



BARINGO COUNTY GOVERNMENT

Tender Document

For

TENDER NO. BRCG/TNR/W&I/286/2017/2018

TENDER NAME: – DRILLING OF
NAMBAWAN BOREHOLE IN
KISANANA WARD

FINANCIAL YEAR 2017/2018

**OFFICE OF THE GOVERNOR,
BARINGO COUNTY GOVERNMENT**

P. O. Box 53 - 30400

KABARNET

Tel:053 22115

CLOSING DATE: 3rd APRIL, 2018

TIME: 12.00 NOON (EAST AFRICAN TIME)

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SECTION I INVITATION FOR TENDERS

SECTION II

INSTRUCTIONS TO TENDERERS

The Sales Manager,
M/S
P.O BOX
TEL;
Email.....
Dear Sir / Madam,

TENDER CONDITIONS

This tender calls for bids from interested Prequalified Contractors for Provision of Water & Irrigation Works to tender for the above project. You are required to submit a tender for the execution and completion of this Project.

TYPE OF BIDDERS FOR THE CONTRACT; OPEN

A complete set of tender documents shall be obtained from the Supply Chain Management Unit (at the Office of the Governor) upon payment of non-refundable fees of **Kshs. 1,000/= (Kenya Shillings One Thousand Only)** in cash or Bankers cheque payable to **Baringo County Government**.

Tenderers shall be required to furnish the procuring Entity with the following information as a minimum criterion for submission of a bid for this works, supported by the relevant documents: -

- (1.) Proof of works of similar magnitude and complexity undertaken in the last three years.
- (2.) Adequate equipment and key personnel for the specified types of works.
- (3.) Sound financial standing and adequate access to bank credit line.
- (4.) Litigation History of the Company (both court and arbitration cases, if any).
- (5.) Tender Form and Confidential Business Questionnaire dully filled and signed by an authorized person.
- (6.) Proof of Registration as a Contractor eligible to undertake Water Works with the relevant Authority (i.e. NCA).
- (7.) PIN, VAT and Tax Compliance Certificates.
- (8.) Evidence of the on-going projects regardless of the total value of the outstanding works;

(9.) Power of attorney for the person authorized to sign on behalf of the company;

(10.) A copy of CR12

(11.) All pages must be serialized,

Further, a tender/ Quotation from the following tenderers shall be treated as non-responsive and therefore subject to automatic disqualification.

- a) A tender from a tenderer whose ongoing projects is/are behind schedule and without any approved extension of time.
- b) A tender from a tenderer who has been served with default notice on on-going project/s or terminated from contract
- c) A tenderer who has three or more on-going projects.

A successful Tenderer (Candidate) upon award of contract shall be required to furnish the Procuring Entity with a Performance Guarantee (Security) of **5% (Five Percent) of the Contract Sum** before signing the Contract Agreement and commencement of the works.

Prices quoted should be net inclusive of all taxes and delivery must be in Kenya Shillings and shall remain valid for **One Hundred and Twenty (120) days** from the closing date of the tender.

A prospective tenderer requiring any clarification of the tender documents may notify the Employer in writing or by telex, facsimile or e-mail at the address given here-below. The Employer will only respond to requests for clarification received earlier than **seven (7) days** prior to the deadline for submission of tenders. Copies of the Employer's response will be forwarded to all persons issued with tendering documents, including a description of the inquiry, but without identifying its source.

Address for Clarifications:

THE DIRECTOR-SUPPLY CHAIN MANAGEMENT,
COUNTY GOVERNMENT OF BARINGO,
P.O. BOX 53-30400
KABARNET.

Completed tender documents (Original and Copy) are to be enclosed in plain sealed envelopes marked with tender reference number and be deposited in the **Tender Box at the Ground Floor of the Supply Chain Offices at AFC building (along Kabarnet Eldoret Road)** or be addressed to **The Office of the Governor, Baringo County Government, P. O. Box 53 - 30400, Kabarnet** so as to be received on or before **Tuesday 3rd April at 12.00 Noon (East African Time)**.

Tenders will be opened publicly immediately thereafter in the presence of the Candidates or their representatives who choose to attend at **the Supply Chain Offices at AFC building (along Kabarnet - Eldoret Road)**

The Government reserves the right to reject any tender.

Yours faithfully,

THE CHIEF OFFICER WATER & IRRIGATION

SECTION II

INSTRUCTIONS TO TENDERERS.

1. General

- 1.1 The Employer as defined in the Appendix to Conditions of Contract invites tenders for Works Contract as described in the tender documents. The successful Tenderer will be expected to complete the Works by the Intended Completion Date specified in the said Appendix.
- 1.2 Tenderers shall include the following information and documents with their tenders:
 - (a) Copies of certificates of registration, and principal place of business;
 - (b) Total monetary value of construction work performed for each of the last five years;
 - (c) Experience in works of a similar nature and size for each of the last five years, and clients who may be contacted for further information on these contracts;
 - (d) Major items of construction equipment owned;
 - (e) Qualifications and experience of key site management and technical personnel proposed for the Contract;
 - (f) Reports on the financial standing of the Tenderer, such as profit and loss statements and auditor's reports for the last five years;
 - (g) Authority to seek references from the Tenderer's bankers.
 - (h) A copy of Valid Tax Compliance Certificate
- 1.3 The Tenderer shall bear all costs associated with the preparation and submission of his tender, and the Employer will in no case be responsible or liable for those costs.
- 1.4 The Tenderer, at the Tenderer's own responsibility and risk, is encouraged to visit and examine the Site of the Works and its surroundings, and obtain all information that may be necessary for preparing the tender and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the Tenderer's own expense.
- 1.5 The procurement entity's employees, committee members, board members and their relatives (spouse and children) are not eligible to participate in the tender.
- 1.6 The procuring entity shall allow the tenderer to review the tender document free of charge.

2. Tender Documents

- 2.1 The complete set of tender documents comprises the documents listed here below and any addenda issued in accordance with clause 2.4 herebelow:-
- (a) These instructions to Tenderers
 - (b) Form of Tender
 - (c) Conditions of Contract and Appendix to Conditions of Contract
 - (d) Specifications
 - (e) Drawings
 - (f) Bills of Quantities/Schedule of Rates (whichever is applicable)
 - (g) Other materials required to be filled and submitted in accordance with these Instructions and Conditions
 - (h) Hydrogeological survey Report
- 2.2 The Tenderer shall examine all instructions, forms and specifications in the tender documents. Failure to furnish all information required by the tender documents may result in rejection of his tender.
- 2.3 A prospective Tenderer making inquiry of the tendering documents may notify the Employer in writing or by cable, telex or facsimile at the address indicated in the letter of invitation to tender. The Employer will respond to any request for clarification received earlier than seven [7] days prior to the deadline for submission of tenders. Copies of the Employer's response will be forwarded to all persons issued with tendering documents, including a description of the inquiry, but without identifying its source.
- 2.4 Before the deadline for submission of tenders, the Employer may modify the tendering documents by issuing addenda. Any addendum thus issued shall be part of the tendering documents and shall be communicated in writing or by cable, telex or facsimile to all Tenderers. Prospective Tenderers shall acknowledge receipt of each addendum in writing to the Employer.
- 2.5 To give prospective Tenderers reasonable time in which to take an addendum into account in preparing their tenders, the Employer shall extend, as necessary, the deadline for submission of tenders in accordance with clause 4.2 here below.

3. Preparation of Tenders

- 3.1 All documents relating to the tender and any correspondence shall be in English Language.
- 3.2 The tender submitted by the Tenderer shall comprise the following:-
- (a) The Tender;

- (b) Tender Security;
 - (c) Priced Bill of Quantities/Schedule of Rates for lump-sum Contracts
 - (d) Any other materials required to be completed and submitted by Tenderers.
- 3.3 The Tenderer shall fill in rates and prices for all items of the Works described in the Bill of Quantities/Schedule of Rates. Items for which no rate or price is entered by the Tenderer will not be paid for when executed and shall be deemed covered by the other rates and prices in the Bill of Quantities/Schedule of Rates. All duties, taxes and other levies payable by the Contractor under the Contract, as of 30 days prior to the deadline for submission of tenders, shall be included in the tender price submitted by the Tenderer.
- 3.4 The rates and prices quoted by the Tenderer shall not be subject to any adjustment during the performance of the Contract.
- 3.5 The unit rates and prices shall be in Kenya Shillings.
- 3.6 Tenders shall remain valid for a period of one hundred twenty (120) days from the date of submission. However in exceptional circumstances, the Employer may request that the Tenderers extend the period of validity for a specified additional period. The request and the Tenderers' responses shall be made in writing.
- 3.7 The Tenderer shall prepare one original of the documents comprising the tender documents as described in these Instructions to Tenderers.
- 3.8 The original 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 alterations or additions have been made shall be initialed by the person or persons signing the tender.
- 3.9 Clarification of tenders shall be requested by the tenderer to be received by the procuring entity not later than 7 days prior to the deadline for submission of tenders.
- 3.10 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.

4. Submission of Tenders

- 4.1 The tender duly filled and sealed in an envelope shall;-
- a) Be addressed to the Employer at the address in the invitation to tender;

- b) Bear the name and identification number of the Contract as defined in the invitation to tender; and
- c) Provide a warning not to open before the specified time and date for Tender opening.

4.2 Tenders shall be delivered to the Employer at the address specified above not later than the time and date specified in the invitation to tender.

4.3 The tenderer shall not submit any alternative offers unless they are specifically required in the tender documents.

Only one tender may be submitted by each tenderer. Any tenderer who fails to comply with this requirement will be disqualified.

4.4 Any tender received after the deadline for opening tenders will be returned to the tenderer un-opened.

4.5 The Employer may extend the deadline for submission of tenders by issuing an amendment in accordance with sub-clause 2.5 in which case all rights and obligations of the Employer and the Tenderers previously subject to the original deadline will then be subject to the new deadline.

5. Tender Opening and Evaluation

5.1 The tenders will be opened in the presence of the Tenderers' representatives who choose to attend at the time and in the place specified in the invitation to tender.

5.2 The Tenderers' names, the total amount of each tender and such other details as may be considered appropriate, will be announced at the opening by the Employer. Minutes of the tender opening, including the information disclosed to those present will also be prepared by the Employer.

5.3 Information relating to the examination, clarification, evaluation and comparison of tenders and recommendations for the award of the Contract shall not be disclosed to Tenderers or any other persons not officially concerned with such process until the award to the successful Tenderer has been announced. Any effort by a Tenderer to influence the Employer's officials, processing of tenders or award decisions may result in the rejection of his tender.

