

SERVICE LEVEL AGREEMENT

Entered into by and between

MK CASSIDY CONSTRUCTION C.C

AND

LESEDI LOCAL MUNICIPALITY



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Entered into by and between

MK CASSIDY CONSTRUCTION C.C

(Hereinafter referred to as "MK CASSIDY CONSTRUCTION C.C.")

AND

LESEDI LOCAL MUNICIPALITY

Established in terms of the Local Government Municipal Structure Act Number 117 of 1998

Herein represented by **Mr Paul Mpele, Municipal Manager**

(Hereinafter referred to as "The Municipality")

PREAMBLE

CASSIDY CORPORATION 
WHEREAS, MK CASSIDY C.C as appointed service provider for the Replacement of AC Pipes to uPvc Pipes Phase 2 on behalf of **LESEDI LOCAL MUNICIPALITY**.

and

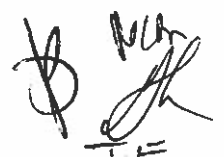
WHEREAS the Municipality was established in terms of the Local Government Municipal Structure Act Number 117 of 1998.


NOW THEREFORE, the Parties agree as follows:

1 INTERPRETATIONS AND DEFINITIONS

1.1 In this Agreement, unless the context indicates otherwise: -


Clause headings are for convenience only and shall not be used in their interpretation, and the following expressions shall bear the meaning assigned thereto to them and cognate expressions shall bear corresponding meanings: -



- 1.1.1 **“Agreement”** means this Service Level Agreement and all the annexures thereto;
- 1.1.2 **“Duration of the Agreement”** From date of signing of SLA by both parties for the entire duration of the contract
- 1.1.4 **“Effective date”** From date of appointment for a period of 6 months;
- 1.1.5 **“Municipality”** Lesedi Local Municipality, established in terms of the Local Government Municipal Structure Act Number 117 of 1998;
- 1.1.6 **“Parties”** means collectively, the service provider and the Municipality and Party shall refer to either of them;
- 1.1.7 **“Republic”** means the Republic of South Africa as constituted from time to time;
- 1.1.8 **“GCC”** General Conditions of Contract OF 2010 

1.2 this Agreement: -

- 1.2.1 the singular shall include the plural and vice versa;
- 1.2.2 the masculine gender shall include the feminine and neuter genders and *vice versa*;
- 1.2.3 unless otherwise indicated, meanings ascribed to a word, phrase or expression in this Agreement, shall bear the same meaning wherever it appears, thereafter;
- 1.2.4 headings to the clauses are only for convenience of reference and shall not be utilised in the interpretation of this Agreement;


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- 1.2.5 "**Closing Time**" means the date and hour specified in the bidding documents for the receipt of bids.
- 1.2.6 "**Contract**" means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- 1.2.7 "**Contract Price**" means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
- 1.2.8 "**Corrupt Practice**" means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution.
- 1.2.9 "**Countervailing Duties**" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
- 1.2.10 "**Country of Origin**" means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
- 1.2.11 "**Day**" means calendar day.
- 1.2.12 "**Delivery**" means delivery in compliance of the conditions of the contract or order.
- 1.2.13 "**Delivery ex Stock**" means immediate delivery directly from stock actually on hand.
- 1.2.14 "**Delivery into consignees store or to his site**" means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.

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- 1.2.15 "**Dumping**" occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the RSA.
- 1.2.16 "**Force Majeure**" means an event beyond the control of the supplier and not involving the supplier's fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the purchase in its sovereign capacity, wars or revolutions, fires, floods; epidemics quarantine restrictions and freight embargoes.
- 1.2.17 "**Fraudulent Practice**" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.
- 1.2.18 "**GCC**" means the General Conditions of Contract.
- 1.2.19 "**Goods**" means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
- 1.2.20 "**Imported Content**" means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.
- 1.2.21 "**Local Content**" means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.

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- 1.2.22 **"Manufacture"** means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- 1.2.23 **"Order"** means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.2.24 **"Project Site,"** where applicable, means the place indicated in bidding documents.
- 1.2.25 **"Purchaser"** means the organization purchasing the goods.
- 1.2.26 **"Republic"** means the Republic of South Africa.
- 1.2.27 **"SCC"** means the Special Conditions of Contract.
- 1.2.28 **"Services"** means those functional services ancillaries to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such obligations of the supplier covered under the contract.
- 1.2.29 **"Written" or "in writing"** means handwritten in ink or any form of electronic or mechanical writing.

