

**UNIVERSITY OF JOHANNESBURG**

**REPLACEMENT OF RUSTED WATER PIPES FOR DRINKING WATER**

**TENDER NO. RFP UJ 94/2022**

**DETAILS OF AMENDMENTS TO THE JBCC PRINCIPAL BUILDING AGREEMENT (EDITION 4.1 MARCH 2005)**

	The JBCC Series 2000 Principal Building Agreement (edition 4.1 March 2005) prepared by the Joint Building Contracts Committee Inc. amended as hereinafter described, shall be the <b>agreement</b>	
	The JBCC Series 2000 preliminaries (May 2005) prepared by the Joint Building Contracts Committee Inc. amended as hereinafter described shall be deemed to be incorporated in these <b>bills of quantities</b>	
	<b>Contractors</b> are referred to the above-mentioned documents for the full intent and meaning of each clause thereof	
	These clauses are hereinafter referred to by clause number and heading only. Where standard clauses or alternatives are not entirely applicable to this contract such modifications, corrections or supplements as will apply are given under each relevant clause heading and such modifications, corrections or supplements shall take precedence notwithstanding anything contrary contained in the above-mentioned documents	
	Where any item is not relevant to this specific contract such item is marked N/A, signifying "not applicable"	
	<b><u>PREAMBLES FOR TRADES</u></b> The Model Preambles for Trades (2008 edition) as published by the Association of South African Quantity Surveyors shall be deemed to be incorporated in these <b>bills of quantities</b> and no claim arising from brevity of description of items fully described in the said Model Preambles for Trades will be entertained.	
	Supplementary preambles to the Model Preambles covering clauses of a general nature, clauses pertaining to specific materials and amendments to clauses in the Model Preambles are incorporated in these <b>bills of quantities</b> to satisfy the requirements of this <b>project</b>	
	The contractor's prices for all items throughout these <b>bills of quantities</b> must take account of and include for all of the obligations, requirements and specifications given in the Model Preambles and in any supplementary preambles	
	<b><u>SECTION A - PRINCIPAL BUILDING AGREEMENT</u></b>	
	<b><u>DEFINITIONS (A1)</u></b>	

Contractor

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1	Clause 1.0 - Definitions and interpretation	
	Clause 1.1 is amended by the replacement and addition of the following definitions:	
	Amend the following definitions by deleting them and replacing them with the following:	
	<b>"Interest"</b> means the prime lending rate of First National Bank as adjusted from time to time.	
	<b>"Penalty"</b> means the stipulated amount per <b>calendar day</b> payable by the <b>contractor</b> to the <b>employer</b> where the date, or the revised date for <b>practical completion</b> , whichever is the latter, has not been met.	
	Add further definitions as follows:	
	<b>"Confidential Information"</b> means that the <b>contractor</b> agrees that it shall hold in confidence all information, documents, data, or know-how disclosed by the <b>employer</b> , and will not disclose to any third party or use (including to the commercial detriment of the <b>employer</b> ), the confidential information or any part thereof without the <b>employer's</b> prior written approval or consent, provided that the confidential information may be disclosed to: A government entity pursuant to any law, subject to the <b>contractor</b> notifying the <b>employer</b> to the extent possible prior to making the disclosure.	
	<b>"Force majeure"</b> means an exceptional event or circumstance that: (a) Could not have been reasonably foreseen; (b) Is beyond the control of the <b>parties</b> ; and (c) Could not reasonably have been avoided or overcome. The inclusive list of such events or circumstances is limited, as follows: <ul style="list-style-type: none"> <li>• Acts of war (declared or not), invasion, hostile acts of foreign enemies.</li> <li>• Insurrection, rebellion, revolution and riots and terrorism.</li> <li>• Strikes (other than the <b>contractor's</b> employees or subcontractors), or lockout.</li> <li>• Sonic shockwaves caused by aircraft or other aerial devices, and ionising or radio-active contamination.</li> <li>• Natural catastrophes including earthquakes, floods, hurricanes or volcanic activity.</li> </ul>	
	<b>"Parties"</b> means the person or entity named in the <b>schedule</b> or appointed by the <b>employer</b> to deal with specific aspects of the <b>works</b>	
	<b>"the Project"</b> means the upgrade of the Physics Undergraduate Lab for the Faculty of Science in the kelder area at C1 Lab Building at the Kingsway (APK) Campus for the University Of Johannesburg	
	<b>"Programme"</b> means a diagrammatic representation of the planned execution of the work or activities, indicating the dates for commencement and <b>completion</b> , which <b>programme</b> is prepared and maintained by the <b>contractor</b> .	
	<b>"the Tender"</b> means the invitation to prospective service providers to provide the <b>employer</b> with Main Building Works under Tender Number: <b>T UJ 47/2019</b> , the Tender Document, Sections thereof and Annexure there to which are deemed to be incorporated herein	
	In respect of clause 1.7, add the following word: "provisional" between the words "purpose of" and "sentence".	
	Add further clauses after clause 1.9 as follows:	
	Add the following as clause 1.10:	

