



HOUSING DEVELOPMENT AGENCY

SERVICE LEVEL AGREEMENT

FOR THE APPOINTMENT OF [BIDDER NAME]

COMPANY REGISTRATION NUMBER:

(Hereinafter referred to as “the Service Provider”)

HDA STANDARD SERVICE LEVEL AGREEMENT (SLA)

INTRODUCTION

The HDA has appointed the Service Provider for the Repair and Reconstruction of eleven (11) formal houses on Maphelo Street, Site C, Khayelitsha within the City of Cape Town Local Municipality, Western Cape for the Cape Town Office, Region A.

THE PARTIES AGREE AS FOLLOWS:

1 DEFINITIONS AND INTERPRETATION

1.1 Unless otherwise expressly stated, or the context otherwise requires, the words and expressions listed below shall, when used in this Agreement, including this clause, bear the meanings ascribed to them as follows:

1.1.1 **"Agreement"** shall mean this Service Level Agreement together with all other documents specifically referred to herein, including the annexures as may be amended from time to time;

1.1.2 **"Effective Date"** shall mean the date when the last Party to sign has signed the agreement;

1.1.3 **"HDA"** shall mean the **Housing Development Agency**, a juristic state-owned entity created in terms of the Housing Development Agency Act No 23 of 2008;

1.1.4 **"Service Provider"** shall mean
....., a company duly incorporated and registered in South Africa, with registration number.....

1.1.5 **"Parties"** shall mean the HDA and the Service Provider and the term **"Party"** shall have a corresponding meaning as and where applicable;

1.1.6 **"Services"** shall mean Repair and Reconstruction of eleven (11) formal houses for the Western Cape Housing Development Agency Office, listed in Annexure "A".

1.1.7 **"NEC3"** shall mean The New Engineering Contract, or NEC Engineering and Construction Contract.

1.1.8 **"ECSC"** shall mean Engineering and Construction Short Contract which forms part of the NEC3 family of contracts.

1.2 The condition of contract contained in the NEC3 ECSC shall apply to this Service Level Agreement.

1.3 In the event of any inconsistency between the provisions of this Service Level Agreement and the terms and conditions contained in the NEC3 ECSC or any annexures hereto, the provisions of this Service Level Agreement shall prevail over the conditions of contract contained in the NEC3 ECSC or any annexures to this Agreement.

2 **THE APPOINTMENT**

2.1 The HDA hereby appoints the Service Provider who accepts such appointment to render the services more fully described in Annexure "A".

2.2 The Service Provider is appointed as an Independent Service Provider and not as an agent, employer, employee or partner of the HDA. The Service Provider has no authority to hold itself out to be the agent, employer, employee, or partner of the HDA and/or to commit the HDA to any contract or obligation of any nature whatsoever.

2.3 Save as provided for herein, neither Party shall be entitled to bind the other Party to any obligation of any nature whatsoever or to incur any liability on behalf of the other Party, whether in contract or otherwise.

3 **DURATION**

The provision of the Services shall commence on the Effective Date and shall terminate on 31st December 2021.

4 THE HDA RESPONSIBILITIES

4.1 The HDA shall appoint a representative who shall be the liaison between the HDA and the Service Provider. Should the identity of the liaison change for any reason whatsoever, the HDA will advise the Service Provider in writing of such a proposed change.

4.2 The HDA representative:

4.2.1 will be authorised to provide timeous, accurate instructions and directives to the Service Provider; and

4.2.2 will cooperate and assist the Service Provider, wherever feasible, in the performance of its obligations in terms of this Agreement.

5 THE RESPONSIBILITIES OF THE SERVICE PROVIDER

5.1 The Service Provider shall: -

5.1.1 provide and execute everything necessary for the Services in accordance with industry standards, trends and norms and relevant regulations;

5.1.2 execute the Services accurately and timeously;

5.1.3 exercise professional skill, care and diligence in the performance of the Services;

5.1.4 attend meetings as and when required by the HDA, the cost and expenses of which shall form part of the agreed fee;

5.1.5 designate an official or individual to be its authorised representative to liaise with the HDA's representative;

5.1.6 ensure that response times or submission times in respect of the Services are adhered to in compliance with the HDA's requirements; and

5.1.7 perform the Services under the supervision of the HDA's representative and abide by the HDA's code of conduct and other organisational guidelines.

