

Kingdom of Saudi Arabia

Ministry of Finance

(279)

Legal Department

Roads Operation and Maintenance Contract Form

Pursuant to the Council of Ministers Resolution No. 87, dated 14/03/1425 H

The amendments annex issued under the Ministry of Finance Circular No. 42/25517, dated 28/03/1428H, shall be complied with.

Roads Operation and Maintenance Contract Form

Contract Main Document

With the Blessing of Allah,

It was agreed in the city of on, corresponding to / / H, by and between:

First: (Ministry or Administrative Entity), represented in signing this Contract by (.....), referred to hereinafter as (the Employer).

(First Party) with its registered office at: KSA, Postal Code (.....).

Second: Company/Establishment registered under registration No. dated / / H, in the commercial register of the city of, with its headquarters in, and address in the Kingdom: P.O. Box Postal Code, represented in signing this Contract by, in his capacity as, under the authorization No. dated / / H, corresponding to / / referred to hereinafter as (the Contractor)

(Second Party)

Whereas the First Party desires to solicit offers for the operation, cleaning and maintenance of the roads of, and such project was offered for public tender and was announced in the local newspapers, and the Second Party submitted its offer dated / / H, corresponding to / / to execute these works after reviewing all conditions and specifications, contract terms and conditions and all related documents and after duly examining the site and acknowledging to be aware of the Government Tenders and Procurement Law and the procedures of implementing its projects and works, promulgated under the Royal Decree (M/14) dated 07/04/1397H and its Implementing Regulation issued pursuant to the Minister of Finance decision No. (2131/17) dated 05/05/1397H and related amendments, resolutions, circulars and directives; and

Whereas the offer of the Second Party was accepted by the First Party as indicated in the award letter No. () dated / / H corresponding to / / , the Parties agreed to carry out the

works pursuant to the following terms and conditions:

Article (1): Contract Purpose:

The purpose of this contract is to implement the maintenance works for the roads of based on the BOQs attached hereto in a total length of () km, and to implement the preventive maintenance works required for these roads. The employer shall notify the contractor of same.

Article (2): Contract Documents:

First: This Contract consists of the following documents:

- 1- Main Contract Document and the Amendments annex issued under the MOF Circular No. 42/25517, dated 28/03/1428H.
- 2- Special Conditions.
- 3- General Conditions.
- 4- BOQs and Price Categories.
- 5- Special Specifications.
- 6- General Specifications for constructing Roads and Bridges.
- 7- Technical manuals provided for in paragraph (15) of Article (1) of the General Conditions.
- 8- Annexes (if any).
- 9- Award letter or offer acceptance letter.
- 10- Work programs, minutes, letters, road maps and agreed upon plans.
- 11- Correspondence between Parties.

Second: These documents shall be deemed an integral part of the Contract and shall be used to interpret and supplement each other.

Third: In case of any conflict between the texts of one document, the text that conforms more to the case in question shall apply. However, in case of a conflict between the texts of more than one document, the preceding document shall prevail pursuant to the order indicated in clause (First) of this Article.

Article (3): Contract Term:

The Contractor undertakes to:

- 1- implement routine maintenance works for roads and related utilities subject to this Contract within three (3) consecutive calendar years starting from the date of the Site handover; and
- 2- implement the preventative maintenance works notified by the Employer to the Contractor during the Contract term in the period(s) agreed upon by both Parties. If the parties fail to agree on such period(s) within a week from the date of notifying the

Contractor of the need of action, the Employer may determine the period(s) and notify the Contractor thereof, and the Contractor shall not have the right to object thereto.

Article (4): Contract Value:

The total value of the Contract shall include:

- 1- Value of routine maintenance works for three (3) years pursuant to the BOQ attached hereto, calculated on the basis of the estimated unit prices and amounts: SAR.....
- 2- The value of the preventive maintenance works shall be subject to the Employer's notifications according to the Road needs throughout the Contract term. Said value shall be specified according to the price categories in the routine maintenance BOQs.

Article (5): Payment:

The Employer shall pay the value of the Contract according to the payment method and dates specified in Article (14) "Payment Requests" of the Contract General Conditions in return for the Second Party implementation and completion of the contractual Works.

Article (6):

Without prejudice to other Laws, the Contractor shall acknowledge not to have paid nor promised to pay any money or other benefit to get this Contract. If otherwise has been proven, an amount equivalent to the amount paid or promised to be paid shall be deducted from the Contractor's entitlements. Besides, the Employer shall have the right to terminate the Contract without being obliged to pay any compensation and the Contractor and its personnel shall be liable for such actions.

Article (7): Governing Law

This contract shall be subject to the laws and regulations applicable in the Kingdom and shall be interpreted, implemented and adjudicated in the lawsuits arising therefrom in accordance with these laws and regulations.

Article (8): Settlement of Disputes:

Any disputes arising from the implementation of the Contract, which cannot be settled amicably, shall be referred to the Board of Grievances. The decision of the Board shall be deemed final.

In witness whereof, the Parties hereto have signed this document in the aforementioned place and date. This Contract has been executed in seven copies, one of which is handed to the Contractor.

Second Party.....

First Party.....

(The Ministry or the Administrative Entity)

Name: -----

Name: -----

Capacity: ----- Capacity: -----

Signature: ----- Signature: -----

General Conditions:

Article (1): Definitions:

First: The following words and phrases shall have the meanings assigned thereto unless the text or context requires otherwise:

1- Employer: (First Party):

The Ministry or the Administrative Entity that called for the submission of tenders.

