

UPGRADING OF DIPAKAPAKENG ACCESS ROAD AND STORMWATER CONTROL

Situated in

ELIAS MOTSOALEDI LOCAL MUNICIPALITY

C1.2 Contract Data

The General Conditions of Contract for Construction Works (3rd edition 2015) published by the South African Institution of Civil Engineers, is applicable to this contract. Copies of these conditions of contract may be obtained from the South African Institution of Civil Engineers (Tel: 011-805 5947).

The General Conditions of Contract for Construction Works make several references to the Contract Data for specific data, which together with these conditions collectively describe the risks, liabilities and obligations of the contracting parties and the procedures for the administration of the Contract. The Contract Data shall have precedence in the interpretation of any ambiguity or inconsistency between it and the general conditions of contract.

Each item of data given below is cross-referenced to the clause in the General Conditions of Contract for Construction Works to which it mainly applies.

If for some reason that “The General Conditions of Contract for Construction Works (2015)” does not address, “The COLTO General Conditions of Contract 1998 for Road and Bridge Works” will be referred to.

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C1.2.1: CONDITIONS OF CONTRACT

GENERAL CONDITIONS OF CONTRACT

SPECIAL CONDITIONS OF CONTRACT

- 1. GENERAL**
- 2. AMENDMENTS TO THE GENERAL CONDITIONS OF CONTRACT**
- 3. TRANSFER OF RIGHTS**

C1.2.1 CONDITIONS OF CONTRACT

GENERAL CONDITIONS OF CONTRACT

This Contract will be based on the "General Conditions of Contract for Construction Works - (3rd edition 2015)", issued by the South African Institution of Civil Engineers (Short title: "**General Conditions of Contract 2015**") and can be obtained from:

SAICE

Waterfall Park
Howick Gardens
Vorna Valley Half way House
Becker Street
MIDRAND
1685
Gauteng Province
Tel: (011) 805-5947/8
Fax: (011) 805-5971.

It is agreed that the only variations from the General Conditions of Contract 2015 are those set out hereafter under "Special Conditions of Contract".

SPECIAL CONDITIONS OF CONTRACT

1. GENERAL

These Special Conditions of Contract (SCC) form an integral part of the Contract. The Special Conditions shall amplify, modify or supersede, as the case may be, the General Conditions of Contract 2010 to the extent specified below, and shall take precedence and shall govern.

The clauses of the Special Conditions hereafter are numbered "SCC" followed in each case by the number of the applicable clause or sub clause in the General Conditions of Conditions 2015, and the applicable heading, or (where a new special condition that has no relation to the existing clauses is introduced) by a number that follows after the last clause number in the General Conditions, and an appropriate heading.

2. ADDITIONAL SPECIAL CONDITIONS OR AMENDMENTS TO THE GENERAL CONDITIONS OF CONTRACT

2.1 General

The following clauses add to, vary or otherwise amend the General Conditions of Contract:

2.1.1 Cession (CL 2.5.1)

Delete the words "without the written consent of the other".

2.1.2 Contractor's Superintendence (CL 4.12)

Add the following sub-clause 4.12.4 to Clause 4.12:

"Where a form is included in the Appendix to the Contract Data for this purpose, the Bidder shall fill in the name of the person he proposes to entrust with the post of Contractor's Site Agent on this Contract in the space provided therefor. Previous experience of this person on work of a similar nature during the past five (5) years is to be entered in the list.

The Contractor's Site Agent shall be on Site at all times when work is being performed.

The person as approved of by the Employers Agent in writing shall not be replaced or removed from Site without the written approval of the Employers Agent.”

2.1.3 Programme (CL 5.6)

Add the following sub-clause 5.6.6 to Clause 5.6:

“Failure on the part of the Contractor to deliver to the Employers Agent, the

- programme of the Works in terms of Clause 5.6.1 and
- supporting documents in terms of Clause 5.6.2

Within the period stated in the Contract Data, shall be sufficient cause for the Employers Agent to retain 25 per centum of the value of the Fixed Charge and Value-related items in assessment of amounts due to the Contractor, until the Contractor has submitted aforementioned first Programme of the Works and Supporting Documents”.

2.1.4 Contractor's Designs and Drawings (CL 5.9.7)

“All designs, calculations, drawings and operation and maintenance manuals shall be fully endorsed by a third party registered Employers Agent, accomplished in such specific field of practice and the cost thereof shall be borne solely by the Contractor.

