

Under the provision of Minimum Wages (Central) Rules, 1950, the contractor is bound to allow to the labours directly or indirectly employed in the works one day rest for 6 days continuous work and pay wages at the same rate as for duty. In the event of default, the Engineer-in-Charge shall have the right to deduct the sum or sums not paid on account of wages for weekly holidays to any labours and pay the same to the persons entitled thereto from any money due to the contractor by the Engineer-in-charge concerned.

In the case of Union Territory of Delhi, however as the all inclusive minimum daily wages fixed under Notification of the Delhi Administration No.F.12(162)MWO/DAB/43884-91,

dated 31.12.1979 as amended from time to time are inclusive of wages for the weekly day of rest, the question of extra payment for weekly holiday would not arise.

- e) The contractor shall comply with the provisions of the Payment of Wages Act, 1936, Minimum Wages Act, 1948, Employees Liability Act, 1938, Workmen's Compensation Act, 1923, Industrial Disputes Act, 1947, Maternity Benefits Act, 1961 and the Contract Labour (Regulation and Abolition) Act, 1970 or the modification thereof or any other laws relating thereto and the rules made there under from time to time.
- f) The contractor shall indemnify and keep indemnified the NDMC against payments to be made under and for the observance of the laws aforesaid and the Contractor's Labour Regulations without prejudice to his right to claim indemnity from his sub-contractors.
- g) The laws aforesaid shall be deemed to be a part of this contract and any breach thereof shall be deemed to be a breach of this contract.
- h) Whatever is the minimum wage for the time being, or if the wages payable is higher than such wage, such wage shall be paid by the contractor to the workmen directly without the intervention of Jamadar and that Jamadar shall not be entitled to deduct or recover any amount from the minimum wage payable to the workmen as and by way of commission or otherwise.
- I) The contractor shall ensure that no amount by way of commission or otherwise is deducted or recovered by the Jamadar from the wage of workmen.

CLAUSE 19 C

In respect of all labour directly or indirectly employed in the work for the performance of the contractor's part of this contract, the contractor shall at his own expense arrange for the safety provisions as per Safety Code framed from time to time and shall at his own expense provide for all facilities in connection therewith. In case the contractor fails to make arrangements and provide necessary facilities as aforesaid he shall be liable to pay a penalty of Rs. 200/- for each default and in addition the Engineer-in-charge shall be at liberty to make arrangements and provide facilities as aforesaid and recover the costs incurred in that behalf from the contractor.

CLAUSE 19 D

The contractor shall submit, by the 4th and 19th of every month, to the Engineer-in-charge a true statement showing in respect of the second half of the preceding month and the first half of the current month, respectively

- (1) the number of labourers employed by him on the work,
- (2) their working hours,
- (3) the wages paid to them,
- (4) the accidents that occurred during the said fortnight showing the circumstances under which they happened and extent of damage and injury caused by them, and
- (5) the number of female workers who have been allowed maternity benefit according to clause 19F and the amount paid to them

Failing which, the contractor shall be liable or pay to the NDMC a sum not exceeding Rs. 200/- for each default or materially incorrect statement. The decision of the Engineer-in-charge shall be final in deducting from any bill due to the contractor the amount levied as fine and be binding on the contractor.

CLAUSE 19 E

In respect of all labour directly or indirectly employed in the works for the performance of the contractor's part of this contract, the contractor shall comply with or cause to be complied with all the rules framed by the NDMC from time to time for the protection of health and sanitary arrangements for workers employed by the contractor.

CLAUSE 19 F

Leave and pay during leave shall be regulated as follows:

- a) Leave :**
 - (i) In case of delivery, maternity leave not exceeding 8 weeks, 4 weeks upto and including the day of delivery and 4 weeks following that day.
 - (ii) In case of miscarriage: - upto 3 weeks from the date of miscarriage.
- b) Pay :-**
 - (i) In case of delivery: - leave pay during maternity leave will be at the rate of woman's average daily earnings, calculated on the total wages earned on the days when full time work was done during a period of three months immediately preceding the date on which she gives notice that she expects to be confined or at the rate of Rupees one only per day whichever is greater.
 - (ii) In case of miscarriage :- leave pay at the rate of average daily earnings calculated on the total wages earned on the days when full time work was done during a period of 3 months immediately preceding the date of such miscarriage.
- c) Conditions for the grant of maternity leave: - No maternity leave benefit shall be admissible to a woman unless she has been employed for a total period of not less than 6 months immediately preceding the date on which she proceeds on leave.
- d) The contractor shall maintain a register of maternity benefit in the following form and the same shall be kept at the place of work.

CLAUSE 19 G

In the event of the contractor committing a default or breach of any of the provisions of the Contractor's Labour Regulations and Model Rules for the protection of health and sanitary arrangements for the works as amended from time to time or furnishing any information or submitting or filling any statement under the provisions of the above regulations and rules which is materially incorrect, he shall, without prejudice to any other liability, pay to the NDMC a sum not exceeding Rs. 200/- for every default, breach or furnishing, making, submitting, filing such materially incorrect statements and in the event of the contractor defaulting continuously in this respect, the penalty may be enhanced to Rs. 200/- per day for each day of default subject to a maximum of 5percent of the estimated cost of the work put to tender. The decision of the Engineer-in-charge shall be final and binding on the parties.

