



SERVICE LEVEL AGREEMENT
FOR
THE CONSTRUCTION OF SHALIMAR RIDGE TRADING MARKET STALL
ENTERED INTO BETWEEN
LESEDI LOCAL MUNICIPALITY
(Client)
AND
THABELA EARTHWORKS
(Service Provider)

1. PARTIES

The Parties to this Agreement are –

1.1 **LESEDI**, a local Municipality established in terms of the Local Government Municipal Structure Act Number 117 of 1998 herein represented by the **Acting Municipal Manager**, Advocate Gugulethu Thimane, being duly authorised thereto (the "**Lesedi**"); and

1.2 **SERVICE PROVIDER**, a company with registration number 2005/086269/23 duly registered in accordance with the company laws of the Republic of South Africa, with its registered address at 125 Zone 3, Sebokeng, 1983, herein represented by Mr. Mofapa Halifax Sethabela in his capacity as Managing Director being duly authorised thereto ("**Service Provider**").

MOSUPA

2. **RECORDAL** It is recorded that —

MH H-J

T.N

2.1 **Lesedi** must urgently address the, **the construction of shalimar ridge tradingmarket stall Heidelberg**, and has accordingly approved deviation from norma procurement processes.

2.2 The **Service Provider** has previously rendered similar services.

3. DEFINITIONS AND INTERPRETATION

3.1 Definitions

In this **Agreement**, unless the context otherwise requires, the following capitalised terms shall have the meanings assigned to them below and cognate expressions shall have corresponding meanings:

"**Agreement**" means this **Agreement** including **Tender document, Annexure A and Addendum(s)**;

"**Lesedi**" means the Lesedi Local Municipality;

"**Duration of Agreement**" is from 1st November 2018 until 31st May 2019;

"**Fallure**" means any failure by the **Service Provider** to perform its obligation in terms of this **Agreement**;

H.J G-T MH
T.N Page 2/15

"Good Industry Practice" applying, in relation to the manner in which the obligations are rendered, the standards, practices, methods and procedures conforming to applicable Law, and exercising that degree of skill, care, diligence, prudence and foresight that would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking under similar circumstances;

"Law" means all applicable laws, ordinances, regulations, judgments and orders of any competent court, governmental agency or authority in any relevant jurisdiction within the Republic of South Africa;

"Obligations" means obligations as set out in clause 6;

"Parties" means **Lesedi** and **Service Provider**, and any reference to **"Party"** shall refer to one of the relevant **Parties** as required by the context;

"Works" means the activities on a project for which contractors are under contract to the Client to perform or is intended to be performed, including the supply of goods and equipment.

"Service Provider Proposal" means the initial financial proposal in respect of the **Project**, which sets out the broad outline of the **Project** and will be used as a guide document for implementation of the **Project**;

3.2 INTERPRETATION

This **Agreement** shall be interpreted according to the following provisions, unless the context requires otherwise:

- 3.2.1 References to the provisions of any Law shall include such provisions as amended, re-enacted or consolidated from time to time in so far as such amendment, re-enactment or consolidation applies or is capable of applying to any transaction entered into under this **Agreement**.
- 3.2.2 References to **"Parties"** shall include the **Parties'** respective successors-in-title and, if permitted in this **Agreement**, their respective cessionaries and assignees.
- 3.2.3 References to a **"person"** shall include an individual, firm, company, corporation, juristic person, responsible authority, and any trust, organisation, association or partnership, whether or not having separate legal personality.

H-J G-T MH
2015

- 3.2.4 References to "clauses", "**sub-clauses**", "**Annexures**" and "**Addendums**" are references to the **clauses, sub-clauses, Annexures and Addendums** of this **Agreement**.
- 3.2.5 References to any other contract or document shall include, if applicable (subject to all approvals required to be given pursuant to this **Agreement** for any amendment or variation to or novation or substitution of such contract or document) a reference to that contract or document as amended, varied, novated or substituted from time to time.
- 3.2.6 Words in parentheses and italics appearing after a clause reference or a reference to a schedule are inserted for esse of reference only. If there is any discrepancy between the clause reference and the words in parentheses and italics, the latter shall prevail.
- 3.2.7 The headings of **clauses, sub-clauses, Annexures and Addendums** are included for convenience only and shall not affect the interpretation of this **Agreement**.
- 3.2.8 The **Parties** acknowledge that each of them has had the opportunity to take legal advice concerning this **Agreement**, and agree that no provision or word used in this **Agreement** shall be interpreted to the disadvantage of either **Party** because that **Party** was responsible for or participated in the preparation or drafting of this **Agreement** or any part of it.
- 3.2.9 Words importing the singular number shall include the plural and vice versa, and words importing either gender or the neuter shall include both genders and the neuter.
- 3.2.10 The number of days indicated to commit an act or indicated for any other purpose, is calculated by excluding the first day and including the last day.
- 3.2.11 If any definition in clause 3.1 (*Definitions*) contains a substantive provision conferring rights or imposing obligations on any **Party**, effect shall be given to such provision as if it was a substantive provision in the body of this **Agreement**.
- 3.2.12 Where there is a conflict between the provisions in the **Agreement** and its **Addendums** or **Annexures**, the provisions in the **Agreement** will prevail, unless the context provides otherwise.

4. APPOINTMENT

- 4.1 **Lesedi** appointed the **Service Provider** to implement and manage the **Project** in accordance with the terms and conditions of this **Agreement** for the duration of the

MT

G-T HJ

Agreement and the **Service Provider** accordingly accepts the appointment.

4.2 The appointment letter is attached as **Annexure A**.

5. CO-OPERATION

Each **Party** shall co-operate with the other in the exercise and performance of their respective rights and obligations under this **Agreement**.

6. OBLIGATIONS OF SERVICE PROVIDER

6.1 The **Service Provider** shall execute the obligations in line with the Bill of Quantities and Financial Proposal.

6.2 The **Service Provider** shall enter into relevant **Addendums**, which shall include the relevant General Conditions of Contract applicable to the Construction Industry, 2010, to this **Agreement** in order to regulate the implementation of the **Project**.

6.3 The **Service Provider** shall devote the necessary time and attention to their obligations and not engage in any business or activity that will prevent the **Service Provider** from performing its obligations effectively.

6.4 The **Service Provider** shall not be relieved of any obligation, responsibility or liability under this **Agreement** by the appointment of any sub-contractor to carry out any part of its obligations. As between the **Service Provider** and **Lesedi**, the **Service Provider** shall be responsible for the payment, performance, acts, defaults, omissions, breaches and negligence of all sub-contractors. **All references** in this **Agreement** to any performance, payment, act, default, omission, breach or negligence of the **Service Provider** shall be deemed to include any of the same by a sub-contractor.

6.5 The Department shall at all reasonable times and with prior written notice have access to the **Project**, all records and documentation (including the right to reproduce) required of the **Service Provider** to be kept in relation to the **Project** for purposes of auditing, quality control and monitoring of the **Project** by **Lesedi**.

6.6 The Service Provider shall:

- 6.6.1 carry out its obligations (each as a separate and distinct obligation) in accordance with Good Industry Practice;
- 6.6.2 in a manner which gives priority to health and safety in the performance of the obligations in order to protect life, health, property and the environment;
- 6.6.3 in compliance with the reasonable policies, procedures, protocols and directives of the Department (as may be amended from time to time) as indicated;
- 6.6.4 employ persons in connection with the performance of the obligations who have the necessary skills and experience as required by their respective professions, trades and callings and taking into account their roles and responsibilities in relation to the **Project**.

7. GENERAL RIGHTS AND OBLIGATIONS OF LESEDI

Lesedi —

- 7.1 shall assist the Service Provider with adequate access to information and documentation available to the Municipality that will be required by the Service Provider to implement the Project;
- 7.2 shall make payments in terms of clause 12 (*Payment*);
- 7.3 shall inform the Service Provider of its policies, procedures, protocols and directives as may be applicable to the Project and shall timeously inform the Service Provider of any amendments thereto.

8. WARRANTIES

8.1 Service Provider warranties

The Service Provider warrants that –

- 8.1.1 the obligations of the **Service Provider under this Agreement are legal, valid and binding and enforceable against it in accordance with the terms of the Agreement;**
- 8.1.2 it has satisfied itself as to the nature and extent of the obligations to be provided in terms of the Agreement; and

8.1.3 it has the necessary resources, skills, expertise and experience required to carry out the obligations in terms of this Agreement and will use reasonable care and skill in the execution of the same under this Agreement.

9. CONFIDENTIALITY

9.1 The **Service Provider** shall not, during the term of this **Agreement and thereafter**, without the prior written consent of **Lesedi**, disclose any confidential information relating to **Lesedi and the Project to anyone other than those persons who are connected to Lesedi and/or the Service Provider** and who are required or othorised to have access to such information.

9.2 The obligation to maintain the confidentiality of information shall survive the termination of this **Agreement**, but will not apply to confidential information which was in the public domain prior to being disclosed by the **Service Provider** and has come into the public domain other than as a result of being divulged by the **Service Provider** or is required to be disclosed by legislation or a court of law.

10. OWNERSHIP OF INTELLECTUAL PROPERTY

10.1 Information provided by **Lesedi** to the **Service Provider** and any studies, reports and documentation produced by the **Service Provider** in the performance, shall belong to and remain the property of **Lesedi**, and will not be used by the **Service Provider** for any purpose other than in accordance with this Agreement, unless by written permission of **Lesedi**.

10.2 Upon termination of this **Agreement** for any reason whatsoever, the **Service Provider** must return without delay to **Lesedi** all materials, information or documentation in its possession, which belong to **Lesedi**, regardless of whether or not such materials, information or documentation were originally supplied by **Lesedi** to the **Service Provider**.

11. FINANCIAL CONTROL

This **Agreement** is subject to the provisions of the Municipal Finance Management Act, 2003 (Act No.56 of 2003).

12. PAYMENT

12.1 **Lesedi** shall make payment to the **Service Provider** to execute the **Project** subject to the Addendums to the Agreement, which shall include the relevant General Conditions of Contract applicable to the Construction Industry, 2010. MH

12.2 The money payable by **Lesedi** during the term of this **Agreement** shall at no stage exceed the amount of **R1 935 942.00** including Value Added Tax ('VAT') and 10% contingencies. To avoid doubt, the total amount of the payment certificate submitted throughout the term of this **Agreement** shall not exceed the aforementioned amount.

12.3 Payment Certificates

12.3.1 The **Service Provider** shall submit to **Lesedi** payment certificates in line with construction industry practice and this **Agreement**.

12.3.2 **Lesedi** shall pay the amount of the payment certificate after it has been certified by the authorized person of **Lesedi**.

13. INSURANCE

13.1 The **Service Provider** shall maintain professional indemnity insurance with a limit of indemnity not less than the value of the **Project** for any claim in respect of any neglect, error or omission on the part of the **Service Provider** in the performance of its obligations under this **Agreement**, for the duration of this **Agreement**.

13.2 The **Service Provider** is also required to provide the following insurance:

- (1) 5% retention of all fees payable to the **Service Provider**

14. TERMINATION

14.1 Non-default termination

This **Agreement** shall automatically be terminated on the expiry date, unless it has been terminated earlier or extended in accordance with the provisions of this **Agreement**.

14.2 Breach

14.2.1 A Party commits breach if he fails or refuses to perform as agreed in terms of the provisions of the **Agreement**.

14.2.2 Should any **Party** (the "guilty **Party**") commit a breach of this **Agreement** and fail or refuse to rectify that breach within 14 (FOURTEEN) days after receipt of a written notice from the other

F.N
MH
G.T

Party (the "innocent **Party**"), calling upon the guilty **Party** to rectify that breach, the innocent **Party** shall be entitled, without prejudice to any other of his rights, to forthwith cancel this **Agreement** by written notice to the guilty **Party**.

14.2.3 The **Parties** recognize that this provision may be amended in the **Addendum(s)** contemplated in this **Agreement**.

14.3 Exhaustion of Funds

It is also agreed that should funds no longer be available to pay for the execution of the **Project**, **Lesedi** may terminate this **Agreement** in its own discretion or temporarily suspend all or part of the **Project** by notice to the **Service Provider** who shall immediately make arrangements to stop the performance of the **Project** and minimize further expenditure: Provided that the **Service Provider** shall thereupon be entitled to payment in full for the services delivered, up to the date of termination or suspension.

15. Termination for Default

15.1 The client, without prejudice to any other remedy for breach of contract, by written notice of default sent to the service provider, may terminate this contract in whole or in part:

- (a) If the service provider 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 client pursuant to GCC Clause 21.2;
- (b) If the service provider fails to perform any other obligation(s) under the contract; or
- (c) If the service provider, in the judgment of the client, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

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

- 15.3 Where the client terminates the contract in whole or in part, the client may decide to impose a restriction penalty on the service provider by prohibiting such service provider from doing business with the public sector for a period not exceeding 10 years.
- 15.4 If a client intends imposing a restriction on a service provider or any person associated with the service provider, the service provider 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 service provider fail to respond within the stipulated fourteen (14) days the client may regard the intended penalty as not objected against and may impose it on the service provider.
- 15.5 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.
- 15.6 If a restriction is imposed, the client must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:
- (i) The name and address of the service provider and/or person restricted by the client;
 - (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 service providers or persons prohibited from doing business with the public sector.

- 15.7 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.

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

16. DISPUTE RESOLUTION AND ARBITRATION

- 16.1 The dispute resolution procedure contained in this clause shall apply to any dispute, claim or difference between the **Parties** arising out of or relating to this **Agreement** ("a dispute").
- 16.2 A dispute will not be deemed to be a dispute until one of the **Parties** has provided a written notice conveying the nature and scope of the dispute to the other **Party**.
- 16.3 **Parties** will endeavour to solve all disputes amicably first.
- 16.4 If the **Parties** have been unable to resolve any dispute within 10 (TEN) working days of the date of the notice contemplated in clause 15.2, any **Party** may approach the Gauteng High Court to settle the dispute.
- 16.5 Nothing in this clause prevent any **Party** to approach the Gauteng High Court having to obtain urgent relief which may be required by such **Party**.
- 16.6 The **Parties** recognize that this provision may be amended in the **Addendum(s)** contemplated in this **Agreement**.

17. INDEMNITIES

The **Service Provider** indemnifies and shall keep **Lesedi** indemnified at all times against all losses sustained by **Lesedi** in consequence of –

17.1 any —

- 17.1.1 loss of or damage to property;
- 17.1.2 breach of a statutory duty arising under any applicable Law;
- 17.1.3 claim for or in respect of the death or personal injury of any individual during the duration of the **Project**; or

- 17.1.4 other claim, action, charge, cost, demand or expense, (including, without limitation, any legal fees or costs) arising in connection with the performance or non-performance of any of the obligations, save to the extent caused by the gross negligence or wilful misconduct of **Lesedi** or by a breach by **Lesedi** of an express provision of this **Agreement** that is directly linked to the loss; or
- 17.2 any breach by the **Service Provider** of any warranties given by it in this **Agreement**.

18. PENALTIES

- 18.1 Subject to GCC Clause 25, if the service provider fails to deliver any or all of the goods or to perform the services within the period(s) specified in the contract, the service provider shall, without prejudice to its 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 client may also consider termination of the contract pursuant to GCC Clause 23.

19. FORCE MAJEURE

- 19.1 Notwithstanding the provisions of the GCC Clauses 22 and 23, the service provider shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that the delay in performance or other failure to perform its obligations under the contract is the result of an event of force majeure.
- 19.2 If a force majeure situation arises, the service provider shall promptly notify the client in writing of such condition and the cause thereof. Unless otherwise directed by the client in writing, the service provider 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.
- 19.3 Where a force majeure situation arises and there is a need for the municipality to either prioritize the budget or subject to budget availability to perform immediate service delivery mandate as provided for in the Constitution of the Republic of South Africa, the municipality reserves the right to adjust budget accordingly and advise the service provider of such instance.

20. CONTRACT MANAGEMENT

Both **Parties** shall nominate and appoint Contract Managers from time to time by written notification of their appointment to the other **Party** to facilitate the implementation of the **Agreement**.

21. MISCELLANEOUS

- 21.1 Save as expressly permitted hereunder, a **Party** shall not, without the prior written approval of the other **Party**, which shall not be unreasonably withheld, assign, cede, delegate, transfer or otherwise dispose of any right or obligation under this **Agreement** to any other person.
- 21.2 The **Service Provider** shall not subcontract with any person for the carrying out of any of its obligations under this **Agreement**, without, in each case, the prior written consent of **Lesedi**, which consent shall not be unreasonably withheld or delayed.
- 21.3 This **Agreement** shall be governed by and construed in accordance with the laws of the Republic of South Africa. Each **Party** agrees that the Gauteng High Court of South Africa shall have exclusive jurisdiction to hear and decide any application, action, suit, proceeding or dispute in connection with this **Agreement**, and irrevocably submits to the jurisdiction of the Gauteng High Court, Johannesburg.
- 21.4 No provision of this **Agreement** including, without limitation, the provisions of this clause may be amended, substituted or otherwise varied, and no provision may be added to or incorporated in this **Agreement**, except (in any such case) by an **Agreement** in writing signed by the duly authorised representatives of the **Parties**.
- 21.5 Any relaxation, indulgence or delay (together "Indulgence") by either **Party** in exercising, or any failure by either **Party** to exercise, any right under this **Agreement** shall not be construed as a waiver of that right and shall not affect the ability of that **Party** subsequently to exercise that right or to pursue any remedy, nor shall any Indulgence constitute a waiver of any other right (whether against that **Party** or any other person).
- 21.6 Except where expressly provided to the contrary in this **Agreement**, this **Agreement** constitutes the entire **Agreement** between the **Parties** in connection with its subject matter and supersedes all prior representations, communications, negotiations, understandings and **Agreements** concerning the subject matter of this **Agreement**.
- 21.7 This **Agreement** may be executed in any number of identical counterparts, all of which when taken together shall constitute one **Agreement**. Any single counterpart or a set of counterparts taken together which, in either case, are executed by the **Parties** shall constitute a full original of this **Agreement** for all purposes.
- 21.8 All notices and any other communications whatsoever (including, without limitation, any approval, consent, demand, query or request) by either **Party** in terms of this **Agreement** or relating to it shall be given in writing and sent by registered post, or delivered by hand, or

transmitted by facsimile or electronic mail to the recipient **Party** at its relevant address set out below:

21.8.1 **Lesedi**, at:

Address: Municipal Manager
Lesedi Local Municipality
1 H.F Verwoed Street
Heidelberg

Email: mm@lesedi.gov.za
Tel: 016 492 0043

21.8.2 The **Service Provider**, at:

Address: 125 Zone 3, Sebokeng
Postal Address: P O Box 265399, Three Rivers, Vereeniging, 1935
Email: thablaearthworks@gmail.com
Tel: 073 908 6414

21.9 Either **Party** may, by written notice to the other **Party**, change any of the addresses at which, or the designated person for whose attention those notices or other communications are to be given.

21.10 Any notice or other communication given by any **Party** to the other **Party** which :-

21.10.1 is sent by registered post to the addressee at its specified address shall be rebuttably presumed to have been received by the addressee on the 7th (SEVENTH) day after the date of posting;
or

21.10.2 is delivered by hand during the normal business hours of the addressee at its specified address shall be rebuttably presumed to have been received by the addressee at the time of delivery; or

21.10.3 is transmitted by facsimile copier to the addressee at the addressee's specified facsimile number shall be rebuttably presumed to have been received by the addressee on the date of transmission as indicated on the sender's facsimile transmission report.

Page 14 of 15
7.10
H.S. g.T. MH

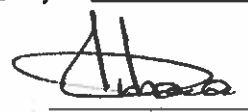
21.11 **The Parties** choose their respective physical addresses in clause 21.8 as their respective *domicilia citandi et executandi* at which all documents relating to any legal proceedings and notices envisaged in this **Agreement**, to which they are a **Party** may be served. If that address is changed to another address which is not a physical address in the Republic of South Africa, then the original address shall remain the *domicilium citandi et executandi* of the relevant **Party** until it nominates a new physical address within the Republic of South Africa in writing, to be its new *domicilium citandi et executandi*.

21.12 Each **Party** shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this **Agreement**.

Thus done and signed at Heidelberg on this 31 day of October 2018.



ACTING MUNICIPAL MANAGER
NAME: ADVOCATE GUGULETHU THIMANE
H.J. MARIJA



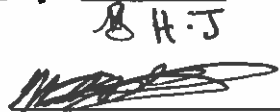
WITNESS

Name in print:

Thus, done and signed at Heidelberg on this 31 day of October ^{7.10} ~~March~~ 2018.



CONTRACTOR
NAME: MH SETHABELA



WITNESS

Name in print: Terence Nkomo Mollay