

Contractual and Service Level Agreement

between

ELECTROCUTS (Pty) Ltd

and

George Municipality

for

**BID NUMBER: FIN/013/2019 – READING OF WATER
AND ELECTRICITY METERS AND OTHER METER
RELATED SERVICES FOR A PERIOD OF THREE (3) YEARS,
FROM DATE OF APPOINTMENT**

George Municipality

Leon Wallace

Acting Director Financial Services

Telephone: +27 44 801 9031

Epos: lewallace@george.gov.za

**71 York Street, George, 6529
George, 6530**

PO Box 19, GEORGE, 6530

Electrocuts (PTY) LTD

Elaine Maritz

Executive Director

Tel: +27 11 403 3062

Cell: +27 83 567 2940

**LG03 Harrow Court 1, Isle of Houghton, 19,
33 Boundary Street, Houghton Estate**

**Postnet Suite 275, Private Bag x5, Norwood,
Johannesburg, 2117**

THIS AGREEMENT IS MADE BETWEEN

1. ELECTROCUTS (Pty) Ltd ("**ELECTROCUTS**")
and
2. George Municipality ("**THE CLIENT**")

WHEREAS :

- (a) **ELECTROCUTS** provides the reading of Water and Electricity meter and other meter related services for a period of three (3) years.
- (b) **ELECTROCUTS** and The Client have agreed that **ELECTROCUTS** will provide the following services
 - The tenderer will be required to read meters and provide meter related services for a three-year period.
 - The tenderer will only be paid for actual meter readings.
 - The tenderer will be penalised for non-performance
 - The tenderer must take into consideration that the number of meters may increase/decrease over the three-year period.
 - The tenderer must define his scope of work and must submit a tender implementation project plan.
 - The tenderer will be required to undertake the following functions and/or service:

Meter Reading Functions

The contractor will be required to adhere to the following actual reading ratio's

- 90% actual reading ratio at the end of the first (1st) contract year
- 95% actual reading ratio at the end of the first (2nd) contract year
- 95% actual reading ratio in the (3rd) contract year on a monthly basis

Penalties

- Penalties will be levied if the above ratios cannot be adhered to.
- Penalties will be levied at the following rate:
 1. **The average cost per meter reading x 2 x the number of meters that are not read.**
- The reading of Water and Electricity meters per route list.
- The taking of readings as per reading cycle, as determined by George Municipality.
- Proof reading or re-reading of meters as requested by the Municipality
- The supply and maintenance of any other electronic reading equipment that are compatible and can be integrated with the Samras DB4 Billing System, for example hand-held terminals.
- The opening of meters that are underground or inaccessible in order to get readings.
- Disconnection/Reconnection of electricity meters to obtain final/new readings of meters.
- Disconnection/Reconnection of water meters to obtain final readings of meters.
- The drying (pumping out) of manholes where meters are under water.

- The tenderer must issue a notice to consumers in cases where meters cannot be read during normal office hours.
- Installation of GPS coordinates of meter location per property.

Back -Office Functions

The tenderer will be required to have a fully equipped and functioning local back office that will deal with the following functions:

- Reporting of faulty or damaged meters.
- Reporting of tampered meters, if detected.
- Reporting of faulty/damaged meter kiosks if detected.
- Reporting of Water and Electricity meters not captured in the meter reading records. (New buildings or vacant plots being connected to the network.)
- Reporting of new connections or electricity meters that were replaced by pre-paid meters.
- Attending to all meter related queries from the end-user/consumer.
- The checking of fault and variance reports and related re-readings.
- Supplying of the necessary infrastructure in aid of the meter reading process e.g. vehicles to access farms, computers and telephones.
- The services provider must ensure that its employees wear identification cards while performing their duties, contemplated in this agreement.
- Quarterly audits of self-readings and all in cases where meter readings could not be done for three (3) months.
- Receiving of all self-readings and follow up of cases where self-readings were not supplied. This verification must be done every three (3) months and if necessary, after hours.