Once the alternative design has been approved, the Contractor shall indemnify and hold harmless the Employers Agent, the Employer, their agents and assigns, against all claims howsoever arising out of the said design, whether in contract or delict”

2.1.5 Suspension of the Works (CL 5.11)

Add the following sub-clause 5.11.6 to Clause 5.11:

“If the Contractor does not receive from the Employer the amount due under an Interim Payment Certificate within 28 days after expiry of the time stated in sub-clause 6.10.4 within which payment is to be made (except for deductions in accordance with sub-clauses 6.10.1.6 and 6.10.1.7), the Contractor may, after giving 14 days’ notice to the Employer, suspend the progress of the Works.

The Contractor’s action shall not prejudice his entitlements to a claim in terms of Clause 10.1 and to cancellation of the Contract in terms of Clause 9.3.

If the Contractor subsequently receives full payment of the amount due under such Interim Payment Certificate before giving a notice of cancellation of the Contract, the Contractor shall resume normal working as soon as is reasonably practicable.”

2.1.6 Extension of Time Arising from Abnormal Rainfall (CL 5.12)

Add the following to sub-clause 5.12.2.2:

“The extension of time to be allowed due to abnormal rainfall shall be calculated separately for each calendar month or part thereof in accordance with the following formula:

$$V = (Nw - Nn) + \frac{Rw - Rn}{x}$$

V = Extension of time in calendar days for the calendar month under consideration

Nw = Actual number of days during the calendar month on which a rainfall of 10 mm or more has been recorded

Nn = Average number of days for the calendar month on which a rainfall of 10 mm or more has been recorded, as derived from existing rainfall records
 Rw = Actual recorded rainfall for the calendar month
 Rn = Average rainfall for the calendar month, as derived from existing rainfall records
 x = 20

The rainfall records which shall provisionally be accepted for calculation purposes are:

**Based on records taken at: Rainfall Station: MARBLE HALL Lat: 24.9670 Lon: 29.3000
 Height 914 m**

Average No of Days with Rainfall exceeding 10mm: 69.2 days/year

Average Rainfall: 521.5 mm/year

Years of record: 1941-2015

Month	Average rainfall for calendar month Rn	Average number of days for calendar month on which a rainfall of 10 mm or more were recorded Nn
	(mm)	(days)
January	84.7	8.4
February	71.4	6.7
March	60.9	5.8
April	32.9	3.87
May	10.2	1.5
June	4.2	0.7
July	1.7	0.4
August	4.1	0.7
September	15.4	1.9
October	49.3	5.5
November	86.3	8.6
December	100.5	8.3

The factor (Nw - Nn) shall be considered to represent a fair allowance for days during which rainfall exceeds 10 mm and the factor (Rw - Rn)/x shall be considered to represent a fair allowance for those days when rainfall does not exceed 10 mm but wet conditions prevent or disrupt work.

The total extension of time shall be the algebraic sum of all monthly totals for the contract period, but if the algebraic sum is negative the time for completion shall not be reduced due to subnormal rainfall. Extensions of time for a part of a month shall be calculated using pro rata values of Nn and Rn."

2.1.7 Guarantee (Security) (CL 6.2)

Delete the contents of the first paragraph of Clause 6.2.1 and insert:

"The Contractor shall deliver to the Employer within such time as may be stated in the Contract Data a Demand Guarantee, of Insurance Company registered in terms of the Short-term Insurance Act (Act 53 of 1998) or registered Commercial Bank, in a sum equal to the amount stated in the Contract Data. The Demand Guarantee shall be issued by an entity approved by the Employer, and shall conform in all respects to the format contained in the Appendix to the Contract Data.

Wherever a joint venture constitutes the contracting party, the Demand Guarantee shall be issued on behalf of the joint venture.

Failure to produce an acceptable Demand Guarantee within the period stated in Clause 2.2.8 of the Contract Data is a fundamental breach of Contract, entitling the Employer to cancel the Contract by due notice in terms of Clause 9.2 with specific reference to sub-clause 9.2.2.5 as amended in the Special Conditions of Contract.”

2.1.8 Variations (CL 6.3)

Omit the words “Provided that” under Clause 6.3.2 and omit Clause 6.3.2.1.

2.1.9 Interim Payments (CL 6.10.1)

Add to the end of Clause 6.10.1 the following paragraph:

“The Contractor shall complete the ‘Contractor’s Monthly Report Schedule’, which pro forma documentation is obtainable from the Employers Agent. Pursuant to Sub-Clause (1), these, duly signed by all concerned, together with the Contractor’s statement and a VAT invoice in original format are to be submitted to the Employers Agent. Issue by the Employers Agent to the Employer and Contractor of any signed payment certificate is conditional to this information being fully endorsed, accurately and timeously submitted to the Employers Agent”.

