AWARDED CONTRACT

CONTRACT NUMBER: ES 19/2014

DISCRIPTION: APPOINTMENT OF A SERVICE PROVIDER TO CONTSTRUCT TARRED ROADS, STORM WATER DRAINS, KERBING &CHANNELS IN WARD 8-EZAKHENI

AWARDED BIDDER: BHEKANANI BUILDING AND CONSTRUCTION

EMNAMBITHI/LADYSMITH MUNICIPALITY MUNICIPAL MANAGER

My Ref. T7/1

Your Ref.

Please ask for THANDEKA

✉ 29
☎ (036) 637 2231
Fax: (036) 631 1400
086 215 3054
Ladysmith 3370

Email: mm@ladysmith.co.za
Website: www.ladysmith.co.za

7 January 2015

Messrs Bhekanani Building and Construction
PO Box 80165
DOORNPOORT
0017

Tel: 012 543 9984
Cell: 083 301 2533
Fax: 012 543 0785

ATTENTION: BHEKI LANGA

Dear Sir

CONTRACT NO: ES 19/2014: APPOINTMENT OF A SERVICE PROVIDER TO CONSTRUCT TARRED ROADS,STORM WATER DRAINS, KERBING & CHANNELS IN WARD 8- EZAKHENI

I have pleasure in informing you that the Emnambithi/Ladysmith Municipality's Bid Adjudication Committee, at its meeting that was held on 10 November 2014, resolved to award the above mentioned bid to your company for the Appointment Of A Service Provider to Construct Tarred Roads, Storm Water Drains, Kerbing & Channels in Ward 8- Ezakheni.

The contract price which is **VAT inclusive** is made up as follows: (reduced scope of work)

Construction of a to Construct Tarred Roads, Storm Water Drains, Kerbing & Channels in Ward 6- Ezakheni	R 7 894 736.84
VAT Amount	R 1 105 263.16
TOTAL PRICE RECOMMENDED FOR ACCEPTANCE	**R 9 000 000.00 (incl. VAT)**

(NINE MILLION RANDS ONLY)

Join the Emnambithi/Ladysmith Municipality in its fight against HIV/AIDS
Fight HIV/AIDS; Abstain, Be Faithful, Condomise - for more information visit the local Clinic
EMNAMBITHI/LADYSMITH INCORPORATES THE TOWNS OF LADYSMITH, STEADVILLE, EZAKHENI AND COLENSO

Notwithstanding the above, kindly note the following:

1) Payments due to you will only be made once all contractual documentation (including though not limited to the provision of any guarantees, insurances, signing of a Service Level Agreement etc) are in order. Payments will only be made following the submission of an invoice by your company for services that are rendered.

2) You are required to return the completed acknowledgment of acceptance form attached to this letter to the office of the Executive Manager: Finance (CFO) within five (5) working days of receipt hereof. Should you fail to do so during this period, this appointment will be rendered null and void.

We wish you every success in the execution of this project.

Yours faithfully

M P KHATHIDE
MUNICIPAL MANAGER

CC: Department of Finance
Department of Community Services
Department of Corporate Services (Legal Section)

TO BE COMPLETED BY THE CONTRACTOR

We acknowledge receipt of the Letter of Appointment and accept that a binding contract exists between the Emnambithi / Ladysmith Municipality and Messrs Bhekanani Building and Construction for the Appointment Of A Service Provider to Construct Tarred Roads,Storm Water Drains, Kerbing & Channels in Ward 8 - Ezakheni as per Contract ES 19/2014.

SIGNED: _____

NAME IN FULL: Bheki Langa

DATE: 08/01/2015

POSITION: Director

COMPANY Bhekanani building and Construction

STAMP:

BHEKANANI
BUILDING AND CONSTRUCTION
2015 -01- 08
Tel: 012 543 9984 Fax: 012 543 0785
385 Poinsettia Street, Sinoville, 0182
PO Box 89165, Doornpoort, 0017

CERTIFICATE

I hereby certify that the attached Agreement/Contract (Es 19/2014 : Construction of Tarred Roads, Stormwater Drains, Kerbing and Channels in Ezakheni, Township Ward 8) are/is in order for signature by the Municipal Manager and that the clauses contained therein reflect the correct legal relationship between the advisory and the Municipal Manager.

