

SLA SDB HOLDINGS (PTY) LTD

SERVICE LEVEL AGREEMENT

ENTERED INTO BETWEEN

DAWID KUIPER MUNICIPALITY

(hereinafter referred to as "The Municipality")

Herein represented by Elias Ntoba in his capacity as Municipal Manager of
Dawid Kuiper Municipality and duly authorised thereto

AND

SDB HOLDINGS(PTY)LTD

(Registration Number: 2008/010866/07)

(CSD Number:)

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

(Both hereafter collectively referred to as "**the Parties**")



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ANNEXURE A.

ANNEXURE B.

ANNEXURE C.

ANNEXURE D.

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1. **DEFINITIONS**

- 1.1. In this Agreement, clause headings and sub-headings are for convenience and shall not be used to interpret such Agreement, unless the context clearly indicates a contrary intention.
- 1.2. Any expression which denotes any gender includes the other gender.
- 1.3. The following expressions shall bear the meanings assigned to them below:
- 1.3.1 **"Agreement"** means this agreement together with all annexes as may be amended from time to time;
- 1.3.2 **"Annexure"** means any one or all of the annexes marked A and/or B, as the case may be;
- 1.3.3 **"Business Day"** means any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
- 1.3.4 **"Confidential Information"** shall mean and encompass information, know-how and data, of a technical, commercial, financial or any other nature, disclosed by or on behalf of any one of the Parties to the other prior to or during the term of this Agreement (a) in writing and marked "confidential" by the disclosing Party; or (b) by drawings, models, prototypes, photographs, software programs or in any machine readable form, which information is stated by the disclosing Party to be confidential; or (c) orally.
- 1.3.5 **"Effective Date"** means the date of the signing of this Service Level Agreement by the Service Provider;
- 1.3.6 **"Entity"** includes any association, business, close corporation, sole propriety, company, concern, enterprise, firm, partnership, joint venture, person, trust, undertaking, voluntary association and any other similar entity;
- 1.3.7 **"Equipment"** means any computer equipment, training equipment and/or any equipment utilized by Service Provider in the delivery of the Services;
- 1.3.8 **"Municipal Representative"** means the person appointed by the Municipality to liaise with the Service Provider on a day to day basis in respect of services provided by the Municipality to the Service Provider in terms of this Agreement;
- 1.3.9 **"Industrial Action"** means any labour protest action; strike; lock-out; and any general retardation of work, whether unprotected or protected by legislation and as further comprehensively defined by the South African Labour Relations Act, 66 of 1995 and other relevant regulatory legislation;
- 1.3.10 **"Intellectual Property"** means any computer software, material, name, concept, training material, training instruments, copyright in documents, patentable or non-patentable inventions, discoveries and improvements, patent, trade mark, trade name, drawings, designs, operational analysis, technology and know-how or other intellectual property;
- 1.3.11 **"Month"** means a calendar month, being one of the 12 (twelve) periods into which a year is divided;
- 1.3.12 **"Municipality"** means Dawid Kruiper Municipality, established in terms of the Local Government Municipal Structures Act, 1998 (Act No. 117 of 1998);
- 1.3.13 **"Parties"** means the Municipality and the Service Provider and **"Party"** means either the Municipality or the Service Provider as the case may be;



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- 1.3.14 **"Service Provider"** means Sdb Holdings (Pty)Ltd a private company registered under the laws of the Republic of South Africa under number 2008/010866/07;
- 1.3.15 **"Service Provider Representative"** means the person appointed by the Service Provider to liaise with the Municipality on a day to day basis in respect of services provided by the Service Provider to the Municipality in terms of this Agreement;
- 1.3.16 **"Services"** mean the services provided by the Service Provider to the Municipality and as described in this Agreement and in the annexes hereto;
- 1.3.17 **"Tax Invoice"** means an invoice as defined in the Value Added Tax Act, No. 89 of 1991, as amended;
- 1.4. Unless the context clearly requires a different interpretation, any reference to:
- 1.4.1 the singular includes the plural and vice versa; and
- 1.4.2 natural persons includes juristic persons and vice versa.
- 1.5. Where appropriate, meanings ascribed to defined words and expressions in clause 1.3 of this Agreement shall impose substantive obligations on the Parties.
- 1.6. Words and phrases defined in the main body of this Agreement shall bear the same meanings in the annexes to this Agreement where such words or phrases are not specifically defined.
- 1.7. Words and expressions defined in any sub-clause shall, for the purposes of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.
- 1.8. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement.
- 1.9. When any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.
- 1.10. The use of the word *"including"* followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule (i.e. the rule that a general word or clause is restricted in meaning to the same class as the specific words which precede it) shall not be applied in the interpretation of such general wording or such specific example/s.
- 1.11. The terms of this Agreement having been negotiated, the *contra proferentem* rule (i.e. that words should be interpreted against the stipulator) shall not be applied in the interpretation of this Agreement.

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- 1.12. Any reference to any statute, regulation or other legislation shall be a reference to that statute, regulation or other legislation as at the Effective Date, and as amended or substituted from time to time.

2. INTRODUCTION

- 2.1. The Service Provider delivers the infrastructure and development of a new waste precinct to accommodate a new municipal waste site; a medical waste facility together with a High Hazardous Eco-Center.
- 2.2. The Service Provider wishes to provide to the Municipality the Services as more fully set out in this Agreement and to formalise its business relationship by concluding a service contract with the Municipality that regulates all aspects of their business- and working relationship.

3. APPOINTMENT

- 3.1. The Municipality hereby appoints the Service Provider who accepts such appointment to provide the Services, subject to the terms and conditions set out in this Agreement.
- 3.2. The Service Provider warrants that it has sufficient knowledge and expertise in all aspects of the Services and has the level of skill and experience to perform the Services. The Service Provider shall use its best endeavours, care and skill in performing all its obligations in terms of this Agreement.

4. DURATION

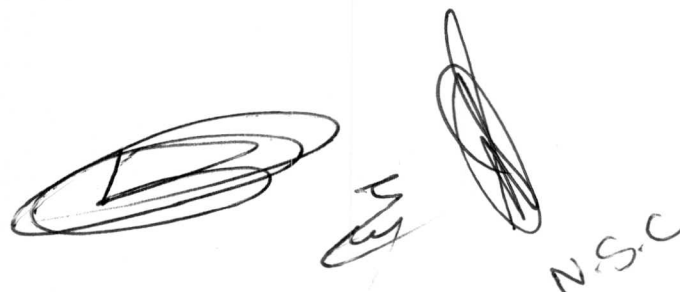
- 4.1. Notwithstanding the date of signature by all Parties, this Agreement shall commence on the Effective Date, and shall continue until final delivery of the Services as per this Agreement.
- 4.2. Notwithstanding the provisions of clauses 4.1 and 11, the Municipality may cancel this Agreement prior to termination date, by giving the other Party thirty (30) days written notice.
- 4.3. Any work already performed by the Service Provider in terms of this Agreement shall be for the account of the Service Provider.

5. REVIEW

- 5.1. The terms of this Agreement and the performance of the Service Provider in terms of this Agreement shall be dealt with by the Municipality as set out in this Agreement.

6. SERVICES PROVISION STANDARDS

- 6.1. The Service Provider shall provide the Services as set out in this Agreement at the standards expected of a diligent and reasonably competent expert service provider.
- 6.2. The provision of the Services shall be carried out at premises designated by the Municipality and the Service Provider shall respect the laws and customs of the country and province in which Services are conducted.

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- 6.3. The Service Provider shall in all professional matters act as a faithful advisor to the Municipality and, in so far as any of its duties are discretionary, act fairly between the Municipality and third parties.

7. SCOPE OF SERVICE

- 7.1. Subject to the terms and conditions of this Agreement, the Service Provider shall provide the Services as set out in Annexure A.
- 7.2. The Services and Service Standards to be delivered shall lie within the discretion of the Municipality, as required by the Municipality.
- 7.3. The Service Provider shall at all times ensure that it has the competencies required to provide the Services as set out in this Agreement.
- 7.4. From the second month from the date of the Effective Date, the Service Provider shall provide the Municipal Representative with a monthly project report, which shall be provided to the Municipal Representative at the end of week and shall include a brief activity and progress report on the Services to be provided.

8. SERVICE PROVIDER OBLIGATIONS

8.1. Undertakings

- 8.1.1 Without derogating from the generality of clause 8.2, the performance of the Services by the Service Provider to the Municipality shall be dependent upon the Service Provider meeting all requirements prescribed by the Municipality.
- 8.1.2 In addition to the above, the performance of the Services by the Service Provider to the Municipality shall be further dependent upon, and the Service Provider agrees to abide by, the following:

8.1.2.1 The Service Provider agrees and undertakes to abide by all of the Municipality's Health and Safety rules and regulations as amended from time to time and to the extent that it is reasonably practical, the Service Provider shall comply with the provisions of the Act insofar as it is applicable. Should the Service Provider fail to comply with any of the said health and safety requirements, the Municipality shall be entitled to terminate the Services in this Agreement or postpone the Services until such time as compliance is established to the satisfaction of the Municipality.

- 8.1.3 Unless otherwise agreed between the Parties, the Service Provider must, as far as reasonably practicable:

8.1.3.1 Provide adequate insurance coverage, against damage and/or loss of whatsoever nature, for any and all its Equipment utilized at any of the Municipality's designated premises for the duration of this Agreement.

- 8.1.4 Make applications to the various grants and funding opportunities available to the municipalities, including the Neighbourhood Development Partnership Grant



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Fund Facility (NDPGF), to facilitate the development of the infrastructure projects contained in this agreement

8.2. Conduct

- 8.2.1 All Services to be rendered by the Service Provider to the Municipality in terms of this Agreement must comply with all the reasonable instructions by the Municipality and shall furthermore comply with all the security and other regulations and procedures as may apply.

9. OBLIGATIONS OF THE MUNICIPALITY

- 9.1 Without derogating from the generality of the terms and conditions of this agreement, the municipality shall undertake the following:

- 9.1.1 Sale of the land parcels to facilitate the development of the infrastructure projects as defined in Annexure A of this agreement. The sale of the land parcels are set forth in Annexure B and Annexure D (or revised numbering) of this agreement
- 9.1.2 Acknowledge the development under the municipalities IDP, SDF and IWMP
- 9.1.3 Enter into Waste Management Service Agreement with the Service Provider for the utilization of the Solid waste Landfill site on terms and conditions to be agreed on between the parties
- 9.1.4 To support the applications of the Service Provider to the various grants and funding opportunities available to the municipality, including the NDPGF, to facilitate the development of the infrastructure projects contained in this agreement and related projects.

10. FEES AND REMUNERATION

10.1. Payment

- 10.1.1 Any and all payments required to be made in terms of this Agreement shall be made in accordance with the stipulations set out in the Annexure hereto.
- 10.1.2 The Municipality is entitled to deduct or set off from any amount payable to the Service Provider, any amount due by the Service Provider to the Municipality for any reason whatsoever.

10.2. Payment Specifics

- 10.2.1 The fees payable for development of the project shall be accounted for under the development costs of the project and shall be funded under the project funding arrangements emanating from the applications made by the Service Provider in terms of clause 8.1.4 of this agreement. This costs shall not exceed more than 12% of the total project costs.
- 10.2.2 The fee for raising the requisite project finance payable to the service provide shall be accounted for under the project costs and shall be funded under the project funding arrangements emanating from the applications made by the Service Provider in terms of clause 8.1.4 of this agreement and such fees shall not comprise of more than 12% of the total project costs.

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- 10.2.3 All engineering costs shall be in line with prevailing ECSA (Engineering Council of South Africa) rates

10.3. Payment terms

- 10.3.1 Any amounts due by the Municipality to the Service Provider in terms of this Agreement shall be paid by the Municipality to the Service Provider within 30 (thirty) days of receipt of a Tax Invoice from the Service Provider requesting such payment.
- 10.3.2 Should any dispute arise relating to the amount of the charges to which the Service Provider is entitled, such dispute shall be determined in accordance with the dispute resolution clause provided for in clause 20 of this Agreement.

10.4. Cancellation, Sub-standard Services Penalties

- 10.4.1 The Service Provider undertakes to deliver the Services in accordance with professional, high quality standards. In the event that the Service Provider should determine to cancel its Services for any reason other than Force Majeure, and/or the Municipality should determine that the Services are not in accordance with the conduct and standards as agreed to with the Service Provider, the Service Provider agrees that the damages the Municipality would suffer as a result of those costs and the loss of Services and/or other ancillary revenue would be substantial. Accordingly, on such determination, the Municipality will provide a written notice of the determined Services to the Service Provider, who shall within 5 (five) Business Days, or any period as determined by the Municipality, re-provide the Services at no cost to the Municipality and to the satisfaction of the Municipality. Any re-provision of Services shall be without prejudice to the Municipality's rights to any claim of immediate, specific performance of all of the Service Provider's obligations as per this Agreement, to claim damages, or to terminate this Agreement.

11. STATUS OF SERVICES

- 11.1. Municipal Services are available in the area (water and electricity). No sewerage services are available.
- 11.2. The Service Provider will be responsible for the provision of services to the property, subject to the conditions set out in Annexure B.

12. TERMINATION, CANCELLATION AND BREACH OF AGREEMENT

- 12.1. This Agreement will commence on the Effective Date and remain in full force and effect for the duration of the Agreement subject to the Municipality's right of termination as provided for in clause 4 hereof and as provided in clause 11.
- 12.2. The Service Provider may terminate this Agreement by giving 12 (twelve) months notice to the Municipality, provided that nothing shall preclude either Party from terminating this Agreement summarily for any cause recognized in law as sufficient.

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- 12.3. The Municipality may summarily terminate this Agreement if the Service Provider is liquidated, whether provisionally or finally; has an execution levied against its assets; is investigated or found guilty by any official prosecution/investigative authority in regards to fraud or dishonesty or any criminal act and/or civil liability.
- 12.4. The Municipality may, by 24 (twenty four) hours written notice of termination to the Service Provider, terminate this Agreement and claim damages or elect to enforce this Agreement if, in the Municipality's sole discretion, the Service Provider:
- 12.4.1 has abandoned this Agreement or breached a material term or condition of this Agreement;
 - 12.4.2 has breached any other term of condition of this Agreement and has failed to remedy the breach within a period of 7 (days) days after receiving written notice of the breach from the Municipality;
 - 12.4.3 has persistently or flagrantly neglected to carry out its obligations under this Agreement;
 - 12.4.4 has committed an act of gross negligence or incompetence;
 - 12.4.5 has assigned this Agreement or any part thereof without the consent in writing of the Municipality; or
- 12.5. Should this Agreement be terminated by mutual agreement between the Municipality and the Service Provider, the obligations of the Municipality shall be limited to the payment of such amounts of work done by the Service Provider, as stipulated in clauses 10.2.1 and 10.2.2 of this agreement, and failing such agreement shall not exceed such amounts as may be due and payable for Services rendered in compliance with clauses 10.2.1 and 10.2.2 of this agreement, up to the date that this Agreement is terminated.
- 12.6. The Municipality's termination of this Agreement or any claim of immediate, specific performance of all of the Service Provider's obligations under this Agreement shall be without prejudice to the Municipality's right to claim damages, or cancel the Agreement.
13. **CONFIDENTIALITY**
- 13.1. The Service Provider warrants that all information made available to it by the Municipality, including but not limited to any contracts signed, materials developed, trade secrets, financial and other details, assistance or advice given or requested, operating methods and costs, will be kept as strictly confidential and will not be divulged to any third parties without the written permission of the Municipality except in enforcement of this agreement. The Service Provider and its employees, contractors or agents, will maintain the utmost secrecy in respect of all such information.
- 13.2. For a period of three years from termination of this Agreement each of the Parties shall keep the Confidential Information received from the other Party confidential, not use it for any other purpose than specified in the preamble or in enforcement of this agreement, and prevent its disclosure to, or use by, others. Each of the Parties shall further only make the Confidential Information available to its or any of its affiliate's employees, directors or advisers to the extent that they require knowledge thereof for the purpose specified in the preamble and provided that, with respect to the Confidential Information, any such employee, director or adviser is bound by obligations of secrecy




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and limited use at least to the same degree that the Parties are bound hereunder, and provided further that each such employee, director and adviser shall, before any Confidential Information received from any of the Parties is made available to him, be notified by such of the Parties employing him of the confidential nature thereof.

- 13.3. Each of the Parties shall use at least the same standard of care in safeguarding the Confidential Information of any other Party as it uses in protecting its own Confidential Information. Each of the Parties shall be answerable for any unauthorized disclosure or use of the Confidential Information by its employees, directors or advisers.
- 13.4. The obligations of confidentiality and limited use set forth herein shall not apply to the extent that Confidential Information (a) was known by the receiving Party from sources other than any other of the disclosing Party prior to receipt as is documented in written records possessed by the receiving Party prior to such time; or (b) is at the time of disclosure to the receiving Party in the public domain or subsequently becomes part of the public domain without a breach of its confidentiality obligations hereunder by the receiving Party; or (c) is disclosed to the receiving Party by a third party without any obligation of secrecy to the disclosing Party, or (d) is disclosed by the disclosing Party on a non-confidential basis to any third party; or (e) is independently developed by employees of the receiving Party who have not had access to the Confidential Information disclosed by the disclosing Party; or (f) is removed from confidential status or cleared for disclosure to a third party by prior written consent of a duly authorized officer of the disclosing Party, subject to any conditions which may be provided for at the time of such removal or clearance and (g) will be used in the enforcement of this agreement.
- 13.5. Neither Party has any obligation to supply Confidential Information hereunder, nor does this Agreement represent any commitment by either Party to enter into any future agreement with the other. Upon expiration of, or earlier termination, of this Agreement, and upon written request of either of the Parties hereto, each receiving Party agrees to return to the disclosing Party all Confidential Information received from it within 10 (ten) days and to destroy any and all copies made thereof.
- 13.6. No waiver by either of the Parties of any breach of any condition of these confidentiality provisions shall be construed as a waiver of any subsequent breach, whether of the same or of any other condition of the provisions.
- 13.7. In the event that one of the Parties, or anyone to whom Confidential Information is disclosed pursuant to this Agreement becomes legally compelled to disclose any of the confidential Information, such compelled party shall provide the affected party with prompt notice so that such affected party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Clause. In the event that such protective order or other remedy is not obtained or in the event that the affected party waives compliance with the provisions of this Clause, the compelled party will furnish only that portion of the Confidential Information which the compelled party is legally required to disclose and will seek to obtain reliable assurance that confidential treatment will be accorded the Confidential Information.



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14. MUNICIPAL PROPERTY

- 14.1. Upon termination of this Agreement, the Service Provider shall return to the Municipality all property belonging to the Municipality, including but not limited to any books, documents, manuals, specifications and technical data.

15. INTELLECTUAL PROPERTY

- 15.1. Intellectual Property rights in material developed for the Municipality in terms of the Services specified in Annexure A shall vest in the Municipality. The Parties shall ensure that no infringements of whatsoever nature are made on the Intellectual Property rights and privileges of each other as relied on in this Agreement.

16. CONTRACT MANAGEMENT

16.1. THE MUNICIPALITY

The Municipality has assigned a Representative to co-ordinate and provide overall guidance in terms of strategy, policy standards and priorities as deemed appropriate for the provision of the Services by the Service Provider and as a single point of contact or a Municipal Official assigned by the Municipal Manager.

16.2. Service Provider

The Service Provider will appoint a representative, who from the Effective Date, shall have overall responsibility for managing and coordinating the performance of the Service Provider's obligations under this Agreement and who will have the authority to act for and on behalf of the Service Provider in respect of all matters relating to this Agreement.

17. REPORTING

- 17.1. Monthly reports will be prepared for the Municipality by the Service Provider in respect of Services undertaken by the Service Provider in terms of this agreement.
- 17.2. Should the Municipality require additional reports from the Service Provider, such reports shall be submitted to the Municipality within a reasonable time frame of the Municipality's request. This will apply to information requested from the Municipality as well.
- 17.3. The Municipality acknowledges that the Service Provider shall perform the Services using information and/or resources which have been or are to be provided by the Municipality or third parties appointed by the Municipality. The Service Provider shall be entitled to rely on such information as being adequate, accurate and correct except in instances where it is expressly agreed that the Service Provider is to evaluate the data provided by the Municipality or by third parties and confirm its correctness as an agreed additional service to be priced as a variation.

18. WARRANTIES, INDEMNITIES AND LIMITATION OF LIABILITY

- 18.1. The Service Provider shall exercise all reasonable skill, care and diligence in the execution of the Services and shall carry out all its obligations in accordance with professional standards. The Service Provider shall in all professional matters act as a faithful advisor to



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the Municipality and, in so far as any of its duties are discretionary, act fairly between the Municipality and third parties.

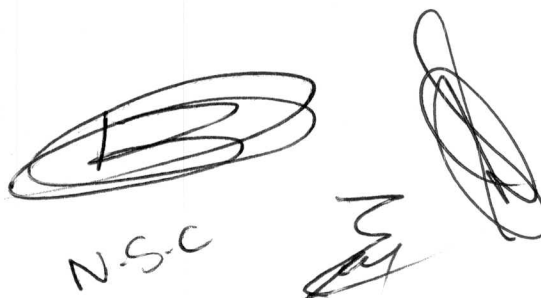
- 18.2. The Service Provider hereby accepts liability for and indemnifies and holds the Municipality harmless against all claims, demands, fines, penalties, actions, proceedings, judgments, damages, losses, costs, expenses, or other liabilities, caused whether negligently or otherwise, by the non-compliance of the Service Provider and/or its employees of their duties and obligations under this Agreement, in delict for breach of statutory duty or otherwise.
- 18.3. The Municipality shall not be liable for any losses, damages, costs, claims and demands which the Service Provider may incur or sustain whilst carrying out or providing the tasks contemplated in this Agreement or which results from, negligence, failures, errors, incomplete documents, information and data provided or omissions from the Service Provider, its agents and its employees.
- 18.4. The Service Provider shall not be liable for damages or losses which results from, negligence, failures, errors, incomplete documents, information and data provided or omissions from the Municipality, its agents and its employees.
- 18.5. Any claim for damages should be lodged within a period of three (3) years from the date of termination and/or expiry of this Agreement.
19. **FORCE MAJEURE**
- 19.1. If any Party is prevented or delayed in performing any obligation under this Agreement for any reason beyond the reasonable control of that Party, then that Party shall be excused from performing or timeously performing that particular obligation for the duration of that prevention or delay.
- 19.2. Any Party so prevented or delayed shall inform the other in writing of that prevention or delay as soon as reasonably possible after the circumstances causing such prevention or delay has arisen.
- 19.3. The Parties shall do everything reasonably possible to prevent, avoid or limit the duration or effects of any such prevention or delay. Upon termination of the circumstances giving rise to any such prevention or delay, the Party so prevented or delayed shall forthwith give written notice to the other Party.
- 19.4. While any such prevention or delay continues, the Parties shall continue to comply with their obligations under this Agreement which are not affected by it, to the extent that they are able lawfully to do so, subject to the right of the other Party not prevented from continuing with all its obligations under this Agreement to cancel this Agreement by giving written notice of such termination to the other Party.
- 19.5. For the purpose of this Agreement "*Force Majeure*" shall mean any circumstances beyond the reasonable control of the Party concerned and shall include but not be limited to:

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- 19.5.1 the inconsistent and/or inadequate supply of electricity by the official South African energy supplying body;
 - 19.5.2 war, revolution, riots, mob violence, sabotage, epidemics, accidents, breakdown of machinery or facilities where such are not part of a Party's equipment or under a Party's control;
 - 19.5.3 Industrial Action by workers, agents or employees;
 - 19.5.4 earthquakes, floods, fires or other natural physical disasters.
- 19.6. The mere shortage of labour, materials or utilities shall not constitute Force Majeure unless caused by circumstances, which are themselves, Force Majeure.

20. ARBITRATION

- 20.1. In the event of any dispute or difference arising between the Parties out of, or in relation to, or in connection with this Agreement, or the interpretation thereof, or its termination, both while in force and after its termination, the Party claiming such dispute or difference shall, subject to any of its rights as per clause 13, forthwith advise the other in writing thereof. The dispute shall be referred to the applicable authorities of the Service Provider and the Municipality who shall within 14 (fourteen) days of receipt of such notice, meet and negotiate in good faith in order to resolve such dispute or difference. Should the Parties fail to resolve such dispute or difference within 14 (fourteen) days of their first meeting or such longer period as the Parties may agree, any Party may refer such dispute or difference to the Arbitration Foundation of South Africa in accordance with the provisions of the Arbitration Act, Act No 42 of 1965, as amended and as amplified or limited by this clause.
- 20.2. Any Party may demand that a dispute be referred to arbitration by giving written notice to that effect to the other Party.
- 20.3. This clause shall not preclude any Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.
- 20.4. The arbitration shall be held:
- 20.4.1 In Uppington in the English language;
 - 20.4.2 Immediately in an informal manner on such basis as the arbitrator may determine with a view to it being completed within 90 (ninety) days after it is demanded.
 - 20.4.3 The Parties irrevocably agree that the decision in arbitration proceedings:
 - 20.4.3.1 shall be final and binding upon the Parties;
 - 20.4.3.2 shall be carried into effect; and
 - 20.4.3.3 may be made an order of any court of competent jurisdiction.
- 20.5. This clause is severable from the rest of this Agreement and will remain valid and binding on the Parties notwithstanding any termination of this Agreement.



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- 20.6. The provisions of this Clause shall not preclude any Party from approaching a competent court of law of appropriate jurisdiction for urgent interim relief and/or immediate final and binding resolution of any matter in dispute between the Parties.

21. DOMICILIA CITANDI ET EXECUTANDI

- 21.1. The Parties choose as their domicilium citandi et executandi for all purposes under this Agreement, whether in respect of court processes, notices or other documents or communication of whatsoever nature (including the exercise of any option) the following addresses:

The Municipality

Physical address: Mutual Street, Upington, 8801
Postal address: Private Bag X6003, Upington, 8800
Telephone: 054 338 7000
Reference: Hondejag Industrial Area
Email: manager@dkm.gov.za

SERVICE PROVIDER

Physical address: 4th Floor Fredman Towers
13 Fredman Drive; Sandton
Postal address: PO Box 652602, Benmore, 2010
Telephone: 011 7842610
Reference: SDB DKM Eco-Center
Email: subash@sdbholdings.co.za

- 21.2. Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing. It shall be competent to give such notice by facsimile or e-mail, if applicable.
- 21.3. Either Party may give notice to the other Party to change the physical address chosen as its domicilium citandi et executandi to another physical address in South Africa, provided that such change shall become effective on the 14th (fourteen) day from the deemed receipt of the notice by the other Party.
- 21.4. Any notice sent by facsimile or e-mail to the facsimile number or e-mail address stipulated in the domicilium citandi et executandi, shall be deemed to have been received on the date of dispatch (unless the contrary is proved). Any notice sent by prepaid registered post in a correctly addressed envelope sent to the address stipulated in the domicilium citandi et executandi, shall be deemed to have been received on the 14th (fourteen) Business Day after posting, unless the contrary is proved.
- 21.5. 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 sent to or delivered to the address chosen as the domicilium citandi et executandi.



Handwritten signatures and initials, including "N.S.C." and a stylized signature.

22. SEVERABILITY

- 22.1. Each of the provisions of this Agreement shall be considered as separate terms and conditions and in the event that, this Agreement is affected by legislation or any amendment thereto, or if the provision herein contained are by virtue of that legislation or otherwise, held to be illegal, invalid, prohibited or unenforceable, than any such provisions shall be ineffective only to the extent of the illegality, prohibition or unenforceability and each of the remaining provisions thereof shall remain in full force and effect as if the illegal, invalid, prohibited or unenforceable provision was not a part thereof.

23. COSTS

- 23.1. Each Party to this Agreement shall be liable for its own costs in respect of, and incidental to, the negotiation and execution of this Agreement.

24. ENTIRE AGREEMENT

- 24.1. This Agreement constitutes the entire contract between the Parties with regard to the matters dealt with in this Agreement and no representations, terms, conditions or warranties not contained in this Agreement will be binding on the Parties.

25. VARIATION AND CANCELLATION

- 25.1. No agreement varying, adding to, or deleting from or cancelling this Agreement will be effective unless reduced to writing and signed by or on behalf of the Parties.

26. INDULGENCES

- 26.1. No indulgences granted by the Municipality shall constitute a waiver of any of its rights under this Agreement. Accordingly the Municipality will not be precluded as a consequence of having granted such indulgence, from exercising any rights against the Service Provider which may have arisen in the past or which may arise in the future.

27. GOVERNING LAW

- 27.1. Notwithstanding the place of signature, this Agreement will be construed, executed and delivered in accordance with the laws prevailing in the Republic of South Africa.

28. CESSION AND ASSIGNMENT

- 28.1. The Service Provider shall not be entitled to cede and assign its rights and obligations in terms of this Agreement without the written consent of COMPANY.

29. CURRENCY

- 29.1. All prices and other currency amounts used in this Agreement are in South African Rand ("ZAR") unless expressly stated to the contrary.

30. CONTROLLING LANGUAGE

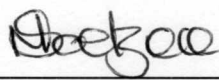
- 30.1. The original of this Agreement has been drafted and executed in the English language. This Agreement may be translated into any other language, but only this Agreement in the English language version shall be deemed the original document. If any conflict arises between the English version and any version in any other language into which this Agreement has been translated, the English language version shall have the controlling authority.

The block contains three handwritten signatures or initials. The first is a large, stylized signature. The second is a smaller, more compact signature. The third is a signature that includes the letters 'N.S.C.' written next to it.

THUS DONE AND ENTERED INTO AT UPINGTON ON THIS THE 22nd DAY OF OCTOBER 2019 IN
THE PRESENCE OF THE UNDERSIGNED WITNESSES:

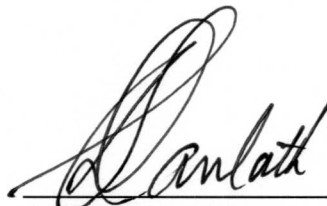
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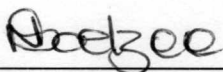

ELIAS NTOMB
MUNICIPAL MANAGER

2. 

THUS DONE AND ENTERED INTO AT UPINGTON ON THIS THE 22nd DAY OF OCTOBER 2019 IN
THE PRESENCE OF THE UNDERSIGNED WITNESSES:

1. 


SUBASH DOWLATH
SDB HOLDINGS (PTY) LTD

2. 

Annexure A: Services Scope

1. The Development of a Municipal Landfill Site on Erf 12943, Hondejag Industrial Area;
2. The Development of a High Hazardous Eco-Center on a piece of land of about 500 hectares adjacent to the Erf 12943, in the Hondejag Industrial Area.
3. The Development of all infrastructure necessary to accommodate such a waste precinct including renewable energy generation resources; including access roads (transport infrastructure); water treatment facilities etc.

Furthermore the scope includes the entering into of a Waste Management Service Agreement that is to be defined under a definitive agreement to be entered into between the parties prior to commencement of the development of the facilities mentioned in 1, 2, and 3 above, subject thereto that there is no other obligations towards the Municipality, except as provided for in Clause 9 of this agreement.

Annexure B: Deliverables

1. The Service Provider is responsible to comply with all Regulatory; Legal and Licencing requirements
2. The Service Provider is responsible for the compilation and application for all related infrastructure grants; inter alia the neighbourhood grant fund; the project preparation fund; IIPSA fund and incentives from the Department of Trade and Industry.
3. The Service Provider is responsible to compile a skills Development plan linked to the relevant Sectoral Training Authorities and Labour Activation Program(LAP) being run by the Department of Labour
4. Monitoring and Evaluation of localization; job creation and enforcement of BBBEE codes on all Service Providers
5. The Service Provider is responsible for the project management; oversight and supervision of the project and development of the properties.
6. The provision of services is subject to the following conditions:
 - 6.1 Internal Water Services: Is available from the N10 road. Application for a water connection must be done at the Directorate Civil Engineering Services and the applicant will be responsible for the normal connection fees (**Refer to Point 7 with regards to bulk water services**).
 - 6.2 Internal Sewer Services: Is not available (**Refer to Point 8 With regards to bulk sewer services**).
 - 6.3 Streets & Road Access: Is available from the N10 road and permission for access must be requested from the relevant national road authority. Only one road access will be allowed per erven. The cost for construction of the road access will be for the applicant.
 - 6.4 Storm Water: Outlet for storm water must be at eastern erven boundary. This cost will be for the applicant.
 - 6.5 Any Alterations of Internal Services: Any future alterations required of any internal services will be for the cost of the applicant & must be approved before hand by the Directorate Civil Engineering Services.



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- 6.6 Road Crossings: Where road crossings is required for connecting to existing services, or for alterations of services, or for the creation of new services, all such road crossings must be done by means of horizontal drilling, subject to the terms & conditions contained in the Directorate Civil Engineering Services standard condition and the cost will be for the applicant.
 - 6.7 Bulk Water Services: Sufficient capacity does not exist with regards to existing bulk water services.
 - 6.8 Bulk Sewer Services: No bulk sewer services are available and for that reason a internal sewer connection cannot be given. A Conservancy Tank will be allowed, subject to the terms and conditions contained in the standards terms of services of the Directorate Civil Engineering Services. The cost will be for the applicant.
 - 6.9 Capital Contribution: The applicant will be responsible for the normal capital contribution in respect to bulk services.
 - 6.10 Additional Requirements: Where additional engineering designs are required, it will be at the expense of the applicant. Where existing services cross the erven, servitude must be registered in favour of the municipality, 3 meters on both sides of the center line of the relevant services. Sufficient access to the servitude must be ensured at all times. Where the registration of servitude is required, the cost will be for the applicant.
 - 6.11 Before any services are constructed engineering designs must be submitted to the Dawid Kruiper Municipality.
 - 6.12 Erf 12943 is correctly zoned and is suitable for the intended purpose.
 - 6.13 The approximate 500 hectares adjacent must be subdivided and rezoned from Erf 1. The Service Provider is responsible for the costs thereof. The Service Provider can only use the property for the purposes as intended in term of this SLA. The Service Provider is responsible to ensure that the property possesses the correct zoning for the intended use.
 - 6.14 The Service Provider must for his own account determine whether an Environmental Impact Assessment (EIA) is required and if this is the case the Service Provider is responsible for the costs and obtaining the necessary IEA.
 - 6.15 A 11 kV line is in the area of the proposed development. A transformer is, however not available. The Service Provider is responsible for the cost pertaining to the provision of the necessary transformer.
 - 6.16 The Service Connections must be done from a point and on a route as agreed upon by the relevant Directorates.
7. The development of the properties is subject to the following conditions:
- 7.1 The handing in of complete building plans for approval before the development take place.
 - 7.2 The conditions of the Councils' Town Planning Scheme.
 - 7.3 The condition of the National Building Regulation & Standards Act.
 - 7.4 Further conditions may be imposed when the building plans are handed in.



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Annexure C: Sale of Property& Penalties

This project is wholly funded by the Service Provider and is the Service Provider responsible for obtaining the necessary funding for the proposed developments.

The landfill site on Erf 12943, Hondejag Industrial Area, must be developed within two years of the signing of the purchase agreements; if such development does not take place in the period determined the property will revert back to Council. The Service Provider will be responsible for the costs involved in transferring the property back to Council.

The Development of a High Hazardous Eco-Center on a piece of land, approximately 500 hectares and situated adjacent to Erf 12943 in the Hondejag Industrial Area, within a period of 5 years from the date of signing the purchase agreement for the property. If such development does not take place in the period determined, the property will revert back to Council. The Service Provider will be responsible for the costs involved in transferring the property back to Council.

In case of the development of the properties not occurring and the properties reverting back to the Municipality the Service Provider will forfeit all monies paid to the Municipality.

Annexure D: Pricing

The properties can be purchased by one of the following methods:

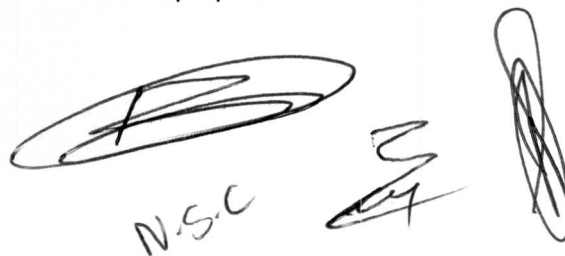
1. By means of bank guarantee. The bank guarantee must be provided to the Municipality within thirty days after the signing of the Service Level Agreement. The bank guarantee must provide for interest of 10% on the outstanding amount due to the Municipality. The interest must be calculated from the date of the signing of the purchase agreement until one day after the registration of the property in the Deeds Office;

or

2. By cash which is payable on the date of the signing of the purchase agreement. In this case the purchase agreement must be signed within a period of two month after the signing of the Service Level Agreement.

The purchase price of the properties are as follows:

1. Erf 12943 (34 hectares) R2 400 000.00 (Two million four hundred thousand Rand)(VAT and 5% administrative costs excluded). Furthermore the Service Provider will pay the Council, annually, 5% (five percent) equity on the netto income ensuing from operating the proposed development. This equity will escalate with 0.5% (half a percent) every five years from the implementation of the equity. This does not include payment for the municipal services provided to the properties.

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The Service Provider will pay, within thirty days after the signing of the Service Level Agreement, 10% (ten percent) of the purchase price.

2. 500 hectares adjacent to Erf 12943 R2 600 000.00(Two million six hundred thousand Rand)(VAT and 5% administrative costs excluded).

The Service Provider will pay, within thirty days after the signing of the Service Level Agreement, 10% (ten percent) of the purchase price. The outstanding amount is payable within two month after the successful completion the the land use changes.


N.S.C 