

**MEMORANDUM OF AGREEMENT MADE AND ENTERED INTO BY  
AND**

BETWEEN

**BERGRIVIER MUNICIPALITY**

(HEREIN AFTER CALLED "BERGRIVIER")

AND

**ASLA DEVCO (PTY) LIMITED**

(HEREIN AFTER CALLED "ASLA")

**WHEREAS:**

- a. Beaufort West Municipality called for tenders to appoint an Implementing Agent for Housing Projects in terms of the Turnkey Contracting Strategy set out in clause 2.2.2(a) of the National Housing Code within its municipal boundaries, annexed hereto marked "A";
- b. Asla tendered and made certain development proposals to Beaufort West Municipality which said proposals and tender are annexed hereto marked "B";
- c. Beaufort West Municipality accepted Asla's said development proposals and tender and, appointed Asla in terms of a letter of appointment dated 25 March 2009, annexed hereto marked "C",
- d. Bergrivier procured the services of Asla in terms of section 32 of the Municipal Supply Chain Management Regulations for the development and implementation of an Integrated Development Program as set out in Asla' proposal, annexed hereto marked "B" and appointed Asla in terms of a letter of appointment dated 27 July 2009 , annexed hereto marked "D";
- e. The Parties wish to record their agreement in writing;

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**THEREFORE the PARTIES record their AGREEMENT as follows:**

1. APPOINTMENT

Bergrivier hereby confirms the appointment of ASLA and, ASLA accepts the appointment as Implementing Agent in terms of clause 2.2.2(a) of the Integrated Residential Development Program of the National Housing Code on the terms and conditions set out in annexures A, B, C, D, E, F and G, subject to the terms and conditions herein recorded:

2. SCOPE

The scope of this appointment is set out in the Annexures to this agreement, and all Annexures hereto form an integral part of this Agreement. All expressions defined and used in this Agreement shall bear the same meanings as used in any Annexure to this Agreement and vice versa.

3. COMMENCEMENT DATE

Irrespective of the date of signing of this agreement, it is recorded that ASLA was appointed as Implementing Agent on 27 July 2009 and that the effective date of this agreement is therefore 27 July 2009.

4. DUTIES AND OBLIGATIONS OF ASLA

Asla shall execute all the duties and obligations set out in annexure A hereto as amplified by the terms and conditions of this agreement and in so far as it does not conflict with the terms and conditions contained in the annexures hereto.

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ASLA shall:-

- 4.1. Prepare and compile an Integrated Residential Development Program for Bergrivier, identify land (demarcated areas) to be incorporated in the Program and, submit the Program to Bergrivier for consideration and approval of the said Program prior to its implementation.
- 4.2. Draw and submit a Development Plan and Implementation Program to Bergrivier and all relevant authorities for approval prior to its implementation to ensure the co-coordinated development of the demarcated areas with due regard to all the terms and conditions of this agreement; the Development Plan shall comply with sound town planning principles and indicate the intended use zoning of all land within a demarcated areas;
- ✓ 4.3. Compile and submit project applications on behalf of Bergrivier for submission and approval by the Department of Locally Government and Housing (herein after called "DLGH").
- ✓ 4.4. Compile and submit applications on behalf of Bergrivier for funding through the Municipal Infrastructure Grants (MIG) and other sources of funding available to fund the various projects as prioritised by Bergrivier.
- ✓ 4.5. Design, construct and install all engineering services including bulk, link, external, connector and rudimentary services in accordance with Bergrivier's service standards, except where ASLA may deviate from Bergrivier's service standards provided such deviation was successfully motivated to and accepted by Director Technical Services in writing prior to implementation thereof.
- ✓ 4.6. Design and construct Top Structures, in accordance with the specifications, standards and requirements of the DLGH and Bergrivier

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- 4.6.1. in consultation with the community based committees representing the beneficiaries; where after
- 4.6.2. the proposed designs shall be submitted for approved by the Bergrivier and,
- 4.6.3. by the DLGH
- 4.7. Provide, at its discretion, bridging finance, if required;
- 4.8. Complete, administer and submit on behalf of Bergrivier
  - 4.8.1. all Housing Subsidy Applications of beneficiaries to the DLGH,
  - 4.8.2. prepare all Deeds of Sale, arrange the registration of transfer to all approved subsidy beneficiaries and,
  - 4.8.3. hand the registered title deeds to the relevant beneficiaries.
- 4.9. Acknowledge and incorporate all existing contracts between Bergrivier and the various consultants/professionals and, where practicable, accommodate them in the overall development coordination of the area concerned.
- 4.10. Liaise with the various communities and facilitate community participation.
- 4.11. Conduct a survey of all the informal structures within a demarcated area as determined by Bergrivier from time to time, identify and compile a list of such structures, its occupants, the number of families and the number of potential beneficiaries who qualify for government housing subsidies.
- 4.12. Cooperate with Bergrivier's squatter control officials to ensure that the number of informal structures in a demarcated area does not increase.

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- 4.13. Ensure that all vacated informal structures of relocated occupants be demolished forthwith; use its best endeavors that the land so cleared not be invaded again and, to this end co-operate with the squatter control officials of Bergrivier.
- 4.14. Ensure that residential erven (and any improvements thereon) in the Project, only be allocated to beneficiaries that have demonstrated the ability to pay, by means of housing subsidy or otherwise.
- 4.15. not allow the occupation by a beneficiary of any serviced erf prior to
- 4.15.1. Approval of the respective housing subsidy;
- 4.15.2. Construction of the Top structure and a Final Completion certificate has been issued for that particular Top structure; and,
- 4.15.3. Any shortfall in respect of the cost of the Top Structure has been paid or secured by the Beneficiary.
- 4.16. Hand over Civil Engineering Services in two phases:
- 4.16.1. The first called Phase A, on completion of the Civil Engineering Services up to the erf boundaries; Phase A may be further phased into sub-phases to allow for the provision of services to certain areas in stages. As-built drawings, in electronic format compatible with Bergrivier's format, and printed copies to be submitted to Bergrivier at the handover of each phase,.
- 4.16.2. The second, called Phase B, on completion of the connector services when a Top Structure is handed over to the beneficiary. Phase B may be further phased into