2- Engineer:

A natural or legal person hired by the Employer at any time to supervise and follow up the Contract execution.

3- Engineer's Representative:

Any residing or supervising Engineer hired by the Employer or assigned by the Engineer at any time to perform any of the Engineer's duties within the powers communicated in writing by the Employer or the Engineer to the Contractor.

4- The Contractor: (Second Party):

Person(s) of natural or legal capacity whose bids are accepted by the Employer, including their representatives, successors and persons replacing them as approved by the Employer.

5- Contractor's Representative:

Person(s) hired by the Contractor to manage and implement the contractual Works.

6- Works: all the Works to be implemented hereunder, including:

a- Routine maintenance Works: divided into two sections:

First Section: Items of operation, cleaning and maintenance of the Works implemented regularly and periodically.

Second Section: Items of safety works, repairs, fittings and any urgent works implemented as per the Engineer's approval.

b- Temporary Works: detours, traffic facilitation and all temporary works of any kind that may be removed, replaced or cancelled during or after the implementation of Works. The costs of these shall be included in the Contract without prejudice to Article (35).

c- Preventive Maintenance Works: Works implemented as per the Employer's approval concerning the repair of the Road or part thereof, any of its components, elements or utilities, due to serious damages that may affect the structural integration and infrastructure of the Road and may endanger the safety of its users, due to erosion because of age factor, environmental factors, conditions of use or exceptional irregular urgent conditions. Repairs

include remediation, replacement, renovation, update, reconstruction, extensions, improvements, modifications, corrections, and expansions necessary for enhancing safety in intersections and dangerous turns. These also include Works which quantities cannot be estimated unless needed, and same shall be approved by the Employer according to the specifications.

7- Equipment

a- Contractor Equipment: Machines, tools and devices owned by the Contractor to be supplied for the purpose of the implementation of Works and services.

b- Project equipment: machines, tools and devices owned by the Employer, if any, to be operated, maintained and kept well throughout the Contract term for the purpose of the implementation of Works and services.

8- Consent: written consent including written confirmation following any prior oral consent.

9- Words in singular shall have the same meaning of words in plural and vice versa if so required by the text.

10- Headings and footnotes used in this Contract shall not be deemed a part hereof and shall not be considered in its interpretation.

11- Consecutive Days: Each day of the week including Fridays and Holidays.

12- Date: Day, month, and year according to the Gregorian calendar and the corresponding Hijri calendar.

13- General Specifications: General specifications for the construction of the Road and bridges approved by the Employer and any attachments thereto if any.

14- Technical Manuals: Manuals approved by the Employer including:

- Maintenance Manual.
- Materials Manual.
- Standard Traffic Controlling Devices Manual.
- Manual of Controlling Devices for Traffic in Working Areas.
- Handbook of Traffic Control in Working Areas.
- Survey Manual.
- Design Manual.
- Implementation Manual.

15- Special Conditions: Special Conditions issued by the Employer for roads maintenance.

16- Plans and Designs: Approved technical plans and designs according to which Works shall be implemented and any approved amendments, including means of treatment and repair.

17- Site: Roads pathways, reserves and utilities including lands and places on, in, under or through which Works shall be implemented, or any other land or place handed by the Employer for the purposes of the Contract as well as any other places specified herein as part of the Site.

Article (2): Language of the Contract:

1- The Arabic Language shall be the approved language for the interpretation and implementation of the Contract.

2- If the Works so require, certain documents or parts thereof may be submitted in a foreign language.

3- Correspondence, after signing the Contract, shall be in Arabic. If the Contractor uses a foreign language, it shall be translated into Arabic at its own expense.

4- In case of any conflict between the Arabic and foreign text, the Arabic text shall prevail.

Article (3): Scope of the Contract:

1- To implement routine maintenance works forroads including:

a- To clean roads and utilities including pathways, shoulders, ramps, traffic islands, reserves, establishments as bridges, ferries and others, sewerage and drainage systems and to remove all that affect the safety of the road and the safety of its users, or cause distortion to the overall view or obstruction of traffic.

b- To repair all damages to road elements, establishments and utilities due to depletion and erosion because of age factor, environmental factors or conditions of use and to implement modifications necessary for enhancing safety of roads and traffic.

c- To perform precautionary, protective and monitory works for road elements, establishments and utilities, observe thereof twenty-four hours a day throughout the Contract term, record any observation, breaches or emergency, and to take all the necessary procedures according to the Contract documents and notify the Employer thereof.

d- To operate and maintain supervisory team, maintenance centers, team sites, truck weighing stations, movable scales and traffic census devices, if any.

e- To perform all items of routine maintenance works assigned to the Contractor shall be within the agreed upon timeline.

f- To provide technical devices, operators, all labor, materials and equipment necessary for Works completion at the designated places and dates without delay.

g- To promptly respond to any emergency on the road, address same by supplying all necessary equipment, labor and warning signs to accident sites immediately after the accident takes place and to secure and facilitate traffic properly without delay.

2- Preventive maintenance works for the road that are required. The

Contractor shall be notified by the Employer.

Article (4): Commencing Works:

First: Routine Maintenance Works:

- 1) The Contractor shall, upon receiving the award letter, take the measures and arrangements necessary for Works commencement.
- 2) Term of the Contract for maintenance shall begin as of the date of the Site handover.

Second: Preventive Maintenance Works:

Term of implementing preventive maintenance Works notified to the Contractor shall commence as of the date of handing over the sites, each shall have a separate notice.