5.4 Tenders determined to be substantially responsive will be checked for any arithmetic errors. Errors will be corrected as follows:

- (a) where there is a discrepancy between the amount in figures and the amount in words, the amount in words will prevail; and

- (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 Employer's representative, there is an obvious typographical error, in which case the 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 Bill of Quantities/Quotation, 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 P.C. 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 valuation of variations.
 - (f) The amount stated in the tender will 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 forfeited.
- 5.5 The tender evaluation committee shall evaluate the tender within 30 days of the validity period from the date of opening the tender.
- 5.6 **Contract price variations shall not be allowed for contracts not exceeding one year (12 months)**
- 5.7 **Where contract price variation is allowed, the valuation shall not exceed 15% of the original contract price.**
- 5.8 Price variation requests shall be processed by the procuring entity within 30 days of receiving the request.
- 5.9 Preference where allowed in the evaluation of tenders shall not exceed 15%
- 5.10 To assist in the examination, evaluation, and comparison of tenders, the Employer at his discretion, may request [in writing] any Tenderer for clarification of the tender, including breakdowns of unit rates. The request for clarification and the response shall be in writing or by cable, telex or facsimile but no change in the tender price or substance of the tender shall be sought, offered or permitted.
- 5.11 The Tenderer shall not influence the Employer on any matter relating to his tender from the time of the tender opening to the time the Contract is awarded. Any effort by the Tenderer to influence the Employer or his employees in his

decision on tender evaluation, tender comparison or Contract award may result in the rejection of the tender.

6. Award of Contract

- 6.1 The County Government of Baringo reserves the right to reject any tender wholly or in part and does not bind itself to accept the lowest nor give reasons for its decision.
- 6.2 Notwithstanding the provisions of clause 6.1 above, **the Employer reserves the right to accept or reject any tender and to cancel the tendering process and reject all tenders at any time prior to the award of Contract without thereby incurring any liability to the affected Tenderer or Tenderers or any obligation to inform the affected Tenderer or Tenderers of the grounds for the action.**
- 6.3 The Tenderer whose tender has been accepted will be notified of the award prior to expiration of the tender validity period in writing or by cable, telex or facsimile. This notification (hereinafter and in all Contract documents called the “Letter of Acceptance”) will state the sum [hereinafter and in all Contract documents called the “Contract Price” which the Employer will pay the Contractor in consideration of the execution, completion, and maintenance of the Works by the Contractor as prescribed by the Contract. The contract shall be formed on the parties signing the contract. At the same time the other tenderers shall be informed that their tenders have not been successful.
- 6.4 The Contract Agreement will incorporate all agreements between the Employer and the successful Tenderer. It will be signed by the Employer and sent to the successful Tenderer, within 30 days following the notification of award. Within 21 days of receipt, the successful Tenderer will sign the Agreement and return it to the Employer.
- 6.5 Within 21 days after receipt of the Letter of Acceptance, the successful Tenderer shall deliver to the Employer a Performance Security amount stipulated in the Appendix to Conditions of Contract.
- 6.6 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.
- 6.7 The procuring entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.
- 6.8 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.

7. Corrupt and fraudulent practices

- 7.1 The procuring entity requires that the tenderer observes the highest standard of ethics during the procurement process and execution of the contract. A tenderer shall sign a declaration that he has not and will not be involved in corrupt and fraudulent practices.
- 7.2 The procuring entity will reject a tender if it determines that the tenderer recommended for award has engaged in corrupt and fraudulent practices in competing for the contract in question.
- 7.3 Further a tenderer who is found to have indulged in corrupt and fraudulent practices risks being debarred from participating in public procurement in Kenya.

8. Appendix To Instruction To Tenderers:

- 1.6 Tenders shall be valid for a period of 120 days after tender opening
- 1.7 The tender security shall be 2% of the tender sum while performance bond shall be 10% from a reputable bank or insurance company only.
- 1.8 Performance security shall be 10% of the tender price

9. Evaluation Criteria

9.1 Mandatory Requirements

1. Copy of Certificate of Registration/Incorporation with Registrar of Companies
2. Copy of VAT Certificate/PIN Certificate
3. Valid Tax Compliance Certificate
4. Original Bid Security Bond of 2% of the Tender sum from reputable bank or insurance signed and sealed.
5. Letter of Attorney in case of Joint Venture
6. License by the Ministry of Water & Irrigation as Borehole Drilling Contractor.
7. Log Book of Equipment as proof of ownership of drilling equipment capable of drilling 300 m deep borehole with air rotary and mud pump for sedimentary collapsible terrain.

9.2. Technical Evaluation (Awarding Marks)

Item	Description	Marks (%)
1	Category of Registration by the Ministry of Water & Irrigation ($\leq 10m = 5\%$, $\geq 10m = 10\%$)	10
2	Reports on financial standing of the tenderer such as profit & loss statements and auditor's report for the last 5 years.	10
3	Key relevant technical personnel (experience & qualification). Attach copies of CVs, Certificates of personnel.	10
4	Total annual volume of construction work performed in the last 3 years. The tenderer should display ability to perform works worth kshs.5,000,000.00 (Five Million) without any advance payment from CGB. Use completion certificate and LSOs.	30
5	Proof of ownership of Major/Relevant drilling equipment and associated items capable of drilling 300m depth and above. The tenderer should display ability of mobilizing 2No. Drilling teams in order to meet the deadlines of the contract period. This to be confirmed through visit by an evaluation team to godowns, workshops and offices of bidder. (1No. Equipment-20%, 2No. Equipments-40%)	40
	Total	100%

Any bidder in the technical evaluation scoring 70% and above shall qualify for financial evaluation.

9.3. Financial Evaluation

The lowest evaluated bidder will be awarded the contract.

SECTION III - CONDITIONS OF CONTRACT

1. Definitions

1.1 In this Contract, except where context otherwise requires, the following terms shall be interpreted as indicated;

“Bills of Quantities” means the priced and completed Bill of Quantities forming part of the tender [where applicable].

“Schedule of Rates” means the priced Schedule of Rates forming part of the tender [where applicable].

“The Completion Date” means the date of completion of the Works as certified by the Employer’s Representative.

“The Contract” means the agreement entered into by the Employer and the Contractor as recorded in the Agreement Form and signed by the parties.

“The Contractor” refers to the person or corporate body whose tender to carry out the Works 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.

“Days” are calendar days; **“Months”** are calendar months.

“A Defect” is any part of the Works not completed in accordance with the Contract.

“The Defects Liability Certificate” is the certificate issued by Employer’s Representative upon correction of defects by the Contractor.

“The Defects Liability Period” is the period named in the Appendix to Conditions of Contract and calculated from the Completion Date.

“Drawings” include calculations and other information provided or approved by the Employer’s Representative for the execution of the Contract.

“Employer” County Government of Baringo, P.O. Box 53-30400 Kabarnet.

“Equipment” is the Contractor’s machinery and vehicles brought temporarily to the Site for the execution of the Works.

“Site” means the place or places where the permanent Works are to be carried out including workshops where the same is being prepared.

“Materials” are all supplies, including consumables, used by the Contractor for incorporation in the Works.

“Employer’s Representative” is the person appointed by the Employer and notified to the Contractor for the purpose of supervision of the Works.

“Specification” means the Specification of the Works included in the Contract.

“Start Date” is the date when the Contractor shall commence execution of the Works.

“A Subcontractor” is a person or corporate body who has a Contract with the Contractor to carry out a part of the Work in the Contract, which includes Work on the Site.

“Temporary works” are works designed, constructed, installed, and removed by the Contractor which are needed for construction or installation of the Works.

“A Variation” is an instruction given by the Employer’s Representative which varies the Works.

“The Works” are what the Contract requires the Contractor to construct, install, and turnover to the Employer.

2. Contract Documents

2.1 The following documents shall constitute the Contract documents and shall be interpreted in the following order of priority;

- (1) Agreement,
- (2) Letter of Acceptance,
- (3) Contractor’s Tender,
- (4) Conditions of Contract,
- (5) Hydrogeological survey report,
- (6) Specifications,
- (7) Drawings,
- (8) Bills of Quantities or Schedule of Rates [whichever is applicable]
- (9) Valid Tax Compliance Certificate

3. Employer’s Representative’s Decisions

3.1 Except where otherwise specifically stated, the Employer’s Representative will decide contractual matters between the Employer and the Contractor in the role representing the Employer.

4. Works, Language and Law of Contract

- 4.1 The Contractor shall construct and install the Works in accordance with the Contract documents. The Works may commence on the Start Date and shall be carried out in accordance with the Program submitted by the Contractor, as updated with the approval of the Employer's Representative, and complete them by the Intended Completion Date.
- 4.2 The ruling language of the Contract shall be English language and the law governing the Contract shall be the law of the Republic of Kenya.

5. Safety, Temporary works and Discoveries

- 5.1 The Contractor shall be responsible for design of temporary works and shall obtain approval of third parties to the design of the temporary works where required.
- 5.2 The Contractor shall be responsible for the safety of all activities on the Site.
- 5.3 Anything of historical or other interest or significant value unexpectedly discovered on the Site shall be the property of the Employer. The Contractor shall notify the Employer's Representative of such discoveries and carry out the Employer's Representative's instructions for dealing with them.

6 Work Program and Sub-contracting

- 6.1 Within seven days after Site possession date, the Contractor shall submit to the Employer's Representative for approval a program showing the general methods, arrangements, order and timing for all the activities in the Works.
- 6.2 The Contractor may sub-contract the Works (but only to a maximum of 25 percent of the Contract Price) with the approval of the Employer's Representative. However, he shall not assign the Contract without the approval of the Employer in writing. Sub-contracting shall not alter the Contractor's obligations.

7 The site

- 7.1 The Employer shall give possession of all parts of the Site to the Contractor.
- 7.2 The Contractor shall allow the Employer's Representative and any other person authorized by the Employer's Representative, 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.

8 Instructions

- 8.1 The Contractor shall carry out all instructions of the Employer's Representative which are in accordance with the Contract.

9 Extension of Completion Date

- 9.1 The Employer's Representative shall extend the Completion Date if an occurrence arises which makes it impossible for completion to be achieved by the Intended Completion Date. The Employer's Representative shall decide whether and by how much to extend the Completion Date.

