human settlements
Department:
Human Settlements
North West Provincial Government
REPUBLIC OF SOUTH AFRICA

2030 NDP

OFFICE OF THE HOD

3366 Besemmer Str Telkom Building
Industrial Site Mahikeng, 2745
Private Bag X 2145, Mmabatho,2735
Tel: +27 (18) 388 4824/5

NWDC Cnr, University & Provident Drive
Private Bag X 2145, Mmabatho,2735
Tel: +27 (18) 388 4913

2nd Floor West Wing, University Drive
Garona Building
Private Bag X 2145, Mmabatho,2735
Tel: +27 (18) 388 4824/5

AGREEMENT

Entered into between

DEPARTMENT OF HUMAN SETTLEMENTS IN THE NORTH WEST PROVINCE,

(Hereinafter referred to as the Department)

Herein represented by

MS. MK. MAHLOBO

In her capacity as

HEAD OF DEPARTMENT

And

KHAMELA PROPERTY INVESTMENT

(Hereinafter referred to as the Developer)

Represented by

IGNATIUS MANOLA MATHEBULA

In his capacity as

DIRECTOR

In respect of

A DETAILED PRE-FEASIBILITY STUDIES IN TAUNG EXTENSION 6 FOR THE DEVELOPMENT OF 150 COMMUNITY RESIDENTIAL UNITS.

M.J

SOUTH AFRICAN ECONOMIC RECONSTRUCTION AND RECOVERY
BUILDING A NEW ECONOMY

PREAMBLE

A. **WHEREAS** the Department of Human Settlements of the North West Province of the Republic of South Africa, is desirous to engage in the process of implementing community residential units as identified by the housing demand in the province.

B **WHEREAS** the said Department of Human Settlements of the North West Province of the Republic of South Africa foresees the necessity of engaging the services of the service provider to assist the Department to conduct a detailed feasibility study in Taung Extension 6 for the development of 150 community residential units.

C **WHEREAS KHAMELA PROPERTY INVESTMENT** has shown a desire and the necessary expertise in terms of the tender to engage in the feasibility study service of the said Department's requirements and has been appointed to undertake the work.

NOW THEREFORE IT IS SPECIFICALLY AGREED AS FOLLOWS:

1. INTERPRETATION AND PRELIMINARY

The headings of the clauses in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of, modify nor amplify the terms of this Agreement or any clause hereof. In this Agreement unless a contrary intention clearly appears.

1.1 words importing-

1.1.1 The singular includes the plural and vice versa, and

1.1.2. Natural person includes juristic entities and vice versa.

1.1.3 Any reference to one gender shall include the other.

1.2. "The Agreement" shall mean this written text and includes all of the **Annexure(s) or Schedule(s).** This Agreement shall be governed by and construed and interpreted in accordance with the National Housing Code.

1.2.1. The following terms shall have the meanings assigned to them here-under and cognate expressions shall have a corresponding meaning, namely:

1.2.2 "Head of Department" means the Accounting Officer of the North West Department of Human Settlements.

1.2.3. "local authority" means the Taung local Municipality.

1.2.4. "Service Provider" means **KHAMELA PROPERTY INVESTMENT**

1.2.5 "Commencement date" means the date of signature of the Head of Department.

1.2.6. "Milestone" means the completion of a requirement set out in the scope of work by the service provider before payment becomes due by the party the Department to the service provider.

1.2.7. ""Minimum Standards" means the:

- "Engineering standards" for the project area as determined by agreement in writing by the Department and the relevant utilities and agencies of Taung Local Municipality
- "Building standards" for the project area determined by agreement in writing by the Department and Taung Local Municipality, and
- "Planning standards" for the project area as determined by agreement in writing by the Department and the relevant utilities and agencies of the Taung Local Municipality.

M.J

1.2.8. "The Department" means the Department of Human Settlements, Northwest Provincial Government.

1.2.9. "Date of Completion" means the **30th of April 2026**

1.2.10. "force Majeure" means an act of GOD, strike other than a strike of the party's own employees, lockout, act of public enemy, war declared or undeclared, blockages, revolution, riot, insurrection, civil commotion, lighting, fire, storm, floods, earthquake, explosion, government act of restraints, embargos, and any other cause, whether of the kind specifically enumerated above or otherwise, which is not reasonably within the control of the party claiming vis majeure and whether of a temporary or permanent nature;

1.2.11. "Municipality" means the municipality as defined in terms of the Municipal Structures Act No. 67 1998 in whose area of jurisdiction the project area is situated.

1.2.2.3. "professionals" means those Developers required to undertake the work of the project under the management and direction and control of the Project Manager/Developer and may include financial modellers, property economists, chartered accountants, town planners, architects, land surveyors, quantity surveyors, electrical engineers, qualified draught persons, civil engineers with structural expertise, architects, conveyances, environmental specialists, or related professionals;

1.2.2.4. **''Project Area''** shall mean Extension 6, Taung as defined in the scope of work.

1.2.2.5. **'' HOD''** means the Head of Department of Human Settlements North west Provincial Government.

M-J

2. GOOD FAITH

Both parties acknowledge the critical role of this function and undertake to act in concert in good faith to achieve the aims of the project.

3. AUTHORISED REPRESENTATIVES

3.1. The parties agree that, for the purposes of this Project, the Service Provider shall, from time to time, designate and appoint a suitably qualified senior representative, duly authorised to act on its behalf, for the purpose of representing the Service Provider in all dealings with the Department.

3.2. The authorised representative shall submit to the Department monthly written reports detailing the services rendered, as well as the associated employment and training impacts. Such monthly reports shall be submitted concurrently with the monthly invoices for services rendered.

3.1.2.The duly authorised representative of the North West Province - Department of Housing in terms of this agreement and all aspects related to it shall be the Director of Rental Housing.

4. ANNEXURES AND ADDENDUM TO THIS AGREEMENT

4.1 All annexures to this agreement which are initialled by the parties will be deemed to be part of this agreement. In the event that there is an inconsistency between the provisions in the main body of the agreement and the provisions in the annexures then the provisions in the main body of the agreement will prevail.

4.2 By agreement between the parties any further scope of work can be developed and made part of this agreement.

4.3. The scope of work, and any amendments thereto, will be deemed to be part of this agreement once the scope of work and any amendments thereto have been reduced to writing and signed by the Department, and the service provider. If there is any inconsistency between the scope of work and the main body of this agreement, then the provisions of the main body of this agreement shall prevail.

5. PROJECT MANAGEMENT SERVICE

5.1. The Department employs **KHAMELA PROPERTY INVESTMENT** as an Independent service provider to render services to the Department as defined in the scope of work on behalf of the Department.

5.2. The parties agree that the service provider shall operate under the direction and guidance of the Department, represented by the Director of Rental Housing for this purpose, in undertaking the tasks outlined in the scope of work.

5.3. The parties agree that all task teams of the programme undertaking activities related to the project contained within the scope of work will operate under the management and direction and control of the professional team when engaged in activities related to the projects described in the scope of work

5.4. The service provider undertakes to carry out the functions of the project according to the scope of work as set out in the annexure, and the general functions of a service provider of a project of this nature, which will include compiling of the feasibility report of Taung Ext 6 CRU as mentioned above

6. SCOPE OF WORK

6.1. The Department, and the service provider undertake that there is a scope of work that might be altered by agreement between the parties, from time to time, in respect of which at the discretion of the Department of Housing the service provider can provide further services to the Department. The parties will then formulate, by agreement between the parties, the services which must be provided as an additional scope, the tasks, which must be provided. This agreement shall be reduced to writing and signed by all the parties and will be the scope of work for the project.

7. PRICE AND PAYMENT TERMS

7.1. The total cost (including fees, disbursements, and VAT) rendered payable by the Department to the service provider for the work completed in terms of this agreement and to complete the project will be the sum of **R780-000.00 (Seven hundred and eighty thousand rands only).**

7.2. Invoices must comply with the standard requirements of the Department, and must, in addition, be itemised as to unit, person, rate, nature of work completed, so as to enable the Department to understand the nature of what services and disbursement are being charged for. Invoices should be designed in such a way as to enable the Department to easily verify their contents and monitor expenditure.

7.3. In the event that the Department makes a payment to the service provider that is in excess of the amount due, owing, and payable by the Department to the service provider, then the service provider undertakes to refund the excess amount of money to the Department within 7(seven) days of this event coming to the service provider's notice. The Department may, at its sole discretion, elect not to claim the refund in terms of this paragraph, but to set off the excess monies paid in error to the service provider against any future payments due, owing, and payable by the Department to the service provider.

8. COMMUNICATION

8.1. The parties acknowledge that the success of the service provider in achieving the milestones of the project is significantly dependent upon the communication process with the affected communities in the project area.

8.2. The parties agree that the service provider will direct and control communication content and processes required for success of the project.

8.3. The Service provider acknowledges and agrees that the submission of any application, request, or correspondence to the Department, including but not limited to requests for clarification, instructions, approvals, or variations, shall not, under any circumstances, entitle the Service Provider to suspend, delay, or cease the execution of the Works, unless expressly authorised in writing by the Department. Any cessation or suspension of Works for a continuous period exceeding thirty (30) calendar days, without such written authorisation, shall constitute an abandonment of the project by the Service Provider, entitling the Department, in its sole discretion and without prejudice to any other rights or remedies available at law or in terms of this Contract, to summarily terminate this Contract and claim any damages arising therefrom

9. GENERAL OBLIGATIONS OF THE SERVICE PROVIDER

9.1 The service provider undertakes to carry out all lawful and reasonable instructions given to it by the Department for the purpose of the project.

9.1.1 The service provider, in its function, undertakes to exercise its discretion to pro-actively re-assess the requirements of the Department and to provide ongoing advice to the Department as to how this project should be completed in the most effective and efficient manner possible in the circumstances.

9.1.2 The Service Provider agrees to act in cooperation with the Department and the professional team in order to accommodate, by mutual agreement, any unforeseen changes in circumstances arising from events occurring either internally or externally to the Department. The parties acknowledge the

political sensitivity of development within the project area. In the event that the Service Provider encounters political challenges beyond its immediate control, which are not attributable to any fault on the part of the Service Provider and which impede the performance of its obligations, the Service Provider shall promptly notify the Department and request its assistance in resolving such challenges.

10. QUALITY CONTROL

10.1. Notwithstanding any approval granted by the Department in terms of this agreement regarding the acceptability of any person or sub-contractor provided by the service provider to work on this project, whether that person or subcontractor is a designated person or not, the service provider will bear final responsibility for the quality of the outputs and deliverables at every stage or phase of this project by any person or sub-contractor which it uses on this project.

10.2. The service provider undertakes to implement documented quality control processes for every activity required in this project related to the quality of the milestones.

11.TERMINATION

11.1 The Department may terminate this Agreement, in whole or in part, during the currency thereof by giving written notice to the Service Provider, on the occurrence of any of the following:

M.J

11.2. a material breach of this Agreement by the Service Provider, which breach is not remedied within a reasonable period after receipt of written notice to do so;

11.3. persistent or repeated failure by the Service Provider to perform its obligations in accordance with the terms of this Agreement.

11.4. failure by the Service Provider to comply with applicable laws, regulations, policies, or directives of the Department.

11.5. incapacity, insolvency, liquidation, or business rescue proceedings involving the Service Provider.

11.6. abandonment or suspension of the Services without the prior written approval of the Department.

11.7. conduct by the Service Provider which brings, or is reasonably likely to bring, the Department or the Project into disrepute.

11.2. the occurrence of circumstances beyond the reasonable control of the Department which render the continuation of the Project impracticable or no longer in the public interest.

11.3. In the event of termination of this Agreement in terms of clause 13.1, the Service Provider shall have no claim of any nature whatsoever against the Department, its employees or agents, save for payment of authorised and verified disbursements and services properly rendered up to the effective date of termination.

12. ANNUAL EVALUATION

12.1. The performance by the service provider of its obligations in terms of this

agreement will be subject to a formal written monthly evaluation by the Department of housing, which evaluation shall be delivered by the Department of housing to the service provider on the last day of each month of the contract period ("the evaluation").

12.2. The evaluation will comment on the quality of the performance by the service provider in performing its obligations in terms of this agreement in the previous month to the date of the evaluation.

12.3. Where the evaluation records any failures of the service provider or any of its constituent members to perform their obligations in the period in question to the satisfaction of the Department, the evaluation will state the nature of the said failures and will record the performance required to remedy these failures, and will determine a reasonable period for the service provider to rectify these failures.

12.4 Should the service provider fail to rectify the failures within the reasonable period determined by Department, then such failure will constitute a material breach of this agreement.

12.5 In the event that the service provider commits a material breach of this agreement in terms of this paragraph 20, the Department may then elect to cancel this agreement, which cancellation shall take effect upon written notice of the Department to the service provider.

13. SECURITY

13.1 The parties acknowledge that operating in these areas may constitute a physical security risk.

M.J

13.2 The service provider undertakes to exercise prudent caution when operating in the project areas and to make all arrangements and take all steps as might be necessary to secure any of its property or personnel, agents, contra or employees from any harm which may befall them. The costs of any security arrangements will be for the service provider's account.

14. INDEMNITIES AND INSURANCE

14.1 The service provider undertakes to indemnify the Department, its, agents, or employees for any damage caused, or any claim against the Department for damage caused, arising out of any breach of this agreement or any negligent or wilful act or omission on the part of the service provider.

14.2 The service provider undertakes at the commencement date to obtain sufficient insurance cover; including, but not limited to, Public Liability Insurance and Professional indemnity Insurance, as is reasonable and necessary for protection

against all legal liabilities arising out of or in connection with the performance, or otherwise, of its obligations under this agreement. The service provider shall furnish proof to the Department, on demand by the Department, to the Department's satisfaction, that the insurance cover has been obtained and the premiums are being paid to maintain such insurance cover.

15. GENERAL WARRANTIES

15.1 The service provider warrants that it will execute the project and perform its obligations in terms of this agreement with the required degree of skill, diligence, competence, and care.

15.2. The service provider warrants that they have the requisite skill to exercise the sole responsibility to manage a project of this nature and acknowledge that the full responsibility of this project forms part of their obligations in terms of this agreement.

15.3 The service provider warrants that the quality control processes which they are obliged to institute in terms of this agreement are sufficient to meet the required standards of this agreement related to the performance of the work of this project.

15.4. The Department warrants that the minimum standards comply with South African law.

16. OWNERSHIP OF INTELLECTUAL PROPERTY

It is agreed between the parties that all intellectual property, including but not limited to copyright, trade secrets, know-how, data, reports, designs, methodologies, working papers, and all other materials and information, whether in draft or final form, generated, developed, compiled, or produced by the Service Provider from the date of its appointment and in the course of carrying out the Services for the Department (the "Deliverables"), shall vest exclusively in the Department as its property from the time of creation, notwithstanding that payment in respect thereof may not yet have been made.

The Service Provider further acknowledges that all such Deliverables and any information obtained or generated in the execution of the Services remain the property of the Department and may not be disclosed, shared, published, or otherwise made available to any third party, nor used for any purpose other than the performance of the Services, without the prior written consent of the Department.

M.J

17. **BREACH AND CANCELLATION**

17.1 Subject to any other provision of this agreement which contains its own specific remedy, if any party breaches any material provision of this agreement and remains in breach for 14 (fourteen) days after written notice have been furnished by the aggrieved party to such party to rectify that breach or if any party repudiates this agreement, the other party may elect:

17.1.1 to both demand and enter into legal proceedings for the specific performance of the defaulting party's obligations under this agreement; or

17.1.2. in the alternative, or upon abandonment of a claim for specific performance by the aggrieved party, to cancel this agreement, which cancellation shall take effect upon written notice of the aggrieved party to the defaulting party, and to claim damages.

17.1.3. The parties agree that the following events will constitute a material breach or repudiation by the service provider of its obligations in terms of this agreement, if:

17.1.4 The service provider is placed under voluntary or compulsory liquidation or under judicial management; or

17.2 a final and unappeasable judgement against the service provider remains unsatisfied and the effect of this judgement is to compromise the ability of the service provider to perform its obligations in terms of this agreement; or

17.2.1 either the service provider makes any arrangement or compromise with creditors and the effect of this compromise or

M.J

N Z.M

SOUTH AFRICAN ECONOMIC RECONSTRUCTION AND RECOVERY BUILDING A NEW ECONOMY

Let's Grow North West Together

arrangement is to compromise the ability of the service provider to fulfil its obligations in terms of this contract.

17.2.2. The service provider renders unsatisfactory performance of its obligations in terms of this agreement and the requirements of the Department and despite written requests by the Department in terms of paragraph 22.1 fails to remedy its unsatisfactory performance within a reasonable time.

18. VIS MAJOR

If *vis major* ("the interrupting circumstances") cause delays in or failure or partial failure of performance by a party of all or any of its obligations hereunder, this agreement, or as the case may be, the affected portion thereof shall be suspended for the period during which the interrupting circumstances prevail. If the interrupting circumstances affect any material part of the agreement for a period of longer than 90 (ninety) days, any affected party shall be entitled on 7 (seven) days' written notice to cancel this agreement. Written notice of the interrupting circumstances specifying the nature and date of commencement thereof shall be despatched by the party seeking to rely thereon (on whom the onus shall rest) to the other/s as soon as reasonably possible after the commencement thereof. Written notice of the cessation of the interrupting circumstances shall be given by the party who relied thereon within 2 (two) days after such cessation. No party shall subsequently be held in breach of this agreement through failure in that period to comply with those particular obligations suspended during such period. The party whose performance is interrupted by the interrupting circumstances shall be entitled, provided that such party shall give notice to that effect with the 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. For the purposes hereof *vis*

major include acts or omissions of any government, government agency, provincial or local authority or similar authority, any laws or regulations having the force of law, civil strife, riots, insurrection, sabotage, acts of war or public enemy,

illegal strikes, interruption of transport, lockouts, inability on the part of the service provider as a result of *force majeure* of the nature contemplated in this clause to obtain the goods from the supplier thereof, combination of workmen, flood, storm, fire or (without limitation *eiusdem generic)* any other circumstances beyond the reasonable control of the party claiming *vis major* and comprehended in the terms *force majeure* or *vis major*.

19. CONFIDENTIALITY

19.1 The service provider acknowledges that this agreement, documentation related to the project, documentation made available to the service provider by the Department or any third party, whether created by the Department or third party, is confidential information ("the confidential information"). Accordingly the service provider undertakes:-

19. 2 The obligations imposed in paragraph 19.1.4 do not extend to information or publication which:

19.2.1.is or becomes public knowledge, otherwise than pursuant to a breach of paragraph 24 of this agreement by the party who discloses such confidential information; or

19.2.3.is required to be disclosed by the provisions of any law or regulation or during the conduct of any court proceedings or proceedings of a regulatory authority; and the party required to make the disclosure undertakes to limit the said disclosure, insofar as this is reasonably possible in the circumstance, strictly to the terms of

reference of the required disclosure by any law, regulation, court or regulatory body. The party required to make the said disclosure shall consult with the other party prior to making such a disclosure unless such consultation is prohibited by law or regulation or court order by a regulatory body.

20. WHOLE AGREEMENT, NO AMENDMENT, NO ASSIGNMENTS

20. This agreement constitutes the whole agreement between the parties relating to the subject matter thereof.

20.1 No amendment or consensual cancellation of this agreement or any of its provisions or terms and no settlement of any disputes arising under this agreement and no extension of time, waiver or relaxation or suspension of or agreement not to enforce or to suspend or postpone the enforcement of any of the provisions or terms of this agreement shall be binding unless recorded in a written document signed by the parties or their assigns, cessionary or successors in title (or in the case of an extension of time, waiver or relaxation or suspension, signed by the party or it's assign, cessionary or successor in title, granting such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating only to the matter in respect of which it may be given.

20.2 No extension of time or waiver or relaxation of any of the provisions or terms of this agreement or any agreement shall operate as an estoppel against the Department in respect of its rights under this agreement.

20.3 To the extent permissible by law no party shall be bound by any representation, warranty, promise or the like that has not been recorded in this contract, whether it induced the contract and/or whether it was negligent or not.

20.4 Save were permitted in this agreement, or agreed to in writing, the parties undertake not to assign or cede their obligations in terms of this agreement.

21. PENALTY FOR NON-COMPLETION OR LATE COMPLETION

21.1. Where the Service Provider fails to achieve Practical Completion of the Works within the time periods stipulated in the approved detailed programme or schedule, and such failure is attributable to the Service Provider, the Service Provider shall be liable to the Department for penalties arising from the portion of the Works remaining incomplete.

21.2 Without limiting the generality of clause 26.1, the Service Provider shall further be liable to the Department for any loss, damage, cost, or penalty incurred as a result of:

21.3 unreasonable delay, neglect, or failure to properly plan, manage, or supervise the Works.

21.4 failure to deploy adequate, suitably qualified, or competent personnel and resources.

21.5 non-compliance with the terms of this Agreement, approved specifications, or applicable laws and regulations;

21.6 defective or substandard workmanship requiring rework or resulting in delay.

21.7 failure to coordinate with the Department, professional team, or other contractors where such coordination is required.

21.8 unauthorised suspension or abandonment of the Works; and

21.9 any act or omission of the Service Provider, its employees, agents, or subcontractors that directly results in delay or prevents Practical Completion.

21.10 Notwithstanding any other rights the Department may have, where the service provider fails to complete the work set out in the scope in a satisfactory manner the service provider shall be liable to the Department for the penalty of non-completion. The rate of such penalty shall be the ten percent (10%) of the penalty in terms of clause 26.1 supra.

22. DOMICILIUM CITANDI ET EXECUTANDI

22.1 The parties choose as their *domiicilia citandi et executandi* for all purposes under this agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the following addresses:

23. THE DEPARTMENT OF HUMAN SETTLEMENTS:

Physical: 2nd Floor West Wing, University Drive,

Garona Building, Mmabatho

Postal: **Private Bag X2145, Mmabatho, 2735**

Tel: **(018) 388 4824/5**

24. **THE SERVICE PROVIDER**

KHAMELA PROPERTY INVESTMENT

52 Meintjies Street

Hartebeespoort

0216

Cell: **072 472 6576**

Email:info@khamelapropertyinvestment.co.za

25.1 Any notice or communication required or permitted to be given in terms of this agreement shall be valid and effective only if in writing, but it shall be competent to given notice by telefax.

25.2. Either party may by notice to the other party change the physical address chosen as its domicilium *citandi et executandi* to another physical address where postal delivery occurs in the Republic of South Africa or its postal address or its telefax number, provided that the change shall become effective on the 7th business day from the deemed receipt of the notice :-

25.3 Sent by prepaid registered post in a correctly addressed envelope to it at an address chosen as its *domicilium citandi et executandi* to which post is delivered

shall be deemed to have been received on the 7th business day after posting (unless the contrary is proved).

25.4 Delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery; or

25.5. Sent by telefax to its chosen telefax number stipulated in clause 29, shall be deemed to have been received on the date of despatch (unless the contrary is proved).

26. Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not set to or delivered at its chosen *domicilium citandi et executandi*.

SIGNED by the parties and witnessed on the following dates and at the following places respectively:

THUS, DONE AND SIGNED AT **MMABATHO** on this 21 **DAY** of January **2026**

FOR THE DEPARTMENT

AS WITNESS :1. _____

SOUTH AFRICAN ECONOMIC RECONSTRUCTION AND RECOVERY BUILDING A NEW ECONOMY

M.J

THUS, DONE AND SIGNED AT MAHIKENG day 29 **DAY** OF January **2026.**

FOR THE DEVELOPER

KHAMELA PROPERTY INVESTMENT

AS WITNESS :1. _____

M.J T.M N

human settlements
Department:
Human Settlements
North West Provincial Government
REPUBLIC OF SOUTH AFRICA

2030 NDP

OFFICE OF THE HOD

3366 Besemmer Str Telkom Building
Industrial Site Mahikeng, 2745
Private Bag X 2145, Mmabatho,2735
Tel: +27 (18) 388 4824/5

NWDC Cnr, University & Provident Drive
Private Bag X 2145, Mmabatho,2735
Tel: +27 (18) 388 4913

2nd Floor West Wing, University Drive
Garona Building
Private Bag X 2145, Mmabatho,2735
Tel: +27 (18) 388 4824/5

AGREEMENT

Entered into between

DEPARTMENT OF HUMAN SETTLEMENTS IN THE NORTH WEST PROVINCE,

(Hereinafter referred to as the Department)

Herein represented by

MS. MK MAHLOBO

In her capacity as

HEAD OF DEPARTMENT

And

BAIPATI CIVIL AND ELECTRICAL CONTRACTOR

(Hereinafter referred to as the Developer)

Represented by

MS R.M. MALEBATI

In her capacity as

MANAGING DIRECTOR

DHS 13/2025 : THE INSTALLATION OF INTERNAL SERVICES (WATER, SEWER, STORM WATER & ROADS) FOR 500 SITES AT BOITEKONG EXTENSION 39 (POPO MOLEFE) WITHIN RUSTENBURG

LOCAL MUNICIPALITY

M.R

1. PREAMBLE

A. **WHEREAS** in terms of section 26(1) of the Constitution of the Republic of South Africa, 1996, everyone has the right to have access to adequate housing;

B. **WHEREAS** the Department of Human Settlements of the North West Province of the Republic of South Africa is desirous to engage in the process of developing **Rustenburg Local Municipality within the North West Province** , as part of meeting the housing needs as identified within the housing strategy of the Department.

WHEREAS the said Department foresees the necessity of engaging the services of

to assist the Department with the installation of internal services **BAIPATI CIVIL AND ELECTRICAL CONTRACTOR** (water, sewer, storm water & roads) for 500 sites at Boitekong Extension 39 (Popo Molefe) Rustenburg Local Municipality within the North West Province, Bojanala District.

C. **WHEREAS BAIPATI CIVIL AND ELECTRICAL CONTRACTOR** shown a desire and demonstrated the necessary expertise, skill and resources in terms of the requirements of the Department to render the service as required within the agreed time frames;

D. **AND WHEREAS** these parties enter into this agreement in order to set out the terms and conditions of their relationship for the purposes of the designing and installing of internal services (water, sewer, storm water & roads) for 500 sites at Boitekong Extension 39 (Popo Molefe) Rustenburg Local Municipality within the North West Province, Bojanala District.

M.R

NOW THEREFORE IT IS SPECIFICALLY AGREED AS FOLLOWS:

1. INTERPRETATION AND PRELIMINARY

The headings of the clauses in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of, modify nor amplify the terms of this Agreement or any clause hereof. In this Agreement unless a contrary intention clearly appears;

1.1 words importing-

1.1.1 the singular include the plural and vice versa, and

1.1.2 natural person includes juristic entities and vice versa.

1.1.3 any reference to one gender shall include the other.

1.2. "The Agreement" shall mean this written text, and includes all of the **Annexure(s) or Schedule(s).** This Agreement shall be governed by and construed and interpreted in accordance with the National Housing Code.

1.2.1. The following terms shall have the meanings assigned to them here-under and cognate expressions shall have a corresponding meaning, namely:

1.2.2. "Head of Department" means the Accounting Officer of the North West Department of Human Settlements;

1.2.3. "Beneficiary/ies" means that person/s ultimately to receive the benefit of housing subsidies as contemplated under Chapter 2 of part 3 of the National Housing Code;

SOUTH AFRICAN ECONOMIC RECONSTRUCTION

1.2.4. "Certificate of Completion" means the certificate issued by the Project Manager or any authorised person, signifying that the whole or portion of the works have reached a state of readiness for occupation or use for the purposes intended;

1.2.5. "Commencement date" means the date of signature of the Head of Department;

1.2.6. "Developer" means the party described as the Developer on the first page of this agreement represented by the party/ person/ parties signing the agreement on behalf of the Developer, such signatory/ies warranting that he/she/they have been duly authorised thereto and accept personal responsibility for the completion of the project;

1.2.7. "Defects Liability Period" means the period of three (3) years commencing from the issuing of the Certificate of Completion during which the Developer has an obligation to make good defects in the materials and workmanship covered by the Contract.

1.2.8. "The Department" means the Department of Human Settlements, North West Provincial Government;

1.2.9. "Date of Completion" means the **"31 MARCH 2027"**.

1.2.10. "force Majeure" means an act of GOD, strike other than a strike of the party's own employees, lockout, act of public enemy, war declared or undeclared, blockages, revolution, riot, insurrection, civil commotion, lighting, fire, storm, floods, earthquake, explosion, government act of restraints, embargos, and any other cause, whether of the kind specifically

enumerated above or otherwise, which is not reasonably within the control of the party claiming vis majeure and whether of a temporary or permanent nature;

1.2.11. "Housing Code" means the National Housing Code issued in terms of Section 4 of Housing Act No. 107 of 1997;

1.2.12. "Municipality" means the municipality as defined in terms of the Municipal Structures Act No. 67 1998 in whose area of jurisdiction the project area is situated;

1.2.13. "National database" means the National Housing Database maintained by the National Department of Housing which contains the names and identity numbers of the persons who have received financial assistance from the government of Republic of South Africa in order to acquire residential property;

1.2.14. "NHBRC" means National Home Builders Registration Council

1.2.15. "Other role players" means amongst other, any one or more of the following, the Municipality, National and Provincial Department.

1.2.16. "Project Works" means the installation of internal services (water, sewer, storm water & roads) for 500 sites at Boitekong Extension 39 (Popo Molefe) Rustenburg Local Municipality within the North West Province, Bojanala District.

1.2.17. "Project area" means Rustenburg Local Municipality within the North West Province.

1.2.18. "Project information details" means all information and details pertaining to the project, including information initially filed with the application.

1.2.19 "Project period" means the period calculated from the commencement date to completion date.

1.2.20. "Project Implementation Plan" means those details directed at expressing the progress and the completion of the project milestones within the agreed time periods, expressing specific milestones to be achieved by the Developer during the project period and the financial projections attached thereto;

1.2.21. "Project reference number" means the Developer's reference number as allocated by the Department;

1.2.22. "Subsidies" means Project linked Subsidies as prescribed in Chapter 3 of part 3 of the Housing Code;

1.2.23. "Specification" means specification or description as per the terms of reference from the NHBRC;

1.2.24. "Minimum Standards" means the:

i. "engineering standards" for the project area as determined by agreement in writing by the Department and the relevant utilities and agencies of the various Municipalities;

ii. "building standards" for the project area determined by agreement in writing by the Department and NHBRC;

iii. "planning standards" for the project area as determined by agreement in writing by the Department and the relevant utilities and agencies of the Bojanala District;

1.2.25. "professionals" means those Developers required to undertake the work of the project under the management and direction and control of the Project Manager/Developer and may include financial modellers, property economists, chartered accountants, town planners, architects, land surveyors, quantity surveyors, electrical engineers, qualified draught persons, civil engineers with structural expertise, architects, conveyances, environmental specialists, or related professionals;

1.2.26. "Total subsidy amount" means the total amount payable in terms of the applicable subsidy calculation for the current financial year (2025/26)

2 PURPOSE

To appoint a Developer for the installation of internal services (water, sewer, storm water & roads) for 500 sites at Boitekong Extension 39 (Popo Molefe) Rustenburg Local Municipality within the North West Province, Bojanala District.

3 APPOINTMENT

3.1 In order to facilitate this project, **BAIPATI CIVIL AND ELECTRICAL CONTRACTOR** shall;

a) Install internal services (water, sewer, storm water & roads) for 500 sites at Boitekong Extension 39 (Popo Molefe) Rustenburg Local Municipality within the North West Province, Bojanala District.

b) That unless agreed to in writing by the department, the contract amount shall not be increased.

c) That the subsidy quantum is calculated as follows:

Item	INSTALLATION OF INTERNAL SERVICES	Cost of 500 sites
1.	**Stabilized Gravel Roads: 500 Stands R12 714.00**	**R6 357 000.00**
2.	**Water Reticulation including meters: 500 Stands R17 003.00**	**R8 502 500.00**
3.	**Storm Water Drainage: 500 stands R2 867.00**	**R1 433 500.00**
4.	**Sewer Reticulation including meters:500 Stands R28 687.00**	**R14 343 500.00**
	TOTAL PROJECT AMOUNT FOR 500 SITES	**R 30 635 500.00**

3.2 The Developer hereby accepts the appointment by the Department as stipulated on Clause 3.1 (a) above.

4. GOOD FAITH

Both parties acknowledge the critical role of this project function and undertake to act in concert in good faith to achieve the aims of the project.

5. DURATION OF AGREEMENT.

5.1 This Agreement shall commence on the date of signing by the Head of Department to and shall be valid until **31ST MARCH 2027.**

SOUTH AFRICAN ECONOMIC RECONSTRUCTION

5.2 The Department may in its sole discretion extend the contract on conditions as may be agreed upon by both parties to this Agreement. No agreement on an extension period shall be valid unless reduced to writing and signed by the authorized representatives of both parties.

6. AUTHORISED REPRESENTATIVES

6.1 The parties agree that for the purpose of managing this project the Developer shall appoint a Project Manager/Leader whom from time to time shall act as the duly authorised representative of the Developer for the purpose of representing the Developer in its dealings with the Department. This representative shall provide the Department with monthly written progress reports of services rendered, job creation and training impacts. This monthly report shall be furnished together with the monthly invoices for services rendered;

6.2 The duly authorized representative of the North West Department of Human Settlements in terms of this agreement and all aspects related to it shall be the Director of Bojanala District.

7. ANNEXURES AND ADDENDUM TO THIS AGREEMENT

7.1 All **Annexure(s)** to this agreement which are initialled by the parties will be deemed to be part of this agreement. In the event that there is an inconsistency between the provisions in the main body of the agreement and the provisions in the *Annexure(s*) then the provisions in the main body of the agreement will prevail;

7.2 **Annexure "A"** to this agreement comprises the Project Implementation Plan with defined scope of work, for the construction, completion and hand-over of a total of housing units as incorporated in the first page of

this agreement, which may be handed over in part/clusters from time to time to the Department for Boitekong within the North West Province, Bojanala District,

7.2.1 By agreement between the parties any further scope of work can be developed and made part of this agreement;

7.2.2 The scope of work and any amendments thereto, will be deemed to be part of this agreement once the scope of work and any amendments thereto have been reduced to writing and signed by the HOD of the Department, and the Developer. If there is any inconsistency between the scope of work and the main body of this agreement, then the provisions of the main body of this agreement will prevail;

8. OTHER AGREEMENTS

8.1 The parties acknowledge that **BAIPATI CIVIL AND ELECTRICAL CONTRACTOR** have not entered into any joint venture agreement, for the purpose of this project.

9. PROJECT MANAGEMENT SERVICE

9.1 The Developer undertakes to ensure that all general project plans, feasibility studies, development proposals, construction plans, and, in general, the development of all the projects are designed, implemented, and carried out in compliance with the needs of the Department;

9.2 The parties agree that the Developer will operate under the direction and guidance of the Department, represented by the Director of Bojanala

Region for this purpose, in undertaking the tasks outlined in the scope of work;

9.3 The parties agree that all task teams of the programme undertaking activities related to the project contained within the scope of work will operate under the management and direction and control of the Developer when engaged in activities related to the projects described in the scope of work;

9.4 The parties agree that the Department will provide the Developer with a list of approved beneficiaries if necessary in terms of the contract.

9.5 The Developer undertakes to carry out the functions of the project according to the scope of work per terms of reference, and the general functions of a project of this nature, which will include, but not be limited to:

9.5.1 Install internal services (water, sewer, storm water & roads) for **500** sites.

9.5.2 and hand-over the same to the Department within the project period;

9.5.3 Structuring of the project and tasks therein to establish the respective development project and programs of the project;

9.5.4 Develop operating procedures and programmes to realise the objectives of the project;

9.5.5 Co-ordinate and manage implementation of the project; and

9.5.6 To encourage, support and facilitate appropriate stakeholders participation in the project.

10 SCOPE OF WORK

10.1 The Department and the Developer undertake that there is a scope of work that may be, from time to time, altered by agreement between the parties. The parties shall then formulate, by agreement between themselves, the services which must be provided as an additional scope, the tasks to be provided. The aforementioned agreement shall be reduced to writing and signed by all the parties and will constitute an additional scope of work;

10.2 The scope of work may be amended from time to time by consent between the parties provided any such amendment is reduced to writing and signed by the parties;

10.3 The completion of the project to be in full compliance with the terms and conditions of this Agreement. The Developer to take all necessary measures to implement quality control mechanisms in the project;

10.4 In the performance of the Contract, comply with all applicable laws, regulations, statutory requirements and in particular on request by the Department or any of its authorised persons to provide proof that it has complied with amongst others, Safety Regulation;

11. FINANCIAL ARRANGEMENTS, PRICE AND PAYMENT TERMS

11.1 The total project cost rendered payable by the Department to the Developer for the work completed in terms of this agreement and to complete the project will be the total sum of Thirty Million Six Hundred and Thirty Five thousand and Five Hundred Rands **(R 30 635 500.00)**

11.2 Payments shall be made to the Developer upon receipt by the Department of a detailed itemized invoice, inspected and approved by the Departments authorized personnel setting out the nature of the deliverable/milestones performed. The Developer shall receive payment within 30 (thirty) days from the date of submission of each invoice to the Department;

11.3 Invoices must comply with the standard requirements of the Department and must in addition, be itemized as to unit, person, rate, nature of work completed, as to enable the Department to understand the nature of what services and disbursement are being charged for.

11.4 Invoices should be designed in such a way as to enable the Department to easily verify their contents and monitor expenditure and in such be accompanied by a detailed monthly progress report detailing actual progress achieved as against milestones agreed upon and claimed for;

11.5 Should the Department request the Developer to redo or resubmit any deliverable or milestones provided in terms of this Agreement because the deliverable was not completed to the required standard, no additional cost shall be charged by the Developer to the Department in respect of that deliverable/milestone. The Developer shall be liable for any loss or damages occasioned to the project due to the Developer failing to complete any deliverable/milestone to the required standard;

11.6 In the event of the Developer being unable to carry out or complete its obligations under this Agreement, or the termination of the Agreement for breach, the Department shall be entitled to withhold all outstanding monies payable as damages, without prejudice to any other remedy, claim or action it may lawfully have against the Developer;

11.7 In the event that the Department makes payment to the Developer that is in excess of the amount due, owing, and payable by the Department to the Developer, then the Developer undertakes to refund the excess amount of money to the Department within 7 (seven) days of this event coming to the Developer's notice. The Department may at its sole discretion, elect not to claim the refund in terms of this paragraph, but to set off excess monies paid in error to the Developer against any future payments due and payable by the Department to the Developer;

11.8 The Department shall not be responsible for any expenses which are not covered in this Agreement, and the Developer shall be responsible for paying of all materials including payment of all monies due to third parties and/or appointed teams and other costs necessary to carry out the work which it is responsible to carry out in terms of this Agreement;

11.9 The Developer shall not incur expenses exceeding the agreed amount as contained in this Agreement, unless prior written approval has been obtained from the Department;

11.10 No adjustment to the approved budget shall be effected without the prior written approval of the HOD of the Department;

11.11 Payment shall be carried out in accordance with the procurement policies and procedures of the Department of Human Settlement, National Housing Code, as well as all applicable legislative and other legal requirements;

11.12 As soon as it appears that the cost for any part of the work to be carried out in terms of this Agreement or the preparation of any of the deliverables, shall exceed the amount specified in the budget set out in the Agreement, the Developer shall notify the Department in writing

M.P

thereof, providing reasons for the anticipated overspending and detailing the amounts involved;

11.13 Prior written consent shall be obtained from the Department for all decisions and activities that have financial implications, and which have not been implicitly contemplated within the budget set out in this Agreement. If it is not clear whether or not a decision or activity which has financial implications has been implicitly contemplated within the budget set out in this Agreement, the Developer should err on the side of caution and seek the Department's consent regarding such a decision;

11.14 All fruitless, wasteful and irregular expenditure (as defined in the Public Finance Management Act, Act No. 1 of 1999) incurred by the Developer outside of the approved budget must be recorded, and a detailed report explaining the reasons for such expenditure must be submitted to the Department as soon as practicable after the Developer becomes aware thereof;

11.15 Fruitless, wasteful and irregular expenditure incurred on account of the negligence of the Developer shall, in consultation with the Developer be recoverable from the Developer.

12 WARANTIES AND UNDERTAKINGS BY THE DEVELOPER

12.1 The Developer undertakes to provide resources, highly skilled and capable professionals, capacity, skills and expertise to realize the objective of the project. The department reserves the right to approve/disapprove the staffing of the project team. Such approval shall not be unreasonably withheld by the Department;

12.2 The developer specifically warrants that s/he has the necessary financial capital and/or undertakings to deliver the project, and further that the Department will not be required to sign cessions in favour of third parties on behalf of the developer.

12.3 The Developer warrants that the services that it shall provide will not in any way infringe upon, or violate the enforceable rights of any third party in the performance of this Agreement, comply with statutory provisions, regulations and all applicable laws, and shall on request of the project manager provide proof that it has complied with the terms and conditions of this Agreement;

12.4 comply with the Implementation Plan agreed to with the Project Manager;

12.5 Make well at his or her expense all incomplete and defective work within the period of liability for defects;

12.6 Inform the Department of any factor that could have an impact on the completion of the project;

12.7 At all times keep information details relating to the project up to date and must provide access to his or her project records or documents to the department.

13.2 **NON-CESSION**

The Developer shall not be entitled to cede or assign any of its rights and obligations under and in terms of this agreement without specific written consent of the Department and on good cause shown.

14. QUALITY CONTROL

14.1 Notwithstanding any approval granted by the Department in terms of this agreement regarding the acceptability of any person or Developer or sub-Developer provided by the Developer to work on this project, whether that person or Developer or sub-Developer is a designated person or not, the Developer will bear final responsibility for the quality of the outputs and deliverables at every stage or phase of this project by any person or Developer or sub-Developer which it uses on this project.

14.2 The Developer undertakes to design and implement documented quality control processes for every activity required in this project related to the quality of the milestones.

14.3 The Developer shall conscientiously follow relevant standards and specifications and shall allow the Department's authorised representatives and its appointed inspectors to conduct inspections of the project, and provide support to facilitate the inspections.

15. DUTIES AND RESPONSIBILITIES OF DEPARTMENT

15.1 The Department shall be responsible for the implementation of the following aspects of the project.

a) PAYMENTS: The Department shall be responsible for paying a subsidy totaling R **30 635 500.00**

b) The Department shall support such claims with proof that the relevant milestones have been achieved entitling the Department to make such claim as certified by the Department's Building Inspectors or Project Managers.

c) The Department shall be entitled to reasonably conduct inspections and enquiries directed at satisfying itself to the proper sustainability of the project;

15.2 The Department shall be entitled to accurate progress reports and information to be submitted monthly by the Developer.

15.3 The Department shall have the right to independently verify the information furnished in the monthly reports, by means of:

a) conducting any professional and /or official investigation of the Developer regarding this Project;

b) obtaining documentation information from any person involved in the Project;

c) conducting physical inspections on any aspect of the Project;

d) calling of meetings with the Developer and/or any other professional on any aspect of the project;

15.4 The Department shall be entitled to receive the following documentation from the Institution;

a) Monthly Progress Reports.

b) Convene Quarterly Review meetings that shall appraise the parties to the Agreement on project progress, challenges and delays and counter measures, settle invoices and payment disputes, proposes amendments to agreement and generally review each party's compliance with this Agreement.

M.R

15.5 Any obstruction, refusal to furnish information and/or documentation or failure to attend meetings by the Institution shall constitute a material breach of this Agreement.

16. ROLES AND RESPONSIBILITY OF THE DEVELOPER

16.1 The Developer undertakes to carry out all lawful and reasonable instructions given to it by the Department for the purpose of the project.

16.2 The Developer undertakes to cooperate and co-ordinate its plans, designs and implementation of the project.

16.3 The Developer in its managerial function, undertakes to exercise its discretion to pro-actively re-assess the requirements of the Department and to provide ongoing advice to the Department as to how this project should be completed in the most effective and efficient manner possible in the circumstances.

16.4 The Developer agrees to act in concert with the Department to accommodate, by agreement, unforeseen changes in circumstances resulting from events occurring either internally or externally to the Department. The parties acknowledge the political nature of the development in the project area. If the Developer confronts political difficulties which are beyond its ability to resolve immediately and these difficulties prevent it from performing its obligations due to no fault on the part of the Developer; then the Developer undertakes to advise the Department's assistance, to resolve these difficulties.

16.5 The Developer shall commence with the project on the commencement date with due skill and diligence and shall complete the project on completion date.

M.R

16.6 The Developer shall complete this project in accordance with provisions of this Agreement, National and Provincial norms and standards, all other legislations, statutory requirements and municipal By-laws applicable in built environment.

16.7 The Developer shall timeously communicate in writing any challenges in implementation of the project to the Department.

16.8 The Developer shall ensure that labour is sourced from the local residents and preference is given to the local sub-contractors.

16.9 Promote local economic growth by buying building materials, where possible, from local suppliers.

17 COMMUNICATION

17.1 The parties acknowledge that the success of the Developer in achieving the milestones of the project is significantly dependent upon the communication process with the affected communities in the project area.

17.2 The parties agree that the Developer must direct and control the communication contents and processes required for the project.

17.3 The Contractor acknowledges and agrees that the submission of any application, request, or correspondence to the Department, including but not limited to requests for clarification, instructions, approvals, or variations, shall not, under any circumstances, entitle the Contractor to suspend, delay, or cease the execution of the Works, unless expressly authorised in writing by the Department. Any cessation or suspension of Works for a continuous period exceeding thirty (30) calendar days, without such written authorisation, shall constitute an abandonment of

the Contract by the Contractor, entitling the Department, in its sole discretion and without prejudice to any other rights or remedies available at law or in terms of this Contract, to summarily terminate this Contract and claim any damages arising therefrom.

18 WHOLE AGREEMENT, NO AMENDMENT, NO ASSIGNMENTS

18.1 This agreement constitutes the whole agreement between the parties relating to the subject matter thereof;

18.2 No amendment or consensual cancellation of this agreement or any of its' provisions or terms and no settlement of any disputes arising under this agreement and no extension of time, waiver or relaxation or suspension of or agreement not to enforce or to suspend or postpone the enforcement of any of the provisions or terms of this agreement shall be binding unless recorded in a written document signed by the parties or their assigns, cessionaries or successors in title (or in the case of an extension of time, waiver or relaxation or suspension, signed by the party or it's assign, cessionary or successor in title, granting such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating only to the matter in respect of which it may be given;

18.3 No extension of time or waiver or relaxation of any of the provisions or terms of this agreement or any agreement shall operate as an estoppel against the Department in respect of its rights under this agreement;

18.4 To the extent permissible by law no party shall be bound by any representation, warranty, promise or the like that has not been recorded

SOUTH AFRICAN ECONOMIC RECONSTRUCTION

in this contract, whether it induced the contract and/or whether it was negligent or not;

18.5 Save where permitted in this agreement, or agreed to in writing, the parties undertake not to assign or cede their obligations in terms of this agreement.

19 GENERAL WARRANTIES

19.1 The Developer warrants that it will execute the project and perform its obligations in terms of this agreement with the required degree of skill, diligence, competence, and care;

19.2 The Developer warrants that they have the requisite resources and skill to exercise the sole responsibility to manage a project of this nature and acknowledge that the full responsibility of this project forms part of their obligations in terms of this agreement;

19.3 The Developer warrants that the quality control processes which they are obliged to institute in terms of this agreement are sufficient to meet the required standards of this agreement related to the performance of the work of this project;

19.4 The department may request information from the Developer pertaining to the project and may inspect any records and/or documents related to the project to which it shall have unrestricted right.

19.5 The Department warrants that the minimum standards comply with South African law.

20 OWNERSHIP OF INTELLECTUAL PROPERTY

SOUTH AFRICAN ECONOMIC RECONSTRUCTION

It is agreed between the parties that the intellectual property; including, but not limited to copyright, of the deliverables in respect of the milestones will vest in the Department as soon as the Department has paid the invoice related to the specific work.

21 DEFAULT

21.1 The Developer shall be deemed to have committed an act of default in terms of this Agreement if the Department is of the view that:

21.1.1 The Developer has failed or is likely to fail in the due performance of any of its obligations in terms of this agreement;

21.1.2 The Developer fails to comply with the Project Implementation Plan agreed to with the Director for Bojanala District;

21.1.3 The Developer is placed under judicial management, liquidation, sequestration (i.e. provisional or final);

21.1.4 The Developer fails to complete the project within the project period;

21.1.5 The Developer has abandoned site;

21.1.6 The Developer has not honoured its contractual obligation with the sub-contractor;

21.1.7 The Developer fails to comply with any other provision of the agreement, including failure to submit monthly progress report timeously and to the satisfaction of the Department;

21.1.8 In the event of the Developer being deemed to have committed an act of default, the Department may give written notice (without prejudice to any other right or remedy it may have in law) calling

upon the Developer within a period of seven (7) days after the date of such notice, to rectify such deemed act of default.

22 PERFORMANCE ASSESSMENT AND ANNUAL EVALUATION

22.1 The Department's assessment of the Developer's performance shall be based on compliance with the signed Delivery Schedule signed by both parties. It is hereby specifically recorded that it remains the Developer's duty to ensure that the schedule is submitted to the Department within Seven (7) days of signing this agreement.

22.2 The performance by the Developer of its obligations in terms of this agreement will be subject to a formal written quarterly evaluation by the Department, which evaluation shall be delivered to the Developer on the last day of the 3rd month of each quarter of the contract period ("the evaluation").

22.3 The evaluation will comment on the quality of the performance by the Developer in performing its obligations in terms of this agreement in the previous three (3) months to the date of the evaluation.

22.4 Where the evaluation records any failures of the Developer or any of its constituent members to perform their obligations in the period in question to the satisfaction of the Department, the evaluation will state the nature of the said failures and will record the performance required to remedy these failures, and will determine a reasonable period for the Developer to rectify these failures.

22.5 Should the Developer fail to rectify the failures within the reasonable period determined by the Department, then such failure will constitute a material breach of this agreement.

SOUTH AFRICAN ECONOMIC RECONSTRUCTION

22.6 In the event that the Developer commits a material breach of this agreement in terms of this ***Clause 22.5*** above, the Department may then elect to terminate this agreement, which termination shall take effect upon written notice of the Department to the Developer.

24. DISPUTE RESOLUTION.

24.1 Should any dispute of whatsoever nature arise between the parties, the parties shall endeavour by means of joint co-operation or discussion between the individuals directly involved with the execution of this agreement, within one week after a dispute arise or such extended time period as the parties may in writing allow, to resolve this dispute.

24.2 Should the dispute not be resolved in the aforesaid manner, then it shall be resolved by way of arbitration, in accordance with the provisions contained in this agreement.

25. ARBITRATION

25.1 Subject to clause 10 a dispute between the parties relating to any matter arising out of this agreement or the interpretation thereof, shall be referred to arbitration, by either of the parties, by way of notice to the party in which notice particulars of the dispute are set out.

25.2 Such arbitration proceedings shall be held in Mmabatho and shall be held in a summary manner, which shall mean that it shall not be necessary to observe or carry out:

a) the usual formalities of procedure;
b) the strict rules of evidence;

c) immediately and with a view to it being completed within ten calendar days after it was demanded;

26 BREACH AND CANCELLATION

26.1 Subject to any other provision of this agreement which contains its own specific remedy, if any party remains in breach of any material provision of this agreement for 14 (fourteen) days after written notice in terms of clause 21.1.8 have been furnished by the aggrieved party to such party to rectify that breach or if any party repudiates this agreement, the other party may elect:

26.1.1 To both demand and enter into legal proceedings for the specific performance of the defaulting party's obligations under this agreement; or

26.1.2 In the alternative, or upon abandonment of a claim for specific performance by the aggrieved party, to cancel this agreement which cancellation shall take effect upon written notice of the aggrieved party to the defaulting party, and to claim damages.

26.2 The parties agree that the following events will constitute a material breach or repudiation by the Developer of its obligations in terms of this agreement, if:

26.2.1 The Developer is placed under voluntary or compulsory liquidation or under judicial management; or

26.2.2 a final and un-appealable judgement against the Developer remains unsatisfied and the effect of this judgement is to

SOUTH AFRICAN ECONOMIC RECONSTRUCTION

compromise the ability of the Developer to perform its obligations in terms of this agreement; or

26.2.3 either the Developer make any arrangement or compromise with creditors and the effect of this compromise or arrangement is to compromise the ability of the Developer to fulfil its obligations in terms of this contract;

26.2.4 the Developer render unsatisfactory performance of its obligations in terms of this agreement and the requirements of the Department and despite written requests by the Department fails to remedy its unsatisfactory performance within a reasonable time;

26.2.5 The Developer contracts a sub-Developer with the consent of the Department and fails in his obligations to effect payment to the sub-Developer for work done in terms of their contract where the Department has paid the Developer for the work in question.

26.3 The Developer shall be deemed to have committed an act of breach in terms of this Agreement if he or she:

26.3.1 fails to adhere to the delivery schedules and/or cash flow projections agreed to between the Parties to this Agreement;

26.3.2 fails to deliver a product that meets the standards as contained in the Housing Code any applicable statutory provisions and/or as shall be determined by the NHBRC and the Department;

26.4 In the event of the Developer being deemed to have committed a breach of this agreement as contemplated herein-above, the Department may give notice (without prejudice to any other right or

SOUTH AFRICAN ECONOMIC RECONSTRUCTION

remedy it shall have in law) calling upon the Developer within a period of not less than fourteen (14) days after the date of such notice to rectify such breach.

27 TERMINATION

27.1 The parties agree that the Department may terminate this agreement with the Developer at its sole discretion at any time during the existing period by written notice to the Developer.

27.2 In the event that this agreement is terminated during the existing period, the Developer shall not have any claim of any nature against the Department, its employees, agents, save the professional fees authorised disbursements incurred during the existing period by the Developer to the date of the termination.

27.3 Should this agreement be terminated for any reason whatsoever, the department shall not be liable for any material left unused by the developer.

28. FULL DISCLOSURE

The parties acknowledge that the Developer may be approached by private persons to engage it or its constituent members for similar services within the region as the Developer is providing to the Department. The parties agree that the Developer may render such services to these private persons provided there is no conflict of interest with the Developer's duties and obligations towards the Department in the rendering of these services.

29. SECURITY

29.1 The parties acknowledge that operating in these areas may constitute a physical security risk.

M.R

SOUTH AFRICAN ECONOMIC RECONSTRUCTION

29.2 The Developer undertakes to exercise prudent caution when operating in the project areas and to make all arrangements and take all steps as might be necessary to secure any of its property or personnel, agents, Developers, or employees from any harm which may befall them. The costs of any security arrangements will be for the Developer's account.

30. INDEMNITIES AND INSURANCE

30.1 The Developer undertakes to indemnify the Department, agents, or employees for any damage caused, or any claim against the Department for damage caused, arising out of any breach of this agreement or any negligent or wilful act or omission on the part of the Developer, its Developers, employees, fieldworkers, or agents.

30.2 The Developer undertakes at the commencement date to obtain sufficient insurance cover; including, but not limited to, Public Liability Insurance and Professional indemnity Insurance, as is reasonable and necessary for protection against all legal liabilities arising out of or in connection with the performance, or otherwise, of its obligations under this agreement. The Developer shall furnish proof to the Department, on demand by the Department, to the Department's satisfaction, that the insurance cover has been obtained and the premiums are being paid to maintain such insurance cover.

31. VIS MAJOR (*visa majeure*)

If *vis majeure* ("the interrupting circumstances") cause delays in or failure or partial failure of performance by a party of all or any of its obligations hereunder, this agreement, or as the case may be, the affected portion thereof shall be suspended for the period during which the interrupting circumstances prevail. If the interrupting circumstances affect any material part of the agreement for a period of longer than 90 (ninety) days, any affected party shall be entitled on 7 (seven) days' written notice to cancel this agreement. Written notice of the interrupting circumstances specifying the nature and date of

M.R

commencement thereof shall be despatched by the party seeking to rely thereon (on whom the onus shall rest) to the other/s as soon as reasonably possible after the commencement thereof. Written notice of the cessation of the interrupting circumstances shall be given by the party who relied thereon within 2 (two) days after such cessation. No party shall subsequently be held in breach of this agreement through failure in that period to comply with those particular obligations suspended during such period. The party whose performance is interrupted by the interrupting circumstances shall be entitled, provided that such party shall give notice to that effect with the 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. For the purposes hereof *vis major* include acts or omissions of any government, government agency, provincial or local authority or similar authority, any laws or regulations having the force of law, civil strife, riots, insurrection, sabotage, acts of war or public enemy, illegal strikes, interruption of transport, lockouts, inability on the part of the Developer as a result of *force majeure* of the nature contemplated in this clause to obtain the goods from the supplier thereof, combination of workmen, flood, storm, fire or (without limitation *eiusdem generic)* any other circumstances beyond the reasonable control of the party claiming *vis major* and comprehended in the terms *force majeure* or *vis major*.

32. CONFIDENTIALITY

32.1 The Developer acknowledges that this agreement, documentation related to the project, documentation made available to the Developer by the Department or any third party, whether created by the Department or third party, is confidential information ("the confidential information"). Accordingly the Developer undertakes:-

32.1.1 to treat as confidential the confidential information during the currency of the agreement and after termination thereof;

SOUTH AFRICAN ECONOMIC RECONSTRUCTION

32.1.2 to use any confidential information only for the purposes of and to the extent required to perform their obligations and exercise their rights in terms of this agreement;

32.1.3 not to permit or allow the confidential information to be published in any publication of any nature whatsoever outside the provisions of this agreement, whether print, electronic or broadcast media,

32.1.4 not to divulge any of the confidential information to any third party except to those of its members or employees or Developer or sub-Developer or other persons who have a specific need to know such information in connection with this agreement, but not prior to the giving by every such member or employee of a written undertaking;

32.1.5 is required to be disclosed by the provisions of any law or regulation or during the conduct of any court proceedings or proceedings of a regulatory authority; and the party required to make the disclosure undertakes to limit the said disclosure, insofar as this is reasonably possible in the circumstance, strictly to the terms of reference of the required disclosure by any law, regulation, court or regulatory body. The party required to make the said disclosure shall consult with the other party prior to making such a disclosure unless such consultation is prohibited by law or regulation or court order by a regulatory body.

33 RELAXATION AND WAIVER

33.1 No relaxation, extension of time or other indulgences which may be given or allowed by the Department in respect of the Institution's performance and/or obligations hereunder; no delays or forbearance in the enforcement of any of the Department's right arising from this agreement; no single partial exercise of any rights by the Department in

terms of this agreement shall in any circumstances be construed or be an implied consent or election by the Department or operate as a waiver or a novation of or otherwise affect any of the Department 's rights in terms of arising from this agreement or estoppels or preclude the Department from enforcing at any time and without notice strict and punctual compliance by the Institution with every provision or term Of this agreement.

34 DOMICILIUM CITANDI ET EXECUTANDI

34.1 The parties choose as their *domiicilia citandi et executandi* for all purposes under this agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the following addresses:

34.1.1 THE DEPARTMENT OF HUMAN SETTLEMENTS:

Physical: 2nd Floor West Wing, University Drive,
Garona Building, Mmabatho

Postal: Private Bag X2099, Mmabatho, 2735

Tel: (018) 388 5176

34.1.1 THE DEVELOPER

BAIPATI CIVIL AND ELECTRICAL CONTRACTOR

Address: P.O. Box 157 Potchefstroom 2520

71 REITZ STREET

Cell: 083 238 8615/ 018 297 0142

Fax: 086 699 7741

Email: mmalebati@webmail.co.za

SOUTH AFRICAN ECONOMIC RECONSTRUCTION

34.2 Any notice or communication required or permitted to be given in terms of this agreement shall be valid and effective only if in writing but it shall be competent to given notice by telefax.

34.3 either party may by notice to the other party change the physical address chosen as its domicilium *citandi et executandi* to another physical address where postal delivery occurs in the Republic of South Africa or its postal address or its telefax number, provided that the change shall become effective on the 7th business day from the deemed receipt of the notice by the

34.3.1 Any notice to a party:-

34.3.2 sent by prepaid registered post in a correctly addressed envelope to it at an address chosen as its *domicilium citandi et executandi* to which post is delivered shall be deemed to have been received on the 7th business day after posting (unless the contrary is proved);

34.3.3 delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery; or

34.3.4 sent by telefax to its chosen telefax number stipulated in clause 34.1, shall be deemed to have been received on the date of despatch (unless the contrary is proved).

34.3.5 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not set to or delivered at its chosen *domicilium citandi et executandi*.

M.R

SOUTH AFRICAN ECONOMIC RECONSTRUCTION

SIGNED by the parties and witnessed on the following dates and at the following places respectively:

THUS, DONE AND SIGNED AT MMABATHO on this 21 **day of** January **2026.**

For the DEPARTMENT OF AND HUMAN SETTLEMENTS, NORTH WEST PROVINCE

AS WITNESS: 1._____ **2.**_____

THUS DONE AND SIGNED AT Mmabatho **on this** 23 **day of** January. **2026.**

For the DEVELOPER (BAIPATI CIVIL AND ELECTRICAL CONTRACTOR)

AS WITNESS: 1._____ **2.**_____

SOUTH AFRICAN ECONOMIC RECONSTRUCTION