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	<p>If the <b>contractor</b> constitutes a joint venture, consortium or other unincorporated grouping of two or more persons:</p> <p>(i) These persons shall be deemed to be jointly and severally liable to the <b>employer</b> for the performance of the <b>agreement</b>;</p> <p>(ii) These persons shall notify the <b>employer</b> of their leader who shall have the authority to bind the <b>contractor</b> and each of these persons; and</p> <p>(iii) The <b>contractor</b> shall not alter its composition or legal status, without the prior written consent of the <b>employer</b>.</p>	
	<p>Add the following as clause 1.11:</p> <p>Failure by any <b>party</b> to enforce any provisions of this <b>agreement</b>, shall not constitute a waiver of terms of this <b>agreement</b> or affect such party's rights to require the performance at any time in the future.</p>	
	<p>Add the following as clause 1.12:</p> <p>If any definition contains a substantive provision conferring rights or imposing obligations on any <b>party</b>, notwithstanding that it is only in the definition (or such other clause), effect shall be given to it as if it were a substantive provision in the body of the <b>agreement</b>.</p>	
	<b>OBJECTIVE AND PREPARATION (A2 - A14)</b>	
2	Clause 2.0 - Offer, acceptance and performance	
3	Clause 3.0 – Documents	
	<p>Clause 3.1 and 3.2 are deleted and clause 3.2 is replaced with the following clause:</p> <p>The <b>contractor</b> shall provide a <b>construction guarantee</b> in the JBCC Construction Guarantee Format in terms of 14.1.</p>	
	<p>Delete clause 3.3 and replace it with the following clause:</p> <p>The <b>contractor</b> shall waive its lien or right of continuing possession of the works in favour of the <b>employer</b>. The waiver shall be according to the JBCC Waiver of Contractor's Lien form, and shall ensure that any <b>selected or nominated subcontractors</b> or <b>contractor's</b> domestic subcontractors, also waive their lien or right of continuing possession, in favour of the <b>employer</b> and sign the JBCC Waiver of Contractor's Lien form.</p>	
4	Clause 4.0 - Design responsibility	
5	Clause 5.0 - Employer's agents	
6	Clause 6.0 - Site representative	
7	Clause 7.0 - Compliance with regulations	
	<p>Clause 7 is amended by adding the following as clause 7.3:</p> <p>Without limiting the generality of the provisions of clause 7.0 of the <b>agreement</b>, the <b>contractor's</b> attention is drawn to the provisions of the Construction Regulations, 2003 issued in terms of the Occupational Health and Safety Act, 1993 in which it is specifically stated that the <b>employer</b> shall prepare a documented health and safety specification for the <b>works</b> and that the <b>employer</b> shall ensure that the <b>contractor</b> has made provision for the cost of health and safety measures during the execution of the <b>works</b>. The <b>contractor</b> shall price opposite this item for compliance with the act and the regulations and the provisions of the aforementioned health and safety specification.</p> <p>The Health and Safety Specification is included in the Annexures to the Tender Enquiry Document and is deemed to be incorporated herein.</p>	

