

SPECIAL CONDITIONS OF CONTRACT
SERVICE LEVEL AGREEMENT

Entered into by and between

**GEORGE MUNICIPALITY VIA ITS DIRECTORATE: HUMAN
SETTLEMENTS, LAND AFFAIRS AND PLANNING**

(Here in represented by **Steven Erasmus** in his capacity as **Director: Human
Settlements, Land Affairs and Planning**)

(Hereinafter referred to as "the Directorate")

and

(a private company duly incorporated in terms of the laws of South
Africa, having its main place of business at

_____,
with registration number _____, represented
herein by _____ in his/her capacity
as _____, duly authorised thereto)

(Hereinafter referred to as "the Service Provider")

PREAMBLE:

- A.** The Directorate has appointed the Service Provider to compile an amended Spatial Development Framework for George (GSDF) as part of the process of drafting an IDP for George.
- B.** The Service Provider has accepted such appointment and shall render the services to the Directorate on the terms and conditions as set out in this Service Level Agreement.

WHEREBY THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

- 1.1 In this agreement unless the context indicates a contrary intention a word or expression which denotes: -
 - 1.1.1 any gender shall include the other genders;
 - 1.1.2 a natural person shall include juristic persons and vice versa; and
 - 1.1.3 the singular shall include the plural and vice versa.
- 1.2 The terms and conditions contained in the General Conditions of Contract (GCC), incorporated herein, and annexed hereto as "A", form part of the agreement between the Parties.
- 1.3 In the event of any inconsistency between the provisions of this Service Level Agreement and the terms and conditions contained in the GCC, or any annexure to this Service Level Agreement the

provisions of this Service Level Agreement shall prevail over the terms and conditions contained in the GCC.

1.4 For the sake of clarity, any reference in the GCC to the term “Supplier” shall equate to the term “Service Provider” and any reference in the GCC to the term “Purchaser” shall equate to the term “Directorate” as contemplated in this Agreement.

1.5 In this Service Level Agreement the following expressions bear the meanings assigned to them below and cognate expressions bear corresponding meanings: -

1.5.1 **“Agreement”** shall mean this Service Level Agreement, together with the bid documents, the GCC, and any other annexures hereto, and **“this Agreement”** shall have a corresponding meaning;

1.5.2 **“Commencement Date”** means the date of appointment of the service provider, being the _____ **2016**, notwithstanding the date of signature of this Agreement;

1.5.3 **“Council”** means the municipal Council responsible for adoption of the GSDF;

1.5.4 **“Directorate”** means the Western Cape Government via its Directorate of Environmental Affairs and Development Planning situated at 1 Dorp Street, Cape Town 8000;

- 1.5.5 “**Directorate**” means the Directorate: Human Settlements, Land Affairs and Planning of the George Municipality situated at the corner of York and Progress Street, George;
- 1.5.6 “**LUPA**” means the Western Cape Land Use Planning Act, 2014 (3 of 2014);
- 1.5.7 “**MSA**” means the Municipal Systems Act. (32 of 2000)
- 1.5.8 “**NEMA**” means the National Environmental Management Act (107 of 1998);
- 1.5.9 “**Parties**” means the Directorate and the Service Provider; and
- 1.5.10 “**Service Provider**” means _____, situated at _____, with registration number _____; and
- 1.5.11 “**SPLUMA**” means the Spatial Planning and Land Use Management Act (16 of 2013);
- 1.6 Words and expressions defined in any clause shall, for the purpose of that clause, bear the meaning assigned to such words and expressions in that clause.

2. APPOINTMENT AND DURATION

- 2.1 The Directorate hereby appoints the Service Provider to provide the Services in accordance with the deliverables outlined in clause 3

below, the Terms of Reference and Bid Documents and on the terms and conditions as contained in this Agreement.

