

CONTRACT

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CONTRACT

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C1: AGREEMENTS AND CONTRACT DATA

C1.1 FORM OF OFFER AND ACCEPTANCE

A. OFFER

The Employer, identified in the Acceptance signature block, has solicited offers to enter into a contract in respect of the following works:

CONTRACT No. UMZ/2022-23/C&CS/009: CONSTRUCTION OF CHITHWA RECREATIONAL PARK – PHASE 1

The Tenderer, identified in the Offer signature block below, has examined the documents listed in the Tender Data and addenda thereto as listed in the Tender Schedules, and by submitting this Offer has accepted the Conditions of Tender.

By the representative of the Tenderer, deemed to be duly authorised, signing this part of this Form of Offer and Acceptance, the Tenderer offers to perform all of the obligations and liabilities of the Contractor under the Contract including compliance with all its terms and conditions according to their true intent and meaning for an amount to be determined in accordance with the Conditions of Contract identified in the Contract Data.

The offered total of the prices inclusive of Value Added Tax is:

Amount in Words.....
.....
.....

R..... (in figures)

This Offer may be accepted by the Employer by signing the Acceptance part of this Form of Offer and Acceptance and returning one copy of this document to the Tenderer before the end of the period of validity stated in the Tender Data, whereupon the Tenderer becomes the party named as the Contractor in the Conditions of Contract identified in the Contract Data.

Signature: (of person authorised to sign the tender):

Name: (of signatory in capitals):

Capacity: (of Signatory):

Name of Tenderer: (organisation):

Address:

.....

Telephone number: Fax number:

Witness:

Signature:

Name: (in capitals):

Date:

[Failure of a Tenderer to sign this form will invalidate the tender]

B. ACCEPTANCE

By signing this part of the Form of Offer and Acceptance, the Employer identified below accepts the Tenderer’s Offer. In consideration thereof, the Employer shall pay the Contractor the amount due in accordance with the Conditions of Contract identified in the Contract Data. Acceptance of the Tenderer’s Offer shall form an agreement between the Employer and the Tenderer upon the terms and conditions contained in this Agreement and in the Contract that is the subject of this Agreement.

The terms of the contract are contained in

- Part 1 Agreements and Contract Data (which includes this Agreement)
- Part 2 Pricing Data, including the Schedule of Quantities
- Part 3 Scope of Work
- Part 4 Site Information

and the schedules, forms, drawings and documents or parts thereof, which may be incorporated by reference into Parts 1 to 4 above.

Deviations from and amendments to the documents listed in the Tender Data and any addenda thereto listed in the Tender Schedules as well as any changes to the terms of the Offer agreed by the Tenderer and the Employer during this process of offer and acceptance, are contained in the Schedule of Deviations attached to and forming part of this Agreement. No amendments to or deviations from said documents are valid unless contained in this Schedule, which must be duly signed by the authorised representatives of both parties.

The Tenderer shall deliver the Guarantee in terms of Clause 7 of the General Conditions of Contract 2015 within the period stated in the Contract Data, and he shall, immediately after receiving a completed copy of this Agreement, including the Schedule of Deviations (if any), contact the Employer’s agent (whose details are given in the Contract Data) to arrange the delivery of any other bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the Conditions of Contract identified in the Contract Data, within 14 days of the date on which this Agreement comes into effect. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this Agreement.

Notwithstanding anything contained herein, this Agreement comes into effect on the date when the Tenderer receives one fully completed original copy of this document, including the Schedule of Deviations (if any). Unless the Tenderer (now Contractor) within five days of the date of such receipt notifies the Employer in writing of any reason why he cannot accept the contents of this Agreement, this Agreement shall constitute a binding contract between the parties.

Signature:

Name: *(in capitals)*

Capacity:

Name of Employer *(organisation)*.....

Address:

.....

Witness: Signature: **Name:**

Date:

C. SCHEDULE OF DEVIATIONS

The extent of deviations from the tender documents issued by the Employer prior to the tender closing date is limited to those permitted in terms of the Tender Data and the Conditions of Tender.

