



PROFESSIONAL SERVICES AGREEMENT

**PROJECT: MONITORING AND CONSTRUCTION OF THE
ADDITIONS AND REPAIRS TO UMZINTO SPORTS
FIELD (WARD 13) PHASE 2 PROJECT**

CLIENT: UMDONI MUNICIPALITY

CONSULTANT: SIMPHULWAZI ENGINEERS

**SERVICE: PROFESSIONAL SERVICES FOR INCEPTION,
CONCEPT, DESIGN, DOCUMENTATION AND
PROCUREMENT, CONTRACT ADMINISTRATION
AND CLOSE-OUT**

AGREEMENT DATE: 13 MAY 2024

THIS AGREEMENT IS RECOMMENDED BY THE FOLLOWING CONSTITUENTS:

Africa Association of Quantity Surveyors
Association of Construction Project Managers
Association of South African Quantity Surveyors
South African Association of Consulting Engineers
South African Black Technical and Allied Careers Organisation
South African Institute of Architects
South African Property Owners Association

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EXPLANATORY NOTES

Introduction

This Umdoni Municipality Professional Services Agreement was compiled in the interests of standardization and good practice in the construction industry on a mandate from the constituents. Any queries regarding this document should be directed to:

Mr. Malusi Ntshangase
Simpfulwazi Engineers
Tel: 033 345 7053
Email: malusi@spzengeers.co.za

The terms of this document have been kept as generic as possible. Any project specific issues are to be dealt with in the appropriate annexure

Structure of document

The Umdoni Municipality Professional Services Agreement comprises:

- Agreement
- Annexure A: Schedule
- Annexure B: Scope of services: to be agreed between the parties
- Further annexures: As required and identified in the schedule which may, *inter alia*, include the relevant tariff of professional fees and schedule of disbursement rates

Disclaimer

Any party using this document acknowledges and agrees that the constituents shall not be held liable for using this document or for any errors or omissions in the document and such party hereby waives any or all claims it may have in this regard

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ANNEXURES

Annexure A: Schedule

A1

Annexure B: Scope of services

B1

Further annexures: As required and identified in the schedule which may, *inter alia*, include the relevant tariff of professional fees and schedule of disbursement rates

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AGREEMENT

1.0 DEFINITIONS AND INTERPRETATION

1.1 Where words and phrases are highlighted in the text of this document they shall bear the meaning assigned to them in this 1.1 and where such words and phrases are not highlighted they shall bear the meaning consistent with the context:

- 1.1.1 **"AGREEMENT"** means this Client/Consultant Professional Services Agreement and other documents listed in the **schedule** which together form this agreement between the **client** and the **consultant**
- 1.1.2 **"DAYS"** means twenty-four (24) hour days commencing at midnight (00.00) which include working and non-working days
- 1.1.3 **"CLIENT"** means the contracting **party** so named in the **schedule**
- 1.1.4 **"CLIENT'S REPRESENTATIVE"** means a representative designated by the **client** and so named in the **schedule** to act with complete authority on the **client's** behalf and who shall be available at all reasonable times
- 1.1.5 **"CONTRACT"** means an agreement entered into between the **client** and a **contractor** for the execution of the **project** or part thereof
- 1.1.6 **"CONTRACTOR"** means the entity or entities entering into **contract(s)** with the **client** for the execution of the **project** or part thereof
- 1.1.7 **"CONSULTANT"** means the contracting **party** so named in the **schedule**
- 1.1.8 **"OTHER CONSULTANT"** means any entity or third party acting on behalf of the **client** to provide professional or specialist services on any aspect of the **project**
- 1.1.9 **"PARTY"** means the entity or entities entering into this **agreement**
- 1.1.10 **"PRINCIPAL AGENT"** means the entity so named in the **schedule** appointed by the **client** to manage and administer the **contract**
- 1.1.11 **"PRINCIPAL CONSULTANT"** means the entity so named in the **schedule** appointed by the **client** to manage and administer the services of the **consultant** and all **other consultants**
- 1.1.12 **"PROJECT"** means the project so named and described in the **schedule**
- 1.1.13 **"SCHEDULE"** means the variables, amendments and/or special conditions as set out in Annexure A
- 1.1.14 **"SERVICES"** means the duties and responsibilities of the **consultant** as set out in Annexure B