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sub-phases to expedite delivery of the Top Structures in certain areas;

- 4.17. Be liable for any latent and patent defects in the civil engineering services for a twelve-month period from date of the handover of Phase A or any sub-phase thereof. Such defects shall be repaired at Asla's cost and to the satisfaction of Bergrivier.
- 4.18. Provide Bergrivier with 2 (two) sets of typical Top Structure plans including the related site plan of such Top Structure and at the completion of the project, provide the Municipality with a site layout of each erf on the layout plan. The plan shall indicate the erf number, the type and position of the Top Structure and the position of water and sewerage connections.
- 4.19. Ensure that on the date a beneficiary is given occupation of a Top Structure a Final Completion Certificate ("Happy Letter") for each Top Structure is signed by the authorized representatives of Asla and Bergrivier, and, by the beneficiary.
- 4.20. Be liable for any latent and patent defects of each constructed Top Structure for a 3-month period from the date of signing the Final Completion Certificate of such a Top Structure. A Final Inspection Certificate will be signed by the authorized representatives of Asla and Bergrivier, and, by the beneficiary on completion of the three-month period.
- 4.21. Be liable for any latent and patent defects in the roof construction and, waterproofing of the Top Structure for a period of 12 months calculated from the date of signing the Final Completion Certificate of such a Top Structure.
- 4.22. Be liable for all costs in respect of the repair work contemplated in clauses 4.20 and 4.21.
- 4.23. Provide at its site office in respect of each particular development undertaken in terms of this agreement a Complaints Record Book

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wherein beneficiaries shall note their complaints after they have taken occupation of their houses. Asla undertakes to react to these complaints within one week after such complaint is entered in the complaints book.

4.24. Pay all charges in respect of water and electricity consumed during construction of the Project and shall make a suitable arrangement with the Bergrivier to ensure that meter readings can be taken. It is recorded that the costs of RDP water meters are paid by the beneficiaries.

4.25. Act as an independent Implementing Agent and not as a general representative for Bergrivier, save as recorded otherwise in this agreement. Asla hereby undertakes not to do anything or allow anything to be done which may create the impression that it acts as a general agent for Bergrivier outside the scope of this agreement.

4.26. Comply with the Expanded Public Works Program (EPWP) and Asla shall maximize the use of local labour and provide training for local labour to enable such learners to work as Sub-contractors during the construction of Top Structures; the employment and training of local labour as contemplated in this clause shall be accepted as compliance with the EPWP. Training as provided by the Department of Labour will be utilized to the benefit of the local community.

## 5. DUTY AND OBLIGATIONS OF BERGRIVIER

Bergrivier hereby accepts all the duties and obligations imposed on it in terms of the appointment attached hereto and marked D and, as amplified by this agreement in so far as it does not conflict with the terms and conditions contained in the Annexures hereto.

Bergrivier shall:-

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- 5.1. Give Asla vacant occupation of land identified and approved by Bergrivier for development;
- 5.2. expedite all applications to the DLGH for housing subsidies for beneficiaries;
- 5.3. Expedite all applications made for MIG and DME funding and budget for the necessary counter funding for the installation of bulk, link, external and collector services as contemplated in clause 4.4 above
- 5.4. Support all other applications for funding related to housing projects undertaken in terms of this agreement
- 5.5. Expedite and facilitate the prompt approval of all town planning applications and engineering designs, provided that such applications and designs comply with its requirements;
- 5.6. Apply for funds and install all electrical networks, street lighting and house connections;
- 5.7. Provide Asla with approved street names by dates mutually agreed upon;
- 5.8. Ensure that the hand over of township and other services from Asla to Bergrivier is expedited to ensure that transfer of residential erven is registered as expeditiously as possible to avoid any delay that may influence payment of subsidy and other payments to Asla negatively;
- 5.9. Respond to applications by Asla or its agents for Rates Clearance certificates within 7 working days upon receiving such a request, provided that such a request complies with the standard requirements of Bergrivier pertaining to such clearance requests;
- 5.10. Make available land for the purpose of relocating people residing in a demarcated area and not qualifying for a DLGH subsidy;

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Budget for the necessary funding for the installation of rudimentary services i.e. shared water and toilet facilities to the subject land.

Bergrivier hereby:-

- 5.11. Appoints Asla to execute and sign all deeds of sale, powers of attorney and related documentation to affect registration of transfer to approved subsidy and other beneficiaries on its behalf.
- 5.12. Authorizes Asla to allocate residential erven in a Project to purchasers who have demonstrated the ability to pay for their erf and any improvements thereon, by means of an approved housing subsidy or otherwise, and to sign, on Bergrivier's behalf, Deeds of Sale of erven to be transferred and registered to purchasers;

## 6. COMPENSATION

Bergrivier shall compensate Asla as follows:-

### 6.1. In respect of all subsidized erven

6.1.1. Pay Asla or its nominee, an amount equal to the housing subsidy payable by the DLGH from time to time; to this end Bergrivier hereby irrevocably and unconditionally undertakes to pay forthwith, without set off, any and all monies as and when received by Bergrivier from the DLGH in respect of any and all claims it may have for payment by the DLGH in respect of the said erven;

6.1.2. Pay all grants or such other funding allocated to this project from time to time.

6.2. In respect of all bulk, link, external, collector and rudimentary services an amount as certified by the Engineers, appointed in terms of this agreement;

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- 6.3. Bergrivier will however not be held accountable by Asla in the event where funds and/or subsidies are not approved. It is also recorded that Bergrivier will not be held accountable by Asla for any retention monies held back by DLGH and that Asla confirms that the successful completion of the DLGH subsidized Top Structures or projects is totally subject to the building guidelines laid down by DLGH.