Third: The Contractor shall be notified in writing of the date specified for the Site handover. In case the Contractor does not attend at the specified date, the term shall commence on the date specified in the notice.

Article (5): Supervising the Works:

The Employer appoints an engineer and its team, referred to herein as the [Engineer] to supervise the Contract execution on its behalf. The Contractor shall implement the Works as per the Engineer's instructions and directions without prejudice to the powers entrusted to the Engineer under this Contract.

Article (6): Site Handover Minutes:

First: Sites of routine and preventive maintenance works notifications shall be handed over by virtue of minutes signed by the Engineer and the Contractor's representative. The following shall be attached to each minute:

1) Routine Maintenance Works:

A statement specifying numbers, names and lengths of Roads handed over to the Contractor, and demonstrating any variations from the Roads Statement attached to the Contract and reasons therefor and a statement specifying utilities to be maintained, operated and preserved.

2) Preventive Maintenance Works:

- a- Specify sites and describe the works that the Contractor may start implementing.
- b- Specify sites which the Contractor may not start implementing, providing reasons therefor.

Second: If the specified date for the Site handover is an official holiday, the date of the Site handover shall be the first working day thereafter.

Article (7): Engineer's Powers:

- 1- Observe, monitor, inspect, approve and examine Works and any material, tool or method used in implementing same.

2- Specify the sites of implementing items of the (Second Section) of routine maintenance works and provide the Contractor with the necessary quantities.

3- To measure and approve the Works implemented by the Contractor.

4- To occasionally delegate its representative in writing to practice any of the granted powers and authorities provided that it shall submit a copy of the written delegation to the Contractor. The written instructions and approvals issued from the Engineer's representative within the limits of its delegation shall be binding to the Contractor and the Employer as if issued from the Engineer considering the following:

- Failure of the Engineer's representative to practice any of the granted powers shall not affect the powers of the Engineer who is entitled to address such afterwards.
- If the Contractor is unsatisfied with any of the decisions taken by the Engineer's representative, it may, within three days from the date of the decision, require the Engineer to reconsider the decision. The Engineer shall, within seven days, approve, cancel or modify same. If the Contractor has not received a response from the Engineer after the lapse of the said period, the decision of the Engineer's representative shall be deemed revoked.

5-The Engineer has no authority to exempt the Contractor from any of the duties or obligations indicated herein.

6- The Engineer may not order any work that may result in delay or increase in the Employer's financial obligations nor change any of the Works without being explicitly specified in the Contract.

Article (8): Contractor's Supervision:

The Contractor shall provide adequate supervision during and after Works implementation to the extent the Engineer deems necessary to properly and elaborately fulfill the contractual obligations. The Contractor or its representative authorized by the Engineer in writing shall be permanently residing at the Works Site to supervise implementation.

Article (9): Project Manager's Powers:

The Contractor shall grant the Project Manager powers to enable it to perform its duties and implement the Works in accordance with the conditions and specifications provided herein.

Article (10): Assignment to Third Parties:

1- The Contractor may not assign the Contract, part thereof, any profit or benefit arising or resulting therefrom to third parties without a prior written consent from the Employer. The Contractor and the assignee shall be jointly liable before the Employer.

2- The assignee shall be competent and accredited in the same degree covering its contractual works obligation.

Article (11): Subcontracting:

- 1- The Contractor may not subcontract to implement any of the Works herein or parts thereof without a prior written consent from the Employer.
- 2- The Employer shall not be deemed a party in the contracts entered into between the Contractor and subcontractors.
- 3- The approval of the Employer shall not exempt the Contractor from related liabilities and obligations.
- 4- Each action, failure, negligence committed by the subcontractor or its agents, personnel or workers shall be deemed as if committed by the Contractor itself.
- 5- The employment contracts conducted by the Contractor on the basis of piece rate payment shall not hereby be deemed subcontracting.
- 6- The subcontractor shall be competent and accredited in the same degree covering its contractual works obligation.

Article (12): Amendments, Additions and Deletions:

First: The Employer may perform any changes in the form, type or quantity of maintenance works or parts thereof as deemed appropriate. The Contractor shall implement same without changing the subject of the Contract or exceeding the limits specified in Clause (Second) herein. If the change requires amendment in the conditions or developing new items with no price categories in the Contract BOQs, the prices shall be specified in agreement with the Contractor and equivalent to the prevailing prices.

Second: The Employer may, during the execution of the Contract, increase routine maintenance works or any of the notified preventive works by no more than ten (10%) percent of the Contract value, and may decrease the same by no less than twenty (20%) percent of the Contract value.

Third: The Contractor may not perform any of the above-mentioned changes without a written order issued by the Engineer.

Article (13): Scheduling Routine Maintenance Works:

Routine maintenance works shall not prejudice the continuous maintenance works required round the clock, including:

- 1- Works ensuring safe and uninterrupted traffic on the Road.
- 2- Clean Road surface and repair any cracks or potholes thereon.
- 3- Clean means of drainage of all kinds and repair any landslides that occur to the Road.

The Contractor shall, within a month from the Site handover, collaborate with the Engineer to develop a timeline for Works pursuant to the specified conditions and in a way that ensures Works implementation throughout the Contract term and as per the established

value. The Engineer may modify the timeline according to the requirements of the Works and incidents on the Road.