Add to the end of Clause 6.10.1.5 the following paragraph:

“All documentary evidence of such materials shall be unambiguous with respect to ownership having fully passed to the Contractor on or before the date of submittal of the Contractor’s monthly statement.

Should the Contractor fail to supply unambiguous documentary evidence, he shall, prior to submittal of his monthly statement, deliver to the Employer a Guarantor Guarantee in the form contained in the Appendices to the Contract Data.”

2.1.10 Variations Exceeding 15 Per Cent (CL 6.11)

In sub-clause 6.11.1.3 omit the words “15 per cent” and replace with “20 per cent”.

2.1.11 Insurances (CL 8.6)

2.1.11.1 Contractor to produce proof of payment

Delete sub-clause 8.6.6 and substitute with:

“The Contractor shall before commencement of the Works produce to the Employers Agent:

8.6.6.1 The policies by which the insurances are effected,

8.6.6.2 Proof that due payment of all premiums there under, covering the full required period has been made, and

8.6.6.3 Proof of continuity of the policies for the required period.

Should, during the currency of the Contract, the required period of insurance be extended for any reason, the Contractor shall timeously extend (so as to maintain) the said insurances for the full extended duration.

The Employers Agent shall be empowered to withhold all payment certificates until the Contractor has complied with his obligations in terms of this Clause 8.6.”

2.1.11.2 Remedy of Contractor’s failure to insure

Delete sub-clause 8.6.7 and substitute with:

“Failure on the part of the Contractor to effect and keep in force any of the insurances referred to in Clause 8.6.1 and its sub-clauses, is a fundamental breach of Contract, entitling the Employer to cancel the Contract by due notice in terms of Clause 9.2 and with specific reference to sub-clause 9.2.2.5, as amended, in the Special Conditions of Contract.”

2.1.12 Termination of the Contract (CL 9.1)

Alter the numbering of:

Clause 9.1.5 to 9.1.6,
Clause 9.1.6 to 9.1.7 and

insert the following new clause 9.1.5:

“The Employer shall be entitled to cancel the Contract, at any time for the Employer’s convenience, by giving written notice of such cancellation to the Contractor. The termination shall take effect 28 days after the later of the dates which the Contractor receives this written notice or the Employer returns the Demand Guarantee. The Employer shall not cancel the Contract under this sub-clause in order to execute the Works himself or to arrange for the Works to be executed by another contractor.

This restriction on the Employer shall lapse 18 months after the date of receipt by the Contractor of cancellation in terms of this sub-clause”.

2.1.13 Termination by Employer (CL 9.2)

Delete the contents of Clause 9.2 and substitute with:

“9.2.1 The Employer may terminate the Contract by written notice to the Contractor if:

9.2.1.1 Sequestration of the Contractor’s estate is ordered by a Court with due jurisdiction, or

9.2.1.2 The Contractor publishes a notice of surrender or presents a petition for the surrender of his estate as insolvent, or makes a compromise with his creditors, or assigns in favour of his creditors, or agrees to carry out the Contract under the supervision of a committee representing his creditors, or (being a company) goes into liquidation, whether provisionally or finally (other than a voluntary liquidation for the purpose of amalgamation or reconstruction), or if the Contractor assigns the Contract without having first obtained the Employer’s consent in writing, or if execution is levied on his goods, or

9.2.1.3 The Contractor, or anyone on his behalf, or in his employ, offers to any person in the employ of the Employer or the Employers Agent, a gratuity or reward or commission, or

9.2.1.4 The Contractor furnished materially inaccurate information in his Bid, which had a bearing on the award of the Contract, or

9.2.1.5 The Contractor has abandoned the Contract

9.2.2 If the Contractor:

9.2.2.1 Has failed to commence the Works in terms of Clause 5.3 hereof, or has suspended the progress of the Works for fourteen (14) days after receiving from the Employers Agent written notice to proceed, or

9.2.2.2 Has failed to provide the Guarantee in terms of Clause 6.2 within the time stipulated in the Contract Data, or

9.2.2.3 Has failed to proceed with the Works with due diligence, or

9.2.2.4 Has failed to remove materials from the Site or to pull down and replace work within fourteen (14) days after receiving from the Employers Agent written notice that the said materials or work have been condemned and rejected by the Employers Agent in terms of these conditions, or

9.2.2.5 Is not executing the Works in accordance with the Contract, or is neglecting to carry out his obligations under the Contract, or