1.	N. NAIDOO COMPILER (full name - print)	SIGNATURE	09/02/2015 DATE
2.	N.P. MNCUBE HEAD OF SECTION (full name - print)	SIGNATURE	09/02/15 DATE
3.	A. [illegible] HEAD OF DEPARTMENT (full name - print)	SIGNATURE	09/02/15 DATE
4.	LEGAL OFFICER/ADVISOR (full name - print)	SIGNATURE	DATE
5.	CHIEF LEGAL ADVISOR (full name – print)	SIGNATURE	DATE
6.	S.P. SHEZI SNR LEGAL ADVISOR (full name – print)	SIGNATURE	11/02/11 DATE

The Municipal Manager was authorised by a resolution passed by the Council of Emnambithi/Ladysmith on 13 November 2003 to sign documents as indicated in the Delegations Register

NOTES

1. _____
2. _____
3. _____
4. _____
5. _____

SERVICE LEVEL AGREEMENT

FOR ES 19/2014: CONSTRUCTION OF TARRED ROADS, STORMWATER DRAINS,KERBING AND CHANNELS IN EZAKHENI TOWNSHIP (WARD 8)

Entered into between:

EMNAMBITHI/LADYSMITH MUNICIPALITY

duly represented herein by M. P KHATHIDE in his capacity as the Municipal Manager of the EMNAMBITHI/LADYSMITH Municipality and duly authorized thereto by a resolution of the Emnambithi/Ladysmith Council dated 13 November 2003

(Hereinafter referred to as "**the Municipality**")

and

BHEKANANI BUILDING AND CONSTRUCTION

a Close Corporation duly registered with registration number 2000/024114/23 and duly represented by (Bheki .S Langa) in his capacity as the Director

(Hereinafter referred to as "**the Service Provider**")

INTRODUCTION:

The Emnambithi/Ladysmith Municipality seeks to appoint Bhekanani Building and Construction CC for the construction of tarred roads, storm water drains, kerbing and channles in Ezakheni township ward 8.

NOW THEREFORE, the Emnambithi/Ladysmith Municipality and the Service Provider (collectively "the Parties") agree that the Service Provider will provide services to the Emnambithi/Ladysmith 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 Bhekanani Building and Construction CC;

1.1.3 **"The Municipality"** – means Emnambithi/Ladysmith 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;

BS

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 Service Provider;

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

2.1 The Emnambithi/Ladysmith Municipality hereby appoints Bhekanani Building and Construction CC for the construction of tarred roads, storm water drains, kerbing and channels in Ezakheni township ward 8

2.2 The Service Provider hereby accepts the appointment by the Municipality to provide the Municipality with the abovementioned services.

2.3 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.

3. DURATION OF AGREEMENT

3.1 The duration of the agreement will be for a period of 6 (six) months from the date of site handover to the service provider that is the 12 January 2015 and terminate on the 12 July 2015.

3.2 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.

4. LOCATION

The services will be performed at such locations as specified by the Municipality, and where the location of a particular task is not so specified, at such locations as the Municipality may approve in writing. Attached Annexure 'A', detailing the exact location.

5. AUTHORISED REPRESENTATIVES

5.1 The Municipality hereby appoints **Mr. A Sompersadh** to serve as Managing Directors 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 **Mr. M. P KHATHIDE**, who is the authorised signatory to this agreement.

5.3 The Service Provider hereby appoints **(Mr. B Langa)** 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 Langa)** in his capacity as the representative of **Bhekanani Building and Construction CC** 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.

6. 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.

7. 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.

8. 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.

9. 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 –

9.1.1 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;

9.1.2 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;

9.1.3 the Service Provider, in the judgment 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.

10. *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.*

11. PENALTIES

11.1.1 In the event of non-compliance with the agreed time frames, penalty fees in the amount of R 5000.00 (Five Thousand Rands) per day will be deducted in lieu of each day the service provider fails to render its service in respect of the project.