1.3 This Agreement shall bind the Parties.

2. OBJECTIVES OF THE AGREEMENT

The main objective of this Service Level Agreement is to establish a cooperative partnership between **LESEDI LOCAL MUNICIPALITY** and **MK CASSIDY CONSTRUCTION C.C.**



2.1 Application

- 2.1.1 These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.
- 2.1.2 Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.
- 2.1.3 Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.

2.2 General

- 2.2.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.
- 2.2.2 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from www.treasury.gov.za

2.3 Standards

- 2.3.1 The goods supplied shall conform to the standards mentioned in the bidding documents and specifications.

2.4 Use of contract documents and information; inspection.

- 2.4.1 The supplier shall not, without the purchaser's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.
- 2.4.2 The supplier shall not, without the purchaser's prior written consent, make use of any document or information mentioned in GCC clause except for purposes of performing the contract.

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2.4.3 Any document, other than the contract itself mentioned in GCC clause shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier's performance under the contract if so required by the purchaser.

2.4.4 The supplier shall permit the purchaser to inspect the supplier's records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.

2.5 Patent Rights

2.5.1 The supplier shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the goods or any part thereof by the purchaser.

2.6 Performance Security

2.6.1 Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.

2.6.2 The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.

2.6.3 The performance security shall be denominated in the currency of the contract or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:

(a) A bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or

(b) A cashier's or certified cheque.

2.6.4 The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified in SCC.

2.7 Inspections, Tests and Analyses

2.7.1 All pre-bidding testing will be for the account of the bidder.

2.7.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.

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- 2.7.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.
- 2.7.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.
- 2.7.5 Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 2.7.6 Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 2.7.7 Any contract supplies may on or after delivery be inspected, tested or analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal, the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.
- 2.7.8 The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 23 of GCC.

2.8 Packing

- 2.8.1 The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.
- 2.8.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be specifically provided for in the contract, including additional requirements, if any, specified in SCC, and in any subsequent instructions ordered by the purchaser.

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2.9 Delivery and Documents

2.9.1 Delivery of the goods shall be made by the supplier in accordance with the terms specified in the contract. The details of shipping and/or other documents to be furnished by the supplier are specified in SCC.

2.9.2 Documents to be submitted by the supplier are specified in SCC.

2.10 Insurance

2.10.1 The goods supplied under the contract shall be fully insured by the supplier, in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the SCC.

2.11 Transportation

2.11.1 Should a price other than an all-inclusive delivered price be required, this shall be specified in the SCC.

2.12 Incidental Services

2.12.1 The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:

- (a) Performance or supervision of on-site assembly and/or commissioning of the supplied goods;
- (b) Furnishing of tools required for assembly and/or maintenance of the supplied goods;
- (c) Furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
- (d) Performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and
- (e) Training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.

2.12.2 Prices charged by the supplier for incidental services, if not included in the contract price for the goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the supplier for similar services.

2.13 Spare Parts

2.13.1 As specified in SCC, the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier:

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- (a) Such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and
- (b) In the event of termination of production of the spare parts: -
 - i. Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
 - ii. Following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

2.14 Warranty

- 2.14.1 The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models and those they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that all goods supplied under this contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the purchaser's specifications) or from any act or omission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.
- 2.14.2 This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in SCC.
- 2.14.3 The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.
- 2.14.4 Upon receipt of such notice, the supplier shall, within the period specified in SCC and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.
- 2.14.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

2.15 Payment

- 2.15.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.

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2.15.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.

2.15.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an original invoice or claim by the supplier.

2.15.4 Payment will be made in Rand unless otherwise stipulated in SCC.

2.16 Prices

2.16.1 Prices charged by the supplier for goods delivered and services performed under the contract shall not vary from the prices quoted by the supplier in his bid, with the exception of any price adjustments authorized in SCC or in the purchaser's request for bid validity extension, as the case may be.

2.17 Costs

2.17.1 Each Party shall bear its own legal costs and incidental to the negotiation, preparation, settling, signing, and implementation of this Agreement.

2.17.2 The rates applicable will be as per tender document and fixed for the duration of this contract.

2.17.3 The total contract value is R 7 565 226.17 Inclusive of VAT.

2.18 Contract Amendments

2.18.1 No variation in or modification of the terms of the contract shall be made except by written amendment signed by the parties concerned.

2.19 Assignment

2.19.1 The supplier shall not assign, in whole or in part, its obligations to perform under the contract, except with the purchaser's prior written consent.

2.20 Subcontracts

2.20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under these contracts if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.

2.21 Delays in the Supplier's Performance

2.21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the general conditions of contract.

2.21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services,

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the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.

2.21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.

2.21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.