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS

In this Agreement the following expressions shall have the following meanings:

- 1.1 **"Affiliates"** any entity which directly or indirectly controls, or is directly or indirectly Controlled by or is directly or indirectly under common Control with another entity;
- 1.2 **"Agreement"** The Agreement between the parties constituted by this document and it's annexes, as well as the complete tender document, which forms part of this agreement and which also form part of the annexes;;
- 1.3 **"Confidential Information"** shall have the meaning given in Clause 4;
- 1.4 **"Effective Date"** 01 November 2020;
- 1.5 **"Intellectual Property"** : Copyrights, trademarks, patents, industrial design rights, trade secrets and business methodologies;
- 1.6 **"The Client"** the George Municipality contracted with ELECTROCUTS Pty Ltd for Revenue Management Services and
- 1.7 **"Revenue Management Services"** activities involved in, and in support of Revenue Management and may include meter reading, back office-support, billing, Revenue Enhancement and Protection;

- 1.8 **"ELECTROCUTS Pty Ltd "** services and/or Systems related to the provision of meter reading services;
- 1.9 **"Personnel"** – The Officers, directors, employees, agents, consultants and/or contractors of a party.

2. ENGAGEMENT

- 2.1 **THE CLIENT** engages **ELECTROCUTS** as **THE CLIENT's** provider of an electronic meter reading service to **THE CLIENT** for the purpose of communicating meter reading data from the field. This engagement is subject to the provisions stipulated in this Agreement.
- 2.2 The terms and conditions of this agreement may be reviewed annually and must be agreed between the parties in writing prior to the implementation.

3. GENERAL OBLIGATIONS

- 3.1 **THE CLIENT** and **ELECTROCUTS** shall fulfil their respective duties and obligations as set out in point (b) above.
- 3.2 The parties shall comply with the remuneration provisions set out in **ANNEXURE "A"**.
- 3.3 **THE CLIENT** and **ELECTROCUTS** shall perform their respective obligations under this Agreement in good faith and with due skill, care and diligence.

4. CONFIDENTIALITY

- 4.1 Each party shall and shall procure that its Personnel shall, at all time, keep confidential any information disclosed to it by the other party, whether disclosed verbally or in writing, in documents or in any other form but excluding any information which:
- 4.1.1 Is or becomes public knowledge without any improper conduct by the receiving party, its Affiliates or Personnel: and/or
- 4.1.2 Was already in the lawful possession of the receiving party and/or its Affiliates without any obligations of confidentiality before it was disclosed by the disclosing party: and/or
- 4.1.3 Is obtained subsequently by the receiving party and/or its Affiliates from a third party without any obligations of confidentiality
- 4.2 A party receiving Confidential Information from the other party shall not use such Confidential information for any purpose other than to carry out its obligations and/or exercise its rights under this Agreement.
- 4.3 This Clause 4 shall continue in force for the duration of this agreement and during the tender process after the termination of this Agreement.

5. DURATION

- 5.1 This Agreement shall commence on the Effective Date and shall continue for an unbroken period of three (3) years.

- 5.2 After the completion of the above-mentioned duration, this agreement can be continued on a month to month basis, with a notice period of 180 days, to be provided by both parties prior to the termination referred to in 5.1 above.

6. DUTIES AND OBLIGATION AN COMPLETION OF THE CONTRACT

- 6.1 On completion of this Agreement for whatever reason:

6.1.1 **ELECTROCUTS** shall immediately transfer to **THE CLIENT** all information provided to **ELECTROCUTS** from **THE CLIENT**, including the data collected from the field and provided by **THE CLIENT**.

- 6.2 The following clause shall continue with full force and effect notwithstanding the termination of the Agreement for any reason: Clause 1 (Definitions), Clause 4 (Confidentiality), Clause 7 (Indemnity), Clause 8.4 (Waiver), Clause 8.8 (Publicity), Clause 8.9 (Severability), Clause 8 (Miscellaneous) and Clause 9 (Jurisdiction).

- 6.3 Completion of this Agreement shall be without prejudice to any right or remedy of either party arising out of any breach of this Agreement.

7. INDEMNITY

ELECTROCUTS shall indemnify **THE CLIENT** and its Personnel against any and all liability, loss, damages, costs, legal costs, professional and other expenses of any nature whatsoever incurred and suffered by **THE CLIENT** arising out of any act, omission or negligence by **ELECTROCUTS**, its Personnel, its Affiliates or their Personnel in the provision of Revenue Management Services and/or **ELECTROCUTS** services and/or any other breach by **ELECTROCUTS** of the provisions of this Agreement.

8. MISCELLANEOUS

Partnership or Joint Venture

- 8.1 Nothing in this Agreement shall create or imply a partnership or joint venture or similar relationship between the parties.

