



**C1.3 PERFORMANCE GUARANTEE**

For use with the General Conditions of Contract for Construction Works, Third Edition, 2015.

**GUARANTOR DETAILS AND DEFINITIONS**

"Guarantor" means: .....

"Physical" address:.....

"Employer" means:.....

"Contractor "means: .....

"Employer's Agent" means:.....

"Works" means: .....

"Site" means: .....

"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: .....

Type of Performance Guarantee..... (insert variable or fixed)

"Expiry Date" means..... (give date) or any other later date set by the Contractor and/or Employer provided such instruction is received prior to the Expiry Date as indicated here

**CONTRACT DETAILS**

Employer's Agent issues: Interim Payment Certificates, Final Payment Certificate and the Certificate of Completion of the Works as defined in the Contract.

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2



**1. VARIABLE PERFORMANCE GUARANTEE**

1.1 Where a Variable Performance Guarantee has been selected, the Guarantor's liability shall be limited during the following periods of diminishing amounts of the Guaranteed Sum as follows:

1.1.1 From and including the date of signing the Performance Guarantee up to and including the date of the interim payment certificate certifying, for the first time, more than 50% of the

Contract Sum:

R.....

(Amount in words .....)

1.1.2 From the day following the date of the said interim payment certificate up to and including the Expiry Date, or the date of issue by the Employer's Agent of the Certificate of Completion of the Works, whichever occurs first:

R .....

(Amount in words .....)

1.2 The Employer's Agent and/or the Employer shall advise the Guarantor in writing of the date on which the interim payment certificate certifying, for the first time, more than 50% of the Contract Sum, has been issued and the date on which the Certificate of Completion of the Works has been issued.

**2. FIXED PERFORMANCE GUARANTEE**

2.1 Where a Fixed Performance Guarantee has been selected, the Guarantor's liability shall be limited to the amount of the Guaranteed Sum.

2.2 The Guarantor's period of liability shall be from and including the date on which the Performance Guarantee is signed, up to and including the Expiry Date, or the date of issue by the Employer's Agent of the Certificate of Completion of the Works, or the date of payment in full of the Guaranteed Sum, whichever occurs first.

2.3 The Employer's Agent 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.

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2



**3. CONDITIONS APPLICABLE TO VARIABLE AND FIXED PERFORMANCE GUARANTEES**

3.1 The Guarantor hereby acknowledges that:

3.1.1 Any reference in this Performance Guarantee to the Contract is made for the purpose of convenience and shall not be construed as any intention whatsoever to create an accessory obligation or any intention whatsoever to create a suretyship;

3.1.2 Its obligation under this Performance Guarantee is restricted to the payment of money.

3.2 Subject to the Guarantor's maximum liability referred to in 1.1 or 2.1, the Guarantor hereby undertakes to pay the Employer the sum certified upon receipt of the documents identified in 3.2.1 to 3.2.3:

3.2.1 A copy of a first written demand issued by the Employer to the Contractor stating that payment of a sum certified by the Employer's Agent 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 3.2.2;

3.2.2 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 3.2.1 and the sum certified has still not been paid;

3.2.3 A copy of the aforesaid payment certificate which entitles the Employer to receive payment in terms of the Contract of the sum certified in 3.2.

3.3 Subject to the Guarantor's maximum liability referred to in 1.1 or 2.1, 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:

3.3.1 the Contract has been terminated due to the Contractor's default and that this Performance Guarantee is called up in terms of 3.3; or

3.3.2 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 3.3; and

3.3.3 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.