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- 1.1.15 "TAX" means value added tax, sales tax or any other similar statutory tax or statutory levy applicable to this **agreement**
- 1.1.16 "WORKS" means all work executed or intended to be executed according to a **contract**
- 1.2 The **client** and **consultant** choose *domicilium citandi et executandi* at the physical addresses as stated in the **schedule**. Either **party** may by notice to the other change its *domicilium citandi et executandi* provided that such new physical address shall be in the same country as stated in the **schedule**
- 1.3 Any legislation referred to in this **agreement** shall be that which was applicable on the date of first signature of this **agreement**
- 1.4 In this **agreement**, unless inconsistent with the context:
- 1.4.1 The word "deemed" shall be conclusive that something is fact, regardless of the objective truth
- 1.4.2 The words "advise", "appoint", "approve", "authorise", "certify", "consent", "decide", "delegate", "designate", "instruct", "issue", "notify", "object", "reply", "request" and "specify" shall indicate an act required to be carried out in writing
- 1.4.3 The masculine gender includes the feminine and neuter genders and *vice versa*, the singular includes the plural and *vice versa* and persons shall include corporate bodies
- 1.4.4 The headings of clauses are for reference purposes only and shall not be taken into account in construing the context thereof
- 1.5 The law applicable to this **agreement** is the law as stated in the **schedule**
- 1.6 All monetary amounts exclude **tax**, which **tax** shall be added to any amounts which become due and payable
- 1.7 Notice in terms of this **agreement** may be given as set out hereunder and shall be deemed to have been duly received when:
- 1.7.1 Delivered by hand – on the date of delivery
- 1.7.2 Sent by prepaid registered post – seven (7) **days** after posting
- 1.7.3 Sent by telefax – three (3) **days** after transmission
- 1.7.4 Sent by e-mail – three (3) **days** after transmission
- 1.8 This **agreement** constitutes the entire agreement between the **parties** and no representations, terms, conditions or warranties not contained in this **agreement** shall be binding on the **parties**. No agreement or addendum varying, adding to, cancelling, or deleting from this **agreement** shall be effective unless reduced to writing and signed by both **parties**

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- 1.9 The original signed **agreement** shall be held by the entity so named in the **schedule** who shall provide copies certified by a commissioner of oaths to either **party** on request
- 2.0 **PROJECT**
- 2.1 The **client** is desirous of undertaking the **project** so named in the **schedule**
- 2.2 The **project** is situated on a site as described in the **schedule**
- 3.0 **APPOINTMENT**
- 3.1 The **client** appoints the **consultant** who accepts the appointment to carry out the **services** as stated in this **agreement**
- 4.0 **DURATION OF AGREEMENT**
- 4.1 The **agreement** shall be effective from the date as stated in the **schedule** notwithstanding the date of signature. If no date is stated in the **schedule**, the **agreement** shall be effective from the date on which the **consultant** commences the **services**
- 4.2 Subject to 7.3, this **agreement** shall be deemed to have been discharged by performance when the **consultant** has completed the **services** and has received full payment of fees and disbursements due
- 5.0 **CLIENT'S OBLIGATIONS**
- 5.1 The **client** shall designate a **client's representative** so named in the **schedule**. The **client** may change the **client's representative** by notice to the **consultant**
- 5.2 The **client** including any **other consultants** or party acting on the **client's** behalf, shall accurately and timeously specify their requirements and provide information, decisions and instructions to the **consultant**