- 9.2 For the purposes of this clause, the following occurrences shall be valid for consideration;

Delay by:-

- (a) Force majeure, or
- (b) Reason of any exceptionally adverse weather conditions, or
- (c) Reason of civil commotion, strike or lockout affecting any of the trades employed upon the Works or any of the trades engaged in the preparation, manufacture or transportation of any of the goods or materials required for the Works, or
- (d) Reason of the Employer's Representative's instructions issued under these Conditions, or
- (e) Reason of the contractor not having received in due time necessary instructions, drawings, details or levels from the Employer's Representative for which he specifically applied in writing on a date which having regard to the date for Completion stated in the appendix to these Conditions or to any extension of time then fixed under this clause was neither unreasonably distant from nor unreasonably close to the date on which it was necessary for him to receive the same, or
- (f) Delay on the part of artists, tradesmen or others engaged by the Employer in executing work not forming part of this Contract, or
- (g) Reason of delay by statutory or other services providers or similar bodies engaged directly by the Employer, or
- (h) Reason of opening up for inspection of any Work covered up or of the testing or any of the Work, materials or goods in accordance with these conditions unless the inspection or test showed that the Work, materials or goods were not in accordance with this Contract, or
- (i) Reason of delay in appointing a replacement Employer's Representative, or

- (j) Reason of delay caused by the late supply of goods or materials or in executing Work for which the Employer or his agents are contractually obliged to supply or to execute as the case may be, or
- (k) Delay in receiving possession of or access to the Site.

10 Management Meetings

- 10.1 A Contract management meeting shall be held regularly and attended by the Employer's Representative and the Contractor. Its business shall be to review the plans for the remaining Work. The Employer's Representative shall record the business of management meetings and provide copies of the record to those attending the meeting and the Employer. The responsibility of the parties for actions to be taken shall be decided by the Employer's Representative either at the management meeting or after the management meeting and stated in writing to all who attend the meeting.
- 10.2 Communication between parties shall be effective only when in writing.

11 Defects

- 11.1 The Employer's Representative shall inspect the Contractor's work and notify the Contractor of any defects that are found. Such inspection shall not affect the Contractor's responsibilities. The Employer's Representative may instruct the Contractor to search for a defect and to uncover and test any Work that the Employer's Representative considers may have a defect. Should the defect be found, the cost of uncovering and making good shall be borne by the Contractor. However if there is no defect found, the cost of uncovering and making good shall be treated as a variation and added to the Contract Price.
- 11.2 The Employer's Representative shall give notice to the Contractor of any defects before the end of the Defects Liability Period, which begins at Completion, and is defined in the Appendix to Conditions of Contract.
- 11.3 Every time notice of a defect is given, the Contractor shall correct the notified defect within the length of time specified by the Employer's Representative's notice. If the Contractor has not corrected a defect within the time specified in the Employer's Representative's notice, the Employer's Representative will assess the cost of having the defect corrected by other parties and such cost shall be treated as a variation and be deducted from the Contract Price.

12 Bills of Quantities/Schedule of Rates

- 12.1 The Bills of Quantities/Schedule of Rates shall contain items for the construction, installation, testing and commissioning of the Work to be done by the Contractor. The Contractor will be paid for the quantity of the Work done at the rates in the Bills of

Quantities/Schedule of Rates for each item. Items against which no rate is entered by the Tenderer will not be paid for when executed and shall be deemed covered by the rates for other items in the Bills of Quantities/Schedule of Rates.

- 12.2 Where Bills of Quantities do not form part of the Contract, the Contract Price shall be a lump sum (which shall be deemed to have been based on the rates in the Schedule of Rates forming part of the tender) and shall be subject to re-measurement after each stage.

13 Variations

- 13.1 The Contractor shall provide the Employer's Representative with a quotation for carrying out the variations when requested to do so. The Employer's Representative shall assess the quotation and shall obtain the necessary authority from the Employer before the variation is ordered.
- 13.2 If the Work in the variation corresponds with an item description in the Bill of Quantities/Schedule of Rates, the rate in the Bill of Quantities/Schedule of Rates shall be used to calculate the value of the variation. If the nature of the Work in the variation does not correspond with items in the Bill of Quantities/Schedule of Rates, the quotation by the Contractor shall be in the form of new rates for the relevant items of Work.
- 13.3 If the Contractor's quotation is unreasonable, the Employer's Representative may order the variation and make a change to the Contract Price, which shall be based on the Employer's Representative's own forecast of the effects of the variation on the Contractor's costs.

14 Payment Certificates and Final Account

- 14.1 The Contractor shall be paid after each of the following stages of Work listed herebelow (subject to re-measurement by the Employer's Representative of the Work done in each stage before payment is made). In case of lump-sum Contracts, the valuation for each stage shall be based on the quantities so obtained in the re-measurement and the rates in the Schedule of Rates.
- i) *First stage (drilling, test pumping, equipping, civil works and commissioning of the borehole-after inspection of final inspection of works)-90%*

(ii) After defects liability period -10%.

14.2 Upon deciding that Works included in a particular stage are complete, the Contractor shall submit to the Employer's Representative his application for payment. The Employer's Representative shall check, adjust if necessary and certify the amount to be paid to the Contractor within 21 days of receipt of the Contractor's application. **The Employer shall pay the Contractor the amounts so certified within 30 days of the date of issue of each Interim Certificate.**

14.3 The Contractor shall supply the Employer's Representative with a detailed final account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Employer's Representative shall issue a Defect Liability Certificate and certify any final payment that is due to the Contractor within 30 days of receiving the Contractor's account if it is correct and complete. If it is not, the Employer's Representative shall issue within 21 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 Employer's Representative shall decide on the amount payable to the Contractor and issue a Final Payment Certificate. The Employer shall pay the Contractor the amount so certified within 60 days of the issue of the Final Payment Certificate.

14.4 If the period laid down for payment to the Contractor upon each of the Employer's Representative's Certificate by the Employer has been exceeded, the Contractor shall be entitled to claim simple interest calculated pro-rata on the basis of the number of days delayed at the Central Bank of Kenya's average base lending rate prevailing on the first day the payment becomes overdue. The Contractor will be required to notify the Employer within 15 days of receipt of delayed payments of his intentions to claim interest.

15. Insurance

15.1 The Contractor shall be responsible for and shall take out appropriate cover against, among other risks, personal injury; loss of or damage to the Works, materials and plant; and loss of or damage to property.

16. Liquidated Damages

16.1 The Contractor shall pay liquidated damages to the Employer at the rate 0.001 per cent of the Contract price per day for each day that the actual Completion Date is later than the Intended Completion Date except in the case of any of the occurrences listed under clause 9.2. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor's liabilities.

17. Completion and Taking Over

17.1 Upon deciding that the Work is complete the Contractor shall request the Employer's Representative to issue a Certificate of Completion of the Works, upon deciding that the Work is completed.

The Employer shall take over the Site and the Works within seven days of the Employer's Representative issuing a Certificate of Completion.

18. Termination

18.1 The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract. These fundamental breaches of Contract shall include, but shall not be limited to, the following;

- (a) The Contractor stops Work for 30 days continuously without reasonable cause or authority from the Employer's Representative;
- (b) The Contractor is declared bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
- (c) A payment certified by the Employer's Representative is not paid by the Employer to the Contractor within 30 days after the expiry of the payment periods stated in sub clauses 14.2 and 14.3 hereinabove.
- (d) The Employer's Representative gives notice that failure to correct a particular defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time.

18.2 If the Contract is terminated, the Contractor shall stop Work immediately, and leave the Site as soon as reasonably possible. The Employer's Representative shall immediately thereafter

arrange for a meeting for the purpose of taking record of the Works executed and materials, goods, equipment and temporary buildings on Site.

19. Payment Upon Termination

19.1 The Employer may employ and pay other persons to carry out and complete the Works and to rectify any defects and may enter upon the Works and use all materials on Site, plant, equipment and temporary works.

19.2 The Contractor shall, during the execution or after the completion of the Works under this clause, remove from the Site as and when required within such reasonable time as the Employer's Representative may in writing specify, any temporary buildings, plant, machinery, appliances, goods or materials belonging to him, and in default thereof, the Employer may (without being responsible for any loss or damage) remove and sell any such property of the Contractor, holding the proceeds less all costs incurred to the credit of the Contractor.

19.3 Until after completion of the Works under this clause, the Employer shall not be bound by any other provision of this Contract to make any payment to the Contractor, but upon such completion as aforesaid and the verification within a reasonable time of the accounts therefore the Employer's Representative shall certify the amount of expenses properly incurred by the Employer and, if such amount added to the money paid to the Contractor before such determination exceeds the total amount which would have been payable on due completion in accordance with this Contract, the difference shall be a debt payable to the Employer by the Contractor; and if the said amount added to the said money be less than the said total amount, the difference shall be a debt payable by the Employer to the Contractor.

20. Corrupt Gifts and Payments of Commission

20.1 The Contractor shall not;

- (a) Offer or give or agree to give to any person in the service of the Employer any gifts or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this or any other contract with the Employer or for showing or forbearing to show favour or disfavor to any person in relation to this or any other contract with the Employer.

- (b) Any breach of this Condition by the Contractor or by anyone employed by him or acting on his behalf (whether with or without the knowledge of the Contractor) shall be an offence under the Laws of Kenya.

21. Settlement of Disputes

21.1 Any dispute arising out of the Contract which cannot be amicably settled between the parties shall be referred by either party to the arbitration and final decision of a person to be agreed between the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed by the chairman of the Chartered Institute of Arbitrators, Kenya branch, on the request of the applying party.

22. Appendix to Conditions of Contract:

14.5 The Contractor shall be paid after each of the following stages of Work listed herebelow (subject to re-measurement by the Employer's Representative of the Work done in each stage before payment is made). In case of lump-sum Contracts, the valuation for each stage shall be based on the quantities so obtained in the re-measurement and the rates in the Schedule of Rates.

- ii) First stage (*drilling, test pumping, equipping, civil works and commissioning of the borehole-after inspection of final inspection of works*)-90%
- (iii) After defects liability period -10%.

SECTION IV – SPECIFICATIONS, DRAWINGS AND BILLS OF QUANTITIES/SCHEDULE OF RATES

I. SPECIFICATIONS

BOREHOLE DRILLING, TEST PUMPING, EQUIPPING & COMMISSIONING OF BOREHOLES

GENERAL

MATERIALS AND EQUIPMENT

All materials, equipment, etc to be used in the execution of the work by the Contractor in this contract shall conform to the requirements of the latest Kenya Standard(KEBS), International Standard Organization(ISO), British Standard Specifications(BSS), or approved applicable standards in Kenya unless otherwise specifically stated.

QUALITY OF MATERIAL AND WORKMANSHIP

The materials and workmanship shall be of the best of their respective kinds and shall be to the approval of the Engineer. Should any material/equipment which are in the judgment of the Engineer be unsound, or of inferior quality or in any way unsuited for the work in which it is proposed for use, such materials/equipment shall not be used upon the works and shall be forthwith be removed from the site and be replaced with the proper quality items to the approval of the Engineer, all at the expense of the contractor.

The contractor shall remove and reconstruct at his own expense any portion of the works which gives evidence of any defects or injury which may affect the strength of or durability of the work or the performance of the system.