Provision of Services shall be carried out at site designated by HDA and the service provider shall, therefore, respect the laws and customs of the area in which services are conducted;

Approved Health and safety plan and construction baseline programme shall be furnished within 7 days of site handover meeting.

6 THE SERVICE PROVIDER'S BBBEE OBLIGATIONS

6.1 The Service Provider warrants that it, and each of its sub-contractors and/or suppliers, holds a Broad-Based Black Economic Empowerment (**BBBEE**) certificate evidencing the BBBEE score set out in the relevant request for proposals ("**BBBEE rating**").

6.2 Notwithstanding the provisions of clause 6.1, the Service Provider undertakes to –

6.2.1 Where applicable, provide the HDA, for the duration of this agreement, with a copy of its BBBEE certificate within 5 (five) days of the effective date, or such other date as the HDA may stipulate; and

6.2.2 inform the HDA of any change in its BBBEE rating within 7 (seven) days of becoming aware of such change.

6.3 Should the Service Provider fail to provide the HDA with a current BBBEE certificate within 14 (fourteen) days of being required to do so; or fail to remedy any change to its BBBEE rating, which results in the Service Provider not meeting the required BBBEE rating, the HDA will be entitled, in its sole discretion, to elect to terminate this Agreement with immediate effect or to effect reasonable amendments, as agreed to by the Parties, to the terms and conditions of the applicable Services to address such failure.

7 FEES FOR THE SERVICES AND PAYMENT TERMS

The total value of the contract shall be **R.....VAT inclusive** [TO BE COMPLETED BY THE BIDDER]

7.1 For the avoidance of doubt, the fees shall include all disbursements reasonably incurred by the Service Provider in performing the Services as set out in this Agreement.

7.2 The fees are more fully set out in Annexure "B" and shall be due and payable upon achievement of the milestones set therein.

7.3 Payment will be affected by the HDA within 30 (thirty) days of presentation of a valid tax invoice to the addresses mentioned in Annexure "C" hereto.

8 ADDITIONAL SERVICES

Should the HDA request the Service Provider to render additional services which fall outside the scope of the Services as detailed in Annexure "A". Such additional services and the remuneration in respect thereof shall be negotiated and agreed to in writing between the Parties, and which terms shall form an annexure to this Agreement. The provision of such additional services shall unless stated otherwise be subject to the same terms and conditions contained in this Agreement.

9 CHANGE OF SERVICES

9.1 Should the HDA wish to revise, amend, alter or otherwise change the nature or scope of any Services, the HDA shall issue a change request addressed to the Service Provider for its consideration.

9.2 The Service Provider will, within 7 (seven) days of receiving a change request-

9.2.1 investigate the likely impact of any proposed change on the rendering of the Services; and

9.2.2 provide the HDA with a change note reflecting the details regarding any increase or decrease in the fee, changes in methodology, procedures, goods/services, assignment of personnel, timeframes and any other amendments that would be required to effect the change request.

9.3 The HDA will consider the change note referred to in clause 2.2 above and decide, in its sole and absolute discretion, whether it will approve or reject the change note. If a change note is accepted by the HDA, it must be signed by duly authorised representatives of the Parties and incorporated into this Agreement, as an amendment.

10 PERFORMANCE REVIEW

- 10.1 The HDA may, on the completion of each milestone set out in Annexure "B", carry out a performance review in respect of the Services rendered by the Service Provider.
- 10.2 The HDA will inform the Service Provider in writing should it not be satisfied with the outcome of any performance review. Such notification shall serve as a notice to the Service Provider to remedy any shortfall in performance within 14 (fourteen) days of receiving such notice. Should the Service Provider fail to remedy the shortfall in performance, the HDA will be entitled to invoke the provisions of clause 12 herein.