7. POSSESSION AND, RISK

- 7.1. Asla accept possession, subject and limited to the intent and purpose of this Agreement, of Bergrivier's land within a demarcated area on the agreed commencement date, from which date Asla shall be liable to take out contractor's all risk insurance, including public liability insurance pertaining to its activities within the demarcated area, more fully dealt with in clause 17 hereunder.
- 7.2. Asla shall not be liable for the payment of any rates, taxes, service charges, and/or any levies imposed by Bergrivier and/or any local and/or any other competent authority upon or in connection with the property and/or the improvements to the erected thereon.

8. ILLEGAL OCCUPATION OF VACANT LAND

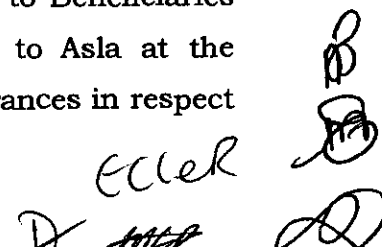
- 8.1. Bergrivier shall without delay, attend to the removal of any and all illegal occupants from any land to which this Agreement applies Asla shall, immediately after becoming aware any and all illegal occupation of sites under construction, report such illegal occupation to Bergrivier. Bergrivier shall, without delay, proceed to remove any and all illegal occupants from any land to which this Agreement applies.

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- 8.2. Bergrivier acknowledges Asla's concern with regards to the detrimental effects of a possible land invasion of the land to which this Agreement applies. Bergrivier accordingly agrees and undertakes that, in the event of one or more persons invading or occupying any portion of the said land, whether on a temporary or permanent basis, it shall within 7 (seven) working days of such occupation and/or invasion, and at its expense, proceed to evict such invaders and, if unsuccessful, forthwith and expeditiously, institute the necessary High Court proceedings for their eviction.
- 8.3. Bergrivier furthermore undertakes to be liable for any and all legal and other costs related to the removal of the invaders, including but not limited to, the costs of the Sheriff of the Court, private security companies and removal companies.
- 8.4. Bergrivier acknowledges that in the event of the eviction, for whatever reason, not being successfully completed within 90 (ninety) days of the initial invasion, Asla shall be entitled to withdraw from this Agreement or from that specific project, in which event compensation will be payable to Asla in terms of clause 18.3.2 (vis major) of this Agreement.###
- 8.5. Asla acknowledges that funding for the Project is provided inter alia by the DLGH in the form of housing subsidies. In the event of an invasion of vacant land, or any other delay resulting in a valid claim for compensation by Asla, Asla undertakes to renegotiate the scope of this Agreement should such an invasion result in a delay of 60 (sixty) days or more and where such delay has a financial impact on the scope of this Agreement.

9. PERFORMANCE GUARANTEE FOR PARTIAL COMPLETION OF SERVICES

- 9.1. In order to expedite the registration of transfer to Beneficiaries and to facilitate the payment of the subsidies to Asla at the earliest opportunity, Bergrivier shall provide clearances in respect

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of the municipal services constructed and/or installed by Asla in terms of this Agreement, even though the installation and/or construction of such services have not been fully completed, provided that Bergrivier, may in such instances call on Asla to provide performance guarantees, issued by a financial institution in a format acceptable to Bergrivier, for amounts representing the prior mutually agreed estimated costs for the completion of such services, subject thereto that such services shall be provided on the same standard as specified in approved plan, as determined by the Consulting Engineer appointed to certify payment in terms of this Agreement.

9.2. Any guarantee referred to in clause 8.1 above shall remain in force until such work has been completed and certified as such by the said Engineer.

#### 10. SALE AND TRANSFER OF ERVEN

10.1. Upon the successful negotiation between Asla and a Purchaser in respect of the sale of an Erf and/or Dwelling, Asla shall prepare a Deed of Sale. Asla, acting on behalf of Bergrivier in terms of a Special Power of Attorney, shall sign such deed, that conforms to a draft Deed of Sale approved by Bergrivier submitted prior to the execution of the Special Power of Attorney.

10.2. All property transfers will be done by Attorneys and Conveyancers appointed by Asla and all costs associated with the registration of transfer shall be included in the project cost.

#### 11. FUNDING

11.1. The services to be rendered and the civil and other construction work to be executed in terms of this Agreement shall be funded through project based subsidies obtained from the DLGH and through funds obtained as contemplated in terms of clauses 5.3 and 5.6 above

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11.2. Bergrivier shall not be liable to compensate Asla for any costs incurred by Asla in respect of any preliminary services rendered until funding is available for the projects envisaged by the parties as set out in this agreement save where Asla elects to avail itself to the proviso stipulated in clause 4.7 above.

## 12. INSPECTION

12.1. Any authorized employee of Bergrivier may at all reasonable times enter upon or inspect any area demarcated in terms of this Agreement in order to satisfy itself that the conditions of this Agreement are being properly observed and carried out and Asla undertakes to afford such employee all reasonable access and facilities for such inspection. Such employee, whilst making use of the said facilities, shall be bound to comply with all safety regulations laid down by Asla.

12.2. Since the approval of subsidies is subject to approval of DLGH it is recorded that if any phase or structure is not approved by DLGH that same must be repaired in terms of their recommendation and will Bergrivier not be held responsible by Asla for any payments by DLGH for that structure until the phase of structure is completed in terms of the recommendations of DLGH.

## 13. APPOINTMENT OF CONTRACTORS, CONSULTANTS AND PROFESSIONALS

13.1. Asla shall be entitled to appoint, at its cost and upon such terms as it may determine, all sub-contractors, professionals or other consultants as it may deem necessary for the development, subject to clause 4.9. Asla shall submit to Bergrivier all the names / companies appointed by them.

