

## CONTRACT

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**C2: PRICING DATA**

**C3: SCOPE OF WORK**

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## **WATERBERG DISTRICT MUNICIPALITY**

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## WATERBERG DISTRICT MUNICIPALITY

## TARRING OF STREETS IN MAHWELERENG

TENDER No. WDM/2011/12-33

## C1.1 Form of Offer and Acceptance

## Offer

The employer, identified in the acceptance signature block, has solicited offers to enter into a contract for the procurement of: TARRING OF STREETS IN MAHWELERENG, Tender No. WDM/2011/12-33

The tenderer, identified in the offer signature block, has examined the documents listed in the tender data and addenda thereto as listed in the returnable schedules, and by submitting this offer has accepted the conditions of tender.

By the representative of the tenderer, deemed to be duly authorized, 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:

ONE THREE SIX FIVE THREE ZERO THREE 79 Rand (in words);  
R1 365 303 - 79 (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

Date 05/06/2012

Name

ICHOLOFEO FLORENCE MABULO

Capacity

MANAGING MEMBER

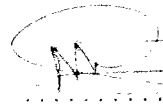
## for the tenderer

(Name and  
address of  
organization)

LA FAWU KAT  
MODIPANA VILLAGE GR - MABUSELA MAPELA  
0610 P.O. BOX 1650 MABUSELA 0610

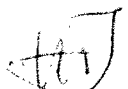
Name and  
signature  
of witness

SAMUEL MABUSA



## Acceptance

By signing this part of this 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:

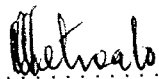
- Part C1: Agreements and contract data, (which includes this agreement)
- Part C2: Pricing data
- Part C3: Scope of work.
- Part C4: Site information

and 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 as 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.

The tenderer shall within two weeks 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 bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the conditions of contract identified in the contract data. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this agreement.

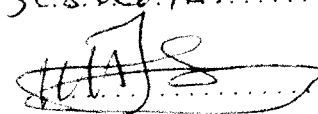
Notwithstanding anything contained herein, this agreement comes into effect on the date when the tenderer receives one fully completed original copy of this document, including the schedule of deviations (if any). Unless the tenderer (now contractor) within five working days of the date of such receipt 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 ..... MOKOPANE LETSOALO  
 Capacity ..... MUNICIPAL MANAGER

Date ..... 21-01-2013...

**for the  
Employer**

Waterberg District Municipality  
 Harry Gwala Street, **Modimolle**

Name and  
signature  
of witness ..... Se.S. M. K. M. J.  


Date ..... 21/01/2013

## Schedule of Deviations

1 Subject .....	
Details .....	
.....	
.....	
.....	
2 Subject .....	
Details .....	
.....	
.....	
.....	
3 Subject .....	
Details .....	
.....	
.....	
.....	
4 Subject .....	
Details .....	
.....	
.....	
.....	
5 Subject .....	
Details .....	
.....	
.....	
.....	

By the duly authorised representatives signing this agreement, 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 changes 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.

**WATERBERG DISTRICT MUNICIPALITY**  
**TARRING OF STREETS IN MAHWELERENG**

**TENDER No. WDM/2011/12-33**

**C1.2 Contract Data**

*Section 1.01 The General Conditions of Contract for Construction Works (2004) published by the South African Institution of Civil Engineering, is applicable to this contract. Copies of these conditions of contract may be obtained from the South African Institution of Civil Engineering (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.



**WATERBERG DISTRICT MUNICIPALITY**  
**TARRING OF STREETS IN MAHWELERENG**

*TENDER No. WDM/2011/12-33*

**C1.2.1: CONDITIONS OF CONTRACT**

**GENERAL CONDITIONS OF CONTRACT**

**SPECIAL CONDITIONS OF CONTRACT**

1. **GENERAL**
2. **AMENDMENTS TO THE GENERAL CONDITIONS OF CONTRACT**

**APPENDIX A: 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 - 1st Edition 2004", issued by the South African Institution of Civil Engineering. (Short title: "**General Conditions of Contract**") 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 2004 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 2004 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 2004, 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. AMENDMENTS TO THE GENERAL CONDITIONS OF CONTRACT**

**The variations to the General Conditions of Contract are:**

- 4.5.2 Replace the term "Safety" with "Occupational Health and Safety"
- 6.3 For conditions regarding selection of **LOCAL EMERGING SUB-CONTRACTORS** (LES Work), see additional clauses below.
- 49.6.1 to 49.6.3 Replace the term "Bank" with "Bank or Insurance Company"
- 55.1.8 Replace sub-clause with:  
The Contractor or anyone on his behalf or in his employ would pay, offer or offer as payment to any person in the employ of the Employer, or in the employ of the Engineer, a gratuity or reward or commission.

