

MEMORANDUM OF AGREEMENT

FOR THE

**CONSTRUCTION OF IRT PHASE 2A INFRASTRUCTURE: GOVAN MBEKI
ROAD BETWEEN LANSDOWNE ROAD & HEINZ ROAD**

MADE AND ENTERED INTO BETWEEN

CITY OF CAPE TOWN METROPOLITAN MUNICIPALITY

And

GOVAN MBEKI IRT JV

Contract No 305Q/2020/21

PREAMBLE

WHEREAS Term Tender 49Q/2020/21 was awarded to **GOVAN MBEKI IRT JV**, in line with resolution **SCMB 39/08/21** dated **16 August 2021** for the **CONSTRUCTION OF IRT PHASE 2A INFRASTRUCTURE: GOVAN MBEKI ROAD BETWEEN LANSDOWNE ROAD & HEINZ ROAD**, for the period **from date of commencement and terminate on 30 May 2026**, in the amount of R 459 250 000.00 (Excl. VAT) and R 528 137 500.00 (Incl. VAT).

AND WHEREAS in line with resolution **SCMB 39/08/21** the conclusion of this Contract between the City of Cape Town and **GOVAN MBEKI IRT JV** is subject to the conclusion of the process prescribed by section 33 of the Local Government: Municipal Finance Management Act 56 of 2003.

AND WHEREAS it is recorded that this Contract will be governed by the provisions of the South African Institution of Civil Engineering ("**SAICE**") General Conditions of Contract for Construction Works, Third Edition, 2015 ("**GCC**"), read with the Contract Specific Data ("**CSD**") annexed hereto marked "**PART 2: CONTRACT SPECIFIC DATA**."

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. PARTIES

The Parties to this Contract are:

1.1. **The City of Cape Town**, a metropolitan municipality, established in terms of the Local Government: Municipal Structures Act. 117 of 1998 read with the Province of the Western Cape: Provincial Gazette 5588 dated 22 September 2000, as amended ("**the Employer**"), herein represented by the **Director: Transport Infrastructure Implementation** duly authorised hereto;

1.2. **GOVAN MBEKI IRT JV** (a Joint Venture between)

1.2.1. **CIVILS 2000 (PTY) LTD**, a private company duly registered in terms of the laws of the Republic of South Africa with registration no: [REDACTED] with its principal place of business situated at [REDACTED] [REDACTED] (the "**Contractor**"); and

1.2.2. **GRINAKE- LTA (PTY) LTD**, a private company duly registered in terms of the laws of the Republic of South Africa with registration no: [REDACTED] with its principal place of business situated at [REDACTED] **"Contractor"**);

-herein represented by, [REDACTED] in his capacity as duly authorised representative of **GOVAN MBEKI IRT JV**.

-herein after jointly referred to as each a "Parties" and in singular, a "Party" .

2. INTERPRETATION

2.1. In the event of any conflict between the provisions of this Contract, the GCC and any Part attached hereto, or any other document incorporated by reference to this Contract, save to the extent expressly stated to the contrary, such conflict will be resolved by giving precedence to such different parts of this Contract in the following order of precedence:

2.1.1. Contract Specific Data (CSD) within the Contract Data;

2.1.2. Particular Specifications;

2.1.3. General Conditions of Contract (GCC) for Construction Works, Third Edition, 2015;

2.1.4. Standard Specifications;

2.1.5. Drawings;

2.1.6. Pricing data;

2.1.7. Scope of Works;

2.1.8. Conditions of tender, the tender data and tender.

- 2.2. The provisions of this Contract supersede and replace the provisions of any previous agreement entered into between the Parties relating to the same subject matter.

3. APPOINTMENT AND DURATION

- 3.1. The Employer hereby appoints the Contractor to perform the Scope of Work for the Employer from the Commencement Date.
- 3.2. Unless terminated earlier in accordance with the provisions as set out in the GCC or any other provision in terms of this Contract, this Contract shall commence on the date of commencement and end on 15 May 2026.

4. MUTUAL GOOD FAITH / CO-OPERATION

- 4.1. The Parties represent and undertake to do all such things, perform all such acts and take all steps to procure the doing of all such things and the performance of all such acts, as may be necessary or incidental to give effect to the execution of this Contract.
- 4.2. The Parties shall at all times during the continuance of this Contract observe the principles of good faith towards one another in the performance of their obligations in terms of this Contract.

5. OBLIGATIONS OF THE EMPLOYER

- 5.1. The Employer undertakes to perform its obligations in accordance with the Contract, including but not limited to the Scope of Work (**PART 5: SCOPE OF WORK**), subject to the satisfactory fulfilment of the obligations by the Contractor as set out in this Contract.
- 5.2. The Employer shall monitor and evaluate the Contractor's performance in respect of the Scope of Work.

6. OBLIGATIONS OF THE CONTRACTOR

- 6.1. The Contractor hereby agrees and undertakes to perform the Services to the Employer as set out in Scope of Work (**PART 5: SCOPE OF WORK**).
- 6.2. The Contractor will perform the Works as expeditiously as possible and furthermore agrees and undertakes to perform the services in accordance with the operational requirements of the Employer.
- 6.3. The Contractor will ensure that the Works will be of a satisfactory quality and fit for purpose.
- 6.4. The Contractor shall, ensure that its employees, agents, representatives, sub-contractors and suppliers comply with this Contract and all applicable Laws in the execution of the Works.
- 6.5. The Contractor will not conduct any activity of whatsoever nature which may be detrimental to the Employer's reputation and goodwill.

7. PRICING DATA

- 7.1. The Contract Price for the Works shall be as set out in the Pricing Data annexed marked "**PART 4: PRICING SCHEDULE**".
- 7.2. The Contractor shall not be entitled to any other consideration for the rendering of the Works other than as provided for in this Contract.

DETAILS OF THE TENDERER

CITY OF CAPE TOWN

DIRECTOR: INFRASTRUCTURE IMPLEMENTATION

CONTRACT No. 305Q/2020/21

CONSTRUCTION OF IRT PHASE 2A TRUNK INFRASTRUCTURE: GOVAN MBEKI ROAD BETWEEN LANSDOWNE ROAD AND HEINZ ROAD

SCHEDULE 1: COMPULSORY ENTERPRISE QUESTIONNAIRE

The following particulars must be furnished. In the case of a joint venture, separate enterprise questionnaires in respect of each partner must be completed and submitted.

Section 1: Name of enterprise:

Section 2: VAT registration number, if any:

Section 2a: National Treasury Central Supplier Database registration number:

Section 2b: SARS Tax Compliance Status PIN:

Section 3: cidb registration number, if any:

Section 4: Particulars of sole proprietors and partners in partnerships

** Complete only if sole proprietor or partnership and attach separate page if more than 3 partners*

Section 5: Particulars of companies and close corporations

Company registration number

Close corporation number

Tax reference number

Section 6: Foreign Bidding Suppliers

Is tenderer the accredited representative in South Africa for the Goods / Services / Works offered? ☐ Yes ☐ No
If yes, enclose proof

Is tenderer a foreign based supplier for the Goods / Services / Works offered? ☐ Yes ☐ No
If yes, answer the Questionnaire to Bidding Foreign Suppliers (below)

Questionnaire to Bidding Foreign Suppliers

a) Is the tenderer a resident of the Republic of South Africa or an entity registered in South Africa? ☐ Yes ☐ No

b) Is the tenderer a resident of the Republic of South Africa or an entity registered in South Africa? ☐ Yes ☐ No

c) Does the tenderer have a permanent establishment in the Republic of South Africa? ☐ Yes ☐ No

d) Does the tenderer have any source of income in the Republic of South Africa? ☐ Yes ☐ No

e) Is the tenderer liable in the Republic of South Africa for any form of taxation? ☐ Yes ☐ No

The undersigned, who warrants that he / she is duly authorised to do so on behalf of the enterprise:

- i) authorizes the Employer to obtain a tax clearance certificate from the South African Revenue Services that my / our tax matters are in order;
- ii) confirms that neither the name of the enterprise or the name of any partner, manager, director or other person, who wholly or partly exercises, or may exercise, control over the enterprise appears on the Register of Tender Defaulters established in terms of the Prevention and Combating of Corrupt Activities Act of 2004 or Database of Restricted Suppliers;
- iii) confirms that no partner, member, director or other person, who wholly or partly exercises, or may exercise, control over the enterprise appears, has within the last five years been convicted of fraud or corruption;
- iv) confirms that I / we are not associated, linked or involved with any other tendering entities submitting tender offers and have no other relationship with any of the tenderers or those responsible for compiling the scope of work that could cause or be interpreted as a conflict of interest; and
- iv) confirms that the contents of this questionnaire are within my personal knowledge and are to the best of my belief both true and correct.

Signature



Date

10/05/2021

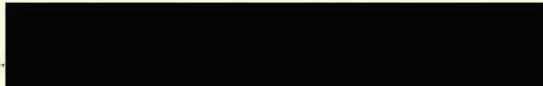
Name



Position

CEO

Enterprise Name



CITY OF CAPE TOWN

DIRECTOR: INFRASTRUCTURE IMPLEMENTATION

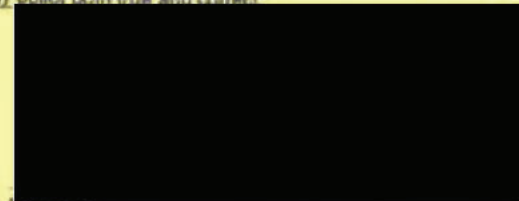
CONTRACT No. 305Q/2020/21

CONSTRUCTION OF IRT PHASE 2A TRUNK INFRASTRUCTURE: GOVAN MBEKI ROAD BETWEEN LANSDOWNE ROAD AND HEINZ ROAD

SCHEDULE 1: COMPULSORY ENTERPRISE QUESTIONNAIRE

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Section 1: Name of enterprise:	
Section 2: VAT registration number, if any:	
Section 2a: National Treasury Central Supplier Database registration number:	
Section 2b: SARS Tax Compliance Status PIN:	
Section 3: c/d/b registration number, if any:	
Section 4: Particulars of sole proprietors and partners in partnerships	
* Complete only if sole proprietor or partnership and attach separate page if more than 3 partners	
Section 5: Particulars of companies and close corporations	
Company registration number	
Close corporation number	
Tax reference number	
Section 6: Foreign Bidding Suppliers	
Is tenderer the accredited representative in South Africa for the Goods / Services / Works offered?	☐ Yes ☐ No If yes, enclose proof
Is tenderer a foreign based supplier for the Goods / Services / Works offered?	☐ Yes ☐ No If yes, answer the Questionnaire to Bidding Foreign Suppliers (below)
Questionnaire to Bidding Foreign Suppliers	
a) Is the tenderer a resident of the Republic of South Africa or an entity registered in South Africa?	☐ Yes ☐ No
b) Is the tenderer a resident of the Republic of South Africa or an entity registered in South Africa?	☐ Yes ☐ No
c) Does the tenderer have a permanent establishment in the Republic of South Africa?	☐ Yes ☐ No
d) Does the tenderer have any source of income in the Republic of South Africa?	☐ Yes ☐ No
e) Is the tenderer liable in the Republic of South Africa for any form of taxation?	☐ Yes ☐ No