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13.2. There shall be no privities of contract between any such sub-contractors, professionals or other consultants on the one hand and Bergrivier on the other and Asla indemnifies Bergrivier against any claims that may be brought against the later by any such sub-contractors, professionals or other consultants appointed by Asla.

#### 14. CESSION

14.1. Asla shall not have the right to dispose, cede, assign, mortgage or in any way hypothecate its rights or obligations in terms of this Agreement or a demarcated area or any portion thereof other than as may be recorded herein or without the prior written consent of Bergrivier.

14.2. Asla shall be entitled to cede its rights or assign its obligations in terms of this agreement should its bankers require a cession of Asla's rights as security for any bridging finance provided by Asla to fund the implementation of this agreement,

#### 15. OCCUPATIONAL HEALTH AND SAFETY ACT

15.1. Asla acknowledges that for purposes of the provisions of the Occupational Health and Safety Act, 1993 (Act NO. 85 of 1993) it is deemed to be an employer in its own right. In order to comply with the requirements of legislation, the Form of Undertaking, annexed hereto marked Annexure C shall be completed by Asla prior to commencing the project.

15.2. The indemnity contained in clause 15 will mutatis mutandis apply to any claims or actions of whatsoever nature that may be instituted in consequence of any non-compliance with the provisions of the said Act.

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## 16. INDEMNITY

Asla hereby indemnifies Bergrivier and will keep Bergrivier indemnified against all actions, proceedings, claims, costs, demands, damages and expenses which may be levied or made against Bergrivier, or which Bergrivier may sustain or incur arising from any act or omission by Asla or any of its agents, employees or sub-contractors in carrying out the works, or the standard or quality of works, or performing any other obligation under the Agreement of whatsoever nature.


## 17. INSURANCE

Asla shall take out adequate insurance cover against all risks assumed by it in terms of this agreement and to fulfill its obligations in terms of clause 16 above, before commencement of the works and for the duration of this agreement and deliver proof of such insurance to Bergrivier from time to time, including proof of the due payment of all premiums due from time to time. Asla shall cede all its rights in the said insurance policy to Bergrivier for the duration of this agreement.

## 18. BREACH BY THE PARTIES

18.1. In the event of any party failing to fulfill any of the terms and/or conditions of this agreement, including any performance required to be undertaken by a due date and remaining in default for a period of 14 (fourteen) days after the other party shall have given notice in writing to the defaulting party, calling upon the defaulting party to remedy such default within 14 days; or

18.2. In the event of application being made for the sequestration or liquidation of the defaulting party's estate whether provisional or final; or commit an act of insolvency; or of the defaulting party assigning or offering to assign his estate for the benefit of his creditors, or if the defaulting party is found to have made a

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material misstatement of fact in any application form or other document submitted by him to the other party; then and in any such event the other party shall be entitled without further notice, in addition to and without prejudice to any other rights available at law:-

18.2.1. To cancel the agreement by notice in writing to the effect sent by registered post to the address at which the defaulting party has chosen domicilium citandi et executandi, in which event the defaulting party shall forfeit all monies and guarantees paid to the other party in terms hereof, without prejudice to the other party's other legal rights and remedies; or

18.2.2. To require the fulfillment by the defaulting party of all the other terms and conditions of this agreement.

18.3. In the event of a breach of this agreement by the defaulting party, the other party shall in addition to any other remedy it may have, be entitled to claim damages as it may be able to prove.

18.4. The defaulting party shall be liable for all legal costs, including attorney and client costs and collection commission incurred by the other party in enforcing any of its rights in terms of this agreement.

18.5. If the development is not proceeded with due to the cancellation of this agreement in terms of clause 17 above or for any other reason and the transfer of any erf or erven have not been registered, such erf or erven shall remain vested in Bergrivier. In such an event all material supplied and/or supplied and installed by Asla will remain Asla's property and may be removed by Asla.

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19.1. If any event or combination of events adversely affecting the ability of either party to perform its obligations under this agreement arises from, or is attributable to, acts, events, omissions or accidents beyond the reasonable control of the party whose ability is so affected, negligence excluded, for a period of at least 20 consecutive working days, then the provisions of clause 19.3 shall apply at the election of the party whose ability is adversely affected. Any such event shall include, without derogating from the generality of the foregoing:

19.1.1. Strikes, lock-outs and other industrial action taken by the employees of a party or of any third party, whether or not the party against whom such action is taken could have avoided the same by acceding to the demands of the employees or third party responsible for such action.

19.1.2. Civil commotion, embargo, governmental legislation or regulation, riot, invasion, war, the threat of or preparation for war;

19.1.3. Fire explosion, storm, flood, earthquake, subsidence, epidemic or other natural physical disaster.

19.2. If either party is prevented or delayed in the performance of any of its obligations under this agreement as a result of an event of the nature referred to in clause 19.1, it shall forthwith notify the other party of the same, fully detailing the background to, and all relevant matters connected with, such event together with such evidence thereof as it may reasonably be able to give and, specifying the period for which such prevention or delay can reasonably be expected to continue. If a party shall have complied with its obligations under this clause, he shall be relieved from the performance of his obligations under this agreement from the date of such notice until such event no longer exists to the extent that his performance is adversely affected by such event provided, however, that during this period a party

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shall be entitled to terminate this agreement forthwith upon notice given in terms of clause 18.1 above to such effect.

19.3. Upon a termination of this agreement in terms of clause 19.1 or 19.2:-

19.3.1. Asla shall, unless otherwise agreed in writing with Bergrivier, hand over to Bergrivier the project which are then in his possession or under his control; and

19.3.2. The compensation payable to Asla for work completed shall be calculated pro-rata for each sub-category of the progress payment claims laid down by the DLGH.

## 20. DISPUTE RESOLUTION

In the event of a dispute arising in regard to this agreement, the following procedures shall apply:-

20.1. The party alleging the dispute shall within 7 working days of the dispute arising or within such further period as the parties may agree upon in writing, give written notice to the other party, which notice shall:-

20.1.1. Set out the nature of the dispute

20.1.2. Propose a solution to the dispute

20.2. After receipt of the notice, the parties involved in the dispute shall endeavor to resolve the dispute by negotiation.