3.4 It is recorded that the aggregate amount of payments required to be made by the Guarantor in terms of 3.2 and 3.3 shall not exceed the Guarantor's maximum liability in terms of 1.1 or 2.1

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2



KGOTSONG/BOTHAVILLE: UPGRADING OF SEWER OUTFALL REMAINING PHASES

- 3.5 Where the Guarantor has made payment in terms of 3.3, 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.
- 3.6 Payment by the Guarantor in terms of 3.2 or 3.3 shall be made within seven (7) calendar days upon receipt of the first written demand to the Guarantor.
- 3.7 Payment by the Guarantor in terms of 3.3 will only be made against the return of the original Performance Guarantee by the Employer.
- 3.8 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.
- 3.9 The Guarantor chooses the physical address as stated above for the service of all notices for all purposes in connection herewith.
- 3.10 This Performance Guarantee is neither negotiable nor transferable and shall expire in terms of 1.1.2 or 2.2, 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.
- 3.11 This Performance Guarantee, with the required demand notices in terms of 3.2 or 3.3, shall be regarded as a liquid document for the purposes of obtaining a court order.
- 3.12 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.

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2



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Signed at .....

Date .....

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

Capacity.....

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

Capacity .....

Witness signatory (1).....

Witness signatory (2) .....

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

**C1.4 CONTRACT DATA****C1.4.1 Conditions of Contract**

The Conditions of Contract applicable are the General Conditions of Contract for Construction Works 3<sup>rd</sup> Edition (2015) published by the South African Institution of Civil Engineering, Private Bag X200, Halfway House, 1685.

**C1.4.2 Contract Specific Data**

The following Contract Specific data, referring to the General Condition of Contract for Construction Works, 3<sup>rd</sup> Edition 2015 are applicable to this contract

**Section 1: Data provided by the Employer**

<b>CLAUSE</b>	<b>ADD THE FOLLOWING TO THIS CLAUSES:</b>
1.1.1.5	The “ <b>Commencement date</b> ” shall be the date the site is handed over to the Contractor and after the guarantees have been delivered.
1.1.1.12	“The special non-working days are all South African statutory holidays and as further defined in Clause 5.8.1.”
1.1.1.14	“This Clause shall apply mutatis mutandis to any portion or phase of the Works that may be described in the Scope of Works or in the Contract Data, or agreed subsequently between the Contractor and the Employer, and committed to writing.
1.1.1.15	The <b>Employer</b> is the <b>NALA LOCAL MUNICIPALITY</b> .
1.1.1.16	The Employer’s agent means any Director, Associate or Professional Engineer appointed generally or specifically by the management of the firm <b>BVi Consulting Engineers</b> to fulfil the functions of the Employer’s agent in terms of the Conditions of Contract.
1.1.1.26	The Pricing Strategy is a <b>Remeasurement Contract</b>
1.2.1	The employer’s address for receipt of communication is: Telephone: 056 514 9200 Facsimile: (056) 515 3922 Address: Nala Local Municipality 8 Preller Street Bothaville 9660
1.2.1	The <b>Employer’s agent’s</b> contact details are as follows: Telephone: (051) 447 2137 e-mail: <a href="mailto:bfm@bvi.co.za">bfm@bvi.co.za</a> Address: 17 President Steyn Ave Westdene Bloemfontein 9301
2.5.1	Cession payments would be allowed.