BOREHOLE DRILLING

CONTRACTOR

The complete drilling works shall be carried out by a Borehole contractor registered with The Ministry of Water and Irrigation.

REGULATIONS AND STANDARDS – TECHNICAL SPECIFICATIONS

The borehole shall be drilled at a site to be identified by the Engineer. The borehole shall be drilled to a depth ordered by the Engineer, as per Hydrogeological survey report. It shall be drilled through all strata encountered, as per Hydrogeological survey report provided by the Engineer. The target aquifer shall be weathered/fractured lithological formations

The client will apply for any permit and government authorization that might be required before drilling a borehole.

a) MOBILIZATION, DEMOBILIZATION AND RESTITUTING

The Contractor shall mobilize to the site in accordance with the agreed programme provided the access is good though the contractor shall satisfy himself as to the current condition.

The sum for mobilization shall include such preparation of wellhead areas as is required, including erection, dismantling and preparation of such temporary camps as the contractor deems necessary.

It shall include provision of water for camp use and redevelopment purpose and provision of personal sanitation facility.

The contractor shall ensure minimum disturbance to the neighboring plots. This shall include ensuring the bailed fines and pumped test water are discharged in a manner that does not create a nuisance either to public or private property.

Site re-instatement under the condition of contract shall include the removal of all hydrocarbons spilled, leaked or otherwise released and associated packaging and cotton waste. Site re-instatement is deemed an integral part of mobilization. This activity shall be costed taking into account the items above and expressed as a lump sum.

b) DRILLING

Unless otherwise approved by the Engineer, drilling shall be by air hammer method, by air flush rotary drilling, Mud rotary drilling or by percussion method. Drilling shall continue through all strata encountered. Drilling fluids and additives used must be approved by the Engineer prior to use. The contractor shall provide appropriate tools and equipment and maintain them in good condition capable of operating to the manufacturer's rating and so to ensure a straight, smooth hole. Drilling shall continue to the stipulated maximum depth of 300 meters as per Hydrogeological survey report at minimum diameter of 203mm (8").

The Engineer reserves the right to stop drilling operation if he considers that further drilling is unlikely to be advantageous. In this event payment shall only be made of the amount of work actually executed.

c) SAMPLE COLLECTION AND STORAGE: RECORD KEEPING

Samples of drill cuttings returned to the surface shall be collected at two (2) meters intervals dried and bagged. Each bag shall be clearly marked with sample depth interval and borehole number. The contractor shall record the depth of any zone of lost circulation for which no sample was taken.

The contractor shall maintain a log of the penetration rate on a meter by meter basis, in minutes per meter excluding any time taken in drilling interruptions.

The depth of any voids, particularly rapid penetration, or significant changes in rig noise shall also be noted. Water level shall be measured and recorded at all start and end of every shift, after significant breaks in activity (such as metal breaks), and during times of plant downtime (as appropriate). Water level shall be measured using a sounding/ or lighting dipper approved for use by the Engineer.

d) SUPPLY AND INSTALLATION OF CASINGS AND SCREENS

i) CASING AND SCREEN SPECIFICATIONS

Casing shall be new 152mm(6'') diameter mild steel as appropriate, with a minimum wall thickness of 6mm.

Mill-slotted screens shall be constructed from new 152mm diameter mild steel with a minimum wall thickness of 4.5mm. Slots shall not exceed 1mm in width, and should constitute not less than 6% open space area. Gas slotted casings are not acceptable.

ii) CASINGS AND SCREENS INSTALLATION

Before installation of casings and screens the contractor shall ensure that the hole is clear to the total depth and shall flush out any backfilled material present. The Engineer shall provide design of casings and screens string prior to installation by the contractor.

Casings jointing shall be by either flush square –section threading or tree pass electric arc welding. Screens shall be welded to casings, or screw-jointed by means of Flush Square –section threads. Externally socketed joints will not be accepted.

Where screwed joints are deemed by the Engineer to be below standard, joint shoulders shall be spot welded at 90° intervals around the casing circumference at no extra cost.

If casing and screen is to be welded, the appropriate welding electrode must be used. During welding, casing and screen lengths must be held absolutely vertical in order to ensure a plumb installation. All joints to be welded must be beveled at the butt end; three continuous weld passes must be made to ensure a sound joint and the oxide coating must be removed before the second and the third passes.

Burn through and subsequent deposition of metal on the inside of the casings and screens must be avoided. The base of the casing shall be sealed, unless otherwise directed by the Engineer, with a circular plate of mild steel of thickness less than 6mm (1/4'') fixed with a continuous weld to the casing string. The appropriate welding electrode shall be used.

The weld passes will be made, with oxide coating removed prior to the second and third passes.

The top of the casing straight shall be shall terminate not less than 0.2meter above original ground level.

iii) ADMISSIBLE RATES

Rates shall be expressed as supply and installation of casings or screens per linear meter.

c) SUPPLY AND INSTALLATION OF GRAVEL PACK

i) SPECIFICATIONS

The contractor shall supply and install filter pack /formation stabilizer.

The material shall be 2-4mm diameter, clean well rounded siliceous gravel with no more than 5% none siliceous material.

The pack must be approved by the Engineer prior to installation. Granular calcium hypochlorite will be introduced to the annular space along with pack material at a concentration of 500 grams per cubic meter of pack.

This will initiate the process of sterilizing the wellbore. The contractor shall provide the Engineer with the bulk density of the pack material (Kg per cubic meter).

Installation of filter pack/formation stabilizer may be water wash down or reverse circulation methods. In the latter case a pump set or airlift string shall be installed in the borehole so as to encourage material settlement. The filter pack shall terminate not less than 3 meters above the uppermost screen when stabilized, or as otherwise directed by the Engineer. The contractor shall provide a means by which this level may be measured.

ii) ADMISSIBLE RATES

Rates shall be expressed as supply and installation of gravel pack per unit cubic meter.

d) INSTAL BACKFILL

i) SPECIFICATIONS

Backfill material shall comprise fine or clayey drilling cuttings and shall be installed from the top of the filter pack to 3 meters bgl unless otherwise stated by the Engineer. The installation method must ensure that no bridging occurs within the annular space.

The contractor shall measure the depth to the top of the backfill and provide the means by which this level may be measured.

ii) ADMISSIBLE RATES

Rates shall be expressed as supply and installation of backfill material per cubic meter

e) DEVELOPMENT

Development shall include both Physical and Chemical development, and shall include the following operations:-

(i) BOREHOLE CLEANING

The contractor shall clean the borehole to its “complete depth” using any of the methods listed below or as otherwise authorized by the Engineer:-

- By bailer with a percussion drilling rig.
- By means of airlift, this may use light or stable foam to assist in the removal of materials from the borehole.
- By means of educator airlift, with or without light or stable foam.

(ii) CHEMICAL DEVELOPMENT

When the Engineer has deemed the borehole clean, he may instruct the contractor to commence with Chemical Development. Chemical development shall comprise an approved polyphosphate as a disaggregate that shall break down silt concretions, any built up clay or silts, or other fine materials within or adjacent to the wellbore. Considerations shall be given to the geological log (if available) when dosing: where clays are abundant the over application of polyphosphate can lead to sloughing of geological material and may damage the borehole. The decision as whether chemical development shall be adopted, and at what dosage rates shall be made by the Engineer on the basis of experience elsewhere and from the observation made during cleaning.

Typical dosage shall comprise powdered Sodium Hexametaphosphate dissolved in hot water. The polyphosphate shall be dosed at 10 to 15kg/m³ of water depending on the concentration of clays in the aquifer mix. This shall be mixed with calcium hypochlorite at a dose of 200 grams/m³ to inhibit bacterial activity. The volume of polyphosphate dosed water shall be one and a half times the volume of water within the screen sector.

Both polyphosphate and added water shall be introduced by means of a pipe, the bottom end of that shall be located in the middle of the screen section of the borehole. The Contractor may get the liquids into the screened section using a jetting head if he so wishes.

After dosing the borehole shall be left overnight to allow disaggregation to occur. The borehole shall then be subjected to physical development.

Chemical development shall be expressed as an hour rate, and include all labor and materials (including clean water) required for the operation. Chemical development undertaken by a Contractor familiar with technique shall take no longer than three (3) hours.

(iii) PHYSICAL DEVELOPMENT

Physical development may adopt any of the commonly used methods, including but not necessarily restricted to the following:-

- Surging Bailing
- High velocity water jet
- Airlift raw hiding
- Airlift raw hiding with educator pipe

Development shall be considered complete when the water discharge is clear and contains no more than an estimated 5 parts per million of suspended solids and: and the borehole has been restored to the cleaned total depth: or as directed by the Engineer.

The Contractor shall describe the method he proposes to adopt and the plant required for physical development in his method statement. **Over pumping** shall not be considered a development method. The rate remitted by the Contractor is deemed to include installation and removal of necessary plant. The quantity given in the bills of quantity only applies to actual development time. Costs of physical development shall be expressed as an hour rate.

f) AQUIFER TESTING

Borehole testing will be conducted according to British Standards BS 6316(1992) (Code of Practice for Test pumping of Water Wells). The following elements are required:-

- A pre-test
- A step drawdown test
- A constant discharge test
- A recovery test

INSTALLATION, PLANT AND METHODOLOGY

Pumping plant and dipper tube shall be installed in the borehole to be tested. The contractor shall investigate and agree with the Engineer the anticipated discharge and pump intake depth.

PUMPING PLANT

Pump used for testing may be electrical submersible or surface-mounted turbine pumps or reciprocating pumps. Intake will not be less than 100 meters and not be greater than 238 meters below ground level.

Any pump used in tests must have a fully functioning none-return valve either in the pump itself or in rising main immediately above the top of the pump.

Discharge will range from 5 to 15 m³/hr and the contractor must have at his disposal pumps covering the discharge range.

The water pumped from the borehole shall be discharged to waste at a distance and in such a manner that it does not pond or flow towards the borehole.

The Contractor must provide a Generator or other prime mover for powering pump, as power is not necessarily available at sites.

DISCHARGE MEASUREMENT & CONTROL

Discharge Measurement shall be by an approved accurate method, such as:-

- An Orifice Plate
- Calibrated Flow Meter
- V-Notch Weir

If volumetric methods are proposed, the Contractor will ensure that the container to be used has been calibrated: when times to fill measurements are made, each discharge measurement shall be calculated from the average of three times measurements.

Discharge shall vary no more than 15% across each step of the step drawdown test, and across the constant discharge test.