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8	Clause 8.0 - Works risk	
	Delete clauses 8.5.1, 8.5.2 and 8.5.3, 8.5.4 and 8.5.5 and replace it with the following as clause 8.5.1: <b>force majeure</b>	
9	Clause 9.0 – Indemnities	
10	Clause 10.0 - Works insurances	
11	Clause 11.0 - Liability insurances	
12	Clause 12.0 - Effecting insurances	
13	Clause 13.0 - No clause	
14	Clause 14.0 – Security	
	Amend clause 14.3.1 by the deletion of 12.5% and replacing it with 10%.	
	Add the following as clause 14.9: The <b>employer</b> shall be entitled to deduct an amount equal to the value of 10% (ten percent) of each and every <b>payment certificate</b> , which amount is to be retained by the <b>employer</b> . The amount of the retention held by the <b>employer</b> will be reduced to 5% on the issue of the <b>certificate of practical completion</b> . The final retention will be released in the final <b>payment certificate</b> after the <b>certificate of final completion</b> has been issued. The retention amounts held as <b>security</b> by the <b>employer</b> shall be for the due fulfilment of the <b>contractor's</b> obligation to attend to any defects arising.	
	<b>EXECUTION (A15 - A23)</b>	
15	Clause 15.0 - Preparation for and execution of the works	
	Add the following clauses to clause 15.3:	
	15.3.5 The <b>contractor</b> shall have inspected the <b>site</b> and any existing structures and be fully acquainted with the conditions under which the <b>works</b> is to be executed, including means of access and any matters which may influence the execution and/or the pricing of the <b>works</b> .	
	15.3.6 Submit to the <b>principal agent</b> the priced <b>bill of quantities</b> /lump sum document with items priced to include all costs, overheads and profits, extended and cast within 15 (fifteen) <b>working days</b> of acceptance of the <b>contractor's</b> offer. The <b>principal agent</b> may instruct the <b>contractor</b> to adjust prices considered to be imbalanced or unreasonable, and to eliminate errors or discrepancies without any change to the <b>contract sum</b> .	
	15.3.7 Prepare and submit to the <b>principal agent</b> within 15 (fifteen) working days of being given possession of the <b>site</b> by the <b>employer</b> , a <b>programme</b> for the <b>works</b> in sufficient detail to enable the <b>principal agent</b> to monitor the progress of the <b>works</b> .	
	15.3.8 Coordinate the <b>programme</b> with subcontractors and direct <b>contractor's programmes</b> .	
	15.3.9 Submit to the <b>principal agent</b> a progress report containing all necessary information for the <b>principal agent</b> to monitor the progress of the <b>works</b> , in order to ensure no delays to the <b>works</b> , on a monthly basis.	
	15.3.10 Update the <b>programme</b> to illustrate progress of the <b>works</b> and revise the <b>programme</b> where the <b>principal agent</b> has revised the	

