

SERVICE LEVEL AGREEMENT

SETSOTO LOCAL MUNICIPALITY

and

ICEBURG GROUP

PROJECT: WATER INFRASTRUCTURE MAINTENANCE & ASSISTANCE FOR SETSOTO LOCAL MUNICIPALITY ON AN AS AND WHEN REQUIRED BASIS FOR A PERIOD OF THREE (3) YEARS.

TENDER NO: T09 (17/18)

CONTRACT MANAGEMENT TEAM:

SS KUNENE -Acting Director Engineering Services
K MOREMEDI- Contracts Management
CONTACTS: 051 933 9367

SETSOTO LOCAL MUNICIPALITY

ICEBURG GROUP

Handwritten initials: C.P., STR, ACW

SERVICE LEVEL AGREEMENT

ENTERED INTO BY AND BETWEEN

SETSOTO LOCAL MUNICIPALITY

(VAT Registration Number: 4000846511)

A Local municipality incorporated in terms of the Laws of the Republic of South Africa, duly represented by **Mr Simon Tshepiso Rankgotho Ramakarane** in his capacity as the Municipal Manager and Accounting Officer.

(Hereinafter referred to as the "Municipality")

and

ICEBURG GROUP (PTY) LTD

A close corporation incorporated in terms of the Laws of the Republic of South Africa with registration number (2015 / 1564 28 / 07) duly represented by **Mr Oupa Daniel Mokoena** in his capacity as the Director of the said Company.

(Hereinafter referred to as the "Service Provider")

SETSOTO LOCAL MUNICIPALITY

ICEBURG GROUP

STR
O.D
AKW

TABLE OF CONTENTS

1. PARTIES	3
2. PURPOSE	3
3. DEFINITIONS	3
4. INTERPRETATION	5
5. AGREEMENT AND DELIVERABLES	6
6. MUNICIPALITY'S OBLIGATIONS	8
7. DURATION	8
8. PRICES AND PAYMENTS	9
9. MANAGEMENT, COMMUNICATION & REPORTING	9
10. CONFIDENTIALITY	10
11. BREACH, LIMITATION OF LIABILITIES & PENALTIES	10
12. DISPUTES	11
13. TERMINATION	12
14. AMENDMENT/VARIATIONS	13
15. DOMICILIUM CITANDI ET EXECUTANDI	13
16. JURISDICTION	14
17. GENERAL	15

Handwritten initials: O.S STR
AGW

2. PURPOSE

- 2.1 The municipality has awarded a bid described as Appointment of service providers for Water Infrastructure Maintenance and Assistance for Setsoto Local Municipality on an as and when required basis for a period of three years commencing on 28 September 2018 notwithstanding date of signature hereof with reference number T09 (17/18).
- 2.2 The service provider has duly accepted the said award.

3. DEFINITIONS

- 3.1 In this agreement unless inconsistent with or otherwise indicated by the context, the following words shall have the meaning assigned to them in this clause and the cognate meaning shall have a corresponding meaning.
 - 3.1.1 **"Agreement"** means this agreement and any Annexures and schedules attached hereto;
 - 3.1.2 **"Business Day"** means any day which is not a Saturday, Sunday or public holiday recognized as such under the Public Holidays Act, (Act 36 of 1994);
 - 3.1.3 **"Bid Documents"** includes all documents that forms part of the bid, which includes invitation to bid, Tax clearance certificate, Pricing schedule(s), Filled in task directive/proposal, Preference claims for Broad Based Black Economic Empowerment Status Level of Contribution in terms of the Preferential Procurement Regulations 2011, Declaration of interest, Declaration of bidder's past SCM practices, Certificate of Independent Bid Determination, Special Conditions of Contract, General Conditions of Contract, Bidder submissions and Other (specify)
 - 3.1.4 **"Deliverables"** means any system, duty, obligation, service, task, action, products, information, documents, program, advice, recommendation, report or disclosure required to be rendered, undertaken, executed, delivered, furnished, provided, made, done and/or compiled by a Party in terms of this Agreement;
 - 3.1.5 **"Delegated Official"** means an official delegated by the MUNICIPALITY to liaise with the SERVICE PROVIDER, also referred to as the project manager or his director
 - 3.1.6 **"Effective date"** means 28 September 2018