11.1.2 Penalty fees will be charged for failure to comply with any of the conditions set out in this agreement.

12. 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.

13. 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.

14. 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.

15. 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.

16. PAYMENT FOR SERVICES

16.1 The Municipality will pay the Service Provider within 30 (thirty) days of receipt of a valid invoice and payment certificate as well as all other required supporting documents from the Service Provider.

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 a quotation given by the Service Provider as applicable, unless the parties have agreed in advance in relation to any varied payment.

17.1.1 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.

18 DUTIES OF THE SERVICE PROVIDER

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

General

18.1.1 Establish a camp and plant on site;

18.1.2 Provide accommodation of supervisory staff;

18.1.3 Location, exposing and demarcation of existing services to be protected and/or relocated by Labour Intensive Methods;

18.1.4 Setting out of the works by Labour Intensive Methods;

Drainage

18.1.5 Storm water drainage system including all manholes, catch pits, junction boxes, kerb inlets, channels, kerb etc. by labour intensive methods;

Road Works

18.1.6 Opening and closing of borrow pit by heavey machinery;

18.1.7 Clearing and grubbing by labour intensive method;

18.1.8 Excavation for roads, roadbed compaction and construction of pavement layers, by heavey machinery;

18.1.9 Importation of gravel material for layer works by labour intensive methods;

18.1.10 Levelling of gravel material for layer works by labour intensive methods;

18.1.11 Compaction of layer works by heavey machinery;

18.1.12 Final finishing cut of sub-base layers by heavey machinery;

18.1.13 Road surface markings and road signs by labour intensive methods

18.1.14 Cleaning of site as work progresses by labour intensive methods;

18.1.15 Final finishing and tidying by labour intensive methods;

Services

18.1.16 The provision of ducts for existing and future services, as directed by the engineer by labour intensive methods;

18.1.17 Relocation of existing services, as directed by the engineer by labour intensive methods;

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

19 AGENCY AND REPRESENTATION

19.1 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.

19.2 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.

20 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.

21 PERSONNEL OF THE SERVICE PROVIDER

21.1 The Service Provider accepts that at all times the Site Agent Mr. Mofokeng will be present together with Site Foreman Mr. Kgobadi.

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:

21.1.1 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;

21.1.2 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

22 SUB-CONTRACTING

22.1 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.

22.2 If the contract amount is greater than or equal to R1,000,000.00, the Service Provider must Sub-contract at least 10% of the contract to Local Contractors, where Sub-Contract is necessary to execute the contract.

22.3 If the contract amount is greater than or equal to R1,000,000.00, the Service Provider must include 50% Local Labour in their staff component.

23 CONFIDENTIALITY

23.1 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.

23.2 The obligation not to disclose or use confidential information contemplated in clause 20.1 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.

24 INDEMNITY

24.1 During and after this agreement –

24.1.1 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

24.1.2 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.

25 GENERAL

25.1 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.

25.2 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.

25.3 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.

25.4 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.

25.5 This agreement may not be ceded or assigned nor the rights in terms of this agreement pledged or made over to any other person.

28 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.

29 BANKING DETAILS OF SERVICE PROVIDER:

Bank:	ABSA Bank
Account Name:	Bhekanani Building and Construction CC
Account Number:	4058310245
Branch:	Montana

30 SIGNATURES

FOR EMNAMBITHI/ LADYSMITH MUNICIPALITY

Signed On This 16 **Day Of** FEBRUARY **2015**

Witnesses

1. K RAMSAROOP (Name)

RAMSAROOP (Sign)

2. _____ (Name)

_____ (Sign)

_____

M P KHATHIDE (MUNICIPAL MANAGER)

Who warrants that he is duly authorised to enter into this contract on behalf of the Emnambithi/Ladysmith Municipality

FOR THE SERVICE PROVIDER

Signed On This Day of 2015

Witnesses

1. Landiwe Mavimbela (Name)

_____ (Sign)

2. M.L Mkhosibe (Name)

_____ (Sign)

_____

B. S Langa
(DIRECTOR)

Who warrants that he is duly authorised to enter into this contract on behalf of the Service Provider