Contractor



Witness 1



Witness 2



Employer



Witness 1



Witness 2



3.1.1	<p>The Employer's agent is required in terms of his appointment with the employer to obtain the following <b>specific approvals from the Employer</b>:</p> <ol style="list-style-type: none"> <li>1. Nominating the Engineer's Representative</li> <li>2. Delegation of Engineer's authority</li> <li>3. Providing consent for subcontracting part of the contract</li> <li>4. The issuing of instructions for dealing with fossils</li> <li>5. The issuing of an instruction to accelerate progress</li> <li>6. Granting permission to work during non-working times</li> <li>7. The issuing of further drawings or instructions</li> <li>8. Suspend the progress of the works.</li> <li>9. The approval of any extension of time for completion</li> <li>10. The reduction of a penalty for delay</li> <li>11. The issuing of a variation order</li> <li>12. Issuing of instructions to carry out work on a day work basis</li> </ol>
3.1.3	<p>The Engineer is required to obtain the specific approval of the Employer in order to authorize any expenditure in excess of the Tender Sum</p>
4.4.1	<p>4.4.1.1 A minimum of 30% of the value of the contract must be subcontracted to:</p> <p style="padding-left: 40px;">(a) an EME or QSE which is at least 51% owned by black people</p> <p>4.4.1.2 A list of suppliers registered on the database approved by the National Treasury to provide the required goods or services in respect of the applicable designated groups mentioned in Clause 4.4.1.1 above must be obtained from Nala Local Municipality from which suppliers, and service providers may be selected.</p> <p>4.4.1.3 If the Contractor fails to comply with Clause 4.4.1.1 and 4.4.1.2 above, the Contractor shall be liable to the employer a penalty as to be determined by the below equation.</p> $P_{sub} = (V_{sub} - V_{act}) \times 2.5\%$ <p><i>P<sub>sub</sub></i>: Penalty for under subcontracting  <i>V<sub>sub</sub></i>: Value of work to be subcontracted according to clause 4.4.1.1  <i>V<sub>act</sub></i>: Value of work subcontracted at completion</p> <p>4.4.1.4 <i>The Contractual relationship between the Contractor and the Subcontractor selected by the Contractor and in consultation with the Employer in accordance with the requirements of and procedure set out above, shall be the same as if the Contractor had appointed the subcontractor in terms of Clause 4.4.3.</i></p>
4.4.3	<p>The <b>minimum Procurement requirements</b>, regarding the portions of the Contract Price to be spent on sub-contractors and labour, are set out in clause C3.3 "Procurement" of the Scope of the Work.</p>
4.10	<p><b>ADD THE FOLLOWING TO THIS CLAUSE:</b></p> <p>"4.10.3 The Contractor shall use local labour in accordance with the requirements contained within the Scope of Work."</p> <p>"4.10.4 Local labour rates will be as per the Department of Labour or South African Federation of Civil Engineering Contractors (SAFCEC), whichever is higher.</p>
5.1.1	<p>The <b>year-end break</b> commences on <b>13 December 2024</b> and ends on <b>6 January 2025</b>.</p>
5.3	<p>The <b>Works are to be commenced within 14</b> days of the Commencement Date.</p>



Contractor



Witness 1



Witness 2



Employer



Witness 1



Witness 2



5.3.1	<p>“The Contractor shall commence executing the works within a period of 22 working days from the date of the written instruction by the Employer’s Agent unless otherwise agreed.</p> <p>The documentation required before commencement with Works execution are:</p> <ul style="list-style-type: none"> <li>• Health and Safety Plan/Permit (Refer to Clause 4.3)</li> <li>• A signed Agreement between the Employer and the Contractor for the Works to be completed by the Contractor in terms of the provisions of Section 37(2) of the Occupational Health and Safety Act (Act No 85 of 1993) and the Construction Regulations promulgated thereunder (Refer to Clause 4.3).</li> <li>• Proof of payment to the Employer, that the Contractor has paid all contributions required in terms of the Compensation for Occupational Injuries and Diseases Act, No 130 of 1993 (Refer to Clause 4.3).</li> <li>• Initial programme (Refer to Clause 5.6)</li> <li>• Security (Refer to Clause 6.2)</li> <li>• Insurance (Refer to Clause 8.6)</li> <li>• Cashflow”</li> </ul>
5.5.1	“The time for Completion shall be 12 months from Commencement Date, including year-end break/s.”
5.6.1	The <b>Works detail programme</b> is to be delivered within the tender document.
5.6.1.6	“Commencement date after all documents after all documents are submitted”
5.7.1	“No such instruction by the Employer’s Agent to expedite progress shall be the subject of additional compensation to the Contractor unless the instruction explicitly states that the Contractor is entitled to additional compensation, and cites the amount of such compensation or the basis upon which it is to be determined.”
5.8.1	<p>The non-working Days are Sundays</p> <p>The special non-working Days are:</p> <p>Statutory public holidays; and</p> <p>a) All annual year-end shutdown periods as recommended by the South African Federation of Civil Engineering Contractors (SAFCEC), and which commence after the Commencement Date and which commence before the Due Completion Date.</p>
5.13.1	<b>The penalty for delay is R 3 000</b> per calendar day or part thereof plus all the Employer's agent's costs including VAT as invoiced to the Employer for maintaining a presence on the site, from the day after the Due Completion Date up to and including the certified date of Practical Completion.
5.16.3	The latent defect Period is <b>10</b> years after the issue of Final Approval Certificate.
6.1	“Payment for works identified in the Scope of Work 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 non-payment for such works shall not relieve the Contractor in any way from his obligations either in contract or in delict.”