Should it appear to the Engineer-in-charge that contractor is not properly observing and complying with the provisions of the Contractor's Labour Regulations and Model Rules for the protection of health and sanitary arrangements for work people employed by the contractor (hereinafter referred to as "the said rules") and the provisions of the Contract Labour (Regulation and Abolition Act, 1970 and the Contract Labour (R and A) Central Rules, 1971, the Engineer-in-charge shall have power to give notice in writing to the contractor requiring that the said rules be complied with and the amenities prescribed therein be provided to the workpeople within a reasonable time to be specified in the notice. If the contractor shall fail within the period specified in the notice to comply with and observe the said rules and to provide the amenities to the work people as aforesaid, The Engineer-in-charge shall have the power to provide the amenities herein before mentioned at the cost of the contractor.

The contractor shall erect, make and maintain at his own expense and according to approved standards all necessary tents and sanitary arrangements required for his work-people on the site in connection with the execution of the works, and if the same shall not have been erected or constructed, according to approved standards, the Engineer-in-charge shall have power to give notice in writing to the contractor requiring that the said tents and sanitary arrangements be remodeled and/or reconstructed according to approved standards, and if the contractor shall fail to remodel or reconstruct such tents and sanitary arrangements according to approved standards within the period specified in the notice, the Engineer-in-charge shall have the power to remodel and reconstruct such tents and sanitary arrangements according to approved standards at the cost of contractor.

CLAUSE 19 H (Deleted)

The contractor shall at his own cost provide his labour with sufficient number of huts (hereinafter referred to as the camp) of the following specifications on a suitable plot of land to be approved by the Engineer-in-charge.

- (i) (a) The minimum height of each hut at the eaves level shall be 2.10m and floor area to be provided will be at the rate of 2.70 sq.m. for each member of the worker's family staying with the labourer.
- (b) The contractor shall in addition construct suitable cooking places having a minimum area of 1.80 m.
- (c) The contractor shall also construct temporary latrines and urinals for the use of the labourers each on the scale of not of not less than four per each one hundred of the total strength, separate, separate latrines and urinals being provided for women
- (d) The contractor shall construct sufficient number of bathing and washing places, one unit for every 25 persons residing in the camp. These bathing and washing places shall be suitable screened.
- (ii) (a) All the huts shall have walls of sun-dried or burnt bricks laid in mud mortar or other suitable local materials as may be approved by the Engineer-in-charge. In case of sun-dried bricks, the walls should be plastered with mud gobi on both sides. The floor may be katcha but plastered with mud gobi and shall be at least 15 cm. above the surrounding ground. The roofs shall be laid with thatch or any other materials as may be approved by the Engineer-in-charge and the contractor shall ensure that throughout the period of their occupation the roofs remain water tight.
- (b) The contractor shall provide each hut with proper ventilation.
- (c) All doors, windows, and ventilators shall be provided with suitable leaves for security purposes.
- (d) There shall be kept an open space of at least 7.20 m between the rows of huts which may be reduced to 6.0 m according to the availability of site with the approval of the Engineer-in-charge. Back to back construction will be allowed.

(iii) Water Supply :- The contractor shall provide adequate supply of water for the use of labourers. The provisions shall not be less than 10 litres of pure and wholesome water per head day for drinking purposes and 15 litres of clean water per head per day for bathing and washing purpose. Where piped water supply is available, supply shall be at stand posts and where the supply is from wells or river, tanks which may be of metal or masonry shall be provided. The contractor shall also at his own cost make arrangements for laying pipe lines for water supply to his labour camp from the existing main wherever available, and shall pay all fees and charges therefore.

(iv) The site selected for the camp shall be high ground, removed from jungle.

(v) Disposal of excreta: - The contractor shall make necessary arrangements for the disposal of excreta from the latrines by trenching or incineration which shall be according to the requirements laid down by the Local Health Authorities. If trenching or incineration is not allowed, the contractor shall make arrangements for the removal of the excreta through the Municipal Authority and inform it about the number of labourers employed so that arrangements may be made by such Authority for the removal of the excreta. All charges on this account shall be borne by the contractor and paid direct by him to the Authority. The contractor shall provide one sweeper for every eight seats in case of dry system.

(vi) Drainage :- The contractor shall provide efficient arrangements for draining away sullage water so as to keep the camp neat and tidy.

(vii) The contractor shall make necessary arrangements for keeping the camp area sufficiently lighted to avoid accidents to the workers.

(viii) Sanitation :- The contractor shall make arrangements for conservance and sanitation in the labour camps according to the rules of the Local Public Health and Medical Authorities.

CLAUSE 19 I

The Engineer-in-charge may require the contractor to dismiss or remove from the site of the work any person or persons in the contractor's employ upon the work who may be incompetent or misconduct himself and the contractor shall forthwith comply with such requirements.

CLAUSE 19 J

It shall be the responsibility of the contractor to see that building under construction is not occupied by any body unauthorized during construction, and is handed over to the Engineer-in-charge with vacant possession of complete building. If such building though completed, is occupied illegally, then the Engineer-in-charge shall have the option to refuse to accept the said building/buildings in that position, any delay in acceptance on this account will be by the treated as delay in completion and for

such delay a levy upto 5% of the tendered value of work may be imposed by the Chief Engineer whose decision shall be final both with regard to the justification and quantum and be binding on the contractor.

However, the Chief Engineer may require the contractor through a notice to remove the illegal occupation any time on or before construction and delivery.