SETSOTO LOCAL MUNICIPALITY

ICEBURG GROUP

[Handwritten initials]
OP *STR* *AGW*

3.1.7 **"Force Majeure"** means any inability, on the part of any of the Parties, to perform any of its obligations in terms of this Agreement due to an event which was beyond its control, these events include, but not limited to, war, civil war, armed conflict or terrorism, natural disasters such as violent storms, floods, earthquakes, destruction by lightning, explosions and fires;

Page | 4

3.1.8 **"Municipality"** means Setsoto Local Municipality being a local municipality;

3.1.9 **"Month/monthly"** shall mean a calendar month, and more specifically a calendar month commencing on that date or same date of any subsequent month thereafter;

3.1.10 **"Parties"** means the parties to this agreement;

3.1.11 **"Persons under the control of the Service Provider"** means any person being an employee, partner, director, shareholder or legal person under the control of the Service Provider, or a person acting on behalf of or with the knowledge of the Service Provider;

3.1.12 **"Services"** means the scope of work as set out in this agreement, bid document and any attached Annexure;

3.1.13 **"Service Provider"** means Iceburg Group, a private company with registration number 2015/ 156428 / 07.

4 INTERPRETATION

4.1 In constructing this agreement and all related written instruments thereof, the grammatical and ordinary sense of the word is to be adhered to, unless that would lead to some absurdity, or some repugnancy or inconsistency with the rest of the terms of this agreement.

4.2 If, however, the ordinary sense of the word leads to some absurdity or some repugnancy or inconsistency with the rest of the terms of this agreement, then the words may be modified just so much as to avoid that absurdity, or repugnancy or inconsistency but no more.

SETSOTO LOCAL MUNICIPALITY

ICEBURG GROUP

[Signature]

O.P. STR
AGW

4.3 Should clauses 4.1 and 4.2 be applied and fail to assist in the interpretation of this agreement then, the interpretation that will put an equitable construction upon this agreement and will not, unless the intention of the parties is manifest, so construe the agreement as to give one of the parties an unfair or unreasonable advantage over the other should be explored.

Page | 5

4.4 However general the expressions in this agreement may be, they only include the matters in respect of which it appears that the contracting parties intend to contract and not those which they did not contemplate.

4.5 Reference to one gender includes the other gender, singular includes the plural and vice versa.

4.6 The words "including" and "in particular" shall not limit the generality of any preceding words.

4.7 Where the approval or consent of any party is required in terms of this Agreement, the Parties hereby agree that such approval or consent shall not be unreasonably withheld or delayed by the Party who is required to give same.

4.8 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.

4.9 Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a Business Day, the next succeeding Business Day.

4.10 If the due date for performance of any obligation in terms of this Agreement is a day which is not a Business Day, then (unless otherwise stipulated) the due date for performance of the relevant obligation shall be the immediately preceding Business Day.

4.11 Any reference to "days" shall be construed as being a reference to calendar days, unless qualified by the word "Business".

4.12 The words "shall", "will" and "must" used in the context of any obligation or restriction imposed on a Party have the same peremptory meaning.

SETSOTO LOCAL MUNICIPALITY

ICEBURG GROUP



O.P STR

AW

5 AGREEMENT AND DELIVERABLES AND SERVICE PROVIDER'S OBLIGATIONS

5.1 Service Providers Obligation

5.1.1 The parties herein enter into an agreement in terms of which the service provider will provide for repairs and maintenance of Municipal fleet for a period of three years.

5.1.2 Water Infrastructure Maintenance Network will include the following:

- 5.1.2.1 Supply and Delivery of pipes, clamps and couplings
- 5.1.2.2 Replace and replacement of pumps and motors
- 5.1.2.3 Supply, delivery and installation of Tele matrix system
- 5.1.2.4 Supply, delivery and installation of valves where needed
- 5.1.2.5 Calibration of meters
- 5.1.2.6 Supply and installation of special fittings
- 5.1.2.7 Supply of parts in an emergency situation

5.1.3 Water Infrastructure Maintenance Mechanical will include the following:

- 5.1.3.1 Supply, repair and replacement of filter system
- 5.1.3.2 Repair and replace motors and pumps (including rewinding)
- 5.1.3.3 Supply of parts in an emergency situation
- 5.1.3.4 Assessment of status of plant mechanical (e.g pump & motors)

5.1.4 To comply with the specification at all times

5.1.5 The service provider shall furnish the municipality with a valid tax invoice accompanied by substantiating documentation of such invoice relating to the fulfillment and deliverables stipulated in the contract and bid documents

SETSOTO LOCAL MUNICIPALITY

ICEBURG GROUP

AG
O.A STR
AGW

5.2 The parties specifically record that:

5.2.1 They do not envisage that the relationship that is created by this agreement is to be a partnership or a contract of employment;

Page | 7

5.2.2 The service provider will not be entitled to any benefit of whatever nature that employees of the municipality may be contractually or in equity be entitled to; and,

5.2.3 The quality of the service/s or level/s upon which the services are to be provided must be of high standard, ethically and otherwise

5.2.4 The purchaser shall not be liable for any injury, loss or damage directly or indirectly incurred by the supplier, as an independent contractor, arising out of or in connection with the services rendered by the supplier in accordance with this agreement.