11 IMPOSSIBILITY

If either Party should be unable to carry out any obligations undertaken by it under this Agreement because of any strike, lockout, war, rebellion, civil riot, trade dispute, fire, accident or any other circumstances beyond the control of such Party, such obligation shall be suspended temporarily pending the settlement or cessation of the occurrence giving rise to such suspension, provided always that in all such events the Party so unable to carry out the obligations undertaken by it under this Agreement shall use every reasonable endeavour to carry out and perform same. No claim for damage or loss arising from any such suspension shall be preferred against the Party unable to carry out any obligations undertaken by it under this Agreement, by the other Party to this Agreement.

For purpose of the Agreement "Force Majeure" shall mean any circumstances beyond the reasonable control of the Party concerned,

12 BREACH

- 12.1 If either Party ("the **defaulting party**") fails to comply with any of the material terms of this Agreement, the aggrieved Party shall be entitled to give the defaulting party 14 (fourteen) days written notice to remedy the breach. Should the defaulting party fail to comply, the aggrieved party shall:-

- 12.1.1 claim specific performance, without prejudice to its rights to claim damages; or
- 12.1.2 terminate the Agreement with immediate effect on written notice, without prejudice to its right to claim damages and/or

12.1.3 pursue any other remedy available to it in law.

13 **INDEMNITY**

The Service Provider hereby indemnifies the HDA and holds the HDA harmless against any loss or damages incurred by the Service Provider for any claim howsoever arising; for any act, omission to act, negligence and/or gross negligence of the Service Provider in the execution of its obligation in terms of this Agreement.

14 **INTELLECTUAL PROPERTY RIGHTS**

14.1 The Parties agree that the Service Provider will, from time to time, develop strategies, methods and/or systems for the HDA which may be considered intellectual property. In this instance, such intellectual property shall be and remain the sole property of the HDA, and the Service Provider shall not at any time in any way question or dispute the ownership of the HDA in and to the intellectual property and undertakes not to infringe or prejudice any rights of the HDA in and to the intellectual property.

14.2 The HDA shall become the owner of all enhancements and amendments to any of the HDA's systems developed or designed by the HDA and/or the Service Provider as a result of the execution of this Agreement or any Services, as well as any manuals, data, information, documents, programmes, reports and analysis collected, compiled, undertaken, developed or designed by the Service Provider in or as a result of the execution of this Agreement or any Services.

15 **WARRANTY**

15.1 The Service Provider warrants that it-

15.1.1 has the necessary qualifications, skills and expertise to provide the Services to the HDA in terms of this Agreement; and

15.1.2 will comply with all relevant legislation, including without limiting the generality of the foregoing, all employment, health and safety or environmental, housing and procurement legislation of the Republic of South Africa.

16 **CORPORATE GOVERNANCE**

The Service Provider shall disclose in writing to the HDA, any interest or involvement in a Project with the HDA other than that identified in the Scope of Services mentioned in Annexure "A".

17 **TERMINATION AND SUSPENSION**

The HDA may in its absolute discretion terminate or suspend all or part of this Agreement for any reason whatsoever on 30 (thirty) days written notice to the Service Provider which shall upon receipt of such notice, immediately suspend all work.

18 **DISPUTE RESOLUTION**

Any disputes arising from or in connection with this agreement shall be finally resolved in accordance with the rules of the Arbitration Foundation of Southern Africa (AFSA) by an arbitrator or arbitrators appointed by AFSA.

Notwithstanding the above, the Parties agree that in the event of a breach of the terms of this Agreement, the aggrieved Party will be entitled to seek and obtain urgent interdictory relief in respect of such breach. To this end, the Parties agree to the jurisdiction of the Magistrate Court or the High Court of South Africa, Johannesburg Local Division.

