



CITY OF TSHWANE METROPOLITAN MUNICIPALITY

TENDER NUMBER:

ROC 10 2021/22

TENDER DESCRIPTION:	TENDER FOR THE REPAIR AND MAINTENANCE OF SWIMMING POOLS, AND THE SUPPLY, DELIVERY, INSTALLATION AND COMMISSIONING OF ACCESSORIES, AS AND WHEN REQUIRED, OVER A 3 YEAR PERIOD
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NAME OF BIDDER:

CSD NUMBER:

VENDOR NUMBER (WHERE APPLICABLE)

Prepared by:
City of Tshwane Metropolitan Municipality
C de Wet Centre
175 Es'kia Mphahlele Drive
Pretoria West
0001
Tel: 012 358 9999

BID CLOSING DATE	15 February 2022
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Only bidders registered on the central supplier database (CSD) and with a CSD number will be considered for this tender, as this is a requirement from the National Treasury.



CITY OF TSHWANE METROPOLITAN MUNICIPALITY

DEPARTMENT: REGIONAL OPERATIONS AND COORDINATION

Bids are hereby invited from suppliers for the following bid:

Bid number	Description	Department	Contact person	Compulsory briefing session	Closing date
ROC 10 2021/22	TENDER FOR THE REPAIR AND MAINTENANCE OF SWIMMING POOLS, AND THE SUPPLY, DELIVERY, INSTALLATION AND COMMISSIONING OF ACCESSORIES, AS AND WHEN REQUIRED, OVER A 3 YEAR PERIOD	REGIONAL OPERATIONS AND COORDINATION	Wouter Koekemoer WouterK@TSHWANE.GOV.ZA (012) 358 1496	N/A	18 February 2022 10:00

THE DOCUMENT IS DOWNLOADABLE ON THE E-TENDER PORTAL.

Each quotation shall be enclosed in a sealed envelope that bears the correct identification details and shall be placed in the tender box located at:

**Procurement Advice Centre
C De Wet Centre
175 Es'kia Mphahlele Drive (previously DF Malan Drive)
Pretoria West
0183**

Documents must be deposited in the bid box not later than **10:00 on 18 February 2022** when bids will be opened in public.

Please note that briefing sessions will not be held for this tender. Bidders must contact the following officials for any enquiries:

- Technical enquiries: Wouter Koekemoer (012 358 1496 or WouterK@tshwane.gov.za)
- Supply chain enquiries: Relebogile Malatswane or RelebogileM@tshwane.gov.za)

Bids will remain valid for a period of 90 days after the closing date.

Bids received after the closing date and time will not be considered. The City of Tshwane does not bind itself to accept the lowest or any other bid in whole or in part.

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VERY IMPORTANT NOTICE ON DISQUALIFICATIONS

A bid that does not comply with the peremptory requirements stated hereunder will be regarded as not being an “acceptable bid”, and such a bid will be rejected. An “acceptable bid” means any bid which, in all respects, complies with the conditions of the bid and the specifications as set out in the bid documents, including the conditions as specified in the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000) and related legislation as published in *Government Gazette 22549*, dated 10 August 2001, in terms of which provision is made for this policy.

1. If any pages have been removed from the bid document and have therefore not been submitted or if a copy of the original bid document has been submitted.
2. If the bid document is completed using a pencil. Only black ink must be used to complete the bid document.
3. The bidder attempts to influence or has in fact influenced the evaluation and/or awarding of the contract.
4. The bid has been submitted after the relevant closing date and time.
5. If any bidder who, during the last five years, has failed to perform satisfactorily on a previous contract with the municipality, municipal entity or any other organ of state after written notice was given to that bidder that performance was unsatisfactory.
6. The accounting officer must ensure that, irrespective of the procurement process followed, no award may be given to a person –
 - (a) who is in the service of the state;
 - (b) if that person is not a natural person, of which any director, manager, principal shareholder or stakeholder is a person in the service of the state; or
 - (c) who is an advisor or consultant contracted to the municipality in respect of a contract that would cause a conflict of interest.
7. Bid offers will be rejected if the bidder or any of his/her directors are listed on the Register of Bid Defaulters in terms of the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004) as a person prohibited from doing business with the public sector.
8. Bid offers will be rejected if the bidder has abused the City of Tshwane supply chain management system.
9. Failure to complete and sign the certificate of independent determination or disclosure of wrong information.

Failure to comply with the above will lead to immediate disqualification.

Bidder

CERTIFICATE OF AUTHORITY FOR SIGNATORY

Status of concern submitting tender (delete whichever is not applicable):

COMPANY/PARTNERSHIP/ONE-PERSON BUSINESS/CLOSE CORPORATION/JOINT VENTURE

A. COMPANY

If the bidder is a company, a certified copy of the resolution of the board of directors that is personally signed by the chairperson of the board, authorising the person who signs this bid to do so and to sign any contract resulting from this bid, and any other documents and correspondence in connection with this bid or contract on behalf of the company, must be submitted with this bid.

An example is shown below:

By resolution of the board of directors on 20.....,
Mr/Ms has been duly
authorised to sign all documents in connection with
Bid Number

SIGNED ON BEHALF OF THE COMPANY:

IN HIS/HER CAPACITY AS

DATE:

SIGNATURE OF SIGNATORY:

WITNESSES: 1.

2.

B. PARTNERSHIP

The following particulars in respect of every partner must be furnished and signed by every partner:

Full name of partner	Residential address	Signature
.....
.....
.....

We, the undersigned partners in the business trading as, hereby authorise to sign this bid as well as any contract resulting from the bid and any other documents and correspondence in connection with this bid or contract on our behalf.

.....
Signature **Signature** **Signature**

.....
Date **Date** **Date**

C. ONE-PERSON BUSINESS

I, the undersigned,, hereby confirm that I am the sole owner of the business trading as

.....
Signature **Date**

D. CLOSE CORPORATION

In the case of a close corporation submitting a bid, a certified copy of the founding statement of such corporation shall be included with the bid with a resolution by its members, authorising a member or other official of the corporation to sign the documents and correspondence in connection with this bid or contract on behalf of the company.

An example is shown below:

By resolution of the members at the meeting on 20..... at , Mr/Ms , whose signature appears below, has been duly authorised to sign all documents in connection with Bid Number

SIGNED ON BEHALF OF THE CLOSE CORPORATION:

IN HIS/HER CAPACITY AS:

DATE:

SIGNATURE OF SIGNATORY:

WITNESSES: 1.

 2.

E. CERTIFICATE OF AUTHORITY FOR JOINT VENTURES

This returnable schedule is to be completed by joint ventures.

We, the undersigned, are submitting this bid offer in joint venture and hereby authorise Mr/Ms , authorised signatory of the company..... , acting in the capacity of the lead partner, to sign all documents in connection with the bid offer and any contract resulting from it on our behalf.

NAME OF FIRM	ADDRESS	DULY AUTHORISED SIGNATORY
Lead partner		Signature: Name: Designation:
		Signature: Name: Designation:
		Signature: Name: Designation:
		Signature: Name: Designation:

REGIONAL OPERATIONS AND COORDINATION

TENDER FOR THE REPAIR AND MAINTENANCE OF SWIMMING POOLS, AND THE SUPPLY, DELIVERY, INSTALLATION AND COMMISSIONING OF ACCESSORIES, AS AND WHEN REQUIRED, OVER A 3 YEAR PERIOD

BID NUMBER

(ROC 10 2021/22)

1. INTRODUCTION AND PURPOSE

Tenderers are called for the repair and maintenance of swimming pools, including all related facilities such as water features and reticulation, and the supply delivery, installation, and commissioning of all relevant accessories, as and when required, over a 3-year period.

2. BACKGROUND

The City of Tshwane (COT) maintains swimming pools and all related facilities, including water features and reticulation. The mentioned swimming pools and/or new swimming pools, water features and reticulation in all regions are to be maintained, repaired, and upgraded during the financial year with special mention to prompt emergency repair and maintenance during the “in season” calendar months (1 September to 31 March), as well as pools and water features and reticulation that are operational all year.

3. SCOPE OF THE TENDER

Reference to swimming pools in this tender also includes water features and reticulation and new swimming pools if applicable. The purpose of this tender is to maintain all swimming pool facilities to a healthy and safe standard conducive to all kinds of swimming events, trainings, and recreational use by the community by doing:

1. Planned maintenance on all items mentioned in the specification.
2. Supply, delivery, installation, and commissioning of all required items referred to in the specification during day-to-day maintenance and repairs as and when requested.
3. Emergency repairs during breakdowns as and when required, on short notice and during weekends and public holidays.

The tender covers the following items:

1. Pumps and Motors (see pricing schedule for details)
2. Electrical Equipment
3. Irrigation systems
4. Chlorine Gas Equipment

5. Filters, weirs and leaf catchers
6. PVC Piping and Fittings
7. Pool and Paving
8. Slides and Tubes
9. Pool Accessories
10. Ladders
11. Heat pumps and Blankets
12. Chemicals
13. Admin Costs
14. Swimming pool water maintenance

3.1 SWIMMING POOL VENUES TO BE SERVICED

	Swimming Pool	Address	Coordinates
A	Area		
A.1	Region 3: Joost Bekker Swimming pool	E'skia Mphahlele Drive, Mayville	S25 41 828 E028 11 048
A.2	Region 1: Club Rendezvous Paddling pool	Club Rendezvous, Emily Hobhouse Circle South, Pretoria North	S25 40 819 E028 10 375
A.3	Region 1: Klipkruisfontein Swimming pool	Hebron Road, Soshanguve South	S25 34 715 E028 05 608
A.4	Region 1: Pretoria North Swimming pool	Emily Hobhouse Circle North, Pretoria North	S25 39 958 E028 10 447
A.5	Region 1: Soshanguve Swimming pool	Block H, Soshanguve	S25 30 908 E028 06 471
A.6	Region 2: Deon Malherbe Swimming pool	Braam Pretorius Street & Kannabos Street, Wonderboom	S25 41 036 E028 12 376
A.7	Region 2: Rooiwal Swimming pool	1 st Street, Rooiwal	S25 33 656 E028 14 857
A.8	Region 2: Temba Swimming pool	Kudube Unit 1/d Temba	S25 22 692 E028 14 740
A.9	Region 3: Les Marais Swimming pool	Benita Avenue, Les Marais	S25 42 508 E028 10 918
A.10	Region 3: Tjaart van Vuuren Swimming pool	Cnr Hertzog Street & 31 ^{ste} Avenue, Villieria	S25 42 274 E028 14 245
B	Area		
B.1	Region 3: Saulsville Swimming pool	Masopha Street, Saulsville	S25 46 084 E028 03 456

	Swimming Pool	Address	Coordinates
B.2	Region 3: Atteridgeville Swimming pool	Maunde Street, Atteridgeville	S25 46 605 E028 04 458
B.3	Region 3: Ga Mothakga Swimming pool	Pitse & Thlou Street, Atteridgeville	S25 45 771 E028 04 056
B.4	Region 3: Gert van Schalkwyk Swimming pool	Markotter Street, Danville	S25 44 292 E028 07 290
B.5	Region 3: Hans Moolman Paddling pool	Hans Moolman Park, Arend Street & Bosduif Street, Kwaggasrand	S25 45 251 E028 06 775
B.6	Region 3: Kwaggaspruit Swimming pool	Cnr van Dalsen and Inner Crescent Streets, West Park	S25 45 551 E028 07 887
B.7	Region 3: Hillcrest Swimming pool	Cnr Jan Shoba & Duxbury Streets, Hillcrest	S25 45 335 E028 14 341
B.8	Region 3: De Jongh Diving centre	Cnr Roper & Nixon Streets, New Muckleneuk	S25 46 106 E028 13 595
B.9	Region 3: Sunnyside Swimming pool	Cnr Bourke & Jorrissen Streets, Sunnyside	S25 45 340 E028 12 515
B.10	Region 4: Laudium Swimming pool	Aquamarine Street & 8 th Avenue, Laudium	S25 47 026 E028 06 272
C	Area		
C.1	Region 3: Fountains Valley Swimming pool	Fountains Valley	S25 46 880 E028 11 610
C.2	Region 5: Derdepoort Swimming pool	Derdepoort Resort, Baviaanspoort Road, Derdepoort	S25 41 817 E028 17 521
C.3	Region 6: Eersterust Swimming pool	Ivan Beckett Street, Eersterust	S25 42 818 E028 18 701
C.4	Region 6: Mamelodi East Swimming pool	Tsomo Street, Mamelodi	S25 42 572 E028 22 616
C.5	Region 6: Mamelodi West Swimming pool	Kubone Street, Mamelodi	S25 42 653 E028 20 693
C.6	Region 6: Moretele Resort Swimming pool	Sibande Street, Mamelodi	S25 42 227 E028 21 598
C.7	Region 6: Nellmapius swimming pool	Erf 6249 Dimakatso Street. Nearest Corner is with Tsebiso street	S25 44 725 E028 21 488
C.8	Region 6: Zita Park Paddling pool	Cnr Zita & Len Brown Streets, Garsfontein	S25 47 604 E028 17 530
C.9	Region 7: Bronkhorstspuit Swimming pool	Olifant Street, Bronkhorstspuit	S25 48 425 E28 43 887
C.10	Region 7: Zithobeni Swimming Pool	Mothibe street, Zithobeni, Bronkhorstspuit	S25 47 003 E28 43 196

3.2 ALL WATER FEATURES

Water features include but are not limited to fountains and water channels within the COT geographical area.

