

**SERVICE LEVEL AGREEMENT**

ENTERED INTO BETWEEN

**DAWID KUIPER MUNICIPALITY**

(hereinafter referred to as "The Municipality or DKM")

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

AND

**BIGEN AFRICA SERVICES (PTY) LTD**

(Registration Number: 1999/010974/07)

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

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



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SLA between Dawid Kruiper Municipality and Bigen Africa Services (Pty) Ltd for Refurbishment and Upgrading of Kameelmond Wastewater Treatment Works

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ANNEXURE A.....

ANNEXURE B. ....

ANNEXURE C.....

ANNEXURE D .....


**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 **"Effective Date"** means **09 April 2019**;
  - 1.3.5 **"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;
  - 1.3.6 **"Equipment"** means any computer equipment, training equipment and/or any equipment utilized by Service Provider in the delivery of the Services;
  - 1.3.7 **"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;
  - 1.3.8 **"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;
  - 1.3.9 **"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;
  - 1.3.10 **"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;
  - 1.3.14 **"Service Provider"** means Bigen Africa Services (Pty) Ltd registered under the laws of the Republic of South Africa under number 1999/010974/07.

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- 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.



- 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 will be responsible for the planning, design, tender phase, project management including construction monitoring for the refurbishment and upgrading of the existing Kameelmond Wastewater Treatment Works (KWWTW) ("the Project").
- 2.2 The DKM and the Service Provider hereby agree to the delivery of this priority objective to provide to the Municipality with exceptional skills to improve the current existing Kameelmond Wastewater Treatment Works according to the set criteria and the best as more fully set out in the Annexures attached hereto 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 in its sole discretion and for any reason whatsoever, 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 paid for by the Municipality up until the point of cancellation, plus a surcharge of one tenth of the full fee which would have been payable to the consulting engineer had his services been completed in terms of his engagement.



- 4.4. Tender Duration reflected 30 June 2021 but this was prior to actual work duration, thus this clause on Tender document (12. Timeframes) is therefore amended by this Service Level Agreement according to the actual planned timeframes.

**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.
- 5.2. The SLA is working document and thus review of priority matters shall be conducted quarterly/or when a need arises and any changes made will be reduced to writing.

**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 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 countries and provinces in which Services are conducted.
- 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 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 employees required to provide the Services as set out in this Agreement.
- 7.4. From the Effective Date, the Service Provider shall provide the Municipal Representative with a monthly project report, which shall be provided to the Municipal Representative by the 15<sup>th</sup> of each month and shall include a brief activity and progress report on the Services to be provided.

**8. SERVICE PROVIDER OBLIGATIONS**

- 8.1. **Undertakings**

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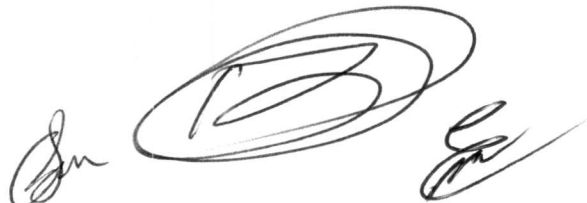
- 8.1.1 Without derogating from the generality of clause 8.2, the performance of the Services by the Service Provider to the Municipality shall be dependent upon the Service Provider meeting all requirements prescribed by the Municipality.
- 8.1.2 In addition to the above, the performance of the Services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

The Dawid Kruiper Municipality Bid TN094/2018 indicated that a minimum insurance cover of R10million should be available at implementation of this Project however the Service Provider shall provide cover of be twice the contract amount.

## 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.
- 8.2.1. The Service Provider shall conduct themselves in a manner of high professionalism, with high work ethics, etc.
- 8.2.3. The Service Provider shall comply with all Governing Standards of ECSA, Engineering Affiliations and National Treasury Regulations including Municipal policies that may be applicable under this Agreement.

## 9. FEES AND REMUNERATION



**9.1. Payment**

- 9.1.1 Any and all payments required to be made in terms of this Agreement shall be made in accordance with the rates set out below in **Annexure C: Cash flow projections**.
- 9.1.2 The Municipality shall process all payments for the Service Provider within an acceptable time of 30 days and according to the Agreement signed by the Municipality with the Department of Water and Sanitation (Grant Terms and Conditions).