6 MUNICIPALITY'S OBLIGATIONS

The Municipality is obliged to:

- 6.1 To make relevant and necessary payments for the services rendered by the Service Provider in accordance with the completed and approved deliverables
- 6.2 To implement the usage of the service from the provider in a responsible and accountable manner.

7 DURATION

- 7.1 This agreement shall be binding to the parties from the effective date and shall continue for a period of three years starting 28 September 2018 to 27 September 2021. Thereafter this agreement will automatically come to an end, save for any extensions or variations and/or amendments agreed by the parties in writing.

SETSOTO LOCAL MUNICIPALITY

ICEBURG GROUP

Handwritten signatures:
O.S STR
ACW

7.2 An extension will only be considered in terms of supply chain management prescripts.

8. PAYMENT

Page | 8

- 8.1 The municipality shall pay the supplier within 30 days upon receipt of a valid tax invoice, where this obligation shall not be met the municipality shall communicate to the supplier the earliest date of payment.
- 8.2 E-mailed tax invoices will be accepted.
- 8.3 The municipality shall pay the supplier on completion of the services
- 8.4 The municipality will verify the correctness of the tax invoice and notify the supplier of any possible discrepancies prior to the payment being made.
- 8.5 The service provider's invoice as in item 5.1.5 shall be the primary document on which payment will be verified and paid
- 8.6 The method and conditions of payment to be made to the supplier under this contract shall be by electronic funds transfer or otherwise by prior notification to the supplier.

9. PRICES

- 9.1 Prices charged by the service provider for services performed under the contract shall not vary from the prices quoted by the supplier in his bid, with the exception of any price adjustments authorized in SCC or in the purchaser's bid submission or request for bid validity extension, as the case may be.
- 9.2 The prices to your bid submission will have a six percent (6%) increment year on year.

10. MANAGEMENT, COMMUNICATION AND REPORTING

- 10.1 The municipality, service provider and any other relevant person shall meet as required and shall, *inter alia*, continuously monitor and reassess the service in the best interest of the Municipality.
- 10.2 Matters of mutual interest will be discussed and decided on from time to time at these meetings as well as operational procedures, service levels and performance measurements may be revised here.

SETSOTO LOCAL MUNICIPALITY

ICEBURG GROUP

Handwritten initials:
O.D. STR
ACW

10.3 The supplier will report on its periodic assessment to the need of establishing a depot or warehouse within the municipal jurisdiction.

10.4 Matters agreed upon for operational purposes will be added as addenda to the agreement.

Page | 9

11. CONFIDENTIALITY

11.1 Both parties acknowledge that in their dealings with each other they may come across confidential information which may, if disclosed, compromise the business of the other party and that they (parties) herein undertake not to disclose such information to any third party, save where such disclosure is authorized by law or by written consent from the other party.

11.2 This clause shall continue to be binding on the parties despite any termination or cancellation of this agreement or any part thereof.

12. BREACH, LIMITATION OF LIABILITY & PENALTIES

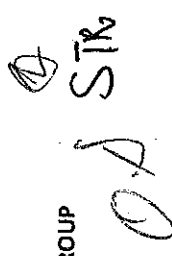
12.1 The responsibilities and obligations imposed to and undertakings made by the parties in terms hereof are meant to be performed and if they are not performed at all, performed late or performed only in part or in a wrong manner, that would constitute breach to this agreement.

12.2 Should the breach contemplated in this clause occur, the aggrieved party shall, if that breach is material:

- i. serve the defaulting party with a written notice of the default and demand the defaulting party to make good the default within fourteen (14) working days;
- ii. claim immediate performance by the defaulting party of all of its obligations that are due for performance and which are the subject of the breach;
- iii. claim damages, if there are any damages sustained by that other party due to the default; and
- iv. exercise rights provided for in clause 13, if the defaulting party failed to remedy the default within seven (7) days on receipt of a notice contemplated in this clause.

