

**AGREEMENT FOR**

**THE PLANNING, DESIGN AND  
CONSTRUCTION OF INFRASTRUCTURE  
WORKS ON BEHALF OF THE MUNICIPAL  
COUNCIL OF WINDHOEK ON PROJECT**  
**[Insert Name]**

between

**THE MUNICIPAL COUNCIL OF WINDHOEK**

and

**[INSERT NAME OF DEVELOPER]**

**For Township Development or Large Subdivisions  
where Works Value is more than N\$5.0 Million**

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## **SECTION 1**

# **MEMORANDUM OF AGREEMENT**

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## **SECTION 1**

### **MEMORANDUM OF AGREEMENT**

made and entered into by and between

#### **THE MUNICIPAL COUNCIL OF WINDHOEK**

of

80 Independence Avenue, Windhoek, Namibia

Herein represented by NILO KAMBWA TAAPOPI and PETRUS L. DU PISANI (Strategic Executive, Infrastructure) in their respective capacities as Chief Executive Officer and representative of the Chairperson of the Management Committee of the said Municipal Council acting as such respectively in terms of 27(5) and Section 31A.(a) of the Local Authorities Act, No. 23 of 1992

(hereinafter referred to as the "**Council**")

and

**[INSERT NAME OF DEVELOPER]**

(Registration No **[Insert]**)

of

**[Insert Address]**

Herein represented by **[Insert Name]** in his capacity as director of the Developer duly authorised thereto by a resolution taken by the Developer, a copy of which is attached as **Schedule A** and initialled for the purpose of identification.

(hereinafter referred to as the "**Developer**")

**Whereas:**

1. The Developer is the owner of certain immovable property known as **[Insert]** situated in the Municipality of Windhoek, Khomas Region, measuring **[Insert]** hectares and held by Deed of Transfer No. **[Insert]** (hereinafter referred to as “the Property”);
2. The Developer wishes to construct private township extension on the Property, and has accordingly obtained from the Council and from the Minister of Regional and Local Government, Housing and Rural Development, the required approval in respect of the necessity and desirability for the extension of a township called **[Insert]** (hereinafter referred to as “the Township Extension”), a copy of which Council Resolution Number **[Insert]** and relevant certificate and the accompanying draft **General Plan/s or Layout plan/s** are attached hereto or will be attached as **Schedules C**, [to be numbered consecutively ] once approved;
3. The Developer wishes from time to time and in the course of his business to sell erven within the Township Extension to third party purchasers;
4. As of the date of this Agreement the Developer wishes to proceed with the Planning, Design and Construction of the Works as defined herein (**The Project**) in accordance with the aforementioned approvals and layout plan/s, but with the condition precedent that construction may commence only after proof of Townships Board approval is submitted by the Developer.
5. As an absolute condition precedent for lawful transfer from time to time of all and any erven contained within the Township Extension from the Developer to a Third Party Transferee or Third Party Transferees and the registration by the Registrar of Deeds of all and any such erven in the name of such Third Party Transferee or Third Party Transferees, the Council requires the Developer to provide certain infrastructure works and services [the “Works”] as described in Sections 2 to 5 hereof in accordance with the standards prescribed in Sections 2 to 5 hereof, all of which works and services shall be provided at the Developer’s sole cost unless otherwise stipulated herein;

The Council and the Developer hereby agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Agreement contained in Section 2 hereof.

2. The following documents shall form the Agreement and be read with and be construed as part of this Agreement:

Section 1 - Memorandum of Agreement

Section 2 - Conditions of Agreement

2.1 General Conditions

2.2 Particular Conditions of Agreement

Section 3 - Project Specific Particular Conditions

Section 4 - Part A: Council's Standard Technical Requirements

Part B: Project Specific Technical Requirements

Section 5 - Agreement Data, List of Erven, Pro Forma Documents, Schedules and Appendixes

3. In consideration of the Developer planning, designing and executing each Section of the Works in conformity with the provisions of the Agreement and at its sole cost, and permitting take-over of the Works by the Council pursuant to the Agreement, the Council hereby covenants that it will:

3.1 grant approval of building plans in respect of all Township Extensions to which the relevant completed and transferred Sections of the Works relates and where such Sections of the Works have been taken over by the Council as provided in Section 2 hereof;

3.2 permit the Developer to open township registers and proclaim those Township Extensions as approved townships to which the relevant completed, taken over and transferred Sections of the Works relates; and thereafter,

- 3.3 permit the Developer to effect transfer and registration any or all of the erven within the aforesaid Township Extensions in the name or names of a specified Third Party Transferee or Third Party Transferees to the extent that:
- 3.3.1 all other necessary requirements for such registration as may be imposed on the Developer and/or the specified Third Party Transferee(s) by the Laws have been adhered to, and
- 3.3.2 any and all conditions precedent to the sale, transfer and/or registration of such erf or erven, which have been imposed on the Developer and/or specified Third Party Transferee(s) by the Council and/or any other legally constituted public authority having jurisdiction within Namibia, have been met.
- 3.3.3 All conditions and obligations of the Developer contained herein have been fulfilled with respect to the Works to be transferred to Council
4. This Agreement contains the entire agreement between the Parties in relation to the subject matter hereof and neither Party shall have any claim or right of action arising from any undertaking, representation or warranty not included in this document. No agreement to vary, add to or cancel this Agreement shall be of any force or effect unless reduced to writing and signed on behalf of all the Parties hereto.
5. No failure by either Party to enforce any provision of this Agreement shall constitute a waiver of such provision or affect in any way that Party's right to require performance of any such provision at any time in the future, nor shall the waiver of any subsequent breach nullify the effectiveness of the provision itself.
6. Each Party chooses the address set out under its name above as its *domicilium citandi et executandi* at which all notices, legal processes and other communications must be delivered for the purposes of this Agreement.
7. Each Party may by written notice to the other Party change its chosen address to another physical address provided that the change shall become effective on the fourteenth day after the receipt of the notice by the addressee.
8. The Agreement shall come into operation on the date of the latest signature of either Party signing this Agreement.

IN WITNESS whereof the parties hereto have set their signatures in the presence of subscribing witnesses:

**FOR AND ON BEHALF OF THE COUNCIL, BEING DULY AUTHORISED TO DO SO:**

AT ..... on this ..... day of .....

SIGNATURE .....

CAPACITY .....

SIGNATURE .....

CAPACITY .....

**AS WITNESS (for the Council)**

\_\_\_\_\_

**SIGNATURE**

\_\_\_\_\_

**NAME**

\_\_\_\_\_

**ADDRESS**

\_\_\_\_\_

**SIGNATURE**

\_\_\_\_\_

**NAME**

\_\_\_\_\_

**ADDRESS**

**FOR AND ON BEHALF OF THE DEVELOPER, BEING DULY AUTHORISED TO DO SO:**

AT ..... on this ..... day of .....

SIGNATURE .....

CAPACITY .....

**AS WITNESS (for the Developer)**

\_\_\_\_\_

**SIGNATURE**

\_\_\_\_\_

**NAME**

\_\_\_\_\_

**ADDRESS**

**AS WITNESS (for the Developer)**

\_\_\_\_\_

**SIGNATURE**

\_\_\_\_\_

**NAME**

\_\_\_\_\_

**ADDRESS**



## **SECTION 2**

### **CONDITIONS OF AGREEMENT**

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## **SECTION 2**

### **1. GENERAL CONDITIONS**

The Conditions of Agreement comprise the “General Conditions”, which are the “Conditions of Contract for Plant and Design-Build for Electrical and Mechanical Works and for Building and Engineering Works”, First Edition 1999 published by the *Fédération Internationale de Ingénieurs-Conseils* (FIDIC), and the following “Particular Conditions” in clause 2 which include amendments and additions to such General Conditions.

### **2. PARTICULAR CONDITIONS**

#### **[AMENDMENT TO GENERAL CONDITIONS IN CLAUSE 1]**

#### **2.1. GENERAL PROVISIONS**

##### **2.1.1. Definitions**

The provisions of the Agreement Data as referred to in the General Conditions and as contained in Section 5 hereof shall be deemed to form part of and be read and applied together with and as part of the Particular Conditions.

The following changes are to be made to the General Conditions. The Clause numbers referred to hereafter are the Clause numbers of the General Conditions.

The word “Contract” and its derivatives is deleted in all its occurrences throughout the General Conditions and replaced in all such occurrences with the word “Agreement”.

The word “Employer” and its derivatives is deleted in all its occurrences throughout the General Conditions and replaced in all such occurrences with the word “Council”.

The word “Contractor” and its derivatives is deleted in all its occurrences throughout the General Conditions and replaced in all such occurrences with the word “Developer”.

The word “Engineer” and its derivatives is deleted in all its occurrences throughout the General Conditions and replaced with the words “Council’s Representative”

The word “Subcontractor” and its derivatives is deleted in all its occurrences throughout the General Conditions and replaced with the word “Contractor”.

The term “Appendix to Tender” is deleted in all its occurrences throughout the General Conditions and replaced with the term “Agreement Data”.

The term “subcontract” and all its derivatives is deleted in all its occurrences throughout the General Conditions and replaced with the term “Contract”.

## **2.1.2. Clause 1.1.1 The Contract**

2.1.2.1. Delete Sub-Clause 1.1.1.1 and replace it with the following:

**“Agreement”** means this contract and other documents hereby listed:

Section 1 -	Memorandum of Agreement;
Section 2 -	Conditions of Agreement;
Section 3 -	Project Specific Particular Conditions
Section 4 -	Part A: Council’s Standard Technical Requirements Part B: Project Specific Technical Requirements
Section 5 -	Agreement Data, List of Erven, Pro-Forma Documents, Schedules and Appendixes

2.1.2.2. Delete Sub-Clause 1.1.1.2 and replace it with the following:

**“Memorandum of Agreement”** means the Memorandum of Agreement contained in Section 1 of the Agreement.

2.1.2.3. Delete Sub-Clause 1.1.1.3 in its entirety.

2.1.2.4. Delete Sub-Clause 1.1.1.4 in its entirety.

2.1.2.5. Delete Sub-Clause 1.1.1.5 in its entirety

2.1.2.6. In line 2 of Sub-Clause 1.1.1.6 delete the words “and submitted with the Letter of Tender” and delete the last sentence of the Sub-Clause.

2.1.2.7. Delete Sub-Clause 1.1.1.7 in its entirety.

2.1.2.8. Delete Sub-Clause 1.1.1.8 in its entirety.

2.1.2.9. Delete Sub-Clause 1.1.1.9 in its entirety.

2.1.2.10. Delete Sub-Clause 1.1.1.10 in its entirety.

### **2.1.3. Parties and Persons**

2.1.3.1. In Sub-Clause 1.1.2.1 delete the word “Employer” and replace it with the word “Council” and delete the word “Contractor” and replace it with the word “Developer”.

2.1.3.2. Delete Sub-Clause 1.1.2.2 and replace it with the following:

“**Council**” means the Municipal Council of Windhoek and the legal successors in title to this entity.

2.1.3.3. Delete Sub-Clause 1.1.2.3 and replace it with the following:

“**Developer**” means the person named as such in the Agreement Data and the legal successors in title to this person.

“**Developers Engineer**” shall mean the Engineer of the Developer appointed under Clause 2 of Section 4. “Engineer” and “Engineering firm” shall have a similar meaning.

2.1.3.4. Delete Sub-Clause 1.1.2.4 and replace it with the following:

“**Council’s Representative**” means a member of the Council’s Personnel appointed to act as the representative of the Council for the purposes of the Agreement and named in the Agreement Data, or other person appointed from time to time by the Council and notified to the Developer under Sub-Clause 3.4 [*Replacement of the Council’s Representative*].

2.1.3.5. In line 3 of Sub-Clause 1.1.2.6, delete the words “of the Engineer and” from after the words “other employees”.

2.1.3.6. In line 3 of Sub-Clause 1.1.2.7, delete the word “Subcontractor” and replace it with the word “Contractor”.

2.1.3.7. Delete Sub-Clause 1.1.2.8 and replace it with the following:

**“Contractor”** means any person appointed under Sub-Clause 2.4.4 of Section 2 as a contractor by or on behalf of the Developer for the fulfilment of all or Sections of the Works; and the legal successors in title to each of these persons. Contractor and Developer’s Contractor shall have the same meaning.

2.1.3.8. Add a new Sub-Clause, Sub-Clause 1.1.2.11, as follows:

**“Departmental Head”** means a departmental head appointed and referred to under Section 28 of the Local Authorities Act 1992 (Act 23 of 1992).

2.1.3.9. Add a new Sub-Clause, Sub-Clause 1.1.2.12, as follows:

**“Third Party Transferee”** means any person or persons to whom the Developer seeks to transfer ownership of any given erf or erven contained within the Township Development.

#### **2.1.4. Dates, Tests, Periods and Completion**

2.1.4.1. Delete Sub-Clause 1.1.3.1 in its entirety.

2.1.4.2. Delete Sub-Clause 1.1.3.2 and replace it with the following:

**“Commencement Date”** means the date as detailed in the Agreement Data.

2.1.4.3. In line 4 of Sub-Clause 1.1.3.3, after the words “[*Extension of Time for Completion*]”, insert the words “or as otherwise agreed between the Parties”

2.1.4.4. Delete Sub-Clause 1.1.3.6 in its entirety.

2.1.4.5. In lines 4 and 5 of Sub-Clause 1.1.3.7, delete the words “(with any extension under Sub-Clause 11.3 [*Extension of Defects Notification Period*])”

2.1.4.6. Add a new Sub-Clause, Sub-Clause 1.1.3.10, as follows:

**“Completion Certificate”** means the Completion Certificate also referred to a ‘Compliance Certificate’ or Certificates referred to in Sub-Clause 2.10.1 (c) of Section 2 [*Council’s Taking-Over*].

2.1.4.7. Add a new Sub-Clause, Sub-Clause 1.1.3.11, as follows:

**“Signature Date”** means the date on which the Agreement is signed by the last Party to sign.

## **2.1.5. Clause 1.1.4 Money and Payments**

2.1.5.1 Delete Sub-Clauses 1.1.4.1, 1.1.4.2 and 1.1.4.4 through 1.1.4.10 and 1.1.4.12.

Delete Sub-Clause 1.1.4.11 **“Retention Money”** and replace with the following:

**“Retention Money”** shall mean the amount stated in 5.1 of the Agreement Data in Section 5 hereof, and which amount shall be paid to the Council by the Developer in full upon completion of the Works or a Section of the Works, but before the Taking Over Certificate is issued by the Council’s Representative. Such amount can be paid in cash in Namibian currency (Option 1), or in the form of a Performance Security (Demand Guarantee) in the form attached in Section 5 hereof (Option 2). The Developer must elect one of the two afore mentioned options in the space provided in 5.1 of the Agreement Data. Retention Money shall be used by the Council to remedy Defects during the Defects Notification Period, or as provided in this Agreement.

## **2.1.6. Clause 1.1.5 Works and Goods**

2.1.6.1. In line 4 of Sub-Clause 1.1.5.1, delete the words “Employer’s Equipment (if any),” from after the words “Temporary Works,”.

2.1.6.2. In line 2 of Sub-Clause 1.1.5.4, after the word “Contract”, insert the words “including all servitudes and public spaces specified in the Council’s Requirements.”

#### **2.1.7. Sub-Clause 1.1.6 Other Definitions**

2.1.7.1. In Sub-Clause 1.1.6.1 in line 2, after the word “drawings”, insert the words “plans, approved diagrams”.

2.1.7.2. Delete Sub-Clause 1.1.6.3 in its entirety.

2.1.7.3. Delete Sub-Clause 1.1.6.4 in its entirety.

2.1.7.4. Delete Sub-Clause 1.1.6.8 in its entirety.

2.1.7.5. Add a new Sub-Clause, Sub-Clause 1.1.6.10, as follows:

**“Contract”** means the agreement under which the Developer shall appoint its Contractor for the provision of all or Sections or Part of the Works.

2.1.7.6. Add a new Sub-Clause, Sub-Clause 1.1.6.11, as follows:

**“Good Industry Practice”** means the exercise of that degree of skill, diligence, prudence and foresight as would reasonably and ordinarily be expected from a skilled and experienced civil engineering contractor (internationally engaged in the same type of undertaking and under the same or similar circumstances and conditions as that in which the relevant matter arises) seeking in good faith to comply with its contractual obligations and to discharge any liability arising under any duty of care that might be owed by that contractor.