**9.2. Payment Specifics**

- 9.2.1 The Municipality shall pay progress payments to the Service Provider as set out in Annexure C for all completed deliverables as per this Agreement
- 9.2.2 Out of the remuneration provided in this clause, the Service Provider shall be responsible for its own payroll expenses such as salaries, wages, etc. The Service Provider shall, on reasonable advance notice from the Municipality, prove to the satisfaction of the Municipality that it is duly and promptly discharging all its responsibilities which rest upon it in law in respect of its employees and agents and indemnifies the Municipality against any liability which the Municipality may incur as a result of the Service Provider's failure to discharge such responsibilities.

**9.3. Payment terms**

- 9.3.1 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 thirty (30) days of receipt of a Tax Invoice from the Service Provider requesting such payment.
- 9.3.2 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.

**9.4. Cancellation, Sub-standard Services**

- 9.4.1 The Service Provider undertakes to deliver the Services in accordance with professional, high quality standards. As such, it acknowledges that the Municipality have, and will incur substantial costs in the preparation of the Services. 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

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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.

#### **10. STATUS OF SERVICES**

- 10.1. Nothing contained in this Agreement or otherwise shall authorize, empower or constitute the Service Provider as an agent of the Municipality in any manner; authorize or empower the Service Provider to assume or create an obligation or responsibility whatsoever, express or implied, on behalf of or in the name of the Municipality; or authorize or empower the Service Provider to bind the Municipality in any manner or make any representation, warranty, covenant, agreement or commitment on behalf of the Municipality.
- 10.2. This Agreement is for the delivery of the Service Provider's Services as specified under this Agreement and nothing in this Agreement shall be deemed or construed to create, or have been intended to create, a partnership, joint venture, employment, franchise, agency or other similar relationship between the Parties hereto. In furtherance of and without limiting the foregoing, the Service Provider shall not hold itself out to be the Municipality and the Service Provider is not and shall not hold itself out to be or be deemed to be the legal representative or agent of the Municipality, for any purpose whatsoever; and the Service Provider shall not act or bind the Municipality in any way or represent that the Municipality is in any way responsible for the Service Provider's acts or omissions.

#### **11. TERMINATION, CANCELLATION AND BREACH OF AGREEMENT**

- 11.1. 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.
- 11.2. The Service Provider may terminate this Agreement by giving 30 (thirty) calendar days' notice to the Municipality, provided that nothing shall preclude either Party from terminating this Agreement summarily for any cause recognized in law as sufficient.
- 11.3. The Service Provider may cancel this Agreement prior to its termination date in its sole discretion and without notice if the Municipality fails to pay for Services rendered on a continuous basis.





- 11.4. 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.
- 11.5. 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:
- 11.5.1 has abandoned this Agreement or breached a material term or condition of this Agreement;
  - 11.5.2 has breached any other term of condition of this Agreement and has failed to remedy the breach within a period of 2 (two) days after receiving written notice of the breach from the Municipality;
  - 11.5.3 has persistently or flagrantly neglected to carry out its obligations under this Agreement;
  - 11.5.4 has committed an act of gross negligence or incompetence; or
  - 11.5.5 has assigned this Agreement or any part thereof without the consent in writing of the Municipality.
- 11.6. 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, and failing such agreement shall not exceed such amounts as may be due and payable for Services rendered in compliance with this Agreement, up to the date that this Agreement is terminated.
- 11.7. 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.

## 12. CONFIDENTIALITY

- 12.1. 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. The Service Provider and its employees, contractors or agents, will maintain the utmost secrecy in respect of all such information.

## 13. MUNICIPAL PROPERTY

- 13.1. 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.



**14. INTELLECTUAL PROPERTY**

- 14.1. Intellectual Property rights in material developed for the Municipality in terms of the Services specified in Annexure A shall vest in the Municipality once fully paid for. 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.
- 14.2. Systems, documents, etc. developed for DKM with external parties (Third parties) shall be solely property of DKM with all rights.