19 **NOTICES AND DOMICILIA**

19.1 The Parties select as their respective domicilium citandi et executandi, the following physical addresses to communicate any notice provided for or required in terms of this Agreement, the said physical addresses as well as the following email address and fax numbers: -

THE HDA:

Physical: Block A, Riviera Office Park
6-10 Riviera Road

Killarney
Johannesburg
2193
Email address: legal@thehda.co.za
Telefax: 011 544 1006

THE SERVICE PROVIDER: [TO BE COMPLETED BY THE BIDDER]

Physical:.....

Email:

Fax Number:.....

19.2 Any Party may change its domicilium to any other physical address or telefax number by written notice to the other Party to that effect. Such change will be effective 5 (five) business days after receipt of the notice of the change.

19.2 All notices to be given in terms of this Agreement will be given in writing and will be delivered by hand or sent by telefax.

19.3 If delivered by hand during business hours, be presumed to have been received on the date of delivery. Any notice delivered after business hours or on the day which is not a business day will be presumed to have been received on the following business day.

19.4 If sent by email or telefax during business hours, be presumed to have been received on the date of successful transmission of the email or telefax. Any email or telefax sent after business hours or on a day that is not a business day will be presumed to have been received on the following business day.

19.5 Notwithstanding the above, any notice given in writing and received by the Party to whom the notice is addressed will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with this clause.

20 GENERAL

20.1 SOLE RECORD OF AGREEMENT

This Agreement constitutes the sole record of the agreement between the Parties about the subject matter hereof. No Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.

20.2 NO AMENDMENTS EXCEPT IN WRITING

No addition to, variation of, or agreed cancellation of, this Agreement shall be of any force or effect unless in writing and signed by or on behalf of the Parties.

20.3 WAIVERS

No relaxation or indulgence which any Party may grant to any other shall constitute a waiver of the rights of that Party and shall not preclude that Party from exercising any rights which may have arisen in the past or which might arise in future.

20.4 SURVIVAL OF OBLIGATIONS

Any provision of this Agreement which contemplates performance or observance after any termination or expiration of this Agreement shall survive any termination or expiration of this Agreement and continue in full force and effect.

20.5 APPROVALS AND CONSENTS

Any approval or consent given by a Party under this Agreement shall only be valid if in writing and shall not relieve the other Party from responsibility for complying with the requirements of this Agreement nor shall it be construed as a waiver of any rights under this Agreement except as and to the extent otherwise expressly provided in such approval or consent, or elsewhere in this Agreement.

20.6 NON-ASSIGNMENT

The Service Provider may not cede or assign its rights or obligations in terms of this Agreement to any third party without the prior written consent of the HDA.

21 **GOVERNING LAW**

The law governing this Agreement, including without limitation its interpretation and all disputes arising out of this Agreement, is the law of the Republic of South Africa.

22 **CONFIDENTIALITY**

22.1 The Service Provider hereby acknowledges and agrees that the Confidential Information disclosed in terms of this Agreement is the proprietary information of the HDA.

22.2 The Service Provider hereby acknowledges and agrees that the Confidential Information disclosed by the HDA, whether orally or in writing, to The Service Provider during this Agreement, in strict confidence, and shall not disclose any of the Confidential Information to any other person, firm or corporation except as expressly provided for in this Agreement, unless with the express prior written consent of the HDA in each instance. This would not apply to information which:

- 22.2.1 has been published or is otherwise available to the public through no fault on the part of The Service Provider; or
- 22.2.2 corresponds to information received at any time by The Service Provider from a third party without breach of any obligation of confidentiality to the HDA and/or third party; or
- 22.2.3 is demonstrated by The Service Provider to the HDA using other tangible evidence to have been known to The Service Provider at the time of the receipt thereof from the HDA.

22.3 The Service Provider shall limit the internal dissemination of the Confidential Information only to those employees of The Service Provider whose access to such Confidential Information is necessary to give effect to the intent of the Agreement. The Service Provider shall further take and cause its employees who may have access to such Confidential Information to take all appropriate to protect the secret and proprietary nature of such Confidential Information and to prevent unauthorised use and disclosure thereof.

