subcontractors as of the date of termination in connection with the Works and Maintenance Services.

59.3.4 If the Contract is terminated under GCC Sub-Clauses 59.3.1 or 59.3.2, the Employer shall pay to the Contractor all payments specified in GCC Sub-Clause 59.1.3, and reasonable compensation for all loss, except for loss of profit, or damage sustained by the Contractor arising out of, in connection with or in consequence of such termination.

59.3.5 Termination by the Contractor pursuant to this GCC Sub-Clause 59.3 is without prejudice to any other rights or remedies of the Contractor that may be exercised in lieu of or in addition to rights conferred by GCC Sub-Clause 59.3.

59.4 In this GCC Clause 59, in calculating any monies due from the Employer to the Contractor, account shall be taken of any sum previously paid by the Employer to the Contractor under the Contract, including any advance payment paid pursuant to the Contract.

H. PROVISIONAL SUM

60 Provisional Sum

60.1 "Provisional Sum" means a sum included in the Contract for use when authorized by the Employer for Emergency Works and for contingencies, which sum may be used, in whole or in part, or not at all, on the instructions of the Employer. The Contractor shall be entitled to only such amounts in respect of the work, supply or contingencies to which such Provisional Sums relate as the Engineer shall determine in accordance with this Clause.

61 Use of Provisional Sum for Emergency Works

61.1 After detecting a situation which in the opinion of the Contractor justifies the execution of Emergency Works or otherwise as defined in GCC Clause 29, the Contractor shall submit a Technical Report to the Engineer characterizing the situation, and state estimated works quantities to correct the emergency situation, and a Lump Sum price quotation for the Emergency Works to be carried out. The price quotation should be based on the Specifications stated in Section VII using the unit prices included in the Bill of Quantities.

61.2 If the execution of the Emergency Works require any activity not priced in the Bill of Quantities, the Contractor will use the price breakdowns included in the Contractor's Tender in order to form the unit prices of the unpriced items to be included in the Price Quotation of the Emergency Works, all in accordance with agreed methodology for approving new prices.

61.3 Upon receiving the request for Emergency Works including a Price Quotation, the Engineer may issue a Work Order in accordance with GCC Sub-Clause 29.2 for execution of the Emergency Works for a Lump-Sum amount with a payment Schedule agreed with the Contractor. The cost of these Works will be covered by the amounts included in the Provisional Sum.

62. Use of Provisional Sum for Contingencies

62.1 The use of the Provisional Sum to cover for Contingencies will be done under the control and initiative of the Engineer in accordance with the conditions of the Contract.

I. CHANGE IN CONTRACT ELEMENTS

63 Change in Assignments to Contractor

63.1 Introducing a Change order

63.1.1 If so indicated in the PCC, the Employer shall have the right to propose, and subsequently require, that the Engineer order the Contractor from time to time during the performance of the Contract to make any change, modification, addition or deletion to, in or from the Assignments to the Contractor (hereinafter called "Change"), provided that such Change falls within the general scope of the Assignment and does not constitute unrelated work and that it is technically practicable, taking into account both the state of advancement of the Works and Maintenance Services and the technical compatibility of the Change envisaged with the nature of the Works and Maintenance Services as specified in the Contract.

63.1.2 If so indicated in the PCC, the Contractor may from time to time during its performance of the Contract propose to the Employer

(with a copy to the Engineer) any Change that the Contractor considers necessary or desirable to improve the quality, efficiency or safety of the Works and Maintenance Services. The Employer may at its discretion approve or reject any Change proposed by the Contractor.

63.1.3 Notwithstanding GCC Sub-Clauses 63.1.1 and 63.1.2, no change made necessary because of any default of the Contractor in the performance of its obligations under the Contract shall be deemed to be a Change, and such change shall not result in any adjustment of the Contract Price or the Time for Completion.

63.1.4 The procedure on how to proceed with and execute Changes is specified in GCC Sub-Clauses 63.2 and 63.3, further details and sample forms are provided in the Sample Forms and Procedures section in the tendering documents.

63.2 Change order Originating from Employer

63.2.1 If the Employer proposes a Change pursuant to GCC Sub-Clause 63.1.1, it shall send to the Contractor a "Request for Change Proposal," requiring the Contractor to prepare and furnish to the Engineer, as soon as reasonably practicable, a "Change Proposal," which shall include the following:

(a) brief description of the Change

(b) effect on the Time for Completion

(c) estimated cost of the Change

(d) effect on Functional Guarantees (if any)

(e) effect on any other provisions of the Contract

63.2.2 Prior to preparing and submitting the "Change Proposal," the Contractor shall submit to the Engineer an "Estimate for Change Proposal," which shall be an estimate of the cost of preparing and submitting the Change Proposal.

Upon receipt of the Contractor's Estimate for Change Proposal, the Employer shall do one of the following:

(a) accept the Contractor's estimate with instructions to the Contractor to proceed with the preparation of the Change Proposal,

(b) advise the Contractor of any part of its Estimate for Change Proposal that is unacceptable and request the Contractor to review its estimate,

(c) advise the Contractor that the Employer does not intend to proceed with the Change.

63.2.3 Upon receipt of the Employer's instruction to proceed under GCC

Sub-Clause 63.2.2 (a), the Contractor shall, with proper expedition, proceed with the preparation of the Change Proposal, in accordance with GCC Sub-Clause 63.2.1.

63.2.4 The pricing of any Change shall, as far as practicable, be calculated in accordance with the rates and prices included in the Contract. If such rates and prices are inequitable, the parties thereto shall agree on specific rates for the valuation of the Change.

63.2.5 If before or during the preparation of the Change Proposal it becomes apparent that the aggregate effect of compliance therewith, and with all other Change Orders that have already become binding upon the Contractor under this GCC Clause 63, would be to increase or decrease the Contract Price as originally set forth in the Contract Agreement by more than fifteen percent (15%), the Contractor may give a written notice of objection thereto prior to furnishing the Change Proposal as aforesaid. If the Employer accepts the Contractor's objection, the Employer shall withdraw the proposed Change and shall notify the Contractor in writing thereof.

The Contractor's failure to so object shall neither affect its right to object to any subsequent requested Changes or Change Orders herein, nor affect its right to take into account, when making such subsequent objection, the percentage increase or decrease in the Contract Price that any Change not objected to by the Contractor represents.

63.2.6 Upon receipt of the Change Proposal, the Employer and the Contractor shall mutually agree upon all matters therein contained. Within fourteen (14) days after such agreement, the Employer shall, if it intends to proceed with the Change, issue the Contractor with a Change Order.

If the Employer is unable to reach a decision within fourteen (14) days, it shall notify the Contractor with details of when the Contractor can expect a decision.

If the Employer decides not to proceed with the Change for whatever reason, it shall, within the said period of fourteen (14) days, notify the Contractor accordingly. Under such circumstances, the Contractor shall be entitled to reimbursement of all costs reasonably incurred by it in the preparation of the Change Proposal, provided that these do not exceed the amount given by the Contractor in its Estimate for Change Proposal submitted in accordance with GCC Sub-Clause 63.2.2.

63.2.7 If the Employer and the Contractor cannot reach agreement on the price for the Change, an equitable adjustment to the Time for Completion, or any other matters identified in the Change Proposal, the Employer may nevertheless instruct the Contractor to proceed with the Change by issue of a "Pending Agreement Change Order."

Upon receipt of a Pending Agreement Change Order, the Contractor shall immediately proceed with effecting the Changes covered by such Order. The parties shall thereafter attempt to reach agreement on the outstanding issues under the Change Proposal.

If the parties cannot reach agreement within sixty (60) days from the date of issue of the Pending Agreement Change Order, then the matter may be referred to the Adjudicator in accordance with the provisions of GCC Sub-Clause 6.1.

63.3 Changes Originating from Contractor

63.3.1 If the Contractor proposes a Change pursuant to GCC Sub-Clause 63.1.2, the Contractor shall submit to the Engineer a written "Application for Change Proposal," giving reasons for the proposed Change and including the information specified in GCC Sub-Clause 63.2.1.

Upon receipt of the Application for Change Proposal, the parties shall follow the procedures outlined in GCC Sub-Clauses 63.2.6 and 63.2.7. However, should the Employer choose not to proceed, the Contractor shall not be entitled to recover the costs of preparing the Application for Change Proposal.

64. Extension Time for Completion

64.1 The Time(s) for Completion specified in the PCC shall be extended if the Contractor is delayed or impeded in the performance of any of its obligations under the Contract by reason of any of the following:

(a) any Change in the Works and Maintenance Services as provided in GCC Clause 63,

(b) any occurrence of Force Majeure as provided in GCC Clause 38 and unforeseen conditions as provided in GCC Clause 36,

(c) any suspension order given by the Employer under GCC Clause 58,

(d) any changes in laws and regulations as provided in GCC Clause 37, or

(e) any default or breach of the Contract by the Employer, or any activity, act or omission of any other contractors employed by the Employer, or

(f) any other matter specifically mentioned in the Contract

by such period as shall be fair and reasonable in all the circumstances and as shall fairly reflect the delay or impediment sustained by the Contractor.

64.2 Except where otherwise specifically provided in the Contract, the Contractor shall submit to the Engineer a notice of a claim for an extension of the Time for Completion, together with particulars of the event or circumstance justifying such extension as soon as reasonably practicable after the commencement of such event or circumstance. As soon as reasonably practicable after receipt of such notice and supporting particulars of the claim, the Employer and the Contractor shall agree upon

the period of such extension. In the event that the Contractor does not accept the Employer's estimate of a fair and reasonable time extension, the Contractor shall be entitled to refer the matter to an Adjudicator, pursuant to GCC Sub-Clause 6.1.

64.3 The Contractor shall at all times use its reasonable efforts to minimize any delay in the performance of its obligations under the Contract.

65. Release from Performance

65.1 If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either the Employer or the Contractor, the Engineer shall certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it and for any work carried out afterwards to which a commitment was made.