Contractor



Witness 1



Witness 2



Employer



Witness 1



Witness 2



6.2 and 8.6	The <b>Performance Guarantee and Insurance</b> are to be delivered within 14 days after the request to do so and the Form of Acceptance will not be signed before receipt of Guarantee that is acceptable to the Employer. Failure to submit the guarantee within 14 days will lead to the cancellation of the appointment.																												
6.2.1	<p>The guarantee will be fixed performance guarantee of 10% of the Contract Sum. The guarantee shall remain valid until the issue of the Certificate or Certificates of Completion in respect of the whole of the Purchase Order. The Form of Guarantee is appended to the Contract Data.</p> <p>The Guarantee shall be returned to the Contractor within 14 days after the issue of the Certificates or Certificates of Completion in respect of the whole of the Permanent Works as per Purchase Order.”</p> <p>Further to this a Retention guarantee of 10% of the value of the works will also be deducted with payment certificates.</p>																												
6.8.2	<p>The application of a Contract Price Adjustment factor will apply to this Contract.</p> <p>ADD THE FOLLOWING TO THIS CLAUSE:</p> <table style="margin-left: auto; margin-right: auto;"> <tr> <td style="padding-right: 20px;">x</td> <td style="padding-right: 20px;">=</td> <td style="padding-right: 20px;">0.15</td> <td style="padding-right: 20px;">Fixed</td> </tr> <tr> <td></td> <td></td> <td style="text-align: center;"><u>Default</u></td> <td style="text-align: center;"><u>Contractor</u></td> </tr> <tr> <td style="padding-right: 20px;">a (labour)</td> <td style="padding-right: 20px;">=</td> <td style="padding-right: 20px;">0.25</td> <td style="padding-right: 20px;">.....</td> </tr> <tr> <td style="padding-right: 20px;">b (plant)</td> <td style="padding-right: 20px;">=</td> <td style="padding-right: 20px;">0.15</td> <td style="padding-right: 20px;">.....</td> </tr> <tr> <td style="padding-right: 20px;">c (materials)</td> <td style="padding-right: 20px;">=</td> <td style="padding-right: 20px;">0.55</td> <td style="padding-right: 20px;">.....</td> </tr> <tr> <td style="padding-right: 20px;">d (fuel)</td> <td style="padding-right: 20px;">=</td> <td style="padding-right: 20px;">0.05</td> <td style="padding-right: 20px;">.....</td> </tr> <tr> <td></td> <td></td> <td style="text-align: center; border-top: 1px solid black;">1.00</td> <td style="padding-right: 20px;">.....</td> </tr> </table> <p style="text-align: center;"><i>Above values must total to one (1).</i></p> <p>‘L’ is the consumer price index for the area of Free State: Other urban areas  ‘F’ is the fuel index and shall be the index for diesel oil for the Witwatersrand</p> <p>The Base Date for the calculation of Contract Price Adjustment shall be one month before the closing of the Tender.”</p>	x	=	0.15	Fixed			<u>Default</u>	<u>Contractor</u>	a (labour)	=	0.25	.....	b (plant)	=	0.15	.....	c (materials)	=	0.55	.....	d (fuel)	=	0.05	.....			1.00	.....
x	=	0.15	Fixed																										
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d (fuel)	=	0.05	.....																										
		1.00	.....																										