20.3. If such negotiations fail or do not occur within 14 (fourteen) days after dispute arises, the dispute shall not become the subject of litigation or arbitration until it has been heard by a mediator.

20.4. Such dispute shall be referred to mediation before a mediator within 14 (fourteen) days after the dispute arises. The mediator shall be appointed by the parties or failing agreement by them as

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to the mediator, shall be nominated by the chairman for the time being of the Arbitration Foundation of South Africa.

20.5. The mediation shall terminate upon the mediator informing the Disputants that in the mediator's opinion no useful purpose will be achieved in continuing the mediation.

20.6. All communication made by the disputants to the mediator or to each other during or in connection with the mediation are made without prejudice to any rights which they may have and form part of bona fide settlement negotiations.

20.7. The parties shall keep the mediation proceedings and any recommendations made by the mediator confidential, save to the extent otherwise contemplated herein. The mediator shall not be compelled by any disputant to disclose any fact learnt in the course of the mediation in any subsequent legal proceedings which may take place and the parties waive their rights to require the mediator to testify regarding what transpired in the mediation.

20.8. The mediator shall:

20.8.1. Be entitled to communicate and meet with any disputant either in the presence of the other disputant(s) or in private;

20.8.2. Not disclose any information furnished in confidence by any one disputant to the mediator, to any other disputant without the prior written consent of the disputant who furnished the information;

20.8.3. Act impartially and disclose to the disputants any relationship or dealings which the mediator may have had with any of the disputants;

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- 20.11. The arbitrators terms of reference shall be "To determine the dispute in such a manner as he may consider fair and equitable, having due consideration to the law, provided that the arbitrator shall be entitled to award either damages or costs to any party".
- 20.12. The arbitrator shall resolve the dispute after hearing each of the parties in such manner as he may consider appropriate and shall endeavor to reach his conclusion within 14 days of the referral.
- 20.13. The arbitration shall be held:-
- 20.13.1. With the parties and/or their representatives, including legal representatives, present there
- 20.13.2. At Bergrivier
- 20.14. The arbitrator shall be entitled to determine the procedures in resolving the dispute and may call upon the parties to discover and produce such documents as may be necessary.
- 20.15. The arbitrator shall be obliged to give his award in writing fully supported by reasons.
- 20.16. The parties shall keep the evidence in the arbitration proceedings and any order made by any arbitrator confidential unless otherwise contemplated herein.
- 20.17. Save as expressly provided in this agreement to the contrary, the arbitration shall be subject to the arbitration legislation for the time being in force in the Republic of South Africa and the provisions of this clause shall be severable from the rest of this agreement and shall remain in effect even if this agreement is terminated for any reason.
- 20.18. Each of the parties irrevocably consents to the arbitrational provisions of this clause and neither of them shall be entitled to withdraw here from or to claim at any arbitration proceedings

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## 23. GENERAL

- 23.1. Bergrivier will not be responsible for any expenses or disbursements which Asla may incur in the execution of any of its rights or obligations save as determined in terms of this Agreement.
- 23.2. None of the terms and conditions of this agreement is capable of being waived, amended, added to or deleted, unless such waiver, amendment, addition or deletion is reduced to writing and is signed by the parties hereto.
- 23.3. No indulgence on the part of any party in exercising any right conferred upon such party in terms of this agreement shall constitute a waiver or novation of any such right, nor shall any single or partial exercise of any right preclude any other or future exercise thereof or the exercise of any other right under this agreement.

## 24. COMPLIANCE WITH LAWS

- 24.1. This agreement shall in all respects be construed in accordance with, and shall be governed by, South African law.
- 24.2. Asla recognizes and agrees that it shall not be exempted from compliance with any statute, regulation or by-law imposing duties or obligations upon it as developer or affecting the use of the property and that it shall not be entitled to claim relief against Bergrivier from any burden or infringement of its rights resulting from the operation of such statute, regulation or by-law or any action lawfully taken there under, by Bergrivier or local or competent authority.
- 24.3. Asla shall also not contravene or permit the contravention of any by-law or statutory regulation which Bergrivier is required to

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observe as a result of the ownership and/or the development of the Property.

25. SPECIAL CLAUSE

This agreement is subject to the terms and conditions entered to between DLGH and Bergrivier.

DATED AND SIGNED AT Strand THIS 27th DAY OF July 2009

AS WITNESSES:

1. [Signature]

for and on behalf of  
ASLA DEVCO (PTY) LTD

2. [Signature]

[Signature]  
Capacity DIRECTOR

DATED AND SIGNED AT PIKETBERG THIS 27th DAY OF JULY 2009

AS WITNESSES:

1. [Signature]

duly authorized and on behalf of  
BERGRIVIER MUNICIPALITY

2. [Signature]

[Signature]  
Capacity

26. INCLUDED:-

- Annexure A
- Annexure B
- Annexure C
- Annexure D
- Annexure E
- Annexure F
- Annexure G

- Notice of Tender.
- Tender Proposal
- Letter of Acceptance = Beaufort West
- Letter of Acceptance = Bergriver
- Form of undertaking in terms of OHS Act
- Authorization to sign this Agreement
- List of projects to be undertaken

[Handwritten signature]



Annexuur B

Tender vir Bedryfsklaar Implementeringsagent vir Beaufort Wes Munisipaliteit

## BEAUFORT WES MUNISIPALITEIT:



DEPARTEMENT VAN DIE DIREKTEUR:  
INGENIEURSDIENSTE

KENNISGEWING NR. 143/2008  
TENDER NO DID 15/2008

VOORSTEL VIR OORWEGING VAN ASLA DEVCO AS BEDRYFSKLAAR ("TURN  
KEY") IMPLEMENTERINGSAGENT VIR BEHUISINGSPROJEKTE VAN  
BEAUFORT WES MUNISIPALITEIT

TENDERAAR : ASLA DEVCO

VOLUME 1



Desember 2008

Ingedien deur:

Asla Devco  
Broadweg 233  
STRAND  
7151

Navrae:

Schalk Loots  
Tel: (021) 845 8335  
Faks: (021) 845 8552  
E-pos: devco@asla.co.za  
schalkl@asla.co.za

B  
A  
C  
M.B.

