



SERVICE LEVEL AGREEMENT

Entered into between

LESEDI LOCAL MUNICIPALITY

Herein represented by **ADVOCATE GUGULETHU THIMANE** in her capacity as Acting Municipal Manager of Lesedi Local Municipality duly authorized thereto by a resolution of Council of Lesedi Local Municipality taken at Heidelberg.

(Herein after called **LESEDI LOCAL MUNICIPALITY**)

And

ECE ENGINEERS

(Herein represented by **JUSTICE MALULEKA** in his capacity as The Managing Director who is duly authorised thereto)

(Herein after called **SERVICE PROVIDER**)

WHEREAS the Municipality has allocated responsibility to render services to the Service Provider for the Design and Project Management of the Water Services Infrastructure Grant Funded Projects for a period of Three (3) Years. **TENDER NUMBER: 31/2018**

The bottom right corner of the page contains several handwritten signatures and initials in black ink. There are three distinct signatures, with the initials 'MS' and 'GA' written to the right of the last signature.

AND WHEREAS The Service Provider was appointed to render the services outlined above, which appointment was accepted by the Service Provider on the terms and Conditions contained herein.

(Hereinafter referred to as **PARTIES**)

WHEREAS:

- A. **THE MUNICIPALITY** appoint the **SERVICE PROVIDER** for the Design, Project Management and Supervision of the **WATER SERVICES INFRASTRUCTURE GRANT FUNDED PROJECTS** in accordance with the standards of the **DEPARTMENT OF WATER AND SANITATION** the **SERVICE PROVIDER** is willing to provide such services.
- B. both the **MUNICIPALITY** and the **SERVICE PROVIDER** intends to enter into a service level agreement for the **DESIGN, PROJECT MANAGEMENT AND SUPERVISION OF THE WATER SERVICES INFRASTRUCTURE GRANT FUNDED PROJECTS** with each other, which agreement will run for a period of **Three (3) Years**.
- C. The agreement is entered into in terms of **LESEDI LOCAL MUNICIPALITY'S** Tender Number **31/2018** for provision of services mentioned in clause A above.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. ESSENTIAL

The **MUNICIPALITY** hereby appoints the **SERVICE PROVIDER** for the **DESIGN, PROJECT MANAGEMENT AND SUPERVISION OF WATER SERVICES INFRASTRUCTURE GRANT FUNDED PROJECTS**.

2. DURATION

- 2.1 Notwithstanding the date of signature, this agreement shall be of effect from **01st November 2018 to 30 November 2021** and shall be effective for a period of **Three (3) Years**.
- 2.2 Either **PARTY** can terminate this contract by giving a **30 (Thirty) day**, notice to the other.
- 2.3 The **SERVICE PROVIDER** shall have no legitimate expectation of any continuation of this contract beyond the period stipulated herein, nor expect any preferential treatment on second bid for tendering for the services.

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3. FEES STRUCTURE

The **PARTIES** agree to the following fee structure:

Activity	Amount
Total Provisionally Price	R 4 009 075.00 Inclusive of Vat

3.1 The Total Provisionally Price of this Project is subject to adjustment based on available budget and escalation cost as well as final design.

3.2 Progress reports should be submitted to the Executive Manager: Infrastructure Services or his/her nominee and Monthly Progress and Technical meetings should be held.

3.3 The Municipality will from time to time extend the implementation of the project in phases if it deems fit and the budget permits.

3.4 Monthly payment will be due to the **SERVICE PROVIDER** based on the progress made as documented in the monthly progress report and agreed to by the Municipality.

4. REVIEW

4.1 The is **SERVICE PROVIDER** given 03 months probation to demonstrate its effectiveness in the implementation of the contract, should it be evident that the **SERVICE PROVIDER** is failing to meet the expectations of the **MUNICIPALITY**, the **MUNICIPALITY** shall consider terminating the contract with immediate effect.

4.2 Notwithstanding any other provisions in this agreement, this agreement shall be reviewable at any time at the request of the **MUNICIPALITY**.

4.3 The objectives of any review shall be to measure the performance of the **SERVICE PROVIDER** against the key performance areas and to consider any amendments to the agreement that may be necessitated by the review.