Contractor



Witness 1



Witness 2



Employer



Witness 1



Witness 2



6.10.1.5	The percentage limit on <b>materials not yet built into the Permanent Works</b> is <b>80%</b> .
6.10.3	"The percentage retention is 10%. The limit of retention money is 5% of the Contract Price at the time of the Guarantee made in terms of the Form of Offer and Acceptance coming into effect."
6.10.4	The <b>first payment</b> certificate will only be processed <b>after the completion of section A: P&amp;G: Item 1 &amp; 2 &amp; 4</b> in the Bill of Quantities, to the satisfaction of the Employer and/or the Employer's agent.
7.8.1	The <b>Defects Liability Period</b> is twelve <b>(12)</b> calendar months after final completion date.
8.6	The <b>amount to be included in the sum insured</b> to cover the value of:
8.6.1	a) <b>Materials</b> supplied by the employer for incorporation into the works: <b>nil</b> . b) <b>Professional fees: nil</b> .
8.6.1.2	South African Special Risks Insurance Association (SASRIA) cover must be arranged on motor vehicles, plant, site accommodation, tools and equipment.
8.6.1.3	"Limit of indemnity shall be R20 million per event, the number of events being unlimited."
8.6.6	"Proof of insurance shall be submitted to the Employer prior to Commencement of the Works (Clause 5.3.1), and copies of the policies and proof of due payment of all premiums shall be presented to the Employer."
8.6.1.5	"In addition to the insurance required in terms of General Conditions of Contract Clause 8.6.1.1 to 8.6.1.3 the following insurance is also required: Insurance cover against any damages or loss against production due to political unrest. The Employer shall not be held responsible for such damages or losses."
9.2.1.3.7	DELETE THE FIRST TWO LINES OF THE CLAUSE AND INSERT THE FOLLOWING:  "The Contractor furnished inaccurate information in the Returnable Documents or Returnable Schedules forming part of the Contract,"
10.4/10.5/10.6	<b>Disputes</b> are to be referred to <b>Amicable Settlement</b> .
10.7	Disputes are to be referred for <b>final settlement to arbitration</b> .
T2.1 M  C3.3.1.1	The additional Conditions of Contract are:  Penalty for failure to comply with labour content and jobs created:  Labour Content: Penalty = <i>Tender sum (excluding VAT) x (tenderer labour content % – actual labour content %)</i>  BEE Content: Penalty = <i>Tender sum (excluding VAT) x (tendered BEE content % - actual BEE content %)</i>  The geographical area for labour recruitment: <b>Kgotsong/Bothaville, Nala Local Municipality</b>



Contractor



Witness 1



Witness 2



Employer



Witness 1



Witness 2



**Section 2: Data provided by the Contractor**

<b>Clause</b>	
1.1.1.9	The <b>contractor</b> is .....
1.2.1.2	The <b>contractor's address</b> for receipt of communication is: Contact Person: ..... Telephone: ..... Facsimile:..... e-mail:..... Address:.....
5.5.1	The Works shall be completed within ..... months as proposed by the contractor

Signed at .....

Date .....

Capacity .....

Signature .....

Witness signatory (1) .....

Witness signatory (2) .....



Contractor



Witness 1



Witness 2



Employer



Witness 1



Witness 2



**C1.4.3 Variations to the General Conditions of Contract**

The following amendments of the General Conditions of Contract 2015 apply to this contract. The headings in these Special Conditions of Contract shall not be deemed to be part thereof nor be taken into consideration in the interpretation or construction thereof or of the Contract.

**1.1 DEFINITIONS**

1.1.1.2 "Bill of Quantities" and "Schedule of Quantities" shall have the same meaning.

1.1.1.15 "Employer" means the Nala Local Municipality represented by the Municipal Manager and/or such other person or persons duly authorized by the Employer in writing.

1.1.1.16 "Employer's agent" means BVi Consulting Engineers Pty Ltd as represented by a Director, Manager or other person duly authorized thereto by BVi Consulting Engineers (Pty) Ltd.

**3. EMPLOYER'S AGENT**

**3.1.2 Employer's agent to consult with contractor and Employer**

*Replace the word "Employer's agent" in the last sentence with the word "Employer".*

**3.2.6** Add the following to Sub clause 3.2.6:

"The time limit for referring the matter to the Employer's agent by the Contractor shall be fourteen (14) days after the decision in question was given by the Employer's agent's Representative."

*Add the following:*

**"3.2.7 Authority of the Employer**

Notwithstanding any provisions to the contrary in the Contract, the Employer shall have the right to reverse and, should he deem it necessary, to amend any certificate, direction, decision or valuation of the Employer's agent and to issue a new one, and such certificate, direction, decision or valuation shall for the purpose of the Contract be deemed to be issued by the Employer's agent, provided that the Contractor shall be remunerated in the normal manner for work executed in good faith in terms of an instruction issued by the Employer's agent and which has subsequently been rescinded."

**4. CONTRACTORS' GENERAL OBLIGATIONS**

**4.1 EXTENT OF OBLIGATIONS AND LIABILITY**

*Add the following sub clause:*

- 4.1.1.1 The Contractor shall, save in so far as it is legally or physically impossible,
- (a) Provide all superintendence, labour, materials, Constructional Plant, Temporary Works, including the design thereof, all requisite transport and all other things, whether of a temporary or permanent nature, required in and for such design, execution and completion of the Works and for the remedying of any defects, so far as the necessity for providing the same is specified in or reasonably to be inferred from the Contract.
- (b) After award of the Contract, the Contractor shall be obligated to ensure that at least the Constructional Plant stated on the prescribed form in the Tender Documents, or Constructional Plant equivalent thereto, are on the site when required."

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2



**“4.1.3 Contractor deemed to have inspected the Site**

The Contractor shall be deemed to have inspected and examined the Site and its surroundings and information available in connection therewith and to have satisfied himself before submitting his tender (as far as practicable) as to

- (a) the form and nature of the Site and its surroundings, including subsurface conditions,
- (b) the hydrological and climatic conditions.
- (c) the extent and nature of work and materials necessary for the execution and completion of the Works,
- (d) the means of access to the Site and the Accommodation he may require and, in general, shall be deemed to have obtained all information (as far as is practicable) as to risks, contingencies and all other circumstances which may influence or affect his tender.

No subsequent claims by the Contractor arising from his lack of knowledge of perceptible conditions on the site or its surroundings or of information available in connection therewith shall be entertained.”

- (c) **4.11.1** To carry out and complete the Works, the Contractor shall employ on the Site only such persons are a careful, competent and efficient in their various trades and professions

**4.3 LEGAL PROVISION**

*Add the following on 4.3.1*

**4.3.1 .** The Contractor shall, in fulfilling the Contract, comply with all applicable laws, *with regard to Health, Safety, Wages and Condition of Work*, regulations, statutory provisions and agreements, and shall, at the request to the Employer’s agent, provide proof that he has complied therewith.

**8. TERMINATION OF CONTRACT**

**9.3 Termination by Contractor**

*Delete the wording of sub clause 9.3.1.1.2 and replace this clause with the following:*

**9.3.1.1.2** “Failing to pay the contractor the amount due in terms of any payment certificate issued by the Employer’s agent, provided that such payment certificate is acceptable to the Employer and further more subject to the provision of sub-clause 3.2.7, within the time of payment provided in the contract.”

**9. CLAIMS AND DISPUTES**

*Add the following*

**10.12 Joint ventures**

"If the Contractor is in a joint venture of two or more parties or persons, the parties or persons shall be jointly and severally bound to the Employer for fulfilment of the Contractor's obligations and terms of this Contract. The formation and/or conditions of agreement of the joint venture shall not be altered without the consent of the Employers. Should such a change be acceptable to the Employer then two notarially certified copies of the revised Joint Venture Agreement shall be submitted to the Employer’s agent within fourteen (14) days of signature thereof by the parties to the Joint Venture."

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2



KGOTSONG/BOTHAVILLE: UPGRADING OF SEWER OUTFALL REMAINING PHASES

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Signed at .....

Date .....

Capacity .....

Signature .....

Witness signatory (1) .....

Witness signatory (2) .....



Contractor



Witness 1



Witness 2



Employer



Witness 1



Witness 2



**C1.4.4 Protection of the Environment Declaration**

**PROTECTION OF THE ENVIRONMENT DECLARATION**

The Contractor will not be given right of access to the Site until this form has been signed

**CONTRACT NO.: NLM/TS/014/2023-24**

**CONTRACT TITLE: KGOTSONG/BOTHAVILLE: UPGRADING OF SEWER OUTFALL REMAINING PHASES**

I/ we, ..... (Contractor) record as follows:

- 1. I/ we, the undersigned, do hereby declare that I/ we am/ are aware of the increasing requirement by society that construction activities shall be carried out with due regard to their impact on the environment.
- 2. In view of this requirement of society and a corresponding requirement by the Employer with regard to this Contract, I/ we will, in addition to complying with the letter of the terms of the Contract dealing with protection of the environment, also take into consideration the spirit of such requirements and will, in selecting appropriate employees, plant, materials and methods of construction, in-so-far as I/ we have the choice, include in the analysis not only the technical and economic (both financial and with regard to time) aspects but also the impact on the environment of the options. In this regard, I/ we recognize and accept the need to abide by the "precautionary principle" which aims to ensure the protection of the environment by the adoption of the most environmentally sensitive construction approach in the face of uncertainty with regard to the environmental implications of construction.
- 3. I/ we declare that I/ we have read and understood the contents of the Environmental Management Programme (which is comprised of the Environmental Management Specification and its Annexures) for this Contract, and that I/ we understand my/our responsibilities in terms of enforcing and implementing the Environmental Management Programme. I/ we also declare that I/ we have made appropriate provision in my/ our pricing of the Bills of Quantities items for the Environmental Management Programme.
- 4. I/ we acknowledge and accept the right of the Employer to deduct, should he so wish, from any amounts due to me/ us, such amounts (hereinafter referred to as fines) as the Employer's Agent shall certify as being warranted in view of my/ our failure to comply with the terms of the Contract dealing with protection of the environment, subject to the following:
  - 4.1 The Employer's Agent, in determining the amount of such fine, shall take into account, *inter alia*, the nature of the offence, the seriousness of its impact on the environment, the degree of prior compliance/non-compliance, the extent of the Contractor's overall compliance with environmental protection requirements and, in particular, the extent to which he considers it necessary to impose a sanction in order to eliminate/reduce future occurrences

The Employer's Agent shall, with respect to any fine imposed, provide me/ us with a written statement giving details of the offence, the facts on which the Employer's Agent has based his assessment and the terms of the Contract (by reference to the specific clause) which has been contravened.

Signed ..... Date.....  
CONTRACTOR

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2



**C1.4.5 Insurance Broker's Warranty**

Pro Forma

*Letterhead of Contractor's Insurance Broker*

Date

NALA LOCAL MUNICIPALITY  
Municipal Manager  
8 Preller Street  
Bothaville  
9660

Dear Sir

**CONTRACT NO.: NLM/TS/014/2023-24**

**CONTRACT TITLE: KGOTSONG/BOTHAVILLE: UPGRADING OF SEWER OUTFALL  
REMAINING PHASES**

NAME OF CONTRACTOR:

I, the undersigned, do hereby confirm and warrant that all the insurances required in terms of the abovementioned contract have been issued and/or in the case of blanket/umbrella policies, have been endorsed to reflect the interests of the NALA LOCAL MUNICIPALITY with regard to the abovementioned contract, and that all the insurances and endorsements, etc., are all in accordance with the requirements of the contract.

I furthermore confirm that all premiums in the above regard have been paid.

Yours faithfully

Signed: \_\_\_\_\_

For: \_\_\_\_\_

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2



**C1.4.6 Contract of Temporary Employment as Community Liaison Officer**

Construction Contract No.: **NLM/TS/014/2023-24**

**PROJECT: KGOTSONG/BOTHAVILLE: UPGRADING OF SEWER OUTFALL REMAINING PHASES**

AGREEMENT made between the CONTRACTOR.....

and the Community Liaison Officer....., hereafter referred to as the CLO, for the appointment and employment of a CLO for the duration of the work in respect of the above-named construction contract.

**1. THE PARTIES HAVE AGREED THAT**

The CLO will be employed by the CONTRACTOR on a temporary basis for the duration of the work from the date of signing this agreement to the date of practical completion as defined in the Contract, subject to all the conditions set out below.