SECTION IX: PARTICULAR CONDITIONS OF CONTRACT (PCC)

The following Particular Conditions shall supplement the GCC. They are to be completed by the Employer and presented as part of the Tendering Documents. Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

Reference to GCC clauses

<table>
<tr><td>1</td><td>The Project Location is located in Mt. Kenya National Park ,its length is approximately 37.5.Km]
The name of the Engineer is Head of Roads and Fleet Management].</td></tr>
<tr><td>3.1</td><td>The following documents are also part of the Contract:
[Standard specifications for Roads and Bridges Constructions, Road Design Manual Part I and II, Supervision and Contract Evaluation Manual for Road Maintenance.</td></tr>
<tr><td>4.1</td><td>The language of the Contract shall be English.
The law of the Contract is that of the Republic of Kenya.</td></tr>
<tr><td>5</td><td>The address of the Employer is: [Director General, Kenya Wildlife Service P.O. Box 40241-00100 Nairobi. Tel 0735663421
Email hps@kws.go.ke</td></tr>
<tr><td>8.4.1</td><td>The Contractor is obliged to prepare and to furnish to the Engineer for Approval the following documents:
Note: The documents to be furnished and needing approval by the Engineer will be relate to Rehabilitation Works.</td></tr>
<tr><td>10.1</td><td>The Start Date shall be 14 after the signing of the Contract by the Employer and the Contractor and issueance of order to commence.</td></tr>
<tr><td>10.2</td><td>The Time for completion for Rehabilitation & Improvement works is [3 Months]
The Time Schedule for the achievement of specific Service Levels is:
<table>
<tr><td>Contract Month</td><td>Road safety Compliance required on % of contract road</td><td>Durability Compliance required on % of contract road</td></tr>
<tr><td>1</td><td>50</td><td>50</td></tr>
<tr><td>2</td><td>100</td><td>100</td></tr>
<tr><td>3 until end of contract</td><td>100</td><td>100</td></tr>
</table></td></tr>
<tr><td>11.2</td><td>The date shall be fourteen (14) days prior to tender submission.</td></tr>
<tr><td>12.1</td><td>The Contractor is specifically allowed to sub-contract the following activities: [N/A]</td></tr>
<tr><td>14.2</td><td>The Employer shall give full possession of and access to the Site as specified in the letter of commencement.</td></tr>
<tr><td>17.2</td><td>The Program of Performance is also referred to as the Works Execution Programme. The Contractor shall submit the cash flow projections together with the work programme.
Times of completion given in the Time Schedule in PCC Clause 10.2.</td></tr>
<tr><td>19.1</td><td>The key personnel shall consist of: Road Manager, Foreman/Inspector and Site Surveyor.
[The Employer shall specify any additional personnel required]
The key staff listed above must have academic qualifications from government recognized or equivalent institutions as specified in the Qualification Criteria. The Qualifications shall be subject to verification and approval on site by the Engineer or his representative on site before</td></tr>
</table>

	commencement of work. Any replacement of the above personnel should be approved by the Employer.
19.2 (a)	The contractor will use local personnel as far as practical
19.2 (g)	The Contractor shall allow in his programme for the following public holidays per calendar year during which the Contractor shall not be permitted to work except for undertaking Maintenance Services. • New Year's Day (1st January) • Good Friday • Easter Monday • Labour day (1st May) • Madaraka Day (1st June) • Idd Ul Fitr • Mashujaa Day (20th October) • Jamhuri day (12th December) • Christmas Day (25th December) • Boxing day (26th December) The Contractor shall also allow per calendar year for a further 2 unspecified public holidays which may be announced by the Government of Kenya with no prior notification upon which he shall not be permitted to work.
19.2 (h),	The scope of the occupational health and safety programme shall be ____ [Employer to specify]
21	The Contractor shall carry out the following Rehabilitation Works, which are detailed in the Specifications: *[As set out in the scope of works of the BOQ]*
22	The Contractor shall carry out the following Improvement Works, which are detailed in the Specifications and Bill of Quantities: *[N/A]*
24	Maintenance service will be measured not only by compliance with the Performance Specifications but also with Contractor's performance of work process during the contract according to *Performance Based Road Maintenance Contract Guideline, 2016*. The contractor's Evaluation result will be represented by score and referred at subsequent procurement.
25.2	The Contractor shall establish a Self-Control Unit with the following minimum requirements *[insert minimum requirements]* *[, the minimum requirement shall be the Road Manager, Inspector, Labourers and a pick up for daily inspection.]*
26.1 (c)	Insert "implement the approved Environmental Management Plan by the Employer," before "take all…"
26.1 (d)	Insert item 26.1(d) after the above as follows "maintain health and safety records and make reports on safety, health and welfare of people and damage to property as the Engineer may from time to time prescribe"
27.3	Replace both 10 and 5 days with "three (3) working days"

<table>
<tr><td>32.1,
33.1</td><td>Further to Clause 32.1 and 33.1, schedule of allocated risks are as follows;

<table>
<tr><th rowspan="2">Risk Item</th><th colspan="2">Rehabilitation Contracts</th><th colspan="2">PBC Contracts</th></tr>
<tr><th>Public Sector</th><th>Contractor</th><th>Public Sector</th><th>Contractor</th></tr>
<tr><td>Design Risk</td><td>√</td><td></td><td></td><td>√</td></tr>
<tr><td>Construction Risk</td><td></td><td>√</td><td></td><td>√</td></tr>
<tr><td>Technical & Management Risk</td><td>√</td><td></td><td></td><td>√</td></tr>
<tr><td>Performance Risk</td><td>√</td><td></td><td></td><td>√</td></tr>
<tr><td>Traffic & Volume Risk</td><td>√</td><td></td><td>√</td><td></td></tr>
<tr><td>Political Risk</td><td>√</td><td></td><td>√</td><td></td></tr>
<tr><td>Social & Environmental Risk</td><td>√</td><td></td><td>√</td><td>√</td></tr>
<tr><td>Acts of God and Force Majeure Risk</td><td>√</td><td>√</td><td>√</td><td>√</td></tr>
</table></td></tr>
<tr><td>34.5</td><td>The Contractor shall report to the Engineer details of any accident within 24 hours of its occurrence. In the case of any fatality or serious accident, the Contractor shall, in addition, notify the Engineer immediately by the quickest available means. The Contractor shall also notify the relevant authority whenever the Laws of Kenya require such a report.</td></tr>
<tr><td>35.1</td><td>The Contractor shall take out and maintain in effect the following insurances in the sums and deductibles shown below: [insert list of insurances, including sums and deductibles of each insurance]</td></tr>
<tr><td>39.1</td><td>The Time for Completion are the following:
Rehabilitation works is 3months
PBC maintenance is 12 months</td></tr>
<tr><td>39.3</td><td>For Rehabilitation Works, the liquidated damages are 0.2% per calendar day of delay, of the payment normally due for the specific Works for which completion is delayed.
For Improvement Works, the liquidated damages are [Not Applicable] per calendar day of delay, of the payment normally due for the specific Works for which completion is delayed</td></tr>
<tr><td>40.4</td><td>The limit of liquidated damages is 10% of contract amount]</td></tr>
<tr><td>41.2</td><td>The defects liability period for rehabilitation and improvement works shall be [1 month]</td></tr>
<tr><td>42.1 (b)</td><td>The aggregate liability of the Contractor to the Employer, excluding payment reductions defined in GCC 47.1, shall not exceed the amount of [20 percentage of contract amount]</td></tr>
<tr><td>44.1</td><td>The payment of the Contract Price will be made in the following currencies: Kenya Shillings(KES)</td></tr>
<tr><td>45.1</td><td>The amount of the Advance Payment is [N/A] Price as specified in the Form of Contract]
The Advance payment will be made by [Not Applicable]</td></tr>
<tr><td>45.3</td><td>The Advance payment will be repaid during the N/A] initial monthly payments at the rate of N/A] percent of the amount advanced in each monthly payment until the repayment of the total amount.</td></tr>
<tr><td>23.1</td><td>Appendix A: Performance standards for unpaved standard Road</td></tr>
<tr><td>46.5</td><td>In case there is no Applicable unit rate for an Emergency Activity in the contract, the prevailing market rates shall be used as agreed between the contractor and the Employer,</td></tr>
<tr><td>47.1</td><td>In accordance with the GCC Clause 49, the Contractor shall submit the estimated values of the Works and Maintenance Services executed or performed during the month as the Contractor’s Monthly Statement to the Engineer. The Monthly Statement shall clearly indicate the Works executed in the form of the approved Bill of Quantities of the Rehabilitation Works, the Improvement Work and the Emergency Works, as fit for the month. The Monthly Statement shall also clearly indicate the fixed value of the Maintenance Services performed in the form of the approved Bill of Quantities, less any reductions to be made during the particular month based on the Payment Reduction Calculation Table calculated by the Contractor to determine the percentages of</td></tr>
</table>

	non-compliance for each Service Scope for determining the amount of reduction in accordance with the GCC Clause 47.1 and as specified in Clause 8 of the Performance Specifications.
47.2	Rehabilitation Works will be measured on the basis of *[work outputs]*
47.3	Improvement Works will be measured on the following basis: *[N/A]*
47.4	Add "as per Clause 46.5" after "payments…"
48.1	Price adjustment *[does not apply]*
49.1	The minimum amount of Interim Payment Certificate for Rehabilitation works is 10%
51	The retention for Rehabilitation Works is fixed at *10%* percent. The retention is not applicable to the following types of Rehabilitation Works: *[N/A]*
53.2.1	The amount of the Advance payment security is*[N/A]*
53.3.1	The amount of the Performance Security is *[10% of Rehabilitation component].*
53.3.2	The form of guarantee is *[Unconditional Bank guarantee].*
57.1	The following Drawings and/or Manuals are required at the following dates: ***none****]*
57.2	If the required documents are not supplied in accordance with PCC 57.1, the amount to be withheld is *[N/A].*
59.2.2(c)	The condition of persistent failure to execute the contract is given if and when the total amount of payment reductions and liquidated damages applied under the contract reaches *[10%]* percent of the total contract amount.
63.1.1	The Employer has the right to propose a change in the contract: Yes or No *[Yes].*
63.1.2	Contractor's right to propose a change in the contract: Yes or No *[Indicate if applicable or not by deleting* ***Yes*** *or* ***No*** *as applicable].*

SECTION X: STANDARD CONTRACT FORMS

FORM OF AGREEMENT

THIS AGREEMENT is made on the ..... day of ..... between the

.....