9.2.2.6 Has, to the detriment of good workmanship or in defiance of the Employers Agent's instructions to the contrary, sublet any part of the Contract, or

9.2.2.7 Has assigned the Contract or any part thereof without the Employer's consent in writing, then the Employer may give the Contractor 14 days' notice to rectify the default, and if the Contractor fails to rectify the default in said 14 days, then, without further notice, notify the Contractor in writing of the termination of the Contract and expel the Contractor and order the Contractor to vacate the site within 24 hours of issue of the Notice of Termination and to hand the Site over to the Employer, and the Employer may then enter upon the Site and the Works without affecting the rights and powers conferred on the Employer or the Employers Agent by the Contract and the Employer may himself complete the Works or may employ another contractor to complete the Works, and the Employer or such other contractor may use for such completion so much of the Construction Equipment, Temporary Works and materials brought onto the Site by the Contractor as the Employer may think proper, and the Employer may at any time sell any of the said Construction Equipment, Temporary Works and unused materials and apply the proceeds of sale towards payment of any sums that may be due or become due to the Employer by the Contractor under the Contract. In such circumstances the Contractor shall forthwith vacate the Site and shall not be entitled to remain on the Site on the grounds that he is entitled to do so on a right of retention until amounts due to him have been paid, neither will the Contractor be entitled to any further payments in terms of this Contract.

9.2.3 If the Contractor, having been given notice to rectify a default in terms of 55.2 above, rectifies said default, but later repeats the same or substantially the same default, then the Employer may notify the Contractor of the immediate termination of the Contract, and proceed as stated in the paragraph following the word "writing" in Clause 55.2.7 above.

9.2.4 Should the amounts the Employer must pay to complete the Works exceed the sum that would have been payable to the Contractor on due completion by him, then the Contractor shall upon demand pay to the Employer the difference, and it shall be deemed a debt due by the Contractor to the Employer and shall be recoverable accordingly. Provided that should the Contractor on demand not pay the amount of such excess to the Employer, such sum may be determined and deducted by the Employer from any sum due to or that may become due to the Contractor under this or any previous or subsequent contract between the Contractor and the Employer."

2.1.14 Termination by the Contractor (CL 9.3)

Add the following paragraph as Clause 9.3.5:

“In addition to, or as an alternative to the rights to termination contained in this Clause 9.3, the Contractor may notify the default to the Employer, with a copy to the Employers Agent, and if the default is not rectified within 10 days the Contractor may suspend progress of the works until a date 7 days after the default is rectified. The Contractor shall be entitled to extension of time to the extent of delay caused by or resulting from such suspension, and to payment of additional costs caused by or resulting from the suspension. Such extension of time and additional costs shall be promptly ascertained by the Employers Agent, who shall then grant the extension of time and include the additional costs in all future payment certificates. Such suspension, extension of time and/or payment of additional costs, shall not prejudice the Contractor's rights to cancel the contract.”

3. PRIORITY OF DOCUMENTS

The documents forming the Contract are to be taken as mutually explanatory of one another. For the purpose of interpretation, the priority of the documents shall be in accordance with the following sequence:

- a) the Form of Offer and Acceptance.
- b) amplifications of the General Conditions of Contract within the Contract Data.
- c) additional special conditions or amendments to the General Conditions of Contract within the Contract Data.
- d) the General Conditions of Contract.
- e) the Specifications, Drawings, Schedules and other documents forming part of the Contract (in that order) contained in the Scope of Work and the Site Information.

If any ambiguity or discrepancy is found in the documents, the Employers Agent shall issue any necessary clarification or instruction.

4. TRANSFER OF RIGHTS

TRANSFER OF RIGHTS AND INDEMNITY (To be completed during construction by successful Bidder only)

Claim for materials on site, Payment Certificate No. Date:

Contract No: for (contract title)

I, the undersigned (name of signatory) in my capacity, as

..... of (name of Contractor)

duly authorized hereto on behalf of the Contractor hereby transfer, cede and assign all the Contractor's rights, title and interest in and to the materials and goods, for which evidence of bona fide ownership is attached hereto, unto and in favor of (name of Employer) insofar as the Contractor retains actual control of the materials and goods, the right of ownership thereof passes to the Employer by *constitutum possessorium*.

I herewith indemnify the Employer against any claim to and in respect of said materials by reason of the Contractor's sequestration or liquidation or of any defect in the Contractor's title to the materials and agree that no payment for materials on site will be made by the Employer until such time as I have submitted documentary proof of bona fide ownership of the said materials and goods.

This transfer shall become effective upon conclusion of the Contractor receiving payment from the Employer or from any other person on behalf of the Employer for the materials and goods as Materials on Site, payment of retention money thereon excluded.

I further confirm that I am fully responsible for all materials and goods listed under this Transfer of Rights and that they have been insured adequately against all risks and will remain insured until they are built into or used in the permanent works and taken over by the Employer.

This certificate of Transfer of Rights applies only to the materials and goods as listed in the following table:

Description of Item	Unit	Quantity	Rate	Amount	Supplier
Total Value of Materials and goods					

Signed by: Date:
for and on behalf of the Contractor.

Witnessed by: Date:

NOTE: This form, together with the documentary proof of ownership or proof of payment by the Contractor to the supplier, shall accompany the Contractor's claim for payment for materials on site in terms of **Clause 6.10.1.5 of the General Conditions of Contract 2015**.

C1.2.2 PART A: CONTRACT DATA PROVIDED BY THE EMPLOYER

The following contract specific data are applicable to this contract.

REFERENCE CONTRACT SPECIFIC DATA BY THE EMPLOYER

- Clause 1.1.13: The defects liability period is 12 months measured from the date of the completion certificate.
- Clause 1.1.14: The time for achieving Practical Completion is **6 calendar months being the effective working time** from the Commencement Date, including special non-working days.
- Clause 1.1.15: **Name of Employer: ELIAS MOTSOLEDI LOCAL MUNICIPALITY represented by Head of Department: Department of Technical Services**
- Clause 1.2.1: **Address of Employer:**
- The Employer's address for receipt of communications is
Postal: P.O Box 48;
Groblersdal 0470
Fax: 013 262 3056/7/8/9
Tel: 013 262 2547/2886
- Clause 1.1.16: **Name of Employers Agent**
'Employers Agent' means any Director, Associate or Professional Employers Agent appointed by a Director of MTP Infrastructure Resources CC to fulfil the functions of the Employers Agent in terms of the Contract Data.
- Clause 1.2.1: **Address of Employers Agent:**
- Physical: Postal:
- The Employers Agent's address for receipt of communications is:
- Ralema Consulting Engineers
34 Mazzanine Oxford Office Park
03 Bauhinia Street
Centurion,
1648
- E-Mail: admin@ralemacons.co.za
- Telephone No: (012) 753 0744 Fax No: (086) 537 7350
- Clause 3.2: The Employers Agent is required to obtain the specific approval of the Employer for the following:
- a) Nominating the Employers Agent's Representative in terms of CI 3.3.1.
 - b) Delegation of Employers Agent's authority in terms of CI 3.2.4.
 - c) The issuing of instructions for dealing with fossils and the like in terms of CI 4.7.1
 - d) The issuing of an instruction to accelerate progress in terms of CI 5.7.3.
 - e) Granting permission to work during non-working times in terms of CI 5.8.1.
 - f) The issuing of further drawings or instructions in terms of CI 5.9.1.
 - g) Suspend the progress of the works in terms of CI 5.11.1.
 - h) The reduction of a penalty for delay in terms of CI 5.13.2.
 - i) The issuing of a variation order in terms of CI 6.3.2.

- j) Issuing of instructions to carry out work on a day work basis in terms of CI 6.4.1.4.
- k) The determination of additional or reduced costs arising from changes in legislation in terms of CI 6.8.4.
- l) The agreeing of the adjustment of the sums for general items in terms of CI 6.11.
- m) Authorizing the Contractor to repair and make good excepted risks in terms of CI 8.2.2.
- n) The giving of a ruling on a contractor's claim in terms of CI 10.1.5.
- o) The agreeing of an extension to the 28 period in terms of CI 10.1.5.1.
- p) The inclusion of credits in the next payment certificate in terms of CI 10.1.5.2.

Clause 6.2: The Guarantee shall be delivered within 14 days after receipt of the acceptance document from the Employer.

Clause 6.2: The Liability of the Guarantee shall be for 10% of the Accepted Bid Sum.

Clause 5.3: The contractor shall commence executing the work within 14 days of the commencement date.

Clause 5.6.1 & 5.6.2: The Contractor shall deliver to the Employers Agent, within 14 days calculated from the Commencement Date, a realistic programme in terms of Clause 5.6.1 and supporting documents in terms of Clause 5.6.2.

Clause 8.6.1.1.3: The amount to cover professional fees for repairing damage and loss to be included in the insurance sum is NIL

Clause 8.6.1.2: Special risk insurance issued by SASRIA is required.

Clause 8.6.1.3: The limit of indemnity for liability insurance required should not be less than the contract amount.

Clause 5.13.1: The penalty for failing to complete the works is 0.05 % of the total bid sum per calendar day

Clause 6.8.2: **The value of the certificates issued shall not be adjusted** in accordance with the Contract Price Adjustment Schedule with the following values:

Contract Price Adjustment Factor = $(1 - x) \left[\frac{aL_t}{L_o} + \frac{bP_t}{P_o} + \frac{cM_t}{M_o} + \frac{dF_t}{F_o} - 1 \right]$ rounded off to the fourth decimal place.

Coefficients for calculating Contract Price Adjustment Factor shall be:

Value of x is 0.10

a = 0.15 b = 0.20 c = 0.55 d = 0.10

L is the "Labour Index" and shall be the "Consumer Price Index – for Polokwane Area" In Release P 0141.1 Table 21

The base month is: "the month prior to the closing of the Bid"

No Contract Price Adjustment will be done if contract period is less than 7 months. This is a fixed contract

Clause 6.8.3: Price adjustments for variations in the costs of special materials is not applicable for this contract.

Variation for special materials will be applicable under this contract.

Clause 6.10.1.5: The percentage advance on materials not yet built into the Permanent Works is: 80%

- Clause 6.10.3: The percentage retention on the amounts due to the Contractor is 10 %, excluding contract price adjustment, contingencies and VAT, and limited to 10% of the contract amount, excluding contract price adjustment, contingencies and VAT.
- Clause 6.10.5: A Retention money guarantee will be not permitted.
- Clause 7.8.1: The Defects Liability Period is 12 months measured from the date of the Certificate of Completion.
- Clause 10.7.1 Dispute resolution shall be by Adjudication.
- SPECIAL**
- i) The minimum local labour target is 10% of the tender sum
 - ii) The minimum local SMMEs target is 20% of the tender sum
- Clause 10.7.1: Dispute Resolution shall be by Adjudication.

Payment for labour-intensive component of the works

Payment for works identified in the Scope of Works as being labour-intensive shall only be made in accordance with the provisions of the Contract if the works are constructed strictly in accordance with the provisions of the Scope of Work. Any payment for such works shall not relieve the Contractor in any way from his obligations either in contract or in delict

Linkage of payment for labour-intensive component of works to submission of project data

The Contractor's payment invoices shall be accompanied by labour information for the corresponding period in a format specified by the employer. If the contractor chooses to delay submitting payment invoices, labour returns shall still be submitted as per frequency and timeframe stipulated by the Employer. The contractor's invoices shall not be paid until all pending labour information has been submitted.

Applicable Labour Laws

The current Ministerial Determination (also downloadable at www.epwp.gov.za), Expanded Public Works Programmes, issued in terms of the Basic Condition of Employment Act of 1997 by the Minister of Labour in Government Notice, shall apply to works described in the scope of work as being labour-intensive and which are undertaken by unskilled workers.

C1.2.2: PART B: CONTRACT DATA PROVIDED BY THE CONTRACTOR

The following contract specific data are applicable to this contract:

REFERENCE CONTRACT SPECIFIC DATA BY THE CONTRACTOR

Clause 1.1.9: **Name of Contractor:**

Clause 1.2.1: **Address of the Contractor:**

The Contractor's address for receipt of communication is:

Physical:

Postal:

.....

.....

.....

.....

.....

.....

.....

.....

E-Mail:

Telephone No: Fax No:

Clause 5.5 The works shall be completed within **Six (6) months** (including special non-working days and the year-end break).

C1.3 Form of Guarantee - Pro Forma

The Municipal Manager
Elias Motsoaledi Local Municipality
Number 02 Grobler Ave
Groblersdal
0470

**CONTRACT: EMLM 30/2021
FOR
UPGRADING OF DIPAKAPAKENG ACCESS ROAD AND STORMWATER CONTROL**

GUARANTOR DETAILS AND DEFINITIONS

“Guarantor” means:.....

Physical address:.....

“Employer” means: **ELIAS MOTSOALEDI LOCAL MUNICIPALITY**

“Contractor” means:.....

“Engineer” means: **MTP INFRASTRUCTURE RESOURCES CC**

“Works” means: **UPGRADING OF DIPAKAPAKENG ACCESS ROAD AND STORMWATER CONTROL**

“Site” means: **DIPAKAPAKENG VILLAGE**

“Contract” means: The Agreement made in terms of the Form of Offer and Acceptance and such amendments or additions to the Contract as may be agreed in writing between the parties.

“Contract Sum” means: The accepted amount inclusive of tax of R.....

Amount in words:.....