- The undersigned, who warrants that he / she is duly authorised to do so on behalf of the enterprise:
- i) authorizes the Employer to obtain a tax clearance certificate from the South African Revenue Services that my / our tax matters are in order;
 - ii) confirms that neither the name of the enterprise or the name of any partner, manager, director or other person, who wholly or partly exercises, or may exercise, control over the enterprise appears on the Register of Tender Defaulters established in terms of the Prevention and Combating of Corrupt Activities Act of 2004 or Database of Restricted Suppliers;
 - iii) confirms that no partner, member, director or other person, who wholly or partly exercises, or may exercise, control over the enterprise appears, has within the last five years been convicted of fraud or corruption;
 - iv) confirms that I / we are not associated, linked or involved with any other tendering entities submitting tender offers and have no other relationship with any of the tenderers or those responsible for compiling the scope of work that could cause or be interpreted as a conflict of interest; and
 - iv) confirms that the contents of this questionnaire are within my personal knowledge and are to the best of my belief both true and correct.



Signature

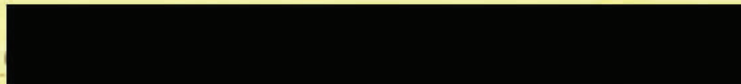
10/05/2021
Date



Name

MD
Position

Enterprise Name.....



PART 1 : AGREEMENTS

CITY OF CAPE TOWN

DIRECTOR: INFRASTRUCTURE IMPLEMENTATION

CONTRACT No. 305Q/2020/21

CONSTRUCTION OF IRT PHASE 2A TRUNK INFRASTRUCTURE: GOVAN MBEKI ROAD BETWEEN
LANSLOWNE ROAD AND HEINZ ROAD

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:

CONTRACT NO. 305Q/2020/21 : CONSTRUCTION OF IRT PHASE 2A TRUNK INFRASTRUCTURE: GOVAN MBEKI ROAD BETWEEN LANSLOWNE ROAD AND HEINZ ROAD

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.

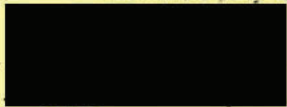
By the representative of the tenderer, deemed to be duly authorized, signing this part of this form of offer and acceptance, the tenderer offers to perform all of the obligations and liabilities of the contractor under the contract including compliance with all its terms and conditions according to their true intent and meaning for an amount to be determined in accordance with the conditions of contract identified in the contract data.

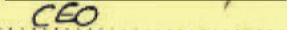
THE OFFERED TOTAL OF THE PRICES INCLUSIVE OF VALUE ADDED TAX IS:

Rand FIVE HUNDRED AND TWENTY EIGHT MILLION, ONE HUNDRED AND THIRTY SEVEN
THOUSAND, FIVE HUNDRED RAND AND ZERO CENTS (in words);

R 528,137,500.00 (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.

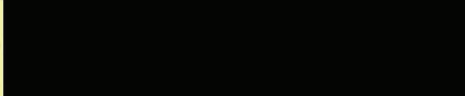
Signature(s) 

Name(s) 

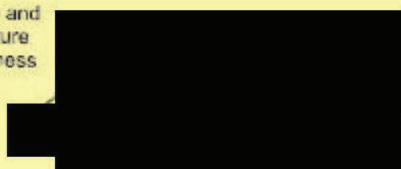
Capacity CEO

for the tenderer

(Name of organization/tenderer) 

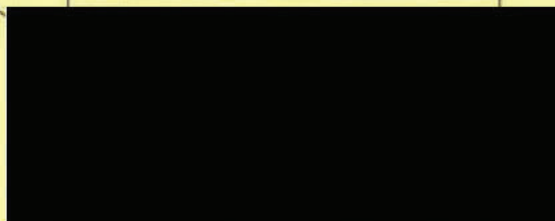
(Address of organization/tenderer) 

Name and
signature
of witness



Date 10/05/2021

For official use.



Tender
Part T2: Returnable Documents
Contract No. 305Q/2020/21

**CONTRACT NO. 305Q/2020/21- CONSTRUCTION OF IRT PHASE 2A INFRASTRUCTURE: GOVAN MBEKI
ROAD BETWEEN LANSDOWNE ROAD & HEINZ ROAD**

ACCEPTANCE (TO BE FILLED IN BY THE CITY)

By signing this part of this form of offer and acceptance, the Employer identified below accepts the Contractor's offer in respect of the region(s) awarded to the Contractor. In consideration thereof, the Employer shall pay the contractor any amounts due in accordance with the conditions of contract identified in the contract data. Acceptance of the Contractor's offer shall form an agreement between the Employer and the Contractor 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:

- Clause 1 to 7, and the sub-clauses therein, cited in pages 1 to 3 above;
- Part 1: Agreements and contract data (which includes this framework agreement)
- Part 2: Special Conditions to Contract
- Part 3: General Conditions of Contract
- Part 4: Pricing Schedules
- Part 5: Scope of Work
- Part 6: Site Information
- Part 7: Occupational Health and Safety Agreement
- Part 8: Protection of the Environment Declaration
- Part 9 : Contract of Temporary Employment as Community Liaison Officer

and drawings and documents or parts thereof, which may be incorporated by reference into the above listed Parts.

Deviations from and amendments to the documents listed in the tender data and any addenda thereto as listed in the returnable schedules as well as any changes to the terms of the offer agreed by the Contractor and the Employer during this process of offer and acceptance, are contained in the schedule of deviations attached to and forming part of this form of offer and acceptance. No amendments to or deviations from said documents are valid unless contained in this schedule.

The Contractor 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 securities, 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 parties have signed the table below and confirms receipt from the Employer of one fully completed original copy of this agreement, including the schedule of deviations (if any). The Contractor shall within five working days of the agreement coming into effect notify the employer in writing of any reason why he cannot accept the contents of this agreement as a complete and accurate memorandum thereof, failing which the agreement presented to the contractor shall constitute the binding contract between the parties.

The Parties	Employer	Contractor
Business Name	CITY OF CAPE TOWN	GOVAN MBEKI IRT JV
Business Registration	N/A	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]) Ltd : 4260103017
Physical Address	Tower Block, Civic Centre, 12 Hertzog Boulevard Cape Town 8001	[REDACTED] [REDACTED] [REDACTED]
Accepted contract sum including tax	R 528 137 500.00 (Incl. VAT).	R 528 137 500.00 (Incl. VAT).
Accepted contract duration	from date of commencement until date of final completion on 15 May 2027.	from date of commencement until date of final completion on 15 May 2027.
Signed – who by signature hereto warrants authority	[REDACTED]	
Name of signatory		
Signed: Date		
Signed: Location		
Signed: Witness		
Name of Witness		

FORM OF OFFER AND ACCEPTANCE (Continued)

**CONTRACT NO. 305Q/2020/21 - CONSTRUCTION OF IRT PHASE 2A INFRASTRUCTURE:
GOVAN MBEKI ROAD BETWEEN LANSDOWNE ROAD & HEINZ ROAD**

(TO BE FILLED IN BY THE CITY)

Schedule of Deviations

Notes:

1. The extent of deviations from the tender documents issued by the employer before the tender closing date is limited to those permitted in terms of the conditions of tender.
2. A tenderer's covering letter shall not be included in the final contract document. Should any matter in such letter, which constitutes a deviation as aforesaid, become the subject of agreements reached during the process of offer and acceptance, the outcome of such agreement shall be recorded here.
3. 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.
4. Any change or addition to the tender documents arising from the above agreements and recorded here, shall also be incorporated into the Contract.

- 1 Subject **CLARIFICATION NOTICE 1- DATED 12 APRIL 2021- TENDER NO: 305Q/2020/21- CONSTRUCTION OF IRT PHASE 2A INFRASTRUCTURE: GOVAN MBEKI ROAD BETWEEN LANSDOWNE ROAD AND HEINZ ROAD**

Details

TENDER QUERY REGISTER FOR DETAILED RESPONSES TO THE VARIOUS TENDER CLARIFICATION REQUESTS RECEIVED TO DATE.

REFERENCES TO VARIOUS TENDER DOCUMENT REPLACEMENT PAGES AND DRAWING REVISIONS TO BE INCLUDED IN THE TENDER DOCUMENT.

- 2 Subject **CLARIFICATION NOTICE 4- DATED 25 APRIL 2021- TENDER NO: 305Q/2020/21- CONSTRUCTION OF IRT PHASE 2A INFRASTRUCTURE: GOVAN MBEKI ROAD BETWEEN LANSDOWNE ROAD AND HEINZ ROAD**

Details

1. NT 4.1 AMENDMENT TO VOLUME 3: C3.1 Description of the works (page 161);
2. NT 4.2 AMENDMENT TO PARTICULAR SPECIFICATION: B1602 DEFINITIONS (page 224);
3. NT 4.3 AMENDMENT TO PARTICULAR SPECIFICATION: B23.29 (page 249 A);
4. NT 4.4 AMENDMENT TO PARTICULAR SPECIFICATION: B3200 (page 250 A);
5. NT 4.5 AMENDMENT TO PARTICULAR SPECIFICATION: B3400 (page 260);
6. NT 4.6 AMENDMENT TO PARTICULAR SPECIFICATION: B3500 (page 266);
7. NT 4.7 AMENDMENT TO PARTICULAR SPECIFICATION: B3700 (page 267 - [REDACTED])

8. NT 4.8 AMENDMENT TO PARTICULAR SPECIFICATION: B3800 (page 274);
 9. NT 4.9 AMENDMENT TO PARTICULAR SPECIFICATION: B4200 (page 289);
 10. NT 4.10 AMENDMENTS TO QUANTITIES AND PAYMENT ITEMS IN THE BOQ;
 11. NT 4.11 AMENDMENTS TO DRAWINGS;
3. Subject **CLARIFICATION NOTICE 5- DATED 04 May 2021- TENDER NO: 305Q/2020/21- CONSTRUCTION OF IRT PHASE 2A INFRASTRUCTURE: GOVAN MBEDI ROAD BETWEEN LANSLOWNE ROAD AND HEINZ ROAD**
- Details: ADVISES ON AMENDMENTS REQUIRED TO VARIOUS TENDER DOCUMENT AND SCHEDULE OF QUANTITY REPLACEMENT PAGES TO BE INCLUDED IN THE TENDER DOCUMENT.
1. NT 5.1 AMENDMENT TO PARTICULAR SPECIFICATION: K10.03 (page 274 B);
 2. NT 5.2 AMENDMENT TO PARTICULAR SPECIFICATION: B4203 COMPOSITION OF ASPHALT BASE AND SURFACING MIXTURES (page 280 A);
 3. NT 5.3 AMENDMENT TO PART C4: SITE INFORMATION (page 674 A);
 4. NT 5.4 AMENDMENTS TO QUANTITIES AND PAYMENT ITEMS IN THE BOQ;
 5. NT 4.11 AMENDMENTS TO DRAWINGS;
4. Subject **CLARIFICATION NOTICE 6- DATED 11 May 2021- TENDER NO: 305Q/2020/21- CONSTRUCTION OF IRT PHASE 2A INFRASTRUCTURE: GOVAN MBEDI ROAD BETWEEN LANSLOWNE ROAD AND HEINZ ROAD**

Details: ADVISES ON AMENDMENTS REQUIRED TO VARIOUS TENDER DOCUMENT AND SCHEDULE OF QUANTITY REPLACEMENT PAGES TO BE INCLUDED IN THE TENDER DOCUMENT.