Article (14): Payment Requests and Methods:

- 1- The Engineer shall, by the end of each calendar month, prepare the current payment request for all the Works implemented by the Contractor during the said month and which meet the terms and conditions. The Contractor may have reservations on any of the measures it does not approve of.
- 2- If the Contractor abstained from signing the payment request, the Engineer shall submit the payment request for disbursement and a copy thereof shall be handed to the Contractor.
- 3- If the Contractor does not submit a reservation on the copy of the payment request within (5) five days from the date of the notification letter of the request, the Contractor shall be deemed in agreement and shall not have the right to object.
- 4- Contractor's entitlements shall be paid according to the monthly current payment requests. All amounts paid to the Contractor pursuant to the payment requests shall be deemed advance payments. If any error is found in quantities or numbers of items, such error shall be corrected in the following or the final payment request.
- 5- After implementation is completed, the Engineer shall collaborate with the Contractor in preparing the closing payment request pursuant to the final measurements of the completed works by no later than thirty (30) days from the date of completion.
- 6- Payment of the closing or final requests of no less than five (5%) percent of the Contract value or the value of the completed works shall be postponed until:
 - a- Final preliminary handover of the routine maintenance works for the third year of the Contract or the preliminary handover of preventive maintenance works.
 - b- Contractor's submission of a certificate from General Authority of Zakat & Tax confirming the payment of the required zakat.
 - c- Contractor's submission of a certificate from General Organization for Social Insurance (GOSI) stating that the Contractor has fulfilled all its obligations.
 - d- Submission of a certificate from the Labor Office or the local committee for the payment of the workers' wages stating that no cases or claims are filed against the Contractor.

Article (15): Damages to Persons and Properties:

- 1- The Contractor shall be held accountable for any damages or harms to persons or properties due to implementation or maintenance of Works or any causes related thereto and shall incur damages resulting therefrom, if such occurs due to the Contractor's negligence or lack of coordination with the Employer. In such case, the Contractor shall also be liable for all actions, claims and expenses resulting therefrom.

2- The Contractor shall not be liable for any losses or damages to easement rights being an inevitable consequence of the contractual Works implementation.

Article (16): Suspension of Works and Associated Costs

First: The Contractor shall, upon a written order from the Engineer, suspend the Works or any part thereof for any period specified by the Engineer. The Contractor shall, during the suspension period, protect and safeguard the Works as deemed necessary by the Engineer.

Second: The Employer shall not be liable for any costs resulting from the suspension in any of the following occasions:

- 1- If the same is specified in the Contract.
- 2- If necessary for the proper implementation of the Works, due to the weather conditions or Contractor's default.
- 3- If necessary for the safety of Works or parts thereof or the safety of the Road users.

Article (17): Extending the Works Implementation Period:

The Works implementation period shall be extended in accordance with Article (9) of the Government Tenders and Procurement Law and the procedures of implementing its projects and works.

Article (18): Final Preliminary Handover of Routine Maintenance Works:

By the end of each calendar year, routine maintenance works implemented during the year shall be handed over preliminary and finally by virtue of a report signed by the Engineer and the Contractor's representative. The handover report shall be attached with a report including the quantities and values of the handed over completed works.

Article (19): Preliminary Takeover of the Preventive Works:

The Contractor shall upon the completion of the Works or full parts thereof, evacuate the Site from all the equipment, materials, dirt and wastes and adequately pave same, then notify in writing the Employer's representative thereof. The latter shall set a date for inspection with a view to the preliminary takeover. The Employer's representative shall set the inspection date by a written notice in no more than (fifteen) days from the Contractor's notice.

Upon the Works takeover, the Employer or its representative shall inspect the Works and preliminarily take them over in the presence of the Contractor or its representative. A record of the preliminary takeover shall be executed in several copies as needed, a copy of which shall be handed to the Contractor. If the Works are taken over without the presence of the Contractor despite being notified by registered mail, such absence shall be evidenced in the record. If the inspection indicated that the works are executed as required, the date of notification by the Contractor to the Employer of its willingness to handover shall be

deemed the date of works completion and the commencement of the warranty period. If the inspection indicated that Works are not properly executed, such execution shall be evidenced in the record and the takeover shall be postponed until the completion of Works required to be implemented or repaired.

If the preliminary takeover proves that there are items or parts not executed by the Contractor, and the preliminary takeover committee deems the incomplete works do not preclude the Works utilization for the purpose for which they have been made, the Employer may in such case deem the Works handed preliminarily and request the Contractor to complete the incomplete works within a reasonable period. If the Contractor fails to do so, the Employer shall be entitled to deduct the value of works and assign a third party to implement same at the Contractor's expense and the latter shall be liable for the difference in prices.

Article (20): Preventive Maintenance Works Warranty Period:

The Contractor shall provide a full warranty for the preventive works for three hundred and sixty (360) days starting from the preliminary takeover date. In case of phasing out the preliminary takeover, the warranty period shall be calculated as per each phase takeover date.

Article (21): The Contractor's Liability during the Warranty Period:

First:

The Contractor shall implement any works of repair, modification, reconstruction or rectification for any defects that appear on the completed works as required by the Employer or the Engineer in writing or at the Final takeover. It shall be understood that such works do not include repairing damages resulting from use and consumption of handed over works if not resulting from a defect in maintenance, implementation or used materials. The Contractor shall execute all the works at its own expense if the Engineer deems such works are due to the fact that the used materials, manufacture or implementation do not meet the Contract specifications or due to negligence or failure on the part of the latter in implementing any explicit or implicit obligation hereunder.

Second:

If the Contractor fails or refrains from executing any of the works specified in clause (First) of the Article as required by the Engineer, the Employer may implement such works by itself or through other contractors. The latter shall collect from the Contractor the costs of the said works or deduct from its entitlements.