Annex B

Tender vir Bedryfsklaar Implementeringsagent vir Beaufort Wes Munisipaliteit

## BEAUFORT WES MUNISIPALITEIT :



DEPARTEMENT VAN DIE DIREKTEUR:  
INGENIEURSDIENSTE

KENNISGEWING NR. 143/2008  
TENDER NO DID 15/2008

VOORSTEL VIR OORWEGING VAN ASLA DEVCO AS BEDRYFSKLAAR ("TURN  
KEY") IMPLEMENTERINGSAGENT VIR BEHUISINGSPROJEKTE VAN  
BEAUFORT WES MUNISIPALITEIT

## VOLUME 2



Desember 2008

**Ingedien deur:**

Asla Devco  
Broadweg 233  
STRAND  
7151

**Navrae:**

Schalk Loots  
Tel: (021) 845 8335  
Faks: (021) 845 8552  
E-pos: devco@asla.co.za  
schalkl@asla.co.za

Desember 2008

**ASLA**

*Handwritten signatures and initials.*

① R/Nr: 1.1

Annisuur C



**MUNISIPALITEIT / MUNICIPALITY / UMASIPALA-WASE  
BEAUFORT-WES / BEAUFORT WEST / BHOBHOFOLO**

Departement van die Direkteur: Ingenieursdienste  
Department of the Director: Engineering Services  
Isebe Lomphathi Owongameleyo: Kwicandelo Lezenjineli

Verwysing  
Reference  
Isalathiso

6/1/1/1; DID 15/2008

Navrae  
Enquiries  
Imibuzo

J.C.L. Smit

Datum  
Date

25 Maart 2009

Privatsak / Private Bag 582  
Faks / Fax 023-415 2811  
Tel 023-414 8101.

E-pos / E-mail : engineers@beaufortwestmun.co.za  
Birdstraat 61/63 Bird Street  
BEAUFORT-WES  
BEAUFORT WEST  
BHOBHOFOLO  
6970

Asla Devco  
Aandag: Mnr. S. Loots  
Broadweg 233  
STRAND  
7151

Per faks no. 021 845 8994

Meneer

**TENDER DID 15/2008: VOORSTEL VIR OORGEWING VAN 'N BEDRYFSKLAAR IMPLEMENTERINGSAGENT  
VIR BEHUISINGSPROJEKTE VAN BEAUFORT WES MUNISIPALITEIT**

Vind hierby aangeheg die skrywe van die Direkteur. Korporatiewe dienste met die besluit van die Aanbiedinge Beoordelingskomitee waar u voorstel aanvaar is.

U word hiermee in terme van die tendervoorwaardes van Tender DID 15/2008 aangestel om as Bedryfsklaar Implementeringsagent van Beaufort Wes Munisipaliteit vir die volgende drie jaar op te tree. Die aanstellingsdatum is 30 April 2009.

Geliewe daarop te let dat indien 'n projek onderweg is, met ander woorde 'n subsidie aansoek by die Departement Behuising geprosesseer en goedgekeur is by die verstryking van die vervaldatum van hierdie aanstelling op 30 April 2012 slegs daardie projek voltooi mag word. Geen ander projek mag van stapel gestuur word na 30 April 2012 nie.

U word hiermee versoek om binne die maand van Mei 2009 'n voorlegging aan die Raad te maak ten einde die pad vorentoe uit te spel. U kan me. N. MFundisi, Tel. 023 414 8181, skakel om reëlings in hierdie verband te tref.

U voorlegging, volume 1 en 2, soos aanvaar deur die Aanbiedinge Beoordelingskomitee asook hierdie skrywe was 'n eenheid beskou vir die uitvoering van hierdie kontrak.

Die uwe

J.C.L. Smit [Pr. Ing.]  
DIREKTEUR: INGENIEURSDIENSTE  
JCL/sec

ELLER  
[Handwritten initials and signatures]

Amuseur C



**MUNISIPALITEIT – MUNICIPALITY – UMASIPALA-WASE  
BEAUFORT-WES/BEAUFORT WEST/BHOBHOFOLO**

Kantoor van die Munisipale Bestuurder / Office of the Municipal Manager  
Departement Korporatiewe Dienste / Department Corporative Services

Rig asseblief alle korrespondensie aan die Munisipale Bestuurder/Kindly address all correspondence to the Municipal Manager/  
Yonke imbalelwano mayithunyelwe kuMlawuli kaMasipala

Verwysing  
Reference 6/1/1/1; DID 15/2008  
Isalathiso

Navrae  
Enquiries L Lakay  
Imibuzo

Datum  
Date 17 Maart 2009  
Umhla

Privaatsak/Private Bag 582  
Faks/Fax 023-4151373  
Tel 023-4148020  
E-pos / E-mail [admin@beaufortwestmun.co.za](mailto:admin@beaufortwestmun.co.za)  
Donkinstraat 112 Donkin Street  
BEAUFORT-WES  
BEAUFORT WEST  
BHOBHOFOLO

MEMORANDUM AAN DIE DIREKTEUR: INGENIEURSDIENSTE

**EVALUERING: TENDER DID 15/2008: VOORSTEL VIR OORWEGING VAN 'N  
BEDRYFSKLAAR IMPLEMENTERINGSAGENT VIR BEHUISINGSPROJEKTE VAN  
BEAUFORT-WES MUNISIPALITEIT**

Die Aanbiedinge Beoordelingskomitee het op 02 Maart 2009 soos volg besluit:-

" Dat die tender ontvang van Asla Devco goedgekeur en aanvaar word om as imlementeringsagent op te tree om behuisingsprojekte wat deel vorm van die Nasionale en Provinsiale behuisingskemas sowel as nie- lae koste residensiële gebiede sowel as kommersiële / industriële gebiede in gebiede in die Munisipale jurisdiksie gebied te ontwikkel."

Vir u dringende aandag.

*Nick*  
NE MFUNDISI  
DIREKTEUR: KORPORATIEWE DIENSTE  
/las

E.C.

Van de hant en  
vir versterking.  
Stu & syne met  
hant hant by  
an DSUB DEVCO.  
Euel. *[Signature]*

Annexure D

# MUNISIPALITEIT BERGRIVIER MUNICIPALITY

Rig alle korrespondensie aan:  
Die Munisipale Bestuurder  
Address all correspondence to:  
The Municipal Manager



✉ 60  
PIKETBERG  
7320  
☎ (022) 91-31126  
FAX (022) 91-31380  
E-pos/E-mail:  
bergmun@telkomsa.net

Verwysing/Reference DID 15/2008  
Navrae/Enquiries D LAMBRECHTS

27 JULIE 2009

Vir Aandag : Mnr S W R Loots  
ASLA / DEVCO

Geagte Mnr Loots

## IMPLEMENTERINGSAGENT BEHUISINGSPROJEKTE

U word hiermee aangestel as Bedryfsklaar Implementeringsagent van Bergrivier Munisipaliteit vir die drie (3) jaar wat strek vanaf 27 Julie 2009 tot 26 Julie 2012 en wel ingevolgt Tender DID 15/2008 van Beaufort-Wes Munisipaliteit.

**Aanhangsel A** – is die skriftelike bevestiging van Beaufort-Wes Munisipaliteit om u ingevolgt Klousule 32(1) van die Voorsieningskanaalbestuursbeleid as diensverskaffer te gebruik.

U word voorts daarop gewys dat weens die noodsaaklikheid van uitvoering, plaaslike arbeid, kontrakteurs, en verskaffers gebruik moet word soos voorgestel in –

- **AANHANGSEL B** – Paragraaf 5.12, bladsy 31 tot 33 van Volume 1 van die Tenderdokument;
- **AANHANGSEL C** – Paragraaf 4.26, bladsy 7 van die MOU tussen Bergrivier Munisipaliteit en ASLA;
- **AANHANGSEL D** – U skriftelike onderneming om plaaslike arbeid / sub-kontrakteurs en verskaffers te gebruik.

Laastens word u skriftelike onderneming gedokumenteer soos uitgewys in AANHANGSEL E.

U voorleggings, tenderdokumente Volume 1 & 2, MOU soos aanvaar deur die Raad, asook hierdie skrywe, word as 'n eenheid beskou vir die uitvoering van hierdie kontrak.

Die uwe

EC Le Roux

**EC LE ROUX**  
MUNISIPALE BESTUURDER

EC Le Roux  
Handwritten initials and signature

**ANNEXURE E**

**FORM OF UNDERTAKING  
OCCUPATIONAL HEALTH AND SAFETY AGREEMENT  
FOR WORK UNDERTAKEN BY CONTRACTORS/MANDATORIES**

Agreement made and entered into between

**BERGRIVIER MUNICIPALITY**  
(hereinafter referred to as the Bergrivier)

AND

**ASLA DEVCO (PTY) LTD**  
(hereinafter referred to as the Mandatory)

IN TERMS OF SECTION 37(2) OF THE OCCUPATIONAL HEALTH  
AND SAFETY ACT (ACT NO. 85 OF 1993 AS AMENDED)

I, **Schalk Willem Rabie Loots** representing **Asla Devco (Pty) Ltd** as an employer in its own right, do hereby undertake to ensure, as far as is reasonably practicable, that all work will be performed, and all equipment, machinery and plant used in such a manner as to comply with the provisions of the Occupational Health and Safety Act and the Compensation of Occupational Injuries and Diseases Act.

I furthermore confirm that **Asla Devco (Pty) Ltd** is registered with the Compensation Commissioner and that all registration and assessment monies due to the Compensation Commissioner have been fully paid. My/our COID registration number is **200843**.

I undertake to abide with the provisions of the Occupational Health and Safety Act (Act No. 85 of 1993 as amended). I further undertake to ensure that any persons/contractors employed by me will enter into an Occupational Health and Safety Agreement separately, and that

I hereby declare that I have read and understand the appended Occupational Health and Safety Conditions and undertake to comply therewith at all times.

SIGNED AT           *Abroad*           AT THIS 27<sup>th</sup> DAY OF July 2009

          *[Signature]*            
WITNESS

          *[Signature]*            
THE MANDATORY

SIGNED AT           *PIKETBERG*           AT THIS 27<sup>th</sup> DAY OF July 2009