SETSOTO LOCAL MUNICIPALITY

ICEBURG GROUP


D STR
O.A.
HUN

14. TERMINATION

Page | 11

14.1 This agreement can only be terminated in the event of:

- i. default on the part of any of the contracting parties as provided for in clause 12,
- ii. Poor Performance after the service provider has been advised in writing of the failure to meet the duties and responsibilities, and given a reasonable period of time of at least seven (7) days to cure the poor performance.
- iii. the service provider instituting insolvency proceedings or has insolvency proceedings involuntarily instituted against it, and
- iv. "Force Majeure" if, as a result of "Force Majeure", the parties can no longer continue performing the obligation of the agreement or it would be undesirable to continue with the agreement.
- v. any of the parties serving to the other party a written notice of termination for a period of three months prior to the termination.

15. AMENDMENTS/VARIATION

15.1 No addition to or variation, consensual cancellation or novation of this agreement and no waiver, cession, delegation or assignment of any right or obligation arising from this agreement or its breach or termination will be of any force or effect unless reduced into writing and signed by the parties or their duly authorised representatives.

16. DOMICILIUM CITANDI ET EXECUTANDI

16.1 Any notice in terms of this agreement will be delivered to the physical addresses of the parties, or will be sent by registered post to the postal addresses of the party to whom it is addressed.

16.2 Any notice will be deemed to have been received by the party to whom it is addressed or delivered when receipt thereof is acknowledged by means of a signed delivery note.

SETSOTO LOCAL MUNICIPALITY

ICEBURG GROUP

OS STR

ACW

16.3 Any notice delivered by hand to the party shall be deemed to have been delivered on the day of delivery. Any notice sent by registered post shall be deemed to have been received within seven (7) days from the date on which it was posted, and any notice sent by fax to a Party at the telefax numbers specified, shall be deemed to have been received within one (1) hours transmission if it is transmitted during normal business hours, and if also confirmed by the other party.

Page | 12

16.4 Either Party may from time to time decide to vary its *domicilium*, address or fax number by giving written notice to the other Party.

16.5 The Municipality chooses for the purposes of this agreement its *domicilium citandi et executandi* address for any notices as follows:

i. Street Address: Setsoto Local Municipality
27 Voortrekker Street
FICKSBURG
9730

ii. Postal Address: PO Box 116

FICKSBURG

iii. Fax : 051 933 9383

b. The service provider chooses for the purposes of this agreement its *domicilium citandi et executandi* and address for any notices as follows:

i. Street Address: 10 North End Road
Hilton

BLOEMFONTEIN

9301

ii. Postal Address: P.O BOX 3957

BLOEMFONTEIN

9300

iii. Tel: 076 778 2402

iv. Fax : 051 430 7296

SETSOTO LOCAL MUNICIPALITY

ICEBURG GROUP

D
D.S *STR*
ACW

17. JURISDICTION

17.1 The parties hereby consent to the jurisdiction of the Magistrates Court of South Africa located in the Province.

Page | 13

18. GENERAL

18.1 This agreement is the whole agreement between the parties in regard to its subject matter. No party shall be bound by any express, implied or tacit term, representation, warranty, promise or the like, not recorded in writing in this agreement and its annexure.

18.2 Should any of the terms and conditions of this agreement be held to be invalid, unlawful or unenforceable, such terms and conditions will be severable from the remaining terms and conditions which will continue to be valid and enforceable. If any term or condition held to be invalid is capable of amendment to render it valid, the parties agree to negotiate an amendment to remove the invalidity.

18.3 This agreement is governed by South African law, without giving effect to any conflict of laws;


SETSOTO LOCAL MUNICIPALITY

ICEBURG GROUP



STR
D.S. R. H.W.

18.4 The relationship between the parties shall be one of the utmost good faith and each party undertakes to observe the utmost good faith towards the other parties.

SIGNED at Ficksburg on this 15 day of October 2018


MR. STR RAMAKHARANE
MUNICIPAL MANAGER

AS WITNESSES:

(1) 
(2) 

NAME: JOHN LYNCH
NAME: Agartha Nontsomi

SIGNED at Botshabelo on this 15 day of October 2018


MR. O.D MOKOENA
MANAGING DIRECTOR

AS WITNESSES:

(1) _____
(2) _____

NAME: KEVIN MBUNDA
NAME: MALESGO SEDIO

SETSOTO LOCAL MUNICIPALITY

ICEBURG GROUP

