

C1.3 FORMS OF SECURITIES

FORMS FOR COMPLETION BY THE CONTRACTOR

THE FOLLOWING FORMS ARE TO BE COMPLETED BY THE CONTRACTOR AFTER THE TENDER HAS BEEN AWARDED TO THE SUCCESSFUL TENDERER

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The forms will be completed by the Contractor who will be instructed to do so in the Form of Acceptance. The completed forms will become part of the Contract.

The Form of Guarantee is a pro forma document. An original document, from a financial institution, with the same text will be provided by the Contractor within the time stated in the Contract Data. Only a Bank or approved Insurance Company or Guarantee Corporation is acceptable as Guarantor.

Pro Forma Performance Guarantee

GUARANTOR DETAILS AND DEFINITIONS

"Guarantor" means: _____

Physical address: _____

"Employer" means: Chief Albert Luthuli Municipality

"Contractor" means: _____

"Employer's Agent" means: A Professional Registered with the Engineering Council of South Africa (ECSA) and is Mr NK Nathoo.

"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.

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 to 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.

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;
- 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.
- 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 consider 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.
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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 Magistrates' 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 (1) _____

C1.3.2: 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 endeavour 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.

PART C1: AGREEMENT AND CONTRACT DATA
BID No: ALMT06/2023 - CONSTRUCTION OF PAVED ROAD FROM
NHLAZATSHE 3 TO ELUKWATINI (PHASE 2)

SIGNED by:

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

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

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

Witness: **Witness:** **Witness:**
(Signature)..... (Signature)..... (Signature).....

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

Address: Address: Address:

.....

.....

Date: Date: Date:

**C1.3.3: AGREEMENT IN TERMS OF SECTION 37(2) OF THE OCCUPATIONAL HEALTH
AND SAFETY ACT No 85 OF 1993**

THIS AGREEMENT is made between **Chief Albert Luthuli 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 Mandatory of the **EMPLOYER** in consequence of
an agreement between the **CONTRACTOR** and the **EMPLOYER** in respect of

BID No:.....

.....

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 OHSA 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.

PART C1: AGREEMENT AND CONTRACT DATA
BID No: ALMT06/2023 - CONSTRUCTION OF PAVED ROAD FROM
NHLAZATSHE 3 TO ELUKWATINI (PHASE 2)

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 it 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 atfor 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

the day of 20.....

SIGNATURE:

NAME AND SURNAME:

CAPACITY:

WITNESSES: 1.

2.

C.1.3.4 BLASTING INDEMNITY

Contract No. _____ Given by _____

*Company Registration No. _____

Address _____

a *Company incorporated with limited liability according to the company laws of the Republic of South Africa, *Partnership, *Close Corporation, *Public Company (hereinafter called the Contractor),

represented herein by _____ in his capacity as the Contractor's
_____ duly authorised hereto by a resolution of the Contractor dated
_____ a certified copy of which resolution is attached to this Indemnity.

WHEREAS the Contractor has entered into a Contract with the Chief Albert Luthuli Municipality
(hereinafter called the Company) for,

_____ and the Company requires this Indemnity from the Contractor

NOW THEREFORE THIS DEED WITNESSETH that the Contractor does hereby indemnify and hold harmless the Company in respect of all loss or damage that may be incurred or sustained by the Company by reason of or in any way arising out of or caused by blasting operations that may be carried out by the Contractor in connection with the aforementioned Contract and also in respect of all claims that may be made against the Company in consequence of such blasting operations, by reason of or in any way arising out of any accidents or damage to persons, life or property or any other cause whatsoever, and also in respect of all legal or other expenses that may be incurred by the Company in examining, resisting or settling any such claims; for the due performance of which the Contractor binds itself according to law.

THUS DONE AND SIGNED for and on behalf of the Contractor at _____ on the
_____ day of _____ 20____ in the presence of the subscribing witnesses.

AS WITNESSES

1. _____

SIGNATURE

2. _____

DESIGNATION OF SIGNATORY

*Delete which does not apply