- 2.2 The appointment under clause 2.1 shall be exclusive to the Service Provider and the Service Provider shall accordingly not appoint any other party to provide the services to the Directorate, unless with the prior written approval of the Directorate and subject to such subcontractor being bound by the terms and conditions of this Agreement.
- 2.3 This Agreement shall come into effect on the Commencement Date and shall, unless otherwise provided for in this Agreement, remain in force until the completion of the Services to the satisfaction of the Directorate.

3. THE SERVICES

- 3.1 The Service Provider shall render the following services to the Directorate on the terms and conditions set out in this Agreement, the ToR and the bid documents (hereinafter referred to as “the Services”):
- 3.1.1 To develop a Municipal Spatial Development Framework (“MSDF”) for the Municipality of George.
- 3.2 The contents of all deliverables will, as a minimum, meet the requirements for the content and process for the development of Municipal Spatial Development Frameworks, as set out in SPLUMA,

LUPA, MSA and the Land Use Planning Bylaw for George Municipality published in PN227/2015, 15 July 2015.

- 3.3 The Service Provider shall perform the Services in accordance with the timeframe and deliverables as outlined in the Terms of Reference, annexed hereto and marked Annexure "B".
- 3.4 The Service Provider will complete the Services in the following phases:
- 3.4.1 An inception report;
- 3.4.2 A draft status quo report for comment by the Project Committee;
- 3.4.3 A final status quo report for submission to the Council the Council for adoption;
- 3.4.4 A concept draft of a preliminary amended MSDF for comment by the Project Committee containing a gap analysis of final amendments required to the document in order to:
- conclude the alignment with the IDP development agenda and applicable legislation; and
 - render a final Strategic Environmental Assessment as specified in the ToR;
- 3.4.5 A draft preliminary amended MSDF for submission to the Council to adopt concurrently with the new 5 year Integrated Development Framework;

- 3.4.6 A concept of the proposed final municipal spatial development framework for comment by the Project Committee and Municipal Directorates;
 - 3.4.7 A first draft MSDF for submission to the council for a mandate to commence with the public participation process, if appropriate;
 - 3.4.8 A table for “documentation “and “comments and responses” as part of a public participation report; and
 - 3.4.9 A final MSDF document for submission to the Council.
- 3.5 The Service Provider will assist the George Municipality with regard to the amendment of the George Spatial Development Framework in accordance with Sections 13, 14 and 15 of LUPA;
- 3.6 The Service Provider must perform the Services -
- 3.6.1 by taking responsibility for the management of the Services;
 - 3.6.2 in consultation with the project manager within the Directorate and via the project manager of the Directorate to other official within the George Municipality, as well as the other relevant Directorates, during all phases at 3.4 above and as required by the Directorate; and

- 3.6.3 by including a mechanism for an appropriate public participation process as per legislative requirements of SPLUMA, LUPA and NEMA.
- 3.7 The Service Provider is required to ensure that the MSDF also contains the following:
 - 3.7.1 Sufficient detail to allow for all land within the urban edge to be approved as an urban area in terms of NEMA;
 - 3.7.2 Sufficient strategic environmental information in order for the competent authority to consider approving a Strategic Environmental Assessment (SEA) in terms of SPLUMA and/or NEMA which includes a strategic assessment of the environmental pressures and opportunities within the municipal area, including the spatial location of environmental sensitivities, high potential agricultural land and coastal access strips.
- 3.8 The Services referred to in clause 3.1 must be completed within 18 months of the Commencement Date in accordance with an approved time schedule that corresponds with the time schedules of the municipal IDP processes, unless an extension is agreed to in writing between the Parties.

4. REPORTING AND LEVELS OF SERVICE TO BE RENDERED BY THE SERVICE PROVIDER

- 4.1 The Services shall be performed in a professional and impartial manner.