2.21.5 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.

2.21.6 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without canceling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

2.22 Penalties

2.22.1 Subject to GCC Clause 25, if the supplier fails to deliver any or all of the goods or to perform the services within the period(s) specified in the contract, the purchaser shall, without prejudice to its other remedies under the contract, deduct from the contract price, as a penalty, a sum calculated on the delivered price of the delayed goods or unperformed services using the current prime interest rate calculated for each day of the delay until actual delivery or performance. The purchaser may also consider termination of the contract pursuant to GCC Clause 23.

2.23 Termination for Default

2.23.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:

- (a) If the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;
- (b) If the Supplier fails to perform any other obligation(s) under the contract; or

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- (c) If the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

2.23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.

2.23.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.

2.23.4 If a purchaser intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated fourteen (14) days the purchaser may regard the intended penalty as not objected against and may impose it on the supplier.

2.23.5 Any restriction imposed on any person by the Accounting Officer/Authority will, at the discretion of the Accounting Officer/Authority, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the Accounting Officer/Authority actively associated.

2.23.6 If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:

- (i) The name and address of the supplier and/or person restricted by the purchaser;
- (ii) The date of commencement of the restriction;
- (iii) The period of restriction; and
- (iv) The reasons for the restriction.

These details will be loaded in the National Treasury's central database of suppliers or persons prohibited from doing business with the public sector.

2.23.7 If a court of law convicts a person of an offence as contemplated in sections 12 or 13 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004, the court may also rule that such person's name be endorsed on the Register for Tender Defaulters. When a person's name has been endorsed on the Register, the person will be prohibited from doing business with the public sector for a period not less than five years and not more than 10 years. The National Treasury is empowered to determine the period of restriction and each case will be dealt with on its own merits. According to section 32 of the Act the Register must be open to the public. The Register can be perused on the National Treasury website.



2.23.8 If there is fraud or corruption in the procurement process, the municipality shall be entitled to cancel the contract.

2.24 Anti-dumping and countervailing duties and rights

2.24.1 When, after the date of bid, provisional payments are required, or antidumping or countervailing duties are imposed, or the amount of a provisional payment or anti-dumping or countervailing right is increased in respect of any dumped or subsidized import, the State is not liable for any amount so required or imposed, or for the amount of any such increase. When, after the said date, such a provisional payment is no longer required or any such anti-dumping or countervailing right is abolished, or where the amount of such provisional payment or any such right is reduced, any such favourable difference shall on demand be paid forthwith by the contractor to the State or the State may deduct such amounts from moneys (if any) which may otherwise be due to the contractor in regard to supplies or services which he delivered or rendered, or is to deliver or render in terms of the contract or any other contract or any other amount which may be due to him.

2.25 Force Majeure

2.25.1 Notwithstanding the provisions of the General Conditions of Contract (GCC Clauses 22 and 23), the supplier shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.

2.25.2 If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

2.25.3 Where a force majeure situation arises and there is a need for the municipality to either reprioritize the budget or subject to budget availability perform immediate service delivery mandate as provided for in the Constitution of Republic of South Africa (RSA), the municipality shall reserve the right to adjust budget accordingly and advise the supplier/service provider of such instance.

2.26 Termination for insolvency

2.26.1 The purchaser may at any time terminate the contract by giving written notice to the supplier if the supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the purchaser.

2.27 Settlement of Disputes

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2.27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.

2.27.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.

2.27.3 Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.

2.27.4 Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.

2.27.6 Notwithstanding any reference to mediation and/or court proceedings herein,

(a) The parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and

(b) The purchaser shall pay the supplier any monies due to the supplier.

2.28 Limitation of Liability

2.28.1 Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 6;

(a) The supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and

(b) The aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.

2.29 Governing language

2.29.1 The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.

2.30 Applicable law

2.30.1 The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.

2.31 Notices



2.31.1 Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice

2.31.2 The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.

2.32 Taxes and Duties

2.32.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.

2.32.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.

2.32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.

2.33 National Industrial Participation Programme (NIP)

2.33.1 The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation.

2.34 Prohibition of Restrictive Practices

2.34.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is/are or a contractor(s) was/were involved in collusive bidding (or bid rigging).

2.34.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has/have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.

2.34.3 If a bidder(s) or contractor(s), has/have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and/or terminate the contract in whole or part, and/or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and/or claim damages from the bidder(s) or contractor(s) concerned.

3. ROLE OF THE PARTIES IN REGARDS WITH CONTRACT

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The parties will adhere and will utilise the completed and signed Contract Document as per tender under contract number 29/2017 as the guideline for the parties' responsibilities.

4. DURATION OF THE AGREEMENT

This Agreement be effective from date of appointment and for the period of six (6) months.

5. COMMUNICATION

The Parties agree that:

5.1 It is necessary to keep the channels of communication open between the Parties at all times and on all aspects of the Agreement.

5.2 The contact persons for communication between the Parties shall be the following persons:

- **MK CASSIDY**
Mr Andile Thwala

- **MUNICIPALITY**
Executive Manager: Infrastructure Services or his/her nominee.

6. ADDRESSES NOMINATED BY THE PARTIES

6.1 Addresses nominated by the parties in a legal contract at which it elects to receive all legal notices and documents for all purposes arising from this Agreement on the following addresses:

- 6.1.1 **MK CASSIDY CONSTRUCTION C.C**
2 Selbourne Road
Hammetts Crossing Office Park
Building 816/2
Fourways
2191

J.E.
D.M.

Tel: (010) 012 5099

6.1.2 THE MUNICIPALITY

1 HF Verwoerd Street

Heidelberg

1441

Tel: (016) 492 0035/43

6.2 Any Party may change its *nominated address* by means of a written notice to the other Party provided that such address shall be a physical address within the Republic of South Africa.

7. BREACH

7.1 Should either Party commit a breach of its obligations under this Agreement, the non-defaulting Party shall give the defaulting Party written notice, calling upon the defaulting Party to remedy the breach or default within a period of 14 [fourteen] Business Days. If the defaulting Party fails to remedy the breach within that period, the non-defaulting Party will be entitled to cancel this Agreement without prejudice to any other rights which the Party may have against the defaulting Party.

7.2 The remedies set out in this clause 7 shall not be construed to be exhaustive of any other remedies available to the Parties.

8. DISPUTE RESOLUTION AND ARBITRATION

8.1 Should any difference or dispute at any time arise between the parties, the duly authorised Senior Officials of each party shall meet within fourteen (14) days, or such period as the parties may agree, from the date on which the dispute arose to resolve the dispute amicably.

8.2 If the dispute is not resolved at such a meeting, or extended meeting as the Parties may agree to in writing, then either of the parties shall be entitled to refer the dispute to the

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Arbitration Foundation of Southern Africa (AFSA) to be determined by arbitration in terms of Arbitration Act 42 of 1965 as amended, such arbitration shall be held in Johannesburg.

8.3 The appointment of the arbitrator shall be agreed upon between the Parties in writing but, failing agreement between them, within a period of 10 (ten) Business Days after the arbitration has been demanded in terms of clause 8.2, above either Party shall be entitled to request the Arbitration Foundation of South Africa to make the appointment and, in making such appointment, to have regard to the nature of the dispute.

8.4 The arbitrator shall have the powers conferred upon an arbitrator under the Arbitration Act, 1965 (as amended), but shall not be obliged to follow the procedures prescribed in that Act. The decision of the arbitrator shall be final and binding on the Parties and may be made an order of any court of competent jurisdiction.

9. AMENDMENTS

No amendments or consensual termination of this Agreement will be binding unless reduced to writing and signed by both Parties.

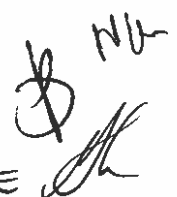
10. GOOD FAITH

The Parties undertake to act in good faith at all times in pursuance of their respective roles in terms of this Agreement as well as to give effect to the spirit and intent of the Agreement.

11. INTELLECTUAL PROPERTY

11.1 All Intellectual Property Rights owned by the Party prior to this agreement shall remain the sole property of that Party.

11.2 Neither Party shall, without the prior written consent of the other party, make use of the other Party's Intellectual Property.

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- 11.3 Neither Party shall acquire any rights, title or interest of any kind in any Intellectual Property of the other Party, unless agreed otherwise in writing by both Parties.
- 11.4 Any Intellectual Property, in any media or format, prepared, created or authored prior to the effective date of this Agreement, by or specifically for either of the contracting Party in terms of this Agreement shall belong exclusively to that contracting Party and, in this regard, the Parties may not cede, assign and make over all rights, title and interest in and to any such material or documentation to the other Party, unless agreed otherwise in writing by both Parties.
- 11.5 The Parties co-own intellectual property developed during the currency of this Agreement and in the event that the Party utilises any intellectual property that is owned by the other Party for provision of services to a third party, the Party shall pay to the other Party a portion of the fee received from such third party, to be agreed to in writing by the Parties.
- 11.6 The parties hereby acknowledge each other's Intellectual Property rights and undertake to one another that they shall not challenge those rights and shall do all things necessary to ensure that the Intellectual Property of the other is not removed from the premises on which it is ordinarily and lawfully located, without the other's prior written consent.
- 11.7 Both Parties shall list all their pre-existing intellectual property rights in Annexure "A" attached herein.