1. NT 6.1 AMENDMENT TO TENDERER'S OBLIGATIONS, ELIGIBILITY CRITERIA (PAGE 8 A);
2. NT 6.2 AMENDMENT TO RETURNABLE SCHEDULE 22F, ANNEX C6 (PAGE 104 A, 105 A, 106 A1 & 106 A2);
3. NT 6.3 AMENDMENT TO PARTICULAR SPECIFICATION: B1300 (PAGE 204 A);
4. NT 6.4 AMENDMENT TO PARTICULAR SPECIFICATION: B1400 (PAGE 206 A & 207 A);
5. NT 6.5 AMENDMENT TO PARTICULAR SPECIFICATION: B1500 (PAGE 222 A);
6. NT 6.6 AMENDMENT TO PARTICULAR SPECIFICATION: E (PAGE 643 A & 644 A);
7. NT 6.7 AMENDMENT TO PARTICULAR SPECIFICATION: H (PAGE 661 A);
8. NT 6.8 AMENDMENTS TO QUANTITIES AND PAYMENT ITEMS IN THE BOQ;
9. RETURNABLE SCHEDULES:

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 returnable 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.



CERTIFICATE OF AUTHORITY FOR JOINT VENTURES

CITY OF CAPE TOWN

DIRECTOR: INFRASTRUCTURE IMPLEMENTATION

CONTRACT No. 305Q/2020/21

CONSTRUCTION OF IRT PHASE 2A TRUNK INFRASTRUCTURE: GOVAN MBEKI ROAD BETWEEN LANSDOWNE ROAD AND HEINZ ROAD

SCHEDULE 3: CERTIFICATE OF AUTHORITY FOR JOINT VENTURES

This returnable schedule is to be completed by joint ventures.

We, the undersigned, are submitting this tender offer in joint venture and hereby authorize

Mr/Ms [REDACTED] authorised signatory of the company,
close cooperation or partnership [REDACTED] CEO

acting in the capacity of lead partner, to sign all documents in connection with the tender offer and any contract resulting from it on our behalf.

NAME OF FIRM	ADDRESS	DULY AUTHORISED SIGNATORY
Lead partner [REDACTED]	[REDACTED]	[REDACTED]
		Signature..... Name..... Designation.....
		Signature..... Name..... Designation.....

Note :

A copy of the Joint Venture Agreement, showing clearly the percentage contribution of each partner to the joint venture, shall be appended to this schedule.

SEE ATTACHED
J.V Agreement

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Tender
Part T2: Returnable Documents
Contract No. 305Q/2020/21

T2
Returnable Schedules

Prebid Joint Venture Agreement

Contract No JV2021/IRT

between

GRINAKER-LTA (Pty) LTD

and

CIVILS 2000 (Pty) LTD

For the

Construction of IRT Phase 2A Infrastructure:
Govan Mbeki Road
Between Lansdowne Road and Heinz Road

City of Cape Town
Contract Number :305Q/2020/21

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This agreement is entered into this day 6th May 2021 by and between:

Grinaker-LTA (Pty) Ltd (hereinafter known as "Grinaker-LTA ") being a company incorporated and registered in accordance with the laws of the Republic of South Africa having its office at [REDACTED] with company registration number [REDACTED]

and

Civils 2000 (Pty) Ltd, a company registered under the laws of the Republic of South Africa having its registered office at [REDACTED] with company registration number [REDACTED]

hereinafter individually referred to as Party or collectively as Parties.

RECITALS

The Parties wish to cooperate in a joint venture to be known as the "Govan Mbeki IRT JV" (the "Joint Venture") for the exclusive purpose of tendering for, and if successful, carrying out the Upgrade of a dual carriageway section of Govan Mbeki road (M9), the provision of exclusive bus lanes, various upgrades to Jan Smuts Drive (M17) and Hanover Park Avenue, and the construction of an elevated traffic round-about bridge structure at the Govan Mbeki Road/ Jan Smuts Drive intersection for the account of the City of Cape Town (hereinafter known as the "Employer") and intend to jointly submit a tender for the Contract, in accordance with the following terms and conditions:

NOW THEREFORE IT IS AGREED HEREBY AS FOLLOWS:

1. Purpose

The Parties hereby associate a Joint Venture exclusively for the purpose of jointly submitting a tender in the name of the Joint Venture for the Contract, and if the tender is successful, to execute the works thereafter jointly.

2. Exclusivity

The Parties engage themselves to pursue the object of this Agreement based on mutual exclusivity and undertake that they and their affiliated companies will not participate with any third parties in relation to any other tender for the Contract.

3. Leader

Civils 2000 shall act as leader, and as such, shall represent the Joint Venture in all matters related to the Project including submission of the Tender.

It is noted that there shall be no fee charged by the Leader and none will be included in the tender pricing.

4. Liability of the Parties

The Parties shall jointly undertake the Contract and shall provide guarantees, working capital, staff, plant and equipment, and other resources as required in proportion to their participation in the Joint Venture, or as otherwise agreed from time to time by the Parties. The Parties shall be jointly and severally liable for the fulfilment of all obligations toward the Employer arising out of the Contract.

5. Participation of the Parties

The participation share of the Parties shall be:

Grinaker-LTA	50%
Civils 2000	50%

and all profits or losses arising from the execution of the Contract shall be borne by the Parties in proportion to their participation in the Joint Venture.

6. Tender Expenses

Unless agreed otherwise, each Party shall bear its own expenses incurred in the preparation and submission of the Tender or incurred during any subsequent negotiation with the Employer.

7. Final JV Agreement

As soon as possible after being awarded the Contract, the Parties shall enter into and sign a final Joint Venture Agreement, which shall include all the substantive terms herein or variations thereto, in order to determine in detail, the contractual stipulations governing their cooperation in the Joint Venture.

8. Termination

This Agreement shall terminate on any of the following occurrences:

- (a) Failure of the Parties to submit a bid to the Employer by the stipulated closing date, or
- (b) The Contract is awarded to a third party, or
- (c) The conclusion of the final Joint Venture Agreement in terms of Clause 7 hereof, or
- (d) The Agreement is terminated by mutual consent of the Parties, or
- (e) Withdrawal by the Employer of the Contract, or
- (f) The specific tender in question for the Contract is not awarded, or
- (g) Within a period of 12 months from the date hereof, or the date 90 days after the validity of the tender including extensions thereof has expired, whichever is the later, unless otherwise agreed by the Parties.

9. Assignment

The Parties shall not be entitled to sell, assign, or in any manner encumber their interest or any part thereof in the Joint Venture, without obtaining the prior written consent of the other Party hereto.

10. Confidentiality

All information acquired by either Party hereto from another shall be treated as confidential by the recipient and shall not be used other than for the purpose contemplated by this Agreement without the consent in writing of the Party providing the information unless such information:

- (a) is, or has become, public knowledge other than by breach of the provisions of this Clause, or
- (b) is in the possession of the recipient with the full right to disclose prior to receiving it from the respective Party, or
- (c) is independently received by the recipient from a third party having the full right to disclose.

The provisions of this Clause shall survive the termination of this Agreement.

11. Disputes

11.1 The Parties shall endeavour to reach an amicable settlement of any dispute arising from or in connection with this Agreement.

11.2 If the parties fail to reach an amicable settlement, the matter shall be resolved finally in accordance with the rules of the Association of Arbitrators of Southern Africa ("AASA") by one arbitrator appointed by AASA, which arbitration shall be held in Johannesburg and in the English language. Should AASA not be in existence at the time, the nomination shall be by the Chairman for the time being of the Johannesburg Bar Council.

11.3 The Arbitrator shall be entitled to:

11.3.1 investigate or cause to be investigated any matter, fact, or thing which he considers necessary or desirable in connection with any matter referred to him for decision;

11.3.2 decide the matters submitted to him according to what he considers just and equitable in all the circumstances, having regard to the purpose of this Agreement; and

11.3.3 make such award, including an award for specific performance, an interdict, damages or a penalty or the costs of arbitration or otherwise as he in his discretion may deem fit and appropriate.

11.4 The arbitration shall be held as quickly as possible after it is demanded, with a view to it being completed within thirty (30) days after it has been so demanded by one or both Parties.

11.5 The decision in the arbitration shall be final and binding on the Parties (whether they are parties to the arbitration or not) and may be enforced by any Court or judicial authority having competent jurisdiction over the Party or its assets against which a judgment is made in the arbitration.

11.6 Nothing in this clause shall prevent either Party from approaching a Court of competent jurisdiction for urgent and interim relief if permitted under the applicable law.

- 11.7 This clause is severable from the rest of the Agreement and shall therefore remain in effect even if this Agreement is terminated.

12. Notices and legal process

- 12.1 Each Party chooses as its address for all purposes under this Agreement ("chosen address"), whether for serving any court process or documents, giving any notice, or making any other communications of whatsoever nature and for any other purpose arising from this Agreement ("notice"), as follows:

in the case of Grinaker-LTA:

address:

telephone number:

e-mail:



in the case of Civils 2000:

address:

telephone number:

e-mail:



- 12.2 Any notice required or permitted under this Agreement shall be valid and effective only if in writing.
- 12.3 Any Party may by notice to the other Parties change its chosen address to another physical address and such change shall take effect on the seventh day after the date of receipt by the Party who last receives the notice.