2.1.7.7. Add a new Sub-Clause, Sub-Clause 1.1.6.12, as follows:

**“Large Subdivisions”** means the division of private land which is situated in an approved township, into a maximum number of ten (10) portions; each with its own title and infrastructure, prior to taking over by Council. The land is divided by means of a survey for registration of title on each smaller portion or of a survey for



registration of a lease and to be promulgated as an approved subdivision under the Townships and Division of Land Ordinance, 1963 (Ordinance 11 of 1963).

**“Township Extension”** means the execution of Works in an existing town, as established and developed, as reflected on an approved General Plan for which a township register is to be opened under section 46 of the Deeds registry Act, 1937(Act 47 of 1937) and to be promulgated as an approved town under the Townships and Division of Land Ordinance, 1963 (Ordinance 11 of 1963); and adjacent land and the availability of services to the extension.

**“Road Reserve”** means an area set apart for the use and benefit of residents in a local authority area which is managed by the local authority, in the interest of the general public (residents) and includes streets, roads, thoroughfare, pavements, sidewalks or lanes (excluding right of way).

#### **2.1.8. Sub-Clause 1.3 Communications**

Amend this Sub-Clause as follows:

In line 2, insert the word “instructions,” before the word “notices”.

In sub-paragraph (a) delete the words “using any of the agreed systems of electronic transmission as stated in the Appendix” after the word “transmitted” and replace them with the words:

- (i) by telefacsimile, in which case the date of receipt is defined as the date and time on which such telefacsimile was transmitted;
- (ii) by electronic (“e”) mail in which case the date and time of receipt is defined as the date and time which the email was received by the recipient as proved by a read confirmation. However, no notices shall be sent by e-mail.”

All instructions and/or notices shall additionally for (i) and (ii) above be delivered in paper original within 3 days of prior mode of transmission.

In paragraph (b) delete the words “as stated in the Appendix to Tender” and replace them with the words “as stated in the Memorandum of Agreement”.

The following is added at the end of Sub-Clause 1.3:

“The Developer recognises that a Project Management Office shall be established for all communications from the Developer as set out hereunder:

- (i) The Assistant to the Council's Representative will be referred to as the Project Manager and appointed once the Memorandum of Agreement has been signed as set out in this Agreement.
- (ii) All communication related to the private development shall be addressed to the Project Management Office which shall coordinate and disseminate same to all relevant officials of the Council and/or Sections and Divisions within the various Departments of the City of Windhoek.
- (iii) Any communication from the Developer channelled directly to other Divisions and/or Sections of the City of Windhoek, other than through the Project Management Section, will not be of any force and effect or considered at all.”

#### **2.1.9. Sub-Clause 1.4 Law and Language**

Delete this Sub-Clause and replace it with the following:

“The Contract shall be governed by the laws of Namibia and the language for communication shall be English. Accordingly all communications, documentation and manuals (if any) will be in the English language”.

#### **2.1.10. Sub-Clause 1.5 Priority of Documents**

Delete the second sentence of the first paragraph and replace it with the following:

“The Contract consists of the following documents which shall be interpreted in the following order of precedence:

- (a) Section 1 - Memorandum of Agreement;
- (b) Section 2 - Conditions of Agreement, Particular Conditions;
- (c) Section 2 - Conditions of Agreement, General Conditions;
- (d) Section 3 - Project Specific Particular Conditions
- (e) Section 4 - Part A: Council's Standard Technical Requirements

- (f) Part B: Project Specific Technical Requirements
- (g) Section 5 - Agreement Data, List of Erven, Pro-Forma Documents, Schedules and Appendixes

#### **2.1.11. Sub-Clause 1.6 Contract Agreement**

Delete this Sub-Clause in its entirety.

#### **2.1.12. Sub-Clause 1.8 Care and Supply of Documents**

Delete the last two paragraphs of this Sub-Clause in their entirety.

#### **2.1.13. Sub-Clause 1.9 Errors in the Council's Requirements**

In lines 1 and 2 of the first paragraph, delete the words "in the Employer's Requirements" and replace them with the words "in those portions of the Council's Requirements which are the responsibility of the Council pursuant to Sub-Clause 5.1."

Add the following wording at the end of Sub-Clause 1.9:

In the event of the Developer discovering within the Council's Requirements an error of the type envisaged by this sub-clause, he shall promptly give notice to the Council's Representative advising him of the nature and details of the error and requesting instruction regarding its rectification.

Upon receipt of this notice, the Council's Representative shall, without prejudice to any other rights and obligations of the Parties under the Agreement, promptly communicate to the Developer (a) whether or not there is an error in the Council's Requirements and (b) if there is such an error, how the error is to be rectified.

#### **2.1.14. Sub-Clause 1.13 Compliance with Laws**

In lines 1 and 4 of paragraph (a), replace the word "Employer" with the word "Developer".

The following is added at the end of Sub-Clause 1.13:

“The Developer shall at all times conform in all respects with the provisions of all Laws which may be applicable to the performance of its obligations under the Agreement and shall indemnify, and keep indemnified the Council, against damages that it may suffer as a result of any breach by the Developer, its contractors, agents or employees, including any hired labour, of any such Laws, including all legal costs on the attorney and client scale which may be payable as a result of any claims or proceedings in respect of the Agreement.”

**2.1.15. Sub-Clause 1.14 Joint Several Liability**

At the end of paragraph (b) insert:

The leader and its representative shall be formally notified and authorised by means of a Special Power of Attorney.

**2.2. THE COUNCIL**

**2.2.1. Sub-Clause 2.1 Right of Access to the Site**

Delete this Sub-Clause in its entirety and replace it with the following:

“The Council’s Personnel shall have full access to the Site for purposes of quality monitoring.”

**2.2.2. Sub-Clause 2.2 Permits, Licences or Approvals**

Delete this Sub-Clause in its entirety.

**2.2.3. Sub-Clause 2.3 Council’s Personnel**

Delete this Sub-Clause in its entirety and replace it with the following:

“The Council shall be responsible for ensuring that the Council’s Personnel take actions similar to those which the Developer is required to take under sub-paragraphs (a), (b) and (c) of Sub-Clause 4.8 [*Safety Procedures*].”

#### **2.2.4. Sub-Clause 2.4 The Council's Financial Arrangements**

Delete this Sub-Clause in its entirety.

#### **2.2.5. Sub-Clause 2.5 Council's Claims**

Delete the last sentence of the first paragraph of the Sub-Clause: "However, notice is not required for payments due.....other services requested by the Contractor."

Delete the last paragraph of the Sub-Clause.

#### **2.2.6. Add the following Sub-Clause 2.6**

##### **"Council's Approval of Registration of Erven**

In the event that erven are created under this project, the following shall apply:

"Subject to the remainder of this Clause the Council shall take all necessary steps within the ambit of the powers conferred upon it by the applicable Laws, and shall act in accordance with such Laws, to permit or facilitate (1) the approval of relevant building plans; (2) the opening of township registers and the proclamation of the Township Extensions thereto under this Agreement; and (3) the transfer to the relevant Third Party Transferee, and registration in the name thereof, of each erf within the Township Development to the extent that the Developer and/or relevant Third Party Transferee has made proper application for such transfer and registration pursuant to the said Laws.

Notwithstanding any other statement to the contrary contained in this Clause or elsewhere in this Agreement, the Council shall be entitled to reject any application by the Developer and/or any Third Party Transferee for the transfer and/or registration of any given erf or erven contained within any given Township Extension of the Township Development unless and until the Developer complies with all his obligations under this Agreement (including, but not limited to, full compliance with any warranties or the provision of Performance Security set out elsewhere in this Clause or this Agreement) and a Take-Over Certificate for the Section or Sections of the Works relevant to the aforesaid Township Extension is

issued or deemed to have been issued in accordance with Clause 2.10 of Section 2 of the Agreement [*Council's Taking-Over*].”

## **2.3. COUNCIL’S REPRESENTATIVE**

### **2.3.1. Sub-Clause 3.1 Council’s Representative’s Duties and Authority**

Delete the last sentence of the first paragraph of this Sub-Clause: “The Engineer’s staff.....competent to carry out these duties.”

Delete the last two sentences of the third paragraph of the Sub-Clause: “If the Engineer is required.....except as agreed with the Contractor.”

### **2.3.2. Sub-Clause 3.2 Delegation by the Council’s Representative**

Delete the first 2 sentences in the first paragraph and replace with the following:

“The Council’s Representative may from time to time assign assistants and may also revoke such assignment or delegation. These assistants include the Section Engineer: Project Management, through which office to the Council’s internal coordination and administration of its obligations shall be executed, and the Section Engineer: Contract Management, through which office the compliance of the Developer with the Council’s Technical Requirements shall be monitored.

In line five of the first paragraph, delete the words “until copies have been received by both Parties”, and replace them with the words “until a copy of such assignment, delegation or revocation has been received by the Developer”

### **2.3.3. Sub-Clause 3.4 Replacement of the Council’s Representative**

In line 1 of the Sub-Clause, replace “42” with “28”.

## **2.4. THE DEVELOPER**

### **2.4.1. Sub-Clause 4.1 The Developer's General Obligations**

In line 1 of the first paragraph, after the word "shall", insert the words "at his sole cost and risk except as otherwise stated in the Agreement"

### **2.4.2. Sub-Clause 4.2 Performance Security**

In the first sentence of the second paragraph delete the words "... deliver the Performance Security to the Employer" and replace with the words "before any construction activity relating to the Works commences".

### **2.4.3. Sub-Clause 4.3 The Developer's Representative**

Delete the words "Unless the Contractor's Representative is named in the Contract," in the first line of paragraph 2.

At the end of paragraph 2, add the following:

"The Developer shall submit to the Council's Representative a formal resolution or Special Power of Attorney indicating the appointment of its Representative in accordance with this clause."

The following is added at the end of this Sub-Clause:

"Without derogating from the generality of the foregoing, the Developer's Representative shall implement forthwith and at the sole cost of the Developer any additional safety precautions which the Council may consider necessary for the proper protection of the Developer's Personnel engaged in the Works. Work to which such additional precautions will apply shall be suspended pending the implementation of such precautions."

The Developer's Representative shall be assisted by the Developer's Engineer, which shall be appointed in accordance with clause 2 of Section 4.

#### **2.4.4. Sub-Clause 4.4 Contractors**

Delete the first line of the Sub-Clause in its entirety.

Add to the end of paragraph (b) the following: “such consent shall not be withheld if the Contractor meets the criteria listed in sub-clause 4.3.1 of Section4 (Council’s Standard Technical Requirements)”.

#### **2.4.5. Sub-Clause 4.5 Nominated Contractors**

Delete this Sub-Clause in its entirety.

#### **2.4.6. Sub-Clause 4.6 Co-operation**

Delete this Sub-Clause in its entirety and replace it with the following:

“The Parties agree that they shall at all times co-operate fully with each other’s Personnel in the performance of their duties relevant to the Agreement.

#### **2.4.7. Sub-Clause 4.7 Setting Out**

Delete this Sub-Clause in its entirety and replace it with the following:

“The Developer shall appoint a registered land surveyor to select the location, in consultation with the Council’s Representative, of all reference marks relevant to the Works. The aforesaid reference marks shall then be placed and surveyed to the satisfaction of the Council after the Works have been executed. The Developer shall notify the Council of the name and address of the appointed land surveyor immediately upon his appointment and ensure that the said land surveyor consults with the Council’s Representative prior to the commencement of the survey.

The Developer shall set out the Works in accordance with the aforesaid selected reference marks and any other original points, lines and levels of reference specified in this Agreement. The Developer shall be responsible for the correct positioning of all parts of the Works, and shall rectify any error in the positions, levels, dimensions or alignment of the Works.”



#### **2.4.8. Sub-Clause 4.8 Safety Procedures**

Add the following to the beginning of this Sub-Clause:

“The Developer acknowledges that it is aware that safety is of the utmost importance to the Council and undertakes to comply strictly with all safety procedures both as contained in the Agreement and as specified by the Council, as well as with Good Industry Practice.”

#### **2.4.9. Sub-Clause 4.10 Site Data**

Delete this Sub-Clause in its entirety and replace it with the following:

“The Developer shall bear sole responsibility for all relevant physical conditions at the Site including, but not limited to, climatic, hydrological, hydro-geological, ecological, environmental, seismic, geotechnical, geological, paleontological and archaeological conditions and sub-surface, ground water, load-bearing and other properties (the Site Conditions’). The Developer shall also bear full responsibility for the adaptation of the design and construction of Works to the Site Conditions, and shall be deemed to have carried out all investigations necessary to enable the Works to be carried out with due regard to the Site Conditions.”

#### **2.4.10. Sub-Clause 4.11 Sufficiency of the Accepted Contract Amount**

Delete this Sub-Clause in its entirety.

#### **2.4.11. Sub-Clause 4.12 Unforeseeable Physical Conditions**

Delete this Sub-Clause in its entirety.

#### **2.4.12. Sub-Clause 4.13 Rights of Way and Facilities**

Delete this Sub-Clause in its entirety.

#### **2.4.13. Sub-Clause 4.14 Avoidance of Interference**

Delete this Sub-Clause in its entirety.

#### **2.4.14. Sub-Clause 4.15 Access Route**

Delete this Sub-Clause in its entirety.

#### **2.4.15. Sub-Clause 4.18 Protection of the Environment**

The following is added at the end of Sub-Clause 4.18:

“Without derogating from the generality of the foregoing the Developer shall at all times and at its cost comply with the Project’s approved Environmental Management Plan (a copy of which is attached herewith as Schedule D) and with all Laws applicable to environmental management. In addition, the Developer shall at all times comply and require its Contractors to comply with any reasonable instructions given by an environmental officer having jurisdiction in or around the Site.”

#### **2.4.16. Sub-Clause 4.19 Electricity, Water and Gas**

Delete this Sub-Clause in its entirety and replace it with the following:

“The Developer shall be entirely responsible for the provision of all power, water and other services he may require and the Council shall take no responsibility whatsoever for the provision of such services.”

#### **2.4.17. Sub-Clause 4.20 Council’s Equipment and Free Issue Material**

Delete this Sub-Clause in its entirety.

#### **2.4.18. Sub-Clause 4.21 Progress Reports**

In sub-paragraph (f) of this Sub-Clause, delete the words “, notices given under Sub-Clause 2.5 [*Employer’s Claims*]”

#### **2.4.19. Sub-Clause 4.22 Security of the Site**

In paragraph (b) of the Sub-Clause, delete the words “; and to any other personnel notified to the Contractor, by the Employer or the Engineer, as authorised personnel of the Employer’s other contractors on the Site”

#### **2.4.20. Sub-Clause 4.23 Developer’s Operations on Site**

Delete this Sub-Clause in its entirety.

#### **2.4.21. Sub-Clause 4.24 Fossils**

Delete this Sub-Clause in its entirety.

### **2.5. DESIGN**

#### **2.5.1. Sub-Clause 5.1 General Design Obligations**

In the first line of the first paragraph, after the words “The Contractor”, insert the words “at his sole cost and risk except as otherwise stated in the Agreement”.

Delete the last two paragraphs of this Sub-Clause, and replace them with the following:

“The Developer shall be deemed to have scrutinised, prior to the Commencement Date, the Council’s Requirements (including design criteria and calculations, if any). The Developer shall be responsible for the accuracy of the Council’s Requirements (including design criteria and calculations except as stated below).

The Council shall not be responsible for any error, inaccuracy or omission of any kind in the Council’s Requirements as originally included in the Agreement and shall not be deemed to have given any representation of accuracy or completeness of any data or information, except as stated below. Any data or information received by the Developer, from the Council or otherwise, shall not relieve the Developer from his responsibility for the design and execution of the Works.

The Developer shall, through its Engineer, submit for approval all construction drawings for the Works to the Council's relevant technical department and obtain consent to release such drawings for purposes of construction of the Works under the Construction Contract. Similarly, the Specifications component of the documents to be used by the Developer's Contractor shall be submitted for consent by the Council's Representative or its assistants prior to releasing such document for purposes of construction.

However, the Council shall be responsible for the following portions of the Council's Requirements and of the following data and information provided by (or on behalf of) the Council:

- (a) portions, data and information which are stated in the Agreement as being the responsibility of the Council,
- (b) criteria for the testing and performance of the completed Works,
- (c) Portions, data and information which cannot be verified by the Developer, except as otherwise stated in this Agreement.

Save as aforesaid, the Developer shall be deemed to have obtained all necessary information as to all risks, contingencies and other circumstances which may influence all or any of its obligations under the Agreement. Further, by signing the Agreement, the Developer accepts total responsibility for having seen all difficulties and costs associated with the performance of the Works.