CLAUSE 19K

Employment of skilled/semi skilled workers

The contractor shall, at all stages of work, deploy skilled/semi skilled tradesmen who are qualified and possess certificate in particular trade from NDMC/CPWD Training Institute/Industrial Training, Institute/National Institute of construction Management and Research (NICMAR)/ National Academy of Construction, CIDC, **PMKVY (Pradhan Mantri Kaushal Vikas Yojana)** or any similar reputed and recognized Institute managed/ certified by State/Central Government the number of such qualified tradesmen shall **have skill card and skill certificate features a Quick response Code(QR Code)** skilled/semi skilled workers required in each trade at any stage of work. The contractor shall submit number of men days required in respect of each trade, its scheduling and the list of qualified tradesmen along with requisite certificate from recognized Institute to Engineer in charge for approval. Notwithstanding such approval, if the tradesmen are found to have inadequate skill to execute the work of respective trade, the contractor shall substitute such tradesmen within two days of written notice from Engineer-in-Charge. Failure on the part of contractor to obtain approval of Engineer-in-charge or failure to deploy qualified tradesmen will attract a compensation to be paid by contractor at the rate of Rs. 100 per such tradesman per day. Decision of Engineer –in- charge as to whether particular tradesman possesses requisite skill and amount of compensation in case of default shall be final and binding.

Clause 19L ESI and EPF contributions **on the part of employer** in respect of this contract shall be payable by the contractor. **The contributions on the part of employer paid by the contractor shall be reimbursed by the Engineer-in-Charge to the contractor on actual basis. The applicable and eligible amount of EPF & ESI shall be reimburse preferably within 7 days but not later than 30 days of submission of documentary proof of payment provided same are in order.**

CLAUSE 20

Minimum Wages Act to be complied with

The contractor shall comply with all the provisions of the Minimum Wages Act., 1948, Contract Labour(Regulation and Abolition) ACT, 1970 amended from time to time and rules framed there under and other Labour laws affecting contract labour that may be brought into force from time to time.

CLAUSE 21

Work not be sublet. Action in case of insolvency.

The contract shall not be assigned or sublet without the written approval of the Engineer-in-charge. And if the contractor shall assign or sublet this contract, or attempt so to do, or become insolvent or commence any insolvency proceedings or make any composition with his creditors or attempt to do so, or bribe, gratuity, gift, loan, perquisite, reward or advantage pecuniary or otherwise, shall either directly or indirectly, be given, promised or offered by the contractor or any of his servants or agents or agents to any public officer or person in the employ of the NDMC in any way relating to his office or employment, or if any such officer or person shall become in any way directly or indirectly interested in the contract, the Engineer-in-charge on behalf of the NDMC shall have power to adopt any of the courses specified in Clause 3 in best suited to the interest of the NDMC and in the event of any such courses being adopted the consequences specified in the said Clause 3 shall ensue.

CLAUSE 22

All sums payable by way of compensation under any of these conditions shall be considered as reasonable compensation to be applied to the use of the NDMC without reference to the actual loss or damage sustained, and whether or not any damage shall have been sustained.

CLAUSE 23

Changes in firm's constitution to be intimated.

Where the contractor is a partnership firm, the previous approval in writing of the Engineer-in-charge shall be obtained before any change is made in the constitution of the firm. Where the contractor is an individual or a Hindu undivided family business concern such approval as aforesaid shall likewise be obtained before the contractor enters into any partnership agreement where under the partnership firm would have the right to carry out the work hereby undertaken by the contractor. If previous approval as aforesaid is not obtained, the contract shall be deemed to have been assigned in contravention of Clause 21 hereof and the same action may be taken, and the same consequences shall ensue as provided in the said Clause 21.

CLAUSE 24

Work to be under direction of Engineer-in-charge

All works to be executed under the contract shall be executed under the direction and subject to the approval in all respects of the Engineer-in-charge who shall be entitled to direct at what point or points and in what manner they are to be commenced, and from time to time carried on.

CLAUSE 25

Settlement of disputed & Arbitration

Except where otherwise provided in the contract, all questions and disputes relating to the meaning of the specifications, design, drawings and instructions here-in before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the contract, designs, drawings, specifications, estimates, instructions, orders or these conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the cancellation, termination, completion or abandonment thereof shall be dealt with as mentioned hereinafter:

(i) If the contractor considers any work demanded of him to be outside the requirements of the contract, or disputes any drawings, record or decision given in writing by the Engineer-in-Charge or if the Engineer in Charge considers any act or decision of the contractor on any matter in connection with or arising out of the contract or carrying out of the work, to be unacceptable and is disputed, such party shall promptly within 15 days of the arising of the disputes request the Chairman NDMC who shall refer the disputes to Dispute Redressal Committee (DRC) within 15 days along with a list of disputes with amounts claimed if any in respect of each such dispute. The Dispute Redressal Committee (DRC) shall give the opposing party two weeks for a written response, and, give its decision within a period of 60 days extendable by 30 days by consent of both the parties from the receipt of reference from CE. The constitution of Dispute Redressal Committee (DRC) shall be as indicated in Schedule 'F'. Provided that no party shall be represented before the Dispute Redressal Committee by an advocate/legal counsel etc.

The DRC will submit its decision to the concern Chairman NDMC for acceptance. Chairman in a time limit of 30 days from the receipt of the decision of Dispute Redressal Committee (DRC), will convey acceptance or otherwise on the said decision. If the DRC fails to give its decisions within aforesaid periods or the Chairman NDMC fails to give his decision in the aforesaid time limit or any other party is dissatisfied with the decision of DRC/Chairman NDMC then either party may within a period of 30 days from the receipt of the decision of DRC/Chairman or expiry of aforesaid time limits available to Chairman NDMC may give notice to the Chairman for appointment of arbitrator on prescribed Performa as per appendix XVII under intimation to the other party.