**15. CONTRACT MANAGEMENT**

**15.1. 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.

**15.2. 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.

**16. REPORTING**

- 16.1. 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.
- 16.2. 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.

**17. WARRANTIES, INDEMNITIES AND LIMITATION OF LIABILITY**

- 17.1. 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 the Municipality and, in so far as any of its duties are discretionary, act fairly between the Municipality and third parties.
- 17.2. 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. The Service Provider's limitation of liability will be limited to twice the value of this Agreement.

- 17.3. 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.
- 17.4. The Service Provider is responsible to monitor that all sureties and warranties provided by the Contractor are valid and appropriate for the contingent of work provided, until the final project handover to the Municipality.
- 17.5. The Municipality will notify the Service Provider during the Defects Liability Period of any defects identified that requires urgent remedial work.

**18. FORCE MAJEURE**

- 18.1. 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.
- 18.2. 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.
- 18.3. 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.
- 18.4. 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.
- 18.5. 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:
  - 18.5.1 the inconsistent and/or inadequate supply of electricity by the official South African energy supplying body;
  - 18.5.2 war, revolution, civil commotion, 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;
  - 18.5.3 Industrial Action by workers, agents or employees;



18.5.4 Earthquakes, floods, fires or other natural physical disasters.

18.6. The mere shortage of funds, labour, materials or utilities shall not constitute Force Majeure unless caused by circumstances, which are themselves, Force Majeure.

## 19. ARBITRATION

19.1. 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 arbitration in accordance with the provisions of the Arbitration Act, Act No 42 of 1965, as amended and as amplified or limited by this clause.

19.2. Any Party may demand that a dispute be referred to arbitration by giving written notice to that effect to the other Party.

19.3. 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.

19.4. The arbitration shall be held:

19.4.1 In Upington, Northern Cape province in the English language;

19.4.2 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.

19.4.3 The Parties irrevocably agree that the decision in arbitration proceedings:

19.4.3.1 shall be final and binding upon the Parties;

19.4.3.2 shall be carried into effect; and

19.4.3.3 may be made an order of any court of competent jurisdiction.

19.5. 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.

## 20. DOMICILIA CITANDI ET EXECUTANDI

20.1. 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 7061  
Reference: Mduduzi Gregory Mnganga  
Email: [mduduzi.mnganga@dkm.gov.za](mailto:mduduzi.mnganga@dkm.gov.za)

**Service Provider**

Physical address: Allan Cormack Street, The Innovation Hub, Persekor, Pretoria 0087  
Postal address: PO Box 29, The Innovation Hub, Persquor, Pretoria 0087  
Telephone: 012 842 8700  
Reference: Tafadzwa Mukwena  
Email: [Taf.Mukwena@bigengroup.com](mailto:Taf.Mukwena@bigengroup.com)

- 20.2. 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.
- 20.3. 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 7th (seventh) day from the deemed receipt of the notice by the other Party.
- 20.4. 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 7th (seventh) Business Day after posting, unless the contrary is proved.
- 20.5. 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.

**21. SEVERABILITY**

- 21.1. 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.

**22. COSTS**

- 22.1. 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.

**23. ENTIRE AGREEMENT**

- 23.1. 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.

**24. VARIATION AND CANCELLATION**

- 24.1. 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.

**25. INDULGENCES**

- 25.1. 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.

**26. GOVERNING LAW**

- 26.1. 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.

**27. CESSION AND ASSIGNMENT**

- 27.1. 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 the Municipality.

**28. CURRENCY**

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

**29. CONTROLLING LANGUAGE**

- 29.1. 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





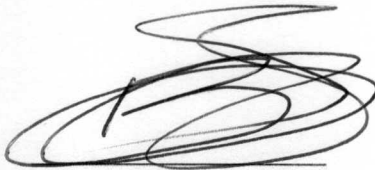
*SLA between Dawid Kruiper Municipality and Bigen Africa Services (Pty) Ltd for Refurbishment and Upgrading of Kameelmond Wastewater Treatment Works*

---


other language into which this Agreement has been translated, the English language version shall have the controlling authority.