[Insert Name Relevant Authority] of .....

[*insert the address of the relevant authority]* hereinafter called "the Employer" of the one part And

.....

hereinafter called “the Contractor" of the other part.

WHEREAS the Employer is desirous that certain works should be executed, viz.

[Insert project name]

.....

.....

.....

and has accepted a Contract by the Contractor for the execution completion and maintenance of such works NOW THIS AGREEMENT WITNESSES as follows:

In this agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to.

The following documents shall be deemed to form and be read and construed as part of this Agreement, viz.:

The Contract Agreement;

The Letter of award by the Employer

The Letter of Acceptance by the Contractor;

The Form of Contract and Appendix to the Form of Contract;

The General Conditions of Contract;

The Particular Conditions of Contract;

The Standard Specification for Road and Bridge Construction, 1986;

The Special Specifications;

The Drawings;

The priced Bill of quantities;

Conditions to the Contract and instructions to the Contractor;

All aforesaid documents are hereinafter referred to as "The Contract".

In consideration of the payment to be made by the Employer to the Contractor, the Contractor hereby covenants with the Employer to execute, complete and maintain the works in conformity in all respects with the provisions of the Contract.

The Employer hereby covenants to pay the Contractor in consideration of the execution, completion and maintenance of the works for the Contract Price at the times and in the manner prescribed by the Contract.

IN WITNESS HEREOF the parties that have caused this Agreement to be executed this

..... day of ..... .

SEALED with the Common Seal of

(Insert *Kenya Wildlife Service***)**

.....)

In the presence of)

Director General)

)

Corporate Secretary

)

)

SEALED with the Common Seal of

(Insert *the Name of Tender***)**

.....)

In the presence of)

1. Managing Director:

)

)

2. Director/Secretary:)

)

FORM OF PERFORMANCE BANK GUARANTEE (UNCONDITIONAL)

To:

(*Insert the Name and Address of the Procurement Entity*)

1. WHEREAS .....

(hereinafter called the Contractor) has undertaken in pursuance of contract No. RD:

..... dated ..... to execute the

.....

.....

(hereinafter called the "Contract")

2 AND WHEREAS it has been stipulated by you in the said Contract that the Contractor shall furnish you with a Bank Guarantee by a recognized bank for the sum specified in the Appendix to Form of Tender as security for compliance with his obligations in accordance with the Contract;

3. AND WHEREAS we have agreed to give the Contractor such a Bank Guarantee;

NOW THEREFORE we (name of Bank) .....

.....

(hereinafter called "the Bank") hereby affirm that we are the Guarantor and responsible to you on behalf of the Contractor up to a total of Kshs .....

Amount in words .....

.....

.....

and we undertake to pay to you, upon your first written demand and without cavil or argument, any sum or sums within and up to the limits as aforesaid without your needing to prove or show grounds or reasons for the sum specified therein.

We hereby waive the necessity of you demanding the said debt from the Contractor before presenting us with the demand.

We further agree that no change or addition to or other modification of the terms of the Contract or of the Works to be performed there under or of any of the Contract Documents which may be made between you and the Contractor shall in any way release us from any liability under this Guarantee and we hereby waive notice of any such change, addition or modification

This Guarantee shall be valid until 28 days after issuing of the Defects Liability Certificate.

AUTHORISED SIGNATORY FOR THE BANK .....

Name of bank .....

Address .....

Date .....

PART 3: SPECIFICATIONS

Introduction to Specifications

(A) General Specifications

Notwithstanding the provisions of Clause 7 of the GCC, the Works and Maintenance Services to be provided by the Contractor include all activities, physical or others, which the Contractor needs to carry out, in order to comply with the service levels and other performance criteria indicated under the contract, or with any other requirements of the contract. In particular, they include management tasks and physical works in accordance with the latest standards and designs guidance issued by the Ministry responsible for Roads in Kenya as may be revised from time to time including and not limited to;

a. Standard Specification for Roads and Bridge Construction, Ministry of Transport and Communications of the 1986 except as supplemented, modified or revised in the Special Specifications and Performance Specifications.

(B) Performance Specifications

Notwithstanding the provisions of Clause 23 of the GCC, the Maintenance Services to be provided by the Contractor include all activities, physical or others, which the Contractor needs to carry out, in order to comply with the service levels and other performance criteria indicated in the Performance Specifications under the contract, or with any other requirements of the contract.

(C) Special Specifications

Special specification is supplementary to the Standard Specifications and the two must be read in conjunction. In any case where there appears to be conflict between the two, then the Special Specifications will take precedence.

(D) Manuals and Guidelines

Manuals and Guidelines are supplementary to the General Specifications, Performance Specifications and Standard Specifications. In particular, they provide a standard methodology to implement the works and services in order to comply with the requirement in the contract and not limited to;

a. Road Maintenance Manual, Ministry of Roads, 2010
b. Performance Based Road Maintenance Contract (PBC) Guideline , JICA, 2016
c. Proposed manual for Traffic Signs in Kenya, June 1975;
   Part I, Road Markings
   Part II, Manual for Traffic Signs in Kenya

SECTION XI: GENERAL SPECIFICATIONS

The contractor must familiarize himself with General specification for Road works as contained in.

1. **Standard Specification** for **Road and Bridge Construction**
   Published by the Ministry of Transport and Communications of the Republic of Kenya, 1986.

Work shall be carried out in accordance with the Standard Specification except as supplemented, modified or revised in the Special Specification.

SECTION XII: PERFORMANCE SPECIFICATIONS

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1. Introduction on Service Level Categories

1.1. Levels of Category

Based on the study of current service levels applied by the road authorities, four (4) standard service level categories cover road network in Kenya. The principal factors considered in the selection of service levels are road type and traffic volume. However, specific road characteristics, such as climatic conditions, road function and terrain, may also be considered. Two service levels (High and Standard) are for paved roads and another two service levels (High and Standard) for un-paved roads.

The Service Levels should be selected from Table 1.1 according Annual Average Daily Traffic Volume (AADT).

Table 1.1. Service Level Categories Adopted

Road Type	Paved		Un-Paved	
Service Level Category	High	Standard	High	Standard
Annual Average Daily Traffic Volume	More than 20,000 vpd	Less than 20,000 vpd	More than500 vpd	Less than 500 vpd

Note: vpd – vehicles per day

Note that Table 1.1 shows indicative traffic volume of service level category. The Road Authority need to define service level based not only on traffic but also on road class, climate and road complexity.

1.2. Service Criteria

Selection of Standard Service Level Category is made based on the road type (Paved or Unpaved), the traffic volume, as well as road conditions assessment.

The Table 1.2 below shows the list of service criteria under each Service Category and Service Scope.

Table 1.2. List of Service Criteria

Service Category	Service Scope	Elements-Paved Road	Elements-Unpaved Road
Road Usability	Passability	Pavement	Pavement.
Road User Comfort	Smooth and Safe Traffic	Pavement	Pavement
		Shoulder	Shoulder
		Median	Footpath
		Footpath/ Cycleway	
		Footbridge	
	Visibility	Sight Distance Availability	Sight Distance Availability
		Street Lighting	
	Traffic Information	Signage	Signage
		Road Works advance warning signs	Road Works advance warning sign
		Road Marking	
Road Durabilitry	Drainage Capability	Side Drains,Mitres Drains,Cut off Drains(Lined)	Side Drains,Mitres Drains,Cut off Drains
		Side Drains,Mitres Drains,Cut off Drains(Unlined)	
		Culverts and Drifts	Culverts and Drifts

Service Category	Service Scope	Elements-Paved Road	Elements-Unpaved Road
		Scour checks,gabions and other erosion protection Srtuctures	Scour checks,gabions and other erosion protection Srtuctures
		Manholes and gulley pots	
	Vegetation Control	Vegetation free zone	Vegetation free zone
		Inner vegetaation zone	Inner vegetaation zone
		Overhanging branches	Overhanging branches
	Maintenance of other structures	Concrete structures	Concrete structures
		Steel strucures	Steel strucures
		Bridge expansion joints	Bridge expansion joints
		Guardrail/Pedestrian rail	Guardrail/Pedestrian rail
		Riverbeds	Riverbeds
	Slope Stability	Embarkment Slopes	Embarkment Slopes
		Slopes in Cuts	Slopes in Cuts

2. Description of the Road

The Road is in Mt Kenya.

It commences at ..... and traverses .....
(describe terrain) for .....km to end at ..... .

The Road has the following major physical features.

a) 18.5 Km of Paved main road with distance of18.5 km. Average carriageway width of 5 m.
b). 19 Km of unpaved service road with distance of
19km km. Average carriageway width of 5 m.
c) ..... Paved feeder road with distance of
..... km. Average carriageway width of ..... m.
d)..... .....
nos. of bridges. The total length of ..... km and the average width of ..... m.
e) ..... Drainage system including approximate .....
m of side drains and ..... m of culverts.
f) Major structures are ..... *(List structures)*

As a general reference on the Road, the information shown below is provided to the Contractor. The Employer provides this information to the best of his knowledge, but does not guarantee its correctness, and the Contractor may not make any claim based on potential errors or omissions in the information provided.

[Provide **information** which may be useful to the bidder for the preparation of his bid, such as

- Traffic volumes for each road section
- Traffic composition
- Rainfall quantities and patterns
- Technical information of each road, such as original design, previous works executed, etc.
- Any maintenance history that is available
- Other information as available.]

3. Works and Services to be provided

3.1. Works

The Works are what the Contract requires the Contractor to construct, install, and turn over to the Employer, as covered under Rehabilitation Works, Improvement Works and Emergency Works.

3.1.1. Rehabilitation Works

Rehabilitation Works are a set of measurable inputs to be executed by the Contractor during the Initial Mobilization Period to allow the Road to achieve the performance standards required under the contract. Rehabilitation Works shall be carried out by the Contractor in accordance with the Bill of Quantities. Rehabilitation Works will be paid for as measured items in accordance with the unit rates in the Bill of Quantities.