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- 5.3 The **client** shall, if requested to do so by the **consultant**, provide within fourteen (14) **days**:
- 5.3.1 Written proof that funding is available for the ongoing requirements of the **project**
- 5.3.2 A guarantee acceptable to the **consultant** for the payment of the **consultant's** fees and disbursements
- 5.4 The **client** shall notify the **consultant** of the appointment of the **principal consultant**, **principal agent** and **other consultants** for the **project**
- 5.5 The **client** shall instruct the **other consultants** to co-operate in absolute good faith and comply with and adhere to all reasonable requests by the **consultant** and the **principal consultant**
- 5.6 The **client** shall make available free of charge to the **consultant** the equipment and facilities as stated in the **schedule**
- 5.7 The **client** shall pay all costs and charges levied by any local or other authorities having jurisdiction regarding the execution of the **project**
- 6.0 **CONSULTANT'S OBLIGATIONS**
- 6.1 The **consultant** shall execute the **services** as set out in Annexure B
- 6.2 The **consultant** shall exercise reasonable professional skill, care and diligence in the performance of his obligations in terms of this **agreement**
- 6.3 Where the **services** assigned to the **consultant** include the obligation to certify or to exercise discretion or quasi-arbitrational functions in carrying out the **services**, the **consultant** shall be obliged to exercise such obligations, discretions and functions in an independent professional manner acting with reasonable skill, care and diligence with regard to all interests involved
- 6.4 The **consultant** shall not make any material alteration, or addition to, or omission from the approved design, budget or programme without the consent of the **client** and **principal consultant** except when required to do so by any applicable law or when arising from an emergency. The **consultant** shall notify the **client** and **principal consultant** as soon as practicable of the action taken
- 6.5 The **consultant** shall co-operate in absolute good faith, comply with and accurately and timeously adhere to all reasonable requests by the **client**, **other consultants** and the **principal consultant**
- 7.0 **LIMIT OF CONSULTANT'S LIABILITY**
- 7.1 Notwithstanding 6.0, the **consultant** shall specifically not be liable for the following:
- 7.1.1 Acts or omissions of **other consultants**

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- 7.1.2 Construction methods, techniques, sequences and procedures employed by the **contractor must be approved and managed by the Consultant**
- 7.1.3 Any material, component, system or workmanship failing to perform according to the claims of the manufacturers, suppliers, contractors or subcontractors
- 7.1.4 Any reasonable deviations from any estimates of costs and/or budgets
- 7.1.5 Failure by the **contractor** or the **client** to perform in terms of the **contract**
- 7.1.6 Delays due to causes outside of the **consultant's** control
- 7.1.7 Acts or omissions of third parties

- 7.2 The maximum amount of compensation payable by the **consultant** to the **client** in respect of liability is limited to an amount selected in the **schedule**. If no selection is made in the **schedule**, then the maximum compensation shall be twice the fees payable by the **client** to the **consultant** in terms of 9.1

The **client** waives all claims against the **consultant** exceeding the aforesaid maximum amount of compensation payable

- 7.3 All claims against the **consultant** shall lapse after a liability period of five (5) years, which period shall commence on the earlier of:

- 7.3.1 Practical or other equivalent completion of the **works**
- 7.3.2 Completion by the **consultant** of his **services**
- 7.3.3 Suspension, postponement, expiry, cancellation or termination of all the **contracts**
- 7.3.4 Cancellation or termination of this **agreement**

- 7.4 The **client** hereby indemnifies the **consultant** against all claims by third parties which arise out of or in connection with **services** rendered under this **agreement**:

- 7.4.1 Which exceed the maximum amount of compensation in terms of 7.2, and
- 7.4.2 For the full amount of any such claims after the period stated in 7.3

8.0 PROFESSIONAL INDEMNITY INSURANCE

- 8.1 The **party** responsible shall provide professional indemnity insurance as stated in the **schedule**
- 8.2 The **party** responsible shall maintain the insurance policy for the duration of the liability period in terms of 7.3 and shall on request by the other **party**, provide a certificate of proof of such insurance

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9.0 **PROFESSIONAL FEES**

- 9.1 The **client** agrees to pay the **consultant** such professional fees as stated and apportioned in the **schedule** for the **services** to be rendered