WATER LEVEL MEASUREMENT

Water level measurement shall be by electric sounding and / or lighting dipper, shall be made in a dipper tube installed alongside the test pump rising main and tied securely to it. The Engineer will check the dipper for stretch and any other accuracy prior to accepting its use. Accuracy of measurement must not be less than 1.0 cm. Water level measurements using an airlift will not be acceptable on the ground of poor precision.

TIME MEASUREMENT

All times shall be recorded by means of a stopwatch. The contractor shall ensure that spare batteries etc, for all equipment are available prior to commencing tests.

i) PRE-TEST

The Pre-test will check all equipment, determine the range of discharges for the step drawdown test & set the globe valves for the first discharge rate. Pre-test shall not exceed three (3) hours.

ii) STEP DRAWDOWN TEST

The step drawdown test will comprise five (5) steps of sixty (60) minutes each, with no recovery phase between successive steps. The step drawdown test shall not start until water level has returned to its true static level unless otherwise stipulated by the Engineer.

Typically, individual

Discharge variations and measurement shall be effected by means of the globe valve and manometer gauge as follows:-

A globe valve of suitable diameter shall control the discharge and on the upstream side of this, not closer than six (6) pipe diameter from the valve, a manometer tapping and gauge will be installed such that it can be clearly seen by any person using the valve. This will be used during the step drawdown test for flow control purpose.

iii) CONSTANT DISCHARGE TEST

Constant discharge test shall typically last no less than twenty four (24) hours or as otherwise determined by the Engineer. A water sample will be procured towards the end of the test for subsequent analysis by a competent laboratory.

iv) RECOVERY TEST & REMOVAL OF PLANT

Recovery test shall continue for not less than twenty four (24) hours, or as otherwise directed by the Engineer. Only after the completion of the recovery data collection may pumping and ancillary plant be removed from the borehole, though above ground components may be dismantled during the recovery phase.

v) ADMISSIBLE RATES

Rates of pumping and recovery are deemed to include the cost of plant installation and removal. The rates are deemed inclusive of installation, removal, plant use, and testing and data collection.

i) WATER SAMPLING AND ANALYSIS

In the closing hour of the constant discharge test, a water sample shall be collected for chemical and bacteriological analysis by a competent laboratory, in the manner conventionally used by the laboratory.

The contractor's unit rate for sampling and analysis will include the cost of analysis and transportation from and to the laboratory for the sampling exercise.

j) WELLBORE DISINFECTION

After removal of test equipment, the borehole shall be disinfected with chlorine/ water solution at a concentration of 50 milligrams per liter of greater of free chlorine. This will be sprayed into the borehole so as to ensure that all exposed borehole wall surfaces are coated. In preparing their tenders, contractor should allow one (1) cubic meter solution per borehole. This shall be coated as a unit lump sum.

k) BOREHOLE HEAD WORKS

A sanitary seal shall be constructed at the well head. This shall comprise the following elements:-

- A 3.2m length of 203mm (8") plain mild steel sanitary steel casing installed around permanent casing string .
- A grout seal between 254mm sanitary seal casing and the 152mm permanent casing string.
- A 1x1x1m concrete block cast around the sanitary seal casings.
- A lockable steel cap

l) SANITARY SEAL CASING

A 3.2 meter length of 203mm (8") mild steel casing shall be installed around the 152 (6") permanent casing string in the 254mm(10") diameter hole drilled up to 3 meters. This shall project not less than 0.2m above original ground level and shall be flush with the permanent casing string.

m) GROUT SEAL

A sanitary grout seal shall be installed between the 152mm (6") and 203mm (8") casings and grounded into place. Grout shall be a cement slurry, or cement and fine sand and shall have a density of at least 1.175kg/l.

This shall be introduced into the annular space from the top of the inert backfill to ground level, using a method that must be approved by the engineer.

n) CONCRETE PLINTH

The ground surface at the wellhead shall be excavated to a depth of one meter, and be one metre square, to allow a concrete plinth to be cast. The 1x1x1m pit will be filled with concrete, to be finished flush with the ground surface. Concrete shall be 1:2:4 OPC: sand: half inch ballast. This must be cast with two 0.8m lengths of 12mm reinforcing bar welded to the 203mm (8") casing 0.7m below ground level.

o) TEMPORARY CAP

The top of the borehole shall be sealed with a cap that shall comprise a round plate of mild steel, of thickness not less than 3mm. this will continuously be welded in single pass to the mild steel borehole casing or should be lockable.

p) RECORDS

After completion of all works at the borehole, the contractor shall submit to the engineer within seven (7) days a completion document with the following:-

- Drilling penetration log
- Geological log
- Relevant WRMA forms for Borehole Completion Record (Three complete sets of completion reports shall be submitted).

3.18 TECHNICAL LITERATURE

a) The Tenderer **MUST** submit the following information together with the tender documents to assist in fair evaluation.

Technical specifications on drilling rig and other ancillary equipment (make, model, rated capacity, Etc)

Particular and specifications of materials to be used in the construction of one borehole (casings, screens, gravel etc)

Any other information the bidder may deem is important in evaluation as well as BOOSTING his/her chances of winning the tender.

III

BILL OF QUANTITIES/SCHEDULE OF RATES

PREAMBLE TO THE BILL OF QUANTITIES

1. General

- 1.1 These Bills of Quantities form part of the Contract Documents and are to be read in conjunction with the Conditions of Contract, Specifications and Drawings.
- 1.2 The Bill of Quantities is for the purposes of recording the rates and prices upon which the Contract Price is determined and is not to be taken as descriptive of the extent of Works to be executed or the extent of the Contractor's obligations.
- 1.3 The rates and prices in the Bill of Quantities shall be the full consideration for the Contractor's obligations under the Conditions of Contract, Specifications and Drawings as reasonably could have been anticipated at the time of tender.
- 1.4 The rates and prices shall be deemed to include allowance for all of the Plant, materials, equipment, labour, superintendence, services and all other things necessary to complete test and commission the Works, render them functional as intended, and remedy any defects therein, in accordance with the Contract.
- 1.5 Where any particular aspect of work or obligation of the Contract is not specifically itemized, the costs in respect thereof shall be deemed to be included within the available Bill of Quantities items.
- 1.6 The quantities set forth in the Bill of Quantities are believed to represent the scope of the work to be carried out. There is no guarantee to the Contractor that he will be required to carry out the quantities of work indicated under any one particular item or group of items in the Bill of Quantities, although on the Contract as a whole the quantities are believed to represent the approximate overall value of the work to be carried out.
- 1.7 The rates and prices in the Bill of Quantities will be used for valuing the work executed and the Engineer will measure the whole of the Works executed in accordance with the Contract.
- 1.8 Quantities for site clearance, stripping and spreading shall be based on the horizontal projection of the area cleared or stripped.
- 1.9 The volume of fill will be measured net to the finished levels as shown in the drawings or as amended by the Engineer.
- 1.10 The volume of excavation shall be based on in-situ materials and not on excavated and hauled materials.
- 1.11 All rates and sums in the Bill of Quantities shall be in Kenya Shillings and Cents and shall be inclusive of all applicable taxes.
- 1.12 The rates for provision of concrete shall include the cost of formwork and casting where necessary.

- 1.13 Before carrying out any implementation of works, the Contractor together with CGB appointed Project Supervisor shall discuss on the bill of quantities and identify all the works stated in the bill of quantities and get satisfied that the description of the works correspond to the actual ground conditions. The original ground levels shall then be taken jointly by the Surveyor from the Contractor and CGB Supervisor and recorded. No work shall start on any site before original ground levels are recorded and controls set.
- 1.14 No excavated or loose material shall be left upstream of dam to avoid the same material being swept into the reservoir during rains thereby reducing the lifespan of the dam by accumulated silts.

2. **Completion of Bill of Quantities**

- 2.1 The Bill of Quantities shall be completed in conformity with the Instructions to Tenderers. Tenderers are advised to peruse and carefully consider the requirements of the Instructions to Tenderers before making any entries in the Bill of Quantities.
- 2.2 The rates and prices inserted by the Tenderers in the Bill of Quantities are to be the full inclusive costs of the Works, complete in place and in accordance with the Specifications and Drawings. They shall include all costs and expenses for the construction of the works described, together with the costs of Contractor's Equipment and of any temporary installations which may be necessary and all general risks, liabilities and obligations set forth or implied in the documents on which the Contract is based.
- 2.3 The brief descriptions of the items given in the Bill of Quantities are purely for the purpose of identification and in no way modify or supersede the detailed descriptions given in the Drawings or Specifications. When pricing items, reference is to be made to the Conditions of Contract, the relevant national or international Standards, the Specifications and Drawings for the full directions and description of the Contractor's obligations, and of work, Plant and materials.
- 2.4 A rate or price is to be inserted, in ink, against each item in the Bill of Quantities, whether quantities are stated or not. If the Tenderers shall omit to price an item, or shall insert the words "included in other rates" or "nil" or an entry to similar effect, it shall be considered that the Contractor's obligations under that item are to be paid by the Contract Price in general and no particular payment shall be made for work executed under that item.
- 2.5 No alteration shall be made to the Bill of Quantities and no extra item shall be inserted. The Tenderer shall satisfy himself that the Tender Price arrived at and the pricing given is sufficient compensation for completing the whole of the Works and remedying any defects therein in accordance with the Contract.
- 2.6 The Bill of Quantities has been separated into portions of the Works for convenience in tabulating quantities and in the pricing. They are not intended to subdivide the actual works and the whole of the Works must be considered when pricing the various items in the Bill of Quantities.

3. **Application of Bill of Quantities**

- 3.1 For the purpose of interim payment of "Lump Sum" items, the Engineer shall assess the proportion of the work completed on the "Lump Sum" item and allow for payment of that portion of the "Lump Sum" he deems fair and reasonable. The total of all portions allowed shall not exceed the "Lump Sum".
- 3.2 During the execution of the Works, the rates and prices in the Bill of Quantities may be used to establish rates and prices for similar new or modified work.
- 3.3 "Supply OR provide" means procure and deliver to site, including tests in the manufacturer's works, third party inspection as required by local customs authorities for imports into Kenya, packaging, insurance in transit, clearance from port and port charges, loading and offloading and temporary storage on site.
- For the supply of pipe-work (under Class I), the Contractor's rates are to include only for the manufacturer's or Contractor's prices, plus where appropriate transport, and the Contractor's mark-up is only to be included in the separate item provided for this.
- 3.4 "Install" means remove from storage, provide all minor materials and install, including adjustment of foundations, connection to existing facilities and all things necessary to render the work complete and functional and the remedying of defects therein, as well as testing and commissioning on completion where no specific items for this are allowed for.
- 3.5 Where an item is described by only the name of the relevant Plant or materials, or the work to be done, the item shall be deemed to be for Supply and Install.
- 3.6 When the site or any particular item of the Works has been sufficiently cleared of the trees, undergrowth etc, and before any excavation or filling has been carried out, the Contractor shall survey with the Engineers Representative the site sufficiently. The data so obtained shall be used as a basis for the computation of excavation and filling.
- 3.7 In the event of any difficulty or disagreement in visual classification of any rock (Classes I and II) or soil (Class III) material, the Engineer's decision on classification of excavation material will be final, but will be based on the guidelines and definitions set forth in the Specifications.
- 3.8 For bill item "Establishment and maintenance of contractor's camp, incl. Training Levy", the tenderer's rate is not allowed to exceed 2% of the Net Tender Sum. If the rate does exceed the limit, the tenderer's rate for this item will be reduced to within the limit and the balance will be added as a uniform percentage to the other rates and prices.