3.1.2. Improvement Works

Improvement Works are a set of interventions to be executed by the Contractor to allow the Road to acquire new characteristics under the contract. Improvement Works shall be carried out by the Contractor when specifically instructed by the Engineer as set out in Clause 27 of GCC and in accordance with the Bill of Quantities. Improvement Works will be paid for as measured items in accordance with the unit rates in the Bill of Quantities.

3.1.3. Emergency Works

Emergency Works are a set of necessary inputs to be executed by the Contractor to allow the Road to be reinstated under the contract in case of inflicted damages as a result of natural phenomena with imponderable consequences, such as strong storms, flooding and earthquakes. Emergency Works shall be carried out by the Contractor when specifically instructed by the Engineer as set out in Clause 27 of GCC and in accordance with the unit rates provided for in the Specifications.

In the event of an emergency, the Contractor shall draw to the attention of the Engineer that certain works need to be carried out to reinstate the carriageway and other road features to restore the safe passage of traffic and ensure the integrity of the Road.

The Engineer who will determine the quantities of activities to reinstate the roads, shall make the payments according to the measured works.

3.1.4. Design Responsibility for Works

All Works, Rehabilitation Works, Improvement Works and Emergency Works shall be designed by the Employer in accordance with the latest specifications adopted by the Employer.

3.2. Maintenance Services

Maintenance Services to be provided by the Contractor include all activities, physical and others, which the Contractor needs to carry out in order that specific road related assets and items comply with the Road Performance Standards as defined by the Service Levels and other output and performance criteria indicated in the contract, or with any other requirements of the contract. In particular, they include management tasks and physical works associated with the following road-related assets and items:

[Note: List the extent of specific road related assets and items that are to be maintained under the contract. The list of assets and items may include:

1) Pavements (paved roads)
2) Shoulders
3) Footpaths/cycleways
4) Road embankments and slopes
5) Bridges
6) Drainage system
7) Vegetation
8) Riverbeds
9) Road furniture
10) Other road related structures
11) Traffic Management
12) Data collection

Maintenance service delivery outputs

During the entire contract period, the Contractor is expected to achieve the following outcomes:

1. No potholes on any part of the Project road
2. No side drains and/ or culverts on the Project roads shall be blocked, silted or damaged
3. No standing water on the project road

4. No road furniture on the Project road is missing
5. The road is safe to all users
6. No defects on the project road
7. No road section length shall be unavailable

For guidance, the activities to be undertaken by the Contractor include, but are not limited to, management tasks and physical works associated with the following:

1. Inspect the road for safety defects and defects likely to impact on durability of the assets
2. Inspect road, identify and remove all obstructions
3. Clean drainage (side drains, culverts)
4. Repair and replace scour checks
5. Vegetation control, grass cutting, bush clearing, tree pruning
6. Maintain bridges and minor repairs (replacement of guardrails)
7. Maintain road furniture and replace damaged traffic signs

The Contractor shall prepare and submit Routine Maintenance strategy for approval by Engineer.

Management tasks and physical works include, but not limited to the following;

[Note: List the management tasks and physical works that are to be provided by the Contractor under the contract. The list may include:

1) Maintain road usability
2) Maintain road user comfort
3) Maintain road durability
4) Maintain control of the Road by patrolling, data collection, conducting inspections and reporting

Maintenance Services shall be paid for as a fixed **lump sum per km per month, with payment reductions made for non-compliance**, if appropriate.

4. Compliance with Service Level Requirements

The Initial Mobilization Period for the Road to be brought to Service Level requirements is 3 months after the issuance of the Actual Start Date by the Contractor. However, the period should vary depending on the initial condition of the road as defined and specified in the PCC. in the Contract. Within the first 3 months, compliance with the Service Levels will be adjusted as shown in Table 3.1 to allow the Contractor to properly mobilize the team within the Initial Mobilization Period.

Table 4.1 Timetable for Compliance with Service Level Requirements

Contract Month	Road Usability Compliance required on % of contract road	Road User Comfort Compliance required on % of contract road	Road Durability Compliance required on % of contract road
1	50	50	50
2	100	75	75
3	100	100	100
Until end of Contract	100	100	100

5. Programme of Performance

In accordance with clause 17.2 of the General Conditions of Contract (GCC), the Contractor shall submit a Program of Performance within twenty-eight (28) days after the signing the contract agreement. The program shall include, but not be limited, to the following items:

5.1. Contractor's Quality Assurance Plan

The purpose of the Contractor's Quality Assurance Plan is to integrate the requirements of the contract and the Contractor's quality assurance systems to deliver the Works and Services.

The Contractor's Quality Assurance Plan describes the methods and procedures which the Contractor will apply for the execution of the Contract, including how the Contractor will:

(a) identify the quality requirements specific to the contract,

(b) plan and execute the Works and Services to satisfy those requirements

(c) inspect and/or test the Works and Services to ensure compliance with the quality requirements

(d) record and monitor the results as evidence of compliance, and

(e) ensure that prompt action is taken to correct non-compliance.

The Contractor's Quality Assurance Plan must clearly describe the systems, procedures and methods that will be used to deliver and monitor compliance of the Works and Services.

5.2. Traffic Management Plan

If required in the Particular Conditions of Contract (PCC) the Program of Performance shall include a Traffic Management Plan. The Traffic Management Plan establishes the practices for traffic management at work sites. The Traffic Management Plan must be developed by the Contractor and agreed with the Engineer.

The objectives of the Traffic Management Plan are to:

(a) clearly define and document the responsibilities and chain of command for the development, implementation and management of traffic control measures and systems

(b) establish the minimum requirements for temporary traffic control

(c) establish the minimum geometric, cross section and surfacing standards for temporary works

(d) provide appropriate transitions and enable safe and efficient traffic flow into, through and out of work sites

(e) protect the Contractor's personnel at all times

(f) protect the Assets and the Contractor's resources at all times.

(g) meet the operational requirements for the road

The Traffic Management Plan must include at least the following:

- Layout diagrams, method statements etc for implementation of traffic control while undertaking each aspect of the Works and Services (including site specific layout diagrams and method statements if the Services require traffic control measures not covered by standard codes of practice)
- A documented process for preparation, review and approval of the Traffic Management Plan
- A document tracking and control system to ensure that only the latest operative copy of the Traffic Management Plan is in circulation
- Contact details for Contractor, Principal, emergency services and other stakeholders

5.3. Safety Management Plan

If required in the Particular Conditions of Contract (PCC) the Program of Performance shall include a Safety Management Plan. The Safety Management Plan establishes the practices for safety management at work sites. The Safety Management Plan must be developed by the Contractor and agreed with the Engineer.

The objectives of the Safety Management Plan are to:

(a) clearly define and document the responsibilities and chain of command for the development, implementation and management of safety control measures and systems

(b) establish the minimum requirements for the safety of workers, road users and community people using the Road

(c) protect the Contractor's personnel at all times

The Safety Management Plan must include at least the following:

- Method statements for implementation of work safety undertaking on each aspect of the Works and Services (including safety gears for workers, use of tool box meetings for safety awareness, provision of work safety signs, training of workers on safe use of tools and equipment, safety inspection under the patrolling by Self Control Unit and commitment by the Contractor on adherence to the Occupational Safety and Health Act, 2007 amended on 2010.)

- A documented process for preparation, review and approval of the Safety Management Plan
- A document tracking and control system to ensure that only the latest operative copy of the Safety Management Plan is in circulation
- Contact details for Contractor, Engineer, emergency services and other stakeholders

5.4. Environmental Management Plan

If required in the Particular Conditions of Contract (PCC) the Program of Performance shall include an Environmental Management Plan. The Environmental Management Plan establishes the practices for environmental management at work sites. The Environmental Management Plan must be developed by the Contractor and agreed with the Engineer.

The objectives of the Environmental Management Plan are to:

(a) clearly define and document the responsibilities and chain of command for the development, implementation and management of environmental control measures and systems

(b) establish the minimum requirements for environmental control measures for maintaining the adequate environment for workers, road users and community people using the Road

(c) maintain the awareness of the Contractor's personnel on environmental protection at all times

The Environmental Management Plan must include at least the following:

- Method statements for maintaining the adequate environmental on work sites undertaking on each aspect of the Works and Services (including specific dumping locations of debris and materials unwanted from the Road, use of tool box meetings for environmental protection awareness, training of workers on environmental control measures, inspection under the patrolling by Self Control Unit and commitment by the Contractor on adherence to the regulations and acts enacted by the government of Kenya under National Environmental Management Authority.)
- A documented process for preparation, review and approval of the Environmental Management Plan
- A document tracking and control system to ensure that only the latest operative copy of the Environmental Management Plan is in circulation
- Contact details for Contractor, Engineer, emergency services and other stakeholders

5.5. Emergency Procedures and Contingency Plan

If required in the Particular Conditions of Contract (PCC) the Program of Performance shall include an Emergency Procedures and Contingency Plan which shall establish the roles, practices and procedures during specific types of emergency events identified in the plans and contingency plans associated with the closure of roads. The Emergency Procedures and Contingency Plan must be developed by the Contractor and agreed with the Engineer and any other stakeholders the Engineer may identify.

The purpose of the Emergency Procedures and Contingency Plan is to ensure the safety of the Contractor's personnel and road users in the case of emergency and/or road closure. It should include:

- an effective communication and event recording system
- the name, contact number and specific duties of the Contractor's personnel nominated to respond to an emergency event
- the contact number of other parties who need to be notified in cases of emergency events, e.g. police
- detailed response procedures for all emergency events
- possible detour routes in the event of road closure

6. Service Criteria

The Contractor is required to carry out the Maintenance Services and to maintain the specific road related assets and items as stipulated in Clause 1.2.2 of the Performance Specifications during the contract duration in compliance with the Road Performance Standards as defined by the Service Criteria as stipulated hereunder.

The Employer requires the Contractor to maintain roads under the contract to be safe and efficient together with the satisfactory level of availability to road users. In order that the Contractor can achieve

such, service criteria are established for guidance and classified into three Service Categories; i.e. Road Usability, Road User Comfort and Road Durability.

1) **Road Usability** is a description that encompasses the scope of passability of the Road, and service level requirements entailed for each.