12. CONFIDENTIALITY

The parties undertake towards each other:

- 12.1 Not to disclose or otherwise reveal directly or indirectly to any third Party, any confidential information provided by one Party to the other, or otherwise acquired, particularly, contract terms, project information, trade secrets, fees, financing arrangements, annexure's, schedules, and information concerning the identity of each parties logos, clients, intellectual property, clients, dealers, borrowers, brokers, lenders, distributors, developers, technology owners, or their representatives, and specific individual names, addresses,

Handwritten signature and initials
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principals, or telex/fax/telephone numbers, references, technology information, and/or all other information, advised by one party to another as being confidential or privileged, without the prior specific written consent of the Party providing such information. The Party may be held liable if, through no action or fault of the latter, any of the above mentioned confidential information is released by the owner or a third Party.

12.2 To exercise reasonable care to prevent disclosure of confidential information to any third Party, except as may be authorised in writing by the other Party, internal dissemination of the confidential information shall be limited to those employees whose duties justify their need to know such information and then only on the basis of a clear understanding by these employees of their obligations to maintain the trade secrets status of such confidential information and to restrict the use of such information solely to the use granted to the other Party under this agreement. The Parties shall each be liable for any improper disclosure of confidential information by their employees.

12.3 The above undertakings shall not apply to:

12.3.1 Information which at the time of disclosure is published or otherwise generally available to the public;

12.3.2 Information which after disclosure by the disclosing party is published or becomes generally available to the public; otherwise than through any act or omission on the part of the disclosing party;

12.3.3 Information which the parties can show was in their possession at the time of disclosure and which was not acquired directly or indirectly from each other;

12.3.4 Information rightfully acquired from others who did not obtain it under pledge of secrecy to either of the parties;

12.3.5 Information which the Recipient is obliged to disclose in terms of an Order of Court, subpoena or other legal process;

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12.4 In the event that either party hereto is required by legal process to disclose any of the confidential information of the other party, covered by this clause 12, it shall:

12.4.1 Provide the other party with prompt notice of such requirement so as to enable such party to seek a protective order or waive compliance with the provisions of this clause;

12.4.2 In the event that a protective order or other remedy is obtained, the party concerned shall use all reasonable efforts to ensure that only the information covered by such order or other remedy is disclosed;

12.4.3 Whether or not a protective order or other remedy is obtained or a party has waived compliance with the provisions of this agreement, the other party shall take all reasonable steps to ensure that only that portion of the information that it is legally required to disclose is so disclosed.

12.5 The provisions of this clause 12 shall survive termination of this agreement, for whatever reason.

12.6 The limitations imposed in terms of this clause shall perpetuate for a full period of the contract between the Parties, shall furthermore extend from the effective date and shall survive the expiration or termination of the contract.

13. REPRESENTATIONS

This Agreement constitutes the entire agreement between the parties regarding the subject matter hereof. No agreements, guarantees or representations, whether verbal or in writing, have been concluded, issued or made, upon which either party is relying in concluding this Agreement, unless the representation or guarantee is recorded in this Agreement.

14. APPLICABLE LAW AND COMPLIANCE WITH THE LAW

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- 14.1 The interpretation, performance and implementation of this Agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa.
- 14.2 Without limitation of any obligations and/or rights under any law, the Parties shall comply with any other acts, regulations and nationally and/or internationally recognized standards, in which by law and practice the party is required to adhere to.

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15. SIGNATURES SERVICE LEVEL AGREEMENT ENTERED INTO BY MK CASSIDY CONSTRUCTION C.C AND LESEDI LOCAL MUNICIPALITY.

THUS, SIGNED AT Lesedi Mun THIS 1st DAY OF February 2018

MK CASSIDY CONSTRUCTION C.C

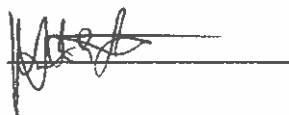


Duly Authorised

Name: Andrik Shwala

Designation: Managing Director

AS WITNESSES:

1. 

2. 

THUS, SIGNED AT HEIDELBERG THIS 4 DAY OF FEB 2018

LESEDI LOCAL MUNICIPALITY



Duly Authorised

Name: Paul Mpele

Designation: Municipal Manager

AS WITNESSES:

1. 

2. 