

Termination of this Agreement for any cause shall not release a party from any liability which at the time of termination has already accrued to such party or which thereafter may accrue in respect of any act or omission prior to such termination.

17.5 Entire Agreement

This Agreement constitute the entire agreement between the parties and, save as otherwise expressly provided, no modification, amendment or waiver of any of the provisions of this Agreement shall be effective, unless made in writing specifically referring to this Agreement and duly signed by or on behalf of the parties.

17.6 Assignment

This Agreement shall be binding to the parties and to their respective successors and assigns; provided that neither party shall be entitled to cede its rights and delegate its obligations under this Agreement without the prior written consent of the other party.

17.7 Further Assurance

Each party shall co-operate with the other party and execute and deliver to the other party such other instruments and documents and take such other actions as may be reasonably requested from time to time in order to carry out, evidence and confirm its rights and the intended purpose of this Agreement.

17.8 Good Faith

Each of the parties undertakes with the other to do all things reasonably within its power, which are necessary or desirable to give effect to the spirit and intent of this Agreement.

17.9 Jurisdiction

17.9.1 This Agreement shall be governed by and construed in accordance with the laws of the Kingdom of Swaziland.

17.9.2 In the event of proceedings arising out of or in connection with this Agreement being instituted in the ordinary courts of law, such proceedings shall be instituted in the High Court and the parties consent to the jurisdiction of the High Court of Swaziland.

17.10 Council Workshop/Office Space Rental

The Service provider shall enter into a Lease agreement with Council to utilize Council Workshops.

18 ADDRESSES

18.1 The parties choose for the purposes of this Agreement the following postal and email addresses:

MUNICIPAL COUNCIL OF MBABANE:

Physical address : Civic Offices, 1 Mahlokohla Street
Postal Address : P.O. Box 1, Mbabane H100
Email Address : mncedisim@mbacity.org.sz

Name of Service Provider.....:

Physical Address :

Postal Address :

Email Address :

18.2 Any legal process to be served on either of the parties may be served on it at the address specified for it in Clause 18.1 and it chooses that address as its domicile citadi et executadi for all purposes under this Agreement.

18.3 Any notice or other communication to be given to either of the parties in terms of this Agreement shall be valid and effective only if it is given in writing,

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provided that any notice given by telefax shall be regarded for this purpose as having been given in writing.

- 18.4 A notice to either party which is sent by registered post in a correctly addressed envelope to the address specified for it in Clause 18.1 shall be deemed to have been received (unless the contrary is proved) within 5 (five) business days from the date it was posted, or which it is delivered to the party by hand at that address shall be deemed to have been received on the day of delivery, provided it was delivered to a responsible person during ordinary business hours.
- 18.5 Notwithstanding anything to the contrary in this Clause 18, a written notice or other communication actually received by either the Council's designated Representative or the Service Provider's Representative, as the case may be, (and for which written receipt has been obtained) shall be adequate written notice or communication to it notwithstanding that the notice was not sent to or delivered at its chosen address.
- 18.6 Either party may by written notice to the other party change its address for the purposes of Clause 18.1 to any other address (other than a post office box number) provided that the change shall become effective on the 5th (fifth) business day after the receipt of the notice.

19 COSTS

- 19.1 Any costs, including attorney and own clients costs, incurred by either party arising out of the other party breaching any of the provisions of this Agreement, shall be borne by the party in breach.

**THUS DONE AND SIGNED BY THE COUNCIL AT ON THIS..... DAY OF
..... 2016**

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AS WITNESSES:

1

.....

FOR AND ON BEHALF OF COUNCIL

2

**THUS DONE AND SIGNED BY THE SERVICE PROVIDER AT.....ON THIS ... DAY
OF..... 2016**

AS WITNESSES:

1

.....

FOR AND ON BEHALF OF SERVICE PROVIDER

2

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APPENDIX A

PERFORMANCE AND STANDARD OUTPUT

DESIRED OUTCOMES	PERFORMANCE STANDARDS	MEASUREMENT TOOLS	PERFORMANCE RATING
1. Ensure paved road surfaces are safe, smooth, stable, and sealed;	<ul style="list-style-type: none"> Patches that provide good rideability to drivers. Execute customer complaints as per section 5 of this agreement. 	<ul style="list-style-type: none"> Approved and signed snag list by Service Provider and Maintenance Engineer. Customer complaints register 	20
2. Provide quality maintenance works	<ul style="list-style-type: none"> Daily inspection of the roads and report to client Inspection of the assigned road after rains or storms and report to client Employ qualified, trained Forman/supervisor with accredited tertiary qualifications. Use correct equipment and materials for the patching of potholes Provide a 	<ul style="list-style-type: none"> Record of inspection reports submitted to client daily. List of staff/ staff contacts with certificates 	30

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DESIRED OUTCOMES	PERFORMANCE STANDARDS	MEASUREMENT TOOLS	PERFORMANCE RATING
	reasonable guarantee period for pothole patching/ No recurrence of potholes on the same spot within 3 months.		
3. Reporting and progress meetings	<ul style="list-style-type: none"> Monthly meetings are held with the client Monthly reporting 	<ul style="list-style-type: none"> Minutes of Monthly meetings Proof of monthly reports sent by the 1st of each month. 12 monthly reports 	15
4. Comply with Council's supply chain management system	<ul style="list-style-type: none"> Ensure that purchase orders are issued for all works to be carried out. Issue Invoice of work completed within 7 days 	<ul style="list-style-type: none"> All work completed as per purchase orders issued No delayed payments due to insufficient documentation. Invoices issued with corresponding purchase orders 	10
5. Produce traffic management plan	<ul style="list-style-type: none"> Prepare a traffic management plan within a week of contract award. No accidents due to 	<ul style="list-style-type: none"> Traffic management plan report submitted 1 week after contract award. Incident reports 	15

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DESIRED OUTCOMES	PERFORMANCE STANDARDS	MEASUREMENT TOOLS	PERFORMANCE RATING
	improper traffic management onsite.		
6. Adherence to the Labour Law and Occupational Health Laws.	7. Adherence to Eswatini Business and Governance legislation	<ul style="list-style-type: none"> Refer to annexure B 	20
TOTAL			110

* *The minimum performance to qualify for renewal is an average 85% after the third year.*

** *Performances below 70% on your annual appraisal may lead to Council terminating the Contract with immediate effect.*

*** *Performance appraisals will be done annually.*

APPENDIX B

Ref. No. SLA	Document Description	Year			Comments
		1	2	3	
1.	Signed Employment Contracts/Agreements with employees				
2.	Health and Safety Representatives and Committee				
3.	Certificate of Incorporation				
4.	Valid Company Tax Compliance Certificate				
5.	ERS approved Monthly VAT remittance				
6.	Valid Company Trading License Certificate				

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Ref. No.	Document Description	Year			Comments
7.	Public Liability Insurance Policy				
8.	Valid Labour Compliance Certificate				
9.	Valid Eswatini National Provident Fund Compliance Certificate				
10.	Personal Protective Equipment (PPE) Policy				
11.	Health and Safety Policy				
12.	Training provided by the Service Provider to its employees (Customer service training)				

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