#### **2.5.2 Sub-Clause 5.4 Technical Standards and Regulations**

Delete each occurrence of the term "Base Date" and replace it with "Commencement Date".

### **2.6. STAFF AND LABOUR**

#### **2.6.1. Sub-Clause 6.1 Engagement of Staff and Labour**

Add the following additional paragraph to this Sub-Clause:

“The Developer declares itself to be fully conversant with any project labour agreement in place covering the Works and shall comply therewith as well as to all amendments thereto and the site industrial relations policy, all at its own cost”

#### **2.6.2. Sub-Clause 6.2 Rates of Wages and Conditions of Labour**

Delete this Sub-Clause in its entirety and replace it with the following:

“The Developer shall ensure that the rates of wages paid and conditions of labour observed with regard to the Developer’s Personnel are not lower than those established for the trade or industry where the work is carried out. If no established rates or conditions are applicable, the Developer shall ensure that the rates of wages paid and the conditions observed are not lower than the general level of wages and conditions observed locally by employers whose trade or industry is similar to that of the Developer and/or the relevant Contractor.”

#### **2.6.3. Sub-Clause 6.4 Labour Laws**

In the first line of the second paragraph, insert the words “and Contractors” after the word “employees”.

#### **2.6.4. Sub-Clause 6.7 Health and Safety**

Delete the last paragraph of this Sub-Clause.

#### **2.6.5. Sub-Clause 6.9 Contractor’s Personnel**

Delete the entire Sub-Clause from the words “The Employer may require” onwards.

### **2.7. PLANT, MATERIALS AND WORKMANSHIP (CLAUSE 7)**

#### **2.7.1. Sub-Clause 7.1 Manner of Execution**

After paragraph (c) add the following:

“(d) under the supervision and control of the Developer’s Engineer.

(e) Quality Assurance Records shall be kept up to date by the Developer's Engineer and submitted to the Council's Quality Monitoring Official."

**2.7.2. Sub-Clause 7.3 Inspection**

At the beginning of this Sub-Clause, add the following:

"The Developer's Engineer shall carry out all inspections and testing as provided herein and in sub-clause 7.4 [Testing] and as further described in Sections 4 and 5 hereof and submit its findings to the Council's Quality Monitoring Official. The Developer's Engineer shall further clearly show whether it has approved or rejected such Work under the Construction Contract between the Developer and its Contractor."

**2.7.3. Sub-Clause 7.4 Testing**

At the end of the first paragraph, insert the words "All such tests shall be carried out at the Developer's sole cost and risk".

Delete the last sentence of the third paragraph of the Sub-Clause: "If these varied or additional tests show.....notwithstanding other provisions of the Contract."

Delete the fifth and sixth paragraphs, including sub-paragraphs (a) and (b), in their entirety: "If the Contractor suffers delay.....agree to determine these matters."

**2.7.4. Sub-Clause 7.6 Remedial Work**

Delete this Sub-Clause in its entirety.

**2.7.5. Sub-Clause 7.7 Ownership of Plant and Materials**

Delete this Sub-Clause in its entirety.

## **2.8. COMMENCEMENT, DELAYS AND SUSPENSION (CLAUSE 8)**

### **2.8.1. Sub-Clause 8.1 Commencement of Work**

Delete this Sub-Clause in its entirety.

### **2.8.2. Sub-Clause 8.3 Programme**

Before the first paragraph insert the following:

“The ‘Programme’ shall also be referred to as ‘Development Programme’ and shall include all Development Stages i.e. planning stage, design stage, execution stage and the sale of developed erven and the commencement of building works on such erven.

The execution stage shall be aligned with the Construction Programme as provided for in the Construction Contract between the Developer and its Contractor.”

In line 1 of the first paragraph, after the words “submit” insert the words “for each Section of the Works, to be approved from time to time”

In line 2 of the first paragraph, delete the words “receiving the notice under Sub-Clause 8.1 [*Commencement of Works*]” and replace them with the words “the Commencement Date”

In line 4 of the first paragraph, after the word “obligations”, insert the words “, or whenever the Council’s Representative instructs him to do so”

In sub-paragraph (a), after the words “Contractors Documents”, insert the words “terminal float completion dates and any free float in relation to all activities including but not limited to,”

Delete the penultimate paragraph and replace it with the following:

“The Developer shall notify the Council in writing of any event, circumstance or factor which may adversely affect the Works or the progress thereof, delay the execution of the Works, constitute an environmental or safety risk or impair the performance or use of the Works or any Section or part thereof (“notified event”) .

Such notice shall be given as soon as possible, but in any event within not more than 7 days after the event, circumstance or factor in question was known or should reasonably have been known to the Developer. In such notice the Developer shall provide:

- (a) detailed particulars of the notified event and the potential adverse effects; and
- (b) proposals for the steps to be taken by the Developer to mitigate the potential adverse effects and meet the Time for Completion.

**2.8.3. Sub-clause 8.4 is deleted in its entirety.**

**2.8.4. Sub-Clause 8.5 Delays Caused by Authorities**

In the last line, delete the words “paragraph (b)” and replace them with the words “paragraph (e)”

**2.8.5. Sub-Clause 8.7 Delay Damages**

Before the first paragraph insert the following:

“This Sub-Clause shall only apply to the execution stage of the Programme, which contains the construction of the Works.”

**2.8.6. Sub-Clause 8.8 Suspension of Work**

Delete this Sub-Clause in its entirety.

**2.8.7. Sub-Clause 8.9 Consequences of Suspension**

Delete this Sub-Clause in its entirety.

**2.8.8. Sub-Clause 8.10 Payment for Plant and Materials**

Delete this Sub-Clause in its entirety.



#### **2.8.9. Sub-Clause 8.11 Prolonged Suspension**

Delete this Sub-Clause in its entirety.

#### **2.8.10 Sub-Clause 8.12 Resumption of Work**

Delete this Sub-Clause in its entirety.

### **2.9 TESTS ON COMPLETION**

#### **2.9.1 Sub-Clause 9.1 Developer's Obligations**

At the end of the fourth paragraph, delete the words "and with the Schedule of Guarantees".

At the end of the fifth paragraph, delete the words "Unless otherwise stated in the Particular Conditions, any product produced by the Works during the trial operation shall be the property of the Employer."

At the beginning of the final paragraph, delete the words "In considering the results of the Tests on Completion, the Engineer shall make allowances for the effect of any use of the Works by the Employer on the performance or other characteristics of the Works."

#### **2.9.2 Sub-Clause 9.4 Failure to Pass Tests on Completion**

Delete sub-paragraph (c) of the second paragraph.

Delete the final paragraph of the Sub-Clause.

### **2.10 COUNCIL'S TAKE OVER**

#### **2.10.1 Sub-Clause 10.1 Taking Over of the Works and Sections**

Delete this Sub-Clause in its entirety and replace it with the following:

“The Council will only issue a Taking-Over Certificate in respect of the Works when all of the following requirements have been satisfied:

- (a) The relevant Works have been completed and have been connected to the relevant and necessary bulk services and is fully functional and within the tolerances specified in Sections 4 and 5 hereof and in accordance with the Agreement; and
- (b) the relevant Works have passed the relevant Tests on Completion in accordance with the Agreement; and
- (c) all relevant Compliance Certificates have been completed and signed in relation to the relevant Works by the relevant Departmental Heads; and
- (d) all Quality Assurance Records as required in Sub-Clause 7.1 (e) hereof and further described in Sections 4 and 5 have been submitted and found by the Council’s Representatives to be complete and in order; and
- (e) in the event that the Parties have elected to proceed in accordance with the terms of Sub-Clause 4.2, a Performance Security has been issued in respect of the agreed Outstanding Works in accordance therewith and submitted to the Council; and
- (f) Retention monies have been paid in accordance with Sub-Clause 2.1.5.1 “Retention Money”.

The Developer shall make application to the Council’s Representative for a Taking-Over Certificate (i) when the Developer’s Engineer has confirmed that the relevant Works to be complete and ready for taking over; and (ii) when the respective taking-over certificates provided for in the respective Construction Contract(s) have been duly issued by or on behalf of the Developer to the respective Contractor(s) in respect of the Works and in accordance with the terms of the said Contract(s); and (iii) when copies of all such taking-over certificates have been given by the Developer to the Council’s Representative.

Within 28 days after receiving the aforesaid application, the Council’s Representative shall:

- (i) issue a Taking-Over Certificate to the Developer, stating the date on which the Works were completed in accordance with the Agreement, except for any minor Outstanding Work or defects. Such minor outstanding work or defect shall in sum be of such a nature that they can be completed and/or remedied by the Contractor within a period of less than 14 days.
- (ii) reject the application, giving reasons and specifying the work required to be done by the Developer to enable the Taking-Over Certificate to be issued. The Developer shall then ensure that this work is complete before issuing a further notification under this Sub-Clause.

If the Council's Representative fails either to issue the Taking-Over Certificate or to reject the Developer's application within the period of 28 days, and if the Works are substantially in accordance with the Agreement and the requirements set out in sub-paragraphs (a) through (e) above have been satisfied, the Taking-Over Certificate shall be deemed to have been issued on the last day of that period.

The mere fact that a Taking-Over Certificate has been issued by or on behalf of the Developer to any or all of the Contractors in respect of the Works shall not in any way be taken to mean that the Works are complete and ready for taking over in accordance with the criteria set down in this Sub-Clause; neither shall such fact deprive the Council's Representative of his right to reject an application by the Developer for a Taking-Over Certificate as described in this Sub-Clause.

#### **2.10.2 Sub-Clause 10.2 Taking Over of Parts of the Works**

Delete the Sub-Clause in its entirety.

#### **2.10.3 Sub-Clause 10.3 Interference with Tests on Completion**

In the first paragraph, second line, after the word "responsible", substitute the remainder of the sentence with the words "the Works shall be regarded as suspended."

Delete the first sentence of the second paragraph.

Delete the third and fourth paragraphs including sub-paragraphs (a) and (b).

## **2.11 DEFECTS LIABILITY (CLAUSE 11)**

### **2.11.1 Sub-Clause 11.2 Cost of Remedying Defects**

After the last paragraph, add the words:

The 'costs' and 'reduction' referred to in paragraph a) and b) above shall be recovered by the Council from the Retention Money which is in the possession of Council either in cash or in the form of a Demand Guarantee. Should the Retention Money prove to be inadequate to cover the 'cost' or 'reduction', the Council shall be entitled to call up the Performance Security as defined in clause 4.2 (Performance Security).

### **2.11.2 Sub-Clause 11.3 Extension of Defects Notification Period**

Delete the second paragraph of the Sub-Clause in its entirety.

### **2.11.3 Sub-Clause 11.4 Failure to Remedy Defects**

Delete sub-paragraphs (b) and (c) of the Sub-Clause in their entirety.

### **2.11.4 Sub-Clause 11.8 Contractor to Search**

Delete the last sentence of this Sub-Clause, beginning "Unless the defect is to be remedied..."

### **2.11.5 Add the following Clause 11.12:**

#### **"Latent Defects**

Nothing contained in this Contract shall in any manner be construed as limiting the Council's rights in the event of a latent defect manifesting itself in the Works."

## **2.12 TEST AFTER COMPLETION (CLAUSE 12)**

Apply general amendments as per Sub-Clause 2.1.1.

## **2.13 VARIATIONS AND ADJUSTMENTS (CLAUSE 13)**

Delete this Clause in its entirety.

## **2.14 CONTRACT PRICE AND PAYMENT (CLAUSE 14)**

Delete this Clause except Sub-Clause 14.9.

### **Sub-Clause 14.9 Repayment of Retention Money**

Replace Sub-Clause 14.9 with the following:

The Retention Money shall be repaid or returned to the Developer upon the issuing of the Performance Certificate by the Council's Representative, as stated in the Agreement Data in Section 5 hereof.

## **2.15 TERMINATION BY EMPLOYER (CLAUSE 15)**

This Clause remains unchanged.

## **2.16 SUSPENSION AND TERMINATION BY CONTRACTOR (CLAUSE 16)**

Delete this Clause in its entirety.

## **2.17 RISK AND RESPONSIBILITIES (CLAUSE 17)**

### **2.17.1 Sub-Clause 17.1 Indemnities**

At the end of the last paragraph, delete the following:

“, and (2) the matters for which liability may be excluded from insurance cover, as described in sub-paragraphs (d)(i), (ii) and (iii) of Sub-Clause 18.3 [*Insurance Against Injury to Persons and Damage to Property*]”.

#### **2.17.2 Clause 17.2 Contractor's Care of the Works**

In the second and third lines of the third paragraph, delete the words “, from any cause not listed in Sub-Clause 17.3 [*Employer's Risks*],”.

#### **2.17.3 Clause 17.3 Employer's Risks**

Delete this Sub-Clause in its entirety.

#### **2.17.4 Clause 17.4 Consequences of Employer's Risks**

Delete this Sub-Clause in its entirety.

#### **2.17.5 Clause 17.6 Limitation of Liability**

In the last line of the first paragraph, delete the words “Sub-Clause 16.4 [*Payment on Termination*] and”.

Delete the last two paragraphs of the Sub-Clause in their entirety.

### **2.18 INSURANCE (CLAUSE 18) of the General Conditions**

#### **2.18.1 Sub-clause 18.1 General Requirements for Insurance is adapted to read:**

Add the following:

In this Clause, "Insuring Party" means, for each type of insurance, the Party responsible for effecting and maintaining the insurance specified in the relevant Sub-Clause.

Wherever the Developer is the insuring Party, each insurance shall be effected with insurers and in terms approved by the Council. These terms shall be consistent with any terms agreed by both Parties before the date of the Letter of Approval for the Project by Council. This agreement of terms shall take precedence over the provisions of this Clause.

Wherever the Council is the insuring Party, each insurance shall be effected with insurers and in terms consistent with the details annexed to the Particular Conditions.

If a policy is required to indemnify joint insured, the cover shall apply separately to each insured as though a separate policy had been issued for each of the joint insured. If a policy indemnifies additional joint insured, namely in addition to the insured specified in this Clause (i) the Developer shall act under the policy on behalf of these additional insured except that the Council shall act for the council's personnel (ii) additional joint insured shall not be entitled to receive payments directly from the insurer or to have any other direct dealings with the insurer, and (iii) the insuring Party shall require all additional joint insured to comply with the conditions stipulated in the policy.

Each policy insuring against loss or damage shall provide for payments to be made in the currencies required to rectify the loss or damage. Payments received from insurers shall be used for the rectification of the loss or damage.

The relevant insuring Party shall, within the respective periods stated in the Agreement Data (calculated from the Commencement Date), submit to the other Party:

- (a) evidence that the insurances described in this Clause have been effected, and
- (b) copies of the policies for the insurances described in Sub-Clause 18.2 (*Insurance for Works and Contractor's Equipment*) and Sub-Clause 18.3 [*Insurance against Injury to Persons and Damage to Property*].

When each premium is paid, the insuring Party shall submit evidence of payment to the other Party. Whenever evidence or policies are submitted, the insuring Party shall also give notice to the Council's representative.

Each Party shall comply with the conditions stipulated in each of the insurance policies. The insuring Party shall keep the insurer's informed of any relevant changes to the execution of the Works and ensure that insurance is maintained in accordance with this Clause.

Neither Party shall make any material alteration to the terms of any insurance without the prior approval of the other Party. If an insurer makes or attempts to make any alteration, the Party first notified by the insurer shall promptly give notice to the other Party.

If the insuring Party fails to effect and keep in force any of the insurances it is required to effect and maintain under the Contract, or fails to provide satisfactory evidence and copies of policies in accordance with this Sub-Clause, the other Party may (at its option and without prejudice to any other right or remedy) effect insurance for the relevant coverage and pay the premiums due. The insuring Party shall pay the amount of these premiums to the other Party, and the Contract Price shall be adjusted accordingly.

Nothing in this Clause limits the obligations, liabilities or responsibilities of the Developer or the Council, under the other terms of the Agreement or otherwise. Any amounts not insured or not recovered from the insurers shall be borne by the Developer and/or the Council in accordance with these obligations, liabilities or responsibilities. However, if the insuring Party fails to effect and keep in force an insurance which is available and which it is required to effect and maintain under the Agreement, and the other Party neither approves the omission nor effects insurance for the coverage relevant to this default, any moneys which should have been recoverable under this insurance shall be paid by the insuring Party. Payments by one Party to the other Party shall be subject to Sub-Clause 2.5 [*Council's Claims*] or Sub-Clause 20.1 [*Contractor's Claims*], as applicable

**2.18.2 Sub-Clause 18.3 Insurance against Injury to Persons and Damage to Property is amended to read:**

“The Developer shall arrange a Public Liability Insurance Policy in the joint names of the Council, the Developer and all contractors or subcontractors of the Developer involved in the construction of the Works as well as the operation of the Works.