A Tenderer’s covering letter will not necessarily be included in the final contract document. Should any matter in such letter, which constitutes a deviation as aforesaid, become the subject of agreement reached during the process of offer and acceptance, the outcome of such agreement shall be recorded here.

Any other matter arising from the process of offer and acceptance either as a confirmation, clarification or change to the tender documents and which it is agreed by the Parties becomes an obligation of the contract shall also be recorded here.

Any change or addition to the tender documents arising from the above agreement and recorded here shall also be incorporated into the final draft of the Contract.

- 1. **Subject:**
- Details:**
-
- 2. **Subject:**
- Details:**
-
- 3. **Subject:**
- Details:**
-
- 4. **Subject:**
- Details:**
-
- 5. **Subject:**
- Details:**
-
- 6. **Subject:**
- Details:**
-

By the duly authorised representatives signing this Schedule of Deviations, the Employer and the Tenderer agree to and accept the foregoing Schedule of Deviations as the only deviations from and amendments to the documents listed in the Tender Data and addenda thereto as listed in the Tender Schedules, as well as any confirmation, clarification or change to the terms of the offer agreed by the Tenderer and the Employer during this process of offer and acceptance.

It is expressly agreed that no other matter whether in writing, oral communication or implied during the period between the issue of the tender documents and the receipt by the Tenderer of a completed signed copy of this Agreement shall have any meaning or effect in the contract between the parties arising from this Agreement.

FOR THE TENDERER:

Signature:

Name:

Capacity:

Tenderer: *(Name and address of organisation)*
.....

Witness:

Signature:

Name:

Date:

FOR THE EMPLOYER

Signature:

Name:

Capacity:

Employer: *(Name and address of organisation)*
.....

Witness:

Signature:

Name:

Date: ..

C1.2: CONTRACT DATA**C1.2.1: CONDITIONS OF CONTRACT**

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C1.2.1 CONDITIONS OF CONTRACT**C1.2.1.1 GENERAL CONDITIONS OF CONTRACT**

This Contract will be based on the "General Conditions of Contract for Construction Works - New Edition 2015", issued by the South African Institution of Civil Engineering (abbreviated title: "General Conditions of Contract 2015").

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

C1.2.1.2 SPECIAL CONDITIONS OF CONTRACT**C1.2.1.2.1 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 2015 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 subclause in the General Conditions of Contract 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 of Contract 2015, and an appropriate heading.

C1.2.1.2.2 AMENDMENTS TO THE GENERAL CONDITIONS OF CONTRACT 2015

SCC 1.1.4. reads "The Commencement date shall be the date of the Site Handover Meeting".

The ASAQS Preliminaries (November 2007 Edition) published by the Association of South African Quantity Surveyors for use with the said JBCC Principal Building Agreement shall be deemed to be incorporated in these Bills of Quantities.

Copies of these conditions of contract can obtained from the Association of South African Quantity Surveyors (011-3154140), Master Builders Association (011-205-9000; 057-3526269) South African Association of Consulting Engineers (011-4632022) or South African Institute of Architects (051-4474909; 011-4860684; 053-8312003;)

Contractors are referred to the abovementioned documents for the full intent and meaning of each clause thereof.

Where any item is not relevant to this specific contract such item is marked N/A, signifying "not applicable"

PREAMBLES FOR TRADES

The Model Preambles for Trades (2008 edition) as published by the Association of South African Quantity Surveyors shall be deemed to be incorporated in these bills of quantities and no claims arising from brevity of description of items fully described in the said Model Preambles will be entertained

Supplementary preambles are incorporated in these bills of quantities to satisfy the requirements of this

project. Such supplementary preambles shall take precedence over the provisions of the said Model Preambles.

The contractor's prices for all items throughout these bills of quantities must take account of and include for all of the obligations, requirements and specifications given in the said Model Preambles and in any supplementary preambles

C1.2.2: CONTRACT DATA (Applicable to this contract)**PART A: DATA PROVIDED BY THE EMPLOYER**

The following contract specific data are applicable to this contract.