2) **Road User Comfort** is a description that encompasses the scope of operational performance indicators of road assets from the road user comfort perspective, such as cleanliness, smooth riding surface, sight distance availability, shoulder availability, adequacy of safety features and functionality of NMT facilities, and service level requirements entailed for each

3) **Road Durability** is a description that encompasses the scope of operational performance indicators of road assets from the Employer's perspective towards monitoring and prolonging the lifespans of the assets such as drainage capabilities, functionality of structures, functionality of road furniture and suitability of road profiles, road widths, embankments, slopes and vegetation control.

The service level requirements, defects and the response times thereof that the Contractor must comply with and separately adhere to are defined in the Performance Standards for the various standard service level categories indicated in the appendices shown in table 5.1 below;

Table 6.1. Performance Standards

Appendix	Service Level Categories
A	Performance Standards for Unpaved Standard Road

7. Self-Control Unit (SCU)

The Contractor is required to establish a Self-Control Unit within his project organization throughout execution and completion of the Works and Services to the satisfaction of the Engineer. The roles of the SCU:

1. For conducting self-inspection to verify the degree of compliance with the Road Performance Standards as defined by the Service Levels and maintain the reporting system of self-inspection.
2. Assessment of the Road. The Self-Control Unit shall have a complete knowledge of the road condition, both on and off carriageway, at all times by carrying out patrolling, to the satisfaction of the Engineer.
3. The Self-Control Unit is responsible for Gathering information required by the Contractor to prepare the Monthly Statement.
4. The carrying out, in close cooperation with the Engineer, the Formal and Informal Inspections of Service Levels which will take place as required.

The Contractor is required to assign a technically qualified and trained person, or persons, to continuously verify the degree of compliance of Service Levels. The Contractor is also required to arrange a satisfactory means of mobility for conducting patrolling to the satisfaction of the Engineer.

8. Site Inspection and Patrolling/Reporting

The Contractor is required to undertake the following management tasks to ensure the full integrity of the Road throughout execution and performance of the Works and Maintenance Services.

8.1. Site Condition Assessment before Commencement of Works and Services

The Contractor shall conduct initial site condition assessment before commencement of the Works and Services under the contract. In case any defects and deficiencies are discovered under the assessment, the Contractor shall notify the Engineer by submitting the Defect Detection and Rectification List as attached to the Appendix 1 of the Performance Specifications and upon agreement of the Engineer, the Contractor shall carry out rectification works as the Rehabilitation Works.

In case the Contractor discovers cases of illegal encroachment and illegal dumping of unwanted materials or otherwise illegal actions by the third parties, the Contractor shall notify the Engineer for further instructions as required.

8.2. Determination of Subsection and Installation of Marker Posts

The Contractor shall either mark clearly on the road or install temporary posts to determine the subsections inspection purposes. The Contractor shall submit the record of such identification and markers to the Engineer.

8.3. Patrolling/Reporting

The Contractor shall carry out patrolling of the Road as required under the contract. Such patrolling shall be reported to the Engineer without delay through submission of the Daily Work Record, Daily Patrol Record, Monthly Photo Record and Incident Report as attached to the Appendices 2, 3, 4 and 5 of the Performance Specifications. The contractor is also required to give the result of self-inspection to the Engineer without delay through submission of the Detail Self Inspection Result Record Form (Paved Road) as attached to the Appendix 6 of the Performance Specifications.

In case the Contractor discovers cases of illegal encroachment and dumping of unwanted materials or illegal actions by third parties, the Contractor shall notify the Engineer for further instructions as required.

8.4. Ad hoc Inspection

The Engineer may carry out ad-hoc inspections to verify the degree of compliance with the Road Performance Standards as defined by the Service Levels. He may do so on his own initiative, at anytime and anywhere on the roads under the contract. If he detects any road sections where the Service Level criteria are not met, he is required to notify the Contractor within 24 hours in writing as the Corrective Order, to enable the Contractor to take remedial action as soon as possible. The results of ad-hoc inspections may not be used by the Engineer for purposes of correcting the Contractor's monthly statements or applying penalties, except for cases in which the traffic flow on the road has been completely interrupted due to the negligence and tardy action by the Contractor.

9. Monthly Statement

9.1. Preparation for Monthly Statement

For the Works and Maintenance Services executed and performed during the month, the Monthly Statement shall be prepared by the Contractor in accordance with the GCC Clauses 46, 47, 48, 49, 50 and 51. The format of Monthly Statement is attached as Appendix 7.

For the Maintenance Services. The Contractor shall take the following actions;

1) Prior to compilation of the Monthly Statement for each month, the Contractor is required to prepare the Payment Reduction Calculation Table for the month by utilizing the result of the most recent self inspection recorded in Self Inspection Result Record Form to determine the total length of non-compliant sections for each Service Scope and for calculation of the reductions required for the month by determining the percentages of non-compliant sections for each Service Scope. The formats of Payment Reduction Calculation Table is attached as Appendix 8 .
2) The prepared Payment Reduction Calculation Table shall become the basis of the payment request for the Maintenance Services.
3) Upon completion of Formal Inspection, the amounts indicated on the Monthly Statement and the Payment Reduction Calculation Table will be adjusted, if required. Such modified Monthly Statement and Payment Reduction Calculation Table shall be countersigned by the Engineer to sign it and present it to the Employer for payment, and to the Contractor for information.

9.2. Reduction Weighting for Non-Compliance on Maintenance Services

In accordance with the relevant clauses of the Performance Specifications and GCC, payment reduction is applied in case of non-compliance with Service Levels.

The total aggregate weighting of 200% is applied to various Service Criteria and Documentation. The reduction weighting for each is indicated below.

	Service Criteria/Documentation	Reduction Weight in case of Non- Compliance
1.	Documentation (Submission of documents specified under Programme of Performance) (% doc)	**4%** of the monthly lump sum for on km applied if the document is not submitted.
2.	Passability: (% pas)	**40%** of the monthly lump sum for one km applied to each one km section which does not comply.
3.	Smooth and Safe Traffic: (% sst)	**30%** of the monthly lump sum for one km applied to each one km section which does not comply.
4.	Visibility: (% vis)	**20%** of the monthly lump sum for one km applied to each one km section which does not comply
5.	Traffic Information: (% ti)	**20%** of the monthly lump sum for one km applied to each one km section which does not comply
6.	Drainage Capability: (% dc)	**30%** of the monthly lump sum for one km applied to each one km section which does not comply
7.	Vegetation Control: (% vc)	**30%** of the monthly lump sum for one km applied to each one km section which does not comply
8.	Maintenance on Other Structures: (% mos)	**30%** of the monthly lump sum for one km applied to each one km section which does not comply
9.	Slope Stability: (% ss)	**6%** of the monthly lump sum for one km applied to each one km section which does not comply

(% xx indicates the percentage of service criteria non-compliant during the month for Service Criteria xx.

The amount of reduction for the Maintenance Services will be calculated as follows:

$$\%Total = (0.04 \times \%doc) + (0.40 \times \%pas) + (0.3 \times \%sst) + (0.20 \times \%vis) + (0.20 \times \%ti) + (0.30 \times \%dra) + (0.30 \times \%veg) + (0.30 \times \%mos) + (0.06 \times \%ss)$$

If the Contractor fails to remedy a cause of non-compliance for which a payment reduction has already been applied, the amount of the payment reduction increases month by month for that cause of non-compliance, without a ceiling being applied, until compliance is established. The amount of payment reduction for such case will be calculated as follows;

1) If the non-compliance has not been remedied within the first thirty days of non-compliance, additional payment reduction for periods beyond 30 days will be split into each 30 day.
2) The additional payment reduction for periods beyond 30 days is calculated using the formula indicated below,

   $PR = 2^n PR_{0,}$ where

   $n = \left\lceil \frac{J-1}{30} \right\rceil$ rounded up to full number (without decimals)

   J = number of days of non-compliance beyond thirty days

   PR_0 is the amount of the initial payment reduction.

10. Formal Inspection

The Formal Inspection shall be carried out jointly by the Engineer and the Road Manager at the end of each month. The Engineer shall notify the Contractor that he intends to carry out Formal Inspection in writing within 7 days of notification. The Contractor shall inform the Engineer of the proposed date and time and shall prepare for Formal Inspection. The main purpose of carrying out the Formal Inspection is to enable the Engineer to verify the information presented in the Contractor's Monthly Statement with the actual observed and measured conditions on the site.

10.1. Procedure for Formal Inspection

The Contractor shall submit the following documents as indicated in Table 10.1 to the Engineer for scrutiny prior to the Formal Inspection after the receipt of notification of carrying out Formal Inspection. The Contractor shall provide sufficient time to the Engineer to allow full scrutiny of the submitted documents.

Table 10.1 List of Documents for Formal Inspection

Appendices	Names of Documents	Mandatory Submission	Submission, if requested by the Engineer
1	Defect Detection and Rectification Lists	○	
2	Daily Work Records		○
3	Daily Patrol Records		○
4	Monthly Photo Records		○
5	Incident Condition & Activity Reports		○
6	Detail Self-Inspection Result Record Form	○	
7	Payment Reduction Calculation Table	○	

The criteria of each Service Level shall be checked jointly by the Engineer and the Road Manager at sections selected by the Engineer based on visual appearance. The Engineer shall be the sole judge of compliance. If a specified criterion is not met, the one-kilometre section in which the deficit occurs will be judged non-compliant in accordance with the Self Inspection Result Record Form.

The Engineer shall prepare a brief Memorandum describing (i) the general circumstances of the site visit, including date, road sections visited, persons present, etc., (ii) any non-compliance which may have been detected, and (iii) the time granted by the Engineer to the Contractor to remedy the detected defects.

The results of Formal Inspection on Service Levels will be recorded by the Engineer in this Memorandum. The Memorandum will state the type and location of any non-compliance detected, in particular those non-compliances already shown in the most recent Self Inspection Result Record Form provided by the Contractor as part of the Monthly Statement. For each individual case of non-compliance, the Engineer will determine a date by which the Contractor must have completed the necessary measures in order to remedy the cause of the non-compliance. A follow-up site visit is therefore necessary at the date fixed by the Engineer, or soon thereafter, in order to verify that the Contractor has indeed remedied the cause of non-compliance. If at the date indicated in the Memorandum, the Contractor has not remedied the cause for non-compliance, independent of the reason given for their failure to do so, the Contractor is subject to payment reduction in accordance with the relevant clauses of the Performance Specifications and GCC.