Three handwritten signatures in black ink are located at the bottom of the page. The first signature on the left is a cursive 'Jm'. The middle signature is a large, stylized circular mark containing the letters 'IB'. The third signature on the right is a cursive 'Jm'.

THUS DONE AND ENTERED INTO AT UPINGTON ON THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_ IN THE PRESENCE OF THE UNDERSIGNED WITNESSES:

1. 

  
ELIAS MOYA  
MUNICIPAL MANAGER

2.   
\_\_\_\_\_

THUS DONE AND ENTERED INTO AT Peetvora ON THIS THE 1<sup>st</sup> DAY OF August 2019 IN THE PRESENCE OF THE UNDERSIGNED WITNESSES:

1.   
\_\_\_\_\_

  
Tafadzwa Mukwena  
BIGEN AFRICA SERVICES  
SERVICE PROVIDER

2. Rudmerwe  
\_\_\_\_\_

**Annexure A: Services Scope**

The Dawid Kruiper Local Municipality requires the services of a Professional Service Provider (PSP) to conduct the planning, design, tender phase, project management including construction monitoring for the refurbishment and upgrading of the existing Kameelmond Wastewater Treatment Works (KWWTW) ("the Project"). This treatment works is Upington's primary wastewater treatment facility and also serves to treat significant quantities of effluent discharged by tanker trucks from surrounding settlements. The Service Provider should note that the full treatment capacity of the Kameelmond WWTW must be kept available throughout the duration of the construction activities on the Project.

The scope entails providing a technically sound process design for a wastewater treatment works with a final 20 year design capacity of 21,000kl/day and in accordance with a peak wet weather factor of 2, the works should be able to handle a hydraulic flow of 42,000kl/day. The effluent discharged into the Orange River and the sludge produced should be in accordance with National Standards.

- Refurbishment and Upgrading of the Unit Processes indicated in figure 1, inclusive of civil, mechanical and electrical design to ensure that the components are fully functional and perform at their design parameters to accommodate future flows.

The bottom of the page contains several handwritten signatures and initials. On the left, there is a signature that appears to be 'Jm'. In the center, there is a large, stylized circular signature. To the right of this, there is another signature that looks like 'Jr'. Further to the right, there are the initials 'TM GN' and 'Hudm' written in a cursive hand.