REFERENCE	CONTRACT SPECIFIC DATA PROVIDED BY THE EMPLOYER
Clause 1.1.14:	Name of Employer: Umzimvubu Municipality
Clause 1.2.2:	Address of Employer: <u>Physical:</u> Dabula street Mount Frere 5010 <u>Postal:</u> Private Bag X 9020 Mount Frere 5010 E-Mail: Nota.Tobela@umzimvubu.gov.za Telephone No: (039) 255 8500 Fax No: (039) 255 0167
Clause 1.1.15:	Name of Engineer: Mr L. Moleko
Clause 1.2.2:	Address of Engineer: <u>Physical:</u> Dabula street Mount Frere 5010 <u>Postal:</u> Private Bag X 9020 Mount Frere 5010 E-Mail: Moleko.Lebohang@umzimvubu.gov.za Telephone No: (039) 255 8500 Fax No: (039) 255 0167
Clause 1.6 & 38.1:	Special non-working days are Sundays, the construction industry year end break and the following statutory public holidays as declared by National Government: New Year's Day, Human Rights Day, Good Friday, Family Day, Freedom Day, Workers' Day, Youth Day, National Women's Day, Heritage Day, Day of Reconciliation, Christmas Day and the Day of Goodwill.
Clause 1.6:	The construction industry year end break commences on the first working day after 15 December and ends on the first working day after 15 January of the next year.
Clause 7.1:	The time to deliver the Guarantee is within 14 days of the Commencement Date. The Liability of the Guarantee shall be for 10% of the Accepted Contract Price up to the Certificate of Completion, and thereafter the liability shall be reduced to 5% of the accepted contract price up to the issue of the Final Approval Certificate.
Clause 10.1:	The Contractor shall commence executing the Works within 14 days of the Commencement Date.
Clause 12.2:	The Contractor shall deliver his programme of work within 7 days of the Commencement Date.

REFERENCE	CONTRACT SPECIFIC DATA PROVIDED BY THE EMPLOYER
Clause 35.1	Insurance to be effected by the Contractor.
Clause 35.1.1.2.2:	The value of materials supplied by the Employer to be included in the insurance sum is <u>Nil</u> .
Clause 35.1.2:	Special Risks Insurance issued by SASRIA is required.
Clause 35.1.3:	The limit of indemnity for liability insurance is <u>R2 000 000,00 (two million rands only)</u> for any single liability claim. Liability insurance shall include spread of fire risk.
Clause 37.2.2.3:	The percentage allowance to cover overhead charges is 10%.
Clause 42.1:	The Works shall be completed as set out in the Scope of Works: <ul style="list-style-type: none"> • In 11 months including special non-working days
Clause 43.1:	The penalty for failing to complete the whole of the Works is R1 500.00 (one thousand five hundred rands only) of the total Contract Price per day.
Clause 46.2:	<p>The value of the certificates issued shall be adjusted in accordance with the Contract Price Adjustment Schedule :</p> <p>The value of the certificates issued shall be adjusted in accordance with the Contract Price Adjustment Schedule with the following values:</p> <p>The value of “x” is 0.1</p> <p>The values of the coefficients are:</p> <p>a = [0, 25] (labour)</p> <p>b = [0, 30] (contractor’s equipment)</p> <p>c = [0, 25] (material)</p> <p>d = [0, 20] (fuel)</p> <p>The urban area nearest the Site is Durban</p> <p>The labour index will be as published by STATSSA for the Eastern Cape</p>
Clause 46.3:	Price adjustments for variations in the cost of special materials is allowed.
Clause 49.1.5:	The percentage limit on materials not yet built into the Permanent Works is 80%.
Clause 49.3:	The percentage retention on the amounts due to the Contractor is 10% to a minimum of 5%..
Clause 49.6:	A Retention Money Guarantee is Not Permitted .
Clause 53.1:	The Defects Liability Period is 6 months from the date of the Certificate of Completion.
Clause 58.2:	Dispute Resolution shall be by Mediation.