- 4.2 The Service Provider shall provide feedback to the Directorate by means of **monthly** progress reports, which reports must be submitted on the **10th** working day of each month for the duration of this Agreement and contain the following information pertaining to the Services of the previous month:
- 4.3.1 The status of the particular phase of the Services;
 - 4.3.2 The challenges faced;
 - 4.3.3 Any interventions required; and
 - 4.3.4 Budgeted spending versus actual spending.
- 4.4 The Directorate reserves the right to request additional information pertaining to any matters or issues raised in or issues omitted from a report as well as any other relevant information.
- 4.5 The Service Provider agrees to attend any further meeting at the request of the Directorate to discuss matters pertaining to this Agreement.
- 4.6 The Service Provider shall keep minutes of each meeting, and shall make same available to the Directorate and annex them to the relevant monthly reports.

5. OBLIGATIONS OF THE SERVICE PROVIDER

5.1 The Services must be performed in a professional and impartial manner.

5.2 The Service Provider shall:-

5.2.1 exercise reasonable skill, care and diligence in performing the Services;

5.2.2 ensure that Services are performed in accordance with the deliverables and obligations as recorded in the Terms of Reference; and

5.2.3 appoint a person with the necessary skill and expertise to supervise and co-ordinate the performance of the Services.

6. PAYMENT

6.1 The Directorate will pay the Service Provider an all-inclusive amount of _____, also inclusive of VAT for the rendering of the Services in terms of this Agreement.

6.2 The Directorate shall pay the Service Provider in accordance with the attached **payment schedule** as agreed upon between the parties, within 30 (thirty) days of receipt of a detailed tax invoice together with the monthly report , provided that the Services to which the tax invoice relates, as referred to in clause 3 above and Annexure "B", have been completed to the satisfaction of the Directorate.

- 6.3 The following details must be reflected on tax invoices forwarded to the Directorate by the Service Provider:
- 6.3.1 The total amount payable with reference to the activities and outputs referred to in clause 3 of this Agreement;
 - 6.3.2 VAT payable.
- 6.4 The Directorate will verify the correctness of a tax invoice, and notify the Service Provider of any possible discrepancies within 10 (ten) days of receipt of the tax invoice. Provided that the tax invoice is correct the amount due shall be payable within 30 (thirty) days from receipt of the tax invoice.
- 6.5 If the Directorate identifies any material discrepancies, the tax invoice will be referred back to the Service Provider, and the amount due will be payable within 30 (thirty) days from receipt of a corrected tax invoice.
- 6.6 No payment will be made in respect of Services that are incomplete and not in line with the requirements of this Agreement.
- 6.7 Payments by the Directorate to the Service Provider shall be made by electronic funds transfer into a bank account in South Africa, as nominated in writing by the Service Provider.
- 6.8 The Directorate shall not reimburse the Service Provider for any further disbursements, including, but not limited to parking, computer consumables, telephone calls, stationary, printing, travel,

catering and accommodation costs that are incurred in order to render the Services.

7. INTELLECTUAL PROPERTY RIGHTS

The Service Provider shall have no claim or entitlement to any copyright or other intellectual property that arises out of the execution of this Agreement, ownership of which shall at all times vest in the Directorate. The Service Provider may not reproduce or use the copyright or any intellectual property unless it obtains the prior written permission of the Directorate.

8. INDEPENDENT CONTRACTOR

- 8.1 The Service Provider is appointed as an independent contractor, and not as an employee, and at all relevant times during the currency of this Agreement no employer/employee relationship shall exist between the Parties.
- 8.2 The Directorate shall not be liable for any injury, loss or damage directly or indirectly incurred by the Service Provider, as an independent contractor, arising out of or in connection with the Services rendered by the Service Provider in accordance with this Agreement.

9. CONFIDENTIALITY

- 9.1 The Parties hereby undertake not to make any public statement or issue press releases relating to or affecting either Party to this Agreement without the prior written consent of the other Party.
- 9.2 The Parties undertake to treat all information furnished by each other or any third party in the execution of this Agreement, as secure and confidential and not to disclose the same to any unauthorized third party, without that Party's prior written consent. The Parties agree to only use such confidential information for purposes of the performance of their respective statutory functions and duties and/or their obligations in terms of this Agreement unless compelled by law to disclose such information.
- 9.3 The provisions of this clause are severable from the rest of the provisions of this Agreement and shall survive its termination and continue to be of full force.