          *[Signature]*            
WITNESS

          *E. Clereux*            
FOR AND ON BEHALF OF THE  
BERGRIVIER MUNICIPALITY

*[Handwritten marks]*

**ANNEXURE E**OCCUPATIONAL HEALTH AND SAFETY CONDITIONS

1. The mandatory shall assume the responsibility in terms of Section 16(1) of the Occupational health and Safety Act. Should the mandatory assign any duty in terms of Section 16(2) a copy of such assignment shall immediately be provided to the Bergrivier Municipality.
2. All work performed on premises of the Bergrivier Municipality shall be performed under the close supervision of the mandatory's employees who are to be trained to understand the hazards associated with any work that the mandatory performs on the premises of the Bergrivier Municipality.
3. The contractor shall appoint a competent person who shall be trained on any occupational health and safety aspect pertaining to them or to the work that is to be performed.
4. The mandatory shall ensure that he familiarises himself with the requirements of the Occupational Health and Safety Act and that he, his employees, and any mandatory, comply with them.
5. Discipline in the interest of occupational health and safety shall be strictly enforced.
6. Personal protective equipment shall be issued by the mandatory as required and shall be worn at all times.
7. Written safe working procedures and appropriate precautionary measures shall be available and enforced, and all employees shall be made conversant with the contents of these practices.
8. No unsafe equipment/machinery/articles or substances shall be used on Bergrivier Municipality's premises.
9. All incidents referred to in the Occupational health and Safety Act shall be reported by the contractor to the Department of Labour and the Bergrivier Municipality.
10. The Bergrivier Municipality hereby obtains an interest in the issue of any formal inquiry conducted in terms of Section 32 of the Occupational Health and Safety Act and into any incident involving a mandatory and/or his employees and/or his sub-contractors.
11. No use shall be made of any Bergrivier Municipality's machinery/plant/equipment/substance or personal protective equipment or any other article without prior arrangement and written approval.
12. No alcohol or any other intoxicating substance shall be allowed on the premises of the Bergrivier Municipality. Any person suspected of being under the influence of alcohol or any other intoxicating substance shall not be permitted access to, or allowed to remain on the premises.

Eluel BB  
m.b. A. Q. 12

Aunweur F.

# AANHANGSEL A

## Pro forma Volmag

### VOLMAG

Volgens 'n besluit deur die Raad van Direkteure / Lede tydens 'n vergadering gehou op 28/11/08

Schalk Willem Rabie Loots

NAAM/NAME VAN GEMAGTIGDE PERSONE

wie se handtekening(e) hieronder verskyn, behoorlik gevolmagtig is om alle dokumente in verband met die aansoek en indien suksesvol om grondbesikbaarheid ooreenkomste aan te gaan met die Beaufort Wes Munisipaliteit vir die ontwikkeling van grond namens

ESLA Devco

NAAM VAN IMPLEMENTERINGSAGENT



HANDTEKENING VAN VERANTWOORDELIKE PERSOON OF MAATSKAPPY / BK.

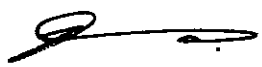
Dirakteur

IN SY/HAAR HOEDANIGHEID AS:

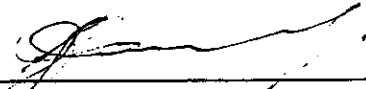
04/12/2008

DATUM

HANDTEKENING VAN GEVOLMAGTIGDE ONDERTEKENAARS :



NAAM: J. H. VERWEY



NAAM T. J. DONNELLY

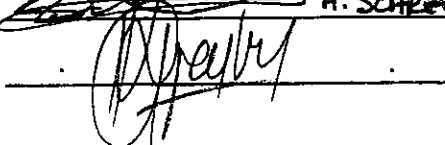
GETUIE

1.

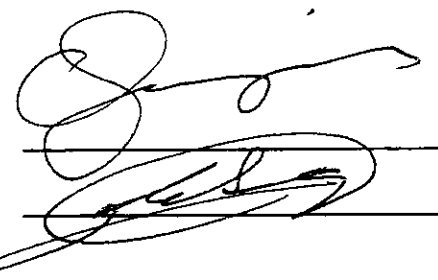


H. SCHREINER

2.



1.



2.

Elleer B  
ms

## ANNEXURE G

SUMMARY OF PROJECTS AND PHASING								
TOWN	LOCATION	LOW INCOME	GAP	TOILETS	DEFECTS	ESTA	PROJECT DESCRIPTION	PROJECT
PIKETBERG	Die Trekstraat, Piketberg		20				GAP Development Proposals	2008/2009
	Around Trajektekamp	82					Phase 1 of 366 Houses	2009/2010
	Around Trajektekamp	285					Phase 2 of 366 Houses	2009/2010
	Old Scheme: Steynville + Behind Watsonia Sportsgrounds			ALL			Existing scheme	2009/2010
	Private Property: Nightsheiter			80			Existing scheme	2009/2011
							Emergency Housing: 20 ESTA	2009/2010
	Melkbosfontein	500					Phase 1 of 1000 Houses	2011/2012
	Melkbosfontein	500					Phase 2 of 1000 Houses	2011/2012
	Melkbosfontein			150			GAP Development Proposals	2011/2012
PORTERVILLE	Smitstraat, Monte Bertha						Emergency Housing: 9 ESTA	2009/2010
	Old Scheme: Monte Bertha			ALL			Existing scheme	2009/2010
	Old Scheme: Monte Bertha				ALL		Existing scheme	2009/2010
	Commange: South of Monte Bertha	320					Phase 1 of 820 Houses	2010/2011
	Uitvlugt (North of Jakkalskloof & Langstraat)			100			GAP Development Proposals	2011/2012
	Uitvlugt (North of Jakkalskloof & Langstraat)	500					Phase 2 of 820 Houses	2011/2012
	Uitvlugt (North of Jakkalskloof & Langstraat)			100			GAP Development Proposals	2012/2013
	Uitvlugt (South of Jakkalskloof & Langstraat)						Emergency Housing: 20 ESTA	2012/2013
	VELDRIF	Noordhoek: Western side	150					Phase 1 of 500 Houses
Noordhoek: Community Hall	350						Phase 2 (final) of 500 Houses	2009/2010
Old Scheme: Laasplek & Noordhoek			ALL				Existing scheme	2009/2010
Old Scheme: Laasplek & Noordhoek				ALL			Existing scheme	2009/2010
Noordhoek Community Hall			100				GAP Development Proposals	2009/2010
Noordhoek Community Hall						20	Emergency Housing: ESTA	2010/2011
Noordhoek Community Hall						20	Emergency Housing: ESTA	2011/2012
Noordhoek Community Hall			150				GAP Development Proposals	2012/2013
Goedverwaght								
Wittewater								
Aurora								
Redelinghuis								
Eendekuil								
Rural Areas								

Eller B