**2. THE DUTIES OF THE COMMUNITY LIAISON OFFICER SHALL BE:**

- a) to keep the community informed on the progress of the project;
- b) to keep the Contractor informed on relevant Community affairs and possible grievances;
- c) to manage the recruitment of workers from the Sub-Council Job-Seekers Database;
- d) to assist the Contractor’s supervisory staff in the management of the workers.

**3. THE FOLLOWING CONDITIONS OF EMPLOYMENT SHALL APPLY:**

The Conditions of Temporary Employment as applicable on this Contract for the workers recruited from the Community shall apply equally to the CLO, except that the rate of remuneration shall be R6500.00 per month. These conditions that apply are listed below as they appear in the Contract of Temporary Employment:

- 3.1 If required to work on a statutory public holiday or Sunday the payment will be double the amount stated in the previous paragraph.
- 3.2 Maximum hours of work:
  - i) 9¼ hours per day
  - ii) 45 hours per week;
  - iii) 5 days per week;
  - iv) 5 hours without an interval, whereupon there shall be an interval of at least 30 minutes;
  - v) A spread-over period of 12 hours.
- 3.3 The CLO shall be entitled to payment where he is prevented from working by reasons which are within the control of the Contractor.
- 3.4 On days when it is raining the Contractor may, before 9 a.m., decide not to open the site and there will be no pay.

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2



If the Contractor closes the site between 9 a.m. and 1 p.m., the CLO will be paid half the daily wage.

If the site works later than 1 p.m., the CLO will be paid the full daily wage.

3.5 Workers and the CLO will not be permitted to work under conditions of:

- i) undisciplined or unruly behavior;
- ii) insubordination to Team Leader, Supervisors or Management;
- iii) abuse of intoxicating substances;
- iv) criminal actions by the employee;
- v) strike action or political stayaways.

3.6 Workers, including the CLO, may be dismissed after two official written warnings for the following behavior:

- i) undisciplined or unruly behavior;
- ii) insubordination to Team Leader, Supervisors or Management;
- iii) abuse of intoxicating substances;
- iv) willful or negligent damage to or loss of machines or equipment.

The Contractor shall ensure that he has statements from at least two witnesses concerning any of the above situations.

The Contractor shall inform the CLO within 24 hours of any warning issued to workers employed from the Job-Seekers Database.

3.7 The CLO will be paid on monthly basis, on the same date as the rest of the workers on site.

3.8 The CLO shall be given a statement with each payment on which is recorded:

- i) the name of the Contractor;
- ii) the CLO's name;
- iii) the number of days worked by the CLO;
- iv) the rate per day;
- v) the details of any deductions made;
- vi) the actual amount paid to the CLO.

3.9 No deduction shall be made from the remuneration except where the CLO consents in writing or unless the Contractor is permitted or required to do so by law or the order of any competent court.

3.10 The CLO shall be supplied free of charge with all health and safety equipment required by the Occupation Health and Safety Act. The equipment shall remain the property of the Contractor.

3.11 The Contractor must give the CLO at least one week's notice of the termination of the Contract of Temporary Employment. If this is not done, the CLO must be paid earnings for five days. This condition does not apply if the CLO is dismissed.

3.12 At the end of the period of temporary employment, the Contractor shall provide a Certificate of Service recording the Contractor's name, the CLO's name and address, the period of service, the type of work on which the CLO was engaged and

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2



the rate of remuneration on termination.

**4. TERMINATION OF AGREEMENT**

4.1 If the CLO can no longer perform and execute his/her duties as detailed in this agreement, this agreement will be terminated without prejudice to any rights under this agreement.

**5. THE CONDITIONS OF THIS AGREEMENT**

5.1 The parties expressly declare that this agreement contains all the conditions negotiated between them, and no condition or stipulation not contained herein shall be binding upon the parties.

**6. THUS, AGREED AND SIGNED BY THE PARTIES:**

Contractor: .....

Community Liaison officer: .....

Date: .....

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2