Based on the outcome of the Formal Inspection and subsequent remedies by the Contractor or otherwise, the Engineer will correct any possible errors or misrepresentations in the Contractor's Monthly Statement, countersign it and present it to the Employer for payment, and to the Contractor for information.

11. Performance Monitoring by the Employer

The Contractor shall acknowledge that the Employer encourages adoption of proactive approach by the Contractor on performing the Maintenance Services. To maintain such approach, the Employer shall have the power to entrust the Engineer to conduct monthly performance monitoring on the Contractor.

1) Performance monitoring will be conducted on service level compliance, self-control unit performance, work safety performance, performance on environment and social management, corrective order management and statutory compliance. The format of Monthly Evaluation Form is attached as Appendix 9, for the purpose of performance monitoring.

2) The result of performance monitoring of each month will be used for the evaluation of the Contractor at the end of each year. Evaluation of the Contractor shall be carried out by the Engineer using the Contract Evaluation Tally Sheet, which is attached as Appendix 10.

– The total aggregate weighting of 100% is applied to 6 criteria in 1) above, with the weighting of 50% on service level compliance, 20% on work safety performance, 0% on statutory compliance and the remaining criteria each weighing 10%.

3) The result of each month on each criterion will be evaluated either a pass or a fail. The tally will be made at the end of each month, collected to the end of the year and to arrive at the performance of the criterion as the percentage of pass attained during the year. The respective weight will be applied to arrive at the evaluation score, with the maximum score of 100 and the minimum score of 0. For statutory compliance, the evaluation score will not be tabulated, but a penalty of 20 will be imposed in case the Contractor faces violation on statutory compliance at least once in a year.

12. Handover Report

Immediately prior to the completion of the contract, the Contractor shall prepare a Handover Report and submit to the employer. The purpose of the Handover Report is to provide a smooth transition to the next contract and ensure that the next contractor is aware of any outstanding issues. The Report will:

(a) Summarize any unresolved issues;

(b) Include the most recent complete set of data on the roads covered by the contract, and

(c) Provide the following details as shall be agreed by the Engineer:

(i) A schedule of outstanding defects
(ii) Any unresolved issues, especially those that may impact on the next Contractor
(iii) Details of any sensitive issues
(iv) Any on-going special monitoring/maintenance needs.

APPENDICES

Appendix A: Performance Standards for Unpaved Standard Road

ROAD USABILITY

Service criteria		Service Level	RESPONSE TIME	TOLERANCE
Check Element	Defect		<< x hours>> means "within x hrs./days/wks."	
I) Passability				
Pavement	Obstruction on passage	The road should always allow for passage of traffic	<< 24 hrs.>>	No tolerance permitted
	Obstruction on overhead clearance		<<24 hrs.>>	No tolerance permitted

ROAD USER COMFORT

Service criteria		Service Level	RESPONSE TIME	TOLERANCE
Check Element	Defect		<< x hours>> means "within x hrs./days/weeks"	
I) Smooth and Safe Traffic				
1.Pavement	Unclean Pavement	The road must always be clean and free of soil, debris, trash and other objects.	<<24 hours >>	i) No tolerance permitted.
	Pavement too rough for road use	The pavement must at all times be kept to an acceptable level of roughness.	<<5 Days>>	The permitted level of tolerance of the IRI shall be a maximum of 11 mm/km.
	Potholes	Max.permitted area within 1 km depth of pothole should be <5 cm and dia.25 cm.	<<2 weeks>>	The permitted maximum area ≤5% in any subsection.
	Corrugations	Max.spacing 3.0 cm.	<<2 weeks>>	The permitted max. corrugated area ≤5% in any subsection. see note 1
	Rutting	All rutting of more than 7 cm deep must be repaired.	<<2 weeks>>	The permitted maximum rutted area >7 cm deep is ≤5 % in any subsection. see note 1
	Loss of Camber	The Camber must be kept at 5.0 %.	<<2 weeks>>	± 1.0 %
	Erosion Gullies	Proper transversal Drainage	<<28 days>>	The permitted maximum area under Erosion Gullies ≤5% in any subsection. see note 1.
	Soft Spots	The pavement must at all times be well drained, Quality base materials must be used at all times.	<<28 days>>	The permitted maximum Soft Spot area ≤5% in any subsection. see note 1

Service criteria		Service Level	RESPONSE TIME	TOLERANCE
Check Element	Defect		<< x hours>> means "within x hrs./days/weeks"	
I) Smooth and Safe Traffic				
1.Pavement	Loss of Gravel Depth	The gravel thickness along the road centre line must be equal to design thickness.	<<6 Months>>	No tolerance permitted
2.Shoulder	Damaged (Scoured/ Rutted/ Depressed/ Potholed/ High vegetation) unpaved shoulders	1) Repaired to avoid water penetration	<<28 days >>	1)Cross fall < the camber on the unpaved surface > 4 % of the subsection.
		2) without deformations and erosion so that the cross fall is not less than the camber on the paved surface		2) The permitted maximum cracked area with cracks> 3 mm wide <10 % of the area in any sub-section.
		3) free of visible potholes, cracks wider >3mm, multiple cracks and rutting of > 2cm		
	Shoulder/ Carriageway Step.	At all sections, difference in height at edge of pavement must be maintained to < 5cm.	<<2 weeks>>	The permitted maximum difference in height < 2 % for each subsection . see note 2
3.Footpath	Obstruction due to soil heaps, debris, trash rocks, fallen trees, abandoned vehicles, rubbish.	All footpath must be clean, in good condition and fully functional. Should be well drained, No Potholes and have access to people with Disability.	<< 3 hours >>	No tolerance permitted.
II) Visibility				
1.Sight Distance availability	Vegetation obstructs visibility or is within the vegetation free zone	Must be removed if >5.5m above the road surface and/or the minimum sight distance of 240m is not maintained	<<24 hours >>.	No tolerance permitted.
III) Traffic Information				
2.Signage	Absence of relevant warning signs/Mandatory signs	All signage must be present, complete, clean, legible, reflective and firmly installed	<<2 weeks >>	Max.tolerance is 5 % of the signs are below the defined Service Level in any subsection.
	Absence of relevant Information Signs, Edge marker Post, Guide Post, Kilometre post	All signage must be present, complete, clean, legible, reflective and firmly installed	<< 4 weeks >>	Max.tolerance is 5 % of the signs are below the defined Service Level in any subsection.

Service criteria		Service Level	RESPONSE TIME	TOLERANCE
Check Element	Defect		<< x hours>> means "within x hrs./days/weeks"	
III) Traffic Information				
2.Signage	Absence of relevant Traffic regulatory signals	All traffic signals must be clean, operational and well synchronized	The Contractor to inform relevant Authorities.	Not Applicable
	Absence of minimum Traffic Speed	Minimum traffic speed is 30 km/hr.	<< 5 days>>	Not Applicable
3.Road Works Advance warning signs	Absence of relevant warning signs/obscured by vegetation	Must be placed when clearing works are required to be undertaken.	<< 12 hours>>	No tolerance permitted

ROAD DURABILITY

Service criteria		Service Level	RESPONSE TIME	TOLERANCE
Check Element	Defect		<< x hours>> means "within x hrs./days/weeks"	
1) Drainage Capability.				
1. Side Drains, Mitre Drains, Cut off drains.	Obstruction due to sediments, soils, debris and washed materials	Must be clean and free of obstructions to ensure free flowing conditions at all times	<< 2 weeks >>	The permitted maximum tolerance is 5% of the length of drains below the defined Service Level.
2. Culverts and Drifts	Obstructions due to debris	Must be clean and free of obstacles to ensure free flowing conditions at all times	Siltation/ Obstruction must be cleared << 1 week>>	The permitted maximum tolerance is 10 % of the length of drains below the defined Service Level.
			Damages must be repaired <<4weeks >>	
	Obstruction /Collapse due to Structural Damage		Broken culverts should be reported to the Engineer << 1 week>>	No tolerance permitted
3. Scour Checks, gabions and other erosion protection structures and gabions	Erosion due to malfunction of the structures.	Must be fully functional with no serious defects that can endanger the structure, roadway or pose safety hazard to road users	<<4 weeks>>	The permitted maximum tolerance is 5 %of the length below the defined Service Level.
II) Vegetation Control				
1.Vegetation free zone	Unwanted vegetation on the Vegetation free zone	Carriageway, shoulders and structures must be kept with no vegetation.	Height: 0mm at all times	No tolerance permitted

Service criteria		Service Level	RESPONSE TIME	TOLERANCE
Check Element	Defect		<< x hours>> means "within x hrs./days/weeks"	
II) Vegetation Control				
2. inner vegetation Zone	Overgrown vegetation	Inner vegetation must zone, edge of shoulders to back of side drain /ditch or 2m away from edge of shoulder on straight and outside of curves and 5m on the inside of curves. Also control of vegetation around street furniture and other features.	Height <<25mm and 300 mm>> at all times Outer vegetation<<25mm and 500 mm>>	The permitted maximum tolerance is 5 %of the length below the defined Service Level in any subsection.
3. Trees within ROW	Self sown tree of nuisance >1 m high	Must be removed incase of overgrown roots which damage the road/structure	<< 1 month>>	The permitted maximum tolerance is 5 % of the number of trees are below the defined Service Level in any subsection.
	Dead tree that presents risk of falling onto the road.	Dead trees within outer vegetation zone must be removed.	<< 1 week>>	
III) Maintenance of other Structures				
1. Concrete structures	Structural deterioration	Concrete structures must be in good condition and fully functional.	Incase of structural damage the contractor to notify the Engineer	No tolerance permitted
	Blocked/ Obstruction due to sediments, soils and washed materials	Must be free flowing at all times		
2. Steel structures	Structural deterioration, Leaking structures	The steel structures (e.g. Bridge and pedestrian bridge) must be clean, in good condition, free of corrosion and fully functional.	Incase of structural damage the contractor to notify the Engineer	No tolerance permitted
3. Bridge expansion joints	Debris impeding joint movement/ damaging the joint	All expansion joints must be clean and in good condition and fully functional	In case of any condition which threatens structural integrity of the expansion joint, the Contractor must notify the Engineer <<2weeks>>.	No tolerance permitted
4. Guardrail /Pedestrian Rail	Deformed/Missing guardrails	Guardrails must be in good condition and fully functional.	Damages and defects must be repaired << 2 weeks>>	No tolerance permitted