4.4 Any amendments resulting from any review contemplated in this clause shall be reduced to writing and signed by both **PARTIES**

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5 RESPONSIBILITIES

5.1. The **SERVICE PROVIDER** shall perform the following responsibilities in fulfilment of this agreement:

- 5.1.1. The **SERVICE PROVIDER** shall devote the whole of his time to meet the requirements of the **MUNICIPALITY'S** instructions
- 5.1.2. Undertake not to disclose or make available to any person any of the **MUNICIPALITY'S** confidential information for as long as he is rendering services to the **MUNICIPALITY** and after the termination of this agreement for whatever reason.
- 5.1.3. Should there be any uncertainty with regard to status of any information provided by the **MUNICIPALITY**, clarity should be sought and permission if need be will be given by the **MUNICIPALITY**.
- 5.1.4. The **SERVICE PROVIDER** should at all times display the highest degree of **good** faith to the **MUNICIPALITY** and avoid conflict between his own interest and those of the **MUNICIPALITY**.
- 5.1.5. Carry out instructions from the **MUNICIPALITY** with the ethical standards governing his Profession.
- 5.1.6. Provide a monthly progress report on all instructions and functions performed on behalf of the **MUNICIPALITY**.
- 5.1.7. The **SERVICE PROVIDER** shall meet with **MUNICIPALITY'S** representatives on a monthly basis to review progress on all instructions given.
- 5.1.8. Submit to the **MUNICIPALITY** a detailed invoice indicating work performed and completed.
- 5.1.9. The professional staff of the Service Provider shall be based on sites (within the jurisdiction of the Municipality where the Project is to be implemented).
- 5.1.10 The **SERVICE PROVIDER** must take all reasonable steps to ensure that the working environment is healthy and safe.

5.2. The **MUNICIPALITY** shall perform the following responsibilities:



- 5.2.1. To provide the **SERVICE PROVIDER** with all the necessary information regarding the **WATER SERVICES INFRASTRUCTURE GRANT FUNDED PROJECTS** and the objectives as determined by the Municipality.
- 5.2.2. Consider monthly reports furnished by the **SERVICE PROVIDER** and provide **feedback to the SERVICE PROVIDER.**
- 5.2.3. To pay accurate and detailed payment certificates which comply with conditions as stated on clause 3(three) above within a period of 30 days of receipt of the invoice(s) from the **SERVICE PROVIDER.**

6. MALPRACTICE

- 6.1. The **SERVICE PROVIDER** shall, at his/her costs, take responsibility for and against loss or damage arising from negligence, malpractice or unprofessional conduct by him or in respect of any other unforeseen cause of action against the **MUNICIPALITY** arising from an act or omission by the **SERVICE PROVIDER** in executing his mandate as this contract.
- 6.2. **MUNICIPALITY** shall have the power to terminate the agreement without further discussion as a result of any conduct as referred to in paragraph 6.1 above

7. DEFAULT

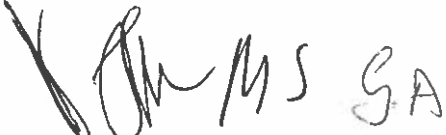
The **PARTIES** agree that, should either party be in default of the agreement, a representative from both **PARTIES** will intervene and to decide on an appropriate corrective action. Serious breach of this agreement may include, amongst others:

- 7.1.1 Failure to deliver a Service in terms of this agreement.
- 7.1.2 Not meeting agreed standards contained in this agreement.

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8. ARBITRATION

- 8.1. any dispute arising at any time between the parties in regard to the interpretation of this agreement or any matter arising out of its termination or any **PARTIES'** rights or obligations there under, shall be submitted to arbitration.
- 8.2. Such Arbitration shall be held:
- 8.2.1. in an informal manner without any pleadings or discovery of documents and without it being necessary to observe any rules of evidence
 - 8.2.2. as soon as possible with a view to it being completed within one (1) month from the date in which the dispute is referred to the Arbitrator,
 - 8.2.3. in accordance with such procedures as the Arbitrator may determine in his discretion
- 8.3. The Arbitrator shall be a practising Advocate agreed upon between the **PARTIES**, And failing agreement in that regard within Seven (7) days after the Arbitration has been demanded, to be appointed by the Chairman or President for the time being of the local professional body to which, Advocates, as the case may be, of the North Gauteng Provincial Division, belong.
- 8.4. Each **PARTY** hereby irrevocably agree that the decision of the Arbitrator in any such Arbitration proceedings shall be final and binding upon them save in the event of being established that:
- 8.4.1. the Arbitrator made any mistake, or
 - 8.4.2. the Arbitrator failed to apply his mind properly to the matter, or
 - 8.4.3. the Arbitrator acted in bad faith, and
 - 8.4.4. any event applicable in law for review of any decision
 - 8.4.5 In which event the decision of the Arbitrator shall be subject to review by court of law.

 MS SA

9. BREACH OF TERMS AND REMEDY

If either of the **PARTIES** breach any provision of this agreement and fail to remedy such breach within seven (7) days of demand, the other **PARTY** shall be entitled to cancel this agreement by giving Notice to the defaulting **PARTY**, without prejudice to any other claim or remedy such **PARTY** may have in law arising from such breach and cancellation.

10. TERMINATION OF THIS AGREEMENT

10.1 Should it be evident that the service provider fails to meet the expectations of the Municipality in three months (03), the Municipality shall consider terminating the contract with immediate effect.

10.2 The **MUNICIPALITY** shall be entitled at any time to review progress made and the success thereof by the **SERVICE PROVIDER**, in terms of this agreement. If the **MUNICIPALITY** is dissatisfied with the progress made and the results thereof, it shall be entitled to terminate the agreement on not less than one (1) month written Notice of termination.

10.3 The **MUNICIPALITY** reserves the right to terminate the agreement, should the Department of Water and Sanitation cancel the Water Services Infrastructure Grant Funding

11. WARRANTIES

The **PARTIES** guarantee that each will not violate each other's rights, or duly interfere with another's obligations or contravene any existing agreement and warrants that each will act according to the agreed specification.

12. VARIATION

12.1 This agreement cannot be varied, added to or cancelled by agreement other than by means of further written agreement between the **PARTIES**.

12.2 In the event that any of the terms of the agreement are found to be invalid, unlawful or enforceable, such terms will be several from the remaining terms and the rest remain valid and enforceable.

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13. RELAXATION OF TERMS

No relaxation of terms of this agreement and no indulgence which any **PARTY** may grant to the other, will in any way operate as estoppels against the former **PARTY**, or be deemed to be waiver of his rights or in any other way limit, alter, or prejudice those rights.

14. WHOLE AGREEMENT

This document and the tender document contains the entire agreement between the **PARTIES**, neither **PARTY** will have any right or remedy arising from any undertaking, warranty, nor representation not included in this document,

15. DOMICILIA CITANDI ET EXECUTANDI

- 15.1 The **PARTIES** agree to choose Domicilia citandi executandi as their respective address, set out in this paragraph for all purpose arising out of or in connection with this agreement, at which address all process and Notices arising out of or in connection with this agreement, may validly be served upon or delivered to either of the **PARTIES**.

For the purpose of the giving of Notices and the serving of Legal process in terms of this agreement, each of the **PARTIES** chooses a domicilium citandi et executandi ("domicilium") as follows:

**Lesedi Local Municipality
No 1 HF Verwoerd Street
Heidelberg
1441**

**ECE ENGINEERS
142 Monument Road
Aston Manor
Kempton Park
1642**

- 15.2 Any Notice given other than documents sent in terms of this agreement shall be in writing and shall:

- 15.2.1 If delivered by hand be deemed to have been duly received by the addresses on the date of delivery.

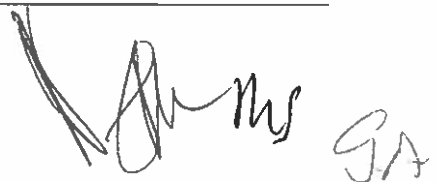
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- 15.2.2 If posted by pre-paid registered post, be deemed to have been received by the addressee on the seventh business day from date of posting.
- 15.2.3 If transmitted by facsimile, be deemed to have been received by the addressee on the day it was dispatched.
- 15.2.4 Notwithstanding anything to the contrary contained in this Agreement, written Notice or communication actually received by one of the **PARTIES** from another, including by way of facsimile transmission, shall be adequate written Notice of communication to such a Party.

16. **FORCE MAJEURE**

Neither of the **PARTIES** shall be liable for any of the failure to perform its obligation insofar as that is, as a result of:

- 16.1 An impediment beyond its control.
- 16.2 It could not be reasonably be expected to have taken the impediment and its effect upon a party's ability to perform into an account at the time of the conclusion of the Agreement; and
- 16.3 It could not have reasonable have avoided or overcome the impediments or its effect.
- 16.4 An impediment as foresaid may come from events such as the following which lists is not exhaustive:
- 16.5 War, whether declared or not, civil war, civil violence, riots, armed revolution, acts of sabotage, natural disaster like violent storms, cyclones, earthquakes, tidal waves, floods or destruction by lighting, explosions, fires, boycotts, strikes, lockouts and work stoppages.
- 16.6 Relief from liability for non performance by reason of this clause shall commence on the time and date upon which a party seeking immunity gives the other a Notice of the nature of the impediment relied upon, and shall terminate on the date upon which that impediment ceases to exist.

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17. ASSIGNMENT, CESSION, DELEGATION

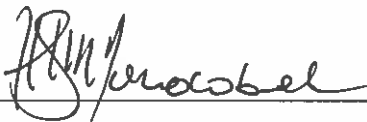
Neither of the Parties may assign, cede, delegate, or transfer, any of the rights, obligations or interest acquired in terms of the Agreement, in whole or in part, to any other party or persons without prior knowledge and approval of the other, and which consent shall not be unreasonable withheld.

17.1 Each counterpart, when executed, shall be an original, but all counterparts together constitute the same document.

SIGNED AT HEIDELBERG ON THIS 14th DAY OF DECEMBER2018

AS WITNESS:

LESEDI LOCAL MUNICIPALITY

1. 



ACTING MUNICIPAL MANAGER

2. 

SIGNED AT HEIDELBERG ON THIS 14th DAY OF DECEMBER2018

AS WITNESS:

ECE ENGINEERS

1. 



DIRECTOR

2. 