10.0 **THIRD PARTY SERVICES**

- 10.1 The **client** shall appoint and remunerate any third party rendering services to the **project**
- 10.2 The **client** shall reimburse the **consultant** for all expenses in respect of fees and costs incurred on behalf of and with the approval of the **client**

11.0 **DISBURSEMENTS**

- 11.1 Unless otherwise stated in the **schedule** the **client** shall, in addition to the professional fees payable, reimburse the **consultant** for the following expenses properly incurred for the **project**:
- 11.1.1 Printing, plotting, photocopying, maps, models, presentation materials, photography and similar documentation including all reproduction or purchasing of documents
- 11.1.2 Accommodation, subsistence and travelling, including kilometre allowances at current recognised rates for the use of vehicles
- 11.1.3 International telephone calls and facsimiles, special postage and courier deliveries
- 11.1.4 Other expenses as stated in the schedule
- a. Unless otherwise stated in the **schedule** reimbursements shall be made monthly upon proof by the **consultant** that such expenses were incurred

12.0 **ADJUSTMENT OF PROFESSIONAL FEES AND DISBURSEMENTS**

- 12.1 The **client** and the **consultant** acknowledge and agree that the professional fees and disbursements are based on the following parameters:
- 12.1.1 Scope of **project**
- 12.1.2 Scope of **services**
- 12.1.3 **Project** programme
- 12.1.4 The cost of the **works**
- 12.1.5 The cost of the **project**
- 12.1.6 Appointment of **other consultants**
- 12.1.7 Appointment of **contractor**
- 12.2 Should any material variation to the parameters stated in 12.1 occur, the professional fees and disbursements shall be adjusted

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13.0 **PAYMENT**

- 13.1 The **consultant** shall be entitled to render invoices monthly taking cognisance of the apportionment of fees in the **schedule**. Such invoices shall be due and payable by the **client** on receipt thereof
- 13.2 Should the **client** not have paid any invoice within thirty (30) days of receipt thereof, the **client** shall be liable for interest for late payment. Such interest shall be calculated and payable at a rate of two (2) percentage points above the rate of interest applicable from time to time to prime borrowers at the **consultant's** bank from the due date for payment
- 13.3 Should the **client** dispute any aspect of an invoice submitted by the **consultant**, the **client** shall give notice with reasons within thirty (30) days and shall not delay payment of the undisputed amount
- 13.4 Should the **client** allege a claim against the **contractor** or any third party, such claim shall be dealt with on its own merits. The **client** is not entitled to withhold payment to the **consultant** on this account
- 13.5 The **client** shall make payment without any set-off and herewith waives all rights to any such set-off

14.0 **ASSIGNMENT**

- 14.1 Neither the **client** nor the **consultant** shall assign obligations under this **agreement** without the written consent of the other **party**

15.0 **CONFIDENTIALITY AND COPYRIGHT**

- 15.1 Both **parties** shall keep all sensitive information obtained by them in the context of this **agreement** confidential and shall not divulge it without the prior written approval of the other **party**
- 15.2 The **consultant** retains copyright of all documents and/or designs prepared by the **consultant** for the **project**. The **client** has the right to the use and the benefit of the documentation produced for the sole purpose of its intended use on the **project** subject to compliance with the terms and conditions of this **agreement**
- 15.3 The **client** is entitled to all data and factual information collected by the **consultant** and paid for by the **client**

16.0 **CONFLICT OF INTEREST AND CORRUPTION**

- 16.1 The **consultant** shall disclose in the **schedule** any interest or involvement in the **project** other than a professional interest in terms of this **agreement**
- 16.2 The **consultant** shall not:

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- 16.2.1 Offer, give, receive or solicit anything of value with a view to influencing the behaviour or action of anyone, directly or indirectly, whether in any selection process or in the conduct of this **agreement**, or
- 16.2.2 Misrepresent any facts in order to influence any selection process or the execution of a contract including the use of collusive practices intended to stifle or reduce the benefits of free and open competition
- 17.0 **CANCELLATION AND SUSPENSION**
- 17.1 Either **party** shall be entitled to cancel this **agreement** should the other **party** breach a material term of this **agreement** and provided written notice of such breach had been given demanding that the breach be remedied within fourteen (14) days and despite such notice, the defaulting **party** remains in breach
- 17.2 Notwithstanding 17.1, the **client** shall be entitled to cancel this **agreement** forthwith in the event of the **consultant** committing a breach in terms of 16.2
- 17.3 The **client** may, without prejudice to its right to cancel, suspend the whole or part of the **services**. Prior to such suspension the **client** shall give the **consultant** fourteen (14) days written notice to suspend and to make arrangements to stop the **services** and to minimize further expenditure
- 17.4 The **consultant** may, without prejudice to its right to cancel, suspend the whole or part of the **services** in the event where:
- 17.4.1 The **client** has failed to pay any invoice of the **consultant** on due date, or
- 17.4.2 **Services** have been suspended under 17.3 and the period of suspension has exceeded six (6) months, or it is evident to the **consultant** that it will be unlikely or impractical to resume the suspended **services** before the period of suspension has exceeded six (6) months, or
- 17.4.3 The **consultant** has given the **client** notice of a material breach in terms of 17.1
- 17.5 Should the **client** cancel or suspend this **agreement**, other than a cancellation in terms of 17.2 then:
- 17.5.1 The **consultant** shall be paid for **services** rendered on a *quantum meruit* basis, and
- 17.5.2 Other than in the case of a breach by the **consultant** in terms of 17.1, the **consultant** shall, in addition to the fee calculated in terms of 17.5.1, be paid a surcharge of ten per cent (10%) of the remaining fee which would have been payable had the **services** been rendered in full in terms of this **agreement**
- 17.6 Should either **party** be prevented by a cause beyond its control from performing its obligations in terms of this **agreement**, it may cancel or suspend this **agreement** without prejudice to the accrued rights the **parties** have against one another
- 18.0 **RESOLUTION OF DISPUTES**

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- 18.1 Should any dispute whatsoever arise between the **parties**, then either **party** hereto may declare a dispute by delivering notice of the details thereof to the other **party**, which dispute shall be referred to arbitration
- 18.2 Prior to arbitration and should the **parties** so agree, the dispute may be referred to a single mediator without the **parties** having legal representation. The mediator shall be selected by agreement between the **parties** within fourteen (14) **days**. Failing such agreement, nominated on the application of either **party** by the person named in the **schedule**. The mediator shall be appointed jointly by the **parties**
- 18.3 The mediator shall have absolute discretion in the manner in which the mediation proceedings shall be conducted
- 18.4 The mediator shall deliver a copy of his reasoned opinion to each **party** within twenty-one (21) **days** of his appointment
- 18.5 The opinion so expressed by the mediator shall be final and binding on the **parties** unless either **party** within twenty-one (21) **days** of the delivery of the opinion, notifies the other **party** of its unwillingness to accept the said opinion, in which event the dispute shall be referred to arbitration in terms of this **agreement**
- 18.6 The costs of mediation shall be determined by the mediator and shall be borne equally by the **parties** and shall be due and payable to the mediator on presentation to them of his written account
- 18.7 Each **party** shall bear any other costs it may have incurred in connection with the mediation
- 18.8 The mediation proceedings shall not prejudice the rights of the **parties** in any manner whatsoever in the event of the dispute proceeding to arbitration
- 18.9 Arbitration shall be by a single arbitrator who shall be selected by agreement between the **parties** within fourteen (14) **days**. Failing such agreement, nominated on the application of either **party** by the person named in the **schedule**. The arbitrator shall be appointed jointly by the **parties**, failing which by either one of the **parties**
- 18.10 The arbitrator shall have power to open up, review and revise any opinion, decision, requisition or notice and to determine all matters in dispute which shall be submitted to him, and of which notice shall have been given as aforesaid, in the same manner as if no such opinion, decision, requisition or notice had been given
- 18.11 The arbitration shall be conducted according to the rules stated in the **schedule**

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