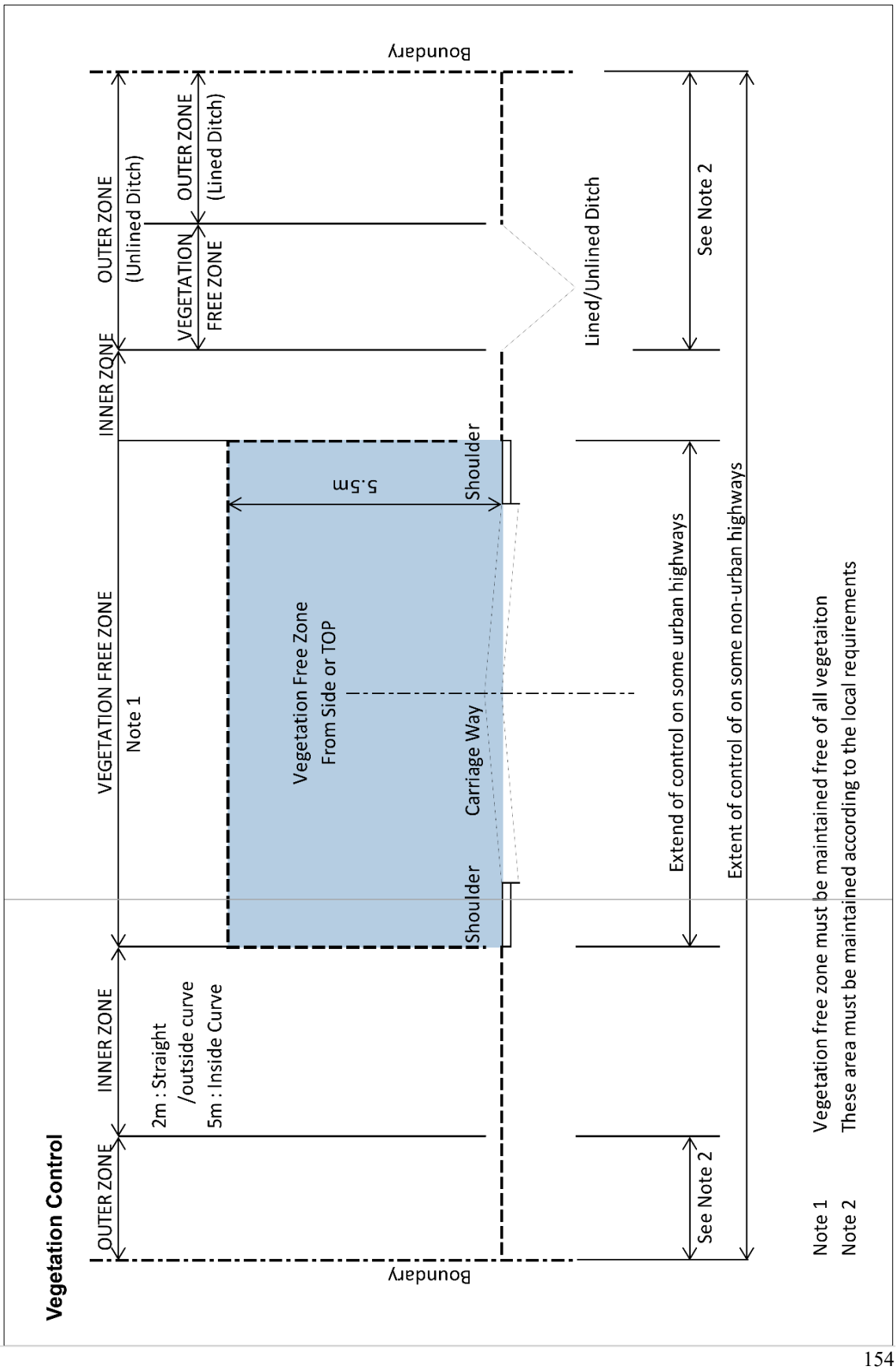
Service criteria		Service Level	RESPONSE TIME	TOLERANCE
Check Element	Defect		<< x hours>> means "within x hrs./days/weeks"	
III) Maintenance of other Structures				
5. Riverbeds	Obstructions due to debris or inappropriate vegetation	Riverbeds must be maintained to ensure free flow of water under the bridge and up to 50 meters upstream and downstream of the river at all times	Any accumulation of debris >400 mm must be removed.	No tolerance permitted
	Eroded river beds	Erosion around bridge abutments and piers must be controlled with all reasonable measures at all times.	Causes for non-compliance must be eliminated << 2 weeks>> after water has sufficiently receded to allow working conditions.	However, the damaged portion pending repairs maybe left on site with proper signs and safety arrangements.
IV) Slope Stability				
1. Embankment slopes	Collapse of embarkment slopes	All embankment slopes must be without deformations/damages and erosions of > 100mm in depth	<< 2 weeks >>	The permitted Max. tolerance is 5 %of the length of the road with embankment slopes is below the defined Service Level in each subsection.
2. Slopes in Cuts	Eroded/ High vegetation/ Collapse of slope protection	All slopes in cut must either be stable or are stabilized with adequate retaining walls.	In case of any condition is observed, the Contractor must notify the Engineer <<24 Hours>>.	No tolerance permitted

Response Time is the Time taken to repair a defect from the time of its detection.

Notes

Note 1: Say area of sub-section of 200 m length =7m x 200=1400sqm.Area of does not to exceed 70 sqm in the subsection. This applies for Rutting, Soft Spots.

Note 2: Say sub-section of 200 m length and the affected length of difference in height not to exceed 4 m in the sub-section.


Vegetation Control
Boundary
OUTER ZONE
(Unlined Ditch)
OUTER ZONE
(Lined Ditch)
VEGETATION
FREE ZONE
INNER ZONE
Lined/Unlined Ditch
See Note 2
5.5m
Shoulder
VEGETATION FREE ZONE
Note 1
Vegetation Free Zone
From Side or TOP
Carriage Way
Shoulder
Extend of control on some urban highways
Extent of control of on some non-urban highways
INNER ZONE
2m : Straight
/outside curve
5m : Inside Curve
OUTER ZONE
See Note 2
Boundary
Note 1 Vegetation free zone must be maintained free of all vegetaiton
Note 2 These area must be maintained according to the local requirements

Appendix 1: Defect Detection/ Rectification Record Form

Road Authority			
Contractor			
Project		Road Name	
Service Level	Category		
	Service Scope		
	Service Criteria		

No	Detection (to be filled by SCU or PM)			Rectification (to be filled by EXU)			Remark
	Date	Location	Description	Date	Compliance (Yes/No)		
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
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44							

Appendix 2: Daily Work Record Form

Basic Information								
Road Authority								
Contractor								
Project								
Road Name/Chainage								
Road Class					Standard Service Level			
Date								
Date			Weather					
PBC Work Operations								
Chainage		Activity Description						Photo No,
From	To							
Machinery, Truck				**Labor**				
Description		Plate No,	Photo No,	Category		number		Photo No,
Materials Delivered to Site				**Materials Removed from Site**				
Description		Quantity	Photo No,	Description		Quantity		Photo No,
Admission								
Personal		Name			Sign		Date	
Self Control Unit								
Road Manager								

Appendix 3: Daily Patrol Record

Basic Information			
Road Authority			
Contractor			
Project			
Road Name/Chainage			
Road Class		Standard Service Level	

Patrol

Date		Weather	

Cleanliness/Obstacles

Chainage	Time		Remarks	Photo No.
	Detection	Removal		

Any other activities undertaken

Chainage	Objects, Condition, other information	Photo No.

Admission

Personal	Name	Sign	Date
Self Control Unit			
Road Manager			

Appendix 4: Monthly Photo Record

Basic Information			
Road Authority			
Contractor			
Project			
Road Name/Chainage			
Road Class		Standard Service Level	

No,	DATE	DATE
Photo	Photo file size: less than 300kB	Photo file size: less than 300kB
Remarks		
No,	DATE	DATE
Photo	Photo file size: less than 300kB	Photo file size: less than 300kB
Remarks		
No,	DATE	DATE
Photo	Photo file size: less than 300kB	Photo file size: less than 300kB
Remarks		