	Region	Location of Water Feature
1	Region 3	City Hall
2	Region 3	Burgers Park
3	Region 3	Fountains Circle
4	Region 3	Jan Cilliers Park
5	Region 3	Van Riebeeck Fountain
6	Region 3	Pretoria Art Museum

3.3 TRAINING PLAN

The Tenderer shall provide a training plan which will include on-the-job training. The training plan must include training on the following topics:

- Filtration systems and recirculation – The set-up of the recirculation is to be explained and demonstrated (i.e., the pump, filter, heater, chemical feeder).
- Basic pool chemistry and calculations – Being able to determine the square meters and volume of the pool. Using this information, show the practical application to employees, e.g., how to determine the amount of chemicals that needs to be added, acceptable bather load, and how much paint is needed to repaint the pool surface.
- Water sanitising and testing – Water testing procedures and frequencies must be addressed.
- Maintenance and troubleshooting – Being able to troubleshoot problems at the pool. Teach simple steps to educate the employees on some of the typical pool problems such as high/low pH, cloudy water, algae growth, inadequate filtration and more.
- Hot tubs and heated pools – Train employees to identify and treat hot water and heated pool chemistry challenges including proper safety, maintenance, and operational guidelines.
- Energy conservation – Teach basic principles for conserving energy that will aid in the running of the facility. Topics should include energy losses, heater sizing and air circulation.
- Training Program must include evaluation and an attendance certificate per student.

- Training session must not be less than 3 hours per day for 2 days per training session.

3.4 SWIMMING POOL MAINTENANCE TO INCLUDE:

- 3.4.1 Two visits to the pool weekly, to service it through the following tasks:
- 3.4.2 Clean weir baskets of all leaves.
- 3.4.3 Scoop leaves from the swimming pool.
- 3.4.4 Vacuum pool floor and walls through the filter removing debris if necessary.
- 3.4.5 Check and clean the pump basket and remove leaves.
- 3.4.6 Perform a backwash and rinse on the filtration unit (sand filters).
- 3.4.7 Check pH by testing the pool water to ensure that the water isn't too acidic or too alkali.
- 3.4.8 Check Chlorine levels to avoid too much chlorine that can be harmful to swim in.
- 3.4.9 Check Total Alkalinity (Monthly) to prevent pH bounce and to make the water comfortable for swimmers.
- 3.4.10 Adjust pH (Acid/Soda Ash) with the necessary chemicals to balance the pool water.
- 3.4.11 Adjust Chlorine in the event there is no chlorine in the water, by dosing the pool according to the volume of water.
- 3.4.12 Brushing the walls and steps to help prevent the buildup of green algae and black algae.
- 3.4.13 Clean the chlorinator.
- 3.4.14 Report all leaks and faults as soon as they are discovered.
- 3.4.15 Record service data on log sheets, time spent at the pool, what the test results were and what chemicals were dosed in the pool.
- 3.4.16 Do final quality inspection.

3.5 COMPLIANCE TO LEGISLATIONS AND REGULATIONS

All electrical installations and electrical equipment pertaining to mechanical services must comply with:

- 3.5.1 The Code of Practice for the Wiring of Premises, SANS 10142, as amended.
- 3.5.2 The Occupational Health and Safety Act. 1993 (Act 85 of 1993), as amended. Notwithstanding anything to the contrary in the agreement, it is hereby specifically determined that the Contractor shall have acquainted him/herself and be conversant with the contents of all statutory provisions applicable to the health and safety of workers and other persons on the site including the execution of the work, and the regulations promulgated in

terms thereof, and shall comply therewith meticulously and in all aspects and/or take care that it is complied with.

- 3.5.3 By-laws and Regulations as well as the Regulations of the local Supply Authority and any special requirements of the local supply authority.
- 3.5.4 The Fire Brigade services Act 1993 Act 99 of 1987 as amended.
- 3.5.5 The National Building Regulations and Building Standards Act, 1977 (Act 103 of 1977) as amended, as well as any incorporated Standards.
- 3.5.6 The Electricity Act 1984 Act 41 of 1984.
- 3.5.7 The Regulations of the Local Gas Board where applicable.

3.6 PERSONNEL, VEHICLES, WORKSHOP AND EQUIPMENT REQUIRED

It is expected of the Contractor to supply all vehicles, equipment and personnel as prescribed for the execution of the work. These vehicles and equipment will be inspected and approved or rejected by the Deputy Director before the appointment of the tenderer.

- a) Workshop and offices will be visited/inspected.
- b) Testing bench and equipment to be presented by tenderer at their premises.
- c) Well maintained vehicles with all required tools for maintenance and repairs of pools to be presented/inspected.
- d) Mobile testing and other required equipment to be presented/ inspected.
- e) Tendered to provide a supervisor to supervise all work and workers on all jobs.

4. DELIVERABLES

4.1 EXECUTION OF WORK

The successful bidder(s) is expected to execute work in the following way:

- a) Major and pre-season maintenance work will be done and must be completed in the off-season (1 May to 30 Aug).
- b) Emergency repairs will be done during the open season, from 1 September to the last day of the April school holidays, accept where indicated differently.
- c) Hillcrest Swimming pool and De Jongh Diving Centre are open all year round and have heating systems.
- d) The tenderer shall conduct yearly inspections and tests all pumps and motors by issuing a test certificate for each item clearly detailing all applicable results of the testing and its fitness for further service or use. Results must be sent to the Deputy Director.
- e) The tenderer shall conduct annual inspections with respect to maintenance to be performed at each swimming pool.

- f) A special maintenance schedule is needed and must be approved to the Deputy Director for major repairs.
- g) When maintenance and repair need to be done during the open season, the contractor needs to comply with safety regulations related to the bathers.
- h) Spares and equipment provided must be available freely in the trade. Must also be made available within three working days.
- i) In the event of maintenance to be performed at a swimming pool, the tenderer shall visit the facility and compile a detailed quotation of work to be done. The tenderer shall submit the quotation of total costs involved.
- j) Where relevant and on instruction of the Deputy Director, the contractor will strip the relevant equipment, perform electrical/electronic tests, visually inspect for faults and assess the condition of each component.
- k) The contractor must compile and submit an assessment report and quotation to the Deputy Director who will have the final say in whether repair/replacement work must continue or not. The assessment report and quotation are to be delivered to the Deputy Director.
- l) If accepted, an official Purchase Order describing work to be carried out, will be issued to the contractor.
- m) All doubtful aspects must be cleared up beforehand (before proceeding with work) The contractor shall then commence with work.
- n) After completion, inspection will be carried out by Deputy Director and relevant technical person for sign off.
- o) If materials and equipment are delivered that do not meet the standards as set out in this document, the City reserves the right to refuse delivery.
- p) The appointed contractors must make use of local labour (EPWP) regarding non-specialized work and for work above R 200 000.00. Lists and procedures of local labours will be available from the councillors office in each ward where the facility is situated.
- q) Invoices must be accompanied with EPWP documents (Copy of ID, Contract, payslip and attendance register) before it will be processed for payment.
- r) All electrical related work must be signed off by an officially accredited/certified electrician and submitted to the Deputy Director appointed by the COT.

4.2. ADDITIONAL REQUIREMENTS DURING EXECUTION OF CONTRACTS

- a) A certified copy of an unendorsed professional drivers permits and licence of the driver(s) of the aforesaid vehicles must be submitted when requested by the City of Tshwane.
- b) Proof of comprehensive insurance on all vehicles, tools, and equipment must be submitted when requested by the City of Tshwane.

- c) Certified copies of vehicles roadworthy certificates must be submitted when requested by the City of Tshwane.
- d) The successful tenderer shall negotiate with companies to hire equipment and machinery while their own machinery is being serviced or repaired. No downtime will be accepted for equipment breakdowns.
- e) The facilities must always be kept in a neat, clean, tidy, and safe condition and must be used in accordance with the OHS Act, (85 of 1996).
- f) When task/work is completed, the respective site must be cleaned of all surplus materials and equipment must be removed from site. All areas of work must be left in a neat and tidy condition to the satisfaction of the client.
- g) The Deputy Director appointed by the COT shall inspect the facilities at any time.
- h) No maintenance may encroach upon competitions taking place.
- i) Repairs and maintenance shall be executed normally during working hours, but for emergency repairs and breakdowns, as and when required, on short notice, also during weekends, public holidays and after hours.
- j) Affiliation to the National Swimming Pool Institute (NSPI) will be considered an added advantage as it would serve as an indication of the tenderers' industry knowledge. A copy of the NSPI certificate must be submitted with this tender.

4.3. DISCHARGING OF SWIMMING POOL WATER

As per the City of Tshwane Metropolitan Municipality Sanitation By-laws (10 September 2003 Notice 647 of 2003), no water from a swimming pool may, without the prior written permission of the Municipality, be discharged directly or indirectly over or into any road, gutter or stormwater drain of which ownership is vested in the Municipality. The backwash water from a swimming pool may be discharged into the drainage system on the premises on which the pool is situated.

In accordance with SABS 0400-1990 (Code of Practice for the application of the National Building Regulations):

PP12 DISCHARGES FROM SWIMMING BATHS, SWIMMING POOLS, FOUNTAINS OR RESERVOIRS

PP12.1

Where any swimming bath, swimming pool, fountain or reservoir is required by the owner thereof to have an overflow to lead away excess rainwater, such overflow shall be designed and constructed to discharge -

(a) onto the site upon which such bath, pool, fountain or reservoir is situated;

or

(b) into an approved surface channel, stormwater drain or natural watercourse.

PP12.2

Any swimming bath, swimming pool, fountain or reservoir shall be so designed and constructed that the water from the backwashing of any filter is discharged onto the site upon which such bath, pool, fountain or reservoir is situated or, with approval, into a drain.

Water should never be wasted and where possible, water should be stored and used again. Should this not be possible, water should be discharged according to the City of Tshwane By-laws.

5. STAGES OF EVALUATION

The following tender will be evaluated according to the following stages:

1. **Stage 1: Administrative Compliance**
2. **Stage 2: Local Content and Production**
3. **Stage 3: Mandatory Requirements**
4. **Stage 4: Functionality Criteria**
5. **Stage 5: Preferential Points System**

5.1 Stage 1: Administrative Compliance

All the proposals will be evaluated against the administrative responsiveness requirements as set out in the list of returnable documents. Service providers that comply with ALL the Stage 1 requirements will be evaluated against the mandatory requirements as set out in Stage 2.

5.2 Stage 2: Local Content and Production

5.2.1 Local Content and Production

- i) In terms of the stipulated minimum threshold for local production and content for:
 - Pumps, Medium Voltage (MV) Motor and Associated Accessories is 70 %
 - Electrical cable and products is 90 %
 - Plastic pipes is 100%
 - Valves products and actuators is 70%

The City shall only accept the specifications which meets minimum threshold percentage and requirements for local production and content as referred to in the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000) Regulations 2017.

Procurement Regulations on Local Content and the relevant National Treasury designated sectors' circulars:

- ii) The bidder must clearly indicate as part of the bid submission the quantities of material and products to be supplied and the level of local content for each product. Should the bidder not be able to comply with the prescribed minimum threshold, an exemption received from the Department of Trade and Industry needs to be submitted

with the bid to be considered for further evaluation. Bidders that do not comply with the above-mentioned requirements will be automatically disqualified.

The following items in this table have a minimum threshold of 100% local content

Product for designation	Minimum Local Content
Polyvinyl chloride (PVC) pipes	100%

The following items in this table have a minimum threshold of 90% local content

Product for designation	Minimum Local Content
Electric cables	90 %

The following items in this table have a minimum threshold of 70 % local content

Product for designation	Minimum Local Content
Electric motors and pumps	70 %
Valve products	70 %

5.3 Stage 3: Mandatory Requirements

5.3.1 The tenderer **must include** the following documentation with the tender document failing which will result in **immediate disqualification**:

- a) Valid Electrician Trade Certificate (Red Seal).
- b) Valid Master Installation Electrician Certificate.
- c) Valid Compensation for Occupational Injuries and Diseases Act, No 130 of 1993 (COIDA), letter of good standing from the department of labour.
- d) Material Safety Data Sheet (MSDS) requirements for Chemicals (Sodium carbonate, Aluminium Sulphate Metal Free, Calcium Hypochlorite, Supply Filter Media, Supply Hydro anthracite; Celite 545 RV) that will be provided.
- e) SANS 966-1 compliance certificate for all PVC poly (vinyl chloride) products and fittings.
- f) SANS 14236:2003 compliance certificate for plastic pipes.

5.4 Stage 4: Functionality

Failure to obtain the minimum score of 70 shall disqualify the tender from further evaluation. The following criteria and weights will be applied when bids are assessed for **functionality**:

FUNCTIONALITY CRITERIA

CRITERIA	SUB-CRITERIA	SCALE	WEIGHT	HIGH POSSIBLE SCORE
Experience on repair and maintenance of swimming pools, water features, reticulation and the supply, delivery, installation, and commissioning of all relevant accessories or similar services as stipulated in this tender. (Affiliation (Certificate) to the National Swimming Pool Institute (NSPI) will be considered an added advantage as it would contribute to evaluating the tenderers' industry knowledge.) Bidders are requested to submit a completion certificate(s) on a letter head of the previous employer(s) including their contact details.	3 years and more but less than 4 years.	3	17	85
	4 years and more but less than 5 years	4		
	5 or more years	5		
Local Economic Participation (Location of Business) (Submit copies of municipal accounts for the business. If offices are leased, provide lease agreement)	Outside Gauteng	1	5	15
	Gauteng	2		
	City of Tshwane	3		
HIGHEST POSSIBLE SCORE				100

- (a) The maximum possible score that can be achieved for functionality is 100.
- (b) **Bids that do not achieve a minimum score of 70 (out of 100) for functionality will not be evaluated further and will not pass to STAGE 5 of the Bid Evaluation Criteria.**

5.5 Stage 5: Preference Point System

The preferential points to be used will be the 80/20 points system in terms of the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000) Regulations 2017.

The system comprises of the following elements:

- 80 points for price
- 20 points for B-BBEE status (service provider to submit the certified copy of the B-BBEE level rating certificate).

6. SUBCONTRACTING

N/A

7. TYPE OF AGREEMENT REQUIRED

A Generic Service Level Agreement is attached.

8. VALIDITY PERIOD

The validity period for the tender after closure is 90 days.

9. PRICING SCHEDULE

Pricing is for evaluation purposes only and does not reflect the value of the tender.

- The City reserves the right to appoint more than one tenderer;
- The tenderer must submit for all seven (7) Regions;
- The tenderer must tender for all individual items under all the work categories A to J in the price schedule below;
- The tenderer must tender for all items;
- The tender will be awarded as whole;
- The tender will be awarded to three bidders. In the event that less than three bids are received the tender will be awarded according to the number of successful bids received. Refer to paragraph 3.1: swimming pool venues to be serviced for areas A, B and C;
- The City reserves the right to enter into price negotiations.

Annexure A: Pricing Schedule

Quoted prices must be valid for the three years.

Price schedule summary (only for evaluation purposes)

13. MARKET ANALYSIS

The City of Tshwane reserves the right to conduct a market analysis. Should the City exercise this option, where a service provider offers a price that is deemed not to be viable to supply goods or services as required, written confirmation will be made with the service provider to determine if it will be able to deliver on the price. If a service provider confirms that it cannot, the service provider will be disqualified based on being non-responsive. If the service provider confirms that it can deliver, a tight contract to mitigate the risk of non-performance will be entered into with the service provider. Further action on failures by the supplier to deliver will be handled in terms of the contract, including performance warnings and listing on the database of restricted suppliers.

The City of Tshwane further reserves the right to negotiate a market-related price with the service provider that scored the most points. If the service provider does not agree to a market-related price, the City reserves the right to negotiate a market-related price with the service provider that scored the second-most points. If the service provider that scored the second-most points does not agree to a market-related price, the City will negotiate a market-related price with the service provider that scored the third-most points. If a market-related price is not agreed, the City reserves the right to cancel the tender.

15. DRAFT SERVICE LEVEL AGREEMENTS

Specification to be accompanied by draft service level agreements

**PART A
INVITATION TO BID**

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE CITY OF TSHWANE MUNICIPALITY					
BID NUMBER:	ROC 10 2021/22	CLOSING DATE:	18 February 2022	CLOSING TIME:	10:00
DESCRIPTION	TENDER FOR THE REPAIR AND MAINTENANCE OF SWIMMING POOLS, AND THE SUPPLY, DELIVERY, INSTALLATION AND COMMISSIONING OF ACCESSORIES, AS AND WHEN REQUIRED, OVER A 3 YEAR PERIOD				
THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (MBD7).					

BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)

Procurement Advice Centre at the entrance of C de Wet Centre					
Supply Chain Management					
175 Es'kia Mphahlele Drive					
Pretoria West					
GPS coordinates: 25.750151°S, 28.173666°E					
SUPPLIER INFORMATION					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
TAX COMPLIANCE STATUS	TCS PIN:		OR	CSD No:	
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE [TICK APPLICABLE BOX]	<input type="checkbox"/> Yes <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT	<input type="checkbox"/> Yes <input type="checkbox"/> No	

[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES & QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]			
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]	ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER PART B:3]
TOTAL NUMBER OF ITEMS OFFERED		TOTAL BID PRICE	R
SIGNATURE OF BIDDER	DATE	
CAPACITY UNDER WHICH THIS BID IS SIGNED			
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO:		TECHNICAL INFORMATION MAY BE DIRECTED TO:	
DEPARTMENT	Supply Chain Management	DEPARTMENT	REGIONAL OPERATIONS AND COORDINATION
CONTACT PERSON	Relebogile Malatswane	CONTACT PERSON	Wouter Koekemoer
TELEPHONE NUMBER	n/a	TELEPHONE NUMBER	012 358 1496
EMAIL ADDRESS	RelebogileM@tshwane.gov.za	EMAIL ADDRESS	Wouterk@tshwane.gov.za

**PART B
TERMS AND CONDITIONS FOR BIDDING**

1. BID SUBMISSION	
1.1	BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
1.2	ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED–(NOT TO BE RE-TYPED) OR ONLINE
1.3	THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.
2. TAX COMPLIANCE REQUIREMENTS	
2.1	BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
2.2	BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VIEW THE TAXPAYER'S PROFILE AND TAX STATUS.
2.3	APPLICATION FOR THE TAX COMPLIANCE STATUS (TCS) CERTIFICATE OR PIN MAY ALSO BE MADE VIA E-FILING. IN ORDER TO USE THIS PROVISION, TAXPAYERS WILL NEED TO REGISTER WITH SARS AS E-FILERS THROUGH THE WEBSITE WWW.SARS.GOV.ZA.

- 2.4 FOREIGN SUPPLIERS MUST COMPLETE THE PRE-AWARD QUESTIONNAIRE IN PART B:3.
- 2.5 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
- 2.6 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
- 2.7 WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.

3. QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS

- 3.1 IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)? YES NO
- 3.2 DOES THE ENTITY HAVE A BRANCH IN THE RSA? YES NO
- 3.3 DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA? YES NO
- 3.4 DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA? YES NO
- 3.5 IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION? YES NO

IF THE ANSWER IS “NO” TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 ABOVE.

NB: FAILURE TO PROVIDE ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID. NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE.

SIGNATURE OF BIDDER:

CAPACITY UNDER WHICH THIS BID IS SIGNED:

DATE:

PRICING SCHEDULE: FIRM PRICES (PURCHASES)

NOTE: ONLY FIRM PRICES WILL BE ACCEPTED. NON-FIRM PRICES (INCLUDING PRICES SUBJECT TO RATES OF EXCHANGE VARIATIONS) WILL NOT BE CONSIDERED

IN CASES WHERE DIFFERENT DELIVERY POINTS INFLUENCE THE PRICING, A SEPARATE PRICING SCHEDULE MUST BE SUBMITTED FOR EACH DELIVERY POINT

Name of Bidder.....	Bid Number
Closing Time	Closing Date

OFFER TO BE VALID FOR DAYS FROM THE CLOSING DATE OF BID.

ITEM NO.	QUANTITY	DESCRIPTION	BID PRICE IN RSA CURRENCY **(ALL APPLICABLE TAXES INCLUDED)
----------	----------	-------------	--

- Required by:
- At:
- Brand and Model
- Country of Origin
- Does the offer comply with the specification(s)? *YES/NO
- If not to specification, indicate deviation(s)
- Period required for delivery
- *Delivery: Firm/Not firm
- Delivery basis

Note: All delivery costs must be included in the bid price, for delivery at the prescribed destination.

** "all applicable taxes" includes value- added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies.

* Delete if not applicable

PRICING SCHEDULE: NON-FIRM PRICES (PURCHASES)

NOTE: PRICE ADJUSTMENTS WILL BE ALLOWED AT THE PERIODS AND TIMES SPECIFIED IN THE BIDDING DOCUMENTS.

IN CASES WHERE DIFFERENT DELIVERY POINTS INFLUENCE THE PRICING, A SEPARATE PRICING SCHEDULE MUST BE SUBMITTED FOR EACH DELIVERY POINT

Name of Bidder	Bid number
Closing Time	Closing Date

OFFER TO BE VALID FOR 90 DAYS FROM THE CLOSING DATE OF BID.

ITEM NO.	QUANTITY	DESCRIPTION	BID PRICE IN RSA CURRENCY **(ALL APPLICABLE TAXES INCLUDED)
----------	----------	-------------	--

- Required by:
 - At:
 - Brand and model
 - Country of origin
 - Does the offer comply with the specification(s)? *YES/NO
 - If not to specification, indicate deviation(s)
 - Period required for delivery
 - Delivery: *Firm/Not firm
- ** "all applicable taxes" includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies.
- * Delete if not applicable

PRICE ADJUSTMENTS

A. NON-FIRM PRICES SUBJECT TO ESCALATION

1. IN CASES OF PERIOD CONTRACTS, NON FIRM PRICES WILL BE ADJUSTED (LOADED) WITH THE ASSESSED CONTRACT PRICE ADJUSTMENTS IMPLICIT IN NON FIRM PRICES WHEN CALCULATING THE COMPARATIVE PRICES
2. IN THIS CATEGORY PRICE ESCALATIONS WILL ONLY BE CONSIDERED IN TERMS OF THE FOLLOWING FORMULA:

$$Pa = (1 - V)Pt \left(D1 \frac{R1t}{R1o} + D2 \frac{R2t}{R2o} + D3 \frac{R3t}{R3o} + D4 \frac{R4t}{R4o} \right) + VPt$$

Where:

- Pa = The new escalated price to be calculated.
- (1-V) Pt = 85% of the original bid price. **Note that Pt must always be the original bid price and not an escalated price.**
- D1, D2.. = Each factor of the bid price eg. labour, transport, clothing, footwear, etc. The total of the various factors D1,D2...etc. must add up to 100%.
- R1t, R2t..... = Index figure obtained from new index (depends on the number of factors used).
- R1o, R2o = Index figure at time of bidding.
- VPt = 15% of the original bid price. This portion of the bid price remains firm i.e. it is not subject to any price escalations.

3. The following index/indices must be used to calculate your bid price:

Index..... Dated..... Index..... Dated..... Index..... Dated.....
 Index..... Dated..... Index..... Dated..... Index..... Dated.....

4. FURNISH A BREAKDOWN OF YOUR PRICE IN TERMS OF ABOVE-MENTIONED FORMULA. THE TOTAL OF THE VARIOUS FACTORS MUST ADD UP TO 100%.

FACTOR (D1, D2 etc. eg. Labour, transport etc.)	PERCENTAGE OF BID PRICE

B. PRICES SUBJECT TO RATE OF EXCHANGE VARIATIONS

- Please furnish full particulars of your financial institution, state the currencies used in the conversion of the prices of the items to South African currency, which portion of the price is subject to rate of exchange variations and the amounts remitted abroad.

PARTICULARS OF FINANCIAL INSTITUTION	ITEM NO	PRICE	CURRENCY	RATE	PORTION OF PRICE SUBJECT TO ROE	AMOUNT IN FOREIGN CURRENCY REMITTED ABROAD
				ZAR=		
				ZAR=		
				ZAR=		
				ZAR=		
				ZAR=		
				ZAR=		

- Adjustments for rate of exchange variations during the contract period will be calculated by using the average monthly exchange rates as issued by your commercial bank for the periods indicated hereunder: (Proof from bank required)

AVERAGE MONTHLY EXCHANGE RATES FOR THE PERIOD:	DATE DOCUMENTATION MUST BE SUBMITTED TO THIS OFFICE	DATE FROM WHICH NEW CALCULATED PRICES WILL BECOME EFFECTIVE	DATE UNTIL WHICH NEW CALCULATED PRICE WILL BE EFFECTIVE

ADJUSTMENT PERIODS	DATE FROM WHICH NEW CALCULATED PRICES WILL BECOME EFFECTIVE
1 st Adjustment	After 12 calendar months
2 nd Adjustment	After 24 calendar months

NB: Unless prior approval has been obtained from Supply Chain Management, no adjustment in contract prices will be made

DECLARATION OF INTEREST

1. No bid will be accepted from persons in the service of the state¹.
2. Any person, having a kinship with persons in the service of the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid. In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons connected with or related to persons in service of the state, it is required that the bidder or their authorised representative declare their position in relation to the evaluating/adjudicating authority.
3. **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**
 - 3.1 Full Name of bidder or his or her representative:
 - 3.2 Identity Number:
 - 3.3 Position occupied in the Company (director, trustee, hareholder²)
 - 3.4 Company Registration Number:
 - 3.5 Tax Reference Number:
 - 3.6 VAT Registration Number:
 - 3.7 The names of all directors / trustees / shareholders members, their individual identity numbers and state employee numbers must be indicated in paragraph 4 below.
 - 3.8 Are you presently in the service of the state? **YES / NO**
 - 3.8.1 If yes, furnish particulars.
.....

¹ MSCM Regulations: “in the service of the state” means to be –

- (a) a member of –
 - (i) any municipal council;
 - (ii) any provincial legislature; or
 - (iii) the national Assembly or the national Council of provinces;
- (b) a member of the board of directors of any municipal entity;
- (c) an official of any municipality or municipal entity;
- (d) an employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No.1 of 1999);
- (e) a member of the accounting authority of any national or provincial public entity; or
- (f) an employee of Parliament or a provincial legislature.

² Shareholder” means a person who owns shares in the company and is actively involved in the management of the company or business and exercises control over the company.

3.9 Have you been in the service of the state for the past twelve months? **YES/NO**

3.9.1 If yes, furnish particulars.
.....

3.10 Do you have any relationship (family, friend, other) with persons in the service of the state and who may be involved with the evaluation and or adjudication of this bid? **YES / NO**

3.10.1 If yes, furnish particulars.
.....

3.11 Are you, aware of any relationship (family, friend, other) between any other bidder and any persons in the service of the state who may be involved with the evaluation and or adjudication of this bid? **YES / NO**

3.11.1 If yes, furnish particulars.
.....

3.12 Are any of the company's directors, trustees, managers, principle shareholders or stakeholders in service of the state? **YES / NO**

3.12.1 If yes, furnish particulars.
.....

3.13 Are any spouse, child or parent of the company's directors trustees, managers, principle shareholders or stakeholders in service of the state? **YES / NO**

3.13.1 If yes, furnish particulars.
.....

3.14 Do you or any of the directors, trustees, managers, principle shareholders, or stakeholders of this company have any interest in any other related companies or business whether or not they are bidding for this contract. **YES / NO**

3.14.1 If yes, furnish particulars:
.....

4. Full details of directors / trustees / members / shareholders.

Full Name	Identity Number	State Employee Number

.....

Signature

.....

Date

.....

Capacity

.....

Name of Bidder

DECLARATION FOR PROCUREMENT ABOVE R10 MILLION (ALL APPLICABLE TAXES INCLUDED)

For all procurement expected to exceed R10 million (all applicable taxes included), bidders must complete the following questionnaire:

1 Are you by law required to prepare annual financial statements for auditing? ***YES / NO**

1.1 If yes, submit audited annual financial statements for the past three years or since the date of establishment if established during the past three years.

.....
.....

2 Do you have any outstanding undisputed commitments for municipal services towards any municipality for more than three months or any other service provider in respect of which payment is overdue for more than 30 days? ***YES / NO**

2.1 If no, this serves to certify that the bidder has no undisputed commitments for municipal services towards any municipality for more than three months or other service provider in respect of which payment is overdue for more than 30 days. ***YES / NO**

2.2 If yes, provide particulars.

.....
.....
.....
.....

3 Has any contract been awarded to you by an organ of state during the past five years, including particulars of any material non-compliance or dispute concerning the execution of such contract? ***YES / NO**

3.1 If yes, furnish particulars

.....
.....