The insuring Party shall insure against each Party's liability for any loss, damage, death or bodily injury which may occur to any physical property (except things insured under Sub-Clause 18.2 [*Insurance for Works and Developer's Equipment*]) or to any person (except persons insured under Sub-Clause 18.4



*[Insurance for Developer's Personnel]*, which may arise out of the Developer's performance of the Agreement and occurring before the issue of the Performance Certificate.

This insurance shall be for a limit per occurrence of not less than the amount stated in the Agreement Data, with no limit on the number of occurrences. If an amount is not stated in the Agreement Data, this Sub-Clause shall not apply

Unless otherwise stated in the Particular Conditions, the insurances specified in this Sub-Clause:

- (a) shall be effected and maintained by the Developer as insuring Party,
- (b) shall be in the joint names of the Parties,
- (c) shall be extended to cover liability for all loss and damage to the Council's property (except things insured under Sub-Clause 18.2) arising out of the Developer's performance of the Agreement, and
- (d) may however exclude liability to the extent that it arises from:
  - (i) the Council's right to have the Permanent Works executed on, over, under, in or through any land, and to occupy this land for the Permanent Works
  - (ii) damage which is an unavoidable result of the Developer's obligations to execute the Works and remedy any defects,

**2.18.3 Sub-Clause 18.4 Insurance Developer's Personnel is to be deleted in its entirety and be replaced with the following:**

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

"The Developer shall, on or before the first Take-Over certificate of a Section being issued, submit to the Council evidence that the insurances for the Developer's Personnel have been effected and submit copies of the policies for the insurances described in this Clause to the Council. When each premium is paid, the Developer shall submit evidence of such payment to the Council."

## **2.19 FORCE MAJEURE (CLAUSE 19)**

Delete in Clause 19.4 sub-paragraph (b) and the last sub-paragraph in its entirety.

Delete Sub-Clauses 19.6 and 19.7 in its entirety.

## **2.20 CLAIMS, DISPUTES AND ARBITRATION (CLAUSE 20)**

### **2.20.1 Sub-Clause 20.1 Developer's Claims is amended to read as follows:**

"If the Developer considers himself to be entitled to any claim under Clause 1.9 of the General Conditions or otherwise in connection with the Agreement, the Developer shall give notice to the Council's Representative, describing the event or circumstance giving rise to the claim.

The notice shall be given as soon as practicable, and not later than 28 days after the Developer became aware, or should have become aware, of the event or circumstance.

If the Developer fails to give notice of a claim within such period of 28 days, the Council shall be discharged from all liability in connection with the claim.

Otherwise, the following provisions of this Sub-Clause shall apply.

The Developer shall also submit any other notices which are required by the Agreement, and supporting particulars for the claim, all as relevant to such event or circumstance.

The Developer shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Council's Representative. Without admitting the Council's liability, the Council's Representative may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/or instruct the Developer to keep further contemporary records. The Developer shall permit the Council's Representative to keep further contemporary records. The Developer shall permit the Council's Representative to inspect all these records, and shall (if instructed) submit copies to the Council's Representative.

Within 28 days after the Developer became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Developer and approved by the Council's Representative, the Developer shall send to the Council's Representative a fully detailed claim which includes full supporting particulars of the basis of the claim. If the event or circumstance giving rise to the claim has a continuing effect:

- (a) This fully detailed claim shall be considered as interim;
- (b) The Developer shall send a final claim within 7 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Developer and approved by the Council's Representative.

Within 28 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Council's Representative and approved by the Developer, the Council's Representative shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within such time.

The Council's Representative shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine the value of the claim.

**2.20.2 Insert a new Clause 20.2 and renumber Clause 20.2 to 20.3 and the new Clause 20.2 to read as follows:**

**“20.2 AMICABLE SETTLEMENT OF DISPUTES**

20.2.1 The parties herewith record their intent to have any dispute or claim under Sub-Clause 20.1 that may arise in respect of any matter in terms of this agreement or the interpretation of this agreement resolved expediently. In particular, disputes pertaining to the parties' on-going relationship shall be dealt with by the parties constructively and with the aim of settling such disputes expeditiously, as provided below.

#### 20.2.2 **Settlement Procedure**

Any Dispute by any of the parties, shall be made in writing by the complaining party and be addressed to the representative of the other party (referred to herein as “the responding party”).

20.2.2.1 The party against whom the claim or dispute is made (“the responding party”) shall have the right and the duty to respond thereto within 7 (seven) business days of receipt of the claim or dispute. Such response may either be in person or in writing, at the discretion of the Representative.

20.2.2.2 The respective representatives shall deal with the claim or dispute and actively pursue the amicable settlement thereof between the complainant and the responding party and engage each other by correspondence, the exchange of relevant information, meetings and the like, as may be appropriate under the circumstances. The representatives shall not elevate the Dispute to the next level until the Dispute is declared in writing as unresolved by the representatives.

20.2.2.3 The Dispute shall be regarded as unresolved by the representatives where they have either: concluded that the resolution of the Dispute at their level is not likely to occur, until they have agreed in writing that the Dispute is unresolved or until one of the parties has failed to actively partake or give a response to the opposing party within 7 (seven) business days.

20.2.3 If the Dispute is unresolved by the representatives, they shall elevate the resolution of the Dispute to the member(s) of the parties’ respective executive or Chief Executive Officer who, from time to time, are tasked to deal with matters of that nature (referred to herein as “the top management”).

20.2.4 The top management shall actively engage each other by correspondence, the exchange of relevant information and data, meetings and the like, as may be appropriate under the circumstances, with the aim of resolving the Dispute within a further 7 (seven) business days. In circumstances where the top management either: fail to resolve the

Dispute within the set time or, jointly conclude that the Dispute is not likely to be resolved, agree in writing that the Dispute is unresolved or where any of the parties' top management fails to actively partake or give a response to the opposing party within set time days, the Dispute shall be regarded as unresolved by the top management and shall constitute a Dispute, which may be referred for adjudication in terms of the remainder of this Clause 20.3.

**20.2.5 Sub-Clause 20.2 Appointment of Dispute Adjudication Board” is renumbered to 20.3 and amended as follows:**

**20.3 Appointment of Dispute Adjudication Board (DAB)**

“Disputes not resolved by amicable settlement under Sub-Clause 20.2 shall be adjudicated by a DAB in accordance with sub-clause 20.5. The Parties shall jointly appoint a sole member DAB as stated in the Agreement Data and within the period stated in the Agreement Data.

The Parties shall make use of the nominating authority stated in the Agreement Data, which the Council shall accordingly request to nominate an adjudicator within 7 days of the Approval letter issued by the Council for the Development. Both Parties shall accept the nominated adjudicator, subject to such adjudicator being impartial. Such adjudicator shall have indicated, or shall indicate on request by either Party to do so, in writing that he is impartial, i.e. that he is at time of nomination not engaged in any activity as consultant or agent (e.g. as named personnel on a project) or otherwise on behalf of the Council or the Developer. Should the nominating authority require a nomination fee, each Party shall be responsible for paying one-half of such nomination fee. The procedural rules of the nominating authority shall apply during the nomination process, which shall lead to the joint appointment of the single DAB, upon which such procedural rules shall become void.”

**20.2.6 Sub-Clause 20.3 “Failure to Agree Dispute Adjudication Board” is renumbered to 20.4 and amended to read as follows:.**

**“20.4 “Failure to Agree Dispute Adjudication Board”**

If the Parties fail to accept the nominated DAB or on the replacement within seven business days or if the DAB becomes unable to act as a result of death,

disability, resignation or termination of an appointment, the appointing authority may appoint an alternative DAB, which appointment shall be final and conclusive.

**20.2.7 Sub-Clause 20.4 “Obtaining Dispute Adjudication Board’s Decision is renumbered to Sub-Clause 20.5 and amended to read as follows:**

If a dispute (of any kind whatsoever) arises between the Parties in connection with, or arising out of, the Agreement or the execution of the Works, including any dispute as to any certificate, determination, instruction, opinion or valuation of the Council’s Representative, then after a DAB has been appointed pursuant to Sub-Clause 20.3 [*Appointment of the DAB*] and 20.4 [*Failure to Agree to a DAB*] either Party may refer the dispute in writing to the DAB for its decision, with copies to the other Party and the Council’s Representative. Such reference shall state that it is given under this Sub-Clause.

Both Parties shall promptly make available to the DAB all information, access to the Site, and appropriate facilities; as the DAB may require for the purposes of making a decision on such dispute. The DAB shall be deemed to be not acting as arbitrator(s).

Within 30 days after receiving such reference, or the advanced payment referred to in Clause 6 of the Agreement - General Conditions of the Dispute Adjudication Agreement, whichever date is later, or within such other period as may be proposed by the DAB and approved by both Parties, the DAB shall give its decision, which shall be reasoned and shall state that it is given under this Sub-Clause, However, if neither of the Parties has paid in full the invoices submitted by each member pursuant to Clause 6 of the Appendix, the DAB shall not be obliged to give its decision until such invoices have been paid in full, The decision shall be binding on both Parties, who shall promptly give effect to it unless and until it shall be revised in an arbitral award as described below. Unless the Agreement has already been abandoned, repudiated or terminated, the Developer shall continue to proceed with the Works in accordance with the Agreement.

If either Party is dissatisfied with the DAB's decision, then either Party may, within 7 days after receiving the decision, give notice to the other Party of its dissatisfaction. If the DAB fails to give its decision within the period of 30 days (or

as otherwise approved) after receiving such reference with the accompanying documentation and information or such payment, then either Party may, within 7 days after this period has expired, give notice to the other Party of its dissatisfaction.

In either event, this notice of dissatisfaction shall state that it is given under this Sub-Clause, and shall set out the matter in dispute and the reason(s) for dissatisfaction, Except as stated in Sub-Clause 20.7 [*Failure to Comply with Dispute Adjudication Board's Decision*] and Sub-Clause 20.8 [*Expiry of Dispute Adjudication Board's Appointment*], neither Party shall be entitled to commence arbitration of a dispute unless a notice of dissatisfaction has been given in accordance with this Sub-Clause.

**20.2.8 Sub-Clause 20.5 Amicable Settlement is deleted in its entirety.**

**20.2.9 Sub-Clause 20.6 Arbitration is deleted in its entirety and replaced with the following:**

20.6.1 Unless settled amicably, any dispute which arises between the Parties out of or in connection with the Agreement shall be settled by a single arbitrator under the Rules for the Professional Arbitration and Mediation Association of Namibia (PAMAN) on the following basis:

20.6.1.1 The parties shall use their best endeavours to ensure that the arbitration is held and concluded and a decision handed down within 30 (thirty) days after the arbitration has been demanded.

20.6.1.2 The arbitrator shall be a person nominated by the parties or, failing agreement between them within 7 (seven) days after the arbitration has been demanded, shall be a legal practitioner of at least 10 (ten) year's experience appointed by the Law Society of Namibia in respect of any interpretation or legal aspect or be a professional engineer of at least ten year's experience appointed by EPA in respect of any dispute relating to engineering works under this Agreement.

20.6.2 The arbitrator shall have full and free discretion with regard to the proceedings.

20.6.3 The arbitrator's decision shall be final and binding on the parties unless it is patently wrong in law or fact. The arbitrator may make an award as to his costs.

20.6.4 The provisions of this Clause 20.6 shall not debar any party from applying for or obtaining urgent interim relief from any competent court.

20.6.5 Any hearing shall be conducted in Windhoek in the English Language.

20.2.10 **Sub-Clause 20.7 Failure to Comply with Dispute Adjudication is deleted in its entirety.**

20.2.11 **Sub-Clause 20.8 Expiry of Dispute Adjudication Board's Appointment is deleted in its entirety.**

**2.21 ADD THE FOLLOWING ADDITIONS TO THE GENERAL CONDITIONS:**

**Clause 21 NON-WAIVER**

Failure by either Party to enforce any provision of the Agreement shall not constitute a waiver of such provision or affect in any way that Party's right to require performance of any such provision at any time in the future, and the waiver of any subsequent breach shall not nullify the effectiveness of the provision itself."



## **SECTION 3**

### **SPECIFIC PARTICULAR CONDITIONS**

COPY

**SECTION 3**

**SPECIFIC PARTICULAR CONDITIONS**

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COPY

## **SECTION 3**

### **SPECIFIC PARTICULAR CONDITIONS**

#### **AMENDMENT TO PARTICULAR CONDITIONS IN SECTION 2**

Preamble: Wherever the Particular Conditions contained in Section 2 hereof have been amended, such amendment shall be made in this Section 3. Wherever the Particular Conditions in Section 2 are added to, such additions are made in this Section 3.

#### **1 DEFINITIONS**

Words and phrases used in the SPECIFIC PARTICULAR CONDITIONS shall have the same meaning as are assigned to them in Section 2.

#### **2. COUNCIL'S RESOLUTIONS**

Descriptions and Resolutions of the Council that are applicable to the Project are included in Appendix 4.

#### **3. OTHER SPECIFIC PARTICULAR CONDITIONS**

##### **3.1. PLANNING AND BLOCK SUBDIVISIONS**

3.1.1. The Developer has to subdivide the Property or re-develop a Property whereby Permanent Works are to be transferred to Council as per Council Resolutions contained in the Schedules, and has to accordingly obtain from the Minister of Regional and Local Government, Housing and Rural Development the necessary necessity and desirability certificates and approvals for the extensions as contained in Section 5, a copy of which approvals and the accompanying approved General Plans/ layout plans are attached hereto.

OR

3.1.2. The necessary subdivision certificates issued by the Minister for the subdivision of the Property, as contained in Section 5;

OR

3.1.3. Whichever is applicable.

- 3.1.3.1. The Developer shall transfer all erven in each of the respective Township extensions and zoned public open space and for municipal purposes to the Council free of consideration and charges, upon opening of the respective Township Register and registration of the General Plan of such particular Township extension or Section in which such erven are situated and submit the Title Deeds to the Council as soon as these are availed by the Registrar of Deeds.
- 3.1.3.2. The Developer shall transfer the Remainders of each of the respective extensions (streets), once the Township Register is opened and the General Plan registered in respect thereof to Council free of consideration and charges and submit the Title Deeds in the name of Council to the Council as soon as these are availed by the Registrar of Deeds.
- 3.1.3.3. All General Plans in respect of the proposed Township Extensions or any such amended General Plans shall, once approved by the Surveyor General be part of this Memorandum of Agreement as and when they become available, be incorporated as the relevant sequenced numbered in the Schedules in Section 5.
- 3.1.3.4. All Township extensions and any amendments to the layout shall be subject to the Windhoek Town Planning Scheme.

## **3.2 TITLE DEED CONDITIONS**

- 3.2.1 The Developer hereby agrees that the existing conditions registered against the Property must be cancelled and that the conditions of the Minister of Regional and Local Government, Housing and Rural Development/Townships Board/Council as attached in Section 4, including a minimum building value as per the Town Planning Scheme of Windhoek must be registered against the new erven; except against the streets, municipal zoned erven or public open spaces,
- 3.2.2 The Developer hereby agrees that any Servitudes to protect any Permanent Works consisting of public services on the Property or its Subdivisions and as indicated on the approved General Plans or designs must be surveyed and be registered in favour of the Council at the Developer's costs.

- 3.2.3 The Developer undertakes to provide the Permanent Works as per Council Resolution(s) in Section 4, which Council Resolutions shall be an integral part of this Agreement.

### **3.3 LAND SURVEYING**

- 3.3.1 Should any changes be made to any layout or preliminary General Plan, the Developer shall notify the Council's Representative in writing of such changes for Council's approval.

### **3.4 ENVIRONMENTAL IMPACT ASSESSMENT AND PARKS**

- 3.4.1 The prescribed requirements of the Environmental Management Act 2007 (Act 7 of 2007) shall apply in respect of listed activities and an Environmental Clearance Certificate for such listed activity must be obtained.
- 3.4.2 The Developer shall submit detailed plans for the landscaping and development of Parks, Open Spaces, Street Trees, Walk-ways, Sport and Recreational facilities for the approval of the Council's Representative, and implement the Environmental Management Plan as approved by Council and the Environmental Commissioner. Such Plan shall be deemed to be attached and form part of this Agreement.