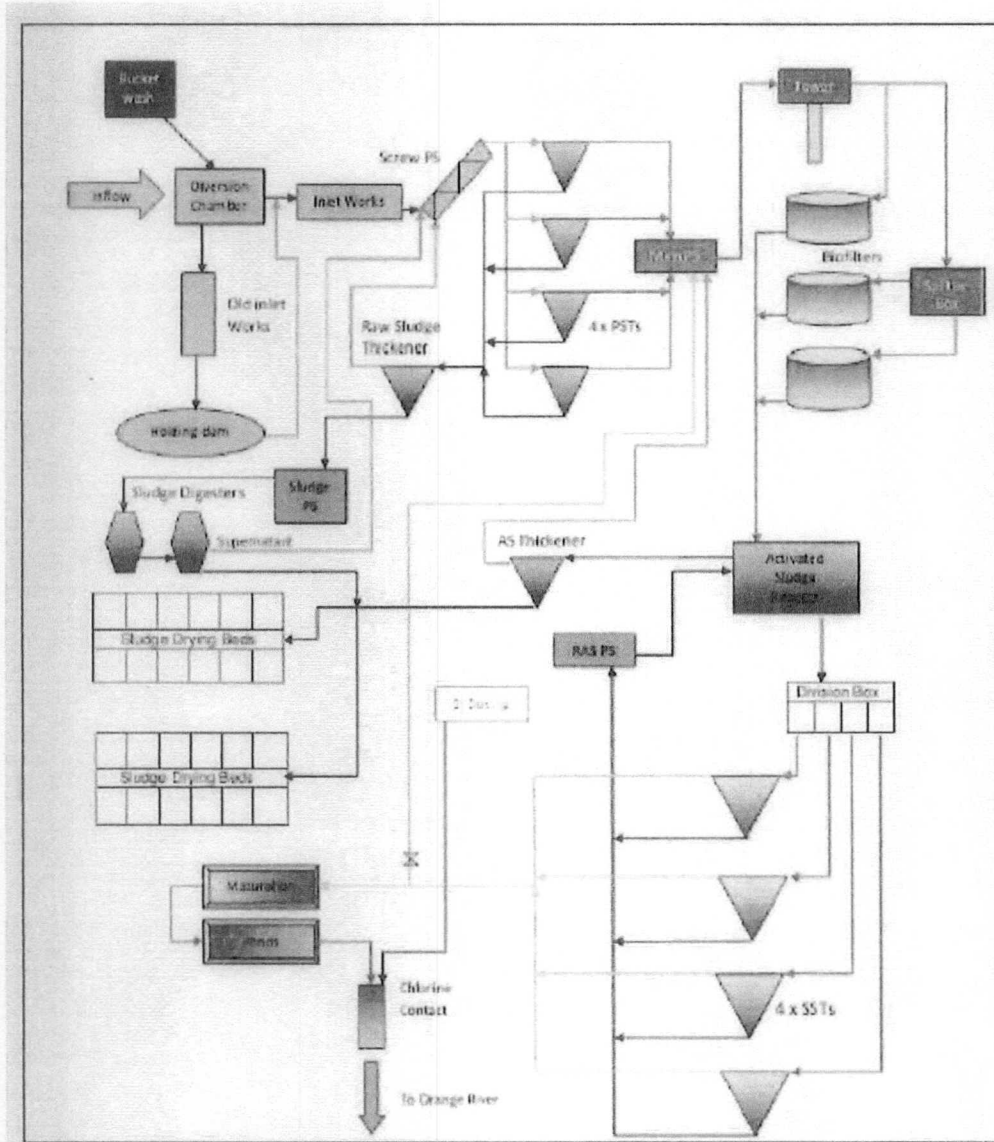


Figure 1: Unit Process

*[Handwritten signatures and initials]*

**Annexure B: Service Provider Deliverables:**

1. Project Planning, Feasibility and Cost Estimation
2. Conduct (or appoint a suitable sub-consultant) for the necessary Surveys, Geohydrological Investigations, and Geotechnical Investigations.
3. Submit and manage the Environmental Authorization Application: conduct a detailed Environmental Impact Assessment on behalf of the Dawid Kruiper Municipality for the increased treatment capacity of the Kameelmond WWTW.
4. Submit and manage the Water Use Licence Application: compile a detailed Water Use Licence Application on behalf of the Dawid Kruiper Municipality for the increased treatment capacity of the Kameelmond WWTW.
5. Project Design (as per design principles prescribed by the Redbook: Guidelines for Human Settlement Planning and Design).
6. Procurement Documentation: Prepare construction tender documents for the Refurbishment Contract and Upgrading Contract inclusive of:
  - General Conditions of Contract
  - Special Conditions of Contract as dictated by the Client
  - Bill of Quantities for civil, mechanical and electrical works required for the project.
  - Detailed civil, mechanical and electrical specifications
  - Detailed civil drawings for pipelines, inclusive of long sections which will indicate valve positions, etc.
  - Detailed civil drawings for pump stations and settling tanks as well as any new works envisaged.
  - Detailed mechanical drawings for pump arrangements, connector piping, control and isolating valve arrangements, etc.
  - Detailed electrical drawings inclusive of Single-line diagrams, cabinet layout for switchgear, domestic power at pump stations and any upgrades required for the mains supply.
  - Detailed instrumentation diagrams / drawings for measurement of flow, pressure, pump and motor bearing temperatures, etc.
  - Detail drawings, P&ID diagrams, etc. for all components to be refurbished or constructed.
  - Arrange and chair of all scheduled meetings as required.
  - Compile technical evaluation report of construction tender documents received.

  
TW SM  
Hudm



7. Attend Municipal tender committee meetings (Tender Specification Committee, Tender Evaluation Committee, Tender Adjudication Committee).
8. Full time construction monitoring (Level): the Service Provider shall maintain a full time presence on site to constantly review samples of materials and work procedures, for conformity to contract documentation, and review completed work prior to covering up. The Client will require a qualified person (Engineers Representative) to maintain a full time presence on site. Said person must have a National Diploma in Civil Engineering with at least 7 years work experience in the civil engineering environment and must reside in Uppington for the duration of the project. The Project leader (to whom the Engineers Representative reports) should visit the works for a minimum of two (2) times a week for four (4) hours per visit. The frequency may vary during the course of the project, according to the demands of the project.
9. Appoint a qualified Health & Safety representative: Said person must be a member of the Institute of Occupational Health & Safety (SAIOSH), proof of membership to be included. The said person should visit the works for a minimum of once a week for eight (8) hours per visit.
10. Development of maintenance manuals for comprehensive future maintenance (electrical, civil, mechanical). Soft copies and four (4) hard copies to be submitted.
11. Prepare a comprehensive Standard Operating Procedure for the daily operations of the WWTW. Soft copy and four (4) hard copies to be submitted.
12. Development of a comprehensive Air Quality Management Plan. Indicative of how emissions will be measured and controlled to minimize the effect on the surrounding communities. Soft copy and four (4) hard copies to be submitted.
13. Development of a comprehensive Sludge Management Plan. This should be accompanied by a community awareness campaign proposal and marketing strategy for revenue collection (waste to money). Soft copies and four (4) hard copies to be submitted.
14. Compile an asset registry for schemes prepared under the Project. Soft copies and four (4) hard copies to be submitted.
15. Skills transfer and training: The Service Provider should make provision for skills transfer and training of the project management departmental, electrical and mechanical departmental, including the wastewater treatment facility staff while rendering their service under this Project. The Service Provider is expected to provide mentor support to municipal candidate engineering technicians on required basis to review their project reports for submission to ECSA as well as





provide support for municipal interns requiring experience. The key training areas are shown below;

- Design Development
- Design Software Utilised
- Contract Administration and Supervision
- Plant operations

16. Provide Drawings: drawings must be delivered in DXF, DWG and four (4) as built hard copies at Close out.

17. Commissioning and Close-Out: Services to include the Final Inspection at the termination of the Defects Liability Period, the preparation of the Final Completion Certificate and the Final Payment Certificate.

18. Reporting will include the following:

- Inception Report
- Preliminary Design inclusive of Refurbishment and Upgrading
- Final Design Report for Refurbishment
- Final Design Report for Upgrading
- Monthly Progress Report: Refurbishment and Upgrading: A progress report to accompany each invoice submitted as part of the Dawid Kruiper Municipality's Policy on Infrastructure Procurement & Delivery Management. The monthly progress report should be inclusive of a cash flow projection, labour statistics and programme of works.
- Close-out Report: Complete the project close-out including necessary documentation to facilitate effective completion.

**19. Approvals:**

All Service Provider Deliverables require formal approval from the Municipality this includes all reports, contractor tender documents, manuals, drawings and registers.

TM SN  
Hudm  
EJ



**Annexure C: Cash flow and Implementation plan**

**1. Cashflow - Annexure C1**

Any and all payments required to be made in terms of this Agreement shall be made in accordance with the rates set out in the approved cash flow projection, the ECSA Fees guidelines and implementation plan.

**2. Proposed Methodology – Annexure C2**

The implementation plan submitted as cashflow together with the proposed methodology according to the tender submission shall be used as the guiding tools for this project implementation.

**3. Project Management Structure – Annexure C3**

The Municipality accept the appointment of Mr Mukwena as the contract manager (project leader) for the implementation of the project on the grounds that he meets all the requirements as stipulated on the tender. CV must be attached here.

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TM SN  
Bwcm



| Description               | Period     | Q3A Municipality       |                        | Q3B Funding             |                         |
|---------------------------|------------|------------------------|------------------------|-------------------------|-------------------------|
|                           |            | Cost, incl. GR/RT      | Cost, excl. GR/RT      | Cost, incl. GR/RT       | Cost, excl. GR/RT       |
| Present-year expenditures | 2019-2020  | \$1 (5,833,943)        | \$1 (5,833,943)        | \$1 (4,017,034)         | \$1 (5,831,321)         |
| Present-year expenditures | 2020-2021  | -                      | -                      | \$1 (20,833,430)        | \$1 (24,630,799)        |
| Present-year expenditures | 2021-2022  | -                      | -                      | \$1 (9,136,951)         | \$1 (21,630,681)        |
| Present-year expenditures | 2022-2023  | -                      | -                      | \$1 (9,339,022)         | \$1 (16,631,824)        |
| Present-year expenditures | 2023-2024  | -                      | -                      | -                       | -                       |
| <b>Sub-total</b>          | <b>Net</b> | <b>\$1 (5,833,943)</b> | <b>\$1 (5,833,943)</b> | <b>\$3 (49,004,435)</b> | <b>\$1 (74,122,624)</b> |
| <b>FedEx</b>              |            |                        | <b>29 (323,825)</b>    |                         | <b>87 (255,581)</b>     |

**Annexure D : Performance Management**

The Service Providers performance and deliverables will be measured against the timeframes stipulated in the implementation plan.

*Signature*

*Signature*

*Signature*

TM SIN  
Kwadm

NOTULE : TENDERTOOKENINGSKOMITEEVERGADERING GEHOU OP  
DONDERDAG, 04 APRIL 2019

Komiteeledede

|                                      |   |                                |
|--------------------------------------|---|--------------------------------|
| Hoof Finansiële Beampte              | - | Voorsitter                     |
| Direkteur Gemeenskapdienste          | - | Afwesig met verlof             |
|                                      |   | Sekundi : Hoof Verkeersdienste |
| Direkteur Siviele Ingenieursdienste  | - | Pos vakant                     |
| Direkteur Ontwikkeling en Beplanning | - | Pos vakant                     |
| Bestuurder Voorsieningskanaalbestuur |   |                                |

1. VERKLARING VAN BELANGE : (TTK) : 3.1.3.3.2.29 : (DIREKTORAAT  
KORPORATIEWE DIENSTE)

1/04.1/2019 (TTK) BESLUIT

Dat kennis geneem word dat die vaste lede van die Komitee en die lede op uitnodiging verklaar het dat hulle geen belang by die items onder bespreking het nie.

2. TENDER TN094/2018: APPOINTMENT OF A PROFESSIONAL CONSULTING  
ENGINEERING FIRM FOR PLANNING, DESIGN AND PROJECT  
MANAGEMENT : UPGRADING AND REFURBISHMENT OF THE  
KAMEELMOND WASTEWATER TREATMENT WORKS : (TAC) : 8.2.2.2.94  
(2018) : (DIRECTORATE CIVIL ENGINEERING SERVICES)

2/04.1/2019 (TAC)

On proposal of the Manager Supply Chain Management Services, seconded by the Chief Traffic Services, it is –

RESOLVED

1. That Bid TN094/2018 “APPOINTMENT OF A PROFESSIONAL CONSULTING ENGINEERING FIRM FOR PLANNING, DESIGN AND PROJECT MANAGEMENT: UPGRADING AND REFURBISHMENT OF THE KAMEELMOND WASTEWATER TREATMENT WORKS BASED ON PERFORMANCE not be awarded to BVi Consulting Engineers even though they obtained the highest price points according to the Council’s Supply Chain Management policy as they did not submit the necessary required proof of similar previous work, which was stipulated as the commissioning of a wastewater treatment works of at least 15 Megaliters or above.
2. That it be noted that no allowance was made for service providers that completed oxidation pond systems or a wastewater treatment works below 15 Megaliters. The Tender Adjudication Committee could not take the risk of appointing a service provider with no similar previous work experience as this project is of a highly technical and specialised nature.