4.1 Will any portion of goods or services be sourced from outside ***YES / NO**

the Republic, and, if so, what portion and whether any portion of payment from the municipality / municipal entity is expected to be transferred out of the Republic?

4.1 If yes, furnish particulars

.....
.....

CERTIFICATION

**I, THE UNDERSIGNED (NAME)
CERTIFY THAT THE INFORMATION FURNISHED ON THIS DECLARATION FORM
IS CORRECT. I ACCEPT THAT THE STATE MAY ACT AGAINST ME SHOULD THIS
DECLARATION PROVE TO BE FALSE.**

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

**PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL
PROCUREMENT REGULATIONS 2017**

This preference form must form part of all bids invited. It contains general information and serves as a claim form for preference points for Broad-Based Black Economic Empowerment (B-BBEE) Status Level of Contribution

NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF B-BBEE, AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017.

1. GENERAL CONDITIONS

1.1 The following preference point systems are applicable to all bids:

- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and
- the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).

1.2 The value of this bid is estimated **to not exceed** R50 000 000 (all applicable taxes included) and therefore the **80/20** preference point system shall be applicable.

1.3 Preference points for this bid shall be awarded for:

- (a) Price; and
- (b) B-BBEE Status Level of Contribution.

1.4 The maximum points for this bid are allocated as follows:

	POINTS
PRICE	80
B-BBEE STATUS LEVEL OF CONTRIBUTION	20
Total points for Price and B-BBEE must not exceed	100

1.5 Failure on the part of a bidder to submit a B-BBEE Verification Certificate from a Verification Agency accredited by the South African Accreditation System (SANAS), or a Registered Auditor approved by the Independent Regulatory Board of Auditors (IRBA) or a sworn affidavit confirming annual turnover and level of black ownership in case of an EME and QSE together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.

1.6 The purchaser reserves the right to require of a bidder, either before a bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the purchaser.

2. DEFINITIONS

- (a) **“all applicable taxes”** includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;
- (b) **“B-BBEE”** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- (c) **“B-BBEE status level of contributor”** means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- (d) **“bid”** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of services, works or goods, through price quotations, advertised competitive bidding processes or proposals;
- (e) **“Broad-Based Black Economic Empowerment Act”** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) as amended by Act No 46 of 2013;
- (f) **“comparative price”** means the price after the factors of a non-firm price and all unconditional discounts that can be utilized have been taken into consideration;
- (g) **“consortium or joint venture”** means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract;
- (h) **“contract”** means the agreement that results from the acceptance of a bid by an organ of state;
- (i) **“EME”** means an Exempted Micro Enterprise as defines by Codes of Good Practice issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (j) **“Firm price”** means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax, which, in terms of the law or regulation, is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;
- (k) **“functionality”** means the measurement according to predetermined norms, as set out in the bid documents, of a service or commodity that is designed to be practical and useful, working or operating, taking into

account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a bidder;

- (l) **“non-firm prices”** means all prices other than “firm” prices;
- (m) **“person”** includes a juristic person;
- (n) **“QSE”** means a Qualifying Small Enterprise as defined by Codes of Good Practice issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (o) **“rand value”** means the total estimated value of a contract in South African currency, calculated at the time of bid invitations, and includes all applicable taxes and excise duties;
- (p) **“sub-contract”** means the primary contractor’s assigning, leasing, making out work to, or employing, another person to support such primary contractor in the execution of part of a project in terms of the contract;
- (q) **“total revenue”** bears the same meaning assigned to this expression in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act and promulgated in the *Government Gazette* on 9 February 2007;
- (r) **“trust”** means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person; and
- (s) **“trustee”** means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.

3. ADJUDICATION USING A POINT SYSTEM

- 3.1 The bidder obtaining the highest number of total points will be awarded the contract.
- 3.2 Preference points shall be calculated after prices have been brought to a comparative basis taking into account all factors of non-firm prices and all unconditional discounts;.
- 3.3 Points scored must be rounded off to the nearest 2 decimal places.
- 3.4 In the event that two or more bids have scored equal total points, the successful bid must be the one scoring the highest number of preference points for B-BBEE.
- 3.5 However, when functionality is part of the evaluation process and two or more bids have scored equal points including equal preference points for B-BBEE, the successful bid must be the one scoring the highest score for functionality.

3.6 Should two or more bids be equal in all respects, the award shall be decided by the drawing of lots.

4. POINTS AWARDED FOR PRICE

4.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS

A maximum of 80 or 90 points is allocated for price on the following basis:

$$\begin{array}{ccc}
 \mathbf{80/20} & \mathbf{or} & \mathbf{90/10} \\
 P_s = 80 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right) & & P_s = 90 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right) \\
 & \mathbf{or} &
 \end{array}$$

Where

- Ps = Points scored for comparative price of bid under consideration
- Pt = Comparative price of bid under consideration
- Pmin = Comparative price of lowest acceptable bid

5. POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTION

5.1 In terms of Regulation 5(2) and 6(2) of the Preferential Procurement Regulations, preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

B-BBEE Status Level of Contributor	Number of points (90/10 system)	Number of points (80/20 system)
1	10	20
2	9	18
3	6	14
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

5.2 A bidder who qualifies as an EME in terms of the B-BBEE Act must submit a sworn affidavit confirming Annual Total Revenue and Level of Black Ownership.

5.3 A Bidder other than EME or QSE must submit their original and valid B-BBEE status level verification certificate or a certified copy thereof, substantiating their B-BBEE rating issued by a Registered Auditor approved by IRBA or a Verification Agency accredited by SANAS.

- 5.4 A trust, consortium or joint venture, will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate.
- 5.5 A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate bid.
- 5.6 Tertiary Institutions and Public Entities will be required to submit their B-BBEE status level certificates in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.
- 5.7 A person will not be awarded points for B-BBEE status level if it is indicated in the bid documents that such a bidder intends sub-contracting more than 25% of the value of the contract to any other enterprise that does not qualify for at least the points that such a bidder qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.
- 5.8 A person awarded a contract may not sub-contract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the contract is sub-contracted to an EME that has the capability and ability to execute the sub-contract.

6. BID DECLARATION

6.1 Bidders who claim points in respect of B-BBEE Status Level of Contribution must complete the following:

7. B-BBEE STATUS LEVEL OF CONTRIBUTION CLAIMED IN TERMS OF PARAGRAPHS 1.4 AND 5.1

7.1 B-BBEE Status Level of Contribution: = (maximum of 10 or 20 points)

(Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 5.1 and must be substantiated by means of a B-BBEE certificate issued by a Verification Agency accredited by SANAS or a Registered Auditor approved by IRBA or a sworn affidavit.

8. SUB-CONTRACTING

8.1 Will any portion of the contract be sub-contracted?

(Tick applicable box)

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

8.1.1. If yes, indicate:

i) What percentage of the contract will be subcontracted%

- ii) The name of the sub-contractor
- iii) The B-BBEE status level of the sub-contractor
- iv) Whether the sub-contractor is an EME.

(Tick applicable box)

YES		NO	
-----	--	----	--

9. DECLARATION WITH REGARD TO COMPANY/FIRM

9.1 Name of company/firm:

9.2 VAT number:

9.3 Company registration number:

9.4 TYPE OF COMPANY/ FIRM

- Partnership/Joint Venture / Consortium
 - One person business/sole propriety
 - Close corporation
 - Company
 - (Pty) Limited
- [TICK APPLICABLE BOX]

9.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....

.....

.....

.....

9.6 COMPANY CLASSIFICATION

- Manufacturer
 - Supplier
 - Professional service provider
 - Other service providers, e.g. transporter, etc.
- [TICK APPLICABLE BOX]

9.7 MUNICIPAL INFORMATION

Municipality where business is situated:

Registered Account Number:

Stand Number:

9.8 Total number of years the company/firm has been in business

9.9 I/we, the undersigned, who is / are duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBE status level of contribution indicated in paragraph 7 of the foregoing certificate, qualifies the company/ firm for the preference(s) shown and I / we acknowledge that:

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraph 7, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- iv) If the B-BBEE status level of contribution has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –
 - (a) disqualify the person from the bidding process;
 - (b) recover costs, losses or damages it has incurred or suffered as a result of that person’s conduct;
 - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
 - (d) restrict the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
 - (e) forward the matter for criminal prosecution.

WITNESSES	
1.
2.

.....	
SIGNATURE(S) OF BIDDERS(S)	
DATE
ADDRESS:

DECLARATION CERTIFICATE FOR LOCAL PRODUCTION AND CONTENT FOR DESIGNATED SECTORS

This Municipal Bidding Document (MBD) must form part of all bids invited. It contains general information and serves as a declaration form for local content (local production and local content are used interchangeably).

Before completing this declaration, bidders must study the General Conditions, Definitions, Directives applicable in respect of Local Content as prescribed in the Preferential Procurement Regulations, 2017, the South African Bureau of Standards (SABS) approved technical specification number SATS 1286:2011 (Edition 1) and the Guidance on the Calculation of Local Content together with the Local Content Declaration Templates [Annex C (Local Content Declaration: Summary Schedule), D (Imported Content Declaration: Supporting Schedule to Annex C) and E (Local Content Declaration: Supporting Schedule to Annex C)].

1. General Conditions

- 1.1 Preferential Procurement Regulations, 2017 (Regulation 8) make provision for the promotion of local production and content.
- 1.2 Regulation 8.(2) prescribes that in the case of designated sectors, organs of state must advertise such tenders with the specific bidding condition that only locally produced or manufactured goods, with a stipulated minimum threshold for local production and content will be considered.
- 1.3 Where necessary, for tenders referred to in paragraph 1.2 above, a two stage bidding process may be followed, where the first stage involves a minimum threshold for local production and content and the second stage price and B-BEE.
- 1.4 A person awarded a contract in relation to a designated sector, may not sub-contract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.
- 1.5 The local content (LC) expressed as a percentage of the bid price must be calculated in accordance with the SABS approved technical specification number SATS 1286: 2011 as follows:

$$LC = [1 - x / y] * 100$$

Where

x is the imported content in Rand

y is the bid price in Rand excluding value added tax (VAT)

Prices referred to in the determination of x must be converted to Rand (ZAR) by using the exchange rate published by South African Reserve Bank (SARB) on the date of advertisement of the bid as indicated in paragraph 3.1 below.

The SABS approved technical specification number SATS 1286:2011 is accessible on [http://www.thedti.gov.za/industrial development/ip.jsp](http://www.thedti.gov.za/industrial%20development/ip.jsp) at no cost.

1.6 A bid may be disqualified if this Declaration Certificate and the Annex C (Local Content Declaration: Summary Schedule) are not submitted as part of the bid documentation;

2. The stipulated minimum threshold(s) for local production and content (refer to Annex A of SATS 1286:2011) for this bid is/are as follows:

<u>Description of services, works or goods</u>	<u>Stipulated minimum threshold</u>
Tender for the repair and maintenance of swimming pools, and the supply, delivery, installation and commissioning of accessories, as and when required, over a 3 year period.	
Electric Cable	90%
Electric Motors	70%
Valve Products	70%

3. Does any portion of the goods or services offered have any imported content?

(Tick applicable box)

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

3.1 If yes, the rate(s) of exchange to be used in this bid to calculate the local content as prescribed in paragraph 1.5 of the general conditions must be the rate(s) published by SARB for the specific currency on the date of advertisement of the bid.

The relevant rates of exchange information is accessible on www.resbank.co.za

Indicate the rate(s) of exchange against the appropriate currency in the table below (refer to Annex A of SATS 1286:2011):

Currency	Rates of exchange
US Dollar	
Pound Sterling	
Euro	
Yen	
Other	

NB: Bidders must submit proof of the SARB rate (s) of exchange used.

4. Where, after the award of a bid, challenges are experienced in meeting the stipulated minimum threshold for local content the dti must be informed accordingly in order for the dti to verify and in consultation with the AO/AA provide directives in this regard.

**LOCAL CONTENT DECLARATION
(REFER TO ANNEX B OF SATS 1286:2011)**

LOCAL CONTENT DECLARATION BY CHIEF FINANCIAL OFFICER OR OTHER LEGALLY RESPONSIBLE PERSON NOMINATED IN WRITING BY THE CHIEF EXECUTIVE OR SENIOR MEMBER/PERSON WITH MANAGEMENT RESPONSIBILITY (CLOSE CORPORATION, PARTNERSHIP OR INDIVIDUAL)

IN RESPECT OF BID NO. ROC 10 2021/22

ISSUED BY: (Procurement Authority / Name of Institution): City of Tshwane
.....

NB

- 1 The obligation to complete, duly sign and submit this declaration cannot be transferred to an external authorized representative, auditor or any other third party acting on behalf of the bidder.
- 2 Guidance on the Calculation of Local Content together with Local Content Declaration Templates (Annex C, D and E) is accessible on http://www.thedti.gov.za/industrial_development/ip.jsp. Bidders should first complete Declaration D. After completing Declaration D, bidders should complete Declaration E and then consolidate the information on Declaration C. **Declaration C should be submitted with the bid documentation at the closing date and time of the bid in order to substantiate the declaration made in paragraph (c) below.** Declarations D and E should be kept by the bidders for verification purposes for a period of at least 5 years. The successful bidder is required to continuously update Declarations C, D and E with the actual values for the duration of the contract.

I, the undersigned, (full names), do hereby declare, in my capacity as of (name of bidder entity), the following:

- (a) The facts contained herein are within my own personal knowledge.
- (b) I have satisfied myself that:
 - (i) the goods/services/works to be delivered in terms of the above-specified bid comply with the minimum local content requirements as specified in the bid, and as measured in terms of SATS 1286:2011; and
- (c) The local content percentage (%) indicated below has been calculated using the formula given in clause 3 of SATS 1286:2011, the rates of exchange indicated in paragraph 3.1 above and the information contained in Declaration D and E which has been consolidated in Declaration C:

Bid price, excluding VAT (y)	R
Imported content (x), as calculated in terms of SATS 1286:2011	R

Stipulated minimum threshold for local content (paragraph 3 above)	
Local content %, as calculated in terms of SATS 1286:2011	

If the bid is for more than one product, the local content percentages for each product contained in Declaration C shall be used instead of the table above.

The local content percentages for each product has been calculated using the formula given in clause 3 of SATS 1286:2011, the rates of exchange indicated in paragraph 3.1 above and the information contained in Declaration D and E.

- (d) I accept that the Procurement Authority / Institution has the right to request that the local content be verified in terms of the requirements of SATS 1286:2011.
- (e) I understand that the awarding of the bid is dependent on the accuracy of the information furnished in this application. I also understand that the submission of incorrect data, or data that are not verifiable as described in SATS 1286:2011, may result in the Procurement Authority / Institution imposing any or all of the remedies as provided for in Regulation 14 of the Preferential Procurement Regulations, 2017 promulgated under the Preferential Policy Framework Act (PPPFA), 2000 (Act No. 5 of 2000).

SIGNATURE: _____

WITNESS No. 1 _____

DATE: _____

WITNESS No. 2 _____

DATE: _____

Annex C

Local Content Declaration - Summary Schedule

(C1)	Tender No.	ROC 10 2021/22
(C2)	Tender description:	TENDER FOR THE SUPPLY, DELIVERY AND OFF-LOADING OF SELF PRIMING PUMPS AT THE WASTE WATER TREATMENT WORKS (WWTW) AND SEWER PUMP STATIONS, AS AND WHEN REQUIRED FOR A PERIOD OF THREE YEARS
(C3)	Designated product(s):	
(C4)	Tender Authority:	
(C5)	Tendering Entity name:	
(C6)	Tender Exchange Rate:	Pula <input type="text"/> EU <input type="text"/> GBP <input type="text"/>
(C7)	Specified local content %	

NOTE: VAT TO BE EXCLUDED FROM ALL CALCULATIONS

Calculation of local content

Tender item no's	List of items	Tender price - each (excl VAT)	Exempted imported value	Tender value- net of exempted imported content	Imported value	Local value	Local content % (per item)

Tender summary

Tender Qty	Total tender value	Total exempted imported content	Total Imported content

(C8)	(C9)	(C10)	(C11)	(C12)	(C13)	(C14)	(C15)

(C16)	(C17)	(C18)	(C19)

(C20) Total tender value R 0

Signature of tenderer from Annex B

(C21) Total Exempt imported content R 0

(C22) Total Tender value net of exempt imported content R 0

(C23) Total Imported content R 0

(C24) Total local content R 0

(C25) Average local content % of tender

Date: _____

				(D32) Total imported value by tenderer						R 0	
C. Imported by a 3rd party and supplied to the Tenderer				Calculation of imported content						Summary	
Description of imported content	Unit of measure	Local supplier	Overseas Supplier	Foreign currency value as per Commercial Invoice	Tender Rate of Exchange	Local value of imports	Freight costs to port of entry	All locally incurred landing costs & duties	Total landed cost excl VAT	Quantity imported	Total imported value
<i>(D33)</i>	<i>(D34)</i>	<i>(D35)</i>	<i>(D36)</i>	<i>(D37)</i>	<i>(D38)</i>	<i>(D39)</i>	<i>(D40)</i>	<i>(D41)</i>	<i>(D42)</i>	<i>(D43)</i>	<i>(D44)</i>
(D45) Total imported value by 3rd party										R 0	

D. Other foreign currency payments			Calculation of foreign currency payments		Summary of payments	
Type of payment	Local supplier making	Overseas beneficiary	Foreign currency value paid	Tender Rate of Exchange	Local value of payments	

	the payment			
(D46)	(D47)	(D48)	(D49)	(D50)

(D51)

(D52) Total of foreign currency payments declared by tenderer and/or 3rd party

Signature of tenderer from Annex B

(D53) Total of imported content & foreign currency payments - (D32), (D45) & (D52) above

R 0

Date:

**This total must correspond
with Annex C - C 23**

(E9) Total local products (Goods, Services and Works) R 0

(E10) **Manpower costs** (Tenderer's manpower cost) R 0

(E11) **Factory overheads** (Rental, depreciation & amortisation, utility costs, consumables etc.) R 0

(E12) **Administration overheads and mark-up** (Marketing, insurance, financing, interest etc.) R 0

(E13) Total local content R 0

This total must correspond with Annex C - C24

Signature of tenderer from Annex B

Date: _____

CONTRACT FORM: RENDERING OF SERVICES

THIS FORM MUST BE FILLED IN DUPLICATE BY BOTH THE SERVICE PROVIDER (PART 1) AND THE PURCHASER (PART 2). BOTH FORMS MUST BE SIGNED IN THE ORIGINAL SO THAT THE SERVICE PROVIDER AND THE PURCHASER WOULD BE IN POSSESSION OF ORIGINALLY SIGNED CONTRACTS FOR THEIR RESPECTIVE RECORDS.

PART 1 (TO BE FILLED IN BY THE SERVICE PROVIDER)

1. I hereby undertake to render services described in the attached bidding documents to (name of the institution)..... in accordance with the requirements and task directives / proposals specifications stipulated in Bid Number: **ROC 10 2021/22** at the price/s quoted. My offer/s remain binding upon me and open for acceptance by the Purchaser during the validity period indicated and calculated from the closing date of the bid.

2. The following documents shall be deemed to form and be read and construed as part of this agreement:
 - (i) Bidding documents, *viz*
 - 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 2017;
 - Declaration of interest;
 - Declaration of Bidder's past SCM practices;
 - Certificate of Independent Bid Determination;
 - Special Conditions of Contract;

 - (ii) General Conditions of Contract; and

 - (iii) Other (specify)

3. I confirm that I have satisfied myself as to the correctness and validity of my bid; that the price(s) and rate(s) quoted cover all the services specified in the bidding documents; that the price(s) and rate(s) cover all my obligations and I accept that any mistakes regarding price(s) and rate(s) and calculations will be at my own risk.

4. I accept full responsibility for the proper execution and fulfilment of all obligations and conditions devolving on me under this agreement as the principal liable for the due fulfillment of this contract.
5. I declare that I have no participation in any collusive practices with any bidder or any other person regarding this or any other bid.
6. I confirm that I am duly authorised to sign this contract.

NAME (PRINT)

CAPACITY

SIGNATURE

NAME OF FIRM

DATE

WITNESSES	
1
2
DATE:	

CONTRACT FORM: RENDERING OF SERVICES

PART 2 (TO BE FILLED IN BY THE PURCHASER)

1. I..... in my capacity as accept your bid under reference number dated..... for the rendering of services indicated hereunder and/or further specified in the annexure(s).
2. An official order indicating service delivery instructions is forthcoming.
3. I undertake to make payment for the services rendered in accordance with the terms and conditions of the contract, within 30 (thirty) days after receipt of an invoice.

DESCRIPTION OF SERVICE	PRICE (ALL APPLICABLE TAXES INCLUDED)	COMPLETION DATE	B-BBEE STATUS LEVEL OF CONTRIBUTION	MINIMUM THRESHOLD FOR LOCAL PRODUCTION AND CONTENT (if applicable)

4. I confirm that I am duly authorised to sign this contract.

SIGNED AT ON

NAME (PRINT)

SIGNATURE

OFFICIAL STAMP

WITNESSES

1

2

DATE:

DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

- 1 This Municipal Bidding Document must form part of all bids invited.
- 2 It serves as a declaration to be used by municipalities and municipal entities in ensuring that when goods and services are being procured, all reasonable steps are taken to combat the abuse of the supply chain management system.
- 3 The bid of any bidder may be rejected if that bidder, or any of its directors have:
 - a. abused the municipality's / municipal entity's supply chain management system or committed any improper conduct in relation to such system;
 - b. been convicted for fraud or corruption during the past five years;
 - c. willfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
 - d. been listed in the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004).
- 4 **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**

Item	Question	Yes	No
4.1	<p>Is the bidder or any of its directors listed on the National Treasury's Database of Restricted Suppliers as companies or persons prohibited from doing business with the public sector?</p> <p>(Companies or persons who are listed on this Database were informed in writing of this restriction by the Accounting Officer/Authority of the institution that imposed the restriction after the <i>audi alteram partem</i> rule was applied).</p> <p>The Database of Restricted Suppliers now resides on the National Treasury's website(www.treasury.gov.za) and can be accessed by clicking on its link at the bottom of the home page.</p>	<p>Yes</p> <input type="checkbox"/>	<p>No</p> <input type="checkbox"/>
4.1.1	If so, furnish particulars:		
4.2	<p>Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)?</p> <p>The Register for Tender Defaulters can be accessed on the National Treasury's website (www.treasury.gov.za) by clicking on its link at the bottom of the home page.</p>	<p>Yes</p> <input type="checkbox"/>	<p>No</p> <input type="checkbox"/>

4.2.1	If so, furnish particulars:		
4.3	Was the bidder or any of its directors convicted by a court of law (including a court of law outside the Republic of South Africa) for fraud or corruption during the past five years?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.3.1	If so, furnish particulars:		
4.4	Does the bidder or any of its directors owe any municipal rates and taxes or municipal charges to the municipality / municipal entity, or to any other municipality / municipal entity, that is in arrears for more than three months?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.4.1	If so, furnish particulars:		
4.5	Was any contract between the bidder and the municipality / municipal entity or any other organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.7.1	If so, furnish particulars:		

CERTIFICATION

**I, THE UNDERSIGNED (FULL NAME)
CERTIFY THAT THE INFORMATION FURNISHED ON THIS DECLARATION FORM
TRUE AND CORRECT.**

**I ACCEPT THAT, IN ADDITION TO CANCELLATION OF A CONTRACT, ACTION
MAY BE TAKEN AGAINST ME SHOULD THIS DECLARATION PROVE TO BE
FALSE.**

.....
Signature

.....
Date

CERTIFICATE OF INDEPENDENT BID DETERMINATION

- 1 This Municipal Bidding Document (MBD) must form part of all bids¹ invited.
- 2 Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).² Collusive bidding is a *pe se* prohibition meaning that it cannot be justified under any grounds.
- 3 Municipal Supply Regulation 38 (1) prescribes that a supply chain management policy must provide measures for the combating of abuse of the supply chain management system, and must enable the accounting officer, among others, to:
 - a. take all reasonable steps to prevent such abuse;
 - b. reject the bid of any bidder if that bidder or any of its directors has abused the supply chain management system of the municipality or municipal entity or has committed any improper conduct in relation to such system; and
 - c. cancel a contract awarded to a person if the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract.
- 4 This MBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.
- 5 In order to give effect to the above, the attached Certificate of Bid Determination (MBD 9) must be completed and submitted with the bid:

¹ Includes price quotations, advertised competitive bids, limited bids and proposals.

² Bid rigging (or collusive bidding) occurs when businesses, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods and / or services for purchasers who wish to acquire goods and / or services through a bidding process. Bid rigging is, therefore, an agreement between competitors not to compete.

CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid: **ROC 10 2021/22**

**TENDER FOR THE REPAIR AND MAINTENANCE OF SWIMMING POOLS,
AND THE SUPPLY, DELIVERY, INSTALLATION AND COMMISSIONING
OF ACCESSORIES, AS AND WHEN REQUIRED, OVER A 3 YEAR PERIOD**

(Bid Number and Description)

in response to the invitation for the bid made by:

CITY OF TSHWANE MUNICIPALITY

do hereby make the following statements that I certify to be true and complete in every respect:

I certify, on behalf of: _____ that:
(Name of Bidder)

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign, the bid, on behalf of the bidder;
5. For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:
 - (a) has been requested to submit a bid in response to this bid invitation;
 - (b) could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and
 - (c) provides the same goods and services as the bidder and/or is in the same line of business as the bidder
6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium³ will not be construed as collusive bidding.

³ Joint venture or consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.

THE NATIONAL TREASURY

Republic of South Africa



GOVERNMENT PROCUREMENT

GENERAL CONDITIONS OF CONTRACT

July 2010

GOVERNMENT PROCUREMENT

GENERAL CONDITIONS OF CONTRACT

July 2010

NOTES

The purpose of this document is to:

- (i) Draw special attention to certain general conditions applicable to government bids, contracts and orders; and
- (ii) To ensure that clients be familiar with regard to the rights and obligations of all parties involved in doing business with government.

In this document words in the singular also mean in the plural and vice versa and words in the masculine also mean in the feminine and neuter.

- The General Conditions of Contract will form part of all bid documents and may not be amended.
- Special Conditions of Contract (SCC) relevant to a specific bid, should be compiled separately for every bid (if applicable) and will supplement the General Conditions of Contract. Whenever there is a conflict, the provisions in the SCC shall prevail.

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General Conditions of Contract

1. Definitions

1. The following terms shall be interpreted as indicated:
 - 1.1 “Closing time” means the date and hour specified in the bidding documents for the receipt of bids.
 - 1.2 “Contract” means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
 - 1.3 “Contract price” means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
 - 1.4 “Corrupt practice” means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution.
 - 1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
 - 1.6 “Country of origin” means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
 - 1.7 “Day” means calendar day.
 - 1.8 “Delivery” means delivery in compliance of the conditions of the contract or order.
 - 1.9 “Delivery ex stock” means immediate delivery directly from stock actually on hand.
 - 1.10 “Delivery into consignees store or to his site” means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.
 - 1.11 "Dumping" occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the RSA.
 - 1.12 ”Force majeure” means an event beyond the control of the supplier and not involving the supplier’s fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.
 - 1.13 “Fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.

- 1.14 “GCC” means the General Conditions of Contract.
- 1.15 “Goods” means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
- 1.16 “Imported content” means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.
- 1.17 “Local content” means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.
- 1.18 “Manufacture” means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- 1.19 “Order” means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.20 “Project site,” where applicable, means the place indicated in bidding documents.
- 1.21 “Purchaser” means the organization purchasing the goods.
- 1.22 “Republic” means the Republic of South Africa.
- 1.23 “SCC” means the Special Conditions of Contract.
- 1.24 “Services” means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such obligations of the supplier covered under the contract.
- 1.25 “Written” or “in writing” means handwritten in ink or any form of electronic or mechanical writing.

1. Application

- 2.1 These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.
- 2.2 Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.
- 2.3 Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.

3. General

- 3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid.
Where applicable a non-refundable fee for documents may be charged.

- 3.2 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from www.treasury.gov.za
- 4. Standards**
- 4.1 The goods supplied shall conform to the standards mentioned in the bidding documents and specifications.
- 5. Use of contract documents and information inspection.**
- 5.1 The supplier shall not, without the purchaser's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.
- 5.2 The supplier shall not, without the purchaser's prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.
- 5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier's performance under the contract if so required by the purchaser.
- 5.4 The supplier shall permit the purchaser to inspect the supplier's records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.
- 6. Patent rights**
- 6.1 The supplier shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the goods or any part thereof by the purchaser.
- 7. Performance security**
- 7.1 Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.
- 7.2 The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.
- 7.3 The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:
- (a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or
 - (b) a cashier's or certified cheque
- 7.4 The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified in SCC.
- 8. Inspections, tests and analyses**
- 8.1 All pre-bidding testing will be for the account of the bidder.

- 8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.
- 8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.
- 8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.
- 8.5 Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6 Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 8.7 Any contract supplies may on or after delivery be inspected, tested or analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.
- 8.8 The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 23 of GCC.

9. Packing

- 9.1 The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.
- 9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract, including additional requirements, if any, specified in SCC, and in any subsequent instructions ordered by the purchaser.

10. Delivery and documents

- 10.1 Delivery of the goods shall be made by the supplier in accordance with the terms specified in the contract. The details of shipping and/or other documents to be furnished by the supplier are specified in SCC.
- 10.2 Documents to be submitted by the supplier are specified in SCC.

- 11. Insurance** 11.1 The goods supplied under the contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the SCC.
- 12. Transportation** 12.1 Should a price other than an all-inclusive delivered price be required, this shall be specified in the SCC.
- 13. Incidental services, services** 13.1 The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:
- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
 - (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
 - (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
 - (d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and
 - (e) training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.
- 13.2 Prices charged by the supplier for incidental services, if not included in the contract price for the goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the supplier for similar services.
- 14. Spare parts** 14.1 As specified in SCC, the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier:
- (a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and
 - (b) in the event of termination of production of the spare parts:
 - (i) Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
 - (ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.
- 15. Warranty** 15.1 The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that all goods supplied under this contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the purchaser's specifications) or from any act or omission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.
- 15.2 This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the

final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in SCC.

- 15.3 The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.
- 15.4 Upon receipt of such notice, the supplier shall, within the period specified in SCC and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.
- 15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.
- 16. Payment**
- 16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.
- 16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.
- 16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.
- 16.4 Payment will be made in Rand unless otherwise stipulated in SCC.
- 17. Prices**
- 17.1 Prices charged by the supplier for goods delivered and 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 request for bid validity extension, as the case may be.
- 18. Contract**
- 18.1 No variation in or modification of the terms of the contract shall be made **amendments** except by written amendment signed by the parties concerned.
- 19. Assignment**
- 19.1 The supplier shall not assign, in whole or in part, its obligations to perform under the contract, except with the purchaser's prior written consent.
- 20. Subcontracts**
- 20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under this contracts if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.
- 21. Delays in the supplier's performance**
- 21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.
- 21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.

- 21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.
- 21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.
- 21.5 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.
- 21.6 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without canceling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

22. Penalties

- 22.1 Subject to GCC Clause 25, if the supplier fails to deliver any or all of the goods or to perform the services within the period(s) specified in the contract, the purchaser shall, without prejudice to its other remedies under the contract, deduct from the contract price, as a penalty, a sum calculated on the delivered price of the delayed goods or unperformed services using the current prime interest rate calculated for each day of the delay until actual delivery or performance. The purchaser may also consider termination of the contract pursuant to GCC Clause 23.

23. Termination for default

- 23.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:
 - (a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;
 - (b) if the Supplier fails to perform any other obligation(s) under the contract; or
 - (c) if the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.
- 23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.
- 23.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.
- 23.4 If a purchaser intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated

fourteen (14) days the purchaser may regard the intended penalty as not objected against and may impose it on the supplier.

- 23.5 Any restriction imposed on any person by the Accounting Officer / Authority will, at the discretion of the Accounting Officer / Authority, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the Accounting Officer / Authority actively associated.
- 23.6 If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:
- (i) the name and address of the supplier and / or person restricted by the purchaser;
 - (ii) the date of commencement of the restriction
 - (iii) the period of restriction; and
 - (iv) the reasons for the restriction.

These details will be loaded in the National Treasury's central database of suppliers or persons prohibited from doing business with the public sector.

- 23.7 If a court of law convicts a person of an offence as contemplated in sections 12 or 13 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004, the court may also rule that such person's name be endorsed on the Register for Tender Defaulters. When a person's name has been endorsed on the Register, the person will be prohibited from doing business with the public sector for a period not less than five years and not more than 10 years. The National Treasury is empowered to determine the period of restriction and each case will be dealt with on its own merits. According to section 32 of the Act the Register must be open to the public. The Register can be perused on the National Treasury website.

24. Anti-dumping and countervailing duties and rights

- 24.1 When, after the date of bid, provisional payments are required, or antidumping or countervailing duties are imposed, or the amount of a provisional payment or anti-dumping or countervailing right is increased in respect of any dumped or subsidized import, the State is not liable for any amount so required or imposed, or for the amount of any such increase. When, after the said date, such a provisional payment is no longer required or any such anti-dumping or countervailing right is abolished, or where the amount of such provisional payment or any such right is reduced, any such favourable difference shall on demand be paid forthwith by the contractor to the State or the State may deduct such amounts from moneys (if any) which may otherwise be due to the contractor in regard to supplies or services which he delivered or rendered, or is to deliver or render in terms of the contract or any other contract or any other amount which may be due to him

25. Force Majeure

- 25.1 Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.
- 25.2 If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all

		reasonable alternative means for performance not prevented by the force majeure event.
26. Termination for insolvency	26.1	The purchaser may at any time terminate the contract by giving written notice to the supplier if the supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the purchaser.
27. Settlement of Disputes	27.1	If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
	27.2	If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.
	27.3	Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.
	27.4	Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.
	27.5	Notwithstanding any reference to mediation and/or court proceedings herein, (a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and (b) the purchaser shall pay the supplier any monies due the supplier.
28. Limitation of liability	28.1	Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 6; the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.
29. Governing language	29.1	The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.
30. Applicable law	30.1	The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.
31. Notices	31.1	Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice

- 31.2 The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.
- 32. Taxes and duties**
- 32.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.
- 32.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.
- 32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.
- 33. National Industrial Participation (NIP) Programme**
- 33.1 The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation
- 34. Prohibition of Restrictive practices**
- 34.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding (or bid rigging).
- 34.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.
- 34.3 If a bidder(s) or contractor(s), has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned.

SERVICE LEVEL AGREEMENT

entered into between

THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY

(Hereafter referred to as the “**City**”)

Herein Represented by the **City Manager/ Acting City Manager**

(Duly authorised hereto)

AND

Name of Company)

Registration Number:

(Hereinafter referred to as the “**Service Provider**”)

Herein Represented by:

In his/her capacity as:

(Duly authorised hereto)

SERVICE LEVEL AGREEMENT

entered into between

THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY

a municipality as described in section 2 of the Local Government: Municipal Systems Act, 2000 and as contemplated in section 155 of the Constitution of the Republic of South Africa, 1996 as a category A municipality, or the Assignee, if applicable, herein represented by the City Manager/ Acting City Manager, duly authorised thereto under and by virtue of a resolution passed on 26 January 2012, and who by his/ her signature hereto warrants that he/ she is properly authorised to sign this Agreement.

(Herein referred to as the “**CITY**”)

AND

(Name of Company)

Registration Number: _____

Herein represented by _____, in his/ her capacity as _____ duly authorised thereto under and by virtue of a resolution of the Board passed on _____, a copy of which is annexed as Annexure “**A**”, and who by his signature hereto warrants that he/ she is properly authorised to sign this Agreement

(Herein referred to as the “**SERVICE PROVIDER**”)

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RECORDAL:

WHEREAS the City requires Services and/or Goods related to the repair and maintenance of swimming pools, including all related facilities such as water features and reticulation, and the supply delivery, installation, and commissioning of all relevant accessories, as and when required, over a 3-year period.

AND WHEREAS the City wishes to appoint the Service Provider;

AND WHEREAS the Service Provider wishes to provide such Services and/or Goods;

AND WHEREAS the Service Provider has indicated that it has the necessary expertise, skills and capabilities to provide the Service;

NOW THEREFORE the Parties have agreed to enter into this Agreement, in terms of which the Service Provider shall provide the Services and/or Goods in the Service Areas and/or Delivery Area and provide maintenance and support thereof, to the City in accordance with the terms and subject to the conditions of this Agreement:

1 DEFINITIONS

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

- 2 “Agreement” means this service level agreement and shall include any annexures and/or schedules and/or attachments and/or appendices and/or any addenda hereto or incorporated herein by reference, as amended from time to time;**
- 3 “Business Day” means any day from Monday to Friday excluding Public Holidays as defined in the Public Holidays Act 36 of 1994 (“Public Holidays Act”) as amended from time to time;**
- 4 “Business Week” means five consecutive Business Days, excluding Public Holidays as defined in the Public Holidays Act;**
- 5 “City” means the City of Tshwane Metropolitan Municipality, a metropolitan municipality established in terms of section 12 of the Local Government: Municipal Structures Act 117 of 1998;**
- 6 “Contact Persons” means persons identified by the Parties as persons who are responsible for the execution of the Agreement and whose names are set out in clause 28 and who can be substituted in writing from time to time;**
- 7 “Contract Price” shall mean the amount reflected as the Contract Price in clause 46 below,**
- 8 “Contract Period” means the Contract Period as reflected in the Project Scope,**
- 9 “Effective Date” means the date on the Appointment Letter to be issued by the City;**
- 10 “Intellectual Property” means Patents, Designs, Know-How, Copyright and Trade Marks and all rights having equivalent or similar effect which may exist anywhere in the world, introduced and required by either Party to give effect to their obligations under this Agreement, owned in whole or in part by, or licensed to either Party prior to the Commencement Date or developed after the Commencement Date, and includes all further additions and**

improvements to the Intellectual Property, otherwise pursuant to this Agreement;

- 11 "Month" means a calendar month;**
- 12 "Parties" means City and Service Provider and "Party" means either of them as the context requires;**
- 13 "Services" means Services and/or Goods to be provided by the Service Provider to the City as detailed in clause 8 below;**
- 14 "Service Provider" means**
-
- (Name of Company),**
a company duly incorporated in accordance with the company laws of the Republic of South Africa with company registration number:
-
- 15 "Signature Date" means the date of signature of this Agreement by the Party signing last;**
- 16 "Subcontract" means any contract or Agreement or proposed contract between the Service Provider and any third party whereby**

that third party agrees to provide to the Service Provider the Services and/or Goods or any part thereof;

17 “Subcontractor” means the third party with whom the Service Provider enters into a Subcontract;

18 “Tax Invoice” means the document as required by section 20 of the Value Added Tax Act 89 of 1991, as amended from time to time; and

19 “VAT” means Value Added Tax as defined in terms of the Value Added Tax Act of 1991.

20 INTERPRETATION

21 Headings and sub-headings are inserted for information purposes only and shall not be used in the interpretation of this Agreement.

22 Unless the context clearly indicates a contrary intention, any word connoting:

23 any singular shall be deemed to include a reference to the plural and vice versa;

24 any one gender shall be deemed to include a reference to the other two genders; and

25 a natural person shall be deemed to include a reference to a legal or juristic person.

26 The expiry or termination of this Agreement shall not affect provisions of this Agreement which expressly provide that they will operate after any such expiry or termination of this Agreement. Provisions of necessity shall continue to have been effective after such expiry or termination of this Agreement, notwithstanding that the clauses themselves do not expressly provide for this.

27 The rule of interpretation that a written Agreement shall be interpreted against the Party responsible for the drafting or preparation of that Agreement shall not apply.

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

29 Any reference to any legislation is a reference to such legislation as at the Signature Date and as amended or re-enacted, from time to time.

30 If any provision in a definition is a substantive provision conferring any rights or imposing any obligations on any Party, then notwithstanding that, it is only in this interpretation clause, effect

shall be given to it as if it were a substantive provision in this Agreement.

31 APPOINTMENT

The City hereby appoints the Service Provider, who accepts such appointment, to provide the Services and/or Goods in accordance with the terms and subject to the conditions of this Agreement..

32 PURPOSE OF THE AGREEMENT

33 The Purpose of this Agreement is to:

34 formalise and regulate the working relationship between the Parties;

35 set out the roles and responsibilities of the Parties; and

36 define process and procedures to be followed by the Parties.

37 RELATIONSHIP

Nothing in this Agreement shall constitute, or be deemed to constitute a partnership or joint venture between the Parties. Furthermore the Service Provider acknowledges and agrees that its status under this Agreement is that of an independent Service Provider and its status shall in no way be deemed to be that of an agent or employee of the City, for any purpose whatsoever, and the Service Provider shall have no authority or power to bind the City or to contract in the name of the City, or create a liability against the City in any way or for any purpose.

38 DURATION

This Agreement shall commence on the Effective Date, and shall subsist for a period of 3 (three) years, unless terminated earlier pursuant to clause 25 below.

39 CONTACT PERSON

40 The work to be performed by the Service Provider hereunder will be supervised by the City's Contact Person.

41 The Parties shall notify each other, in writing from time to time, of the details of their nominated Contact Person.

42 The Contact Persons shall liaise and update each other on the progress of the Services and/or Goods rendered and shall endeavour to resolve and remedy any problems or disputes that may arise in relation to the Services and/or Goods.

43 Either Party may substitute a Contact Person at its discretion provided that each Party shall give the other Party reasonable

notice of such substitution and will provide replacement employees of equivalent ability.

44 Without derogating from the foregoing, should either Party replace a Contact Person for any reason whatsoever, it shall ensure, to the greatest extent possible in the circumstances, that the suitable period of hand-over and overlap takes place, at its cost, between the new and the encumbered Contact Person.

45 PROJECT SCOPE OF GENERAL SERVICES AND/ OR GOODS

The Service Provider shall, for the duration of this Agreement, provide the Services and/or Goods as specified in the Project Scope, set out in the tender document.

46 PRICE AND PAYMENT

47 The City shall pay to the Service Provider the Contract Price as per the items in the Appointment Letter to be issued by the City.

48 All payments under this Agreement shall be made by electronic fund transfer or other forms of payment as the Parties may agree from time to time, upon receipt of valid and undisputed Tax Invoices and month-end statements together with the supporting documentation from the Service Provider, once the undisputed Tax Invoices or such portion of the Tax Invoices which are undisputed become due and payable.

49 All amounts and other sums payable in terms of this Agreement and Schedules hereto will be stipulated exclusive of VAT, unless expressly stated otherwise.

50 Unless otherwise provided in the Schedules, valid Tax Invoices shall be submitted together with a month-end statement. Payment against such month-end statement shall be made by The City within 30 (thirty) days after the date of receipt by The City of the Service Provider's statement together with the relevant valid and undisputed Tax Invoice(s) and supporting documentation, but in any event not later than 90 (ninety) days of receipt of such statement.

51 There shall be no interest levied on a Tax Invoice that is in dispute between the Parties.

52 The City shall pay the amount reflected on a Tax Invoice once the City's Contact Person has verified that the Services and/or Goods

set out in a schedule have been rendered and the Tax Invoice amount has been approved by the City.

53 All Tax Invoices shall be addressed to the City' Contact Person.

54 All payments shall be transferred, by the City to the Service Provider electronically into the Service Provider's bank account, the details of which are set out below:

Bank: _____

Account type: _____

Account No: _____

Branch No: _____

Failure to comply with the clauses above may result in late payment of the total amount of an invoice by the Service Provider to the City. The City shall not be liable for any costs or damages suffered by the Service Provider as a result of such late payment.

55 SERVICE LEVELS

56 The Service Provider recognises that the City has entered into this Agreement relying specifically on the Service Provider's representations regarding service levels including, *inter alia*:

57 capacity allocations in accordance with the Service to be provided; and

58 all work to be performed and Services and/or Goods rendered under this Agreement shall comply with industry norms and best practice acceptable within the Services and/or Goods industry and shall be executed by the Service Provider to the total satisfaction of the City.

59 The Service Provider shall provide suitably qualified and trained employees to provide the Services and/or Goods to the City in terms of this Agreement, and shall allocate, in its discretion employee resources in accordance with the technical skill and knowledge required, provided that any exercise of such discretion by the Service Provider shall not negatively impact on the provision of the Services and/or Goods by the Service Provider to the City, and shall allocate employees with the technical skill and knowledge

onsite at the City at all times during normal working hours, if the City so requires.

60 Amongst others, the Service Provider shall comply with and provide the Services and/or Goods as set out in Clause 8 above.

61 **WITHHOLDING OF PERFORMANCE**

The Service Provider may not under any circumstances, including, without limitation, non-payment by the City, withhold any Services and/or Goods from The City during the currency of this Agreement, unless it validly terminates this Agreement in terms of clause 25 below.

62 **PENALTY**

63 Should the Service Provider fail to comply with its obligations in terms of this Agreement, the City may:

64 exercise its rights in terms of clause 24 below; alternatively

65 impose a penalty on the Service Provider as stated hereunder in clause 12.4 below.

66 An election of any of the above by the City shall not mean that the City has waived any other rights which the City might have in law.

67 Should the City elect to impose a penalty on the Service Provider, the City shall provide the Service Provider with a written notice requiring the Service Provider to remedy the default within 7 (seven) days from the date of delivery of the notice.

68 Should the Service Provider fail to remedy the default within 7 (seven) days after receiving the notice, then the City shall be entitled, without prejudice to any alternative or additional right of action or remedy available to the City and without further notice, impose a penalty, which penalty shall be a deduction of 10% of the monthly Contract Price for the Contract Period; and for the avoidance of doubt, the penalty amount shall be 10% of the monies

due for payment to the Service Provider monthly in terms of clause 46 above.

69 Should there be a dispute as to whether the failure to deliver was caused by the City or was the Service Provider's fault such dispute shall be dealt with in accordance to clause 26 below.

70 ACCESS

71 The City shall allow the Service Provider reasonable access to its premises, provided that:

72 access is related to the Services and/or Goods to be provided by the Service Provider; and

73 the Service Provider adheres to all rules, regulations and instructions applicable at the City's premises.

74 The Service Provider is required to notify the City monthly of employees who are to provide Services and/or Goods at the Service Areas and/or Delivery Areas.

75 The City shall grant the Service Provider and/or its employees, referred in clause 74 above, access to its premises to perform its obligations in terms of this Agreement.

76 The Service Provider and its employees shall at all time when entering the premises and/or Service Areas and/or Delivery Areas of the City comply with all rules, laws, regulations and policies of the City.

77 INSPECTION

78 The City may at any time inspect the Service levels of the Service Provider in terms of this Agreement.

79 If the City is, at any time, dissatisfied with the service levels then the Service Provider shall, within 7 (seven) days, notify the Service Provider in writing of the failure or default.

80 The Service Provider shall immediately upon receipt of written demand by the City, remedy such failure or default, within 7 (seven) Business Days from the date of receipt of the notice, free of charge.

81 Should the Service Provider fail to remedy the failure or default referred to above then the City shall have the right to impose

penalties as provided for in clause 12 above or invoke the provisions of clauses and/or clause 163 below.

82 To enable the City to determine whether the Services and/or Goods rendered in terms of this Agreement are being complied with the Service Provider shall:

83 *provide the City with such information as it may reasonably require;*

84 *allow the City to inspect and take copies of any records of the Service Provider relating to the Services and/or Goods, including all hardware, software, data, information, visuals, procedures, event logs, transaction logs, audit trails, books, records, contracts and correspondence;*

85 *allow the City or its authorised representatives to conduct interviews with any of the Service Provider's employees, subject to reasonable notice being given to the Service Provider.*

86 Service Provider to Provide Reasonable Assistance

87 Where any information is required for inspection in terms of this clause and the information is kept in a computer, the Service Provider shall give the City reasonable assistance required to facilitate inspection and obtain copies of the information in a visible and legible form or to inspect and check the operation of any computer and any associated apparatus or material that is or has been in use in connection with the keeping of the information.

88 Any information required to be provided to the City pursuant to this clause 14 shall be provided by the Service Provider, as the case may be in such form (including a form otherwise than in writing) as the City may reasonably specify.

89 The cost of any inspection contemplated in terms of this clause 14 shall be for the account of the City unless any material irregularity or failure on the part of the Service Provider is determined by the City in the course of such inspection.

90 The inspection contemplated in this Agreement will be conducted:

91 during normal business hours; and

92 save where the circumstances justify it, on reasonable notice to the Service Provider; with the minimum interference in the provision of the Services and/or Goods and the Service Provider's other operations.

93 SERVICE PROVIDER'S WARRANTIES AND INDEMNITIES

94 Service Warranties

- 95 The Service Provider warrants that in relation to each Service provided in terms of this Agreement:
- 96 *it has full capacity and authority to enter into and perform this Agreement, and that this Agreement is executed by duly authorised representatives of the Service Provider;*
- 97 *it possesses or has access to the requisite knowledge, skill and experience to provide the Services and/or Goods in an expert manner;*
- 98 *it will discharge its obligations under this Agreement and any annexure, appendix or Schedule hereto with all due skill, care and diligence;*
- 99 *all work performed and Services and/or Goods rendered under this Agreement shall comply with prevailing practice, standards and specifications within the industry;*
- 100 *it will be solely responsible for the payment of remuneration and associated benefits, if any, of its Personnel and for withholding and remitting income tax for its Personnel in conformance with any applicable laws and regulations;*
- 101 *the use or possession by the City of any Materials will not subject the City to any claim for infringement of any Intellectual Property Rights of any third party;*
- 102 *with promptness and diligence and in a skilful manner and in accordance with the practices and professional standards of operations while performing Services and/or Goods or similar to the Services and/or Goods;*
- 103 *which Services and/or Goods will in all aspects comply with industry norms and best practice to the satisfaction of the City with regard to materials and workmanship;*
- 104 *using and adopting any standards, processes and procedures required under this Agreement;*

105 *warranting that it shall employ suitably qualified and trained employees to provide the Services and/or Goods to the City and it shall allocate employees in accordance with the technical skill and knowledge required;*

106 *free from any defects in material and workmanship;*

107 *maintaining and causing to be maintained the highest standard of workmanship and care in undertaking the Services and/or Goods;*

108 *maintaining and caused to be maintained the highest standard of care and diligence in providing the Services and/or Goods, maintenance and support; and*

109 *ensuring that all applicable laws are observed;*

110 Indemnity

111 The Service Provider hereby indemnifies the City against any claim which may be brought against the City by the Service Provider's personnel or a third party arising from the execution of this Agreement alternatively which arises against the City as a result of the Service Provider's breach of any of the provisions of this Agreement, provided that the City shall notify the Service Provider in writing within a reasonable time, and in any event not less than 14 (fourteen) Business days of the City becoming aware of any such claim to enable the Service Provider to take steps to contest it and shall provide the Service Provider with such reasonable assistance as may be necessary to enable the Service Provider to defend the claim to the extent only that it is in a position to render such assistance. The Service Provider may, within 5 (five) Business Days of receipt of written notice from the City aforesaid, elect in writing to contest such a claim in the name of the City and shall be entitled to control the proceedings in regard thereto, provided that the Service Provider indemnifies the City against all and any costs (including attorney and own client costs) which may be incurred by or awarded against the City as a consequence of the defence of the claim.

112 THE SERVICE PROVIDER'S PERSONNEL

113 Liability for Criminal Acts of Employees

The Service Provider shall be liable to the City for any loss that the City or any third party may suffer as a result of any theft, fraud or other criminal act of any employee of the Service Provider which arises within the course and scope of such employees' employment with the Service Provider.

114 Character of Employees

115 Due to the confidential nature of certain aspects of the Services and/or Goods and the position of trust which the Service Provider's employees will fulfil, the Service Provider hereby undertakes to use its best commercial endeavours to ensure that it only assigns to the City employees who are fit and proper persons and who display the highest standards of personal integrity and honesty and who have not, to their knowledge, being convicted of any crime.

116 The Service Provider shall, at its own cost, conduct all reasonable background checks into members of its employees prior to utilizing same to provide the Services and/or Goods in terms of this Agreement.

117 The City shall conduct all reasonable background checks into the Service Provider's employees from time to time, where it deems it necessary to do so.

118 STATUTORY AND EMPLOYMENT ISSUES

119 The Service Provider shall comply with all employment legislation

120 The Service Provider warrants that it has full knowledge of all relevant statutory, collective and other stipulations applicable to the relationship with its personnel and its relationship with the City. This includes, but is not limited to, the Labour Relations Act, the Basic Conditions of Employment Act, 1977, the Employment Equity Act, 1998 and any other applicable employment legislation currently in force.

121 The Service Provider warrants further that it is not and will not in future be in contravention of any of the provisions of any such legislation and in the event of such contravention, the Service Provider shall immediately take all steps to remedy such contravention. If the City advises the Service Provider of any contravention of such legislation in writing, the Service Provider shall, within 10 (ten) days after receipt of such notice, take all steps necessary to remedy such contravention and shall keep the City informed regarding the steps taken and the implementation and the result thereof.

122 No employment

The Service Provider warrants that none of its personnel shall be regarded as employees of the City. The Service Provider shall assist to defend and bear all costs in the event that the City is required to defend a claim, whether civil or employment related, instituted against it by the Service Provider's personnel should the City defend the matter, the Service Provider hereby indemnifies the City against all and any costs (including attorney and own client costs) which may be incurred by or awarded against the City as a consequence of the defence of the claim.

123 Occupational Health and Safety Act, 1993

The Service Provider shall be responsible for ensuring compliance with all the provisions of the Occupational Health and Safety Act, 1993 and it indemnifies the City against any claim which may arise in respect of such Act by its personnel against the City.

124 SUB-CONTRACTING

- 125 The Service Provider may not Subcontract the whole of or any portion of the Services and/or Goods in terms of this Agreement to any third party without the prior written consent of the City.**
- 126 In the event the Service Provider wishes to Subcontract the whole of or any portion of the Services and/or Goods in terms of this Agreement, it shall apply to the City in writing for consent to do so.**
- 127 In its application, the Service Provider shall give the name of the Subcontractor, the Subcontractor's obligations, the proposed date of commencement of the Subcontract which shall include the fees payable to the Subcontractor, and a report of the background security check on the Subcontractor's suitability, financial and otherwise.**
- 128 The City may, in its sole and absolute discretion refuse consent to Subcontract. In the event the City approves the Subcontracting of the whole of or any portion of the Services and/or Goods in terms of this Agreement, then:**
- 129** the Service Provider shall ensure that the Subcontractor's B-BBEE level is equal or better than that of the Service Provider, their price is competitive and they have the capacity to provide the Service;
- 130** such Subcontracting shall not absolve the Service Provider from responsibility for achieving the Service Levels or complying with its obligations in terms of this Agreement and the Service Provider hereby indemnifies and holds the City harmless against any loss, harm or damage which the City may suffer as a result of such Subcontracting;
- 131** the Service Provider shall at all times remain the sole point of contact for the City in respect of the acquisition of Services and/or Goods by the City; and
- 132** no such Subcontracting shall have any effect on the Contract Price and charges payable by the City to the Service Provider in terms of this Agreement.

133 CONFIDENTIALITY

- 134 The Service Provider acknowledge that all information relating to the City confidential business and technical information, data, documents or other information necessary or useful for the carrying on by the City of its business which shall include, but shall**

not be limited to operating procedures, quality control procedures, approximate operation personnel requirements, descriptions and trade names and trademarks, know how, techniques, technology, information relating to clients, customers, suppliers, relevant authorities, copyright, trade secrets and all goodwill relating to the business and any other intellectual property rights, technical data and documents in whole or in part, used by the City in respect of its business; (“Confidential Information”), shall remain confidential and shall not be made known unless the City has given written consent to do so.

135 The information provided by the City in the context of this Agreement is Confidential Information and the Service Provider shall take all reasonable measures to keep the information confidential and will only use the information for the purpose for which it was provided.

136 The Service Provider undertakes to not disclose any such Confidential Information. However, there will be no obligation of confidentiality or restriction on use where:

137 the information is publicly available, or becomes publicly available otherwise than by action of the receiving Party; or

138 the information was already known to the receiving Party (as evidenced by its written records) prior to its receipt under this or any previous agreement between the Parties or their affiliates; or

139 The information was received from a third Party not in breach of an obligation of confidentiality.

140 INTELLECTUAL PROPERTY RIGHTS

141 All Intellectual Property Rights of the Service Provider and/or third party vest in the Service Provider and/or third party, as appropriate.

142 All rights in the City name and logo remain the absolute property of the City.

143 The Service Provider warrants that no aspect of the Services and/or Goods provided in terms thereof will infringe any Patent, Design, Copyright, Trade Mark or trade secret or other proprietary right of any third party.

144 The Service Provider shall promptly notify the City, in writing, of any infringement or apparent or threatened infringement or any circumstances which may potentially give rise to an infringement,

or any actions, claims or demands in relation to any Intellectual Property Rights.

145 In the event the City becomes aware of any such infringement, the Service Provider shall, at its cost, defend the City against any claim that the Services and/or Goods infringe any such third party Intellectual Property Rights, provided that the City gives notice to the Service Provider of such claim and the Service Provider controls the defence thereof. The Service Provider further indemnifies the City against, and undertakes that it will pay all costs, damages and attorney fees, if any, finally awarded against the City in any action which is attributable to such claim and will reimburse the City with all costs reasonably incurred by the City in connection with any such action.

146 Should any claim be made against the City by any third party in terms of clause 141 above, the City shall give the Service Provider written notice thereof within 3 (three) days of becoming aware of such claim to enable the Service Provider to take steps to contest it.

147 Should any third party succeed in its claim for the infringement of any third party proprietary rights, the Service Provider shall, at its discretion and within 30 (thirty) days of the Services and/or Goods having been found to infringe, at its own cost:

148 obtain for the City the right to continue using the subject of infringement or the parts thereof which constitute the infringement; or

149 replace the subject of infringement or the parts thereof which constitute the infringement with another product or service which does not infringe and which is materially similar to the subject of infringement; or

150 alter the subject of infringement in such a way as to render it non-infringing while still in all respects operating in substantially the same manner as the subject of infringement; or

151 withdraw the subject of infringement.

152 FORCE MAJEURE

153 For the purposes hereof, Force Majeure shall mean civil strife, riots, insurrection, sabotage, national emergency, acts of war of public enemy, rationing of supplies, flood, storm, fire or any other like forces of nature beyond the reasonable control of the party claiming Force Majeure and comprehended in the terms thereof.

154 If Force Majeure causes delays in or failure or partial failure of performance by a Party of all or any of its obligations hereunder,

this Agreement shall be suspended for the period agreed in writing between the Parties.

155 In the event of circumstances arising which the other Party believes that it constitutes a Force Majeure (“the Affected Party”) then such Affected Party shall send, within 5 (five) days from the interrupting circumstances, a written notice of the interrupting circumstances specifying the nature and date of commencement of the interrupting event to the other Party. The Parties shall agree, in writing, to suspend the implementation of this Agreement for a specific period (“Agreed Period”).

156 In the event that both Parties reasonably believe that the Affected Party shall be unable to continue to perform its obligations after the Agreed Period, then either Party shall be entitled to terminate this Agreement without further notice to the other Party.

157 The Party whose performance is interrupted by the interrupting circumstances shall be entitled, provided that such party shall gave notice to that effect with a written notice of the interrupting circumstances as provided above, to extend the period of this Agreement by a period equal to the time that its performance is so prevented.

158 CESSION

The Service Provider shall not be entitled to cede or assign or transfer in any other way and/or alienate its rights and obligations in terms of this Agreement without the prior written consent of the City.

159 CHANGE OF CONTROL / CIRCUMSTANCE

160 The Service Provider shall notify the City, in writing, of any change in the Service Provider’s shareholding or membership or any change in the Service Provider’s subsidiary companies or holding or its affiliates (such change shall be considered a material change in the constitution and identity of the Service Provider. The City may terminate this Agreement upon becoming aware of such material change.

161 The Parties agree that should there be a change as envisaged in clause 160 above, the Service Provider will no longer exist and a new third party/entity shall have been constituted. In this regard, such third party shall not be entitled to inherit any of the Service Provider’s rights and obligations in terms of this Agreement, which will only be transferred to the new entity in writing by the City following the City’s satisfaction and approval in writing of such new entity.

162 The Service Provider shall further notify the City of any material changes or circumstance which might have led the City to appoint

the Service Provider to Provide the Goods and/or Services. In the event that any material change or circumstance occurs and the Service Provider fails to inform the City of such a change or circumstance, the Service Provider shall be deemed to have breached a material term of this Agreement and the City shall be entitled to cancel the Agreement on 1 (one) month's prior notice.

163 BREACH

164 Subject to clause 23.3 above, should either Party commit a breach of any term of this Agreement ("the Defaulting Party") then the affected party ("Aggrieved Party") shall be entitled to inform the Defaulting Party in writing to remedy such failure or default within 5 (five) Business Days and should the Defaulting Party fail to remedy the breach within 5 (five) Business Days after receipt of the notice the so Aggrieved Party shall be entitled, without prejudice to any of its rights under this Agreement or law to:

165 immediately terminate this Agreement without giving written notice and claim damages (which shall include legal costs on an attorney/client scale); or

166 request specific performance and claim damages (which shall include legal costs on an attorney/client scale); or

167 impose penalties as provided for in clause 12 above.

168 EARLY TERMINATION

The City shall have the right to terminate this Agreement by giving 30 (thirty) days' notice in writing to the Service Provider of its intention to terminate the Agreement.

169 DISPUTES

170 Save for clause 24 above or any other clause in this Agreement which provides for its own remedy, should any dispute arise between the Parties in respect of or pursuant to this Agreement,

including, without limiting the generality of the foregoing, any dispute relating to:

- 171** the interpretation of the Agreement;
 - 172** the performance of any of the terms of the Agreement;
 - 173** any of the parties' rights and obligations;
 - 174** any procedure to be followed;
 - 175** the termination or cancellation or breach of this Agreement; or
 - 176** the rectification or repudiation of this Agreement; then any Party may give the other Party written notice of such dispute, in which event the provisions below shall apply.
- 177 Within 7 (seven) days of the declaration of such dispute, the Parties representatives or their nominated persons shall meet in the spirit of goodwill and endeavour to resolve the dispute, failing which (and without prejudice to any other alternative dispute resolution to which the Parties may agree, either prior to or concurrently with arbitration) the provisions of this clause 168 above shall apply.**
- 178 If the Parties are unable to resolve the dispute within 14 (fourteen) days of the notice of the dispute (or such longer period as they may have agreed to in writing), then either Party may, on written notice to the other Party, require that the dispute be submitted to and**

decided by arbitration, in terms of the Arbitration Act, 42 of 1965 of South Africa (“the Arbitration Act”).

179 The arbitration shall be held under the provisions of the Arbitration Act provided that the arbitration shall be:

180 at any place which the Parties agree, in writing, to be mutually convenient; and

181 in accordance with such formalities and/or procedures as may be settled by the arbitrator and may be held in an informal and summary manner, on the basis that it shall not be necessary to observe or carry out the usual formalities of procedure, pleadings and/or discovery or respect rules of evidence.

182 If the arbitration is:

183 a legal matter, then the arbitrator shall be a practicing advocate or a practicing attorney of not less than 10 (ten) years' standing;

184 an accounting matter, then the arbitrator shall be a practicing chartered accountant of not less than 10 (ten) years' standing; and

185 any other matter, then the arbitrator shall be any independent person agreed upon between the Parties.

186 Should the Parties fail to agree on an arbitrator within 14 (fourteen) days after the arbitration has been demanded, then the arbitrator shall be nominated at the request of either of the Parties, by the president for the time being of the Law Society of the Northern Provinces.

187 Should the Parties fail to agree whether the dispute is of a legal, accounting or other nature within 7 (seven) days after the

arbitration has been demanded, then it shall be deemed to be a dispute of a legal nature.

188 The arbitrator may:

- 189** investigate or cause to be investigated any matter, fact or thing which he considers necessary or desirable in connection with the dispute and for that purpose, shall have the widest powers of investigating all documents and records of any Party having a bearing on the dispute;
- 190** interview and question under oath the parties of any of their representatives;
- 191** decide the dispute according to what he considers just and equitable in the circumstances; and
- 192** make such award, including an award for specific performance, damages or otherwise, as he in his discretion may deem fit and appropriate. The arbitration shall be held as quickly as possible after it is requested, with a view to it being completed within thirty (30) days after it has been so requested.

193 The arbitrator's decision and award shall be in writing with reasons and shall be final and binding upon the Parties.

194 The arbitrators award may, on application by either Party to a court of competent jurisdiction and after due notice is given to the other Party, be made an order of court.

195 Notwithstanding the provisions of clauses 26.1, 26.2, 26.3, 26.4, 26.5, 26.6 and 26.7 above, in the event of either Party having a claim against the other Party for a liquidated amount or an amount which arises from a liquid documents, or for an interdict or other urgent relief, then the other Party having such a claim shall be entitled to institute action therefore in a court of law rather than in terms of the above clauses, notwithstanding the fact that the other Party may dispute the claim.

196 The provisions of this clause 26 are severable from the rest of this Agreement and shall remain in effect even where this Agreement is terminated or cancelled for any reason.

197 LAWS AND JURISDICTION

198 This Agreement shall be governed by and interpreted according to the Law of the Republic of South Africa.

199 Each Party submits to the exclusive jurisdiction of the South African courts in respect of any matter arising from or in connection with this Agreement including its termination. Each

Party further consents to the jurisdiction of the High Court of South Africa (North Gauteng High Court (Pretoria)).

200 NOTICES AND COMMUNICATIONS

201 The Parties choose as their respective *domicilium citandi et executandi* (hereinafter referred to as the “*domicilium*”) and for the delivery of any notices arising out of the Agreement or its termination or cancellation, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the address set out below:

202 THE CITY:

Office of the City Manager
Tshwane House
2nd Floor, Block D
320 Madiba Street
Pretoria, 0001
P O Box 440
Pretoria, 0001
Fax: 086 214 9544
Email: citymanager@tshwane.gov.za
Telephone: 012 358 4901/4

203 THE SERVICE PROVIDER:

Street Address: _____

Postal Address: _____

Attention: _____

Cell phone: _____

Telephone: _____

Fax: _____

Email: _____

- 204 Each Party shall be entitled from time to time, by written notice to the other Party, to vary its *domicilium* to any other address which is not a Post Office Box or a Poste Restante.**
- 205 Any notice given and any payment made by any Party to another Party (hereinafter referred to as “the addressee”) which:**
- 206** is delivered by hand during normal business hours of the addressee at the addressee’s *domicilium*, shall be deemed, until the contrary is proved by the addressee, to have been received by the addressee at the time of delivery;
 - 207** is posted by prepaid registered post 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 (seventh) day after the date of posting; or
 - 208** is sent by email or facsimile machine shall be deemed, until the contrary is proven by the addressee, to have been received within 1 (one) hour of transmission where it is transmitted during business hours of the receiving instrument and at noon on the following business day (excluding Saturdays) where it is transmitted outside such business hours.
- 209 Any notice or communication required or permitted in terms of this Agreement shall be valid and effective only if in Writing but it shall be competent to give notice by facsimile.**
- 210 Notwithstanding anything to the contrary in this Agreement a notice or communication actually received by one Party shall be an**

adequate notice or communication notwithstanding that it was not sent to or delivered at the chosen *domicilium citandi et executandi*.

211 GENERAL AND MISCELLANEOUS

212 SOLE RECORD OF AGREEMENT

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

213 NO AMENDMENT 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. Any alleged waiver of this requirement must itself be reduced to writing and signed by the relevant Party to be of any effect.

214 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.

215 SURVIVAL OF OBLIGATIONS

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

216 APPROVALS AND CONSENTS

An 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. Any alleged waiver of the requirement that the approval or consent must be in writing must itself be reduced to writing and signed by the relevant Party to be of any effect.

217 EXECUTION

218 This Agreement may be executed in several counterparts, which shall each be deemed an original, but all of which shall constitute

one and the same instrument. A facsimile shall constitute a valid counterpart for all purposes hereunder.

219 The signatories to this Agreement by their signature warrant their authority to enter into this Agreement and the capacity of their principal, if signing in a representative capacity, to enter into this Agreement.

Signed at _____ on this ____ day of _____ 20____

Witnesses

1.
2.

City Manager/ Acting City Manager for and on behalf of the City of Tshwane Metropolitan Municipality, and duly authorised thereto.

Signed at _____ on this ____ day of _____ 20____

Witnesses

1.
2.

In his capacity as _____

for and on behalf of: (Name of Company) _____,

and duly authorised thereto.

ANNEXURE "A"

RESOLUTION OF THE BOARD

Resolution by the Board of Directors of _____
made at a meeting held at _____ on _____ 20____.

NOTED: THAT _____ (Company Name)

intends to enter into an Agreement with the City of Tshwane Metropolitan Municipality in terms of which _____ (Company Name) shall provide General Maintenance of all the Cemeteries and Crematorium terrain in all seven Regions as and when required for a three-year period.

on the terms and subject to the conditions, for the duration of this Agreement, provide the Services and/or Goods as specified in the Project Scope, set out in the tender document.

RESOLVED:

THAT _____ (Name of Company), approves and enters into the Agreement on the terms and subject to the conditions of the Agreement to which this resolution is attached.

THAT _____, in his/her capacity as a _____, of _____ (Name of Company), be and is hereby authorised to negotiate, settle and sign the Agreement attached hereto, and to sign all documentation and do all things necessary to give effect to the aforesaid resolutions on behalf of _____ (Name of Company).

Read and Confirmed
Chairman/Company Secretary