4. **Day-works Schedule**

- 4.1 Where the Contractor is instructed to execute additional minor works which could not be foreseen at the time of Tender, or works of similar purposes, these shall be executed as directed by the Engineer and paid for under the item for Day-works in the Bill of Quantities. The valuation of such work shall be done in accordance with the Day-works Schedule which is based upon Basic Prices.
- 4.2 "Basic Price" means
- (i) The ex-source price of local materials or GIF price of imported materials; or

- (ii) The wages or remuneration of personnel excluding overtime, travelling allowances, and non-monetary benefits; or
 - (iii) The hire charges for equipment or for hire of similar equipment where the equipment used is owned by the Contractor, whichever shall be applicable. The Contractor shall provide documents to support the Basic Price with each application for payment of Day-works which are valued on the basis of Basic Prices.
- 4.3 The rates entered under the various items in the Day-works Schedule are to be inclusive of all costs associated in supervision and overheads, and provision of tools of the trade for labour and tradesmen. Payment for Equipment and personnel will be for the time actually worked. No extra payment will be made for overtime unless work is ordered to be done specifically outside the Contractors normal working hours in which case overtime for labour and tradesmen will be paid for at 1.5 times the Basic Price for week-days and 2 times for weekends and public holidays. No extra payment will be made for overtime for Equipment or for technicians and specialists, or for the time of travel to and from the site of work.
- 4.4 Rates in the Day-works Schedule for material shall include for their supply on site and for testing in accordance with the Contract of the materials themselves and the finished product made therefrom. The rates for Equipment shall include for the provision of drivers, operators and loaders, and for fuel, oils, lubricants, and the like.
- 4.5 The Contractor shall give the Engineer's Representative at least 48 hours written notice of intention to commence any works intended to be valued in accordance with the Day-works Schedule.

A. PRELIMINARIES

PROJECT: NAMBAWAN BOREHOL					
WORKS: PRELIMINARIES					
Item	Description	Unit	Quantity	Rate	Amount
1.0	Project Signboard				
1.1	Provide a Prime Cost sum of Ksh. 20,000/= for Provision, erection and maintenance of 3 project signboard in accordance with Specification and as shall be directed by the Engineer.	No	1	20,000	20,000
2.0	Supervision of works by Engineers				
2.1	Provide Prime Cost of Ksh. 80,000/= for supervision to be expended as directed by the Engineer to include air time, progress reports, photographs and site meetings.	Item	1	80,000	80,000
2.2	Add percentage on item 2.1 for overheads and profits.	%	24%		19,200
3.0	Contingency Sum				
3.1	Provide contingencies sum of Ksh. 70,000/= to be expended to cover necessary items required during drilling which shall however be ratified by the project supervisory team.	Item		70,000	70,000
SUB-TOTAL CARRIED TO COLLECTION					189,200

**BILL NO. 1: DRILLING AND TEST PUMPING OF 1NO. BOREHOLE
IN MOGOTIO SUB COUNTY.**

**1. NAMBAWAN BOREHOLE
RECOMMENDED DEPTH – 180 M**

ITEM	DESCRIPTION OF WORK	UNIT	QTY	RATE(KSHS)	AMOUNT(KSHS)
1.	Mobilization and transportation of whole drilling unit to and from the site	L.S	1		
2.	Erecting and dismantling of whole drilling unit and related equipment at the site.	L.S	1		
3.	Drilling borehole of 8'' minimum diameter through all types of strata including disposal of excavated materials, taking any remedial measure to overcome caving – in or over drilling to accommodate sloughed material and keeping drilling records as specified between ground level and 100 meters below ground level.	M	100		
4.	As item 3.0 above but between 100 m and 200m below ground level.	M	80		
5.	Reaming and boring with 10'' Diameter bit if necessary	M			RATE ONLY
6.	Insert and remove 8'' diameter casing temporarily	M			RATE ONLY
7.	Insert 8'' diameter casing permanently	M			RATE ONLY
8.	Supply and install 6'' diameter plain steel casings	M	150		
9.	Supply and install 6'' diameter slotted steel casings	M	30		
10.	Allow for taking samples of drill cuttings at two (2) meters intervals	No.	90		
11.	Supply and insert Filter	Tons	6		

	Supply and insert Filter Gravel Pack				
12.	Grout between the casing and the borehole for top five (5) meters	M	5		
13.	Development of the boreholes shall comprise physical and chemical development, including inserting and removal of development equipment a) Physical Development b) Chemical Development	HR HR	10 3		
14.	Undertake Constant Discharge Test specified (24 hours for actual test pump and 8 hours for insertion removal of test pumping equipment)	HR	24		
15.	Undertake Water Level observation and record on recovery	HR	24		
16.	Carry out well bore sterilization	L.S	1		
17.	Prepare well head, well Cap Serial Number and cement slab around the wellhead with dimensions of 1 m x1 m x1m.	L.S	1		
18.	Supply of water for drilling operations and field camp.	L.S	1		
20.	Water samples laboratory analysis expenses (both chemical and bacteriological)	L. S	1		
	Total(Kshs)				

COLLECTION

	AMOUNT (Ksh)
Preliminaries	
Drilling of Nambawan borehole	
GRAND TOTAL	

SECTION V

STANDARD FORMS

List of Standard Forms

- I. Form of Tender
- II. Form of Tender Security
- III. Qualification Information
- IV. Tender Questionnaire
- V. Confidential Business Questionnaire

FORM OF TENDER

TO: County Secretary,
Baringo County Government,
P.O BOX 53- 30400, Kabarnet.

Date _____

Name of contract _____

Dear Madam,

1. In accordance with the Conditions of Contract, Specifications, Drawings and Bills of Quantities/Schedule of Rates for the execution of the above named Works, we, the undersigned offer to construct, install and complete such Works and remedy any defects therein for the sum of Kshs. _____ *[Amount in figures]* Kenya Shillings _____ *[Amount in words]*
2. We undertake, if our tender is accepted, to commence the Works as soon as is reasonably possible after the receipt of the Employer’s Representative’s notice to commence, and to complete the whole of the Works comprised in the Contract within the time stated in the Appendix to Conditions of Contract.
3. We agree to abide by this tender until _____ *[Insert date]*, and it shall remain binding upon us and may be accepted at any time before that date.
4. Unless and until a formal Agreement is prepared and executed this tender together with your written acceptance thereof, shall constitute a binding Contract between us.
5. We understand that you are not bound to accept the lowest or any tender you may receive.
Dated this _____ day of _____ 20____ Signature _____
in the capacity of _____ duly authorized to sign
tenders for and on behalf of _____ *[Name of Tenderer]* of _____ *[Address of Tenderer]*
Witness; Name _____

Address _____

Signature _____

Date _____

FORM OF TENDER SECURITY

WHEREAS (hereinafter called “the Tenderer”) has submitted his tender dated for the construction of
..... (Name of Contract)

KNOW ALL PEOPLE by these presents that WE having our registered office at(hereinafter called “the Bank”), are bound unto(hereinafter called “the Employer”) in the sum of Kshs..... for which payment well and truly to be made to the said Employer, the Bank binds itself, its successors and assigns by these presents sealed with the Common Seal of the said Bank this Day of20.....

THE CONDITIONS of this obligation are:

- 1. If after tender opening the tenderer withdraws his tender during the period of tender validity specified in the instructions to tenderer
Or
- 2. If the tenderer, having been notified of the acceptance of his tender by the Employer during the period of tender validity:
 - (a) fails or refuses to execute the form of Agreement in accordance with the Instructions to Tenderer, if required; or
 - (b) fails or refuses to furnish the Performance Security, in accordance with the Instructions to Tenderer;

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 one or both of the two conditions, specifying the occurred condition or conditions.

This guarantee will remain in force up to and including thirty (30) days after the period of tender validity, and any demand in respect thereof should reach the Bank not later than the said date.

[date]

[signature of the Bank]

[witness]

[seal]

QUALIFICATION INFORMATION

1. Individual Tenderers or Individual Members of Joint Ventures

1.1 Constitution or legal status of tenderer (attach copy or Incorporation Certificate);

Place of registration: _____

Principal place of business _____

Power of attorney of signatory of tender _____

1.2 Total annual volume of construction work performed in the last five years

Year	Volume	
	Currency	Value

1.3 Work performed as Main Contractor on works of a similar nature and volume over the last five years. Also list details of work under way or committed, including expected completion date.

Project name	Name of client and contact person	Type of work year of	Value of work performed and completion	Contract
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

1.4 Major items of Contractor’s Equipment proposed for carrying out the Works. List all information requested below.

Item of Equipment	Description, Make and age (years)	Condition(new, good, poor) and number available	Owned, leased (from whom?), or to be purchased (from whom?)
_____	_____	_____	_____
_____ (etc.)	_____	_____	_____

- 1.5 Qualifications and experience of key personnel proposed for administration and execution of the Contract. Attach biographical data.

Position	Name	Years of experience (general)	Years of experience in proposed position
Project Manager			
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
(etc.)			

- 1.6 Financial reports for the last five years: balance sheets, profit and loss statements, auditor's reports, etc. List below and attach copies.

- 1.7 Evidence of access to financial resources to meet the qualification requirements: cash in hand, lines of credit, etc. List below and attach copies of supportive documents.

- 1.8 Name, address and telephone, telex and facsimile numbers of banks that may provide reference if contacted by the Employer.

- A
1.9 Statement of compliance with the requirements of Clause 1.2 of the Instructions to Tenderers.

- 1.10 Proposed program (work method and schedule) for the whole of the Works.

2 Joint Ventures

- 2.4 The information listed in 1.1 – 1.10 above shall be provided for each partner of the joint venture.
- 2.5 The information required in 1.11 above shall be provided for the joint venture.
- 2.6 Attach the power of attorney of the signatory(ies) of the tender authorizing signature of the tender on behalf of the joint venture
- 2.7 Attach the Agreement among all partners of the joint venture (and which is legally binding on all partners), which shows that:
 - a) all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;
 - b) one of the partners will be nominated as being in charge, authorized to incur liabilities and receive instructions for and on behalf of any and all partners of the joint venture; and
 - c) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.