3. That it be noted that the Tender Adjudication Committee did not agree with the functionality score allocated by the Tender Evaluation Committee as the functionality criteria did not make provision for a 0-score to be awarded to a tenderer and that the value 1 agreed with the values as advertised in the tender document under paragraph 8 Table 1.
4. That Bid *TN094/2018 "APPOINTMENT OF A PROFESSIONAL CONSULTING ENGINEERING FIRM FOR PLANNING, DESIGN AND PROJECT MANAGEMENT: UPGRADING AND REFURBISHMENT OF THE KAMEELMOND WASTEWATER TREATMENT WORKS BASED ON PERFORMANCE"* be awarded to Bigen Africa Services for the amount of R16,880,140.48, as they presented the necessary required expertise and obtained the highest points according to the functionality evaluation in terms of section 8 the tender specifications and the second highest price points in terms of the Councils Supply Chain Policy
5. That the following reasons why the bid was awarded to the second highest bidder be noted:
  - 5.1. That Bigen Africa Services has submitted the required proof of works successfully completed and commissioned as required by the bid specifications and that makes them the only eligible professional service provider for this specialized project.
  - 5.2 Bigen Africa Services has commissioned eleven (11) WWTW with biological nutrient removal (BNR) reactors including mechanical sludge dewatering units, biological trickling filters, digesters incorporating gas harvesting for heating purposes, primary and secondary sedimentation tanks and chlorine contact tanks and channels.
  - 5.3 They have significant experience in the numerous biological nutrient removal process modes; Modified Ludzack-Ettinger, Johannesburg, 3-stage Phoredox as well as UCT and have the proficiency on how to configure these modes for specific and optimal nutrient removal. The above-mentioned BNR reactors are subjected to aeration and selecting the correct type of aeration as this has a major impact on the electricity requirements of a WWTW. In addition to the project list submitted reflecting their involvement in both surface aeration and fine bubble diffused aeration (FBDA) they have also published a research paper on the comparative cost evaluation on the above-mentioned aeration types.
6. That the bid be funded per function 0067 item 6685 and R13,768,644 and by the RBIG allocation.
7. The project will be completed within three (3) years.

8. That it be noted that the following bidders did not meet the functionality requirements of 70%: The PPPFA Section 5(6) states clearly that bids who do not meet the functionality criteria are not acceptable, these bidders were therefore disqualified:
- Bergstan South Africa Consulting and Development Engineers
  - CSM Consulting Services
  - IX Engineering
  - Africoast Consulting Engineers
9. The following bidders were non-responsive:
- Advanced Consulting Engineers: Did not submit complete project plan as requested
  - Kazia Engineering: No project plan submitted
  - Delta Built Environment Consultants: Did not submit complete project plan as requested
  - NEP Consulting Engineers: Did not submit complete project plan as requested
  - UWP Consulting: Did not submit complete project plan as requested
  - Servinet Consulting Engineers: Did not submit complete project plan as requested
  - Element 2030: Did not submit complete project plan as requested
  - Aurecon South Africa: Did not submit complete project plan as requested
  - PKT Consulting Engineers: Did not submit audited financial statements
  - Nurizon Consulting: Did not submit complete project plan as requested
10. That it be noted that the tax matters of the Bidder mentioned in paragraph 4, is, on 2019.04.04, in order according to the Central Supplier Database.

Approved :

  
MUNICIPAL MANAGER

Die Notule van die Tendertoekenningskomitee is goedgekeur en bekragtig deur die Tendertoekenningskomitee op 'n vergadering gehou op \_\_\_\_\_

\_\_\_\_\_  
VOORSITTER

\_\_\_\_\_  
DATUM

[illegible]





## MUNISIPALITEIT DAWID KRUIPER

3 April 2019

MEMORANDUM AAN:

Munisipale Bestuurder

AANWYS VAN SEKUNDILID VIR TENDERTOEKENNINGSKOMITEE : 2019.03.06

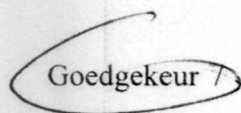
Die Direkteur Gemeenskapsdienste is op 2019.04.04 afwesig met amptelike sake.

Toestemming word hiermee versoek dat die Hoof Verkeersdienste as sekundi, met volmag, in die plek van die Direkteur Gemeenskapsdienste by die vergadering van die Tendertoekenningskomitee van 2019.04.04 mag optree.



J MCDULING

HOOF ADMINISTRATIEWE BEAMPTTE (KOMITEES)



Goedgekeur / Afgekeur

  
MUNISIPALE BESTUURDER