### **3.5 HEALTH AND SAFETY**

In addition to Sub-Clauses 1.4 and 6.7 of Section 2, the Developer must specifically comply with the provisions of:

- 3.5.1 The Employees Compensation Act, 1941 (Act 30 of 1941);
- 3.5.2 The Labour Act, Act 11 of 2007 and including the Employer's duties as per the Labour Act, Act 11 of 2007, as well as Regulations relating to the Health and Safety of Employees at work;
- 3.5.3 The Social Security Act, 1994 (Act No. 34 of 1994)

The Council's Health and Safety Officials shall have access to the Site of Works to verify Health and Safety compliance with the above.

### **3.6 CESSION AND ASSIGNMENT**

- 3.6.1 Subject to the provisions of this Agreement, the Developer notes that the Developer shall not be entitled to cede, assign or in any other manner make over its rights, title and interest in this Agreement or any of its liabilities, responsibilities, duties or obligations hereunder, to any other third party, without the prior written consent of the Council, which consent shall not be unreasonably withheld: Provided that the Developer or its successor-in-title or successors-in-name or in shareholding or membership or its assigns (whichever may be applicable), duly complied or guaranteed compliance with all conditions under this Agreement as well as with the conditions to be registered notarially in favour of the Council.

### **3.7 REGISTRATION PRE-CONDITIONS**

- 3.7.1 The Developer and/or its approved successors-in-title and/or successor-in-name and/or successor shareholders and/or successor member(s) and/or its assigns, whichever are applicable, shall not be entitled to transfer any individual erven within any Township extension or Section of the Development to a third party transferee or to any subsequent Successor/s in Title or to register a sectional title scheme; without the prior consent of the Council.
- 3.7.2 This permission under Clause 2.8.1 will not be granted by the Council until such time as Council has issued a Take-Over Certificate in accordance with Clause 2.10 of Section 2.
- 3.7.3 Subject to the provisions of Clause 2.8.1, where circumstances, which are reasonably beyond the control of the Developer and/or its approved successors-in-title and/or successor-in-name and/or successor shareholders and/or successor member(s) and/or its assigns, whichever are applicable, prevent or delay the Developer and/or its approved successors-in-title and/or successor-in-name and/or successor shareholders and/or successor member(s) and/or its assigns, whichever are applicable from materially completing the Permanent Works in respect of a Township extension or Section within the development period referred to in the Programme the parties shall in good faith negotiate a reasonable extension of the time period within which the Developer and/or its approved successors-in-title and/or successor-in-name and/or successor shareholders and/or successor member(s) and/or its assigns, whichever are applicable, must complete the development of such Permanent Works.

- 3.7.4 The Developer and/or its approved successors-in-title and/or successor-in-name and/or successor shareholders and/or successor member(s)', whichever are applicable undertake to effect at its own cost the registration of the conditions contained in Clauses 2.8.1 to 2.8.3 by way of a **Notarial Deed of Imposition of Conditions against the Title Deed of every individual erf within a particular Township extension**, the wording of such Notarial Deed to be determined by the Notary of the Developer to reflect the intention of the Developer and Council contained in the said Clauses.

### **3.8 BETTERMENT AND ENDOWMENT FEES AND OTHER CHARGES**

- 3.8.1 Unless otherwise decided and approved by the Minister of Regional and Local Government, Housing and Rural Development, the Developer shall pay to the Council the following within 14 days of signature of this Agreement.

3.8.1.1 a Betterment fee in respect of the rezoning of the Property, under the Planning Ordinance 18 of 1954 as a result of the Property's permitted usage being changed from residential of 1:50 000 to a higher density 'residential', 'office' and 'business'; and

3.8.1.2 an endowment fee to be determined as per Section 19 of Ordinance 11 of 1963, excluding public places and erven transferred to a local authority or to the State.

- 3.8.2 The Developer must make available the following land and Permanent Works:

3.8.2.1 The land transferred to the Council zoned 'institutional', 'municipal' and 'public open spaces' usable for parks and landfill sites (excluding water courses and land steeper than a slope of 1 in 4),

3.8.2.2 The land subdivided and used for roads, bridges and other services external to the approved layout and which will in the future serve a greater community,

3.8.2.3 Permanent Works to be provided at the Developer's costs according to specifications and standards as set out in Sections 2 to 5.

#### 3.8.2.4 Council's Administration fee:

The Developer shall within 21 days of Commencement Date or 21 days prior to the commencement of construction (whichever date is last), pay to the Council an Administration Fee, as reflected in the Agreement Data, which fee is to be applied for the involvement of Council and/or the Council Representative and its assistants during the Project. The Administration Fee is to be utilized in defraying costs to Council for inter alia the following activities during the project i.e. quality monitoring, approval of drawings, visiting of sites, conducting of tests and all other actions required and necessary by the Council via it's Representative during the course of the Project. The Administration Fee is calculated by multiplying the number of erven being serviced (A) with an amount reflected in the Agreement Data per erf (B).

### **3.9 DONATION**

### **3.10 DEVELOPMENT PROGRAMME**

Within 21 days of signature of this Agreement the Developer shall submit to the Council's Representative a detailed Development Programme containing all relevant dates and time lines for all phases from Planning to Sale of Erven, including Design and Construction. The Development Programme shall be kept up to date by the Developer and any amendments thereof shall be immediately notified to the Council's Representative.



## **SECTION 4**

### **PART A: COUNCIL'S STANDARD TECHNICAL REQUIREMENTS**

The Council's Standard Technical Requirements [1<sup>st</sup> Edition 2013], which forms part of the Memorandum of Agreement, are available in the Project Management Office, Roads and Stormwater Department, in the Town House Building, City of Windhoek.

COPY

## **SECTION 4**

### **PART B: PROJECT SPECIFIC TECHNICAL REQUIREMENTS**

#### **1 DEFINITIONS**

Words and phrases used in the PROJECT SPECIFIC TECHNICAL REQUIREMENTS shall have the same meaning as are assigned to them in Section 2.

This Section shall be added and completed upon approval of drawings for release of construction, so that only project-applicable criteria can be included here.

#### **2 MAIN SERVICE CONNECTION**

#### **3 ELECTRICAL SERVICES**

#### **4 CIVIL ENGINEERING WORKS**

#### **5 PLANNING, DESIGN AND EXECUTION**

#### **6 APPROVAL OF STAGES (PER EACH SECTION OF THE DEVELOPMENT)**

#### **7 COMPLETION (THE TAKING OVER OF COMPLETED PERMANENT WORKS BY THE COUNCIL)**

## **SECTION 5**

### **AGREEMENT DATA, LIST OF ERVEN, PRO-FORMA DOCUMENTS, SCHEDULES AND APPENDIXES**

<b>SCHEDULES</b>	
A	Resolution taken by the Developer
B	Necessity and desirability approval certificate
C	General - and Layout Plan/s
D	Township extension Conditions

## 5.1 AGREEMENT DATA

This Agreement Data forms part of the Agreement.

With the exception of the items for which the Sections 3 to 5 have been inserted, the Developer shall complete the following information. Wherever the letters “PC” or “SPC” are used in this Agreement Data, same shall refer to the Particular Conditions in Section 2 and the Specific Particular Conditions in Section 3 of the Agreement; respectively.

<u>Item</u>	<u>Sub-Clause</u>	<u>Data</u>
Council's name and address	1.1.2.2 & 1.3	See Agreement
Contractor's name and address	1.1.2.3 & 1.3	See Agreement
Council's Representative's name and address	1.1.2.4 & 1.3	The Strategic Executive, Department of Infrastructure, Mr Petrus L Du Pisani
Commencement Date	1.1.3.2	Signature date of last signatory of this Agreement
Retention Money	1.1.4.11	Tick elected Option Option 1: Cash Payment <input type="checkbox"/> Option 2: Demand Guarantee <input type="checkbox"/>
Time for Completion of the Works	1.1.3.3	As per submitted Program under Clause 8.3
Defects Notification Period	1.1.3.7	2 (two) calendar years from the date of the last Take Over of Large Subdivisions or Works within the Municipal Road Reserve
Governing Law	1.4	Namibia
Ruling language	1.4	English
Language for communications	1.4	English
Time for access to the Site	2.1	N/A
Delegation by Council's Representative	3.2	For Quality Monitoring Official: As notified by Section Engineer: Contract Management
Amount and form of Performance Security or Land	4.2	Form as attached in 5.3 of Section 5, Amount: 15% of value of the Works
Delay damages of the Works	8.7 & PC 2.8.5	N\$ 2,000 / day
Maximum amount of delay damages	8.7	10% of value of the Works

Initials of signatory of Agreement\_\_\_\_\_

Percentage of retention	14.3 & 2.1.5.1	5% of value of the Works
Limit of Retention Money	14.3 & 2.1.5.1	5% of value of the Works
Pay back of Retention Money	14.9	Within 14 days of the date of the Performance Certificate
Insurance	18	Insuring Party: Developer
Appointment to be made by	20.3	Nominating Authority: Engineering Professions Association (EPA)
Council's Administration Fee	SPC 3.8.2.4	Not applicable.

*If there are Sections:*  
Definition of Section:

Description (Sub-Clause 1.1.5.6)	Time for Completion (Sub-Clause 1.1.3.3)	Delay Damages (Sub-Clause 8.7)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Initials of signatory of Agreement\_\_\_\_\_

## **5.2 LIST OF ERVEN TAKEN OVER UNDER A SECTION**

The erven listed hereunder are issued separately from this document but form part of this Agreement.

### **5.3 PRO-FORMA DOCUMENTS**

## **SECTION 5.3**

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COPY



**1.A FORM OF PERFORMANCE SECURITY**  
**(Clause 2.4.2 of Section 2)**

**S.12 Guarantor Letterhead**

**TO:**

- 1** Name and Address of Beneficiary (whom the Contract defines as Council):

**Windhoek Municipal Council**  
**Box 59**  
**Windhoek**  
**Namibia**

- 2** **Date of issue:**

- 3** **Type of security:**

PERFORMANCE SECURITY, DEMAND GUARANTEE (ONLY TO BE ISSUED IN PAPER FORM)

- 4** **Guarantee Number:** .....

- 5** **Description of Agreement (Underlying Relationship):**

..... "Agreement")

- 6** **The Developer (Principal):**

- 7** **The Guarantor**

We have been informed that ..... (the "Principal") is your Developer under such Agreement, which requires him to obtain a performance security.

At the request of the Principal, we ..... ("the Bank" a local branch situated at..... [state address]) herein represented by ..... and ..... in their respective capacities as ..... and ....., waiving all objections and defences, hereby independently and irrevocably guarantee to pay you the Windhoek Municipal Council (the "Beneficiary"), the Guaranteed Amount.

- 8** **The Guaranteed Amount**

The sum or sums not exceeding in total the amount of N\$..... equalling 15% of the Value of the Works shall be the "guaranteed amount", say:.....

- 9** **Presentation**

Upon receipt by us of the Beneficiary's demand in paper format in writing and written statement stating:

- (a) that the Principal is in breach of his obligation(s) under the Agreement; and
- (b) the respect in which the Principal is in breach.

Such demand shall be in the language of this guarantee and shall be either hand-delivered, or sent by pre-paid registered post to the Bank's address as detailed above. All charges and fees payable to the Bank or any guarantor in respect of the issuing of this Demand Guarantee or any related matter shall be for the account of the Principal.

Any demand for payment must contain the Beneficiary's Chief Executive Officer signature(s) which must be authenticated by the Beneficiary's bankers or by a notary public or the legal practitioner of the beneficiary.

**10 Expiry**

The authenticated demand and statement must be received by the Bank at its offices at ..... [insert address] on or before the date 70 days after the date of the Performance Certificate issued by the Council's Representative [insert name] ("the expiry date"), when this guarantee shall expire and must be returned to the Bank by the Principal, together with a copy of the Performance Certificate.

**11 Variation or Reduction of the Amount or Extensions**

Following the receipt by the Bank from the Principal of an authenticated copy of the Taking-over Certificate for the whole of the Works, the guaranteed amount shall be reduced by 75% and the Bank shall promptly notify the Beneficiary in writing that the Bank has received such certificate and has reduced the guaranteed amount accordingly.

The Bank has been informed that the Beneficiary may require the Principal to extend this guarantee if the Performance Certificate under the Agreement has not been issued by the date 28 days prior to the expiry date. The Bank undertakes to pay the Beneficiary the guaranteed amount upon receipt by the Bank, within such period of 28 days, of the Beneficiary's demand in writing and written statement that the Performance Certificate has not been issued, for reasons attributable to the Principal.

**12 Jurisdiction and Rules**

This guarantee shall be governed by the laws of the Republic of Namibia, and shall be subject to the Uniform Rules for Demand Guarantees, published as number 758 by the International Chamber of Commerce, except as stated above.

Date: ..... Signature and Name / Title .....

Witness: .....

Date: ..... Signature and Name / Title .....

Witness: .....

**1.B    FORM OF PERFORMANCE SECURITY**  
**(Clause 2.1.5.1 of Section 2: Retention Money)**

**S.12    Guarantor Letterhead**

**TO:**

- 1    Name and Address of Beneficiary (whom the Contract defines as Council):**

**Windhoek Municipal Council**  
**Box 59**  
**Windhoek**  
**Namibia**

- 2    Date of issue:**

- 3    Type of security:**

PERFORMANCE SECURITY, DEMAND GUARANTEE (ONLY TO BE ISSUED IN PAPER FORM)

- 4    Guarantee Number: .....**

- 5    Description of Agreement (Underlying Relationship):**

..... "Agreement")

- 6    The Developer (Principal):**

- 7    The Guarantor**

We have been informed that ..... (the "Principal") is your Developer under such Agreement, which requires him to obtain a performance security for the purposes of remedying defective work.

At the request of the Principal, we ..... ("the Bank" a local branch situated at..... [state address]) herein represented by ..... and ..... in their respective capacities as ..... and ....., waiving all objections and defences, hereby independently and irrevocably guarantee to pay you the Windhoek Municipal Council (the "Beneficiary"), the Guaranteed Amount.

- 8    The Guaranteed Amount**

The sum or sums not exceeding in total the amount of N\$..... equalling 5% of the Value of the Works shall be the "guaranteed amount", say:.....

- 9    Presentation**

Upon receipt by us of the Beneficiary's demand in paper format in writing and written statement stating:

- (a)    that the Principal is in breach of his obligation to remedy defective work under the Agreement; and
- (b)    the details of such defective work.

Such demand shall be in the language of this guarantee and shall be either hand-delivered, or sent by pre-paid registered post to the Bank's address as detailed above. All charges and fees

payable to the Bank or any guarantor in respect of the issuing of this Demand Guarantee or any related matter shall be for the account of the Principal.  
Any demand for payment must contain the Beneficiary's Chief Executive Officer signature(s) which must be authenticated by the Beneficiary's bankers or by a notary public or the legal practitioner of the beneficiary.

**10 Expiry**

The authenticated demand and statement must be received by the Bank at its offices at ..... [insert address] on or before the date 70 days after the date of the Performance Certificate issued by the Council's Representative [insert name] ("the expiry date"), when this guarantee shall expire and must be returned to the Bank by the Principal, together with a copy of the Performance Certificate.

**11 Variation or Reduction of the Amount or Extensions**

The Bank undertakes to pay the Beneficiary the guaranteed amount upon receipt by the Bank, within such period of 28 days, of the Beneficiary's demand in writing and written statement that the Performance Certificate has not been issued, for reasons attributable to the Principal.

**12 Jurisdiction and Rules**

This guarantee shall be governed by the laws of the Republic of Namibia, and shall be subject to the Uniform Rules for Demand Guarantees, published as number 758 by the International Chamber of Commerce, except as stated above.

Date: ..... Signature and Name / Title .....

Witness: .....

Date: ..... Signature and Name / Title .....

Witness: .....

## CERTIFICATE IN RESPECT OF COMPLIANCE WITH QUALITY ASSURANCE

PROJECT TITLE: .....

SECTION OF THE WORKS: .....

It is herewith certified that the QUALITY ASSURANCE MANUAL / FILE has been received and found to be compliant in respect of:

- |  |                          |
|--|--------------------------|
| 1. Final Quality Assurance Manual / File received on   | Date: .... / .... / .... |
| 2. Contractor's Process Control test results included  | Yes / no                 |
| 3. Engineer's Acceptance Control test results included | Yes / no                 |
| 4. Engineer's Acceptance Sheets signed                 | Yes / no                 |

Remarks:

.....  
.....