TENDER QUESTIONNAIRE

Please fill in block letters.

1. Full names of tenderer;
.....
2. Full address of tenderer to which tender correspondence is to be sent (unless an agent has been appointed below);
.....
3. Telephone number (s) of tenderer;
.....
4. Telex of tenderer;
.....
5. Name of tenderer's representative to be contacted on matters of the tender during the tender period;
.....
6. Details of tenderer's nominated agent (if any) to receive tender notices. This is essential if the tenderer does not have his registered address in Kenya (name, address, telephone, telex);
.....
.....

Signature of Tenderer

Make copy and deliver to: County Government of Baringo, P.O. Box 53, 30400, Kabarnet located along Hospital Road, during normal working hours.

CONFIDENTIAL BUSINESS QUESTIONNAIRE

You are requested to give the particulars indicated in Part 1 and either Part 2 (a), 2 (b) or 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; Country/Town.....

Plot No..... Street/Road

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

Nature of Business.....

Current Trade Licensee No..... Expiring date.....

Maximum value of business which you can handle at any time: K. Shillings.....

Name of your bankers.....

Branch.....

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:

	<i>Name in full</i>	<i>Nationality</i>	<i>Citizenship Details</i>	<i>Shares</i>
1
2
3

Contract Agreement Form
CONTRACT FOR DRILLING BOREHOLES IN BARINGO COUNTY – LOT 1

BETWEEN

COUNTY GOVERNMENT OF BARINGO

AND

.....

TENDER NO: BRCG/TNR/242/2017-2014

March 2014

SECTION I CONTRACT FORM

THIS AGREEMENT is made theday of, 2012 BETWEEN County Government of Baringo of P.O. Box 53, 30400, Kabarnet (hereinafter referred to as “the Corporation”) of the one part AND **Of P. O. Box**,, **KENYA** (hereinafter referred to as “the Contractor”) of the other part;

WHEREAS

- A. Vide Tender No. **BRCG/TNR/242/2017-2014**, the Contractor was awarded the tender by the County Government to execute borehole drilling, test pumping, equipping, civil works and commissioning (hereinafter referred to as “**THE WORKS**”) of 3 number boreholes **Tanyinleel, Katipsogon and Ndorot to a maximum depth of 300 meters** each at a total contract price of **Kshs.....{in words..... Only}** (hereinafter referred to as “the Contract Price).
- B. The **CONTRACTOR** having presented to the County Government that it has enough equipment, manpower and experience for **THE WORKS**, has agreed to perform **THE WORKS** on the terms and conditions set forth in this Contract

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

- 1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract referred to:
- 2. **Documents to form part of the Contract**
The following documents shall be deemed to form and be read and construed as part of this Agreement viz:
 - 2.1 Tender document in respect of Tender No. **BRCG/TNR/242/2017-2014** **(In a separate document)**
 - 2.2 The County Government’s letter of Notification of Award to the Contractor
 - 2.3 the Contractor’s letter of acceptance of the award
 - 2.4 the General Conditions of Contract
 - 2.5 the Special Condition of Contract
 - 2.6 the Bills of Quantities
 - 2.6 the following Appendices:-
 - Appendix A Hydrogeological survey report
 - Appendix B Technical Proposal **(In a separate document)**
 - Appendix C Financial Proposal
 - Appendix D Performance Security
- 3.0 All works shall be executed in compliance with ISO 9000-2008 QMS standard and procedures. In consideration of the payments to be made by the County

Government to the Contractor, the Contractor hereby covenants with the County Government to perform the Works in conformity in all respects with the provisions of the Contract

4.0 The County Government hereby covenants to pay the Contractor in consideration of performance of the works , the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Contract to be executed in accordance with their respective laws the day and year first above written.

Signed for and on behalf of County Government of Baringo

Stella Kereto
County Secretary

In the presence of

Signed for and on behalf of The Limited.

In the presence of

SECTION II GENERAL CONDITIONS OF CONTRACT

1. GENERAL PROVISIONS

1.1 Definitions

Unless the context otherwise requires, the following terms whenever used in this Contract shall have the following meanings;

- a) “Applicable Law” means the laws and any other instruments having the force of law in the Republic of Kenya as they may be issued and in force from time to time
- b) “Contract” means the Contract signed by the Parties, to which these General Conditions of Contract (GC) are attached together with all the documents listed in Clause 1 of such signed Contract
- c) “Contract Price” means the price to be paid for the performance of the Works in accordance with Clause 6 here below
- d) “Contractor “ means The Limited or its Successors and Assigns
- e) “County Government” means County Government of Baringo or its Successors and Assigns
- f) “GC” means these General Conditions of Contract
- g) “Government” means the Government of the Republic of Kenya
- h) “Local Currency” means the Kenya Shilling
- i) “Party” means the County Government or the Contractor as the case may be and “Parties” means both of them
- j) “Personnel” means persons hired by the Contractor as employees and assigned to the performance of the Works or any part thereof
- k) “SC” means the Special Conditions of Contract by which the GC may be amended or supplemented
- l) “Works” means the work to be performed by the Contractor pursuant to this Contract, as described in Appendix A; and
- m) “Sub contractor” means any entity to which the Contractor subcontracts any part of the Works in accordance with the provisions of Clauses 3 and 4.

1.2 Law Governing the Contract

This Contract, its meaning and interpretation and the relationship between the Parties shall be governed by the Laws of Kenya.

1.3 Language

This Contract has been executed in English language which shall be the binding and Controlling language for all matters relating to the meaning or interpretation of this Contract.

1.4 Notices

Any notice, request, or consent made pursuant to this Contract shall be in writing and shall be deemed to have been made when delivered in person to an authorized Representative of the Party to whom the communication is addressed or when sent by registered mail, telex, telegram or facsimile to such Party at the address specified In the SC.

1.5 Location

The Services shall be performed at such locations as are specified in the Hydrogeological surveys and, where the location of a particular task is not so specified, at such locations, whether in the Republic of Kenya or elsewhere, as the County Government may approve.

1.6 Authorized Representatives

Any action required or permitted to be taken and any document required or permitted to be executed under this Contract by the County Government or the Contractor may be taken or executed by the officials specified in the SC.

1.7 Taxes and Duties

The Contractor, sub Contractor [s] and their personnel shall pay such taxes, duties, fees and other impositions as may be levied under the Laws of Kenya, the amount of which is deemed to have been included in the Contract Price.

2. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT

2.1 Effectiveness of Contract

This Contract shall come into effect on the date the Contract is signed by both parties and such other later date as may be stated in the SC

2.2 Commencement of Services

The Contractor shall begin carrying out the Works immediately and not more than seven days after the date the Contract becomes effective or at such other date as may be specified in the SC.

2.3 Expiration of Contract

Unless terminated earlier pursuant to Clause 2.6, this Contract shall terminate at the end of such time period, after the Effective Date, as is specified in the SC.

2.4 Modification

Modification of the terms and Conditions of this Contract, including any modification of the Scope of the Works or the Contract Price, may only be in circumstances stated in the SC and shall be made by written agreement between the parties.

2.5 Force Majeure

2.5.1 Definition

For the purposes of this Contract, "Force Majeure" means an event which is beyond the reasonable control of a Party and which makes a Party's performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.

2.5.2 Breach of Contract

The failure of a Party to fulfill any of its obligations under the Contract shall not be considered to be a breach of, or default under, this Contract in so far as such inability arises from an event of Force Majeure, provided that the Party affected by such an event

- (a) Has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and
- (b) Has informed the other Party as soon as possible about the occurrence of such an event from an event of Force Majeure, provided that the Party affected by such an event

2.5.3 Extension of Time

Any period within which a Party shall, pursuant to this Contract complete any action or task shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

2.5.4 Payments

During the period of his inability to perform the Works as a result of an event of Force Majeure, the Contractor shall be entitled to continue to be paid under the terms of this Contract, as well as to be reimbursed for additional costs reasonably and necessarily incurred by him during such

period for the purposes of the Works and in reactivating the Works after the end of such period.

2.5.5 Assignment

Neither party shall assign or transfer its rights nor its obligation under this Agreement without the prior consent in writing of the other party, which consents shall not be unreasonably withheld.

2.6 TERMINATION

2.6.1 By the County Government

The County Government may terminate this Contract by not less than thirty (30) days' written notice of termination to the Contractor, to be given after the occurrence of any of the events specified in this Clause;

- a) If the Contractor does not remedy a failure in the performance of his obligations under the Contract within thirty (30) days after being notified or within any further period as the County Government may have subsequently approved in writing;
- b) If the Contractor becomes insolvent or bankrupt;
- c) If, as a result of Force Majeure, the Contractor is unable to perform a material portion of the Works for a period of not less than sixty (60) days;
- d) If the Contractor, in the judgment of the County Government, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract. For the purpose of this clause“ corrupt practice” means
 - i) The offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the selection process or in Contract execution.
 - ii) A misrepresentation of facts in order to influence a selection process or the execution of Contract to the detriment of the County Government, and includes collusive practice among Contractors (prior to or after submission of bids) designed to establish prices at artificial non-competitive levels and to deprive the County Government of the benefits of free and open competition.
- e) If the County Government in its sole discretion decides to terminate this Contract

2.6.2 By the Contractor

The Contractor may terminate this Contract by not less than thirty (30) days' written notice to the County Government, such notice to be given after the occurrence of any of the following events;

- a) if the County Government fails to pay any monies due to the Contractor pursuant to this Contract and not subject to dispute pursuant to Clause 7 within sixty (60) days after receiving written notice from the Contractor that such payment is overdue; or
- b) if, as a result of Force Majeure, the Contractor is unable to perform a material portion of the Works for a period of not less than sixty (60) days.

2.6.3 Payment upon Termination

Upon termination of this Contract pursuant to Clauses Upon 2.6.1 or 2.6.2, the County Government shall make the following Termination payments to the Contractor

- a) Remuneration pursuant to Clause 6 for Works satisfactorily performed prior to the effective date of termination;
- b) Except in the case of termination pursuant to paragraphs (a) and (b) of Clause 2.6.1, reimbursement of any reasonable costs incident to the prompt and orderly termination of the Contract, including the cost of the return travel of the personnel and their eligible dependents.

3. OBLIGATIONS OF THE CONTRACTOR

3.1 General

The Contractor shall perform the Works and carry out his obligations with all due diligence, efficiency and economy in accordance with generally accepted professional techniques and practices and shall observe sound management practices, and employ appropriate advanced technology and safe methods. The Contractor shall always act, in respect of any matter relating to this Contract or to the Works, as faithful adviser to the County Government and shall at all times support and safeguard the County Government's legitimate interests in any dealing with Sub Contractor or third parties.

Items of Works described in the Bill of Quantities for which no rate or price has been entered in the Contract shall be considered as included in other rates and prices in the Contract and will not be paid for separately by the County Government

3.2 Responsibility of the Contractor

- a. The Contractor shall be solely responsible to arrange his materials (plant, equipment, tools, draw off pipes etc) to be delivered to the location of his work and to remove the same as directed by the County Government.
- b. The Contractor shall be fully responsible to have in place all necessary materials, equipment and supervision for the Works including paying all charges and expenses.
- c. The Contractor shall comply with all plans, drawing, specifications, site instructions and letters issued by the County Government. The Contractor shall establish a Method Statement for carrying out the Works. The Works cannot be started without approval of the County Government.
- d. Cleaning and arrangements of work area related to borehole construction work.
- e. Safety education for the laborers.

3.3 Conflict of Interest

3.3.1 Contractor not to Benefit from Commissions Discounts Etc

- (a) The remuneration of the Contractor pursuant to Clause 6 shall constitute the Contractor's sole remuneration in connection with this Contract or the Works and the Contractor shall not accept for his own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or to the Works or in the discharge of his obligations under the Contract and the Contractor shall use his best efforts to ensure that his personnel, any sub Contractor [s] and agents of either of them similarly shall not receive any such additional remuneration.
- (b) For a period of two years after the expiration of this Contract, the Contractor shall not engage and shall cause his personnel as well as his sub contractor[s] and his/their personnel not to engage in the activity of a purchaser (directly or indirectly) of the assets on which he advised the County Government on this Contract nor shall he engage in the activity of an adviser (directly or indirectly) of potential purchasers of such assets.
- (c) Where the Contractor as part of the Works has the responsibility of advising the County Government on the procurement of goods, works or services, the Contractor will comply with any applicable procurement guidelines and shall at all times exercise such responsibility in the best interest of the County Government. Any discounts or commissions obtained by the Contractor in the exercise of such procurement shall be for the account of the County Government

3.3.2 Contractor and Affiliates not to be otherwise interested in the Project

The Contractor agrees that, during the term of this Contract and after its Termination the Contractor and his affiliates, as well as any Sub Contractor and of his affiliates shall be disqualified from providing goods, works or services (other than the works and any continuation thereof) for any project resulting from or closely related to the works

3.3.3 Prohibition of Conflicting Activities

Neither the Contractor nor his sub contractor [s] nor their personnel shall engage, either directly or indirectly in any of the following activities:

- a) During the term of this Contract, any business or professional activities in the Republic of Kenya which would conflict with the activities assigned to them under this Contract; or
- b) After the termination of this Contract, such other activities as may be specified in the SC.

3.4 Confidentiality

The Contractor, his sub contractor t[s] and the personnel of either of them shall not, either during the term of this Contract disclose any proprietary or confidential information relating to the Project, the Works, this Contract or the County Government's business or operations without the prior written consent of the County Government

3.5 Defect Liability

All defects and faults in the Contractor's works shall be made good by the Contractor at his expense within the defects liability period of 6 months. At the end of the defects liability period, certification of works shall be made by a joint verification team comprising of the County Government's representative and the Contractor's representative

3.6 Insurance to be Taken Out by the Contractor

The Contractor (a) shall take out and maintain and shall cause any sub contractor [s] to take out and maintain, at his (or the sub contractor s', as the case may be) own cost but on terms and conditions approved by the County Government insurance against the risks and for the coverage, as shall be specified in the SC; and (b) at the County Government's request, shall provide evidence to the County Government showing that such insurance has been taken out and maintained and that the current premiums have been paid.

3.7 Contractor's Actions Requiring County Government's Prior Approval

The Service Provider shall obtain the County Government's prior approval in writing before taking any of the following actions;

- a) Entering into a subcontract for the performance of any part of the Works,
- b) Undertaking any additional works that may result in variation of total cost of the project.

3.8 Documents

All plans, drawings, specifications, designs, reports and prepared and submitted by the Contractor in relation to this Contract shall become and remain the property of the County Government. The Contractor shall, not later than upon termination or expiration of this Contract, deliver all such documents to the County Government together with a detailed inventory thereof. The Contractor may retain a copy of such documents and software. Neither Party shall use these documents for purposes unrelated to this Contract without the prior approval of the other Party.

4. CONTRACTOR'S PERSONNEL

4.1 Description of Personnel

The titles, agreed job descriptions, minimum qualifications and estimated periods of engagement in the carrying out of the Works of the Contractor's Key Personnel are described in Appendix B. The Key Personnel listed by title as well as by name in Appendix B are hereby approved by the County Government.

4.2 Labour Standards

The Contractor shall be responsible for making all arrangements for and shall bear all costs relating to recruitment, of its staff and labour. The Contractor shall further:-

- a) *Comply with the existing local labour laws, regulations and labour standards*
- b) *Formulate and enforce an adequate safety program with respect to all work under his contract, whether performed by the Contractor or subcontractor. The Contractor has assurance from the County Government of cooperation where the implementation of these safety measures requires joint cooperation.*

4.3 Removal and/or Replacement of Personnel

- a) Except as the County Government may otherwise agree, no changes shall be made in the Key Personnel. If for any reason beyond the reasonable control of the Service Provider, it becomes necessary to replace any of the Key Personnel, the Service Provider shall provide as a replacement a person of equivalent or better qualifications.
- b) If the County Government finds that any of the Personnel have;

- i. Committed serious misconduct or have been charged with having committed a criminal action, or
 - ii. The County Government has reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Contractor shall, at the County Government's written request specifying the grounds thereof, provide as a replacement a person with qualifications and experience acceptable to the County Government.
- c) The Contractor shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

5. OBLIGATIONS OF THE COUNTY GOVERNMENT

5.1 Assistance and Exemptions

The County Government shall use its best efforts to ensure that it provides the Contractor such assistance and exemptions as may be necessary for due Performance of this Contract.

5.2 Change in the Applicable Law

If after the date of this Contract, there is and change in the Laws of Kenya with respect to taxes and duties which increases or decreases the cost of the Works rendered by the Contractor, then the remuneration and reimbursable expenses otherwise payable to the Contractor under this Contract shall be increased or decreased accordingly by agreement between the Parties and corresponding adjustments shall be made to the amounts.

6 PAYMENTS TO THE CONTRACTOR

6.1 Completed Works Remuneration

The Contractor's total remuneration shall not exceed the Contract Price and shall be calculated per actual completed works as per the Bills of Quantity in the Tender Document.

6.2 Contract Price

- (a) The price payable in foreign currency is set forth in the SC.
- (b) The price payable in local currency is set forth in the SC.

6.3 Payment for Additional Services

For the purposes of determining the remuneration due for additional Works as may be agreed under Clause 2.4, a breakdown of the lump-sum price is provided in the Bills of Quantities.

6.4 Terms and Conditions of Payment

Payments will be made to the account of the Contractor and according to the payment schedule stated in the SC. Unless otherwise stated in the SC, the first payment shall be made against the provision by the Contractor of a bank guarantee in the form provided under the Contract for the payment shall be made after the conditions listed in the SC for such payment have been met and the Contractor has submitted an invoice to the County Government specifying the amount due same amount and shall be valid for the period stated in the SC.

6.5 Retention Money

A retention amounting to the percentage stipulated in the Special Conditions of Contract shall be made by the County Government in the first and following Interim Payment Certificates until the amount retained shall reach the "Limit of Retention Money" named in the Special Conditions of Contract.

Upon the issue of the Taking-Over Certificate , with respect to the whole of the works one half of the retention money shall become due and shall be paid to the Contractor when the County Government shall certify in writing that the last section of the whole works has been substantially completed.

Upon expiration of the Defects Liability Period for the works, the other half of the Retention Money shall be certified by the County Government for payment to the Contractor.

Provided also that if at such time, there remain to be executed by the Contractor any works, the County Government shall be entitled to withhold certification until completion of any such work or so much of the balance of the Retention money as shall in the opinion of the County Government, represents the cost of the remaining work to be executed.

6.6 Advance Payment

There will be no advance payment in this contract

7. SETTLEMENT OF DISPUTES

7.1 Amicable Settlement

The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.

7.2 Dispute Settlement

Any dispute between the Parties as to matters arising pursuant to this Contract that cannot be settled amicably within thirty (30) days after receipt by one Party of the other Party's request for such amicable settlement may be referred by either Party to the arbitration and final decision of a person to be agreed between the Parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed by the

Chairman of the Chartered Institute of Arbitrators, Kenya Branch, on the request of the applying party.

SECTION III SPECIAL CONDITIONS OF CONTRACT

Number of Amendments of and Supplements to clauses GC Clause in the General Conditions of Contract

1.4 The addresses are:

Employer:

County Government of Baringo
P. O. Box 53-30400, Kabarnet
Attention: County Secretary
Phone: +254
Facsimile: +254
Email:
Website:

Contractor:

.....
P. O. Box
Attention: Managing Director
Phone: +254 (0)
Facsimile: + 254 20
Email:
Website:

1.6 The Authorized Representatives are:

For the County Government: **County Secretary**
For the Contractor: **The Managing Director**

1.7 The Contractor shall be charged VAT and other Taxes with respect to all taxable Works.

2.1 The date on which this Contract shall come into effect is the date of contract signature by both parties.

2.2 The date for the commencement of Works is 2014.
Mobilization shall be 7 days after signing of Contract Agreement.

2.2.1 The expected date of completion of Works is 2014, whereupon the Contract shall expire on 2014 which is 180 Days After the end of the defect liability period

2.3 For additional works and variation orders the tendered rates shall apply and shall attached Bills of Quantities. Any variation Shall have to be discussed and mutually agreed by the two parties.

3.6 The Contractor shall be solely responsible for any losses or expenses not covered by the insurances. The Contractor shall provide the following insurance covers

- Contractors all risk
- Third Party Liability
- Workmen’s Compensation

6.1 Payment will not be subject to price escalation. The total project cost shall be **Kshs**..... {in words..... only} The amount payable shall include all taxes.

6.4 a) The accounts are:
Bank:
Bank Account Number:
Bank Branch:
Branch Code:
Bank Code:
Swift Code:

b) **Payment Terms**

- i. **90 %** upon completion of the Works and
- ii. **10% payment after defect liability period of 6 months**

6.5 **10%** of contract sum shall be retained by the client and released after expiry of **defect liability period of 6 months**.

6.6 ***Advance Payment***
There shall be no advance payment for the works.

-End-

