

SERVICE LEVEL AGREEMENT

(In respect of the development of a Rural Roads Asset Management System for Lejweleputswa District Municipality)

Made and entered into by and between:

Lejweleputswa District Municipality

Hereinafter referred to as
("the Municipality")

A category C municipality as envisaged in Section 155(1) (c) of the Constitution of the Republic of South Africa; Herein represented by the Municipal Manager

Me. Palesa Kaota

duly authorized hereto

and

Aganang Consulting Engineers CC

Herein referred to as
"the Service Provider"

A close Corporation registered in accordance with the law of South Africa with registration number 1997 041404 23; Herein represented by the Executive Manager

Ms. Funeka Nyaqela

duly authorized hereto

Whereas the Municipality requires the Service Provider to provide consulting services to it in respect of the development of a rural roads asset management system, which services the Service Provider is willing and able to provide to the Municipality;

And Whereas the Municipality has formally appointed the Service Provider to render the services in accordance with the terms and conditions set out herein, and the business plan dated 11 May 2015 and appointment letter dated 15 May 2015 attached hereto as **Annexures "A" and "B"** respectively;

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And whereas the parties wish the terms and conditions of the agreement between them to be recorded in writing,

Now therefore the parties agree as follows:

1. DEFINITIONS

In this agreement, unless the contrary is expressly indicated, words in the singular shall include the plural and vice versa.

2. CONTRACTUAL TERMS AND CONDITIONS

- 2.1 The terms and conditions agreed to between the parties are those contained in this agreement read together with the terms and conditions in annexures "A" and "B" hereto.
- 2.2 In the event of any of the terms and conditions in this agreement being in conflict with the terms and conditions contained in annexures "A" and "B" hereto, the relevant provisions contained in this agreement will take precedence and be regarded as the terms agreed to between the parties insofar as the conflict issue exists and requires a provision to take precedence to ease the conflict.
- 2.3 The parties' record that the terms and conditions contained herein read together with annexures "A" and "B" hereto, contain a full and exact recording of all the terms and conditions agreed to between them and all previous agreements, warranties and representations between them are hereby cancelled and of no further force and effect. It is agreed that no alteration, variation, modification or purported cancellation of this agreement (including of this sub-clause, and of the annexures thereto) shall be valid and binding unless in writing and signed by the parties representatives.
- 2.4 No purported or released cancellation of this agreement by consent, shall be valid and binding unless in writing and signed by the parties representatives.

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The Service Provider is responsible for the following as indicated on the schedule of outputs and deliverables set out below in clause 3.1 and to be submitted as per the timeframes;

3.1 PROPOSED OUTPUTS AND ACTIVITIES

3.1.1 Outputs

This work will be undertaken through the following outputs and deliverables:

Date	Deliverables	Amount	Weight %	Cumulative Amount
31 July 2015	Business Plan	36 250.00	2%	
	Progress Report	32 950.00	1%	
	Progress on Visual Assessments	64 000.00	3%	
	Disbursements	6 660.00	0%	
	VAT	19 580.40	1%	
	July 2015 Estimate		159 440.40	7%
31 August 2015	Progress Report	43 500.00	2%	
	Resource Acquisition	37 783.11	2%	
	Classification of Roads	29 000.00	1%	
	Progress on Visual Assessments	60 700.00	3%	
	Disbursements	8 549.00	0%	
	VAT	25 134.49	1%	
August 2015 Estimate		204 666.60	9%	364 107.00
30 September 2015	Progress Report	72 300.00	3%	
	Progress on Visual Assessments	48 200.00	2%	
	Cycle 1 Traffic Counts (Masilonyana)	60 700.00	3%	
	Disbursements	9 060.00	0%	
	VAT	26 636.40	1%	
	September 2015 Estimate		216 896.40	10%
	Progress Report	43 500.00	2%	

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Date	Deliverables	Amount	Weight %	Cumulative Amount
30 October 2015	Progress on Visual Assessments	25 700.00	1%	
	Cycle 1 Traffic Counts (Tokologo)	64 000.00	3%	
	Disbursements	6 660.00	0%	
	VAT	19 580.40	1%	
	October 2015 Estimate	159 440.40	7%	740 443.80
30 November 2015	Progress Report	72 300.00	3%	
	Progress on Visual Assessments	48 200.00	2%	
	Cycle 1 Traffic Counts (Tswelopele)	60 700.00	3%	
	Disbursements	9 060.00	0%	
	VAT	26 636.40	1%	
	November 2015 Estimate	216 896.40	10%	957 340.20
18 December 2015	Progress Report	36 250.00	2%	
	Progress on Visual Assessments	60 700.00	3%	
	Traffic Data Analysis	36 250.00	2%	
	Disbursements	6 660.00	0%	
	VAT	19 580.40	1%	
	December 2015 Estimate	159 440.40	7%	1 116 780.60
29 January 2016	Progress Report	47 125.00	2%	
	Progress on Visual Assessments	86 075.00	4%	
	Disbursements	6 660.00	0%	
	VAT	19 580.40	1%	
	January 2016 Estimate	159 440.40	7%	1 276 221.00
29 February 2016	Progress Report	43 500.00	2%	
	Progress on Visual Assessments	89 700.00	4%	
	Training of Interns/Graduates	60 000.00	3%	
	Disbursements	9 660.00	0%	
	VAT	28 400.40	1%	
	February 2016 Estimate	231 260.40	10%	1 507 481.40
31 March 2015	Progress Report	29 000.00	1%	
	Progress on Visual Assessments	49 500.00	2%	
	Paved Network Data Report	21 750.00	1%	

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Date	Deliverables	Amount	Weight %	Cumulative Amount
	GIS Road Network Update	32 950.00	1%	
	Disbursements	6 660.00	0%	
	VAT	19 580.40	1%	
	March 2016 Estimate	159 440.40	7%	1 666 921.80
29 April 2015	Progress Report	54 225.00	2%	
	Progress on Visual Assessments	60 700.00	3%	
	GIS Traffic Data Update	66 275.00	3%	
	Disbursements	9 060.00	0%	
	VAT	26 636.40	1%	
	April 2016 Estimate	216 896.40	10%	1 883 818.20
31 May 2015	Progress Report	29 000.00	1%	
	Progress on Visual Assessments	60 700.00	3%	
	GIS Overlay Cost Estimates	43 500.00	2%	
	Disbursements	6 660.00	0%	
	VAT	19 580.40	1%	
	May 2016 Estimate	159 440.40	7%	2 043 258.60
30 June 2015	Progress Report	21 750.00	1%	
	Progress on Visual Assessments	11 200.00	1%	
	GIS Query Reports	25 375.00	1%	
	RRAMS Narrative Report	25 375.00	1%	
	Financial Year Close-out Report	49 500.00	2%	
	Disbursements	6 660.00	0%	
	VAT	19 580.40	1%	
	June 2016 Estimate	159 440.40	7%	2 202 699.00
TOTAL		2 202 699.00	100%	

4. OBLIGATIONS OF THE MUNICIPALITY

- 4.1 The Municipality must pay the Service Provider the agreed stipulated amounts after completion of the activities mentioned in clause 3 above and only when satisfied with the quality thereof.

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- 4.2 The Municipality must establish an enabling environment conducive for the service provider to perform their responsibilities in terms of this contract providing all necessary documents and cooperation required in the process.
- 4.3 The Municipality must have a final say on decisions taken relating to the recommended project as presented by the Service Provider.

5. COMMENCEMENT AND DURATION OF THIS AGREEMENT

This agreement shall commence, notwithstanding the date on which both parties attach their signatures, on 1 July 2015 and it will automatically terminate on 30 June 2017, save as provided for herein with regards termination and breach.

6. EXTENSION OF TIME

- 6.1 If by any reason, due to commotion, strikes, stand-outs or lock-outs, or a combination thereof, or in consequence of fire, flood or by reason of any unforeseen circumstances beyond the control of the Service Provider, and not arising through any act or default on part of the Municipal Manager, the Municipality or its officials, the Service Provider in its opinion, shall have been delayed in completion of or in rendering part of the service then and in such cases, the Service Provider shall immediately give notice in writing to the Municipal Manager and thereupon the Municipal Manager may, grant such extension of time, either prospectively or retrospectively, and assign such other day or days for the completion of the work as she deems reasonable, without thereby prejudicing or in any manner affecting the validity of the contract.
- 6.2 Any extension of time thus granted shall be deemed to be full compensation in respect of the delay for which it is granted and no other compensation shall be allowed.
- 6.3 The Municipal Manager may further, if she deems fit, even though no application or request has been made, grant and fix any extension of time if such delay has, in her opinion, been caused by the default or delay of the Municipality or its officials . Such extensions may be granted and fixed by the Municipal Manager at any time before payment or refund of all monies due to the Service Provider in respect of this contract has been made.

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- 6.4 In the event of any extension of time being granted and fixed, no compensation or damage shall be payable to the Service Provider in respect of such delay or extension of time. No extension of time granted and fixed by the Municipal Manager shall in any way affect the validity or continued operation of this agreement.

7. PENALTIES DUE TO LATE COMPLETION

If the final project referred to in paragraph 5 is not completed **by 30 June 2017, save as provided for in terms hereof**, a penalty clause of 2/10 of 1% per day of the outstanding portions of the contract amount will apply for as long as any non-compliance with the contracted date exists. The maximum penalty amount will not exceed 10% of the total contractual amount.

8. FEES AND PAYMENT THEREOF

- 8.1 The fees shall be as per Annexure "A" hereto, namely R2, 105, 000.00 for the Municipality's 2015/16 financial year, and R2, 185, 000.00 for the Municipality's 2016/17 financial year. These amounts are inclusive of VAT.
- 8.2 Any additional funds or roll-over funds applied for by the Service Provider on behalf of the Municipality for the 2015/16 and/or 2016/17 financial years shall be allocated by the Municipality to the approved budget included in the Division of Revenue Act and such additional funds shall be used on the project as per the approved motivation for such additional and/or roll-over funds.
- 8.3 The Municipality undertakes to pay the Service Provider all monies due within 30 (Thirty) days from date of invoice. VAT shall be payable on all fees payable in terms of this agreement subject to the fact that the Municipal Manager has reasonably satisfied herself that the services were rendered according to this contract.
- 8.4 The Municipality shall not be entitled to withhold payment due by it to the Service Provider, unless the amounts invoice in respect of such payments are in dispute, whether as a result of allege incorrect compilation or debiting thereof, or whether pertaining to defective services.

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9. OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS

- 9.1 The title in the product delivered or in any other way made available to the Municipality, is vested in the Municipality once fully paid for by the Municipality. Until then same is owned and vested in the Service Provider.
- 9.2 Title or rights of ownership, copyright or any other intellectual property rights in the product shall be transferred to the Municipality upon delivery date of such product and payment of the relevant invoice.
- 9.3 The Service Provider shall take upon itself all charges and responsibilities in regard to any patent royalties, trademarks or name, or other protective rights that may be involved in respect of this contract, and it is to hold the Municipality harmless for and is to indemnify the Municipality against any claims of this nature.

10. MODIFICATIONS

The right to make improvements, substitutions or enhancements to any part of the services rendered is transferred to Municipality upon delivery of such product.

11. SERVICE PROVIDER TO CONFORM TO ALL REGULATIONS

The Service Provider shall, during the period of this agreement, conform to the provisions of any Acts of Parliament, Provincial Ordinance and to the regulations and by-laws of any Local or other authority relating to the services and shall give all notices required, and pay all fees payable to such authority in respect of the services, and shall hold the Municipality free from all losses, damages or expenses caused by the Services Providers failure to comply with such acts, ordinances, regulations and by-laws.

12. EMPLOYMENT RESTRICTION

- 12.1 A party shall not, while this agreement is in force and for a period of 6 (Six) months from the date of termination thereof, for any reason whatsoever, employ or offer employment to any person employed or acting on behalf of the other party and who was assigned to provide services in terms of this agreement.

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12.2 It is recorded that the Service Provider will be using six trainees / graduates as set out in Annexure "B" hereto, and it is specifically agreed that this clause 12 will not apply in respect of those persons.

13. AUTHORISED REPRESENTATIVES

13.1 The Service Provider and the Municipality shall each appoint an authorized representative to liaise with the other regarding day-to day decisions in connection with the progress of the contract. Subject to the proviso hereunder, the authorized representative shall each have the power to make all such decisions as may be required from him by the other party and the other party shall be entitled to act upon such decision.

13.2 The parties shall not accept instructions or request from the other party other than through the authorized representative, and all such instructions and /or requests shall be in writing.

13.3 The Municipality's representative shall however have no authority to relieve the Service Provider of its duties or obligations under the contract or, except as expressly provided hereunder, to order any work involving delay or any extra payment by the Municipality.

13.4 The authority given to the Municipality's representative under this clause shall only include powers and authorities which may be necessary for the efficient execution of the contract and should the Service Provider doubt the authority of the representative, it shall be entitled to request the Municipal Manager to provide a written delegation of powers and authorities to such representatives.

13.5 Any written instructions or written approval given by the Municipality's representative to the Service Provider within the terms of such delegation (but not otherwise) shall bind the Service Provider and the Municipality as though it had been given by the Municipal Manager, provided however that:

13.6 Failure of the Municipal Manager's representative to disapprove any material shall not prejudice the power of the Municipal Manager thereafter to disapprove such materials, at the sole cost of the Service Provider.

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- 13.7 If the Service Provider shall be dissatisfied by reason of any decision of the Municipal Manager who shall thereupon confirm, reverse or vary such decision.

14. FORCE MAJEURE

Provided that the Service Provider has complied with the obligation of notification to the Municipal Manager regarding extensions of time as envisaged in clause 5.1 and the Service Provider acted diligently and expeditiously in pursuance of its obligations during the extension which may have been granted by the Municipal Manager the Municipality shall not have any claim of any nature whatsoever against the Service Provider for any failure of the Service Provider to carry out any of its obligations as a result of force majeure, which shall include acts of God, any strike, lock-out, stand-out, shortage of Labour, riot, sabotage, terrorism, political or civil disturbance, industrial action, the elements of any act of any state or government or other authority, or anything occurring over which the Service Provider has no reasonable control.

16. BREACH AND TERMINATION

- 16.1 In the event of either parties committing any breach of the terms and conditions of this agreement or failing to fulfill any of its obligations in terms of this agreement and remaining in breach of such obligation notwithstanding the innocent party having given it 7 (seven) days written notice requiring it to remedy such breach or fulfill such obligation, then and in that event the innocent party shall be entitled to summarily terminate this agreement by way of written notice to the other party to such extent.
- 16.2 In the event of the Service Provider becoming insolvent or making or proposing to make any assignment for the benefit of its creditors or purpose any composition of its creditor for the settlement of its debt, or in the event that the Service Provider commits any act of insolvency, or in the event the Service Provider passing a resolution in favour of liquidation or in the event of a competent court making a final order of liquidation, the Municipality shall be entitled to summarily terminate this agreement by way of written notice to such extent to the Service Provider.
- 16.3 In the event of the Service Provider or any person employed by it, giving or promising or offering to give any gratuity, award, commission or benefit whatsoever to the Municipal Manager or to any other Councilor or any person in the employment of the

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Municipality, the Municipality shall furnish the Service Provider with full particulars thereof and request the Service Provider to disapprove or prove to the contrary within 7 (Seven) days of such written notice and if in the opinion of the Municipal Manager, the Service Provider is unable to disapprove such allegations the Municipality shall be entitled to terminate this agreement summarily by written notice to such extend to the Service Provider.

- 16.4 In the event of the Municipality terminating this agreement on any of the aforesaid grounds, then and in that event the Municipality shall have the following rights, namely:
- 16.4.1 To summarily take the work wholly out of the Service Provider and expel it and its workmen from the premises and /or the works.
- 16.4.2 Take whatever steps it deems fit to complete the contract in such time and manner and by such persons as the Municipality may deem fit, or perform any act or discharge anything which, in the opinion of the Municipal Manager, the Service Provider failed to do,
- 16.4.3 Withhold any payment which may have been due to the Service Provider or materials and or services already supplied and delivered , until such time as the damages which may have been suffered by the Municipality are determined as stated hereunder or otherwise,
- 16.4 In the event of cancellation of this agreement by the Municipality as aforesaid, the Municipal Manager shall be entitled to and is hereby authorized to determine the means or methods, in her discretion, of establishing the damages which the Municipality may have suffered as a result of the premature termination of this agreement as a result of the Service Provider breach, and once she has established such damages, a written certificate certifying the amount of such damages. Such certificate shall be final and binding on the Service Provider, subject thereto that in the event of the Service Provider disputing the correctness of such certificate or the compilation of the damages stated therein; such dispute shall be referred to arbitration as provided for in this agreement.

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17. NON-WAVER/EXTENSION OF TIME

In the event of any of the parties having committed a breach of this agreement or having failed to fulfill its obligations in terms of this agreement and the innocent party having failed to immediately exercise its aforesaid rights, such as failure and/or extension of time which may have been expressly or implied be granted by the innocent party to the other, shall be a bar to the innocent party from subsequently exercising its rights in terms of this agreement.

18. SETTLEMENT OF DISPUTES

If any dispute or differences of any kind whatsoever shall arise between the Council and the Service Provider in connection with or arising out of this contract, or the carrying out of the works (whether during the progress of the works or after their completion and whether before or after termination, abandonment or breach of the contract), it shall be referred to and settled by the MUNICIPAL MANAGER who shall state her decision in writing and give notice of the same to the Municipality and the Service Provider. Such decision in respect of every matter so referred, shall be final and binding upon the Municipality and the Service Provider, who shall proceed with the work, and shall forthwith be given effect to by the Service Provider, who shall proceed with the works and with all due diligence, whether notice of dissatisfaction is given by her, or by Municipality, hereinafter provided for, or not. If either the Municipality or the Service Provider be dissatisfied with any such decision of the MUNICIPAL MANAGER, THEN AND IN ANY SUCH CASE, EITHER THE Municipality or the Service Provide, may within 30 (thirty) days after receiving notice of such decision, require the matter to be referred to arbitration by an arbitrator recommended by the Arbitration Foundation of South Africa (AFSA) and in accordance with the rules of AFSA. The award of the arbitrator shall be final and binding on the parties.

19. DOMICILIUM

19.1 The parties choose as their respective Domicilium citandi et executandi ("Domicilium") and for the delivery of all notices arising out of this agreement or its termination or cancellation, the addresses set out below, namely:

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The Service Provider at:

Aganang Consulting Engineers

44 Baden Powell Avenue

Golfview

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Fax: (018) 381 8120

E-Mail: titus.m@aganangsa.co.za

The Municipality at:

Lejweleputswa District Municipality

Cnr Jan Hofmeyr & Tempest Road

WELKOM

Fax: (057) 353 3382

E-Mail: mm@lejwe.co.za

- 19.2 Either party may, by written notice to the other, vary its Domicilium to any other address within the Republic of South Africa, which is not a post office box number or post restante.
- 19.3 Any notice given and any payment made by any party to any other (addressee) which is posted by pre-paid registered post from an address within the Republic of South Africa to the addressee at the addressee's Domicilium shall be deemed, until the contrary is proved by the addressee, to have been received on the 7th day after the date of posting thereof; is sent by facsimile shall be deemed, until the contrary is proved by the addressee, to have been received; within 4 (Four) hours of transmission where it is transmitted during normal office hours and at noon the following business day, where it is transmitted outside such business hours.
- 19.4 The parties record that whilst they may correspond via e-mail during the currency of this Agreement for operational reasons, no formal notice required in terms of this Agreement, nor any amendment or variation to this Agreement may be given or concluded via e-mail.

20. CESSION, ASSIGNMENT AND/OR DELEGATION

Neither party may cede its rights or delegate its obligations in terms of this agreement without the prior written consent of the other party, provided however that the Service

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Provider may, if it has given the Municipality at least 7 (seven) days' notice thereof, cede its rights or delegate its obligations (or both) to any members company of the Service Provider its subsidiaries, and furthermore provided that such company to whom such cession or delegation may be made complies with the empowerment charter of the Government of the Republic of South Africa.

21. LEGAL COSTS

In the event of it being necessary for either party to resort to litigation and/or arbitration as envisaged in this agreement, the unsuccessful party in such litigation and/or arbitration will be obligated to and undertakes to pay the successful party's legal costs on a scale as between attorney and own client.

22. BINDING:


This agreement shall be binding upon all the parties and upon their estates, executors, administrators, curators, legal representatives or assigns as the case may be.

DATED AT WELKOM ON THIS 1 DAY OF JULY 2015



FOR AND ON BEHALF OF
LEJWELEPUTSWA DISTRICT
MUNICIPALITY

WITNESSES:

1.  _____

2.  _____

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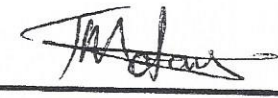
DATED at Welkom on this 1 July day of 2015

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FOR AND ON BEHALF OF
AGANANG CONSULTING
ENGINEERING CC

WITNESSES:

1. 

2. 

02/07/15