22.4 Without intending to limit the remedies available to the HDA, should the Service Provider breach its confidentiality obligation as provided for in this Agreement, the HDA shall be entitled to obtain a restraining order, preventing The Service Provider from engaging in such conduct or such other relief as may be necessary to enforce its obligations hereunder. The HDA shall be entitled to recover all costs and/or expenses incurred from The Service Provider in any such action.

22.5 This clause shall survive the termination of this Agreement.

[signature page to follow]

SIGNED at on2021

.....
HDA REPRESENTATIVE

Full Names:.....

Capacity: Acting Chief Executive Officer
(CEO).....

ON BEHALF OF THE HDA WHO
WARRANTS THAT HE/SHE IS DULY
AUTHORISED HERETO.

AS WITNESSES

1..... on2021

2..... on 2021

[TO BE COMPLETED BY THE BIDDER]

SIGNED at on 2021

[signature].....

BIDDER REPRESENTATIVE

Full Names:.....

Capacity:.....

ON BEHALF OF THE BIDDER WHO WARRANTS
THAT HE/SHE IS DULY AUTHORISED HERETO.

AS WITNESSES

1..... on2021

2..... on 2021

ANNEXURE A: SCOPE OF WORK

The successful service provider will be required to appointment an independent Structural Engineer to conduct detailed condition assessment of the damaged houses and provide a method statement for the repair of the eleven houses. Following the approval by the client (HDA) in relation to the method statement, the contractor will proceed with the repair of the damaged houses.

The service provider will have to achieve the following deliverables:

- i. Appoint an independent Structural Engineer to provide conditional assessment report including a method statement for the repair of the eleven damaged houses.
- ii. HDA approval and the recommendations of the Structural Engineer for the commencement of work.
- iii. The appointed service provider to complete the repair of the eleven formal houses as per the Structural Engineers report.
- iv. Work to be completed and verified on site by an HDA's representative. Verification to accompany the service providers invoice.
- v. The Employer (HDA) shall not be responsible for any loss or damages incurred during the contract period for the repair and reconstruction of the 11 houses.

The successful bidder will supply and construct the Works:

- i. Applying a good standard of workmanship
- ii. Using new and suitable material complying with relevant NHBRC and local authority specifications
- iii. Substantially in accordance with the Design and Specifications and shall obtain prior written consent from the HDA for any material deviation from the Design and Specifications.
- iv. In compliance with the national health and safety requirements and shall report any accident to the HDA without delay.

For the duration of the project the successful tenderer shall insure and keep the Works insured in terms of all risk insurance policy.

ANNEXURE B- PAYMENT MILESTONES RATES

The total amount quoted per house shall be payable upon completion of said house in accordance with industry standards, trends and norms and relevant regulations and to the satisfaction of The Housing Development Agency's Housing Inspector. Attach BOQ for them to price on rates!!!

ANNEXURE C

, To facilitate the smooth flow of invoices including payments, all invoices reflecting the relevant HDA order number to be addressed to:

The Financial Manager
P.O. Box 3209
Houghton
2041

Or hand-delivered for the attention of the Financial Manager at
Block A, Riviera Office Park
6-10 Riviera Road
Killarney
Johannesburg

Or email to: invoice@thehda.co.za

ANNEXURE D: DECLARATION OF SECRECY:

I

(Full name)

Solemnly declare that

1.

I have taken note of the provisions of the Protection of Information Act, 1982 (84 of 1982) and of the provisions of section 4 of the Act:

2.

I understand that I shall be guilty of an offence if I reveal any information which I have at my disposal by virtue of my office and concerning which I know or should reasonably know that the security or other interests of the Republic require that it be kept secret from any person other than a person

- to whom I may lawfully reveal it; or
- to whom it is my duty to reveal it in the interests of the Republic; or
- to whom I am authorised by the HDA or by an officer authorised by him to reveal it;

3.

I understand that the said provisions and instructions shall apply not only during the duration of the project but also after the termination of my services with the HDA and

4.

I am fully aware of the serious consequences that may follow any breach or contravention of the said provisions and instructions.

Signature:

Witnesses: 1.....

Place: 2.....

Date: