

SERVICE LEVEL AGREEMENT

THE COMPILATION OF THE VALUATION ROLL AND SUPPLEMENTARY VALUATION ROLLS AND MAINTENANCE THEREOF AS WELL AS THE SUPPLY OF OTHER RELATED SERVICES IN COMPLIANCE WITH THE LOCAL GOVERNMENT; MUNICIPAL PROPERTY RATES ACT, 2004 (ACT NO 6 OF 2004 AS AMENDED) AND OTHER VALUATION SERVICES AS REQUIRED BY THE MUNICIPALITY.

By and Between

LESEDI LOCAL MUNICIPALITY

Herein referred to as "The Municipality or LESEDI LOCAL MUNICIPALITY"

Represented by: **TSHOTLEHO PAUL MPELE**

In his capacity as: **MUNICIPAL MANAGER**

Duly authorised to enter into this Agreement in terms of both the Public Finance Management Act 1 of 1999 and the Municipal Finance Management Act 56 of 2003.

And

MODI-RES VALUERS CC (2006/029599/07)

Hereinafter referred to as "The Service Provider"

Represented by: **LOJALELO MACDONALD MODIBEDI**

In his capacity as: **DIRECTOR**

PREAMBLE

- **WHEREAS** the Municipal Property Rates Act 6 of 2004 (MPRA) regulate the power of municipality to impose rates on properties to make provisions to implement a transparent and fair system of exemptions, reductions and rebates through rating policies, fair and equitable valuation methods of properties and objections and appeal processes.
- **AND WHEREAS** as section 18 of the Act confers the power to the MEC for Local Government to monitor whether the Municipalities comply with the ACT
- **AND WHEREAS** the Lesedi Local Municipality has appointed Modi-Res Valuers cc as a Service Provider for the compilation of the general valuation roll for Lesedi Local Municipality as well as the supply of other valuation related services in compliance with the Local Government; Municipal Property Rates Act, 2004 (Act no 6 of 2004 as amended) to be implemented for the period 1 July 2019 to 30 June 2024. under **Tender No: 25/2017**
- **AND WHEREAS** Modi-Res Valuers cc has accepted same. (Copies of the Resolution, Letter of Appointment and Acceptance Letter are attached herein as annexure "A", "B" and "C" respectively).

1. DEFINITIONS

- 1.1 The headings to the clauses, schedules and annexure of this Agreement are for reference purposes only and shall in no way govern or affect the interpretation of, nor modify, nor amplify the terms of this Agreement nor any clause, schedule or annexure thereof.
- 1.2 Unless the context indicates otherwise, the words and expressions set out below shall bear the following meanings and cognate expressions shall bear corresponding meanings:
- 1.2.1 **“Agreement”** means the agreement as set out in this document together with any annexure hereto, RFQ, the LOA and the Service request;
- 1.2.2 **“Acceptance Period”** means the period of 30 (thirty) days (or such other period as may have been agreed to in writing), after delivery, during which may consider whether the Service complies with the Specifications and/or is not of inferior workmanship;
- 1.2.3 **“Business Day”** means Monday to Friday between the hours of 08:00 to 16:15, excluding Saturdays, Sundays or a day which, from time to time, is proclaimed a public holiday in South Africa;
- 1.2.4 **“Calendar Month”** means a period from the first to the last day of a month (e.g. 1 January to 31 January);
- 1.2.5 **“Checks”** means the background check on the Service Provider’s employees.
- 1.2.6 **“Completion Date”** means the date stipulated on the Service Request for the performance and completion of the Services;
- 1.2.7 **“Contact Person”** means the relevant person(s) appointed by Lesedi City Local Municipality from time to time, to oversee the execution of this Agreement and whose name(s) appears on the Service Request;

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- 1.2.8 **“Commencement Date”** means the date as per the date of signing the agreement.
- 1.2.9 **“Fault”** includes, but is not limited to, failure to comply with Lesedi City Local Municipality’s specifications, non-compliance with agreed Service levels, inferior service, and inferior workmanship;
- 1.2.10 **“Invoice”** means the original tax invoice prepared by the Service Provider reflecting the consideration or the adjusted consideration (if any), owing by Lesedi City Local Municipality to the Service Provider and which conforms to the provisions of the VAT Act;
- 1.2.11 **“LOA”** means the letter of acceptance in terms of which a Service Provider is advised by Lesedi Local Municipality of its conditional appointment as a Service Providers subject to the conclusion of this Agreement;
- 1.2.12 **“Local Service Provider”** means a Service Provider which has its registered address in South Africa;
- 1.2.13 **“Notice of Non-Acceptance”** means the written notice to be delivered by Lesedi Local Municipality to the Service Provider in the event that the Service is inferior and/or does not comply with the Specifications;
- 1.2.14 **“Parties”** means the Service Provider and Lesedi Local Municipality and a “Party” shall as the context requires, be either of them;
- 1.2.15 **“Quotation”** means the written response of a Service Provider to the RFP issued by Lesedi Local Municipality;
- 1.2.16 **“Purchase Consideration”** means the price to be paid by Lesedi Local Municipality for the Services as reflected in this Agreement or Annexure thereto and confirmed in the Service Request;

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- 1.2.17 “**RFQ**” means the Request for Quotation, being the formal written invitation issued by Lesedi Local Municipality requesting third parties to submit proposals to Lesedi Local Municipality in respect of the supply of the Services;
- 1.2.18 “**Services**” means the services set out in the RFQ, in respect of which Lesedi Local Municipality will set out as and when required in a Service Request;
- 1.2.19 “**Service Location**” means the physical address where the Services will be rendered;
- 1.2.20 “**Service Request**” means Lesedi Local Municipality 's assignment letter, issued in terms of this Agreement, requesting the Service Provider to render the Services set out in that request to Lesedi Local Municipality on the terms and conditions set out in that request;
- 1.2.21 “**Lesedi Local Municipality**” means Lesedi Local Municipality, a Municipality established in terms of section 12(1), read with section 14(2) and section 90(2) of the Local Government: Municipal Structures Act 117 of 1998;
- 1.2.22 “**Specifications**” means the requirements for the Service as more fully detailed in the RFQ or in a Service Request;
- 1.2.23 “**Service Provider**” means **MODI-RES VALUERS** (registration number: 2006/138405/23) a company duly incorporated with limited liability in accordance with the company laws of the Republic of South Africa and herein represented by **Macdonald Modibedi** (Copy of the Company Resolution is attached herein as annexure “D”);
- 1.2.24 “**Term**” means a period of 3 (THREE) years from the commencement date;
- 1.2.25 “**VAT**” means value added tax at the rates specified in the VAT Act;
- 1.2.26 “**VAT Act**” means the Value Added Tax Act, No. 89 of 1991.
- 1.3 Any reference in this agreement to legislation or subordinate legislation is to such legislation or subordinate legislation at the date of signature hereof and as amended and/or re-enacted from time to time.



- 1.4 Words importing the singular shall include the plural, and vice versa, words importing the masculine gender shall include the feminine and neuter genders, and vice versa, and words importing natural persons shall include legal persons, and vice versa.
- 1.5 The head notes to the clauses to this agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
- 1.6 The rule of construction that, in the event of ambiguity, the contract shall be interpreted against the party responsible for the drafting thereof, shall not apply in the interpretation of this Agreement.
- 1.7 Where any provision of this Agreement requires a Party to perform any act in writing, this requirement will only be satisfied if such performance is made in a written or paper-based form. The provisions of the Electronic Communications and Transactions Act, No. 25 of 2002, are expressly excluded from this Agreement.
- 1.8 Where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the same meaning as ascribed to it for all purposes in terms of this Agreement, notwithstanding that the term has not been defined in this interpretation clause.

When any number of days is prescribed in this agreement, same shall be reckoned exclusively of the first and inclusively of the last day

2. PRECEDENCE

- 2.1 The documents listed hereunder constitute this Agreement. In the event of a conflict the order of precedence for the interpretation thereof shall be:
- 2.1.1 **APPROVED BID ADJUDICATION COMMITTEE REPORT;**
- 2.1.2 **APROVED TENDER DOCUMENT;**
- 2.1.3 **LETTER OF APPOINTMENT; and**

2.1.4 THIS AGREEMENT.

3. AGREEMENT

- 3.1 The Service Provider agrees to render the Services to Municipality under the terms and conditions of this Agreement. This Agreement constitutes an agreement on the basis of which the Service Provider will render the Services to the Municipality.
- 3.2 The Service Provider shall not be entitled to impose any terms and conditions on the Municipality other than those contained in this Agreement.
- 3.3 No claim by the Service Provider for additional payment on any grounds will be allowed, including, without limitation, misunderstanding or misinterpretation in respect of the Tender, nor will the Service Provider be released from any risk or obligations imposed on/or undertaken by the Service Provider on any such grounds or on the ground that it could not have foreseen any matter which might affect, or have affected its performance in terms of this Agreement.

4. COMMENCEMENT AND DURATION

- 4.1 This agreement shall be deemed to have commenced from the date of signature of this agreement or mutually agreed date and shall endure for a period ending 30 June 2024.
- 4.2 Notwithstanding clause **Error! Reference source not found.** above the Parties shall have the right to terminate this Agreement in terms of clause 18, herein.

5. VALUATION MANAGEMENT, UPLOADING AND RECONCILIATION

- 5.1 The Service Provider will be required to produce the new General Valuation Roll, as well as the Supplementary Valuations for 2019 to 2014 financial year of all identified properties in the LESEDI LOCAL MUNICIPALITY are is strict compliance with the Municipal Property Rates Act (MPRA)

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- 5.2 The valuation roll will need to be provided in the following formats:
- (i) An electronic format which can be made available to the public as well as published on the municipal website.
 - (ii) 15 hard copies; printed and bound.
- 5.3 Data Collectors must be identifiable and must carry identify cards bearing the logo of LESEDI LOCAL MUNICIPALITY.
- 5.4 The Service Provider must comply with Section 44 of the MPRA regarding protection of information for the duration of the tender.
- 5.5 The Service Provider must be aware of and ensure compliance with the requirements of the MPRA relating to designations and delegations of valuers and data collectors and the declarations by the Municipal Valuer and Assistant Municipal Valuers.
- 5.6 The MPRA prescribes contents of Valuation Rolls in terms of Section 48 which must be collected / determined for each property reflected in the Valuation Roll.
- 5.7 The Service Provider must ensure that the Draft Valuation Roll is available to the LESEDI LOCAL MUNICIPALITY financial system by 31 December 2018 in order to verify and correct discrepancies.
- 5.8 The Service Provider must liaise with the relevant LESEDI LOCAL MUNICIPALITY finance department in order to compare and reconcile the valuation roll on the LESEDI LOCAL MUNICIPALITY financial system where necessary.

