

# MOSES KOTANE LOCAL MUNICIPALITY



## RETENTION POLICY

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## Definitions

“Council” means a Municipal Council established in Section 18 of the Municipal Structures Act and referred to in Section 157 (1) of the Constitution.

“CIDB” is a national body established by an Act of Parliament (Act 38 of 2000).

“Contract” means the written agreement entered into between the Council and the Contractor, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.

“Contractor” the firm or person signs the contract and commissioned to construct the work.

“Defects” are aspects of the works that are not in accordance with the contract. They usually occur because of design deficiencies, material deficiencies, specification problems or workmanship deficiencies.

“Defects Liability Period” the period for which the contractor is required to “guarantee” the completed works and to rectify any defects that may be discovered or appear. The defects liability period starts when the Municipality is satisfied that the works are complete and takes delivery or handed over to the Municipality.

“Municipality” means the Moses Kotane Local Municipality established in terms of Section 155 of the Constitution.

“Register” means the official register kept for receipting all unclaimed deposits.

“Retention” this is money, usually from 5% to 10% of the value of the work done, that is held back by the Municipality to correct defective work.

“Subcontractor” appointed by the contractor to perform a part of the construction works under subcontractor.

“Disputes” dispute is defined as an unresolved matter of dissatisfaction or differences.

## Section 1

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## Section 2

### Introduction

The purpose of this policy is to ensure sound, uniformity and proper administration of all retention money retained by the Municipality.

## Section 3

### Objective of the policy

The objectives of the policy are to:

- 3.1 To provide a framework on how to deal with retention monies withheld by the Municipality for capital projects.
- 3.2 To reduce the liability of the Municipality.

## Section 4

### Background

Retention is a percentage usual from 5% to 10%, of the amount certified as due to the Contractor on an interim certificate that is deducted from the amount due and retained by the Municipality. The purpose of the retention is to ensure that the Contractor properly completes the activities required of them under the contract. Retention can also be applied to nominated sub-contractors.

## Section 5

### Applicable Legislation

- 5.1 The Construction Industry Development Board Act 38 of 2000. This act regulates the construction industry as a whole and publishes standards, directives and regulations to give effect to this objective. The Construction Industry Development Board Act 38 of 2000. This act regulates the construction industry as a whole and publishes standards, directives and regulations to give effect to this objective.
- 5.2 General Conditions of Contract for Construction Works.(GCC)
- 5.3 Joint building contractors committee . (JBCC)

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## Section 6

### Payment of Retention

- 6.1 Once the Engineer issues a copy of the final completion certificate, the Municipality is required to pay the retention money due to the contractor.
- 6.2 Half of the amount retained is released on certification of practical completion for GCC construction works
- 6.3 80% of the amount retained is released on certification of practical completion for JBCC contracts.
- 6.4 And remainder or balance is released at the end of the defects liability period.

## Section 7

### Defects liability period

- 7.1 Near the end of the defects liability period, the contractor requests the Municipality to inspect the project and identify defective items which the contractor is responsible for making good in terms of the contract.
- 7.2 The amount held as retention by the Municipality will only be paid when the contractor has properly completed the list of defects and certified by the Engineer.

## Section 8

### Retentions Register

- 8.1 The Municipality will keep a retention register.
- 8.2 The register will be maintained and updated monthly.

## Section 9

### Unclaimed Retention

According to Prescription Act 68 of 1969, extinction of debts by prescription

- (1) Subject to the provisions of this Chapter and of Chapter IV, a debt shall be extinguished by prescription after the lapse of the period which in terms of the relevant law applies in respect of the prescription of such debt.
- (2) By the prescription of a principal debt a subsidiary debt which arose from such principal debt shall also be extinguished by prescription.
- (3) Notwithstanding the provisions of subsections (1) and (2), payment by the debtor of a debt after it has been extinguished by prescription in terms of either of the said subsections, shall be regarded as payment of a debt.

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11. Periods of prescription of debts

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The periods of prescription of debts shall be the following:

(a) Save where an Act of Parliament provides otherwise, three years in respect of any retention not claimed.

9.1 It is the responsibility of the contractor to submit a claim for the retention once the defects liability period has lapsed.

9.2 Unclaimed retention which is over three (3 year after the defect liability period will be written off based on this policy and amount written off from the retention register will be transferred to the accumulated surplus and will form part of the reporting to council on annual basis.

9.3 Write offs can be approved by the Municipal Manager.

## Section 10

### Disputes and how to resolve them

The Municipality standard form contracts will cater for a dispute resolution mechanism which will state the procedure to be followed when a dispute arises with regards to retention.

## Section 11

### Review

This policy will be reviewed annually to ensure that it complies with changes in applicable legislation, reporting framework and the operating requirements of the Municipality.

## Section 12

### Responsibility for the upkeep of the policy

The Chief Financial Officer will be responsible for the administration upkeep of the policy.