Appendix 5: Incident Condition and Activity Report

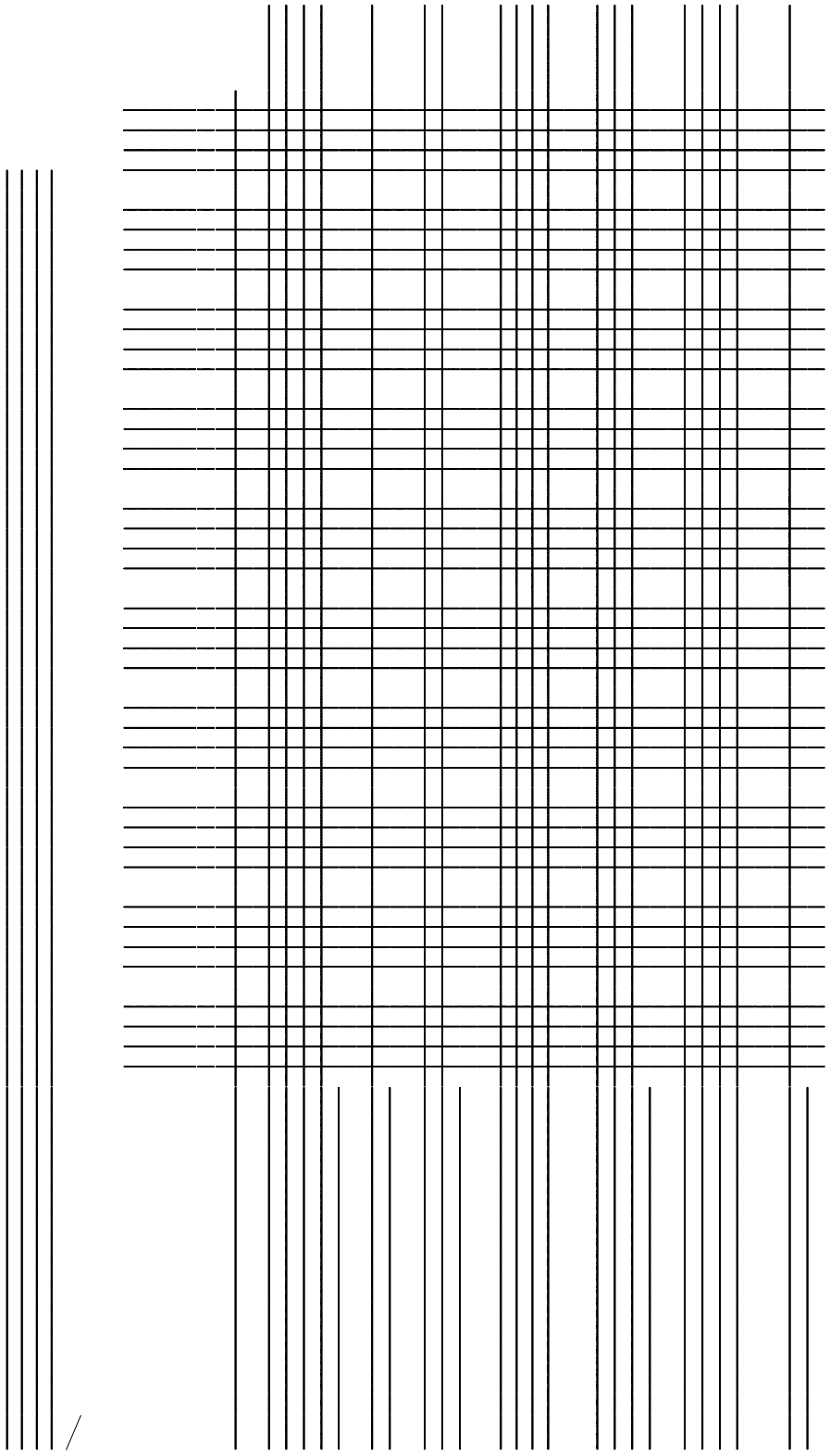
Basic Information			
Road Authority			
Contractor			
Project			
Road Name/Chainage			
Road Class		Standard Service Level	

Incident Notification	Caller		Phone No,
Date/Time /Chainage or Location			
Information Resource	Road Authority, Police, Engineer, Road Users, Others ( )		
Mature of Incident			
Location of Incident			
Condition of Accident Vehicles			
Number/Conditions of injured People			

Description

Site Condition **(Any road asset damaged by the accident)**			Photo No,
Assets	Damage condition		

Appendix 6: Detail Self Inspection Result Record Form (Paved Road)



Appendix 8 Payment Reduction Calculation Table (Paved Road)

Sheet

Project	A BC Road PBC Maintenance Project					Contract Period	24
Road Authority	KeNHA or KURA or KeRRA or KWS			Contractor	XYZ Contractor		
Road Name/ Clas s / Chainage/ (j)Length	A BC Road			Road Clas s	A, B, C, D, E, Unclas s ified, Urban Road		10.0km
Statement Month/ Year and Elaps e of Month	September	2014	3	Standard Service Level		High	
Contract Due Amount of the Month (x)		400,000	KSH				

Service Level Criteria		Compliance			Reduction						
Service	Service Scope	(a) Contract Road Length (km)	(b) Required Target	(c)=(a)*(b) Target Length (km)	(d)=(a)-(c) Exemptio n Length (km)	(e) Non-Compliant Length (km)	(f)=(e)-(d) (>=0) Adjus ted Non-Compliant Length (km)	(f)/(c) NON-Complian t Rate	(g) Reduction W eight	(h)=(f)*(g) Reduction Rate (%)	(i)=(c)x(h) Reduction Length (km)
Documentation		10.0	100%	10.0	-	-	-	1	4%	4.0%	0.40
1. Road Us ability	A) Pas s ability	10.0	100%	10.0	0.0	2.0	2.0	20%	40%	8.0%	0.80
2.Road Us er Comfort	B) Smooth and Safe Traffic	10.0	100%	10.0	0.0	2.0	2.0	20%	30%	6.0%	0.60
	C) Vis ibility	10.0	100%	10.0	0.0	2.0	2.0	20%	20%	4.0%	0.40
	D) Traffic Information	10.0	100%	10.0	0.0	2.0	2.0	20%	20%	4.0%	0.40
	E) Drainage Capability	10.0	100%	10.0	0.0	0.0	0.0	0%	30%	0.0%	0.00
3. Road Durability	F) Vegetation Control	10.0	100%	10.0	0.0	6.0	6.0	60%	30%	18.0%	1.80
	G) Maintenance of other Structures	10.0	100%	10.0	0.0	6.0	6.0	60%	20%	12.0%	1.20
	H) Slope Stability	10.0	100%	10.0	0.0	6.0	6.0	60%	6%	3.6%	0.36
									(j) Total = 200%	59.6%	5.96

Required Target

Elaps e of Month	1. Road Us ability	2. Road Us er Comfort	3. Road Durability	
1	50%	50%	50%	
2	100%	75%	75%	
3	100%	100%	100%	
4	100%	100%	100%	
5	100%	100%	100%	
6	100%	100%	100%	
7~	100%	100%	100%	

Calculation of the Payment Amount of the Month

Contract Due Amount	KSH	**400,000**	(x)
Reduction R	%	**60%**	(j)
Reduction Am	KSH	**238,400**	(z)=(x)x(i)
Payment Amount of	KSH	**161,600**	(y)=(x)-(z)

Appendix 8: Monthly Statement

Contract No.

Contract Name: PERFORMANCE-BAS ED ROAD MAI NTENANCE CONTRACT

CERTI FI CATE NO.

FOR…

Contractor:

VALUATI ON AS AT ____

_ CONTRACT S UM :

Region | Fin. Year

Administrative Boundary: | Month

	Prev ious Certificate (Kshs)	This Certificate (Kshs)	Total (Kshs)
A. Maintenance Services			
B. Rehabilitation Works			
C. Improv ement Works			
D. Emergency Works			
E. S ub-total of (A+B+C+D)			
F. REDUCTION FOR NON-COMPLIANCE			
G. Sub-total of (E-F) TOTAL VALUE OF W ORK (G)			
H. ADD 16% VAT (16% of G)			
I. LESS 5 % RETENTION (5% of (G))			
J. LESS 3% WITHHOLDING TAX (3% of G)			
K. CUMMULATI VE DEDUCTI ONS (I +J)			
L. TOTAL PAYMENT (G-K)			
M. ADVANCE PAYMENT			
N. RECOVERY OF ADVANCE			
O. INTEREST ON LATE PAYMENTS			
P.LESS LIQUIDATED DAMAGES			
Q. NET PAYMENT			
LESS PREVIOUS CERTIFICATES			-
NOW DUE TO CONTRACTOR			-

Submitted by _____

Date……..

Contractor

I hereby confirm the above rates & quantities are correct

Checked by _____ _____

Date……. _ _ Date…….

THE ENGI NEER

EMPLOYER (GM(M))

Appendix 9 Monthly Evaluation Form

Number of elapsed month =

Project Title	
Road Authority	
Contractor	
Date of checking	

	Date	Name	Signature
Engineer			
Road Manager			

This form is used by Engineer to verify monthly performance for contract evaluation.

	Scope		Requiremen	Pass or Fail*1
1	Service level compliance	1	Reduction rate for service level non-compliance is less than 5.0%	
2	Self-control unit performance	1	Self-control unit is organized by proper contractor's member	
		2	Self-control unit operates properly	
		Pass or fail in total*2		
3	Work Safety Management	1	Workers and operators wear proper safety gear	
		2	Traffic control is conducted properly	
		3	No accident of workers, operators attributable to the contractor	
		4	No accident of third-parties attributable to the contractor	
		Pass or fail in total*2		
4	Environment and social management	1	Environmental consideration is properly conducted	
		2	Waste material generated from the site is properly disposed	
		3	Transportation by vehicles is properly controlled	
		Pass or fail in total*2		
5	Corrective order	1	No corrective order is made by authority	
6	Statutory compliance	1	Contractor complied with relevant statutory regulations	

*1 Filling Example: "Pass" = "1" "Fail" = "0" "Not applicable" = "N/A"

*2 Scoring criteria:

In case of having more than one requirement in each evaluation scope, all the requirements except not applicable case shall be passed for pass evaluation in total

Appendix 10: Contract Evaluation Tally Sheet

Project Title	
Road Authority	
Contractor	
Date of Commencement	
Expected date of Completion	
Number of elapsed months in the end of last year	

	Date	Name	Signature
Engineer			
Road Manager			

1. This tally sheet is for the Engineer to evaluate performance of contractor by scoring at the end of contract. Use this form for evaluation in every year during contract period.
2. Fill "1" for "Pass" or "0" for "Fail" in column for each item and month according to monthly evaluation form. Fill "-" in column for non applicable.

	Item	Monthly Evaluation												(a)	(b)	(c)	(d)	(f)
		No. of month with "Pass=1" in past years	Year (2015)											No. of month with "Pass=1" in total	(a)/ Total month (%)	Weight for each item	Score for each item (b)*(c)	Penalty*1
			Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec					
1	Service level compliance														0		50%	0	
2	Self-control unit performance														0		10%	0	
3	Work safety management														0		20%	0	
4	Environment and social management														0		10%	0	
5	Corrective order issuance														0		10%	0	
6	Statutory compliance														0				0
																		0	0
																	Total score	0	

*1: Penalty of -20 point is given for non-compliance in equal or more than one month

SECTION XIII: SPECIAL SPECIFICATIONS

[Insert] Description of Works for Rehabilitation and Improvement and Detailed scope.

SECTION XIV: MANUALS AND GUIDELINES

a. Road Maintenance Manual, Ministry of Roads, 2010
b. Performance Based Road Maintenance Contract (PBC) Guideline , JICA, 2016
c. Proposed manual for Traffic Signs in Kenya, June 1975;
   Part I, Road Markings
   Part II, Manual for Traffic Signs in Kenya