Certificate prepared by:

.....	.....	.....
Name (Quality Monitoring Official)	Signature	Date

Final Quality Assurance Manual / File Audited and found in order:

.....	.....	.....
Name (Quality Auditor)	Signature	Date

Quality Assurance Approved for purposes of Taking Over:

.....	.....	.....
Section Eng: Contract Management	Signature	Date

CERTIFICATE OF APPROVAL AS ISSUED BY THE AFFECTED SERVICES DEPARTMENTS OF THE COUNCIL IN TERMS OF CLAUSE 2.10.1 OF THE MEMORANDUM OF AGREEMENT ENTERED INTO BETWEEN THE COUNCIL AND THE OWNER / DEVELOPER FOR THE PURPOSE OF LARGE SUBDIVISIONS AND TOWNSHIP DEVELOPMENTS

TOWNSHIP & ERF NUMBERS: [Insert name of development]

COUNCIL RESOLUTION NUMBER: [Insert]

TOWNSHIPS BOARD ITEM NUMBERS: [Insert]

#### PART A:

### STRATEGIC EXECUTIVE: URBAN PLANNING & PROPERTY MANAGEMENT'S CHECK LIST FOR OBTAINING MUNICIPAL SERVICES' CERTIFICATE

- 1 Has a copy of each diagram or general plan been received? .....
- 2 Have erf dimensional requirements been met? .....
- 3 Have building regulation requirements been met? .....
- 4 Have any closures been completed? .....
- 5 Have any other imposed conditions been met? .....
- 6 Have servitudes been accommodated? .....
- 7 Have retention monies been paid? .....
- 8 Survey requirements. (To be done by a Professional Land Surveyor) .....
- 8.1 Have all erf beacons been identified? (Done upon completion of buildings and where OWNER/DEVELOPERs took delivery) .....
- 8.2 Has any encroachment by completed structures been detected? .....
- 8.3 Have the Reference Marks been certified? .....
- 9 Have Environmental Impact Assessment requirements been met? .....

Comments:.....

.....

Chief Planner

Date

.....

Strategic Executive: Urban Planning & Property Management

Date

CERTIFICATE OF APPROVAL AS ISSUED BY THE AFFECTED SERVICES DEPARTMENTS OF THE COUNCIL IN TERMS OF CLAUSE 2.10.1 OF THE MEMORANDUM OF AGREEMENT ENTERED INTO BETWEEN THE COUNCIL AND THE OWNER / DEVELOPER FOR THE PURPOSE OF LARGE SUBDIVISIONS  
TOWNSHIP & ERF NUMBERS: [Insert name of Development]  
COUNCIL RESOLUTION NUMBER: [Insert]  
TOWNSHIPS BOARD ITEM NUMBERS: [Insert]

**PART BI:**

**STRATEGIC EXECUTIVE: INFRASTRUCTURE, WATER & TECHNICAL SERVICES'S CHECK LIST FOR OBTAINING MUNICIPAL SERVICES' CERTIFICATE.**

**BULK & WASTE WATER**

1. Have design drawings and specifications of infrastructure been approved? .....
- 1.1 Have pipes, valves and hydrants been installed according to the approved specifications? .....
- 1.2 Have valve and hydrant markers been installed? .....
- 1.3 Have manholes, rodding eyes, benching, covers and step irons been installed to specification? .....
- 1.4 Have house connection markers been installed? .....
2. Has all quality assurance data been submitted (Quality Assurance Manuals)? .....
- 2.1 Has the quality assurance data been evaluated and found to be compliant with the requirements of the Agreement? .....
- 2.2 Have as-built drawings been received? .....
3. Has as-built electronic/CAD data been received? .....
4. Have all other imposed conditions pertaining to water and sewer been met? .....
5. Has any required deposit been provided? .....
6. Have servitudes been accommodated? .....
7. Have retention monies been paid? .....
8. Has all refuse and rubble been satisfactorily removed from site, to an approved landfill site? .....

**Comments:**.....

.....

**Chief Engineer**

**Date**

.....

**Strategic Executive: Infrastructure, Water and Technical Services**

**Date**

CERTIFICATE OF APPROVAL AS ISSUED BY THE AFFECTED SERVICES DEPARTMENTS OF THE COUNCIL IN TERMS OF CLAUSE 2.10.1 OF THE MEMORANDUM OF AGREEMENT ENTERED INTO BETWEEN THE COUNCIL AND THE OWNER / DEVELOPER FOR THE PURPOSE OF LARGE SUBDIVISIONS  
 TOWNSHIP & ERF NUMBERS: [Insert name of Development]  
 COUNCIL RESOLUTION NUMBER: [Insert]  
 TOWNSHIPS BOARD ITEM NUMBERS: [Insert]

**PART BII:**

**STRATEGIC EXECUTIVE: INFRASTRUCTURE, WATER & TECHNICAL SERVICES'S CHECK LIST FOR OBTAINING MUNICIPAL SERVICES' CERTIFICATE.**

**ROADS & STORM WATER**

- 1 Has an Engineer been appointed according to Section 2, Clause 10.6? .....
- 2 Have design drawings and specifications of infrastructure been approved? .....
- 3.1 Has the quality management system been approved? .....
- 3.2 Has the quality assurance manual (Part A and Part B) been received and found to be in order? .....
- 3.3 Has the Quality Assurance Compliance Certificate been signed and attached to this Certificate? .....
- 4 Have as-built drawings been received and found to be in order? .....
- 5 Has as-built electronic/CAD data been received? .....
- 6 Have all requirements under Sections 4 and 5 of the Agreement pertaining to roads and stormwater been met by the Developer? .....
- 7 Has the Engineer issued its Taking Over Certificate under the Construction Contract? .....
- 8 Have servitudes been accommodated? .....
- 9 Have street signs and boards been erected? .....
- 10 Have traffic signs and road markings been provided? .....

**Comments:**.....

.....  
**Quality Monitoring Official**

.....  
**Date**

.....  
**Chief Engineer**

.....  
**Date**

.....  
**Strategic Executive: Infrastructure, Water and Technical Services**

.....  
**Date**



CERTIFICATE OF APPROVAL AS ISSUED BY THE AFFECTED SERVICES DEPARTMENTS OF THE COUNCIL IN TERMS OF CLAUSE 2.10.1 OF THE MEMORANDUM OF AGREEMENT ENTERED INTO BETWEEN THE COUNCIL AND THE OWNER / DEVELOPER FOR THE PURPOSE OF LARGE SUBDIVISIONS  
TOWNSHIP & ERF NUMBERS: [Insert name of Development]  
COUNCIL RESOLUTION NUMBER: [Insert]  
TOWNSHIPS BOARD ITEM NUMBERS: [Insert]

### PART BIII:

## STRATEGIC EXECUTIVE: INFRASTRUCTURE, WATER & TECHNICAL SERVICES'S CHECK LIST FOR OBTAINING MUNICIPAL SERVICES' CERTIFICATE.

### PROJECT MANAGEMENT

- 1 Has an Engineer been appointed according to Section 2, Clause 10.6? .....
- 2 Have Certificates of Approval been received from all Technical Departments? .....
3. Have all obligations of the Developer in terms of the Agreement and pertaining to the Taking Over of the Works been met? .....
4. Have the required Performance Securities been submitted and found to be compliant? .....
5. Has the retention money, if required, been paid by the Developer? .....
- 6 Have all other conditions under Section 2, been met? .....
7. Can the Taking Over Certificate under the Development be issued by the Council's Representative? Yes/No (or comment below)

Comments:.....

.....  
Project Coordinator

.....  
Date

.....  
Chief Engineer

.....  
Date

.....  
Strategic Executive: Infrastructure, Water and Technical Services

.....  
Date

CERTIFICATE OF APPROVAL AS ISSUED BY THE AFFECTED SERVICES DEPARTMENTS OF THE COUNCIL IN TERMS OF CLAUSE 2.10.1 OF THE MEMORANDUM OF AGREEMENT ENTERED INTO BETWEEN THE COUNCIL AND THE OWNER / DEVELOPER FOR THE PURPOSE OF LARGE SUBDIVISIONS

TOWNSHIP & ERF NUMBERS: [Insert name of Development]

COUNCIL RESOLUTION NUMBER: [Insert]

TOWNSHIPS BOARD ITEM NUMBERS: [Insert]

### PART C:

#### STRATEGIC EXECUTIVE ELECTRICITY'S CHECK LIST FOR OBTAINING MUNICIPAL SERVICES' CERTIFICATE

1. Have the Electrical Reticulation Drawings been approved before construction started? .....
2. Have the special Electrical Conditions been met? .....
3. Is the installation standard on site and acceptable? .....
4. Have "as built" drawings been received of the Electrical installations, CAD and paper? .....
5. Have all monies due to the Electrical Department been paid? .....
6. Were servitudes violated? .....
7. Have servitudes been provided for as required? .....

Comments:.....

.....

Chief Engineer

Date

.....

Strategic Executive: Electricity

Date

# CITY OF WINDHOEK



BOX 59  
WINDHOEK

---

## TAKING-OVER CERTIFICATE

This certifies that the Works or Sections of the Works are taken over in terms of Clause 2.10 of Section 2 of the Agreement. This Certificate is subject to the minor outstanding works and (list attached as Appendix 2 of the Agreement) being completed and/or remedied by .....

**Development Name:** .....

**Developer:** .....

**Description of Works:** All works to be transferred to the Municipal Council of Windhoek including but not limited to, Roads & Stormwater, Bulk & Waste Water and Electrical infrastructure.

**Section/s:** .....

**Date of Retention Payment:** .....

**Date of Taking-Over:** .....

**Date of End of Defects Notification Period:** .....

Certified:

\_\_\_\_\_  
(THE COUNCIL)

\_\_\_\_\_  
(DATE)

The Take Over will only be valid if the Developer **completes the minor outstanding work and remedies the defects listed on the attached sheet[s]** (Appendix 2) by the dates specified, failing which Take Over will be deemed not to have taken place.

---

Original DEVELOPER

Copy COUNCIL

# CITY OF WINDHOEK



BOX 59  
WINDHOEK

## PERFORMANCE CERTIFICATE

**Contract Name:** .....

**Developer:** .....

**Description of Work:**

.....

.....

.....

.....

.....

.....

In terms of Clause 11.9 of the Conditions of Agreement, we hereby certify that the Developer has achieved successful completion of the Works described above and that the Works have been accepted by \_\_\_\_\_ on \_\_\_\_\_ in terms of the Contract.

\_\_\_\_\_  
(THE DEVELOPER)

\_\_\_\_\_  
(DATE)

\_\_\_\_\_  
(THE COUNCIL)

\_\_\_\_\_  
(DATE)

Original DEVELOPER

Copy COUNCIL

## **SCHEDULES**

COPY

## **SCHEDULE A**

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## **SCHEDULE B**

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## **SCHEDULE C**

COPY



## **SCHEDULE D**

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# **APPENDIX**

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## APPENDIX 1

### QUALITY ASSURANCE PROCEDURES ON PRIVATE INFRASTRUCTURE DEVELOPMENT PROJECTS (2<sup>nd</sup> Edition 2014)



#### Abbreviations

CPC	Contractor's Process Control
EAC	Engineer's Acceptance Control
ERF	Engineer's Report Form
QAS	Quality Assurance System
OAM	Quality Assurance Manual (Vol. 1 & Vol. 2)
QMO	Council's Quality Monitoring Official (of the Local Authority)

#### Definitions

Agreement:	The Memorandum of Agreement (Development Agreement) between Council and the Developer, including all specifications and workmanship standards
Engineer:	The Engineer appointed by the Developer in accordance with the provisions of the Agreement and acting for and on behalf of the Developer
Contractor:	The Contractor employed by the Developer in accordance with the provisions of the Agreement

#### Preamble

The Local Authority (Council) will perform its own quality monitoring activities during construction, as described in more detail below as well as in the Agreement. The objective of such quality monitoring is to ascertain that the standards prescribed in the Agreement are met by the Developer and its team.

Quality monitoring will be performed by officials of the Contract Management Section of Council, assisted by officials of other technical divisions and departments. The Section Engineer: Contract Management shall assign a Quality Monitoring Official (QMO) for the Project, of whom the Developer will be informed through the office of Council's Project Manager.

The activities of the Council's QMO shall be independent of the Developer's quality assurance requirements and shall not relieve the Developer or his Engineer of any responsibility in this regard.

The construction contract between the Developer and his Contractor shall be the FIDIC Conditions of Contract for Construction (1999 Edition), and the Developer through its Engineer shall ensure that the systems for quality assurance established under that Contract are in place and complied with.

The Specifications shall be based on SABS 1200. The Developer shall ensure that the Engineer and the Contractor remain compliant with these Specifications, or any amendments thereof approved by Council, or as stated in the Agreement.

Communications: In order to simplify the communication channels regarding matters of technical nature on the construction site, such channel shall be directly between the Engineer and Council's QMO. Such communications shall however be copied to the Council's Project Coordinator and the Developer's Representative.

## **1. Commencement of the Works**

At least seven days before commencement of the works, the Developer shall notify the Section Engineer: Contract Management of Council of the commencement date. Such Notice shall be accompanied by all relevant documentation, such as but not limited to:

- a) A copy of the signed Development Agreement;
- b) 1 copy of the set of approved construction drawings (released for construction);
- c) 1 copy of the construction contract document containing the specifications.

## **2. Contractor's Quality Assurance System**

The Developer shall ensure that the Engineer complies with the following requirements:

The Engineer shall require the Contractor to establish a Quality Assurance System for the approval by the Engineer as prescribed in sub-clause 4.9 of the FIDIC General Conditions of Contract (1999 Edition).

The Quality Assurance System shall further include procedures and checks and balances to ensure compliance with all requirements of the Specifications. Such procedures and checks and balances shall be documented in a manual (the Quality Assurance Manual (QAM) Volume 1) for the implementation by all key staff members of the Contractor. The Engineer shall require the Contractor to ensure that all key staff members are trained and equipped to implement the Quality Assurance System.

The QAM (Volume 1) shall include all obligation and requirements of the construction Contract, but particularly:

- i. List minimum requirements in terms of the Standard Specification (SABS1200) and the Project Specifications;
- ii. List testing frequencies as prescribed in the Standard Specification (SABS1200) and the Project Specifications (the testing schedule shall be linked to the construction programme with dates for each test);
- iii. Quality control system, describing how process control testing and inspections will be carried out, methodologies and / or name of commercial laboratory;

- iv. Approval system including all inspection / testing request and approval forms (Engineer's Report Forms (ERF)). ERF forms are to be drafted in consultation with the Engineer.

Upon approval of the QAM by the Engineer, the Engineer shall submit a copy of the QAM to the Council's QMO, but no later than 21 days after commencement of the Works.

The QAM (Volume 2) shall include the Engineer's Report Forms (ERF) as well as all tests for process control and acceptance control as provided in QAM (Volume 1). The file shall be kept up to date by the Engineer, and shall be organized street by street, activity by activity and in order of chainage, as far as possible.

The QAM (Volume 2) shall be submitted by the Engineer to the Council's QMO for evaluation and audit on a regular basis, or as notified by the Council's QMO. The QAM (Volume 2) shall be submitted within 3 days of the QMO's notice. Should it be found during the evaluation or auditing process conducted by Council, that certain information is outstanding. This will be notified by the Council's QMO and must be submitted, but no later than 3 days of such notice.

### **3. Engineer's Acceptance Control**

The Engineer's own testing and inspection frequency shall be based on the frequency of process control testing prescribed in SABS1200, and shall be at a frequency of at least 10% of process control testing. This percentage may need to increase if irregularities arise.

In the event that the Engineer has received all process control testing for a particular activity, and has performed its own checks and is satisfied that the required standards have been achieved, it shall, prior to approving such work, inform the QMO via an agreed mode of communication, and grant the QMO an opportunity to carry out further testing before work is covered up. Such tests, if any, shall be carried out at the QMO's discretion.

Engineer's Report Forms (ERF) shall make provision for request for acceptance by the Contractor, indicating that the Contractor has carried out all process control in terms of the Specifications, with all test results and tolerance checks attached to such request. The ERF shall then be completed by the Engineer, and shall include copies of the Engineer's inspections and tests conducted. The forms vary depending on inspection or test type, and shall include:

- Description or title of the inspection activity
- Location of the inspection activity or location from which the sample was obtained
- Recorded observation or test data
- Results of the inspection activity and applicable tests
- Personnel involved in the inspection activity
- Signature of the Engineer / Resident Engineer

#### Engineer's Report Forms (ERF)

Once completed and signed by the Engineer, the ERF's shall be filed in the QAM (Volume 2).