12.4 Any notice to a Party contained in a correctly addressed envelope and delivered by hand to a responsible Person during ordinary business hours at its chosen address, shall be deemed to have been received on the date of delivery.

12.5 Notwithstanding anything to the contrary herein, a written notice actually received by a Party, including a notice sent by email, shall be an adequate notice to it notwithstanding that it was not sent or delivered to its chosen address.

13. Proper Business Conduct

13.1 The Parties warrant their compliance with Proper Business Conduct, which shall include but not be limited to:

- (a) compliance with all relevant and applicable laws, regulations and statutory requirements together with an undertaking not to condone corruption or anti-competitive practices with each other and / or the marketplace, and
- (b) commitment to the promotion of and adherence to ethical standards, which includes a zero-tolerance policy towards bribery and facilitation payments of any form.

13.2 In the event of either Party failing to comply with Proper Business Conduct (the "defaulting Party"), the other Party (the "continuing Party") shall be entitled to terminate the Joint Venture Agreement after having given 7 days written notice.

13.3 The defaulting Party shall deliver all confidential information, and any other information applicable to the project being undertaken, to the continuing Party.

13.4 The Parties hereby indemnify each other against all harmful consequences of whatsoever nature including but not limited to all losses or damages, including legal costs, arising out of any lawful action by the Employer under the Contract such as cancellation, or otherwise, arising out of termination of the Joint Venture Agreement in this manner.

14. Sequestration

In the event that either of the Parties (the "defaulting Party" for the purposes of Clauses 13.3 to 13.4) enters into business rescue or carries on business under a liquidator, receiver, trustee, administrator or similar for the benefit of its creditors, whether voluntarily or by order of a court, or becomes bankrupt, insolvent, or liquidated, other Party (the "continuing Party" for the purposes of Clauses 13.3 to 13.4) shall be entitled to immediately terminate the Joint Venture Agreement upon giving written notice. Thereafter, Clauses 13.3 to 13.4 will apply.

15. Applicable Law

This agreement shall be governed by and construed in accordance with the law of South Africa.

16. General and miscellaneous

- 16.1 This Agreement constitutes the sole record of the agreement between the Parties with regard to the subject matter hereof. No Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.
- 16.2 No addition to, variation of, or agreed cancellation of, this Agreement shall be of any force or effect unless in writing and signed by or on behalf of the Parties.
- 16.3 Save as is expressly provided for in this Agreement and in particular without limiting the generality of the foregoing, no provision of this Agreement constitutes a stipulation for the benefit of a third person (ie a *stipulatio alteri*) which, if accepted by the person, would bind any Party in favour of that person.
- 16.4 No relaxation or indulgence which any Party may grant to any other shall constitute a waiver of the rights of that Party and shall not preclude that party from exercising any rights which may have arisen in the past or which might arise in future.
- 16.5 An approval or consent given by a Party under this Agreement shall only be valid if in writing and shall not relieve the other Parties from responsibility for complying with the requirements of this Agreement nor shall it be construed as a waiver of any rights under this Agreement

except as and to the extent otherwise expressly provided in such approval or consent, or elsewhere in this Agreement.

- 16.6 Save as otherwise stated in this Agreement, nothing herein shall constitute or be deemed to constitute a partnership between any of the Parties hereto and none of them shall have any authority to bind the others in any way.
- 16.7 No Party may cede and/or assign that Party's rights or delegate that Party's obligations in this Agreement without the prior written consent of the other Parties.
- 16.8 Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this Agreement shall survive any termination or expiration of this Agreement and continue in full force and effect.
- 16.9 The Parties shall at all times cooperate and consult with each other in good faith in order to procure the implementation of this Agreement in all its aspects.
- 16.10 Each Party shall bear that Party's own legal costs of and incidental to the negotiation, preparation, settling, signing and implementation of this Agreement.
- 16.11 Any costs, including attorney and own client costs, incurred by a Party arising out of a breach by another Party shall be borne by the Party in breach.
- 16.12 Each of the Parties hereby respectively agrees and acknowledges that:
- 16.12.1 It has been free to secure independent legal advice as to the nature and effect of each provision of this Agreement and that it has either taken such independent legal advice or has dispensed with the necessity of doing so; and
- 16.12.2 each provision of this Agreement is fair and reasonable in all the circumstances and is part of the overall intention of the Parties in connection with this Agreement.
- 16.13 Should any part of this agreement be found to be void, unenforceable or unlawful, such part shall be severed from the agreement, and the remainder of the agreement shall continue in full force and effect.

16.14 This Agreement may be executed in a number of counterparts and by different Parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall be deemed to constitute one and the same agreement.

This done and signed at Johannesburg RSA on the date above first written

For and on behalf of
Grinaker-LTA (Pty) Ltd

For and on behalf of
Civils 2000 (Pty) Ltd



07/05/2021
Date

07-05-2021
Date



PART 2- CONTRACT SPECIFIC DATA

CONTRACT SPECIFIC DATA

The following contract specific data, referring to the General Conditions of Contract for Construction Works, Third Edition, 2015, are applicable to this Contract:

Clause 1.1.1.2:

Add the following after "Bill of Quantities":

, also referred to as Bills of Quantities,

Clause 1.1.1.13:

The Defects Liability Period is 12 months.

Clause 1.1.1.14:

The time for achieving Practical Completion is **43 (forty-three) months**, inclusive of the 14-day period referred to in Clause 5.3.2 below, and inclusive of non-working days referred to in Clause 5.8.1 below, but exclusive of special non-working days (Clause 5.8.1).

Clause 1.1.1.15:

The **Employer** is the CITY OF CAPE TOWN, represented by the Director: TRANSPORT INFRASTRUCTURE IMPLEMENTATION: TRANSPORT DIRECTORATE and/or such other person or persons duly authorised thereto by the Employer in writing.

The name of the Employer is: CITY OF CAPE TOWN
TRANSPORT DIRECTORATE

and is referred to in the Contract documents by the terms "Employer", "City of Cape Town" or "Council" as the context provides.

Clause 1.1.1.16:

The **Employer's Agent**, referred to in the Contract documents, is the firm of SMEC South Africa (Pty) Ltd acting through a director, an associate or an official authorised thereto in writing.

The name of the Employer's Agent is: SMEC South Africa (Pty) Ltd or their successors duly appointed by the Employer.

Clause 1.1.1.26:

The Pricing Strategy is a Re-measurement Contract.

Add the following Clauses after Clause 1.1.1.34:

- 1.1.1.35 "Drawings" means all drawings, calculations and technical information forming part of the Contract Documents and any modifications thereof or additions thereto from time to time approved in writing by the Employer's Agent or delivered to the Contractor by the Employer's Agent.
- 1.1.1.36 "Letter of Notification" means the letters of formal notification, signed by the Employer, of the decision of the Supply Chain Management Bid Adjudication Committee sent to all tenderers. The notification of the decision does not form part of the Employer's Acceptance of the successful tenderer's Offer and no rights shall accrue.
- 1.1.1.37 "Intellectual Property" means any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, copyright and rights in the nature of copyright, design rights, rights in databases, know-how, trade secrets and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists

and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.

Clause 1.2.1.2:

The address of the Employer is:

Physical address: Tower Block, Civic Centre
12 Hertzog Boulevard
Cape Town
8001

Postal address: P O Box 298
Cape Town
8001

[REDACTED]

Clause 1.3:

Delete Clause 1.3.5 in its entirety and replace with the following:

1.3.5 Intellectual Property

1.3.5.1 The Contractor acknowledges that it shall not acquire any right, title or interest in or to the Intellectual Property of the Employer.

1.3.5.2 The Contractor hereby assigns to the Employer, all Intellectual Property created, developed or otherwise brought into existence by it for the purposes of the contract, unless the Parties expressly agree otherwise in writing.

1.3.5.3 The Contractor shall be deemed to have given the Employer a non-terminable, transferable, non-exclusive, royalty-free licence to copy, use and communicate the Contractor's documents, including making and using modifications of such documents for further work required to the Works.

1.3.5.4 The Contractor shall, and warrants that it shall:

1.3.5.4.1 not be entitled to use the Employer's Intellectual Property for any purpose other than as contemplated in this contract;

1.3.5.4.2 not modify, add to, change or alter the Employer's Intellectual Property, or any information or data related thereto, nor may the Contractor produce any product as a result of, including and/or arising from any such information, data and Intellectual Property, and in the event that it does produce any such product, the product shall be, and be deemed in law to be, owned by the Employer;

1.3.5.4.3 not apply for or obtain registration of any domain name, trademark or design which is similar to any Intellectual Property of the Employer;

1.3.5.4.4 comply with all reasonable directions or instructions given to it by the Employer in relation to the form and manner of use of the Employer Intellectual Property, including without limitation, any brand guidelines which the Employer may provide to the contractor from time to time;

- 1.3.5.4.5 procure that its employees, directors, members and contractors comply strictly with the provisions of clauses 1.3.5.4.1 to 1.3.5.4.3 above;

unless the Employer expressly agrees thereto in writing after obtaining due internal authority.

- 1.3.5.5 The Contractor represents and warrants to the Employer that, in providing goods, services or both, as the case may be, for the duration of the contract, it will not infringe or make unauthorised use of the Intellectual Property rights of any third party and hereby indemnifies the Employer from any claims, liability, loss, damages, costs, and expenses arising from the infringement or unauthorised use by the contractor of any third party's Intellectual Property rights.

- 1.3.5.6 In the event that the contract is cancelled, terminated, ended or is declared void, any and all of the Employer's Intellectual Property, and any and all information and data related thereto, shall be immediately handed over to the Employer by the contractor and no copies thereof shall be retained by the contractor unless the Employer expressly and in writing, after obtaining due internal authority, agrees otherwise.

Add the following Clause after Clause 1.3.6:

- 1.3.7 The parties agree that this contract shall also be subject to the Employer's Supply Chain Management Policy ('SCM Policy') that was applicable on the date the bid was advertised, **save that if the Employer adopts a new SCM Policy which contemplates that any clause therein would apply to the contract emanating from this tender, such clause shall also be applicable to that contract.** Please refer to this document contained on the CCT's website.

- 1.3.8 Abuse of the supply chain management system is not permitted and may result in cancellation of the contract, restriction of the supplier, and/or the exercise by the Employer of any other rights and remedies available to it as described in the SCM Policy.