Article (22): Final Takeover of the Preventive Maintenance Works:

The Contractor shall, one month before the lapse of the warranty period, notify the

Employer in writing to set a date for inspection with in preparation for the final takeover. If the inspection proves that the works are in compliance with the terms and conditions, the final takeover shall be carried out pursuant to a record executed by the Employer or his representative in several copies as needed and signed by the Parties or their representatives, a copy of which shall be handed to the Contractor.

If the inspection proves there are defects or errors in some of the works even if not included in the preliminary takeover record, the takeover shall be postponed. The warranty period shall be extended until the defects and errors are repaired and dealt with by the Contractor during a reasonable period set by the Engineer. If the period lapses before the Contractor completes the Works, the Employer, at its own discretion, may properly perform the necessary repairs at the expense of the Contractor or deduct related costs from the prices referred to in the BOQs from the guarantees submitted by the Contractor.

Article (23): Performance Bonds Release:

1- The performance bond for the routine maintenance works shall be released after the lapse of the Contract Term and approving the final and preliminary takeover record. The Employer may deduct the bond value annually by (5%) five percent from the value of implemented routine maintenance works and receive same from the Contractor by the end of each year of the Contract term.

2- Performance bond for the preventive maintenance works shall be released after the permission of the final takeover of the same. If the final takeover is executed on a segmental basis, the Employer may deduct the bond value by (5%) five percent from the value of the works finally handed over.

Article (24): Failure in Execution of Routine Maintenance:

a- If the Contractor fails to fulfil its obligations or does not respond promptly to emergency situations, it shall be subject to penalty as determined in the contractual terms and conditions. Such penalty shall not exceed ten (10%) percent from the Contract value at the end of implementation term.

b- If the Contractor does not implement the required Works or supply any of the required items or elements pursuant to the Contract documents, related costs shall be deducted from its entitlements even if the deducted value exceeds ten (10%) percent of the Contract value.

Article (25): Delay Penalty

First: If the Contractor does not complete any of the Works on a timely manner or by the specified timeline and the Employer does not see a reason to withdraw the Works from the Contractor, the Contractor shall be subject to a penalty for the period of delay in completing the Works after the handover specified date. Such period shall be calculated on

the basis of the average daily cost for the project by dividing the value of Works by the period according to the following:

1- A penalty for the first part of the delay period in an amount equivalent to the quarter of the average daily cost for each day of delay up to fifteen (15) days or five (5%) percent of the Contract term.

2- A penalty for the second part of the delay period in an amount equivalent to the half of the average daily cost for each day of delay up to thirty (30) days or ten (10%) percent of the Contract term.

3- A penalty for the third part of the delay period in an amount equivalent to the full average daily cost for each day of delay up the longer period specified in paragraph (b) of this Article.

If the Employer considers that the delayed part does not preclude the full utilization of the Works on the completion due date, and does not cause disruption in the utilization of any other facility and does not negatively affect the completed works, the penalty shall only be deducted from the value of the delayed works according to the way of calculating the penalty on original works without exceeding ten (10%) percent of the value of the delayed works.

Second: The total value of delay and failure penalties shall not exceed ten (10%) percent of the value of total works notified to the Contractor.

Third: Supervision costs resulting from the delay in implementing preventive maintenance works:

Together with the aforementioned penalty, the Contractor shall incur the supervision costs during the period the penalty is imposed. These costs shall be calculated as follows:

a) If the supervision is performed by the Employer:

Supervision costs = value of delayed works \times (1/100) \times (period of delay in days \div period of implementing works in days)

b) If the supervision is performed by a consultant:

The Contractor shall incur the actual costs resulting from the consultant's supervision of delayed works.

Article (36): Withdrawing Works from the Contractor:

Without prejudice to other relevant laws, the Employer may:

First: Withdraw works from the Contractor and take over the Site in any of the following cases:

a) The Contractor delays in commencing the Work, poor performance, slow progress or complete suspension of the same to the extent the Employer deems it impossible to the have

the Works completed as per the specified timeline and list of works.

b) The Contractor withdraws from, abandons, leaves, assigns or subcontracts the Work to any third party without a prior written permission from the Employer.

c) The Contractor breaches any of the Contract conditions, refrains from implementing its contractual obligations without repairing the same within fifteen days from being notified in writing of the required repairs.

d) If the Contractor, by itself or through an agent, gives or promises to give any gift, loan or reward to any government employee or any other person related to the Works subject of the Contract.

e) The Contractor becomes bankrupt, files for bankruptcy, is proven insolvent or an order is issued to put it under receivership, or if the Contractor is a company that has been liquidated or dissolved.

Second: Withdrawing the Works from the Contractor shall be pursuant to a written notice based on a recommendation from the Bid Examination Committee and a decision by the authorized official without the need for any court order.

Third: Upon issuing the withdrawal decision, the bank guarantees and the insurance policies provided by the Contractor shall be seized until checking the completed works and the pending ones. Thus, the project accounts shall be liquidated and any amounts due to the Employer shall be deducted from the guarantees value.

Article (27): Consequences of Work Withdrawal:

First: In case of withdrawing the Works from the Contractor, the Employer may, on its own discretion, apply one of the following measures:

1- Negotiate with the bidder whose bid follows the Contractor's bid to implement the Works for the same prices. If no agreement is reached, the Employer may negotiate with other bidders for the same.

2- To put forth the required Works and services for a new tender. In all cases, the Contractor shall incur all expenses.