It is a term of contract that each party invoking arbitration must exhaust the aforesaid mechanism of settlement of claims/disputes prior to invoking arbitration.

It is a term of this contract that the party invoking arbitration must exhaust the aforesaid mechanism of settlement of claims/disputes prior to invoking arbitrations.

The Chairman NDMC shall in such case appoint the sole arbitrator or one of the three arbitrators as the case may be within 30 days of receipt of such a request and refer such dispute to arbitration. Wherever the Arbitral Tribunal consists of three Arbitrators, the Contactor shall appoint one Arbitrator

with in 30 days of making request for arbitration or of receipt of request by Division In charge to Chairman, NDMC for appointment of Arbitrator, as the case may be, and two appointed Arbitrators shall appoint the third arbitrator who shall act as the Presiding Arbitrator. In the even

- a. A party fails to appoint the second Arbitrator, or
- b. B. the two appointed Arbitrators fail to appoint the Presiding Arbitrator, then

The Chairman, NDMC shall appoint the second or Presiding Arbitrator as the case may be.

Disputes or difference shall be referred for adjudication through arbitration to a sole arbitrator where Tendered amount is Rs. 100 Crore or less. Where Tendered Value is more than Rs. 100 Crore, Tribunal shall consist of three Arbitrators as above. The requirements of the Arbitration and Conciliation Act, 1996 (26 of 1996) and any further statutory modifications or re-enactment thereof and the rules made there under and for the time being in force shall be applicable.

It is also a term of this contract that any member of the Arbitration Tribunal shall be a Graduate Engineer with experience in handling public works engineering contracts at a level not lower than Chief Engineer (Joint Secretary level of Government of India). This shall be treated as a mandatory qualification to be appointed as arbitrator.

Parties, before or at the time of appointment of Arbitral Tribunal may agree in writing for fast track arbitration as per the Arbitration and Conciliation Act, 1996 (26 of 1996) as amended in 2015.

Subject to provision in the Arbitration and Conciliation Act, 1996 (26 of 1996) as amended in 2015 whereby the counter claims if any can be directly filed before the arbitrator without any requirement of reference by the appointing authority, the arbitrator shall adjudicate on only such disputes as are referred to him by the appointing authority and give separate award against each dispute and claim referred to him and in all cases where the total amount of the claims by any party exceeds Rs. 1,00,000/-, the arbitrator shall give reasons for the award.

It is also a term of the contract that if any fees are payable to the arbitrator, these shall be approved by Chairman, NDMC OEM issued vide No. 02/2006SE(TLC)/CSQ/137 dated 19/11/2019 (or it latest amendment). This fee shall be shared equally by parties. The place of arbitration shall be as mentioned in Schedule F. In case there is no mention of place of arbitration, the arbitrator tribunal shall determine the place of arbitration. The fee shall be shared equally by parties.

The venue of the Arbitration shall be such place as may be fixed by the Arbitral Tribunal in consultation with both the parties. Failing any such agreement, then the Arbitral Tribunal shall decide the venue.

CLAUSE 26

Contractor to indemnify the NDMC against Patent Rights

The contractor shall fully indemnify and keep and indemnified the N.D.M.C against any action, claim or proceeding relating to infringement or use of any patent or design or any alleged patent or design rights and shall pay any royalties, which may payable in respect of any article or part thereof included in the contract. In the event of any claims made under or action brought against the NDMC in respect of any such matters as aforesaid, the contract shall be immediately notified thereof and the contractor shall be at liberty, at his own expense, to settle any dispute or to conduct any litigation that may arise there from; provided that the contractor shall be liable to indemnify the N.D.M.C, if the infringement of the patent or design or any alleged patent or design right is the direct result of an order passed by the Engineer-in-charge in this behalf.

CLAUSE 27

Lump sum provisions in tender.

When the estimate on which a tender is made includes lump sum in respect of parts of the work, the contractors shall be entitled to payment in respect of the items of work involved or the part of the work in question at the same rates, as are payable under this contract for such items, or if the part of the work in question is not, in the opinion of the Engineer-in-charge capable of measurement, the Engineer-

in-charge may at his discretion pay the lump sum amount entered in the estimate, and the certificate in writing of the Engineer-in-charge shall be final and conclusive against the contractor with regard to any sum payable to him under the provisions of the clause.

CLAUSE 28

Action where no Specifications are specified.

In the case of any class of work for which there is no such specifications as referred to in Clause 11, such work shall be carried out in accordance with the Bureau of Indian Standards Specifications. In case there are no such specifications in Bureau of Indian Standards, the work shall be carried out as per manufacturer's specifications. In case there are no such specifications as required above, the work shall be carried out in all respects in accordance with the instructions and requirements of the Engineer-in-charge.

CLAUSE 29

With holding and lien in respect of sums de from contractor.

Whenever any claim or claims for payment of a sum of money arises out of or under the contract or against the contractor, the Engineer-in-charge or the NDMC shall be entitled to withhold and also have a lien to retain such sum or sums in whole or in part from the security, if any deposited by the contractor and for the purpose aforesaid, the Engineer-in-charge or the N.D.M.C, shall be entitled to withhold the security deposit, if any, furnished as the case may be and also have a lien over the same pending finalization or adjudication of any such claim. In the event of the security being insufficient to cover the claimed amount or amounts or if no security has been taken from the contractor, the Engineer-in-charge or the N.D.M.C shall be entitled to withhold and have a lien to retain to the extent of such claimed amount or amounts referred to above, from any sum or sums found payable or which may at any time thereafter become payable to the contractor under the same contract or any other contract with the Engineer-in-charge or the N.D.M.C. or any contracting person through the Engineerin- charge pending finalization or adjudication of any such claim.

It is an agreed term of the contract that the sum of money or moneys so withheld or retained under the lien referred to above by the Engineer-in-charge or N.D.M.C will be kept withheld or retained as such by the Engineer-in-charge or N.D.M.C till the claim arising out of or under the contract is determined by the arbitrator(if the contract is governed by the arbitration clause) or by the competent court, as the case may be and that the contractor will have no claim for interest or damages whatsoever on any account in respect of such withholding or retention under the lien referred to above and duly notified as such to the contractor. For the purpose of this clause, where the contractor is a partnership form or a limited company, the Engineer-in-charge or the N.D.M.C shall be entitled to withhold and also have a lien to retain towards such claimed amount or amounts in whole or in part from any sum found payable to any partner/limited company as the case may be, whether in his individual capacity or otherwise.

The N.D.M.C shall have the right to cause an audit and technical examination of the works and final bill of the contractor including all supporting vouchers, abstract etc., to be made after payment of the final bill and if as a result of such audit and technical examination any sum is found to have been overpaid in respect of any work done by the contractor under the contract or any work claimed to have been done by him under the contract and found not to have been executed, the contractor shall be liable to refund the amount of overpayment and it shall be lawful for the N.D.M.C to recover the same from him in the manner prescribed in sub-clause (1) of this clause or in any other manner legally permissible; and if it is found that the contractor was paid less than what was due to him under the contract in respect of any work executed by him under it, the amount of such under payment shall be duly paid by the N.D.M.C to the contractor, without any interest thereon whatsoever.

CLAUSE 29 A

Lien in respect of claims in other contracts

Any sum of money due and payable to the contractor (including the security deposit returnable to him) under the contract may be withheld or retained by way of lien by the Engineer-in-charge or the NDMC or any other contracting person or persons through Engineer-in-charge against any claim of the

Engineer-in-charge or NDMC or such other person or persons in respect of payment of a sum of money arising out of or under or any other contract made by the contractor with Engineer-in-charge of the NDMC or with such other person or persons.

It is agreed term of the contract that the sum of money so withheld or retained under this clause by the Engineer-in-charge or the N.D.M.C will be kept withheld or retained as such by the Engineer-in-charge or the NDMC or till his claim arising out of the same contract or any other contract is either mutually settled or determined by the arbitration clause or by the competent court, as the case may be, and that the contractor shall have no claim for interest or damages whatsoever on this account or on any other ground in respect of any sum of money withheld or retained under this clause and duly notified as such to the contractor.

CLAUSE 30 (Deleted)

Employment of coal mining or controlled area labour not permissible

~~—The contractor shall not employ coal mining or controlled area labour falling under any category whatsoever on or in connection with the work or recruit labour from area within a radius of 32 km (20 miles) of the controlled area. Subject as above the contractor shall employ imported labour only i.e., deposit imported labour or labour imported by contractors from area, from which import is permitted.~~

~~—Where ceiling price for imported labour has been fixed by State or Regional Labour Committee not more than that ceiling price shall be paid to the labour by the contractor.~~

~~—The contractor shall immediately remove any labourer who may be pointed out by the Engineer in charge being a coal mining or controlled area labourer. Failure to do so shall render the contractor liable to pay to NDMC a sum calculated at the rate of Rs.10/- per day per labourer. The certificate of the Engineer in charge about the number of coal mining or controlled area labourer and the number of days for which they worked shall be final and binding upon all parties to this contract.~~

~~—It is declared and agreed between the parties that the aforesaid stipulation in this clause is one in which the public are interested within the meaning of the exception in Section 74 of Indian Contract Act, 1872.~~

~~—Explanation: Controlled Area means the following areas:~~

~~Districts of Dhanbad, Hazaribagh, Jamtara a Sub Division under Santhal Pargana Commissionery, Districts of Bankuara, Birbhum, Burdwan, District of Bilaspur.~~

~~—Any other area which may be declared a Controlled Area by or with the approval of the Central Government.~~

CLAUSE 31

Unfiltered water supply

This will be subject to the following conditions regarding water supply:-

- (i) That the water used by the contractor shall be fit for construction purposes to the satisfaction of the Engineer-in-charge
- (ii) The Engineer-in-charge shall make alternative arrangements for supply of water at the risk and cost of contractor if the arrangements made by the contractor for procurement of water are in the opinion of the Engineer-in-charge unsatisfactory.

CLAUSE 32

Alternate water arrangements

- (i) Where there is no piped water supply arrangement and the water is taken by the contractor from the wells or hand pumps constructed by the NDMC no charge shall be recovered from the contractor on that account. The contractor shall, however, draw water at such hours of the day that it does not interfere with the normal use for which the hand pumps and wells are intended. He will also be responsible for all damages and abnormal repairs arising out of his use, the cost of which shall be recoverable from him. The Engineer-in-charge shall be the final authority to determine the cost recoverable from the contractor on this account and his decision shall be binding on the contractor.

- (ii) The contractor shall be allowed to construct temporary wells in the NDMC land for taking water for construction purposes only after he has got permission of the Engineer-in-charge in writing. No charges shall be recovered from the contractor on this account, but the contractor shall be required to provide necessary safety arrangements to avoid any accidents or damage to adjacent buildings, roads and service lines. He shall be responsible for any accidents or damage caused due to construction and subsequent maintenance of the wells and shall restore the ground to its original conditions after the wells are dismantled on completion of the work.

CLAUSE 33

Return of surplus materials

Notwithstanding anything contained to the contrary in this contract, where any materials for the execution of the contract are procured with the assistance of the NDMC either by issue from the NDMC stores or purchase made under orders or permits or licences issued by the NDMC or Govt. the contractor shall hold the said materials economically and solely for the purpose of the contract and not dispose of them without the written permission of the NDMC and return, if required by the Engineer-in-charge, all surplus or serviceable materials that may be left with him after the completion of the contract or at its termination for any reason whatsoever on being paid or credited such price as the Engineer-in-charge shall determine having due regard to the conditions of the materials. The price allowed to the contractor, however, shall not exceed the amount charged to him excluding the element of storage charges. The decision of the Engineer-in-charge shall be final and conclusive. In the event of breach of the aforesaid condition, the contractor shall in addition to throwing himself open to action for contravention of the terms of the license or permit and/or for criminal breach of trust, be liable to the NDMC for all moneys, advantages or profits resulting or which in the usual course would have resulted to him by reason of such breach.

CLAUSE 34

Hire of Plant & Machinery

- i. The contractor shall arrange at his own expense all tools, plant, machinery and equipment (hereinafter referred to as T&P) required for execution of the work except for the Plant & Machinery listed in Schedule 'C' and stipulated for issue to the contractor. If the contractor requires any item of T&P on hire from the T&P available with the NDMC over and above the T&P stipulated for issue, the NDMC will, if such item is available, hire it to the contractor at rates to be agreed upon between him and the Engineer-in-charge. In such a case, all the conditions hereunder for issue of T&P shall also be applicable to such T&P as is agreed to be issued.
- ii. The Plant and Machinery when supplied on hire charges shown in Schedule 'C' shall be made over and taken back at the departmental equipment yard/shed shown in Schedule 'C' and the contractor shall bear the cost of carriage from the place of issue to the site of work and back.
- iii. The contractor shall be responsible to return the plant and machinery with condition in which it was handed over to him, and he shall be responsible for all damage caused to the said plant and machinery at the site of work or elsewhere in operation and otherwise during transit including damage to or loss of plant and for all losses due to his failure to return the same soon after the completion of the work for which it was issued. The Divisional Engineer shall be the sole judge to determine the liability of the contractor and its extent in this regard and his decision shall be final and binding on the contractor.
- iv. The plant and machinery as stipulated above will be issued as and when available and if required by the contractor. The contractor shall arrange his programme of work according to the availability of the plant and machinery and no claim, whatsoever, will be entertained from him for any delay in supply by the Department.
- v. The hire charges shall be recovered at the prescribed rates from and inclusive of the date the plant and machinery made over upto and inclusive of the date of the return in good order even though the same may not have been working for any cause except major breakdown due to no fault of the contractor or faulty use requiring more than three working days continuously (excluding intervening holidays and Sundays) for bringing the plant in order. The contractor shall immediately intimate in writing to the Engineer-in-charge when any plant or machinery

gets out of order requiring major repairs as aforesaid. The Engineer-in-Charge shall record the date and time of receipt of such intimation in the log sheet of the plant or machinery. Based on this if the breakdown before lunch period or major breakdown will be computed considering half a day's breakdown on the day of complaint. If the breakdown occurs in the post lunch period of major breakdown will be computed starting from the next working day. In case of any dispute under this clause, the decision of the Superintending Engineer shall be final and binding on the contractor.

- vi. The hire charges shown above are for each day of 8 hours (inclusive of the one hour lunch break) or part thereof.
- vii. Hire charges will include service of operating staff as required and also supply of lubricating oil and stores for cleaning purposes. Power fuel of approved type, firewood, kerosene oil etc. for running the plant and machinery and also the full time *chowkidar* for guarding the plant and machinery against any loss or damage shall be arranged by the contractor who shall be fully responsible for the safeguard and security of plant and machinery. The contractor shall on or before the supply of plant and machinery sign an agreement indemnifying the Department against any loss or damage caused to the plant and machinery either during transit or at site of work.
- viii. Ordinarily, no plant and machinery shall work for more than 8 hours a day inclusive of one hour lunch break. In case of an urgent work however, the Engineer-in-charge may, at his discretion, allow the plant and machinery to be worked for more than normal period of 8 hours a day. In that case, the hourly hire charges for overtime to be borne by the contractor shall be 50% more than the normal proportionate hourly charges ($\frac{1}{8}^{\text{th}}$ of the daily charges) subject to a minimum of half day's normal charges on any particular day. For working out hire charges for over time, a period of half an hour and above will be charged as one hour and a period of less than half an hour will be ignored.
- ix. The contractor shall release the plant and machinery every seventh day for periodical servicing and/or wash out which may take about three to four hours or more. Hire charges for full day shall be recovered from the contractor for the day of servicing/ wash out irrespective of the period employed in servicing.
- x. The plant and machinery once issued to the contractor shall not be returned by him on account of lack of arrangements of labour and materials, etc. on his part, the same will be returned only when they are required for major repairs or when in the opinion of the Engineer-in-charge, the work or a portion of work for which the same was issued is completed.
- xi. Log Book for recording the hours of daily work for each of the plant and machinery supplied to the contractor will be maintained by the Department and will be countersigned by the contractor or his authorized agent daily. In case the contractor contests the correctness of the entries and/or fails to sign the Log Book, the decision of the Engineer-in-charge shall be final and binding on him. Hire charges will be calculated according to the entries in the Log Book and will be binding on the contractor.
- xii. Recovery on account of hire charges for road rollers shall be made for the minimum number of days worked out on the assumption that a roller can consolidate per day and maximum quantity of materials or area surfacing as noted against each in the statement given herein after.
- xiii. In the case of concrete mixers, the contractors shall arrange to get the hopper cleaned and the drum washed at the close of the work each day or each occasion.
- xiv. In case rollers for consolidation are employed by the contractor himself, log book for such rollers shall be maintained in the same manner as is done in case of departmental rollers, maximum quantity of any items to be consolidated for each roller-day shall also be same as in Annexure to Clause 34(xii). For less use of rollers, recovery for the less roller days shall be made at the stipulated issue rate.
- xv. The contractor will be exempted from levy of any hire charges for the number of days he is called upon in writing by the Engineer-in-charge to suspend execution of the work, provided Government plant & machinery in question have, in fact, remained idle with the contractor because of the suspension.
- xvi. In the event of the contractor not requiring any item of plant and machinery issued by NDMC though not stipulated for issue in Schedule 'C' any time after taking delivery at the place of issue, he may return it after two days written notice or at any time without notice if he agrees to pay hire charges for two additional days without, in any way, affecting the right of the Engineer-in-charge to use the said plant and machinery during the said period of two

- days as he likes including hiring out to a third party.
- xvii. The N.D.M.C. give no guarantee in respect of output of its T&P hired to the contractor and no reduction in rates or any compensation shall be allowed on the ground that output or performance of N.D.M.C.'s T&P was not to the contractor's expectations.

CLAUSE 35 (Deleted)

Conditions relating to use of asphaltic materials

- (i) ~~The contractor undertakes to make arrangements for the supervision of the work by the firm supplying the tar or bitumen used.~~
- (ii) ~~The contractor shall collect the total quantity of tar or bitumen required for the work as per standard formula, before the asphaltic work is started and shall hypothecate it to the Engineer-in-charge. If any bitumen or tar remains unused on completion of the work on account of lesser use of materials in actual execution for reasons other than authorized changes of specification and abandonment of portion of work, a corresponding deduction equivalent to the cost of unused materials as determined by the Engineer-in-charge shall be made and the material returned to the contractor. Although the materials are hypothecated to the N.D.M.C., the contractor undertakes the responsibility for their proper watch, safe custody and protection against all risks. The materials shall not be removed from site of work without the consent of the Engineer-in-charge in writing.~~
- (iii) ~~The contractor shall be responsible for rectifying defects noticed within a year from the date of completion of the work and the portion of the security deposit relating to asphaltic work shall be refunded after the expiry of this period.~~

Clause 36

Employment of Technical Staff and employees

Contractors Superintendence Supervision, Technical Staff & Employee

- (i) The contractor shall provide all necessary superintendence during execution of the work and all along thereafter as may be necessary for proper fulfilling of the obligations under the contract.
The contractor shall immediately after receiving letter of acceptance of the tender and before commencement of the work, intimate in writing to the Engineer-in-charge, the name(s), qualifications, experience, age, address(s) and other particulars along with certificates, of the principal technical representative to be in charge of the work and other technical representative(s) who will be supervising the work. Minimum requirement of such technical representative(s) and their qualifications and experience shall not be lower than specified in Schedule 'F'. The Engineer-in-charge shall within 3 days of receipt of such communication intimate in writing his approval or otherwise of such a representative(s) to the contractor. Any such approval may at any time be withdrawn and in case of such withdrawal, the contractor shall appoint another such representative(s) according to the provisions of this clause. Decision of the tender accepting authority shall be final and binding on the contractor in this respect. Such a principal technical representative and other technical representative(s) shall be appointed by the contractor soon after receipt of the approval from Engineer-in-charge and shall be available at site before start of work.

All the provisions applicable to the principal technical representative under the Clause will also be applicable to other technical representative(s). The principal technical representative and other technical representative(s) shall be present at the site of work for supervision at all times when any construction activity is in progress and also present himself/themselves, as required, to the Engineer-in-charge and / or his designated representative to take instructions. Instructions given to the principal technical representative or other technical representative(s) shall be deemed to have the same force as if these have been given to the contractor. The principal technical representative and other technical representative(s) shall be actually available at site fully during all stages of execution of work, during recording/checking/test checking of measurements of works and whenever so required by the Engineer-in-Charge and shall also note down instructions conveyed by the Engineer-in-charge or his designated representative(s) in the site order book.

and shall affix his/their signature in token of noting down the instructions and in token of acceptance of measurements/ checked measurements/test checked measurements. The representative(s) shall not look after any other work. Substitutes, duly approved by Engineer-in-charge of the work in similar manner as aforesaid shall be provided in event of absence of any of the representative(s) by more than two days.