Clause 3.1

Delete clause

Clause 3.2.2

Add the following at the end of the clause:

If, in exercising any discretion, the result of such decision would be to utilise the contingency allowance, increase the contract value or granting of time for practical completion, the Employer's Agent must obtain approval from the Employer that such funding or time is available and granted by the Employer to be awarded prior to finalising such a decision.

Clause 3.2.3:

The Employer's Agent shall obtain the specific approval of the Employer before executing any of his functions or duties according to the following Clauses of the General Conditions of Contract or Contract Data:

- a) Clause 3.3.1 Nomination of Employer's Agent's Representative
- b) Clause 3.3.4 Employer's Agent's authority to delegate
- c) Clause 5.8.1 Non-working times
- d) Clause 5.11.2 Suspension of the Works
- e) Clause 5.12.4 Acceleration instead of extension of time
- f) Clause 6 All actions in terms of the clause subject to 3.2.2 of Contract Data.
- h) Clause 6.10.10 Advance payment, for items not listed in the Advance Payment Schedule.
- i) Clause 10.1.5 All actions in terms of the clause subject to 3.2.2 of Contract Data.

Clause 3.3.2.2.3:

Delete the words "oral or" from the clause

Clause 3.3.2.2.4:

Delete the words "oral or" from the clause

Clause 4.1:

Add the following Clause after Clause 4.1.2:

- 4.1.3 Where the Contract is based on an alternative tender offer submitted by the Tenderer/Contractor, he shall, notwithstanding acceptance of the offer by the Employer, be liable for any deficiency in the

alternatives proposed, for any costs in ensuring that the alternatives meet the Employer's standards and requirements, and for any loss or damage arising out of such error or deficiency.

Clause 5.3.1:

The documentation required before commencement with Works execution is:

- a) Approved Health and Safety Plan (Refer to applicable clause in the Health and Safety Specification in Part C3.5 in the Scope Work)
- b) Initial programme (Refer to Clause 5.6)
- c) Security (Refer to Clause 6.2)
- d) Evidence of Insurance (Refer to Clause 8.6)
- e) Occupational Health and Safety Agreement (Part C1.5 in Agreements and Contract Data)
- f) Letter of good standing from the Compensation Commissioner, or a licensed compensation insurer (Refer to Clause 4.3)
- g) Protection of the Environment Declaration (Part C1.6 in Agreements and Contract Data)
- h) Proof of Registration / Letter of Good Standing with the Bargaining Council for the Civil Engineering Industry (BCCEI)
- i) Other requirements

Add the following to Clause 5.3.1:

Such instruction shall, where the Contract Sum exceeds one hundred and thirty million Rand (R130 000 000), also be subject to the issuing, by the Provincial Director of the Department of Labour, of a construction work permit to perform the intended construction work in terms of Clause 5.3.4 below.

Clause 5.3.2:

The time to submit the documentation required before commencement with Works execution is within **14** days.

Clause 5.3.3:

Add the following to Clause 5.3.3:

Notwithstanding the above, where a construction work permit from the Provincial Director of the Department of Labour is required, commencement of the Works shall not be deemed to take place until such construction work permit has been issued by the Provincial Director.

Clause 5.3.4:

Add the following Clause after Clause 5.3.3:

5.3.4 Application for Construction Work Permit

Where the Employer is required to apply to the Provincial Director of the Department of Labour for a construction work permit to perform the intended construction work, the Employer shall do so as soon as possible after its Bid Adjudication Committee has awarded the contract, and the period that the Department of Labour requires to issue the permit will run concurrently with the appeal period.

Should the issuing of a construction work permit delay the Employer's Agent's instruction to commence executing the Works and this in turn causes a delay to Practical Completion by more than 60 days, then the Contractor shall be entitled to make a claim in accordance with Clause 10.1. Should, however, the issuing of a construction work permit be delayed by the submission of an unacceptable draft Health and Safety Plan, in the opinion of either the Employer's Health and Safety Agent, or the Provincial Director of the Department of Labour, no claim for an extension of time will be entertained.

Clause 5.4.2:

Access to and possession of the Site shall not be exclusive to the Contractor insofar as the provisions of Clause 4.8 apply, and where ongoing use by the general public is required.

Add the following Clause after Clause 5.4.3:

- 5.4.4 The Contractor shall bear all costs and charges for special and temporary rights of way required by it in connection with access to the Site.

Clause 5.6.2.3:

Insert the following after "...approvals,"

... permits,

Clause 5.8.1:

The non-working days are Sundays.

The special non-working days are:

- a) All gazetted public holidays.
- b) Year-end break(s) not exceeding 15 working days in duration.

Clause 5.12.2.2:

Add the following to Clause 5.12.2.2:

No extension of time will be granted in respect of any delays attributed to normal climatic conditions. Normal climatic conditions shall be deemed to include normal rainfall and associated wet conditions and materials, strong winds and extremes of temperature. However, in the event that delays to critical activities exceed the number of working days listed below for each month, then abnormal climatic conditions shall be deemed to exist, and an extension of time may be claimed in accordance with the provisions of Clause 5.12.

The number of days quoted below shall be regarded as a fair estimate of the delays to be anticipated and allowed for under normal climatic conditions where inclement weather prevents or disrupts critical work.

January	2 days
February	2 days
March	2 days
April	2 days
May	2 days
June	4 days
July	4 days
August	4 days
September	4 days
October	2 days
November	2 days
December	2 days

Claims for delays for abnormal climatic conditions shall be accompanied by substantiating facts and evidence, which shall be submitted timeously as each day or half-day delay is experienced.

It shall be further noted that where the critical path is not affected, no extension of time for abnormal climatic conditions or for any other reason will be entertained.

Clause 5.13.1:

The penalty for failing to complete the Works is **R49 200** per day.

Insert the following after "actual date of Practical Completion":

... or, in the case of termination by the Employer in terms of Clause 9.2.1, the actual date of termination,

Clause 5.16.3:

The latent defects period is 10 years.

Clause 6.2.1:

The security to be provided by the Contractor shall be a performance guarantee of 7% of the Contract Sum. The performance guarantee shall contain the precise wording of the document included in Part C1.3 of the Contract Data: **Form of Performance Guarantee**, and it shall be issued by a financial institution approved by the Employer at the date when the guarantee is issued. The list of approved financial institutions current at the date of tender is attached to the **Form of Performance Guarantee**.

Clause 6.2.2:

Delete Clause 6.2.2 in its entirety.

Clause 6.2.3:

Delete Clause 6.2.3 in its entirety and replace with the following:

The Contractor shall ensure that the performance guarantee remains valid and enforceable until the Certificate of Completion of the Works is issued.

Clause 6.5.1.2.3:

The percentage allowance to cover overhead charges is 10%

Clause 6.8.2:

Add the following to Clause 6.8.2:

The Contract Price shall be subject to contract price adjustment in accordance with Clause 6.8 of the General Conditions of Contract.

If special materials are specified in Part 2 of the Contract Data then the provisions of Clause 6.8.3 of the General Conditions of Contract shall apply to such special materials.

Where applicable, in terms of the foregoing, the value of the certificates issued shall be adjusted in accordance with the Contract Price Adjustment Schedule with the following values for "Concrete works" and/or "Roads and earthworks":

The value of "x" is 0,10.

The values of the coefficients for "Concrete works (Concrete Bus Lanes)" are:

a = 0,25 b = 0,15 c = 0,55 d = 0,05

The values of the coefficients for "Concrete works (Major Structures)" are:

a = 0,15 b = 0,20 c = 0,55 d = 0,10

The values of the coefficients for "Roads and earthworks (New Road Construction – Urban)" are:

a = 0,30 b = 0,30 c = 0,35 d = 0,05

The base month is one month prior to the month in which the tender closed.

Furthermore, the Contract Price Adjustment Schedule shall be amended as follows:

"L" is the "Labour Index" and shall be the Consumer Price Index (CPI) for "All items (CPI Headline)", as published in the Statistical News Release, P0141: Table A – Consumer Price Index: Main Indices of Statistics South Africa.

"P" is the "Plant Index" and shall be the Construction Materials Price Index for "Plant and Equipment" as published in the Statistical News Release P0151.1, Table 4 – Mining and construction plant and equipment price index of Statistics South Africa..

"M" is the "Materials Index" and shall be the Construction Materials Price Index for selected materials, Materials for "Civil Engineering material – roads, general (excluding bitumen)," as published in the Statistical News Release P0151.1, Table 6 – Civil engineering material price indices of Statistics South Africa

"F" is the "Fuel Index" and shall be the Producer Price Index (PPI) for "Coal and Petroleum Products - Diesel", as published in the Statistical News Release P0142.1: Table 1 –PPI for final manufactured goods of Statistics South Africa.

The amount "Ac" shall be subdivided into Ac₁ and Ac₂, as appropriate, and each of these shall be multiplied by its Contract Price Adjustment Factor (CPAF), with the resultant amounts added together to produce the adjustment as envisaged in the CPA Schedule:

where

Ac₁ is the proportion of Ac applicable to "Concrete works", and
Ac₂ is the proportion of Ac applicable to "Roads and earthworks"

and where

Ac₁ = T₁ – S₁ – D₁ – E₁ – G₁ – Ap₁, and
Ac₂ = T₂ – S₂ – D₂ – E₂ – G₂ – Ap₂

in which formulae the values associated with the symbols T_1 and T_2 Ap_1 and Ap_2 shall be applicable to the proportions of T_1 Ap_1 in "Concrete works" and "Roads and earthworks", respectively. Furthermore, the value of the General Items shall be proportional to the value of work done and materials on Site in T_1 and T_2 respectively.

Clause 6.8.3: Variation in the cost of special materials

Price adjustment for variations in the cost of special materials is provided for in the Special Materials Schedule at the end of this Part 1: Contract Data provided by the Employer.

Clause 4.2 of the Contract Price Adjustment Schedule

Delete the words "by the Contractor" that appear after "... entered in the Contract Data"

Clause 6.8.4:

Add the following to Clause 6.8.4:

Notwithstanding the above, in the event that a public holiday is proclaimed after 28 days before the closing date for tenders, no costs other than those that can be claimed under Clause 5.12.3 shall be added to the contract price.

Add the following after Clause 6.8.4:

6.8.5. If price adjustment for variations in the cost of plant and materials imported from outside of South Africa is provided for in the contract data, such adjustment shall be based on the information contained on the schedule titled "**Price Basis for Imported Resources**" and as below. For the purposes of this clause the Rand value of imported Plant and Materials inserted on the schedule titled "**Price Basis for Imported Resources**" (column (F)) shall be the value in foreign currency (column (A)) converted to South African Rand (column (C)) by using the closing spot selling rate quoted by **Employer's** main banker, NEDBANK, on the Base Date (seven calendar days before tender closing date) rounded to the second decimal place (column (B)), to which shall be added any Customs Surcharge and Customs Duty applicable at that date (columns (D) and (E)).