10. SETTLEMENT OF DISPUTES

- 10.1 Without detracting from a party's right to institute action or motion proceedings in the High Court or other Court of competent jurisdiction in respect of any dispute that may arise out of or in connection with this Agreement, the Parties may, by mutual consent, follow the mediation and/or arbitration procedure as set out in clauses 10.2 and 10.3.

10.2 Mediation

- 10.2.1 Subject to the provisions of clause 10.1, any dispute arising out of or in connection with this Agreement may be referred by the Parties without legal representation to a Mediator.
- 10.2.2 The dispute shall be heard by the Mediator at a place and time to be determined by him or her in consultation with the Parties.
- 10.2.3 The Mediator shall be selected by agreement between the Parties.
- 10.2.4 If an agreement cannot be reached upon a particular Mediator within three business days after the Parties have agreed to refer the matter to mediation, then the President for the time being of the Law Society of the Cape of Good Hope shall nominate the Mediator within seven business days after the Parties have failed to agree.
- 10.2.5 The Mediator shall at his or her sole discretion determine whether the reference to him or her shall be made in the form of written or verbal representations, provided that in making this determination he or she shall consult with the Parties and may be guided by their common reasonable desire of the form in which the said representations are to be made.

- 10.2.6 The Parties shall have seven business days within which to finalise their representations. The Mediator shall within seven business days of the receipt of the representations express in writing an opinion on the matter and furnish the Parties each with a copy thereof by hand or by registered post.
- 10.2.7 The opinion so expressed by the Mediator shall be final and binding upon the Parties unless a Party is unwilling to accept the opinion expressed by the Mediator. In such event, the aggrieved party may institute legal proceedings in a court of competent jurisdiction, unless the Parties agree to refer the dispute to arbitration in accordance with clause 10.3. The expressed opinion of the Mediator shall not prejudice the rights of either Party in any manner whatsoever in the event of legal proceedings or arbitration, as the case may be.
- 10.2.8 The cost of mediation shall be determined by the Mediator.
- 10.2.9 Liability for such cost shall be apportioned by the Mediator and shall be due and payable to the Mediator on presentation of his or her written account.

10.3 Arbitration

- 10.3.1 Subject to the provisions of clause 10.1, the Parties may agree to refer any dispute arising out of or in connection with this Agreement, to arbitration.
- 10.3.2 Arbitration shall be held in Cape Town informally and otherwise in accordance with the provisions of the Arbitration Act, No. 42 of 1965, it being intended that, if possible, it shall be held and concluded within ten business days.
- 10.3.3 Save as otherwise specifically provided herein, the Arbitrator shall be if the matter in dispute is:
- (a) Primarily a legal matter, a practicing Senior Advocate of the Cape Bar;
 - (b) any other matter, an independent and suitably qualified person as may be agreed upon between the parties to the dispute.
- 10.3.4 If agreement cannot be reached on whether the question in dispute falls under 10.3.3(a) or 10.3.3(b) and/or upon a particular Arbitrator within three business days after the Parties have agreed to refer the dispute to arbitration, then the Chairperson for the time being of the Cape Bar Council shall be requested to:

- (a) determine whether the question in dispute falls under 10.3.3(a) or 10.3.3(b); and/or
- (b) nominate the Arbitrator within seven days after the Parties have failed to agree.

10.3.5 The Arbitrator shall give his or her decision within five business days after the completion of the arbitration. The Arbitrator may determine that the costs of the arbitration are to be paid either by one or the other or by both of the Parties.

10.3.6 The decision of the Arbitrator shall be final and binding and may be made an order of the Western Cape High Court, Cape Town, upon the application by any party to the arbitration.