6. SERVICE REQUEST

- 6.1 The true intention and meaning of the Service Request is that the Service Provider will, in all respects, render and complete the Service in a workmanlike manner to the satisfaction of the Municipality.
- 6.2 Notwithstanding anything contained herein each Service Request will constitute an instruction to proceed with the subsequent phase.

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- 6.3 If there appears to be any conflict or want of agreement and/or contradiction between this Agreement and a Service Request, the Service Provider will refer the matter to the Municipality for a decision before proceeding with the execution of the Service Request, or part thereof, affected by the conflict or want of agreement.
- 6.4 All Services and the like, not expressly mentioned in the Service Request or this Agreement, but which are necessary to fulfil its intent, will be performed by the Service Provider as if specifically mentioned or described in the Service Request.
- 6.5 Immediately after receiving the Service Request as per clause 5.4 the Service Provider will, in writing, confirm receipt of each Service Request. Failure by the Service Provider to confirm receipt will constitute a material breach of this Agreement.
- 6.6 It is specifically recorded that the Municipality reserves the right to, during the execution of this Agreement, require the Service Provider, by notice, to alter, amend, omit, add to, or otherwise vary any Service without invalidating the Service Request and the Service Provider will be obliged to carry out such variations subject to clause 6.7 below.
- 6.7 If such variations involve an additional payment or prevent the Service Provider from fulfilling any obligations and/or guarantees, and within 5 (five) working days of receipt of the notice, the Service Provider will, before proceeding therewith, notify the Municipality in writing of its acceptance of the amendment. In such case the Municipality will decide not later than 5 (five) working days whether the Service Provider may proceed. If the Municipality confirms its instructions to proceed with the said variation, the Service Provider's obligations and guarantees will be varied to such extent.
- 6.8 To the extent that the amendment results in an adjustment to the Service costs, the Service Provider shall not give effect to the amendment notice until the Service Provider has received written confirmation, in the form of a letter on the Municipality's official stationery, from the Municipality signed by the

Municipal Manager or his duly authorised representative ("the Confirmation Notice") of its approval of such adjusted Service costs. Such Confirmation Notice will constitute a valid variation of the Service Request.

- 6.9 The Municipality shall, subject to the Service Request that has been already issued, be entitled to source the Services from any Service Provider of its choice.

7. SERVICES TO BE RENDERED BY THE SERVICE PROVIDER

- 7.1 This clause is subject to the Agreement agreed by the Service provider and approved by the Municipality;

The Service Provider's Scope of work is as follows:

1. Valuation of different categories of properties in terms of Section 8(2).
2. Valuation of multiple purpose properties in terms of Section 9 and the review thereof, if so required by municipality.
3. Compile valuations in terms of Section 7(1) and subject to the provisions of Section 30(2), where applicable.
4. Compliance with the provisions of Section 30.
5. Compile the valuation roll as at date of valuation in terms of Section 31.
6. Comply fully with Section 34 – Functions of Municipal Valuer.
7. Section 36 – Data Collectors. Assume responsibility for their performance.
8. Comply with Section 37 – Delegation where applicable and if necessary.
9. Comply with Section 39 – Qualifications of Municipal Valuers.
10. Comply with Section 40 – Prescribed Declarations.
11. Comply with Section 41 – Inspection of property within defined days and times.

12. Comply with Section 42 – Access to information.
13. Comply with Section 43 – Conduct of Valuers.
14. Comply with Section 44 – Protection of information.
15. Comply with Section 45 – Valuation methodology and Section 13 hereof.
16. Comply with Section 46 – General basis of valuation.
17. Comply with Section 47 – Sectional Title Schemes.
18. Comply with Section 48 – Content of valuation roll including any additional information that the Municipality may require in terms of this tender.
19. Comply with Section 51 – Processing of objections, if so required by municipality.
20. Comply with Section 52(1)(3) – Compulsory review.
21. Comply with Section 53 – Notification.
22. Comply with Section 69 – Decision of Valuation Appeal Board and Section 34(f).
23. Comply with Section 78- for the first Supplementary Valuation roll only.
24. Comply with Section 81 & 82 of the Act. Bidder(s) / Nominated Person/s shall provide and make available all data and valuations for purposes of internal monitoring by the municipality as well as monitoring by the MEC for local government in terms of Section 81(1) of the Act and the Minister in terms of Section 82(1) of the Act. Such data will be available in a format that is easy to read, understand and interpret.
25. The Service Provider will be required to record changes and maintain the property master file on an on-going basis after creation thereof. The total number of valuation entries contained in the master file may vary from the number of entries appearing in the valuation roll. The property master file will include

properties forming part of the Township owner's interest account whether registered or not. The master file will also include the entries of agricultural holdings excised into farms proclaimed into townships and even consolidated. Upon proclamation of a township, Service Provider will create the individual entries of all erven comprising that township in the master file.

26. The Service Provider shall thereafter administer the township owner's interest account on an on-going basis as and when entries comprising that township are registered. Unregistered subdivisions will be handled in the same manner as township owner interest accounts.

27. The purpose of the master file is to enable the public and officials of the municipality to have easy access to all properties registered or unregistered, forming part of either the master file and/or the valuation rolls of the municipality. The master file and/or valuation rolls will cross refer all entries that are no longer live deed office entries to their new counterparts appearing in the master file and/or valuation roll.

28. Where such information appears in the current valuation roll, it will be transferred to the new valuation roll. It will not be necessary to obtain historic information relating to unregistered entries, other than those appearing on the current valuation roll. All new unregistered entries are to be recorded on either the master file and/or the valuation rolls. All consolidations, excisions, notarial ties, township proclamations etc which result in unregistered records being created will be recorded from date of commencement of this tender and shall continue for the full duration hereof. Example: Erf 14 & 15 Heidelberg consolidated into Erf 300. Under erven 14 + 15 they will be indicated as unregistered with a cross reference to Erf 300. Under Erf 300 it will be cross-referenced to indicate consolidation of Erf 14 & 15. Holding 16 Heidelberg Agricultural Holdings excised into Portion 315 of the Farm Boschfontein 386 IR. Under Holding 16 it will be referred to as unregistered and under Portion 315 it will cross-refer as "previously Holding 16 Heidelberg Agricultural Holding";

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29. The Service Provider shall assist the municipality to compile a register of specialised Properties that will enable municipality to easily refer to at any time to such properties.

30. The register will reflect the property description and method of valuation applied. Where generally recognized methods of valuation are not appropriate in the determination of value, for properties of this nature, the nominated person will be required to obtain the written approval from the municipality for the method of valuation or technique of valuation to be applied in the valuation of such properties;

The Assistant Municipal Valuer shall, with concurrence of the Municipal Valuer have the sole discretion as to whether a property is classified as a special property.

8. PERFORMANCE

8.1 The completion date specified in the service request is of the utmost importance. Non-compliance, as a result of the negligence of the service provider, with the said date will constitute a material breach of this agreement. Partial performance will not constitute the provision of the services.

8.2 Service Provider or an independent or agent of his contractor. In the event of the Service Provider or its contractor rendering the Service to the Municipality, becoming involved in arbitration or falling within a collective agreement under a Bargaining Council, then the Service Provider shall immediately inform the Municipality thereof and on request, supply the Municipality with a copy of such award, agreement or any documentation that the Municipality may request. Non-compliance with this clause will be considered to be a material breach of this Agreement and will entitle the Municipality to terminate this Agreement with the Service Provider, without limiting the Municipality's right to recover damages from the Service Provider resulting from such cancellation, or to take all steps and do all things necessary to remedy such a contravention itself.

- 8.3 The Service Provider will render the Services at the address indicated in the Service Request.
- 8.4 Upon any delay beyond the set date, the Municipality may, without terminating this Agreement, be entitled forthwith to obtain similar Services from a third party as the Municipality may require.
- 8.5 The Municipality will recover any adverse difference in price it may incur as well as any other damages that may be suffered by the Municipality due to the Service Provider's none or partial performance of the Services and such damages to be determined against the total tender amount.
- 8.6 If the Service Provider fails to render the Services within the Completion Date, the Municipality will have the right, in its sole discretion to either deduct as a penalty an amount equivalent to 2,5% (two and a half percent) of the Service Request/Agreement value (as the case may be) per week/portion of a week for the period of delay, or to claim any damages or loss suffered in lieu of such penalty, provided that the penalty will be applied to the value of the outstanding portion of the Service Request/Agreement (as the case may be), only where the Municipality has Beneficial Use of the Services.

9. SUPPLEMENTARY VALUATION ROLL

- 9.1 The Service Provider must compile Supplementary Valuation for the period 01 July 2018- 30 June 2024 financial year in terms of Section 78 of MPRA
- 9.2 The Service Provider must comply with the requirements of the MPRA, regulations and the contents of the tender in delivering a Supplementary Valuation Roll and updating the Valuation Roll.
- 9.3 The Service provider must ensure that every Valuation Roll change is maintained and stored in the current Valuation Roll Management System with a full history and an audit trail to ensure audit compliance.
- 9.4 for all Valuation Roll changes the Service Provider must ensure that there are audit controls and approvals undertaken and easy access to audit trails which reflect old data and new data.

10. PAYMENT

- 10.1 Payment shall be made in installments of the amounts as reflected in the tender document.
- 10.2 The Service Provider warrants that the prices, charges and fees to the Municipality as contained in this Agreement are at least as favourable as those offered by the Service Provider to any of its other customers that are of the same or similar standing as the Municipality.
- 10.3 Payments of fees shall only be made for the services rendered and verified.
- 10.4 After due completion of the Services, and upon request by the Service Provider the Municipality will supply the Service Provider with a written acknowledgement to the effect that the Services have been rendered in accordance with this Agreement.
- 10.5 Payment of Invoices for the Service Provider will be effected not later than 30 (thirty) days from receipt of a correct and original Invoice. The MUNICIPALITY shall have 7 (seven) days from the submission of the invoice to approve it, failing which it shall advise the SERVICE PROVIDER of what it does not approve. In the event that the MUNICIPALITY does not query an invoice in the allotted time period, the invoice shall be deemed to have been approved
- 10.6 The monthly statement, invoices and all supporting documentation must be received before payment can be effected. The monthly statement must be accompanied by a summary page indicating invoices, date value and the department work done for payments received from commencement date of tender. Should the Service Provider's documentation be incomplete or incorrect, payment of these documents will only be effected the month following the month during which the correct documents were received.
- 10.7 Settlement discounts, if any, agreed upon shall be deducted from payments.

- 10.8 The Municipality may set-off any amounts owed by the Service Provider from any amount due, with the exception of payment being withheld in terms of clause 19.
- 10.9 Payment will be effected by bank transfer Municipality's liability towards the Service Provider will be deemed to have been met when the bank transfer is made. The Service Provider assumes the entire risk upon transfer being made. The Service Provider will ensure that the Municipality, at all times, has the correct banking information in order to make a bank transfer.
- 10.10 All original Invoices must be forwarded to the Municipality to the address stated below:

BY HAND

THE LESEDI LOCAL MUNICIPALITY

1 H.F Verwoerd Street
Heidelberg
Gauteng
1441

THE MANAGER: REVENUE

P O Box 201
Heidelberg
1438

- 10.11 All payments are provisional and are subject to audit by the Municipality. The Service Provider will preserve its records for such a period as the South African Revenue Services may require or 5 (five) years from date of payment, whichever is the longer.

11. OBJECTIONS

The Service Provider must develop and implement a system that will manage objections and is in compliance with the requirements of Section 51 of the MPRA.

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12. NON-EXCLUSIVITY

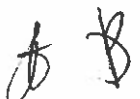
This Agreement is not exclusive. Notwithstanding the delivery of the LOA and the signing of this Agreement, the Municipality reserves the right to procure the Services from any other Service Provider irrespective of whether such Service Provider has been appointed as the Service Providers or not.

13. INDEMNITY

The Service Provider agrees to indemnify, hold harmless and defend Lesedi Local Municipality and its officers, employees, agents and representatives from and against the following damages, loss and liabilities (hereinafter collectively referred to as "Liability") arising as a result of the negligence or fault of the Service Provider:

- 13.1 Any liability with regard to claims by governmental authorities or others for non-compliance by the Service Provider with any Act of Parliament, law, Ordinance, regulation or by-law made by a lawful authority provided that such compliance therewith was required for the execution of this Agreement;
- 13.2 Any Liability arising out of intentional or negligent acts, or omissions to act, of the Service Provider;
- 13.3 Any Liability arising from claims with regard to the death of, or injury to, the Service Provider or the death of, or injury to, third parties due to the Service Provider's negligence (excluding the Municipality's employees in respect of whom the Municipality holds the Service Provider harmless); and
- 13.4 Any Liability arising from any loss of, or damage to, property (including Lesedi Local Municipality property and/or equipment of the Service Provider).

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14. LIMITATION OF LIABILITY

Notwithstanding anything to the contrary contained in this Agreement, the Municipality shall not be liable to the Service Provider whether in contract, tort or for any indirect or consequential loss or damage, including without limitation, loss of profit, revenue, anticipated savings, business transactions or goodwill or other contracts whether arising from negligence or breach of contract.

15. SAFETY AND SECURITY

15.1 The Service Provider agrees to comply with the Municipality's security and safety procedures, without limiting the generality hereof, the Service Provider will specifically comply with the Occupational Health and Safety Act.

16. CANVASSING AND INDUCING LESEDI LOCAL MUNICIPALITY EMPLOYEES

16.1 The Service Provider will not under any circumstances offer, promise or make any gift, payment, loan, reward, inducement, benefit or other advantage to any of Lesedi Local Municipality's employees.

16.2 Such an act will constitute a material breach of the Agreement and the Municipality will be entitled to terminate this Agreement forthwith, without prejudice to any rights.

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17. FRAUD

If, at any time during the duration of this Agreement, the Municipality, in its reasonable discretion determines, based on *prima facie* evidence, that the Service Provider has, in respect of this Agreement to which they were or are Parties:

- 17.1 acted dishonestly and/or in bad faith; and/or
- 17.2 has made any intentional or negligent misrepresentation to the Municipality, whether in any negotiations preceding the conclusion of, or in the execution of the Agreement between the parties:

17.2.1 Then the Municipality will be entitled by written notice to the Service Provider forthwith to terminate this Agreement. Upon such termination the Municipality shall be entitled, in addition to all other remedies available to it, to recover from the Service Provider all damages it has suffered by virtue of such conduct by the Service Provider.

17.2.2 If, at any time of such termination, Lesedi Local Municipality be indebted to the Service Provider for any amounts whatsoever, the Municipality shall be entitled to withhold payment in respect thereof for a period of 90 (ninety) days from the date of termination in order to investigate the Service Provider's conduct and any damages suffered by the Municipality to the Service Provider after the lapse of such period shall preclude the Municipality, thereafter, from recovering from the Service Provider any such damages as it may have suffered.

18. FORCE MAJEURE

- 18.1 If either Party is prevented or restricted directly or indirectly from carrying out all or any of its obligations under this Agreement, including but not limited to, by reason of strike, lock-out, fire, explosion, floods, riot, war, accident, act of God, embargo, legislation, shortage of or a breakdown in transportation facilities, civil commotion, unrest or disturbances, cessation of labour, government

interference or control, or any other cause or contingency beyond the control of that Party,

- 18.2 the Party so affected shall be relieved of its obligations hereunder during the period that such event and its consequences continue, but only to the extent so prevented and shall not be liable for any delay or failure in the performance of any obligations hereunder or loss or damages either general, special or consequential which the other Party may suffer due to or resulting from such delay or failure, provided always that written notice shall forthwith be given of any such inability to perform by the affected and
- 18.3 Any Party invoking *force majeure* shall, upon termination of such event giving rise thereto forthwith give written notice thereof to the other Party. Should such *force majeure* continue for a period of more than 90 (ninety) days then either Party shall be entitled forthwith to cancel this Agreement in respect of any obligations still to be performed hereunder.

19. BREACH, PENALTY AND TERMINATION

- 19.1 A Party to this Agreement shall be in default if it:
- 19.1.1 fails to pay any amount due by it in terms of this Agreement, by the due date, and fails to remedy such breach within 7 (seven) days of written notice to do so; or
- 19.1.2 Commits a material breach of any provision of this Agreement and fails to remedy such breach within 5 (five) days (or such period as may be reasonable in the circumstances) written notice to do so; or
- 19.1.3 commits an act of insolvency within the ambit of Section 8 of the Insolvency Act, No. 24 of 1936, is deemed unable to pay its debts within the ambit of Section 345 of the Companies Act, No. 61 of 1973, alternatively Section 69 of the Close Corporations Act, No. 69 of 1984, as the case may be, finds itself in circumstances capable of being wound up in terms of Section 344 of the Companies Act, alternatively

Section 68 of the Close Corporations Act, as the case may be, is deregistered or applies for deregistration in terms of Section 73 of the Companies Act, alternatively Section 26 of the Close Corporations Act, as the case may be, or is subject to application by a person other than a Party for the provisional winding up or judicial management of such Party, or a special resolution is passed for the winding up of such Party.

19.2 If a Party is in default, the aggrieved party shall be entitled, in addition to all other remedies to which it may be entitled in law or in terms of this Agreement, to terminate this Agreement.

19.3 Notwithstanding the provisions of clause 19, Lesedi Local Municipality may, without prejudice to any other rights herein, at any time and by giving written notice, forthwith terminate the Agreement if:

19.3.1 The Municipality has any reason to believe that the Service Provider or anyone employed by it or acting on its behalf, whether with or without the Service Provider's knowledge, engages in a fraudulent practice in connection with this Agreement;

19.3.2 There is a substantial change of the ownership in or in the control of the Service Provider (save in the event of the restructuring of the group of companies of which the Service Provider forms part), without prior notification of such change to the Municipality;

19.3.3 the Service Provider fails to satisfy a judgement against the Service Provider within 21 (twenty one) days after the Service Provider becomes aware of the judgement, except if the Service Provider provides evidence on an on-going basis to the reasonable satisfaction of the Municipality that steps have been initiated within the 21 (twenty one) days to appeal or rescind the judgement and to procure suspension of execution of the judgement and that such steps are being expeditiously pursued. The period of 21 (twenty one) days shall run from the date succeeding the date on which judgement becomes

final, or the date on which the attempts to procure the suspension of the execution fail; or

19.3.4 The Service Provider acts against the expressed policies and instructions of Agreement as expressed in terms of this Agreement.

19.4 Penalties - Parties agrees to effect the recourse of effecting penalties to ill-performance as per the service agreement in line with the Conventional Penalties Act, 1962, and its amendments.

19.5 The termination of this Agreement will not prejudice the rights of the Municipality to claim damages or to obtain any other relief in respect of any antecedent breach of the terms and conditions of this Agreement prior to such termination.

19.6 Notwithstanding any other provision contained in this Agreement, in the event that the Service Provider fails to complete the Services on the Completion Date (or such later date as the Parties may have agreed to in writing), or fails to deliver the Services in compliance with the Specifications, then the Municipality shall, at its election, be entitled, but not obliged to:

19.6.1 Terminate this Agreement forthwith; and

19.6.2 Acquire the Services from any third party and recover such additional expenditure (if any), in relation to the cost of the Service incurred by the Municipality and damages (if any), from the Service Provider; or

19.6.3 deduct from any amount owing to the Service Provider by the Municipality , as a penalty, an amount referred to a tender document during which delivery remains outstanding or incomplete or during which the product fails to comply with the specifications, provided that such penalty amount shall not be in excess of the service consideration or the adjusted service Consideration; or

19.6.4 Claim damages or loss suffered in lieu of such penalty.

19.7 This contract may terminate by mutual consent of both parties.

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- 19.8 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.
- 19.9 If there is fraud or corruption in the procurement process, the municipality shall be entitled to cancel the contract.
- 19.10 On termination of this Agreement all original data, programs information, documents, reports, etc. must be handed back to the Municipality by the Service Provider.
- 19.11 The Municipality will notify the Service Provider three (3) months prior to the natural expiry of the contract of its intention to renew or termination the contract.

20. DISPUTE RESOLUTION

- 20.1 All disputes between the Parties shall, when all efforts to resolve such dispute by negotiation have failed, be referred to the South Gauteng High Court of South Africa (Witwatersrand Local Division), save if the Parties agree to refer the dispute to arbitration as envisaged in clause 21.
- 20.2 The Party declaring the dispute shall be obliged, prior to referring the matter to the High Court or to arbitration, to deliver written notice to the other Party giving full details in respect of the alleged disputes to enable the other Party to fully appreciate the nature and extent of the alleged dispute

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21. ARBITRATION

21.1 In the event that the Parties agree to refer a dispute to arbitration, such arbitration shall be held subject to the provisions of this clause:

21.1.1 at Heidelberg;

21.1.2 Informally;

21.1.3 Otherwise in accordance with the provisions of the Arbitration Act, No. 42 of 1965, as amended, and it being the intention that, if possible, it shall be held and concluded within 21 (twenty-one) Business Days after it has been demanded.

21.2 The arbitrator shall be if the question in issue is:

21.2.1 Primarily an accounting matter, an independent accountant agreed upon between the Parties;

21.2.2 Primarily a legal matter, a practising senior counsel with no less than 10 (ten) years standing agreed upon between the Parties; or

21.2.3 Any other matter, an independent person agreed upon between the Parties.

21.2.4 If the Parties cannot agree upon a particular arbitrator in terms of clause 19 above within 7 (seven) Business Days after the arbitration has been demanded, the nomination in terms of 21.2.1, 21.2.2 or 21.2.3, as the case may be, shall be made by the President of the Law Society of the Northern Provinces (or its successor), within 7 (seven) days after the Parties have so failed to agree

21.3 The Parties irrevocably agree that the decision in these arbitration proceedings:

21.3.1 Shall be binding on them;

21.3.2 Shall be carried into effect;

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Parktown North

Johannesburg

Telephone number : **0861 26 22 64**

Cell phone number : **071 485 4139**

Fax : **012 345 2468**

Email Address : **info@modi-res.co.za**

PROJECT DIRECTOR : **Lojalelo Macdonald Modibedi**

or at such other physical address, not being a Post Office Box or poste restante, of which the Party concerned may notify the other in writing.

23.3 Any notice given in terms of this Agreement shall be in writing and shall, unless the contrary is proven:

23.3.1 If delivered by hand, be deemed to have been duly received by the addressee on the date of delivery;

23.3.2 If posted by prepaid registered post, be deemed to have been received by the addressee on the 8th (eighth) Business Day following the date of such posting;

23.3.3 If transmitted by facsimile, be deemed to have been received by the addressee 1 (one) Business Day after despatch;

23.3.4 If sent electronically, be deemed to have been received on the first Business Day following the successful transmission thereof as evidenced by the electronic confirmation of receipt.

23.3.5 Notwithstanding anything to the contrary contained in this Agreement, a written notice or communication actually received by a Party at its

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[Handwritten signatures]

chosen address set out above shall be an adequate written notice of communication to such Party.

24. JURISDICTION

- 24.1 The Parties irrevocably agree that the South Gauteng High Court shall have jurisdiction to hear and determine any suit, action or proceeding and to settle any dispute which may arise out of or in connection with the Agreement and for such purpose irrevocably submit to the jurisdiction of the High Court.
- 24.2 Each of the Parties irrevocably waives any objection which it might now or hereafter may have to the court referred to in clause 21.1 being nominated as a forum to hear and determine any suit, action or proceedings and to settle any disputes which may arise out of or in connection with this Agreement and agrees not to claim that any such court is not a convenient or appropriate forum. The Parties agree that the process by which any suit, action or proceeding is begun may be served on it by being delivered in connection with any suit, action or proceeding at its registered office for the time being.
- 24.3 The Service Provider shall, if its registered address is not in South Africa, as soon as any suit, action or proceeding is brought against it, appoint an address in South Africa for purposes of service and failing such appointment within 15 (fifteen) days after such suit, action or proceeding is instituted, the Municipality shall be entitled to appoint such address by notice to the Service Provider. Nothing contained herein shall affect the right to serve process in any other manner permitted by law.
- 24.4 The submission to the jurisdiction of the court referred to in clause 24.1 shall not be construed so as to limit the rights of either Party to take proceedings against the other Party in any other court of competent jurisdiction for the purposes of obtaining urgent or interdictory relief.

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25. ASSIGNMENT AND CESSION

The Service Provider shall not:

- 25.1 transfer any rights and/or obligations arising out of this Agreement without the written permission of the Municipality; and
- 25.2 make or allow any change to the shareholding or management control of the Service Provider as it is at the time of signature of this Agreement in the absence of prior notification of such change to Lesedi Local Municipality.

26. SEVERABILITY

If any clause or term of this Agreement should be invalid, unenforceable or illegal, then the remaining terms and provisions of this Agreement shall be deemed to be severable there from and shall continue in full force and effect unless such invalidity, unenforceability or illegality goes to the root of this Agreement.

27. WAIVER

- 27.1 The waiver (whether expressed or implied), by a Party of any breach of the terms or conditions of this Agreement by the other Party shall not prejudice any remedy of the waiving Party in respect of any continuing or other breach of the terms and conditions hereof.
- 27.2 No failure, delay, relaxation or indulgence on the part of either Party in exercising any power or right conferred on such Party in terms of this Agreement shall operate as a waiver of such power or right nor shall any single or partial exercise of any such power or right preclude any other or further exercises thereof or the exercise of any other power or right under this Agreement.
- 27.3 The expiry or termination of this Agreement shall not prejudice the rights of either Party in respect of any antecedent breach or non-performance by the other Party of any of the terms or conditions hereof.

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28. MODIFICATION

No amendment, variation or consensual cancellation of this Agreement or any provision or term hereof or of any other document issued or executed pursuant to or in terms of this Agreement and no settlement of any disputes arising under this Agreement and no extension of time, waiver or relaxation or suspension of or agreement not to enforce or to suspend or postpone the enforcement of any of the provisions or terms of this Agreement or of any other document issued pursuant to or in terms of this Agreement shall be binding unless made in accordance with the terms of this Agreement and recorded in a written document signed by the duly authorized representatives of the Parties.

29. APPLICABLE LAW

This Agreement shall be governed exclusively, in all respects, by and shall be interpreted in accordance with the laws of South Africa

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30. ENTIRE AGREEMENT

The Agreement and the incorporated annexures represent the entire Agreement between the Service Provider and the Municipality, cancelling and taking the place of all prior oral, written or implied agreements between them, with respect to the supply of the Services.

SIGNED AT Heidelberg ON THE 12 DAY OF April 2018

WITNESSES:

1. 


Duly authorised for and on behalf of
MODI-RES VALUERS CC.

2. 

SIGNED AT HEIDELBERG ON THE 12 DAY OF APRIL 2018

WITNESSES:

1. 


Duly authorised for and on behalf of
LESEDI LOCAL MUNICIPALITY

2. 

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ANNEXURE 6

Format of declaration to be completed by the valuer of a municipality or assistant municipal valuer or a special valuer

DECLARATION BY MUNICIPAL VALUER OR ASSISTANT VALUER OR A SPECIAL VALUER FOR THE PERIOD _____ TO _____

I, Lesalelo Macdonald Modibedi, Identity Number 6702015907087 do declare that I will, in accordance with the provisions of the Local Government: Municipal Property Rates Act, 2004 (Act No.6 of 2004), hereinafter referred to as the "Act", to the best of my skills and knowledge and without fear, favour or prejudice truly and impartially value properties and diligently perform all valuation-related functions, including the processing of objections and appeals regarding all properties within Lesedi municipal area of jurisdiction in terms of the provisions of the Act. In the discharge of my duties as a municipal valuer/assistant municipal valuer/special valuer*, I will comply with sections 43 and 44 of the Act.

Declared at Heilabong this 4 day of May 2018 (year)

Professional Registration Number with the South African Council for the Property Valuers Profession** 6056

Category of Professional Registration** PROFESSIONAL VALUER

**In the case of a professional valuer

Signature of ~~Municipal Valuer/Assistant~~ Municipal Valuer/Special Valuer

**Delete whichever is not applicable*

DR. SPANSCHEBERG
0435033-1

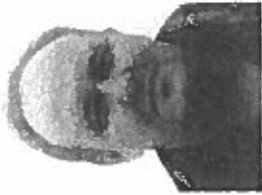
Commissioner of Oaths (Full Names)

Signature





LESEDI
Local Municipality



General Valuation Project

Name: Corrie Schalkwyk
Identity Number: 6609035211087

Data Team

Card Issue date: 4 May 2018
Card Valid date: 31 July 2019

Signatures:
Valuer

Municipal Manger

Contact Number: 016-492 0049



LESEDI
Local Municipality



General Valuation Project

Name: Macdonald Modibedi
Identity Number: 6702015907087

Municipal Valuer

Card Issue date: 4 May 2018
Card Valid date: 31 July 2019

Signatures:
Valuer

Municipal Manger

Contact Number: 016-492 0049