“Guaranteed Sum” means: The maximum aggregate amount of R.....

Amount in words:.....

“Expiry Date” means:.....

CONTRACT DETAILS

Engineer issues: Interim Payment Certificates, Final Payment Certificate and the Certificate Completion of the Works as defined in the Contract.

PERFORMANCE GUARANTEE

1. The Guarantor's liability shall be limited to the mount of the Guaranteed Sum.
2. The Guarantor's period of liability shall be from and including the date of issue of this Performance Guarantee and up to and including the Expiry Date or the date of issue by the Engineer of the Certificate of Completion of the Works or the date of payment in full of the Guaranteed Sum, whichever occurs first. The Engineer and/or the Employer shall advise the Guarantor in writing of the date on which the Certificate of Completion of the Works has been issued.
3. The Guarantor hereby acknowledges that:
 - 3.1 any reference in this Performance Guarantee to the Contract is made for the purpose of convenience and shall not be constructed as any intention whatsoever to create an accessory obligation or and intention whatsoever to create a suretyship;
 - 3.2 its obligation under this Performance Guarantee is restricted to the payment of money.
4. Subject to the Guarantor's maximum liability referred to in 1, the Guarantor hereby undertakes to pay the Employer the sum certified upon receipt of the documents identified in 4.1 to 4.3:
 - a. A copy of a first written demand issued by the Employer to the Contractor stating that payment of a sum certified by the Engineer in an Interim or Final Payment Certificate has not been made in terms of the Contract and failing such payment within seven (7) calendar days, the Employer intends to call upon the Guarantor to make payment in terms of 4.2;
 - b. A first written demand issued by the Employer to the Guarantor at the Guarantor's physical address with a copy to the Contractor stating that a period of seven (7) days has elapsed since the first written demand in terms of 4.1 and the sum certified has still not been paid;
 - c. A copy of the aforesaid payment certificate which entitles the Employer to receive payment in terms of the Contract of the sum certified in 4.
- 5.1 Subject to the Guarantor's maximum liability referred to in 1, the Guarantor undertakes to pay to the Employer the Guaranteed Sum or the full outstanding balance upon receipt of a first written demand from the Employer to the Guarantor at the Guarantor's physical address calling up this Performance Guarantee, such demand stating that:
 - 5.2 the Contract has been terminated due to the Contractor's default and that this Performance Guarantee is called up in terms of 5; or
 - 5.3 a provisional or final sequestration or liquidation court order has been granted against the Contractor and that the Performance Guarantee is called up in terms of 5; and
 - 5.3 the aforesaid written demand is accompanied by a copy of the notice of termination and/or the provisional/final sequestration and/or the provisional liquidation court order.
- 6 It is recorded that the aggregate amount of payments required to be made by the Guarantor in terms of 4 and 5 shall not exceed the Guarantor's maximum liability in terms of 1.
- 7 Where the Guarantor has made payment in terms of 5, the Employer shall upon the date of issue of the final Payment Certificate submit an expense account to the Guarantor showing how all monies received in terms of this Performance Guarantee have been expended and shall refund to the Guarantor any resulting surplus. All monies refunded to the Guarantor in terms of this Performance Guarantee shall bear interest at the prime overdraft rate of the Employer's bank compounded monthly and calculated from the date payment was made by the Guarantor to the Employer until the date of refund.
- 8 Payment by the Guarantor in terms of 4 or 5 shall be made within seven (7) calendar days upon receipt of the first written demand to the Guarantor.
- 9 Payment by the Guarantor in terms of 5 will only be made against the return of the original Performance Guarantee by the Employer.
- 10 The Employer shall have the absolute right to arrange his affairs with the Contractor in any manner which the Employer may deem fit and the Guarantor shall not have the right to claim his release from this Performance Guarantee on account of any conduct alleged to be prejudicial to the Guarantor.

- 11 The Guarantor chooses the physical address as stated above for the service of all notices for all purposes in connection herewith.
- 12 This Performance Guarantee is neither negotiable nor transferable and shall expire in terms of 2, where after no claims will be considered by the Guarantor. The original of this Guarantee shall be returned to the Guarantor after it has expired.
- 13 The Performance Guarantee, with the required demand notices in terms of 4 or 5, shall be regarded as a liquid document for the purposes of obtaining a court order.
- 14 Where this Performance Guarantee is issued in the Republic of South Africa the Guarantor hereby consents in terms of Section 45 of the Magistrate's Courts Act No.32 of 1944, as amended, to the jurisdiction of the Magistrate's Court of any district having jurisdiction in terms of Section 28 of the said Act, notwithstanding that the amount of the claim may exceed the jurisdiction of the Magistrate's Court.

Signed at.....

Date.....

Guarantor's signatory (1).....

Capacity

Guarantor's signatory (2).....

Capacity.....

Witness signatory (1).....

Witness signatory (2).....

C1.4: Agreement with Adjudicator

This agreement is made on the.....day of 20.....between: the Employer
(name of company / organisation).....
of (address).....
.....and the Contractor
(name of company / organisation)
of (address).....
..... (hereinafter called **the Parties**)

and
(name).....
of (address)
..... (hereinafter called **the Adjudicator**)

Disputes or differences may arise/have arisen* between the Parties under a Contract dated.....
and known as Contract No.....
(Contract title).....

and these disputes or differences shall be/have been* referred to adjudication in accordance with the CIDB Adjudication Procedure, (hereinafter called "**the Procedure**") and the Adjudicator may be or has been requested to act.

(* Delete as necessary)

IT IS NOW AGREED as follows:

1. The rights and obligations of the Adjudicator and the Parties shall be as set out in the Procedure.
2. The Adjudicator hereby accepts the appointment and agrees to conduct the adjudication in accordance with the Procedure.
3. The Parties bind themselves jointly and severally to pay the Adjudicator's fees and expenses in accordance with the Procedure as set out in the Contract Data.
4. The Parties and the Adjudicator shall at all times maintain the confidentiality of the adjudication and shall endeavor to ensure that anyone acting on their behalf or through them will do likewise, save with the consent of the other Parties which consent shall not be unreasonably refused.
5. The Adjudicator shall inform the Parties if he intends to destroy the documents which have been sent to him in relation to the adjudication and he shall retain documents for a further period at the request of either Party.

SIGNED by:

(Signature): (Signature): (Signature):

Name: **Name:** **Name:**

who warrants that he/ she is
duly authorised to sign for and
on behalf of the **First Party** in
the presence of

who warrants that he/ she is
duly authorised to sign for
and on behalf of the **Second
Party** in the presence of

the **Adjudicator** in the
presence of

Witness: (Signature).....	Witness: (Signature).....	Witness: (Signature).....
Name:	Name:	Name:
Address:	Address:	Address:
.....
.....
Date:	Date:	Date:

C1.5: AGREEMENT IN TERMS OF THE MINE HEALTH AND SAFETY ACT, (ACT No. 29 OF 1996) AS AMENDED BY THE MINE HEALTH AND SAFETY AMENDMENT ACT (ACT No. 72 OF 1997)

THIS AGREEMENT is made aton this theday of.....in the year.....between The **ELIAS MOTSOLEDI LOCAL MUNICIPALITY** (hereinafter called the "EMPLOYER" of the one part, herein represented by:

.....
in his capacity as:.....and delegate of the Employer in terms of the Employer's standard powers of delegation pursuant to the provisions of Act No. 7 of 1998;

AND:

(hereinafter called the CONTRACTOR) of the other part, herein represented by

.....
in his capacity as: and duly authorised to sign on behalf of the Contractor.

WHEREAS the Employer is desirous that certain works be constructed, (insert contract title) and has accepted a tender by the Contractor for the construction, completion and maintenance of such works and whereas the Employer and the contract have agreed to certain arrangements and procedures to be followed in order to ensure compliance by the Contractor with the provisions of the Mine Health and Safety Act (Act 29 of 1996); as amended by the Mine Health and Safety Amendment Act (Act No. 27 of 1997).

NOW THEREFORE the parties agree as follows:

1. The contractor shall obtain the Mining Authorisation for the particular site where mining activities, as defined in the Mine Health and Safety Act, No. 29 of 1996 as amended, are to be conducted.
2. The contractor shall assume responsibility for the Environmental Management Programme (EMPR) in respect of the site and shall ensure that the site is rehabilitated at the conclusion of the contract.
3. The contractor declares himself to be conversant with:
 - a) all the requirements, regulations and standards of the Act, together with its amendments.
 - b) the procedures and safety rules of the Employer as pertaining to the Contractor and to all his sub-contractors.
4. The contractor is responsible for the compliance with the Act and its amendments by all his subcontractors, whether or not selected and/or approved by the Employer.

SIGNED ON BEHALF OF THE EMPLOYER

AS WITNESS:

1.....

2.....

NAME(Print):

NAME(Print):

******For official use only**

SIGNED ON BEHALF OF THE CONTRACTOR

AS WITNESS:

1.....

2.....

NAME(Print):

NAME(Print):