10.4 Notwithstanding the provisions contained in clause 27 of the GCC, disputes between the Parties shall be governed exclusively by, and settled in terms of, clauses 10.1 to 10.3 of this Service Level Agreement.

11. BREACH

11.1 If either of the Parties commits a material breach of any provision of this Agreement, the other Party may call in writing on the Party in breach to remedy the breach within a period which, if the breach consists of the non-payment of money due, will not be less than 10 (ten) days and if the breach is of any other nature will be not less

than 30 (thirty) days. If the breach remains unremedied after the notice period has expired, the aggrieved Party may institute proceedings immediately for enforcement of the terms of this Agreement or any other remedy that may be available to it in law.

- 11.2 Notwithstanding the above, the Directorate reserves the right to impose penalties or claim damages in lieu of penalties, as contemplated in clause 12 below due to late performance or non-delivery of the Services.

12. PENALTIES

- 12.1 It is recorded and agreed that, in the event that the Service Provider fails to deliver the Services within the period stipulated in this Agreement, the Directorate shall be entitled to impose penalties on the Service Provider in the manner as set out in clause 22 of the GCC.
- 12.2 The Directorate's right to impose penalties shall not in any way detract from the Directorate's right to claim damages in lieu of penalties in the event of a breach by the Service Provider of any or all of the terms and conditions of this Agreement.

13. ASSIGNMENT, CESSION AND DELEGATION

The Service Provider may not assign, cede, delegate or transfer any rights, obligations, share or interest acquired in terms of this Agreement, in whole or in part, to any other party or person without

the prior written consent of the Directorate, which consent shall not unreasonably be withheld or delayed.

14. NOTICE AND DOMICILIUM

14.1 The Parties choose as their respective *domicilium citandi et executandi* for the purposes of legal proceedings and for the purpose of giving or sending any notice provided for or necessary in terms of this Agreement, the following addresses:

THE DIRECTORATE:

The Municipal Manager
3rd floor, Civic Centre,
Corner York and Progress Street,
George, 6529

THE SERVICE PROVIDER:

14.2 All notices to be given in terms of this Agreement shall be given in writing and be delivered or sent by prepaid registered post to the Party's chosen *domicilium citandi et executandi*.

14.3 If delivered by hand, a notice shall be presumed to have been received on the date of delivery, or, if sent by prepaid registered post, be presumed to have been received 7 (seven) business days after the date of posting.

14.4 Notwithstanding anything to the contrary contained in this Agreement, a written notice or communication actually received by one of the Parties from the other Party shall be adequate written notice of communication to such Party.

15. WAIVER

15.1 No waiver of any of the terms and conditions of this Agreement shall be binding unless expressed in writing and signed by the Party giving the same, and any such waiver shall be affected only in the specific instance and for the purpose given.

15.2 No failure or delay on the part of either Party in exercising any right, power or privilege precludes any other or further exercising thereof or the exercising of any other right, power or privilege.

15.3 No indulgence, leniency or extension of time which any Party (*"the Grantor"*) may grant or show the other Party, shall in any way prejudice the Grantor or preclude the Grantor from exercising any of its rights in terms of this Agreement.

16. ENTIRE AGREEMENT

16.1 This Agreement constitutes the entire agreement between the Parties and no amendment, alteration, addition or variation of any right, term or condition of this Agreement will be of any force or effect unless reduced to writing and signed by the Parties to this Agreement.

16.2 The Parties agree that there are no conditions, variations or representations, whether oral or written and whether expressed or implied or otherwise, other than those contained in this Agreement.

16.3 This Agreement replaces any other previous verbal or written agreement entered into between the Parties.

SIGNED AT **ON THIS** **DAY OF** **2016**

THE DIRECTORATE

AS WITNESSES:

Signature

Name also in capital letters

Signature

Name also in capital letters

SIGNED AT

ON THIS

DAY OF

2016

THE SERVICE PROVIDER

AS WITNESSES:

Signature

Name also in capital letters

Signature

Name also in capital letters

DRAFT