



SERVICE LEVEL AGREEMENT

**FOR DP&HS 06/2018: APPOINTMENT OF A SERVICE PROVIDER TO UNDERTAKE
PLANNING ACTIVITIES AND SERVICING OF SITES ON THE REMAINDER OF ERF 1
LADYSMITH (KNOWN AS PROPOSED ERVEN 17809 AND 17810 LADYSMITH)**

Entered into between:

ALFRED DUMA LOCAL MUNICIPALITY

duly represented herein by **SS NGIBA** in her capacity as the Municipal Manager of
the **ALFRED DUMA LOCAL** Municipality and duly authorized thereto by a resolution
of the Alfred Duma Local Municipality's Council dated

26TH October 2017

(herein after referred to as Developer ("the LANDOWNER"))

And

MAHLORI DEVELOPMENT CONSULTANTS AND PROJECT MANAGEMENT CC

A Close Corporation duly registered with registration number 2005/150662/23 and
duly represented by **(B. MAKASANI)** in his capacity as the Director
(Hereinafter referred to as "the Service Provider")

INTRODUCTION:

The Alfred Duma Local Municipality has advertised for the appointment of a Service Provider to undertake Planning activities and servicing of sites on the Remainder of Erf 1, Ladysmith (Known as proposed Erven 17809 and 17810).

WHEREAS, in fulfilling the needs of the community and ensuring adequate housing in line with the Constitution of South Africa in conjunction with the Housing Act 107 of 1997, the Municipality had identified the Remainder of Erf 1 Ladysmith, as a suitable area for such development.

WHEREAS It was resolved at the Bid Adjudication Committee meeting that the Municipality will appoint **MAHLORI DEVELOPMENT CONSULTANTS AND PROJECT MANAGEMENT CC** as the Service Providers to undertake the Planning activities and servicing of sites on the Remainder of Erf 1, Ladysmith (Known as proposed Erven 17809 and 17810), as per the attached letter of appointment.

NOW THEREFORE, the Alfred Duma Local Municipality and the Service Provider (collectively "the Parties") agree that the Service Provider will provide services to the Alfred Municipality in accordance with the terms and conditions set out in this Agreement.

The Parties agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this agreement, unless clearly inconsistent with or otherwise indicated by the context:

- 1.1.1 **"This agreement"** - means this agreement and any Annexures attached hereto;
- 1.1.2 **"service provider"** – means **MAHLORI DEVELOPMENT CONSULTANTS AND PROJECT MANAGEMENT CC**;
- 1.1.3 **"The Municipality"** – means Alfred Duma Local Municipality;
- 1.1.4 **"Corrupt practice"** - means the offering, giving, receiving or soliciting of anything of value to influence the action of an official in the selection process or in contract execution;
- 1.1.5 **"Fraudulent practice"** – means a misrepresentation of facts, in order to influence a selection process or the execution of a contract to the detriment of the Department, and includes collusive practice among Service Providers (prior to, or after,

submission of proposals), designed to establish prices at artificial non-competitive levels and to deprive the Department of the benefits of free and open competition;

- 1.1.6 **"The MFMA"** – means the Municipal Finance Management Act 56 of 2003;
- 1.1.7 **"Business Day"** means any day of the week other than Saturdays, Sundays and any other day officially recorded as a public holiday in the Republic of South Africa;
- 1.1.8 **"Confidential information"** – includes any information or knowledge acquired by the Service Provider in the course of or incidental to providing the services to the Municipality in terms of this agreement, whether such information originates from the Municipality or from other persons;
- 1.1.9 **"Parties"** – means the Municipality and the Service Provider and "Party" means either one of them, as the context may indicate.
- 1.1.10 **"Event of Force Majeure"** - means any act of God, fire, explosion, floods, riot, war, accident, embargo, legislation, civil commotion or disturbances, government interference or control or, without regard to the foregoing, any circumstances, events, contingencies and/or actions beyond or outside the reasonable control of the relevant parties or its employees or agents;
- 1.1.11 **For the purpose of this agreement:**
- 1.1.11.1 day means calendar day;
- 1.1.11.2 Whenever any number of days is prescribed, it excludes the first and includes the last day unless the last day falls on a Sunday, Saturday or South African public holiday, in which case the last day will be the next succeeding business day.
- 1.1.11.3 Reference to months or years shall be construed as calendar months and conventional years i.e. 01 January to 31 December.

1.2 INTERPRETATION

- 1.2.1 In this Agreement, unless clearly inconsistent with or otherwise indicated by the context words importing any one gender include the other, the singular includes the plural and *vice versa*, and any reference to natural persons includes a legal persons and *vice versa*.
- 1.2.2 This Agreement shall be governed by and construed and interpreted in accordance with the law of the Republic of South Africa.



2. APPOINTMENT AND SERVICES TO BE PROVIDED

The Alfred Duma Local Municipality hereby appoints **MAHLORI DEVELOPMENT CONSULTANTS AND PROJECT MANAGEMENT CC** to undertake the Planning activities and servicing of sites on the Remainder of Erf 1, Ladysmith (Known as proposed Erven 17809 and 17810), as per the bid no: DP&HS 06/2018 and the letter of appointment attached herein.

- 2.1 The Service Provider hereby accepts the appointment by the Municipality to provide the Municipality with the abovementioned services, as per Annexure "A".
- 2.2 The Service Provider undertakes to provide the services within the applicable time period(s) set out in the BID document, unless the prior written consent of the Municipality has been obtained for an extension of time.

2. DURATION OF AGREEMENT

- 2.1 The duration of the agreement will be for a period of **24** (twenty Four) months to complete the Planning activities and servicing of approximately 2000 sites in respect of remainder of Erf 1 (Known as proposed erven 17809 and 17810), Ladysmith that must start on date of acceptance of the appointment letter.
- 2.2 **12** (twelve) months for installation of services, from the expiration of the above date.
- 2.3 In the event of the service not being concluded within the duration of this agreement then both parties may in writing consent to an extension of this contract for a period until such time as both parties have discharged all of their obligations in terms of the agreement and as per the MFMA.
- 2.4 In terms of S116 (a) (iii), this contract will be reviewed as follows:
 1. At the conclusion of the pre-feasibility study;
 2. At the conclusion of installation of services;
 3. At the conclusion of the top structures.

3. LOCATION

The services will be performed at:

- Remainder of Erf 1 (Known as proposed Erven 17809 and 17810) Ladysmith

And where the location of a particular task is not so specified, at such locations as the Municipality may approve in writing.

4. **AUTHORISED REPRESENTATIVES**

- 5.1 The Municipality hereby appoints **SE. MAZIBUKO** to serve as liaison Officer between the respective parties for the purpose of amongst other functions, monitoring the services, issuing instruction, taking reports from the service provider, evaluating work delivered, receiving and certifying invoices for payment for work duly delivered and for payment made.
- 5.2 The Municipality warrants that the only person officially authorised to sign any legal document including this agreement on behalf of the Municipality, is **Ms SS NGIBA**, who is the authorised signatory to this agreement.
- 5.3 The Service Provider hereby appoints **(MR B. MAKASANI)** as it's duly authorised representative to serve as a liaison officer between the respective parties.
- 5.4 The Service Provider warrants that **(MR B. MAKASANI)** in his capacity as the representative of **MAHLORI DEVELOPMENT CONSULTANTS AND PROJECT MANAGEMENT CC.**
- 1.1 authorised to sign this agreement on behalf of the Service Provider.
- 5.5 The said persons referred to in paragraph 5.2 and 5.3 respectively may execute any document that is required or is permitted to be executed, under this Agreement.

1. **TAXES AND DUTIES**

Unless otherwise specified, the Service Provider and sub-consultants shall pay such taxes, duties and fees, as may be levied in terms of South African legislation, the amount of which is deemed to have been included in the fees/price.

2. **NON-ENFORCEMENT/INDULGENCES GRANTED**

The non-enforcement of any provision of this Agreement or any indulgence that either Party may grant to the other Party shall be without prejudice to the rights of such first-mentioned Party to insist upon strict compliance by such other Party with all the provisions of this Agreement or to enforce its right in respect of which such indulgence was granted.

3. BREACH

In the event of "the defaulting Party" failing to comply with its obligations in terms of this Agreement for which no specific remedy has been provided, "the aggrieved Party" may, by written notice addressed to the defaulting Party, require the defaulting Party to remedy its breach within 10 (ten) business days of the date of such notice. If the defaulting Party fails to remedy its breach within the aforesaid period, the aggrieved Party may, without prejudice to any rights it may otherwise have against the defaulting Party, either—

- 8.1 claim specific performance of the obligations of the defaulting Party, in terms of this Agreement; or
- 8.2 cancel this Agreement forthwith and without further notice and recover damages for breach of contract, from the defaulting party where such breach is material; or
- 8.3 Cancel this Agreement and retain all amounts paid.

4. TERMINATION

- 9.1 The Municipality may, on not less than 10(ten) business days' written notice of termination to the Service Provider, terminate the provision of any services should –
 - 4.1.1 the Service Provider fail to remedy a failure in the performance of the services hereunder, within 10 (ten) business days of receipt of such notice, or within such further period as the Municipality may approve, in writing;
 - 4.1.2 the Service Provider fail, in the absence of any review or appeal proceedings, to comply with any final decision reached as a result of any legal or arbitration proceedings;
 - 4.1.3 the Service Provider, in the judgement of the Municipality has engaged in corrupt or fraudulent practices in competing for or in executing the Agreement. For purposes of this clause, the Municipality, in its sole discretion, and for any reason whatsoever decides to terminate the Agreement
- 9.2 Should the Municipality terminate this Agreement, pursuant to the provision of clause 9.1.3, the Municipality may withhold the payment of all outstanding fees and disbursements payable to the Service Provider resulting from practises emanating from clause 9.1.3.

- 9.3 Should the Municipality terminate this Agreement pursuant to the provisions of clause 9.1.3 the Municipality will not be liable for the payment of outstanding fees and disbursements payable to the Service Provider, as at the date of such termination.

5. **FORCE MAJEURE**

The Service Provider shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that this delay in performance or other failure to perform his obligations under the contract is as a result of an event of *force majeure*.

6. **PENALTIES**

- 11.1.1 In the event of non-compliance with the agreed time frames, penalty fees in the amount of R200.00 per week per house as stated in the Bid Document, will be deducted in lieu of each week the service provider fails to render its service in respect of the project, in accordance with SANS 294.
- 11.1.2 The Service Provider is required to deliver a certain number of units in terms of the project programme as determined in the tri-partite agreement that will be entered into between the Service Provider and the Department of Human Settlements.
- 11.1.3 Penalty fees will be charged for failure to comply with any of the conditions set out in this agreement.

7. **MEETINGS**

The parties undertake to meet on a monthly basis and/or as and when required during the course of this agreement for the purpose of taking reports & monitoring progress in terms of the deliverables. To ensure that the purposes and objectives of the Brief are accomplished, the Parties shall periodically exchange views and furnish all such information as may be reasonably requested, regarding progress, performance of their respective obligations and other related matters to the purposes and objectives of the Brief. Minutes of such meetings must be recorded and maintained by the Municipality and circulated to all relevant parties.

8. **REPORTING OBLIGATIONS**

The Service Provider shall submit to the Municipality the reports and documents as specified in the form, numbers, and within the periods set.



9. ASSISTANCE BY MUNICIPALITY

The Municipality shall use its best endeavours, to assist the Service Provider to render the Services and shall make available to the Service Provider any service and /or facility, as may be agreed upon.

10. CONFLICT OF INTERESTS

Neither the service provider, nor the sub-consultants or personnel shall engage, either directly or indirectly, during this Agreement, in any business or activities that would be in conflict with the activities assigned to them in terms of this Agreement.

11. PAYMENT FOR SERVICES

- 16.1 Original invoices must be submitted to the Municipality during the first week of the month for verification and authorisation where after same will be submitted to the Provincial Department of Human Settlements for payment.
- 16.2 The Municipality will not pay value-added tax ("VAT") unless the Service Provider has furnished the Municipality with proof of its registration for VAT and its VAT registration number.
- 16.3 The Municipality will not pay the Service Provider any amount, which exceeds the amount specified in terms of the Department of Human Settlements as applicable, unless the parties have agreed in advance in relation to any varied payment.
- 16.4 Invoices to be submitted to the Municipality by the Service Provider must include all staff and other ancillary costs as applicable and any other costs incidental and/or related to the rendering of service.
- 16.5 The project is undertaken at risk, until the approval of the project, availability of funding, as well as signing of the Bi Lateral Agreement between the Municipality and the Department of Human Settlements.
- 16.6 There is no escalation on this project and prices are fixed.



17 DUTIES OF THE SERVICE PROVIDER

17.1 The scope of work to be carried out under this contract include the following but not limited to:

- 17.1.1 Packaging and submission of housing funding application for funding to the Department of Human Settlements;
- 17.1.2 Apply and comply with all aspects of NHBRC and enforce the technical standards on the project;
- 17.1.3 Preliminary facilitation and consultation with all stakeholders;
- 17.1.4 Geo Technical investigation;
- 17.1.5 Land surveying and site pegging;
- 17.1.6 Provision of engineering services;
- 17.1.7 Environmental Impact Assessment
- 17.1.8 Sourcing of funding on behalf of the municipality i.r.o. Stages 1,2 of the project;
- 17.1.9 Provision of Project manager;
- 17.1.10 Provision of Environmental Control Officer;
- 17.1.11 Provision of Site Supervisor;
- 17.1.12 Provision of level 4 supervision, no exceptions allowed;
- 17.1.13 Preparation of project progress reports on a monthly basis;
- 17.1.14 Close out of project

The above description is not conclusive and shall not limit the work to be performed by the service provider.

17.2 DUTIES OF THE ALFRED DUMA LOCAL MUNICIPALITY

- 17.2.1 Provision of the Surveyor General Diagrams;
- 17.2.2 Provision of a detailed map of services;
- 17.2.3 Provision of administrative support.
- 17.2.4 In terms of S116 (2) (b), the Accounting Officer or his delegated Official must, on a monthly basis, monitor the performance of the Contractor, and submit monthly reports to the Contract management section of the Municipality

18 AGENCY AND REPRESENTATION

- 18.1 This agreement does not confer on the Service Provider any right of agency or representation of the Municipality or to hold out that it has a special relationship with the Municipality. Any representation to this effect by the Service Provider will constitute a material breach of this agreement.
- 18.2 The Service Provider does not have the authority to incur any debt or other liability or to obtain any credit facilities in the name of or on behalf the Municipality.

19 NO CONTRACT OF EMPLOYMENT

Nothing in this agreement must be construed as constituting a contract of employment between the Service Provider and the Municipality who by their signatures to this agreement acknowledge that no such relationship exists.

20 PERSONNEL OF THE SERVICE PROVIDER

- 20.1 The Service Provider accepts that at all times a Site Agent will be present, as well as all other qualified personnel.
- 20.2 The Service Provider may further employ and /or provide such qualified and experienced personnel as are required to carry out the service subject to the following:
- 20.2.1 the Service Provider will immediately and in consultation with the Municipality provide a person as a replacement of equivalent or better qualifications and experience if it becomes necessary to replace any of the personnel for any reason beyond the reasonable control of the Service Provider;
- 20.2.2 the Service Provider will immediately provide a person as a replacement with qualifications and experience acceptable to the Municipality upon written request of the Municipality, which request will specify the grounds thereof if the Municipality has reasonable cause to be dissatisfied with the performance of any of the Service Providers' personnel

21 SUB-CONTRACTING

- 21.1. The Service Provider may not sub-contract the provision of services in terms of this agreement or any part of such services without the prior written approval of the



Municipality. Despite any approval granted by the Municipality in terms of this clause, the Service Provider remains solely liable for the performance of its obligations under this agreement.

- 21.2 The Service Provider **MUST** sub contract 10% of the total cost of the project to service providers residing within the Alfred Duma Local Municipality.

22 CONFIDENTIALITY

- 22.1 The Service Provider may not, directly or indirectly, disclose any confidential information relating to the affairs of the Municipality to anyone except those persons authorised to have access to such information, or use such confidential information, unless for a purpose authorised by the Municipality or by law. If there is any doubt whether any disclosure or use is for an authorised purpose, the Service Provider must obtain a ruling in writing from the Municipality and must abide by it.
- 22.2 The obligation not to disclose or use confidential information contemplated in clause 22.1 will survive the termination of this Agreement, but the prohibition on disclosure will not apply to confidential information which is already in the public domain, other than as a result of being divulged by the Service Provider.

23 INDEMNITY

- 23.1 During and after this agreement –


- 23.1.1 The Service Provider will keep the Municipality indemnified against all indirect and consequential and special or direct losses and damages and expenses and costs and claims including, but not limited to, legal fees and expenses suffered by the Municipality or any third party where such loss or damage or expense or cost is the result of any wrongful action or omission or negligence or breach of any contract by the Service Provider or its employees and/or its agents; and
- 23.1.2 The Municipality will not be liable for any loss incurred by the Service Provider as a result of any unnecessary or irrelevant work done by the Service Provider including work done after an extension.



24 GENERAL

- 24.1 This agreement constitutes the entire agreement between the parties, wholly supersedes and replaces any previous agreements concerning the provision of services by the Service Provider to the Municipality, which may have come into existence between the parties prior to the signing of this agreement, and irrespective of whether such previous agreements came into existence through conduct, orally or in writing.
- 24.2 On entering into this agreement, no party relies on any warranties, representations, terms, conditions, disclosures or expressions of opinion in respect of matters dealt with in this agreement that are not contained in this agreement.
- 24.3 No relaxation, extension or indulgence which a party may grant to any other constitutes a waiver of any right of that party or a novation of any term of this agreement and does not preclude that party from exercising any right which may have arisen in the past or which arises in the future.
- 24.4 No variation, suspension, deletion, amendment or modification of this agreement, including this clause, is of any force or effect, unless recorded in writing and signed by the parties, and is effective only in the specific instance and for the purpose and to the extent set out.
- 24.5 This agreement may not be ceded or assigned nor the rights in terms of this agreement pledged or made over to any other person.
- 24.6 This agreement will cease to exist, upon the signature of all parties on the Tri Partite agreement, whereupon the tri-partite agreement will be the sole agreement governing the relationship between all parties.

25 ARBITRATION

- 25.1 Should any dispute arise, the parties shall refer the matter to Arbitration. The Arbitrator shall be nominated by the both parties. The Arbitration shall be concluded with 14 days of referral of the matter.
- 25.2 Should arbitration fail to resolve the matter, the matter shall be referred to the Magistrates' Court, notwithstanding, the fact that a High Court might have jurisdiction.
- 25.3 The Arbitration shall be held in the Alfred Duma Municipal jurisdictional area.
- 25.4 The parties may only approach the court directly for urgent relief only.
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26 DOMICILIUM ADDRESS AND NOTICES

26.1 The parties choose as their addresses for the purposes of this agreement, the addresses set out below, and any party may change its *domicilium* as aforesaid by written notice to the other party, which change will take effect seven (7) days after the date of receipt or deemed receipt of such notice. The changed address must be a physical address:

ALFRED DUMA LOCAL MUNICIPALITY	SERVICE PROVIDER
The Office of the Municipal Manager Lister Clarence Building 221 Murchison Street 3370 Telephone No: (036) 637 2231 Telefax No.: (036) 631 1400	202 Summerbrooke Close Silverwoods Country Estate Johannesburg 0054 Telephone: 012 111 7447 Telefax: (086) 659 2756 Email: mdc@executivemail.co.za

26.2 Any notice or correspondence given by hand, or given by pre-paid registered post or by telefax to the *domicilium* chosen by the addressee in terms of clause 26.1 and will be deemed to have been received by the addressee –

26.2.1 on the date on which the same was delivered, if delivered by hand;

26.2.2 on the seventh (7th) day after the date of posting, if sent by pre-paid registered post; or

26.2.3 on despatch, if sent to the addressee's telefax number.

27 CESSION, ASSIGNMENT AND/OR DELEGATION

The Service Provider may not cede its right or delegate its obligations in terms of this Agreement without the prior written consent of the Municipality. Consent of Cession, Assignment and /or Delegation of any rights or obligations shall be at the discretion of the Municipality.

28 JOINT VENTURES

The members of a joint venture formed in response to preferential procurement policies should share in at least the following aspects of the joint ventures activities in a meaningful and equitable manner:-

- 28.1 Control
- 28.2 Management
- 28.3 Operations
- 28.4 Risks
- 28.5 Profit or Loss

29 PATENT RIGHTS

- 29.1 The Service Provider shall indemnify the Municipality 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 Municipality.
- 29.2 When the Service Provider develops documentation/ projects for the Municipality, the intellectual copy and patent rights or ownership of such documents or projects will vest in the Municipality.

30 BANKING DETAILS OF SERVICE PROVIDER:

Bank:	FIRST NATIONAL BANK
Account Name:	Mahlori Development Consultants and Project Management
Account Number:	621 781 040 99
Branch:	Lifestyle Centre
Branch Code:	260216

31 SIGNATURES**FOR ALFRED DUMA LOCAL MUNICIPALITY**

SIGNED BY THE MUNICIPALITY AT Ladysmith ON THIS 8th DAY OF February 2019.