**The additional clauses to the General Conditions of Contract are:**

**Local Emerging Sub-Contractors**

The Contractor shall promptly, and in any event within a reasonable time after the Commencement Date, sub-contract a portion of the Works to the value of ten (10) percent of the work specified in the Schedule of Works (excluding preliminary and general costs) ("the LES Work") to one or more of the local emerging sub-contractors notified by the Employer to the Contract ("the Local Emerging Sub-Contractors"), in strict accordance with, and subject to, the requirements set out in Paragraphs (i) to (x) of this Clause, as follows:

- (i) The Contractor shall select the Local Emerging Sub-Contractor(s) to whom he is to sub-contract the LES Work by means of a competitive bidding process conducted strictly in accordance with the CIDB Standard for Uniformity in Construction Procurement and Best Practice Guidelines January 2009, and in doing so shall exercise all reasonable endeavours to ensure as inclusive and equal a distribution of the LES Work as shall be practicable amongst all the Local Emerging Sub-Contractors, taking into account price, competency and capacity only.
- (ii) The Contractor shall, without reference to the Employer, taking into account only the competencies and capacity of each Local Emerging Sub-Contractor, be free to identify those components of the LES Work that he shall allocate to each Local Emerging Sub-Contractor.
- (iii) Subject to paragraphs (iv) and (vii) of this clause, in the event that the Contractor fails to sub-contract and/or allocate the required quantum of LES Work or any portion thereof in accordance with this clause, the Engineer may either a) apply a penalty equal to 10% of the value of the shortfall, or b) make a determination regarding the setting aside of the LES Work so as to prevent the shortfall.

- (iv) Subject to paragraph (vii) of this clause, and notwithstanding paragraph (iii) of this clause, in the event that the Contractor fails to sub-contract and/or allocate the required quantum of LES Work or any portion thereof in accordance with this clause by reason of his inability to reach agreement on price with one or more of the Local Emerging Sub-Contractor(s), the Engineer may, in his absolute discretion, advise the Employer to allow an increase in the Contractor's rates to so as to facilitate successful price negotiation. In the event that the Employer refuses to authorise an increase to the Contractor's rates or, in the event that the authorised increase in rates fails to facilitate successful negotiation between the Contractor and the relevant Local Emerging Sub-Contractor(s), the Contractor shall be relieved of his obligation to sub-contract the relevant portion of LES Work, always subject to paragraph (vii) of this clause.
- (v) The rates to be applied by the Contractor in the sub-contracts with the Local Emerging Sub-Contractors for the LES Work shall at all times be based strictly on the rates applicable to the Contractor under the Contract, save for any adjustments allowed in terms of paragraph (iv) above.
- (vi) The Contractor shall apply the same rates to each Local Emerging Sub-Contractor in respect of each component of the LES Work, such that, in the event that more than one Local Emerging Sub-Contractor is successfully selected for a single component of the LES Work, the same rates shall apply to each of the selected Local Emerging Sub-Contractors in respect of the said single component.
- (vii) The Contractor shall not be under any obligation to employ a Local Emerging Sub-Contractor against whom the Contractor raises reasonable objection by written notice to the Engineer as soon as practicable, with supporting particulars in writing. In the event of failure on the part of the Contractor to prove reasonable objection to the satisfaction of the Engineer, the Engineer's determination shall be final and binding.
- (viii) The Contractor shall be entitled to include within the Contract Price a maximum management fee of 10% in excess of the rates paid to the Local Emerging Sub-Contractors.
- (ix) When tendering the Contractor shall have exercised all reasonable care not to distort any rates in such a way as to hinder or preclude his obligations under this clause, and, in the event that the Engineer determines the setting aside of the LES Work in terms of paragraph (iii) above, the Contractor shall be prevented from arguing that such LES Work is reserved not to be subcontracted.
- (x) The Contractor shall submit a priced copy of the final agreed version of each proposed sub-contract with a Local Emerging Sub-Contractor ("the Final Draft LES Sub-Contract") to the Employer prior to the execution of such sub-contract. In the event that the Employer, in consultation with the Engineer, deems the price or any other term of any Final Draft LES Sub-Contract to be unduly onerous or unfair to the Local Emerging Sub-Contractor concerned, the Contractor shall modify the price and/or terms in accordance with the Engineer's reasonable instructions.

In sub-contracting the LES Work, the Contractor shall be responsible for performing the LES Work as if he had not sub-contracted. The Contractor shall be liable for the acts and omissions of the employees, sub-contractors and agents of the Local Emerging Sub-Contractors as if they were his own employees, sub-contractors and agents.

**APPENDIX A: TRANSFER OF RIGHTS****TRANSFER OF RIGHTS AND INDEMNITY (To be completed during construction by successful Tenderer 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 authorised 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 favour 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 49.1.5 of the General Conditions of Contract 2004.

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

The following contract specific data are applicable to this contract.

**REFERENCE CONTRACT SPECIFIC DATA BY THE EMPLOYER**

Clause 1.1.14: **Name of Employer: Waterberg District Municipality**

Clause 1.2.2: **Address of Employer:**

Physical:

Harry Gwala  
MODIMOLLE  
0510

Postal:

Private Bag x 1018  
MODIMOLLE  
0510

E-Mail:

Telephone No: (014) 718 3300

Clause 1.1.15: **Name of Engineer:**

Ntsu Engineering Consultants  
PO Box 43  
SESHEGO  
0742

Contact:

Name: Mr S. Mphego

Telephone: 015 295 7972

Email: [shandukani@nts.co.za](mailto:shandukani@nts.co.za)

Clause 1.6 & 38.1: Special non-working days are Sundays and the following statutory public holidays as declared by National or Regional 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 including the construction industry year-end break.