Entire Agreement

- 8.2 This Agreement constitutes the entire agreement and understanding between the parties in relation to its subject matter and supersedes any or all previous agreements, understanding or representations between the parties and may not be modified except in writing signed by duly authorized representatives of both parties.

- 8.3 Except as expressly set forth in this Agreement, neither party grants to the other by implication, estoppels nor otherwise, any right, title, licence or interest in any intellectual property right.

- 8.4 The parties acknowledge that entering into this Agreement they have not relied on and shall have no remedy in respect of any representation (other than a fraudulent misrepresentation), warranty or their provision except as expressly provided in this Agreement and all condition,

warranties or other terms implied by statute or common law (save in respect of fraudulent misrepresentation) are excluded to the fullest extent permitted by law.

Waiver

8.5 Failure or delay by either parties to exercise any right or remedy under this Agreement shall not be a waiver of that right or remedy or prevent the party from exercising that or any other right or remedy on any occasion. **THE CLIENT** acknowledges and undertakes that an accidental and reasonable delay by **ELECTROCUTS** or its employees or deputies to carry out the tasks herein undertaken as result of temporary weather conditions, Labour unrest, shall not be deemed a breach of the terms of condition of this agreement.

Assignment

8.6 A party shall not, without the prior written consent of the other party, assign, delegate, sub-contract or otherwise deal with this Agreement or any of its duties, rights, interest and/or obligations under this Agreement. In particular, **ELECTROCUTS** shall not sub-contract without prior consent of **THE CLIENT**. If a party assigns sub-contracts, or otherwise delegates, any of its obligations under this Agreement to any third party, the party assigning, sub-contracting or delegating shall be fully responsible to the other party for the proper performance for those obligations and for any act or omission of the third party.

Notices

8.7 Any notices statements or other documents given (or to be given) in connection with this Agreement shall be in writing in the English Language and shall be delivered by hand, or sent by airmail or fax, to the address or fax number subsequently notified by that party.

8.8 Any notice given under Clause 8.6 shall be deemed to have been received: -

8.8.1 on the date of delivery if delivered by hand to 5:00 pm on a business day, otherwise on the next business day following the date of delivery:

8.8.2 on the tenth business day from and including the day of posting in the case of pre-paid airmail; or

8.8.3 on the next business day following the day of transmission in the case of facsimile

Publicity

8.9 Except as required by law, **ELECTROCUTS** and **THE CLIENT** shall not, and shall undertake that their respective Personal, their respective Affiliates and the Personnel of their respective Affiliates shall not, make any announcements, or comment upon, or originate any publicity, or otherwise provide any information to any third party (other than their respective legal advisors) concerning this Agreement including the fact that the parties are engaging in discussions, the existence of this Agreement, the terms of this Agreement, the performance of this Agreement and/or any dispute or terms of this Agreement relating to this Agreement without the prior consent of the other party.

Severability

8.10 In the event that any provision or any part of any provision of this Agreement is declared by any Court or other competent authority to be void or unenforceable that the relevant part of that provision shall be deleted and the remaining provisions of the this Agreement shall continue in force and effect.

Inconsistency

8.11 This is written and executed in English but may be translated into another language. In the event of any inconsistency or conflict between the English version and the translated version, the English version shall always prevail.

8.12 In the event of any inconsistency or conflict between the provisions of the main body of this Agreement (Clauses 1-9), the provisions of the annexes to this Agreement, the provisions of the main body of this agreement, the provisions of the main body of this Agreement shall override those of the annexes to the extent of the inconsistency or conflict only.

Further Assurances

8.13 Each party shall, as and when requested by the other party, do all acts and execute all documents as may be reasonably necessary to give effect to the provisions of this Agreement.

Interpretation

8.14 In this Agreement: -

8.14.1 "*including*" mean including without limitation: "*includes*" shall be construed accordingly;

8.14.2 the headings are for convenience only and shall not affect the interpretation of this Agreement

Affiliates

8.15 **ELECTROCUTS** shall procure that its Affiliates comply with provisions of this Agreement as if they were party to it.

8.16 BREACH

8.16.1 An event of breach shall be deemed to have occurred if-

8.16.1.1 Any party breaches any of its obligations in terms of this Agreement and fails to remedy such breach within seven (7) days after receipt of written notice from the other party requiring the remedying thereof if such breach is capable of being remedied; or

8.16.1.2 Any party ceases or is unable for any reason whatsoever to conduct its business in an ordinary or regular manner, and fails to take reasonable steps to remedy such situation within seven (7) days after having been called upon in writing to do so by the other party; or

8.16.1.3 Any covenant or warranty or representation made by any party in terms of this Agreement is found to be untrue or incorrect in any material respect.

8.16.2 Upon the occurrence of any event of default then, without prejudice to such other rights and remedies which either of the parties may have at law if either THE CLIENT or ELECTROCUTS is in breach ("the defaulting"), then the party who is not in breach ("the aggrieved") shall be entitled-

8.16.2.1 To call on the defaulting party to perform its obligations in terms of this Agreement; or

8.16.2.2 To cancel this Agreement, which termination will become effective after notice has been given in writing to the defaulting party and a fourteen (14) day response time has been allowed for rectification.

8.16.3 In the event of cancellation of this Agreement in terms of this clause, both parties agree thereto, without prejudice to any of their rights that the rendering of the Services will continue for a period of six (6) months after the date of cancellation or termination of this Agreement on the same terms and conditions set out in this Agreement.

9. LAW AND JURISDICTION

This Agreement shall be governed, construed and interpreted in accordance with the South African law and, subject to the provision of Clause 8.13, the parties agree to submit to exclusive jurisdiction of the courts in connection with n any dispute arising hereunder.

10. PPPFA POLICY

The following Special Conditions were included in the tender document:

10.1 To ensure equitable work distribution, the successful bidder MUST employ 100% of the semi-skilled workers and 90% of the skilled workers from the George Municipal Area.

10.2 In order to improve the local economic market, if the successful bidder is not based in the George Municipal Area; they MUST subcontract/outsource a minimum of 30% of the contract value to a local Exempted Micro Enterprise (EME) at the same tendered rate.

10.3 The successful bidder must establish an operational office in the George Municipal area.

- 10.4 The successful bidder must allow for numeracy and computer literacy training. The latter training shall be by an accredited trainer and certificates shall be issued to all qualifying attendees. Successful bidder will submit on a quarterly basis a list of all employees that attended the necessary training.
- 10.5 All the meter readers must be supplied with proper identity cards, suitable & visible safety clothing.
- 10.6 The successful bidder must have all the necessary equipment to perform the meter reading function.
- 10.7 The successful bidder will submit on a monthly basis a list of all employees and contractors on site, indicating the following:
- Salary/wages spent on local employees versus total wages/salary budget
 - Number of local employees employed versus per total workforce
 - Amount spent on local contractors versus budgeted
 - Number of local employees trained

11. DISPUTE RESOLUTION

- 11.1 The parties hereby agree that in the event of a dispute arising out of this agreement the resolution of this dispute must be attempted by the way of consultation between the parties. If the consultation process does not lead to a resolution of the dispute, within 10 days, then the parties agree to refer the dispute for arbitration.
- 11.2 All arbitration proceedings shall be conducted in George. The arbitration shall be conducted informally, but in accordance with the provisions of the Arbitration Act, No. 42 of 1962, it being intended that if possible, it shall be concluded within ten days of referral.
- 11.3 If the parties cannot agree on the appointed of an Arbitrator within three days after arbitration has been agreed upon, then the President for the time being of the Cape Bar Council will be requested to appoint the arbitrator.
- 11.4 The fees payable to the arbitrator shall be determined and agreed to between the arbitrator and the parties and the parties shall be jointly and severally liable for the payment of the arbitrator's fees. Any party may request the other party to deliver an acceptable guarantee or reasonable deposit for his portion of the cost.
- 11.5 The Arbitrator shall be requested to hand down his/her award within ten days after the completion of the arbitration.
- 11.6 The decision of the Arbitrator shall be final and binding and may be an order of the Cape of Good Hope Provincial Division of the High Court upon the application by and party to the arbitration.

Agreed by the duly authorised representatives of the parties on the date set out at the start of this Agreement: -

GEORGE MUNICIPALITY

Signed at GEORGE this 9th day of December 2020

NAME IN PRINT : LEON WALLACE

POSITION : ACTING DIRECTOR FINANCIAL SERVICES

SIGNATURE : 

ELECTROCUTS (PTY) LTD

Signed at JOHANNESBURG this 9th day of DECEMBER 2020

NAME IN PRINT : ELAINE ROCHE MARITZ

POSITION : EXECUTIVE DIRECTOR

SIGNATURE : 