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	date for <b>practical completion</b> . The revised <b>programme</b> to be provided to the <b>principal agent</b> within 7 (seven) days of request by the <b>principal agent</b> to the <b>contractor</b> .	
	15.3.11 Maintain daily records of categories of persons and construction equipment employed on the <b>works</b> , and regularly provide copies of such daily records to the <b>principal agent</b> .	
	15.3.12 Allow the <b>employer</b> and <b>principal agent</b> reasonable access to the <b>works</b> , workshops or other places where the work is being prepared, executed or stored.	
	15.3.13 Provide, maintain and remove, on <b>practical completion</b> all temporary structures, construction equipment and notice boards.	
	15.3.14 On achieving <b>practical completion</b> , hand over to the <b>principal agent</b> all the information for the preparation of "as built" documents and applicable statutory/regulatory approval certificates.	
	15.3.15 On achieving <b>practical completion</b> , hand over to the <b>principal agent</b> all operating and instructions manuals, product guarantees and the like.	
	15.3.16 Cede to the <b>employer</b> on the date of issue of the <b>certificate of final completion</b> , any guarantees, warranties or indemnities pertaining to the <b>works</b> , including any subcontractors, whether nominated or selected.	
16	Clause 16.0 - Access to the works	
	Amend clause 16.0 clause by adding the following as clause 16.3: The <b>contractor</b> is bound by the terms of the University's Policy on Campus Access Control of 10 March 2009, and the Contractor has had regard to such policy in preparing the <b>tender</b> .	
17	Clause 17.0 - Contract instructions	
18	Clause 18.0 - Setting out of the works	
	Clause 18.0 is amended by the addition of the following clause:	
	Amend clause 18.0 by adding the following as clause 18.5: The <b>contractor</b> shall notify the <b>principal agent</b> if any encroachments of adjoining foundations, buildings, structures, pavements, boundaries, arrangements may be made for the rectification of any such encroachments	
19	Clause 19.0 – Assignment	
	Clause 19.1 is amended by deleting it and replacing it with the following: Neither the <b>employer</b> nor <b>contractor</b> shall assign or cede his rights or obligations	
20	Clause 20.0 - Nominated subcontractors	
	Add the following as clause 20.11: Unless expressly provided for elsewhere in this <b>agreement</b> , the <b>contractor</b> shall be responsible for the acts or defaults of any <b>nominated subcontractor</b> , his agent or employees, as if they were the acts or defaults of the <b>contractor</b> .	
21	Clause 21.0 - Selected subcontractors	
	Add the following as clause 21.11: Unless expressly provided for elsewhere in this <b>agreement</b> , the <b>contractor</b> shall be responsible for the acts or defaults of any <b>selected subcontractor</b> , his agent or employees, as if they were the acts or defaults of the <b>contractor</b> .	
	Add the following as clause 21.12:	

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	The <b>contractor</b> is to satisfy himself and give notice to the <b>principal agent</b> to such effect that tenderers to be appointed as <b>selected subcontractors</b> can fulfill the provisions of clauses 21.2.1 and 21.2.2 prior to the opening of the selected subcontract <b>tenders</b>	
	Clause 21.3.2 is deleted as well as the word "either" in clause 21.3	
22	Clause 22.0 - Employer's direct contractors	
23	Clause 23.0 - Contractor's domestic subcontractors	
	<b>COMPLETION (A24 - A30)</b>	
24	Clause 24.0 - Practical completion	
25	Clause 25.0 - Works completion	
26	Clause 26.0 - Final completion	
27	Clause 27.0 - Latent defects liability period	
	Add the following as clause 27.3: The <b>contractor</b> shall make good all <b>latent defects</b> that appear up to the date of the expiry of the <b>latent defects</b> liability period.	
28	Clause 28.0 - Sectional completion	
29	Clause 29.0 - Revision of date for practical completion	
	Clause 29.2.10 is deleted	
	Clause 29.0 is amended by the addition of the following clauses:	
	29.9 A revision of the date for <b>practical completion</b> in terms of this clause will only be considered when work on the critical path of the <b>programme</b> for the <b>works</b> is affected (clause 29.0)	
	29.10 The removal and replacement of materials and/or workmanship that do not conform to specification or drawings shall not constitute grounds for a revision of the date for <b>practical completion</b> nor for an adjustment to the <b>contract value</b> (clause 29.3)	
	Delete clause 29.1.4 and replace it with: " <b>force majeure</b> ".	
	Amend clause 29.4.3 by the deletion of the expression "failing which the <b>principal agent</b> shall not consider such claim" and replacing it with the expression "failing which the <b>contractor</b> shall forfeit such claim, and shall not be entitled to a revision of the date for <b>practical completion</b> or adjustment of the <b>contract value</b> ."	
	Amend clause 29.5 by: Deleting the reference to "60 (sixty) days" and replacing it with "40 (forty) days"; And add at the end of clause 29.5 the expression ",shall not be entitled to a revision of the date for <b>practical completion</b> or adjustment of the <b>contract value</b> ."	
30	Clause 30.0 - Penalty for non-completion	
	The penalty for the <b>works</b> that does not reach <b>practical completion</b> by the required date as set out in clause 42.2.7 shall be R 5 000.00/ <b>calendar day</b>	
	Clause 30.0 is amended by the addition of the following clauses:	
	30.3 Where the <b>contractor</b> fails to bring the <b>works</b> or <b>sections</b> thereof to <b>works completion</b> within forty (40) <b>working days</b> of the date of the	