If the Engineer-in-charge, whose decision in this respect is final and binding on the contractor, is convinced that no such technical representative(s) is/are effectively appointed or is/are effectively attending or fulfilling the provision of this clause, a recovery (non-refundable) shall be effected from the contractor as specified in Schedule 'F' and the decision of the Engineer-in-charge as recorded in the site order book and measurement recorded checked/test checked in Measurement Books shall be final and binding on the contractor. Further if the contractor fails to appoint suitable technical Principal technical representative and/or other technical representative(s) and if such appointed persons are not effectively present or are absent by more than two days without duly approved substitute or do not discharge their responsibilities satisfactorily, the Engineer-in-charge shall have full powers to suspend the execution of the work until such date as suitable other technical representative(s) is/are appointed and the contractor shall be held responsible for the delay so caused to the work. The contractor shall submit a certificate of employment of the technical representative(s) **(in the form of copy of Form-16 or CPF deduction issued to the Engineers employed by him)** along with every on account bill/ final bill and shall produce evidence if at any time so required by the Engineer-in-charge.

- (ii) The contractor shall provide and employ on the site only such technical assistants as are skilled and experienced in their respective fields and such foremen and supervisory staff as are competent to give proper supervision to the work.

The contractor shall provide and employ skilled, semiskilled and unskilled labour as is necessary for proper and timely execution of the work.

The Engineer-in-charge shall be at liberty to object to and require the contractor to remove from the works any person who in his opinion misconducts himself, or is incompetent or negligent in the performance of his duties or whose employment is otherwise considered by the Engineer-in-charge to be undesirable. Such person shall not be employed again at works site without the written permission of the Engineer-in-charge and the persons so removed shall be replaced as soon as possible by competent substitutes.

CLAUSE 37

Levy/Taxes payable by Contractor

- (i) GST or any other tax or Cess in respect of this contract shall be payable by the contractor and NDMC shall not entertain any claim whatsoever in this respect.
- (ii) The contractor shall deposit royalty and obtain necessary permit for supply of the red bajri, stone, kankar, etc. from local authorities.
- (iii) If pursuant to or under any law, notification or order any royalty, cess or the like becomes payable by the NDMC and does not any time become payable by the contractor to the State Government, Local authorities in respect of any material used by the contractor in the works, then in such a case, it shall be lawful to the NDMC and it will have the right and be entitled to recover the amount paid in the circumstances as aforesaid from dues of the contractor.
- (iv) ESI and EPF contributions on the part of the employer in respect of this contract shall be payable by the contractor **The contributions on the part of employer paid by the contractor shall be reimbursed by the Engineer-in-Charge to the contractor on actual basis. The applicable and eligible amount of EPF & ESI shall be reimburse preferably within 7 days but not later than 30 days of submission of documentary proof of payment provided same are in order.**

CLAUSE 38**Conditions for reimbursement of levy/taxes if levied after receipt of tenders**

- (i) All tendered rates shall be inclusive of all taxes and levies payable under respective statutes. However, if any further tax or levy or cess is imposed by Statute, after the last stipulated date for the receipt of tender including extensions if any and the contractor thereupon necessarily and properly pays such taxes/levies/cess, the contractor shall be reimbursement the amount so paid, provided such payments, if any, is not, in the opinion of the Additional Chief Engineer/Superintending engineer (whose decision shall be final and binding on the contractor) attributable to delay in execution of work within the control of the contractor.
- (ii) The contractor shall keep necessary books of accounts and other documents for the purpose of this condition as may be necessary and shall allow inspection of the same by a duly authorized representative of the NDMC and/or the Engineer-in-charge and shall also furnish such other information/document as the Engineer-in-charge may require from time to time.
- (iii) The contractor shall, within a period of 30 days of the imposition of any such further tax or levy or cess, give a written notice thereof to the Engineer-in-charge that the same is given pursuant to this condition, together with all necessary information relating thereto.

CLAUSE 39**Termination of Contract on death of contractor**

Without prejudice to any of the rights or remedies under this contract, if the contractor dies, the Divisional Officer on behalf of the NDMC shall have the option of terminating the contract without compensation to the contractor.

CLAUSE 40**If relative working in NDMC then the contractor not allowed to tender**

The contractor shall not be permitted to tender for works in the NDMC circle (Division in case of contractors of Horticulture/Nursery categories) responsible for award and execution of contracts in which his near relative is posted as Divisional Accountant or as an officer in any capacity between the grades of the Chief Engineer and Junior Engineer (both inclusive). He shall also intimate the names of persons who are working with him in any capacity or are subsequently employed by him and who are near relatives to any Officer in the NDMC. Any breach of this condition by the contractor would render him liable to be removed from the approved list of contractors of this Department. If however the contractor is registered in any other department, he shall be debarred from tendering in NDMC for any breach of this condition.

NOTE: By the term “near relatives” is meant wife, husband, parents and grand parents, children and grand children, brothers and sisters, uncles, aunts and cousins and their corresponding in-laws.

CLAUSE 41**No Engineer to work as Contractor within one year of retirement**

No engineer or other officer employed in NDMC shall work as a contractor or employee of a contractor for a period of one year after his retirement from NDMC service without the previous permission of NDMC in writing. This contract is liable to be cancelled if either the contractor or any of his employees is found at any time to be such a person who had not obtained the permission of NDMC as aforesaid, before submission of the tender or engagement in the contractor's service, as the case may be.

CLAUSE 42**Return of material & recovery for excess material used**

- i. After completion of the work and also at any intermediate stage in the event of non-reconciliation of materials issued, consumed and in balance (see Clause 10), theoretical