Clause 1.6: The year end break commences on the first working day after 15 December and ends on the first working day after 4 January of the next year.

Clause 2.3: The Engineer is required to obtain the specific approval of the Employer for the following: The Engineer requires the Departmental approval in order to authorise any expenditure in excess of the tender Sum.

Clause 6.3: Minimum requirement for engagement of local emerging sub-contractors to be selected in consultation with the Employer: 10% of the cost of works (excluding preliminary and general costs)

Clause 7.1: The Guarantee shall be delivered within 14 days after the Employer has informed the Contractor in writing that his tender has been accepted. The Form of Acceptance will however not be signed by the Employer before the receipt of a guarantee acceptable to the Employer.

Clause 7.1: The time to deliver the Deed of Guarantee is within 14 Days of the Commencement Date.

Clause 7.1: The Liability of the Guarantee shall be for 10% of the first R 1.0 Million plus 3.5 % of the balance of the Accepted Tender Sum.

*[Handwritten signature]*

- Clause 10.1: The contractor shall commence executing the work within 14 days of the Commencement date.
- Clause 12.2: The Contractor shall deliver his programme of work within 14 days of the Commencement date.
- Clause 35.1.1.2.2: none
- Clause 35.1.1.2.3: The amount to cover professional fees for repairing damage and loss to be included in the insurance sum is R 100 000.00
- Clause 35.1.2: Special risk insurance issued by SASRIA is required.
- Clause 35.1.3: The limit of indemnity for liability insurance is R 5 000 000.00 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 15%
- Clause 42.1: The Works shall be completed within 15 months including special non-working days and the year end break.
- Clause 43.1: The penalty for failing to complete the works is 0.05 % of the Total Tender Sum per Calendar Day
- Clause 46.2: The value of the certificates issued shall be adjusted in accordance with the Contract Price Adjustment Schedule with the following values:

$$\text{Contract Price Adjustment Factor} = (1 - x) \left[ \frac{aL_t}{L_o} + \frac{bP_t}{P_o} + \frac{cM_t}{M_o} + \frac{dF_t}{F_o} - 1 \right]$$

rounded off to the fourth decimal place.

Coefficients for calculating Contract price Adjustment Factor shall be:

Value of x is 0.10

a = 0.20

b = 0.35

c = 0.35

d = 0.10

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

The base month is: **April 2012.**

- Clause 46.3: Price adjustments for variations in the costs of special materials are allowed
- Clause 49.1.5: The percentage advance 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 % excluding contract price adjustment, contingencies and VAT of which 5% (50% of the retained amount) will be returned when the Certificate of Completion is issued.
- Clause 49.6: A Retention money guarantee is not permitted
- Clause 53.1: The Defects Liability Period is 12 months measured from the date of the Certificate of Completion.
- Clause 58.2: Dispute Resolution shall be by Mediation and then Adjudication.

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

The following contract specific data are applicable to this contract.

**REFERENCE****CONTRACT SPECIFIC DATA BY THE CONTRACTOR**

Clause 1.8:

Name of Contractor: LA Fancy kay

Clause 1.2.2:

Address of the Contractor:

Physical:

MOD PARA VILAGE  
GA - MAPUSELA  
MAPELA  
0610

Postal:

P.O BOX 450  
MAPELA  
0610

E-Mail:

lafancykay@webmail.co.za

Telephone No:

0739838048

Fax No:

0766006606

Clause 46.3:

The variation in cost of all special materials is to be provided in the table SM 1 for special materials.

The rates and prices for the special materials shall be furnished by the Tenderer, which rates and prices shall not include VAT but shall include all other obligatory taxes and levies. The quoted price is the ruling price on the 1<sup>st</sup> of **March 2012**.

**TABLE: SM1**

Special Materials	Unit*	Rate or Price for the base month
Bitumen	Ton	..... ..... ..... <u>1772.00</u>

\* Indicate whether the material shall be delivered in bulk or in containers. When called upon to do so, the Contractor shall substantiate the above rates or prices with acceptable documentary evidence.

Signed on behalf of Tenderer: [Signature]

Clause 6.3:

**Selection of Sub-Contractors**


The Tenderer shall list in Schedule J the Subcontractors and Suppliers whom he intends to appoint in respect of the various specialist items of work to be done or goods supplied on this contract. Alternatives may be mentioned.

The Tenderer shall state whether he intends to carry out any specialised work or supply of goods himself.

Acceptance of this tender shall not be construed as approval of all or any of the listed specialist Subcontractors or Suppliers. Should any of or all of the specialist Subcontractors or Suppliers not be approved subsequent to the acceptance of the tender, it shall in no way invalidate this tender, and the tendered unit rates for the various items of work shall remain final and binding, even in the event of a Subcontractor or Supplier not listed below being approved by the Employer.

The sub-contractors listed in Schedule J exclude the identified local emerging contractors who will be identified by the Employer.

Signed on behalf of Tenderer:

 .....

10  
11