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	issue the <b>works completion</b> list or revision thereof in terms of clause 30.4, the <b>contractor</b> shall be liable to the <b>employer</b> for the <b>penalty</b> per <b>calendar day</b> for non-completion of the <b>works</b> at the rate stated in clause 30.7. The <b>principal agent</b> shall calculate the <b>penalty</b> due from and including forty one (41) <b>working days</b> after the date or revised date in terms of clause 30.4 of the issue of the <b>works completion</b> list up to and including the actual date of <b>works completion</b> of the <b>works</b> or <b>section</b> thereof	
30.4	The <b>contractor</b> may request additional time for the completion or rectification of works on the <b>works completion</b> list, within 5 <b>working days</b> from receipt of the <b>works completion</b> list, failing which the <b>principal agent</b> shall not consider such claim. The granting of additional time will be by decision of the <b>principal agent</b>	
30.5	Where the <b>contractor</b> fails to bring the works or <b>sections</b> thereof to <b>final completion</b> within one hundred and twenty (120) <b>calendar days</b> of or revision thereof in terms of clause 30.6, the <b>contractor</b> shall be liable to the <b>employer</b> for the <b>penalty</b> per <b>calendar day</b> for non-completion of the <b>works</b> or each <b>section</b> thereof at the rate stated in clause 30.7. The <b>principal agent</b> shall calculate the <b>penalty</b> due from and including one hundred and twenty one (121) <b>calendar days</b> after the date of the <b>certificate of works completion</b> or revised date in terms of clause 30.4, up to and including the actual date of <b>final completion</b> of the <b>works</b> or <b>section</b> thereof	
30.6	The <b>contractor</b> may request additional time for the completion or rectification of <b>works</b> on the <b>defects</b> completion list, within 5 <b>working days</b> from receipt of the <b>defects</b> completion list, failing which the <b>principal agent</b> shall not consider such claim. The granting of additional time will be by decision of the <b>principal agent</b>	
30.7	The <b>penalty</b> will be calculated as follows: For the <b>works</b> that did not reach <b>works completion</b> or <b>final completion</b> <b>Penalty amount: R 1 250.00/calendar day</b>	
30.8	Where the <b>employer</b> levies such a <b>penalty</b> the <b>principal agent</b> shall detail the amount for recovery in terms of clause 33.1.1	
30.9	The <b>contractor</b> shall agree with the <b>principal agent</b> in writing at least five (5) <b>working days</b> before access to the <b>works</b> is required for the completion or rectification of <b>works</b> on the <b>works completion</b> list. Should the <b>contractor</b> not be allowed access to the <b>works</b> as agreed, then the <b>contractor</b> will be granted additional time for completion of the <b>works</b> on the <b>works completion</b> list, equal to the time access was refused	
	<b>PAYMENT (A31 - A35)</b>	
31	Clause 31.0 - Interim payment to the contractor	
	Clause 31.0 is amended as follows:	
	By adding the following at the end of clause 31.7 "Notwithstanding the provisions of this clause, the <b>contractor</b> bears the risk of loss or damage to any <b>materials and goods</b> , due to any cause whatsoever, other than the <b>employer's</b> wilful misconduct or gross negligence	