6.8.5.1 Adjustment for variations in rates of exchange:

- (a) The value in foreign currency inserted in column (A) shall be subject to clause (h) below when recalculating the Rand value.
- (b) The rate of exchange inserted in column (B) shall be the closing spot selling rate quoted by **Employer's** main banker, NEDBANK, on the Base Date, rounded to the second decimal place, subject to sub-paragraph (c) below.
- (c) If the rate of exchange inserted by the Tenderer differs from the NEDBANK rate referred to above, then the NEDBANK rate shall apply and the Rand value in columns (C) and (F) shall be recalculated accordingly, without altering the price in the Schedules of Quantities for the relevant items.
- (d) If a tender from a supplier or subcontractor provides for variations in rates of exchange, the Contractor may **only** claim for variations in rates of exchange if he binds the supplier or subcontractor to the same provision to take out forward cover as described in sub-paragraph (e) below.
- (e) The Contractor (or supplier or subcontractor) shall within five working days from the date of placing a firm order on an overseas supplier, cover or recover forward by way of a contract with a bank which is an authorised foreign exchange dealer, the foreign exchange component of the cost of any imported Plant and Materials inserted by the Tenderer on the schedule titled "**Price Basis for Imported Resources**".
- (f) When the Contractor (or supplier or subcontractor) so obtains forward cover, the Contractor shall immediately notify the Employer of the rate obtained and furnish the Employer with a copy of the foreign exchange contract note.
- (g) Based on the evidence provided in sub-paragraph (f) above, the value in Rand inserted in column (C) on the schedule titled "**Price Basis for Imported Resources**" shall be recalculated using the forward cover rate obtained, and any increase or decrease in the Rand value defined in this clause shall be adjusted accordingly, subject to sub-paragraph (h) below. Failure to provide such evidence shall result in no such recalculation being considered by the Employer.

- (h) The adjustments shall be calculated upon the value in foreign currency in the Contractor's (or supplier's or subcontractor's) **forward cover contract**, provided that, should this value exceed the value in foreign currency inserted in column (A) of the schedule titled "**Price Basis for Imported Resources**", then the value in column (A) shall be used.

6.8.5.2 Adjustment for variations in customs surcharge and customs duty

- (a) Any increase or decrease in the Rand value between the amounts of Customs Surcharge and Customs Duty inserted on the schedule titled "**Price Basis for Imported Resources**" and those amounts actually paid to the Customs and Excise Authorities, which are due to changes in the percentage rates applicable or to the foreign exchange rate used by the authorities, shall be adjusted accordingly.
- (b) The Tenderer shall state the Customs Duty Tariff Reference applicable to each item and the Contractor shall advise the Employer's Agent of any changes which occur.

6.8.5.3 Adjustment for variation in labour and material Costs

If the prices for imported Plant and Materials are not fixed, the Contractor shall in his Tender specify the formula for calculating Contract Price Adjustments normally used in the country of manufacture and the indices and relative proportions of labour and material on which his Tender prices are based. Evidence of the indices applicable shall be provided with each claim. The indices applicable 42 days before contractual dispatch date from the factory will be used for the purposes of Contract Price Adjustment.

Failure to specify a formula in the Tender shall mean that the prices are fixed or shall be deemed to be fixed.

Clause 6.10.1.5:

Delete Clause 6.10.1.5 in its entirety and replace with the following:

6.10.1.5 The value of Plant and materials:

- 6.10.1.5.1 up to a percentage limit of **80%** for the Plant and materials referred to in Clause 6.9.1.1 brought on to the Site but not yet built into the Permanent Works;

Provided that the Contractor has produced documentary evidence of ownership of such Plant and/or materials and has delivered to the Employer an indemnity, approved in writing by the Employer, against any claim to or in respect of such Plant and/or materials by reason of the Contractor's sequestration or liquidation, or of any defect in the Contractor's title to the Plant and/or materials;

- 6.10.1.5.2 which have been manufactured and are stored at places other than the Site, in respect of which the Employer has indicated, on the Advance Payment Schedule, that advance payment will be permitted;

- 6.10.1.5.3 for which a deposit with order is required from the Contractor by a manufacturer/supplier, only in respect of which the Employer has indicated, on the Advance Payment Schedule, that advance payment will be permitted;

The terms and conditions for advance payment are set out in Clause 6.10.10 and in the Advance Payment Schedule at the end of this Part 1: Contract Data provided by the Employer.

Clause 6.10.1.7:

Add the following after the words "Clause 5.13":

or any other fines or penalties that become due under the Contract.

Clause 6.10.3:

Add the following to Clause 6.10.3:

Notwithstanding the provision of a performance guarantee in terms of Clause 6.2.1, interim payments to the Contractor shall be subject to a retention by the Employer of an amount of **5%** of the said amounts due to the Contractor, with no limit. A guarantee in lieu of retention is not permitted.

Clause 6.10.4:

Add the following to the last sentence of Clause 6.10.4:

..., dated as at the date of delivery of the Contractor's statement to the Employer's Agent.

Add the following to Clause 6.10.4:

Notwithstanding the above, the Employer's Agent shall be empowered to withhold the delivery of the payment certificate until the Contractor has complied with his obligations to report in terms of Clause 4.10.2 and as described in the Scope of Work.

The Contractor may submit a fully motivated application regarding more frequent payment to the Employer's Agent to be submitted to the Employer for consideration. Requests for more frequent payments will be considered at the sole discretion of the Employer and is not a right in terms of this contract.

Clause 6.10.10:

Add the following Clause after Clause 6.10.9:

6.10.10 Advance payment

Subject to Clauses 6.10.1.5.2 and 6.10.1.5.3, and the Advance Payment Schedule, the Employer shall make an advance payment for Plant and materials stored at places other than the Site, or in respect of which a deposit with order is required, only once the Contractor has submitted an advance payment guarantee in accordance with this Clause, the authenticity of which has been verified by the City's Treasury Department.

Unless and until the Employer receives this guarantee, the following paragraphs shall not apply.

The Employer's Agent shall issue an Interim Payment Certificate for, or including, advance payment after receiving a statement under Clause 6.10.1 and after the Employer has received a guarantee in an amount equal to the advance payment requested. This guarantee shall be issued by a financial institution approved by the Employer, as listed in the Annexure in Part C1.3 of the Contract Data, and shall be in the form of and shall contain the precise wording of the document included in Part C1.4: **Form of Advance Payment Guarantee** and shall come into force, be administered and expire in terms thereof.

The Employer shall return the guarantee to the Contractor within 14 days after the expiry date.

The provision of the Advanced Payment Guarantee shall be at the Contractor's cost.

The term "deposit" or "deposit with order" used in the context of this Clause and elsewhere by reference to this Clause, means a sum payable by the Contractor to a manufacturer/supplier prior to the manufacture of an item of Plant or material, required at the time of placing an order, the balance of the value of the item being payable later.

Clause 8.6.1.1.2:

The value of Plant and materials supplied by the Employer to be included in the insurance sum is **R 0.00 (Nil)**.

Clause 8.6.1.1.3:

The amount to cover professional fees for repairing damage and loss to be included in the insurance sum is **R0.00 (Nil)**.

Clause 8.6.1.3:

The limit of indemnity for liability insurance is R20 000 000.00 for any single claim – the number of claims to be unlimited during the construction and defects liability periods.

Clause 8.6.1.5:

In addition to the insurances required in terms of General Conditions of Contract Clauses 8.6.1.1 to 8.6.1.4 the following insurance is also required:

- a) Insurance of Construction Equipment (including tools, offices and other temporary structures and contents) and other things (except those intended for incorporation into the Works) brought onto the site for a sum sufficient to provide for their replacement.
- b) Insurance in terms of the provisions of the Compensation for Occupational Injuries and Diseases Act, 130 of 1993.



- c) Motor Vehicle Liability Insurance comprising (as a minimum) "Balance of Third Party" Risks including Passenger Liability Indemnity.
- d) Where the contract involves manufacturing and/or fabrication of the works or part thereof at premises other than the Site, the Contractor shall satisfy the Employer that all materials and equipment for incorporation in the works are adequately insured during manufacture and/or fabrication. In the event of the Employer having an insurable interest in such works during manufacture or fabrication then such interest shall be noted by endorsement to the Contractor's Policies of Insurance.

Clause 8.6.5:

Delete the following from Clause 8.6.5:

"and the terms thereof shall be subject to the approval of the Employer's Agent, which approval shall not be unreasonably withheld."

Clause 8.6.6:

Replace clause 8.6.6 with the following:

The Contractor shall provide evidence in the form stated in the contract data to the Employer's Agent that the required insurances are effected and that all premiums thereunder have been paid.

Clause 9.1:

In Clause 9.1.6 replace "and 9.1.3" with:

, 9.1.3 and 9.1.7

Add the following Clause after Clause 9.1.6:

9.1.7 Death of Sole Proprietor/Member

Upon the death of the Contractor who was a Sole Proprietor, or a sole member of a Close Corporation, the Contract will terminate forthwith. The Employer shall pay to the Contractor's estate any money which it considers due under the Contract in terms of Clause 9.1.5, in full and final settlement thereof.

9.1.8 Material Irregularity during procurement process

The Employer may terminate the contract if a material irregularity vitiates the procurement process leading to the conclusion of the contract, rendering the procurement process and the conclusion of the resulting contract unfair, inequitable, non-transparent, uncompetitive or not cost-effective, provided the Employer follows the processes as described in its SCM Policy.

9.1.9 Reputational risk or harm to the Employer

The Employer, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate the contract if the implementation of the contract may result in reputational risk or harm to the City as a result of (inter alia):

- 9.1.9.1 reports of poor governance and/or unethical behaviour;
- 9.1.9.2 association with known family of notorious individuals;
- 9.1.9.3 poor performance issues, known to the Employer;
- 9.1.9.4 negative social media reports; or
- 9.1.9.5 adverse assurance (e.g. due diligence) report outcomes.

Add the following Clause after Clause 9.2.3:

9.2.4 Employer's Elections in case of Insolvency

In addition to anything else contained in this contract, the Employer may make either of the following elections to ensure its rights are protected and any negative impact on service delivery is mitigated:

- 9.2.4.1 accept a contractor's proposal (via the trustee / liquidator) to render delivery utilising the appropriate contractual mechanisms; or
- 9.2.4.2 terminate the contract, as the liquidator proposed contractor is deemed unacceptable to the employer, at any time by giving written notice to the contractor (via the trustee / [REDACTED])

Clause 10.5.3:

The number of Standing Adjudication Board Members to be appointed is 3 (three).

ADDITIONAL CONDITIONS OF CONTRACT

Add the following Clause after Clause 10:

Clause 11 Details to be confidential

The Contractor shall treat the details of the Works comprised in this Contract as private and confidential (save in so far as may be necessary for the purposes hereof) and shall not publish or disclose the same or any particulars thereof in any trade or technical paper elsewhere without the prior written consent of the Employer's Agent.

Clause 12: Periodic review

This Agreement is valid from the commencement date outlined herein and is valid until further notice. This Agreement shall be reviewed once every three years; however, in lieu of a review during any period specified, the current Agreement will remain in effect. The purchaser reserves the right to reduce or increase the scope of works according to the dictates of the budget, to terminate this contract, and/or to review and terminate this contract as is contemplated in Section 116(1)(b)(iii) of the Local Government: Municipal Finance Management Act 56 of 2003, without adjustment to the agreed rates, sums or fees and without payment of any penalty or surcharge in this regard. The supplier shall however be entitled to pro-rata payment for all services carried out in terms of any adjustment to the Scope of Work or, in the case of termination, payment for goods delivered.

Clause 13: Protection of Personal Information

The supplier acknowledges that it will be processing personal information as defined in the Protection of Personal Information Act No. 4 of 2013 relating to City customers, on behalf of the City. Accordingly, it undertakes to ensure compliance with the Act in respect of its processing activities. In particular, it undertakes to keep such information confidential and not to disclose it unless required by law or in the course of the proper performance of its duties. Furthermore, it undertakes to maintain security measures as envisaged in Sections 19 and 21 of the Act. The requirements of this clause apply to all agents and subcontractors acting on behalf of tenderers and must be included in all contracts between tenderers and their agents or subcontractors.

SPECIAL MATERIALS SCHEDULE		
Each material dealt with as a special material in terms of Clause 4.1 of the Contract Price Adjustment Schedule of the General Conditions of Contract is stated in the list below. The provisions of Clause 6.8.3 of the General Conditions of Contract shall apply to such special materials. The base prices for the special materials (current at the time of tender) shall be as stated in the schedule below, or where required, shall be furnished by the tenderer/contractor. Only those materials listed by the Employer below shall be considered as special materials.		
Special Material	Unit	Base Price
Bitumen (50/70 penetration grade)	T	R 5 725.00 (January 2021 - Durban)
Bitumen (70/100 penetration grade)	T	R 5 625.00 (January 2021 - Durban)
Structural steel	T	The SA Metal prices, as published in their official price list, current at the time of tender closing, will be used as the base prices for determining the adjustment in steel prices.
Steel reinforcing bars	T	
Steel used in the manufacture of pipes	T	
Steel used in the manufacture of street light poles	T	
Conditions:		
1) When called upon to do so, the contractor shall substantiate the prices to be used to determine the adjustment in respect of the special materials listed above with acceptable documentary evidence.		
2) In the case of bituminous products, the Employer has provided, in the schedule above, a base rate for bitumen upon which the tendered rates will be deemed to be based, and which will be used for determining the adjustment in the price of such bituminous products.		

- 3) Where an adjustment for the variation in the price of bituminous products is claimed, the claim must be substantiated by a declaration from the manufacturer, confirming the source of bitumen used in such bituminous products at the time in question.
- 4) Where the source of bitumen (the refinery) is located in the Western Cape Province, or where bitumen sourced from abroad is landed at a port in the Western Cape, the cost of transporting such bitumen within the boundaries of the Western Cape shall be included in the rate for bituminous products. Extra-over rates to cover the cost of transporting bitumen from beyond the borders of the Western Cape have been measured separately in the Bill of Quantities.
- 5) Where imported bitumen used in bituminous products is landed at a port beyond the borders of the Western Cape, the importers must clearly state whether or not their price is inclusive of transport to the Western Cape, which will determine whether extra-over transport costs are applicable, or not. The price of the imported bitumen itself must be expressed as a landed price in ZAR.

ADVANCE PAYMENT SCHEDULE	
This Advance Payment Schedule is to be read in conjunction with Clauses 6.10.1.5.2, 6.10.1.5.3 and 6.10.10 in the Contract Specific Data. The purpose of this schedule is to itemise specific Plant and materials not yet brought onto the Site for building into the Permanent Works and for which the Employer is prepared to make advance payments to the Contractor, subject to the conditions below. The items of Plant and materials which have been identified by the Employer as being suitable for advance payment in terms of the Contract are listed in the table below. Should an item or items be added to the list at tender stage by a tenderer, such item(s) will not be binding on the Employer.	
Plant and materials which have been manufactured and are stored at places other than the Site:	Plant and materials yet to be manufactured and for which a deposit with order is required from the Contractor by a manufacturer/supplier, and which may be stored at places other than the Site after manufacture:
Conditions: 1) The Contractor can only rely on advance payment being permitted by the Employer in respect of the Plant and materials listed in the table above. The Employer may, however, permit advance payment for other Plant and materials in exceptional circumstances and at its sole discretion, during the course of the Contract, and upon reasonable request from the Contractor. 2) Advance payment for the purposes of deposits will only be provided up to a limit of 20% of the value of any one item being claimed. 3) The Contractor shall provide the Employer with documentary evidence of the terms and conditions for which a deposit with order is required by a manufacturer/supplier, together with the advance payment guarantee. 4) The Contractor will also be permitted to obtain advance payment for the balance of the value of the Plant and materials in respect of which he has paid a deposit, for an item which after manufacture is stored at a place other than the Site. The Contractor shall, in respect of such payment, provide an advance payment guarantee, either for such balance or, if the advance payment guarantee in respect of the deposit is to be returned by the Employer upon request, for the whole value of the item.	

ANNEXURE A: INSURANCE BROKER'S WARRANTY

Pro Forma



Letterhead of Contractor's Insurance Broker

Date _____

CITY OF CAPE TOWN
City Manager
Civic Centre
12 Hertzog Boulevard
Cape Town
8001

Dear Sir

CONTRACT NO.: 305Q/2020/21

CONTRACT TITLE: CONSTRUCTION OF PHASE 2A TRUNK INFRASTRUCTURE: GOVAN MBEKI ROAD BETWEEN LANSDOWNE ROAD AND HEINZ ROAD

NAME OF CONTRACTOR: _____

I, the undersigned, do hereby confirm and warrant that all the insurances required in terms of the abovementioned term tender contract have been issued and, in the case of blanket/umbrella policies, will be endorsed to reflect the interests of the CITY OF CAPE TOWN with regard to each Works Project 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: _____

Annexure B: Form of Performance Guarantee

C1.3 Form of Performance Guarantee

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: The City of Cape Town, Transport Directorate

"Contractor" means:

"Employer's Agent" means:

"Works" means: **CONTRACT No. 305Q/2020/21 : CONSTRUCTION OF PHASE 2A TRUNK
INFRASTRUCTURE: GOVAN MBEDI ROAD BETWEEN LANSLOWNE ROAD AND HEINZ
ROAD.**

"Site" means: The site as defined in the Contract Data.

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

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

Amount in words:

"Guaranteed Sum" means: The maximum aggregate amount of R.....

Amount in words:

"Expiry Date" means: The date of issue by the Employer's Agent of the Certificate of Completion of the Works.

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.

PERFORMANCE GUARANTEE

1. The Guarantor's liability shall be limited to the amount of the Guaranteed Sum.
2. The Guarantor's period of liability shall be from and including the date of issue of this Performance Guarantee and up to and including the Expiry Date or the date of payment in full of the Guaranteed Sum, whichever occurs first. 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. The Guarantor hereby acknowledges that:
 - 3.1 any reference in this Performance Guarantee to the Contract is made for the purpose of convenience and shall not be construed as any intention whatsoever to create an accessory obligation or any intention whatsoever to create a suretyship;
 - 3.2 its obligation under this Performance Guarantee is restricted to the payment of money.

4. Subject to the Guarantor's maximum liability referred to in 1, the Guarantor hereby undertakes to pay the Employer the sum certified upon receipt of the documents identified in 4.1 to 4.3:
 - 4.1 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 4.2;
 - 4.2 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 4.1 and the sum certified has still not been paid;
 - 4.3 A copy of the aforesaid payment certificate which entitles the Employer to receive payment in terms of the Contract of the sum certified in 4.
5. Subject to the Guarantor's maximum liability referred to in 1, the Guarantor undertakes to pay to the Employer the Guaranteed Sum or the full outstanding balance upon receipt of a first written demand from the Employer to the Guarantor at the Guarantor's physical address calling up this Performance Guarantee, such demand stating that:
 - 5.1 the Contract has been terminated due to the Contractor's default and that this Performance Guarantee is called up in terms of 5; or
 - 5.2 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 5; and
 - 5.3 the aforesaid written demand is accompanied by a copy of the notice of termination and/or the provisional/final sequestration and/or the provisional liquidation court order.
6. It is recorded that the aggregate amount of payments required to be made by the Guarantor in terms of 4 and 5 shall not exceed the Guarantor's maximum liability in terms of 1.
7. Where the Guarantor has made payment in terms of 5, the Employer shall upon the date of issue of the Final Payment Certificate submit an expense account to the Guarantor showing how all monies received in terms of this Performance Guarantee have been expended and shall refund to the Guarantor any resulting surplus. All monies refunded to the Guarantor in terms of this Performance Guarantee shall bear interest at the prime overdraft rate of the Employer's bank compounded monthly and calculated from the date payment was made by the Guarantor to the Employer until the date of refund.
8. Payment by the Guarantor in terms of 4 or 5 shall be made within seven (7) calendar days upon receipt of the first written demand to the Guarantor.
9. 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.
10. The Guarantor chooses the physical address as stated above for the service of all notices for all purposes in connection herewith.
11. This Performance Guarantee is neither negotiable nor transferable and shall expire in terms of 2, where after no claims will be considered by the Guarantor. The original of this Guarantee shall be returned to the Guarantor after it has expired.
12. This Performance Guarantee, with the required demand notices in terms of 4 or 5, shall be regarded as a liquid document for the purposes of obtaining a court order.
13. Where this Performance Guarantee is issued in the Republic of South Africa the Guarantor hereby consents in terms of Section 45 of the Magistrate's Courts Act No 32 of 1944, as amended, to the jurisdiction of the Magistrate's Court of any district having jurisdiction in terms of Section 28 of the said Act, notwithstanding that the amount of the claim may exceed the jurisdiction of the Magistrate's Court.