## **4. Quality monitoring by the Local Authority**

### **4.1 Inspection**

The Council's QMO shall at all reasonable times be entitled to examine and inspect the materials and workmanship. No such activity shall relieve the Developer from any of his obligations and/or responsibilities under the Agreement.

The Engineer shall give notice to the QMO whenever any work is ready and before it is covered up or put out of sight. The QMO shall then carry out the examination and inspection without unreasonable delay or promptly give notice to the Developer that he does not wish to do so.

### **4.2 Rejection**

If, as a result of an examination or inspection by the QMO, or any Test on Completion, any plant, materials, design or workmanship is found to be defective or otherwise not in accordance with the requirements of the Agreement, the QMO may, through the office of Council's Representative reject the plant, materials, design or workmanship by giving notice to the Developer, with reasons. The Developer shall then promptly make good the defect and ensure that the rejected item complies with the Agreement. Any Works that have been notified to be rejected by the Council's QMO, shall not be taken over by the Council, unless it has been properly remedied, and shown by the Developer to be compliant.

### **4.3 Tests on Completion**

The Developer shall carry out the Tests on Completion at his own cost and risk, and shall submit the results including an evaluation thereof to the QMO. The Developer shall be responsible for the provision of all apparatus, assistance, documents and other information, electricity, equipment, fuel, consumables, instruments, labour, materials and suitably qualified and experienced staff, as are necessary to carry out the Tests on Completion efficiently. The Developer shall agree with the QMO the time and place of the Tests on Completion.

The QMO shall give the Developer not less than 24 hours' notice of the intention of the QMO to attend the Tests on Completion. If the QMO does not attend at the time and place agreed, unless otherwise instructed by the QMO, the Developer may proceed with the Tests on Completion and the Tests on Completion will then be deemed to have been made in the presence of the QMO.

## **5. Construction Site Meetings**

The Engineer shall invite the QMO to all site meetings.

The Agenda for site meetings shall include an agenda point with the heading 'Quality Assurance', during which point all quality related issues shall be reported on and minuted accordingly.

## 6. Accommodation of Traffic

The Developer shall ensure that all Works are kept in a safe condition for pedestrians and vehicular traffic. The procedures that are relevant to work within a municipal road reserve, the temporary encroachment onto a lane, temporary closure of a lane or road during construction, and the relevant traffic accommodation measures that need to be taken by the Developer, are contained in the document entitled: **Standard Traffic Accommodation Manual**, which is part of and attached to the Agreement. These measures must be strictly complied with at all times.

The Developer shall organise his work so as to reduce the inconvenience to traffic to a minimum, and no public road or street shall be completely closed without prior approval. If so ordered, the Developer shall provide suitable bridges at street and driveway crossings where traffic must cross open trenches. The Developer shall construct temporary accesses to adjacent private properties if necessary to ensure access. Damage caused to existing roads and sidewalks by construction equipment or public traffic shall be repaired by the Developer at own cost. All roads shall be reinstated to their original condition.

The Developer shall ensure that the Engineer frequently assesses the adequacy of any temporary signage or barricades to ensure public safety. The Developer shall provide and maintain in proper condition all necessary barricades, lights, warning signals and all direction signs necessary to enable traffic to follow the routes of diversion throughout their length. The Developer shall provide flagmen at all deviations and/or obstructions where deemed necessary by the Engineer. Should the QMO become aware of any inadequacy of the temporary signage, it shall immediately notify the Engineer who shall address the matter immediately, and ensure that the situation is made safe and compliant to road traffic legislation and the provisions of the Agreement. In the event that such inadequacy is not immediately addressed, the QMO, in consultation with the Traffic Management Division of Council, shall order the immediate suspension of the work until, such time that the accommodation of traffic is made adequate and safe.

All traffic signs and the control of traffic shall be in accordance with the SADC Road Traffic Signs Manual. The Developer shall liaise and co-operate and obtain written approval from the relevant Traffic Authorities in each case where the Works affect existing roads. In addition, the Developer's proposed accommodation of traffic must be signed off in accordance with the procedures contained in Council's **Standard Traffic Accommodation Manual**. Work shall not be allowed to commence without these signs in place. After the signs are put in place the Developer shall get written confirmation from the Traffic Authorities to state that it is correct. This confirmation must be kept on site and produced on request by the Council's QMO at any time.

The Developer shall ensure that the applicable insurances as required in the Agreement are in place and shall sign an indemnity clearing the Local Authority, as applicable, from all liabilities in respect of excavations and works on or adjacent to trafficked roads, before any work within the municipal road reserve commences.

Note: The use of plastic “danger tape” will only be allowed in rare cases and only on approval by the Engineer and the QMO and only when it is wrapped around two strands of equally spaced binding wire. The Developer must ensure that its Contractor erects PVC temporary barrier fencing to cordon off dangerous areas.

## **7. As build Data and drawings**

The as-built drawings will record approved actual field conditions upon completion of the work. The original design drawings will be marked up as the project progresses to indicate as-built conditions. Where there was a change to a specified material, dimension, location, or other feature, the as-built drawing will indicate the work performed.

All as-built information shall be submitted to the QMO. As-built drawings submitted on CD-ROM shall be the latest version of AutoCAD as confirmed to by the office of Council’s Chief Engineer: Design.

As built drawings will be used to update the design drawings to as-built status at the completion of the work, and shall be certified by the Engineer before submission to the QMO.



## APPENDIX 2

### STANDARD TRAFFIC ACCOMMODATION MANUAL ON PRIVATE INFRASTRUCTURE DEVELOPMENT PROJECTS (1<sup>st</sup> Edition 2014)



#### Abbreviations

CoW	City of Windhoek
MoA	Memorandum of Agreement
QMO	Council's Quality Monitoring Official (of the Local Authority)
TA	Traffic Accommodation
TMU	Traffic Management Unit

#### Definitions

Agreement:	The Memorandum of Agreement (Development Agreement) between Council and the Developer, including all specifications and workmanship standards
Engineer:	The Engineer appointed by the Developer in accordance with the provisions of the Agreement and acting for and on behalf of the Developer
Contractor:	The Contractor employed by the Developer in accordance with the provisions of the Agreement
QMO:	Council's Quality Monitoring Official, as defined in the Agreement

#### Preamble

It is the duty of the Developer to ensure that all Works and the construction site are kept in a safe condition for pedestrians and vehicular traffic, particularly when such Works are executed adjacent or within a municipal road reserve.

The procedures that are relevant to work within a municipal road reserve, the temporary encroachment onto a lane, temporary closure of a lane or road during construction, and the relevant traffic accommodation measures that need to be taken by the Developer, are contained herein the document entitled: **Standard Traffic Accommodation Manual (STAM)**, which is part of and attached to the Agreement. These measures must be strictly complied with at all times. The STAM provides the procedures for submission, approvals and extensions of the Traffic Accommodation (TA) written applications, plans and notices. The STAM shall be read in conjunction with the Local Authorities Act, 1992 (Act 23 of 1992), Part IX: Streets and Public Places.

The Developer shall ensure that the Contractor organizes his work in such a way to reduce the inconvenience to traffic to a minimum, and no public road or street shall be completely closed off without prior approval as defined herein. If so ordered by the QMO, the Developer shall provide

suitable bridges at street and driveway crossings where traffic must cross open trenches. The Developer shall construct temporary accesses to adjacent private properties if necessary to ensure access. Damage caused to existing roads and sidewalks by construction equipment or public traffic shall be repaired by the Developer at own cost. All roads shall be reinstated to their original condition.

Communications: In order to simplify the communication channels regarding matters of technical nature on the construction site, such channel shall be directly between the Developer's Engineer and the Council's QMO. Such communications shall however be copied to the Council's Project Coordinator and the Developer's Representative.

## **1. CoW's Technical Standards for Traffic Accommodation**

**1.1** All traffic signs and control of traffic shall be in accordance with the SADC Road Traffic Signs Manual. In addition, the more comprehensive version Chapter 13, Volume 2: Appendix B of the South African Road Traffic Signs Manual for road works signing should be used whenever applicable. The latter is the manual that should guide all road signs related to construction sites / road works. The Road Traffic Signs Manual shall form part of the Council's Standard Traffic Accommodation Manual, by reference. Nothing that is contained in it will be duplicated.

The Developer shall liaise, co-operate and obtain written approval from the relevant Local and Traffic Authorities in each case where the Works affect existing roads. The Developer's proposed accommodation of traffic must be approved in accordance with the procedures contained in Council's **STAM**. Work shall not be allowed to commence without these signs in place. After the signs are put in place, the Developer shall obtain written confirmation from the Traffic Authorities to state that it is correct. This confirmation must be kept on site record and produced on request by the Council's QMO at any time.

**1.2** The use of plastic "danger tape" is discouraged. Its use will only be allowed in rare cases and only on approval by the Engineer and the QMO, and only when it is wrapped around two strands of equally spaced binding wire. The Developer must ensure that its Contractor erects PVC temporary barrier fencing to cordon off dangerous areas.

**1.3** The Developer shall ensure that the Engineer frequently assesses the adequacy of any temporary signage or barricades to ensure public safety. The Developer shall provide and maintain in proper condition all necessary barricades, lights, warning signals and all direction signs necessary to enable traffic to follow the routes of diversion throughout their length.

**1.4** The Developer shall provide flagmen at all deviations and/or obstructions where deemed necessary by the Engineer.

**1.5** Should the QMO become aware of any inadequacy of the temporary signage, it shall immediately notify the Engineer who shall address the matter immediately, and ensure that the situation is made safe and compliant to road traffic legislation and the provisions of the Agreement. In the event that such inadequacy is not immediately addressed, the QMO, in consultation with the Traffic Management Division of Council, shall order the immediate suspension of the work until such time that the accommodation of traffic is made adequate and safe.

**1.6** The Developer shall ensure that the applicable insurances as required in the Agreement are in place and shall sign an indemnity clearing the Local Authority, as applicable, from all liabilities in respect of excavations and works on or adjacent to trafficked roads, before any work within the municipal road reserve commences. In the event that such indemnity is not in place, the QMO shall order the immediate suspension of the work until such time that the indemnity has been submitted to Council and found to be in order.

## **2. Procedure for the Submission and Approval of the Traffic Accommodation (TA) Written Application and Plan**

**2.1** Before any road / lane is closed on the development, the Developer shall, in terms of the Agreement, Section 2, Clause 2.18.2: *Sub-clause 18.3 Insurance against Injury to Persons and Damage to Property*; ensure that the public indemnity insurance is in place and clear the Local Authority from all liabilities in respect of excavations and works on or adjacent to trafficked roads.

**2.2** The Developer should apply at least one (1) week before the planned closure of the road / lane. This is to allow enough time for the approval process of the application and plan.

**2.3** The TA application can be collected from the COW Traffic Management Unit which is situated at the City Police – Traffic Unit, PA De Wet Building, Erf 6327W, Corner of Sishen & Essen Streets.

**2.4** The Contractor shall prepare and present the TA written application, plan and notice to the Engineer.

**2.5** The Engineer then checks it for compliance with the SADC Road Traffic Signs Manual, the construction contract and the work programme; and confirms compliance.

**2.6** Once the Engineer has confirmed compliance of the application by signing the cover page and initialising on each page, the written application and plan are submitted to the Council's QMO: Roads and Stormwater Division.

**2.7** The QMO will confirm compliance with the SADC Road Traffic Signs Manual, the provisions of the Agreement, the construction contract and the work programme (*approximately two (2) working days is required for this process*).

**2.8** Once adequacy is confirmed, the QMO will sign it off for submission to the Section Engineer: Traffic Flow Division, Department of Urban Planning & Property Management. The Section Engineer will check the adequacy of traffic flow and interest of the public in the affected area (*approximately two (2) working days is required for this process*) and return to the QMO.

**2.9** The QMO will inform the Engineer to collect the application for submission to the Divisional Head: Traffic Management Unit (TMU), Department of City Police.

**2.10** The Divisional Head: TMU will check the written application and the traffic signs on the TA plan. In addition, the traffic signs need to be put in place and a site inspection done by the Traffic Authorities at the TMU; whereby they will issue a written confirmation to state that the traffic signs are correct. (*approximately three (3) working days required for this process*)

**2.11** Once signed off by the QMO, the Section Engineer: Traffic Flow and the Divisional Head: TMU, this will then signify approval. The Engineer should ensure that all pages of the TA written application and plan are signed by the relevant officials.

**2.12** Upon approval by the Divisional Head: TMU, the Engineer shall arrange to collect the approved documents (i.e. the TA written application, TA plan and traffic signs on-site confirmation).

**2.13** Two (2) hard copies of the approved documents should be forwarded to the QMO for record purposes.

**2.14** It should be noted that the CoW reserves the right to revoke a road / lane closure with prior notice. This can happen, but is not limited to; when no road works are conducted, if the traffic accommodation is not to standard during the closure and if such road closures create unexpected traffic behaviour or major delays.

**2.15** It should be noted that all communications pertaining to the TA application and plan will be done through the Council's QMO and the Developer's Engineer. This is to ensure that there is a single point of contact and also to reduce confusion within the process.

**2.16** TA Application Cover Page:

- i. It should be noted that a standard cover page will be used to depict all the approval signatures and keep track of the TA application (**refer to Template 1: Cover page**).
- ii. The preceding signatures should be on before the final approval is made. Hence, it's the duty of the Developer to ensure that all stages of approval have been followed.

**2.17** Refer to **Template 2 for the typical sequence of principal events** for the submission and approval of the written application, TA plan and TA notice.

### **3. The minimum requirements for Traffic Accommodation Plans (layout, content and size)**

**3.1 TA Plan Template** - A typical standard traffic accommodation drawing which outlines the various layouts of traffic accommodation is attached to the Manual (**refer to the CoW Traffic Accommodation Standard Drawing, which can be obtained from CoW's Planning and Design Division in the Department of Urban Planning and Property Management**). For reference purposes, the standard traffic accommodation drawing is available on request from the Roads and Stormwater Division, 4<sup>th</sup> Floor, Townhouse Building.

It should be noted that the TA plan differs for every situation that is presented on the construction site. Thus, the onus is on the Developer to ensure that the correct traffic accommodation is applied for road / lane closures.

**3.2 Layout and content of the TA Plan** - The road layout of the TA plan shall be as per approved construction drawings and it shall comprise of the following:

- i. Section of the road / lane to be closed, clearly highlighted
- ii The correct traffic signs should be utilized,
- ii. The distance between the road signs should be clearly indicated,
- iii. The North arrow should be indicated and;
- iv. The closure period for the road / lane should be indicated in the top right corner of the plan.

**3.3 Size of the TA plan** - The acceptable size of the TA plan shall be A3, whereby the roads / lanes to be closed shall be legible. However, if the area that will be closed is larger and the words are not legible, a bigger size can be utilized. The plan shall be drawn with AutoCad or a similar drawing program.

### **4. Procedure for the Submission and Approval of the Traffic Accommodation (TA) Notices that are placed in the print media**

**4.1** In terms of the Local Authority Act, 1992 (Act 23 of 1992), Part IX, Section 50: Closing of streets or public places, Subsection (1)(a), it states that *"A local authority council may at any time upon notice as it may deem fit – (iii) temporarily close or divert any street or any portion of a street for all traffic for the purpose of maintenance or any reason which in its opinion requires it to be closed"*.

This implies that a notice for all road / lane closure (regardless of the period of closure) shall be made. The responsibility for the notices shall rest with the Developer

**4.2** Hence, the Developer's Engineer shall ensure that for all road / lane closures that a TA notice is submitted to the Council's QMO, at least seven (7) working days; prior to the road/lane closure.

**4.3** The notice for the print media (newspapers) shall be submitted in word format for approval and formation, as the CoW has a standard format for the notice that is placed in the newspapers and this will be used for all road / lane closures.

**4.4** For the locality map of the notice (which is the TA plan), the adverts shall have a simple schematic diagram of the road / lane closures (inclusive of detours if any) and this will be a simpler reduced version of the TA Plan. **Refer to the Template 3: CoW Standard Notice.** The schematic diagram shall illustrate the relevant street names and the affected areas where the traffic accommodation shall apply.

**4.5** The standard notice will be produced and forwarded to the Engineer, whereby the Developer will place the advertisements, at his own cost, in at least two local newspapers which shall be the following: The Namibian and Die Republikein, or similar.

**4.6** Furthermore, the Developer shall inform the residents and business owners adjacent; and affected by the area of the road / lane closures. Leaflets can be used; however the discretion of communication will be left up to the Developer.