Second: If one of the cases specified in paragraphs 1 and 2 of clause "First" of this Article is applicable, the Employer may, on its own discretion, seize the Contractor's materials and equipment available at the work site. The Employer may, in all cases, make the Contractor cover all losses and damages.

Third: After the Employer pays the Contractor's entitlements, the latter may move its materials, equipment, and machines from the Site.

General Commitments

Article (28): Performance Bond and Insurance Policies:

First: Within 10 days from awarding the Contract, the Contractor shall provide an irrevocable performance bond amounting to five percent (5%) of the value of the routine maintenance works. Such bond shall be valid throughout the Contract term.

Second: The Contractor shall submit an irrevocable performance bond with an amount of five percent (5%) of each notice concerning the preventive maintenance works within ten (10) days of notifying the same, which shall be deemed a guarantee of implementation thereof. Such guarantee shall be valid throughout the Work implementation term until the final takeover thereof.

Third: The Employer may extend the deadline of submitting the bid bond up to ten (10) days after the initial period referred to hereinabove in clauses “First” and “Second”.

Fourth: The performance bond shall be issued by a national bank or a bank in a foreign country operating in the Kingdom through one of the banks licensed to operate in the Kingdom, and as per the form adopted by the Ministry of Finance, provided that such banks are licensed by the Saudi Arabian Monetary Agency.

Fifth: If the Contractor whose bid was accepted, fails to provide the performance bond, the Employer may either withdraw its acceptance thereof and confiscate the bid bond, or implement the Works at the Contractor’s expense as stipulated in Article (27) herein “Consequences of Work Withdrawal” without prior warning or notification, and without prejudice to the Employer’s right to claim the Contractor for compensation for all resulting damages and losses.

Sixth: Upon signing any contract or notification of preventive maintenance works with an amount exceeding five (5) million riyals, the Contractor shall submit to the Employer the insurance policies as proof that the former insured, through a national insurance company, the maintenance works and main components thereof during implementation and until the initial delivery thereof.

Article (29): Site Inspection:

The Contractor shall, at its own expense, examine and inspect the Site and surrounding area, and make sure of the form and nature of the Site prior to submitting the bid. The Contractor shall also review work quantities, required material to complete the works, means of accessing the site, necessary facilities. In general, the Contractor shall, on its own, obtain all required information and be aware of factors that may affect its bid.

Article (30): Bid Adequacy:

The Contractor shall be deemed fully informed prior to submitting its bid, making sure that

the prices and price categories in the BOQs are adequate to cover all contractual commitments thereof, in addition to all required items for sound, optimum work implementation and maintenance.

Article (31): Contract Documents:

1- After signing the Contract, the Contractor shall submit a full copy of the main contract documents, terms, specifications, and BOQs. Thereafter, the Contractor shall bear the costs of obtaining additional copies of said documents or other Contract documents necessary for the Work. It shall also notify the Engineer sufficiently in advance, as per a written notice, if copies of any documents that are necessary for work implementation are needed.

2- When notified of any preventive maintenance works, the Contractor shall be given the BOQs, a description of required work, and a copy of all plans if any.

3- The Contractor shall provide the Project Manager with a copy of contract documents, to be stored at the Site.

Article (32): Reviewing Technical Documents:

The Contractor shall be responsible for reviewing, in detail, the technical and engineering designs within fifteen (15) days of delivery thereof, and shall report any comments or any errors discovered in said blueprints and drawings during implementation to the Employer or the Engineer. Upon completion of Works, the Contractor shall submit original copies of plans of completed works as implemented.

Article (32): Personnel of the Contractor

First: Required Personnel for Routine Maintenance Works:

The Contractor shall hire the required personnel to undertake routine maintenance works as specified in the BOQs, as well as other required skillful, specialized individuals, and skilled, semiskilled, and regular workers in order to ensure optimum quality in implementation.

Second: Required Personnel for Routine Maintenance Works:

The Contract shall assign a separate, independent technical team, comprising engineers, inspectors, surveyors and workers to undertake any preventive maintenance works it is notified of. The Project Manager shall remain responsible for such works, and the fees of said team shall be deducted from the original contract value with no additions.

Third: Saudization:

1- The Contractor shall hire Saudis for the jobs specified by the Employer, as per the lists included with the Contract documents. Their salaries shall not be less than their peers as specified in the Civil Service laws and regulations.

2- Failure to comply with the provision of paragraph (1) hereinabove, the Contractor shall

be subject to the penalties indicated in the Contract specifications and conditions.

3- Saudis shall be hired on full time basis, and the Contractor shall provide documents proving that these employees are registered with GOSI.

Fourth: Workers Hiring

The Contractor shall take special arrangements for hiring and treating workers, whether nationals or foreigners, as specified in the Labor Law, Social Security Law, Residency Law and other relevant laws. The Contractor shall provide the necessary requirements for them, including proper accommodation, means of transport, healthcare and safety means.

Fifth: Workers' Uniform and Protective Equipment

The Contractor shall provide the field workers with a uniform and protective equipment including helmets and reflective safety jackets.

Sixth: Removal of the Contractor's Personnel

The Employer may, at all cases, require the Contractor in writing to remove any of its unfit personnel and to replace him within fifteen (15) days from the date of the written notification.

Article (34): Equipment Used

1- The contractor shall estimate and secure the number, type and size of the equipment and machinery required for the routine maintenance work, and distribute the same to the work sites in such a way that enable it to perform the required works. Related costs shall be paid as per the quantities specified in the approved BOQs for those actually supplied to the Site. The use of such equipment shall not be permitted except for the routine maintenance works.

2- The equipment and machinery shall be supplied at the dates specified in the work programs and in quantities suitable for the preventive maintenance works. It shall be understood that the costs of these equipment and machinery are charged to the prices of preventive maintenance items.

3- The Contractor shall comply with the applicable regulations and laws when transferring or moving equipment.

Article (35): Detours and smooth Traffic on Roads:

1- On implementing any of the routine or preventive maintenance works, the Contractor shall ensure safe and ongoing traffic flow at the Work Sites and shall take all necessary safety precautions and measures in accordance with the specifications of the manual of controlling devices for traffic and the traffic control handbook in the working areas.

2- If the implementation of works or repairs hinders or affects the traffic on the road, the Contractor shall construct side detours approved by the supervising engineer and in a

manner that does not impede the discharge of flood waters and without violating private properties. These detours shall be regularly maintained.

3- If detours need to be paved with asphalt, only the asphalt layer costs shall be paid as per the prices included in BOQs.

4- The Contractor shall be paid for the safety measures required to be applied at these detours according to the prices of their items in the BOQs and according to the special specifications.

Article (36): Road Reserve Encroachments

The Contractor shall notify the Engineer in writing of any encroachment on the road or any event taking place nearby that might affect the road, its utilities or users, provided it is indicated in this notification the location of encroachment or event and its type.

If the Contractor is required to remove such encroachment, it shall use the routine maintenance equipment without any additional costs.

Article (37): Works Implementation

First: The Contractor shall abide by the Engineer or its representative's written instructions and directives in matters related to the Works implementation. It shall not cover any work or use any material or equipment without the Engineer's approval.

Second: The Contractor and all its staff and subcontractors shall not take any photos of the utilities and facilities or any part thereof, or use photos for advertising purposes without the Employer's consent.

Third: The Contractor shall comply with the laws, regulations and decisions issued by the competent authorities, and with the laws and rules governing public bodies and related companies, and shall bear the responsibility and pay penalties of any kind for violating the same.

Fourth: The Contractor shall purchase national products, and not use similar imported materials for the execution of the Contract. If there are no national products that meet the Works requirements, it shall purchase the necessary materials and equipment from Saudi agents.

Fifth: The materials used to execute the Contract, whether local or imported, shall conform to the standard specifications adopted by the Saudi Arabian Standards and Metrology Organization. For materials with no established Saudi specifications, they shall conform to one of the recognized international standards.

Sixth: The laws, regulations and standards for the environment protection issued by the competent authorities in KSA shall be observed.

Seventh: The Contractor shall obtain the following services from Saudi institutions:

- a) Goods and personnel transport services if the Contractor does not perform directly with equipment owned by it or by persons working directly with it.
- b) Local insurance services
- c) Banking services.
- d) Services of buildings and land lease and purchase.
- e) Catering and food supply services.

Eighth: The Contractor shall transport by air personnel and materials required for the execution of the Contract via Saudi Arabian Airlines. Failure to comply with this, the Contractor shall be subject to the penalty prescribed for such violation.

Ninth: The Contractor shall find an office in the area of work or in any city near the work site.

Tenth: The Contractor shall submit its letters, accounts and documents in Arabic and shall be responsible for them.

Eleventh: The Contractor shall provide the opportunity for any of the other contractors employed or authorized by the Employer to carry out their works.

Twelfth: In case of the Contractor's negligence or delay in executing the Engineer's instructions, the Employer may hire third parties to perform the same and their wages and related expenses shall be borne by the Contractor. The Employer shall have the right to claim the Contractor for these expenses or to deduct them from any amounts due or that become due to it.

Article (38): Inspection of Works:

1- The Contractor shall allow the Engineer and its representative to inspect the Works implemented or being implemented or the materials or equipment being used in implementation, and provide them with all the required facilities and assistance.

2- When the Works are ready or are about to be ready for inspection, the Contractor shall give a written notice to the Engineer. The Engineer or its representative shall attend as soon as possible within no later than 48 hours for the inspection, unless the Engineer deems this not necessary and notifies the Contractor in writing of the same.

3- The Contractor shall uncover any part or parts of the Works, or make holes therein as instructed by the Engineer from time to time in order to inspect the implemented Works. The Contractor shall return this part or parts to its previous condition.

Article (39): Removal of non-conforming Works:

During the Works implementation phase, the Engineer may instruct the following in writing from time to time:

1- Remove from the Site any materials it deems non-conforming to the Contract, provided

doing this within the period(s) specified in the indicated instructions.

2- Replace these with appropriate, valid and conforming materials.

3- Remove any works non-conforming to the Contract whether in terms of materials, manufacturing origins or execution, and properly re-implement the same, regardless of any previous test for said works or the payment of any related costs.

Article (40): Equipment, Temporary Works and Materials:

The equipment and temporary works brought to the Site by the Contractor shall be used only for the purpose of completion of Works only. The Contractor shall not transfer the equipment and works or any part thereof from the Site, without the Engineer's written consent, unless being transferred from one place to another at the same Site. The Engineer shall not withhold such consent except for a reasonable cause.

Article (41): Quantities:

The quantities indicated in the BOQs attached hereto or the list of preventive maintenance quantities works provided by the Contractor throughout the Contract term, shall be deemed estimated quantities of Works, and payment shall be based on the actual implemented quantities.

Article (42): Using of Explosives:

The Contractor shall not use any explosives without the Engineer's written permission and after taking the necessary permits from the competent authorities. The Engineer shall ensure before using explosives that the Contractor has considered the relevant regulations and instructions. The refusal of the Engineer to give such permission shall not constitute grounds for filing any claim against the Employer, and the Engineer shall not withhold such permission except for a reasonable ground.