C1.3: FORM OF GUARANTEE

PRO FORMA

FORM OF GUARANTEE

Employer: *(name and address)* _____

Contract No: _____

(Contract title) _____

WHEREAS _____
 (hereinafter referred to as “the Employer”) entered into a Contract with

_____ (hereinafter called “the Contractor”) on the _____ day of _____ 20_____
 for the construction of *(Contract Title)*

at _____

AND WHEREAS it is provided by such Contract that the Contractor shall provide the Employer with security by way of a guarantee for the due and faithful fulfilment of such Contract by the Contractor;

AND WHEREAS _____ (hereinafter referred to as “the Guarantor”) has/have at the request of the Contractor, agreed to give such guarantee;

NOW THEREFORE WE, _____ do hereby guarantee and bind ourselves jointly and severally as Guarantor and Co-principal Debtors to the Employer under renunciation of the benefits of division and excussion for the due and faithful performance by the Contractor of all the terms and conditions of the said Contract, subject to the following conditions:

1. The Employer shall, without reference and/or notice to us, have complete liberty of action to act in any manner authorized and/or contemplated by the terms of the said Contract, and/or to agree to any modifications, variations, alterations, directions or extensions of the Due Completion Date of the Works under the said Contract, and that its rights under this guarantee shall in no way be prejudiced nor our liability hereunder be affected by reason of any steps which the Employer may take under such Contract, or of any modification, variation, alterations of the Due Completion Date which the Employer may make, give, concede or agree to under the said Contract.
2. This guarantee shall be limited to the payment of a sum of money.
3. The Employer shall be entitled, without reference to us, to release any guarantee held by it, and to give time to or compound or make any other arrangement with the Contractor.
4. This guarantee shall remain in full force and effect until the issue of the Practical Completion Certificate in terms of the Contract, and thereafter the liability shall be reduced to 5% up to the issue of the Final Approval Certificate, unless we are advised in writing by the Employer before the issue of the said Certificate of his intention to institute claims, and the particulars thereof, in which event this guarantee shall remain in full force and effect until all such claims have been paid or liquidated.

5. Our total liability hereunder shall not exceed the sum of

_____ (in words)

R _____ (in figures)

6. The Guarantor reserves the right to withdraw from this guarantee by depositing the Guaranteed Sum with the beneficiary, whereupon the Guarantor’s liability hereunder shall cease.

7. We hereby choose our address for the serving of all notices for all purposes arising herefrom as

IN WITNESS WHEREOF this guarantee has been executed by us at _____

on this _____ day of _____ 20 _____

As witnesses:

1. _____ Signature _____
Name in Block Letters

2. _____ Signature _____
Name in Block Letters

Duly authorized to sign on behalf of (*Guarantor*) _____

Address _____

C1.4: AGREEMENT IN TERMS OF SECTION 37(2) OF THE OCCUPATIONAL HEALTH AND SAFETY ACT No 85 OF 1993

THIS AGREEMENT is made between The Umzimvubu Local Municipality. (hereinafter called the EMPLOYER) of the one part, herein represented by:

.....
in his capacity as:

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

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

WHEREAS the CONTRACTOR is the Mandatary of the EMPLOYER in consequence of an agreement between the CONTRACTOR and the EMPLOYER in respect of:

CONTRACT No. UMZ/2022-23/C&CS/009: CONSTRUCTION OF CHITHWA RECREATIONAL PARK – PHASE 1

for the construction, completion and maintenance of the works;

AND WHEREAS the EMPLOYER and the CONTRACTOR have agreed to enter into an agreement in terms of the provisions of Section 37(2) of the Occupational Health and Safety Act No 85 of 1993, as amended by OHS Act Amendment Act No 181/1993 (hereinafter referred to as the ACT);

NOW THEREFORE the parties agree as follows:

1. The CONTRACTOR undertakes to acquaint the appropriate officials and employees of the CONTRACTOR with all relevant provisions of the ACT and the regulations promulgated in terms thereof.
2. The CONTRACTOR undertakes to fully comply with all relevant duties, obligations and prohibitions imposed in terms of the ACT and Regulations: Provided that should the EMPLOYER have prescribed certain arrangements and procedures that same shall be observed and adhered to by the CONTRACTOR, his officials and employees. The CONTRACTOR shall bear the onus of acquainting himself/herself/itself with such arrangements and procedures.
3. The CONTRACTOR hereby accepts sole liability for such due compliance with the relevant duties, obligations, prohibitions, arrangements and procedures, if any, imposed by the ACT and Regulations, and the CONTRACTOR expressly absolves the EMPLOYER and the Employer’s CONSULTING ENGINEERS from being obliged to comply with any of the aforesaid duties, obligations, prohibitions, arrangements and procedures in respect of the work included in the contract.
4. The CONTRACTOR agrees that any duly authorised officials of the EMPLOYER shall be entitled, although not obliged, to take such steps as may be necessary to ensure that the CONTRACTOR has complied with his undertakings as more fully set out in paragraphs 1 and 2 above, which steps may include, but shall not be limited to, the right to inspect any appropriate site or premises occupied by the CONTRACTOR, or to take such steps the EMPLOYER may deem necessary to remedy the default of the CONTRACTOR at the cost of the CONTRACTOR.

5. The CONTRACTOR shall be obliged to report forthwith to the EMPLOYER any investigation, complaint or criminal charge which may arise as a consequence of the provisions of the ACT and Regulations, pursuant to work performed in terms of this agreement, and shall, on written demand, provide full details in writing of such investigation, complaint or criminal charge.

Thus signed at for and on behalf of the **CONTRACTOR**

on this the day of 20.....

SIGNATURE:

NAME AND SURNAME:

CAPACITY:

WITNESSES: 1.

2.

Thus signed at for and on behalf of the **EMPLOYER** on this

the day of 20.....

SIGNATURE:

NAME AND SURNAME:

CAPACITY:

WITNESSES: 1.

2.

C2: PRICING DATA

C2.1 PRICING INSTRUCTIONS

C2.1.1 GENERAL

The Schedule of Quantities forms part of the Contract Documents and must be read and priced in conjunction with all the other documents comprising the Contract Document, which include the Conditions of Tender, Conditions of Contract, the Specifications and Drawings.

C2.1.2 QUANTITIES REFLECTED IN THE SCHEDULE

The quantities given in the Schedule of Quantities are estimates only, and subject to re-measuring during the execution of work. The validity of Contract will in no way be effected by difference between the quantities in the Bill of Quantities and quantities finally certified for payment. The Bills of Quantities must not be used to procure material required on site.

C2.1.3 PROVISIONAL SUMS (PS)

Budgetary Allowances are provided for some items in the Schedule of Quantities. Work done under these items will be at the written direction of the Employer or Principal Agent. The Employer or Principal Agent reserves the right, during the execution of the works, to adjust the stated amounts upwards or downwards according to the work actually done under the item, or the item may be omitted altogether, without affecting the validity of the Contract.

The Tenderer shall not under any circumstances whatsoever delete or amend any of the sums inserted in the "Amount" column of the Bill of Quantities and in the Summary of the Bill of Quantities unless ordered or authorized in writing by the Employer before closure of tenders. Any authorized changes made by the Tenderer to provisional items in the schedule, or to the provisional percentages and sums in the Summary of the Bill of Quantities, will be treated as arithmetical errors.

C2.1.4 PRICING

All rates in the bills must exclude Value Added Tax (VAT), which the bidder must allow for in the final summary of the Bills of Quantities.

The labour and artisan rates shall be as the latest gazetted rates by The Department of Labour, and all the bidders must adhere to this.

The Bidders must make allowance for the employment of the Community Liaison Office (CFO), at a rate of Labour.

C2.2. SCHEDULE OF QUANTITIES