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	in respect of such <b>materials and goods.</b> "	
	<p>Clause 31.9 is amended by deleting it and replacing it with the following clause:.</p> <p>The <b>employer</b> shall pay the <b>contractor</b> the amount certified in an interim <b>payment certificate</b> within thirty (30) <b>calendar days</b> following the date of issue of the <b>payment certificate</b>. Payment shall be subject to the <b>contractor</b> giving the quantity surveyor a valid <b>tax</b> invoice for the amount due</p>	
	Clause 31.10 is deleted	
32	Clause 32.0 - Adjustment to the contract value	
	Clause 32.0 is amended by the addition of the following expressions and clauses:	
	Add in clause 32.6 after the words "no compensation will be made" the following expression: "and such claim shall be forfeited."	
	<p>Add the following as clause 32.16:</p> <p>All fluctuations in costs, with the exception of fluctuations in the rate of Value Added Tax shall be for the account of the <b>contractor</b>. Clause 32.13 shall therefore not apply</p>	
	<p>Add the following as clause 32.17:</p> <p>Where prices are submitted by the <b>contractor</b> or <b>nominated/selected subcontractors</b> during the progress of the <b>works</b> in respect of <b>contract instructions</b> or in regard to a claim under the terms of the <b>agreement</b> and notwithstanding the fact that such prices may be used in an interim <b>payment certificate</b>, there is to be no presumption of acceptance. Should the <b>principal agent</b> wish to accept any such prices prior to the issue of the final <b>payment certificate</b>, it will be in writing</p>	
33	Clause 33.0 - Recovery of expense and loss	
	Clause 33.1.4 is deleted	
	<p>Add the following as clause 33.7:</p> <p>Payment of compensatory <b>interest</b> in terms of 31.10 shall not apply since clause 31.10 has been deleted</p>	
34	Clause 34.0 - Final account and final payment	
	<p>Clause 34.0 is amended by the addition of the following as clause 34.15:</p> <p>The <b>employer</b> shall not pay any <b>interest</b> on amounts payable to the <b>contractor</b> for one hundred and forty seven (147) <b>working days</b> after the date of issue of the <b>certificate of practical completion</b>. The <b>employer</b> shall, however, pay <b>interest</b> to the <b>contractor</b> at the rate stipulated in clause 34.11 on any amounts payable to the <b>contractor</b> more than one hundred and forty seven (147) <b>working days</b> after the date of issue of the <b>certificate of practical completion</b> but only for such period as the settlement of the <b>final account</b> is delayed by the non-performance of the <b>principal agent</b> or the <b>employer</b> or his <b>agents</b>. In evaluating non-performance for purposes of this clause a reasonable time shall be allowed by the <b>principal agent</b> to the <b>employer</b> or his <b>agents</b> to respond to any matter brought to his/their attention and which may affect the settlement of the <b>final account</b></p>	
35	Clause 35.0 - Payment to other parties	
	<b>CANCELLATION (A36 - A39)</b>	

Contractor

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Employer

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36	Clause 36.0 - Cancellation by employer - contractor's default	
37	Clause 37.0 - Cancellation by employer - loss and damage	
38	Clause 38 - Cancellation by contractor - employer's default	
38	Clause 39 - Cancellation - cessation of the works	
	<b>DISPUTE (A40)</b>	
40	Clause 40.0 - Dispute settlement	
	<b>SUBSTITUTE PROVISIONS (A41)</b>	
41	Clause 41 - State clauses	

## SIGNATORIES OF THE CONTRACTING PARTIES

Please sign below confirming the above amendments made to the provisions of The JBCC Series 2000 Principal Building Agreement (edition 4.1 March 2005) have been examined and agreed upon.

For and on behalf of the Employer

Name (Capitals): \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Designation: \_\_\_\_\_

On behalf of: \_\_\_\_\_

For and on behalf of the Contractor

Name (Capitals): \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Designation: \_\_\_\_\_

On behalf of: \_\_\_\_\_

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2