Article (43): Employer's Default:

The Employer shall implement the Contract conditions in a good faith, and pay the Contractor's entitlements without any delay. If the Employer fails to comply with any of the contractual terms and conditions or delays in payment, the Contractor may claim for compensation for any damages resulting from such failure or default.

The Contractor shall not stop work due to the Employer's delay in payment, and it shall be deemed waiving of any compensation not claimed for within thirty days from the occurrence of the incident for which it is making the claim.

Article (44): Personnel Salaries:

The Contractor shall, from the third payment request, submit payrolls for the previous period, certified by the Contractor's and Engineer's Representatives office. Similar payroll shall be submitted on a quarterly basis until the end of the Contract term. If the Contractor

delays the payment of the salaries of its personnel who are hired for the execution of the Contract, the Employer shall be entitled to pay such salaries directly from the Contractor entitlements through the competent authorities after providing them with a related notice without referring to the Contractor.

Article (45): Site Evacuation after the Works Completion

Upon the Works completion, the Contractor shall evacuate the Site and remove all equipment, materials, waste and temporary Works of all types. These shall be disposed of in a manner that does not affect the environment, the road and the surrounding areas. It should leave the entire Site clean and ready to be used.

Article (46): Patent Rights Ownership

The Contractor shall be liable for all claims and actions arising out of or resulting from its infringement of any right, franchise, design, trademark, commercial name or other registered rights in respect of any of the equipment, machinery and materials used for the purpose of the Works execution. It shall also be liable for all related claims, actions, damages and expenses, charges and fees.

Article (47): Special Risks:

Special risks means war and acts of invasion by hostile forces, as well as the military acts and the like.

The Contractor shall not be liable for compensation or otherwise for any sabotage or destruction to the temporary works, the property of the Employer or any third person, or any failure or damage to life if such sabotage or destruction arises from special risks.

Except for what may be subject to removal and rejection under the provisions of this Contract, the Employer shall pay the Contractor the value of the Works, temporary works or materials if damaged or destroyed due to special risks, whether in or near the Works Site or on the way leading to them. The Employer shall also pay the Contractor the costs necessary for the repair of the same to the extent deemed fit by the Engineer. Compensation shall be calculated on the basis of the cost price plus the reasonable amount of profit as determined by the Engineer. Any destruction, damage or loss in lives resulting from an explosion or pressure at any place or time caused by a mine, bomb, ammunition, explosives or any similar material, shall be deemed from special risks to which the provision of this Article shall apply, unless the same is caused by the negligence, action or inaction of the Contractor, its subcontractors or personnel.

If a war occurs during the Contract term, the Contractor shall take all possible measures and efforts to complete the Works, taking into account that the employer has the right at all times after the war outbreak to terminate the Contract under a written notice to the

Contractor. Upon receiving such notice, the Contract shall terminate except in respect of the Parties' rights stipulated in this Article and without prejudice to the rights of either party relating to any breach committed before termination.

If the Contract is terminated due to the outbreak of war as described hereinabove, the Employer shall pay the Contractor all due rights for the Works completed in addition to the value of the materials and goods supplied to the Site, after deducting any of the Employer's remaining amounts paid to the Contractor as down payments for the Works execution.

Article (48): Taxes and Charges:

1- The Contractor shall be subject to the tax laws applicable in KSA and shall pay taxes and charges as per the specified dates and amounts to the competent authority and shall be accountable for such.

2- In case of modifying the taxes and fees in KSA by increase or reduction after the date of Bid submission, the value of the Contract shall be increased or reduced accordingly.

3- To pay the difference resulting from the increase in customs duties, the Contractor shall prove that it has paid such difference to purchase materials necessary for the implementation of the contractual works after amending charges by increase, and to prove that this difference was not compensated for as a result of price adjustment in accordance with this Article.

Article (49): Provisions of Importation and Customs:

The Contractor shall acknowledge that it is aware of the import and customs laws and relevant provisions applicable in KSA in terms of supplying and shipping any product or parts thereof to KSA or export the same from KSA. These shall include the provisions relating to the prohibition of importation.

Article (50): Material Testing and Road Examination:

If the Employer finds it necessary to examine or take samples of certain sites of roads, the Contractor shall ensure the required safety measures and allow relevant staff to use any of the routine maintenance equipment and personnel. All these works shall be included in the contractual items prices.

Article (51): Confidentiality:

The Contractor, its affiliates and subcontractors shall not disclose or exploit any data, drawings, documents or information, whether written or oral, to any third party. This applies to what is in its possession or comes to its knowledge due to its relevance to the Contract or the Works, including the secrets, transactions, deals or the affairs of the Employer. This provision shall apply throughout the Contract term and shall remain in force after expiration or after termination by the Employer.

Article (52): Sanctity of the Holy Places:

Laws and regulations do not allow non-Muslims to access the Haram area in both Makkah and Madinah. Thus, the Contractor, its employees and personnel shall comply with the same.

Article (53): Notices:

1- Contract-related notices shall be deemed to have been delivered by hand against an acknowledgment of receipt, by registered or official mail. These shall be duly valid if given as indicated to the addresses detailed in the Main Contract Document.

2- Either Party may change its designated address, provided notifying the other thirty days before the date of change.

Article (54): Cancellation of the Register:

The Contractor shall not cancel its commercial register except after fulfilling all its obligations with the Employer.