## **5. The Minimum Requirements for Notices (layout, content and size), including the Locality Plan forming part of the Notice**

**5.1** A standard CoW Notice will be used for all notices that will be sent through the print media.

**5.2** Content of the Notice - The Notice will contain the title of the roads / lanes that will be closed, the description of the affected road works, the duration of the road / lane closure, the locality map of the area (with the affected area visibly highlighted) and the contact details of the relevant Parties.

**5.3** Size of the notice - The size of the advertisement that will be placed in the newspaper will be A5 size with at least 3 column widths.

**5.4** Locality map – The font on the map will be Arial 11 and shall be drawn with AutoCad or similar drawing programs. However, the locality map shall be submitted in jpeg format.

**5.5** It should be noted that the drawing for the locality map does not necessarily have to be that of the TA plan, as a simplified version of the TA plan is required due to the sizing of the newspaper adverts.

## **6. Payment Procedures for the Notices**

It shall be the responsibility of the Developer to place the Notice in the newspapers at his own cost. However, the content, layout and size of the standard CoW Notice should be adhered to.

## **7. Extensions on Existing Approved TA Applications and Plans**

**7.1** Once the existing TA plan has expired but the Works within the road reserve are still ongoing, a detailed written motivation for the extension will be required. The motivation has to provide justification for the extension of the existing plan and this should run concurrently with the approved works programme of the development.

**7.2** All extension requests shall be submitted to the Council's QMO, whereby the QMO shall check and make approvals thereof.

**7.3** The Traffic Flow Division and Traffic Management Unit will not directly be involved in the approval of the extension. However, they will be given copies of the approved extension.

**7.4** It should be noted that extensions of road / lane closures will require a new notice to be placed in the local newspapers indicating the revised completion dates.

**7.5** It should further be noted that if the extensions are foreseen for the development, the initial written application shall provide all the phases of road / lane closures with clearly indicated dates of closures and openings.

## **8. Adjustments and Revisions to Existing TA Plans**

**8.1** It should be noted that the initial TA application should state all phases / sections that will be closed for the same construction area. This is to ensure that any adjustments or revisions required for the area will have been presented from the beginning, taken into consideration and approved in the initial written application.

**8.2** Thus, a new application will not be needed if all the road / lane closures for the same area were covered in the initial application.

**8.3** However, if for any unforeseen circumstances and road / lane closures that were not covered in the initial TA application; the changes to the existing TA plan will need to be resubmitted for approval, in terms of Clause 2 of the STAM.

**8.4** The CoW reserves the right to instruct such adjustments, should they be found to be necessary.

## **9. Schedule for the Subsequent Road / Lane Closures of the Entire Development**

**9.1** The Developer shall draw up a schedule for the proposed road / lane closures for the entire period of the development.

**9.2** This schedule should link the dates and activities on the approved programme of the development. The schedule should also include proposed dates for the advertisement of notices for the road / lane closures.

**9.3** The schedule will be used for planning purposes, to facilitate the TA applications and also to keep track of expiration dates on road / lane closures.

## **10. Maximum Duration of Road / Lane Closures, before it becomes necessary to Re-apply**

The road / lane will be allowed to remain closed for a period that is not more than 12 months. If the 12 month period lapses and there is a need for the road / lane to remain closed, then Clause 7 above will apply.

## **11. Procedures for Opening or Lifting Restrictions (notifications to authorities, public and media)**

At least one week prior to the road / lane opening, an inspection shall be held with the Council's QMO and any relevant Traffic Authority. This is to ensure that the permanent road signs are put back up and that the road is restored to its original state.

## **12. Penalties on Road / Lane closures**

When the closure of the road / lane has not been approved, has expired and no TA extension has been made; the Developer will be in breach of its obligations under Sub-Clause 2.4.8 'Safety Procedures' and this STAM of the Agreement; and penalties shall accordingly apply. No public road / lane shall be completely closed without approval.

This is in terms of the Local Authority Act, 1992 (Act 23 of 1992) Part IX, Section 51: Offences and penalties in relation to streets and public places, Subsection (1)(a) that *"Any person who without the prior approval in writing of the local authority council and otherwise than in accordance with such conditions, if any, as may be determined by the local authority council in the public interest – (a) constructs, closes or diverts any street in its areas; shall be guilty of an offence and on conviction liable to a fine not exceeding N\$ 2000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment"*.

In the event that an offence has been committed, the Act will come into effect and the Developer will be held liable to comply with the penalties. The offences and penalties will be enforced by the Traffic Management Unit.

As a result, the COW reserves the right to discontinue any construction works and reopen the road / lane; until such a time whereby an application, extension or adjustment (if any) has been approved by the relevant Traffic Authorities. The Developer shall ensure that the street is restored back to its



original state, for the safety of the pedestrians and vehicular traffic until such approval has been made.

COPY

## TEMPLATE 1: COVER PAGE

BOX 59  
WINDHOEK

CITY OF WINDHOEK

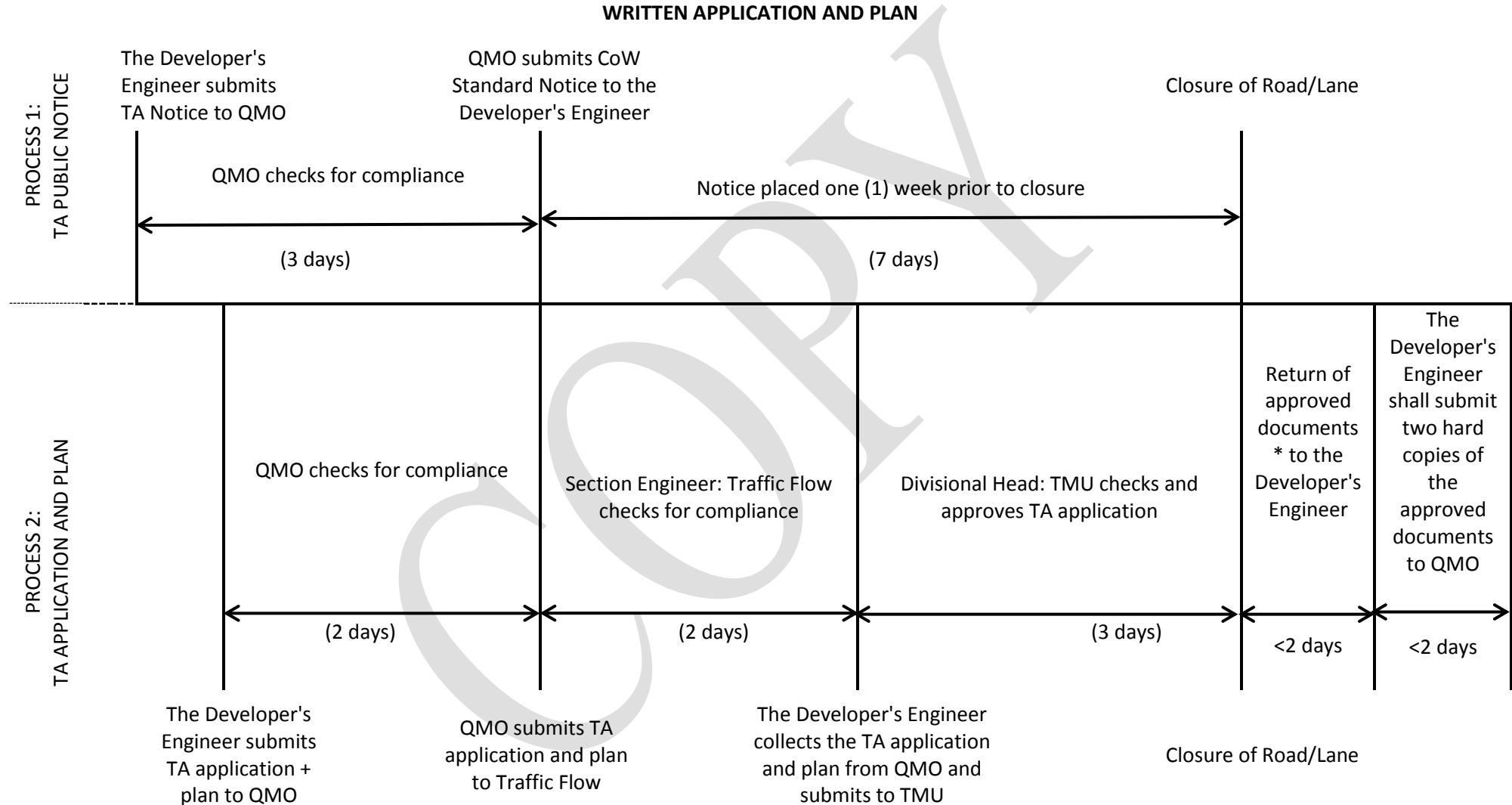


APPROVAL FOR THE TRAFFIC ACCOMMODATION OF [Insert name of Road/Lane Closure]

	Name	Signature	Date
Developer's Engineer  (Name of Firm)			
City of Windhoek Quality Monitoring Official: Roads and Stormwater  Department of Infrastructure, Water and Technical Services			
City of Windhoek Section Engineer: Traffic Flow  Department of Urban Planning and Property Management			
City of Windhoek Divisional Head: Traffic Management Unit  Department of City Police			

## TEMPLATE 2: TYPICAL SEQUENCE OF EVENTS

### TYPICAL SEQUENCE OF PRINCIPAL EVENTS FOR THE SUBMISSION AND APPROVAL OF THE TRAFFIC ACCOMMODATION (TA) PUBLIC NOTICE, WRITTEN APPLICATION AND PLAN



## TEMPLATE 2: TYPICAL SEQUENCE OF EVENTS (cont.)

### **Notes:**


1. *Approved documents: TA written application, TA plan, traffic signs on-site confirmation*
2. *days = working days*
3. *The TA Notice and TA application were separated into two processes, as the submission and approval channels differ.*
4. *The processes for the TA Notice and TA application can run concurrent with each other.*
5. *Every TA application submitted should be accompanied by a TA Notice being placed in the print media.*

## TEMPLATE 3: CITY OF WINDHOEK STANDARD NOTICE

*City of  
many faces*

**City of Windhoek**

Vision: To enhance the quality of life of all our people



# PUBLIC NOTICE

## ROADWORKS ALONGSIDE FRANKIE FREDERICKS DRIVE - KLEINE KUPPE

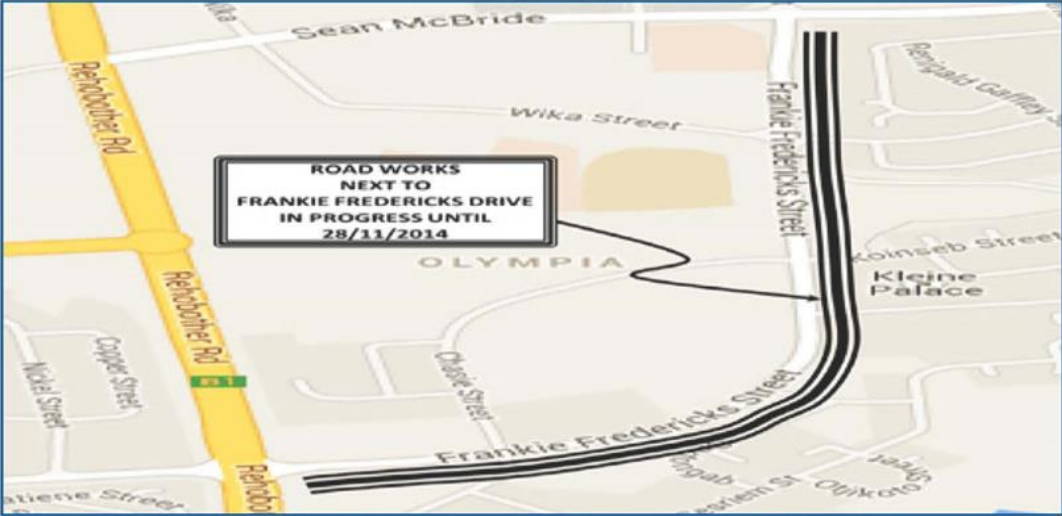
**Description of the Affected Roadworks:**  
Roadworks for the construction of the widening of Frankie Fredericks Drive will be extended up to Sean McBride Street and Aus Road. The existing carriageway on Frankie Fredericks Drive will be accessible and motorists need to be cautious about the roadworks. This is necessary in order to facilitate the widening of the existing roads around the new Grove Mall and upgrading of services.

**Duration:**  
The construction work will commence on 15 November 2013 until 28 November 2014.

We urge all road users to adhere to the traffic signage and speed restrictions around the construction works.

We apologize for any inconvenience while this necessary work is underway.

**Locality Map:**



**Issued by:**  
Office of the Chief Executive Officer  
Corporate Communications, Marketing, Tourism and Customer Care  
Tel: +264 61 290 2365 / 2044  
Fax: +264 61 290 2344  
E-mail: [communication@windhoekcc.org.na](mailto:communication@windhoekcc.org.na)

**Enquiries:**  
Department of Infrastructure, Water & Technical Services  
Engineer: Contract Management  
Dia-Maria Shivute  
Tel: +264 61 290 2028  
Fax: +264 61 290 2583  
Email: [Dia-Maria.Shivute@windhoekcc.org.na](mailto:Dia-Maria.Shivute@windhoekcc.org.na)

Seelenbinder Consulting Engineers  
Engineer  
Jannie Burger  
Tel: +264 61 23 5000  
Fax: +264 61 23 5001  
Email: [jannie.burger@sce.com.na](mailto:jannie.burger@sce.com.na)

APPENDIX 3

**MINOR OUTSTANDING WORK AND DEFECTS**

DATE: \_\_\_\_\_

**Development Name:**

**Developer:**

THE FOLLOWING MINOR OUTSTANDING WORK AND DEFECTS SHALL BE COMPLETED OR RECTIFIED AS REQUIRED BY THE AGREED COMPLETION DATE	DUE COMPLETION DATE

[illegible]

## APPENDIX 4

## **PRIVATE DEVELOPMENTS: COMMENCEMENT PROCEDURE - CHECKLIST**

*This Document is to be completed by the Developer's Engineer before and during the commencement of the Execution Stage and submitted to the Council's QMO from time to time as requested*

PROJECT NAME	<input type="text"/>
DEVELOPER NAME	<input type="text"/>
ENGINEER NAME	<input type="text"/>
CONTRACTOR NAME	<input type="text"/>
DATE OF MOA (AGREEMENT)	<input type="text"/>

### **A. UPON COMPLETION OF CONSTRUCTION CONTRACT DOCUMENT**

Action	Agreement Reference	Information	Done (X)
Council's Quality Monitoring Official (QMO) designated	Clause 2.3 of Section 4	Name of QMO:	<input type="checkbox"/>
Council's Technical requirements included in Construction contract	Clause 4.1 of Section 4; Appendix 1		<input type="checkbox"/>
<b>Pre-construction meeting</b>	Clause 4.2.1 of Section 4	Attach minutes	<input type="checkbox"/>
<b>Proposed Contractors meet Council's Requirements</b>	Clause 4.3.1 of Section 4	Attach acceptance by Council's Representative	<input type="checkbox"/>
Provide QMO with copy at this point			

### **B. BEFORE COMMENCEMENT OF CONSTRUCTION CONTRACT**

Action	Agreement Reference	Information	Done (X)
<b>Copy of insurance submitted to Council's Representative</b>	Clause 2.18 of Section 2	Attach copy	<input type="checkbox"/>
<b>Performance Guarantee and Retention Moneys submitted</b>	Clause 2.4.2 of Section 2	Attach copy	<input type="checkbox"/>
<b>Copy of approved construction drawings submitted to QMO</b>	Point 1 of Appendix 1		<input type="checkbox"/>
<b>Copy of Specifications</b>	Point 1 of Appendix 1		<input type="checkbox"/>
Provide QMO with copy at this point			

### **C. UPON COMMENCEMENT OF CONSTRUCTION CONTRACT**



Action	Agreement Reference	Information	Done (X)
Copy of Construction Programme submitted to QMO	Clause 4.3.2 of Section 4	Date of programme	<input type="checkbox"/>
Quality Assurance Manual (QAM) - Volume 1 submitted to QMO	Point 2 of Appendix 1	Date submitted	<input type="checkbox"/>
Continuous submission of Quality Assurance data / QAM Volume 2 submitted to QMO	Point 2 of Appendix 1		<input type="checkbox"/>

Provide QMO with copy at this point

Comments:

Process confirmed to be correct:

Developer's Engineer, date