Signed at

Date

Guarantor's signatory (1)

Capacity

Guarantor's signatory (2)

Capacity

Witness signatory (1)

Witness signatory (2)



ANNEXURE

LIST OF APPROVED FINANCIAL INSTITUTIONS

•

The following financial institutions are currently (as at 18 October 2016) approved for issue of contract guarantees to the City:

National Banks:

ABSA Bank Ltd.
FirstRand Bank Ltd.
Investec Bank Ltd.
Nedbank Ltd.
Standard Bank of SA Ltd.

International Banks (with branches in SA):

Barclays Bank plc.
Citibank n.a.
Credit Agricole Corporate and Investment Bank
HSBC Bank plc.
JP Morgan Chase Bank
Societe Generale
Standard Chartered Bank

Insurance companies:

ABSA Insurance
Coface s.a.
Compass Insurance Co.
Constantia Insurance Co.
Credit Guarantee Insurance Co.
Guardrisk Insurance Co.
Hollard Insurance Company Ltd.
Infiniti Insurance Limited
Lombard Insurance

New National Assurance Co.
Regent Insurance Co.
Renasa Insurance Company Ltd.
Santam Limited
Zurich Insurance Co.

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ANNEXURE C: FORM OF ADVANCE PAYMENT GUARANTEE

C1.4 Form of Advance Payment Guarantee

ADVANCE PAYMENT 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: The City of Cape Town, Transport Directorate

"Contractor" means:

"Employer's Agent" means:

Works" means: **CONTRACT 305Q/2020/21 : CONSTRUCTION OF PHASE 2A TRUNK INFRASTRUCTURE:
GOVAN MBEKI ROAD BETWEEN LANSDOWNE ROAD AND HEINZ ROAD**

"Site" means: The site as defined in the Contract Data.

"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.

"Plant and materials" means: The Plant and materials stored at places other than the Site, or in respect of which an advance payment prior to manufacture is required, which the Employer has agreed may be subject to advance payment, such Plant and materials being listed in the Schedule of Plant and materials.

"Schedule of Plant and materials" means: A list of Plant and materials which shows the value thereof to be included in the Guaranteed Advance Payment Sum.

"Guaranteed Advance Payment Sum" means: The maximum aggregate amount of R.....

Amount in words:

"Expiry Date" means: The date of the payment certificate wherein the Plant and materials have been certified by the Employer's Agent as having been built into the Permanent Works.

CONTRACT DETAILS

Employer's Agent issues: Interim Payment Certificates and Final Payment Certificate.

ADVANCE PAYMENT GUARANTEE

1. The Guarantor's liability shall be limited to the amount of the Guaranteed Advance Payment Sum.
2. The Guarantor's period of liability shall be from and including the date of issue of this Advance Payment Guarantee and up to and including the Expiry Date or the date of payment in full of the Guaranteed Advanced Payment Sum, whichever occurs first.

3. The Guarantor hereby acknowledges that:
 - 3.1 any reference in this Advance Payment 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;
 - 3.2 its obligation under this Advance Payment Guarantee is restricted to the payment of money.
4. Subject to the Guarantor's maximum liability referred to in 1, the Guarantor hereby undertakes to pay the Employer the sum certified upon receipt of the documents identified in 4.1 to 4.3:
 - 4.1 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 4.2;
 - 4.2 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) calendar days has elapsed since the first written demand in terms of 4.1 and the sum certified has still not been paid;
 - 4.3 A copy of the aforesaid payment certificate which entitles the Employer to receive payment in terms of the Contract of the sum certified in 4.
5. Subject to the Guarantor's maximum liability referred to in 1, the Guarantor undertakes to pay to the Employer the Guaranteed Advance Payment 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 Advance Payment Guarantee, such demand stating that:
 - 5.1 the Contract has been terminated due to the Contractor's default and that this Advance Payment Guarantee is called up in terms of 5; or
 - 5.2 a provisional or final sequestration or liquidation court order has been granted against the Contractor and that the Advance Payment Guarantee is called up in terms of 5; and
 - 5.3 the aforesaid written demand is accompanied by a copy of the notice of termination and/or the provisional/final sequestration and/or the provisional liquidation court order.
6. It is recorded that the aggregate amount of payments required to be made by the Guarantor in terms of 4 and 5 shall not exceed the Guarantor's maximum liability in terms of 1.
7. Payment by the Guarantor in terms of 4 or 5 shall be made within seven (7) calendar days upon receipt of the first written demand to the Guarantor.
9. 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 Advance Payment Guarantee on account of any conduct alleged to be prejudicial to the Guarantor.
10. The Guarantor chooses the physical address as stated above for the service of all notices for all purposes in connection herewith.
11. This Advance Payment Guarantee is neither negotiable nor transferable and shall expire in terms of 2, where after no claims will be considered by the Guarantor. The original of this Guarantee shall be returned to the Guarantor after it has expired.
12. This Advance Payment Guarantee, with the required demand notices in terms of 4 or 5, shall be regarded as a liquid document for the purposes of obtaining a court order.
13. Where this Performance Guarantee is issued in the Republic of South Africa the Guarantor hereby consents in terms of Section 45 of the Magistrate's Courts Act No 32 of 1944, as amended, to the jurisdiction of the Magistrate's Court of any district having jurisdiction in terms of Section 28 of the said Act, notwithstanding that the amount of the claim may exceed the jurisdiction of the Magistrate's Court.

Signed at

Date

Guarantor's signatory (1)

Capacity

Guarantor's signatory (2)

Capacity

Witness signatory (1)

Witness signatory (2)

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PART 3: GENERAL CONDITIONS OF CONTRACT

GENERAL CONDITIONS OF CONTRACT

The following standardised General Conditions of Contract:

General Conditions of Contract for Construction Works, Third Edition, 2015

prepared by the South African Institution of Civil Engineering (SAICE) shall apply to and form the General Conditions of Contract for this contract. Copies of these conditions of contract are obtainable from the South African Institution of Civil Engineering (SAICE) [REDACTED]

e-mail: [REDACTED]

Copies of the General Conditions of Contract are available for inspection and scrutiny at the offices of the Employer.

The Pro-formas bound with the General Conditions of Contract 2015, on pages 96 to 113 shall not apply to this Contract and shall be replaced with the documents bound into this Contract Document.

The General Conditions of Contract 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.

The General Conditions of Contract shall be read in conjunction with the variations, amendments and additions set out in the Contract Specific Data below. Each item of data given below is cross-referenced to the clause in the General Conditions of Contract to which it mainly applies.

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

- a) the Form of Offer and Acceptance,
- b) the Contract Specific Data within the Contract Data,
- c) the General Conditions of Contract for Construction Works, Third Edition, 2015,
- d) the Drawings,
- e) the Scope of Work,
- f) the Pricing Data, and
- g) the conditions of tender, the tender data and tender schedules

If an ambiguity or discrepancy is found in the documents, the Employer's Agent shall issue any necessary clarification or instruction.

PART 4: PRICING SCHEDULE

The Pricing Schedule/Bill of Quantities - attached hereto and marked '**ANNEXURE A1**'



PART 5: SCOPE OF WORK

The SCOPE OF WORK - attached hereto and marked 'ANNEXURE B1'

PART 6: SITE INFORMATION

The SITE INFORMATION - attached hereto and marked '**ANNEXURE C1**'



PART 7: OCCUPATIONAL HEALTH AND SAFETY AGREEMENT

C1.5 Occupational Health and Safety Agreement

AGREEMENT MADE AND ENTERED INTO BETWEEN THE CITY OF CAPE TOWN (HEREINAFTER CALLED THE "EMPLOYER") AND

(Contractor/Mandatar/Company/CC Name)

IN TERMS OF SECTION 37(2) OF THE OCCUPATIONAL HEALTH AND SAFETY ACT, 85 OF 1993 AS AMENDED.

I _____

, representing

, as an employer

in its own right, do hereby undertake to ensure, as far as is reasonably practicable, that all work will be performed, and all equipment, machinery or plant used in such a manner as to comply with the provisions of the Occupational Health and Safety Act (OHSA) and the Regulations promulgated thereunder.

I furthermore confirm that I am/we are registered with the Compensation Commissioner and that all registration and assessment monies due to the Compensation Commissioner have been fully paid or that I/We are insured with an approved licensed compensation insurer.

COID ACT Registration Number: _____

OR Compensation Insurer: _____ Policy No. _____

I undertake to appoint, where required, suitable competent persons, in writing, in terms of the requirements of OHSA and the Regulations and to charge him/them with the duty of ensuring that the provisions of OHSA and Regulations as well as the Council's Special Conditions of Contract, Way Leave, Lock-Out and Work Permit Procedures are adhered to as far as reasonably practicable.

I further undertake to ensure that any subcontractors employed by me will enter into an occupational health and safety agreement separately, and that such subcontractors comply with the conditions set.

I hereby declare that I have read and understand the Occupational Health and Safety Specifications contained in this tender and undertake to comply therewith at all times.

I hereby also undertake to comply with the Occupational Health and Safety Specification and Plan submitted and approved in terms thereof.

Signed at _____ on the _____ day of _____ 20____

PART 8: PROTECTION OF THE ENVIRONMENT DECLARATION

C1.6 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.: 305Q/2020/21

CONTRACT TITLE: CONSTRUCTION OF PHASE 2A TRUNK INFRASTRUCTURE: GOVAN MBEKI ROAD BETWEEN LANSDOWNE ROAD AND HEINZ ROAD

I/ we, Govan Mbeki IRT{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 recognise 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
 - 4.2 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 
CONTRACTOR

Date. 13 June

PART 9: CONTRACT OF TEMPORARY EMPLOYMENT AS COMMUNITY LIAISON OFFICER

C1.8 Contract of Temporary Employment as Community Liaison Officer

Construction Contract No.:

PROJECT.....

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:

1. to keep the community informed on the progress of the project;
2. to keep the Contractor informed on relevant Community affairs and possible grievances;
3. to manage the recruitment of workers from the Sub-Council Job-Seekers Database;
4. 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 R360 per working day. 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.

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 behaviour;
 - (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 behaviour:
- (i) undisciplined or unruly behaviour;
 - (ii) insubordination to Team Leader, Supervisors or Management;
 - (iii) abuse of intoxicating substances;
 - (iv) wilful 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 a Friday afternoon every two weeks, one week in arrears.
- 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 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.

5. THUS AGREED AND SIGNED BY THE PARTIES:

Contractor:

Community Liaison officer:

Date: