



PIXLEY KA SEME DM

SERVICE LEVEL AGREEMENT
(Development of Rural Roads Asset
Management Services)

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SERVICE LEVEL AGREEMENT

made and entered into by:

1 PARTIES

1.1 The parties to this agreement are:

1.1.1 **PIXLEY KA SEME DISTRICT MUNICIPALITY**, a District Municipality established in terms of the Laws of the Republic of South Africa, with its main place of business at Culvert road, De Aar, herein represented and duly authorised thereto by, Rodney E Pieterse in his capacity as Municipal Manager

("the Customer")

and

1.1.2 **ROYAL HASKONING DHV Pty(Ltd)**, a company duly incorporated in terms of the Laws of the Republic of South Africa with its registered head office at 3rd Floor Rosestad Building, Nelson Mandela Drive, Bloemfontein, herein represented and duly authorised thereto by, Christopher du Plessis, in his capacity as Managing Director.

("the Service Provider").

1.2 The parties agree as set out below.



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2 INTERPRETATION

- 2.1 In this agreement, unless inconsistent with or otherwise indicated by the context –
- 2.1.1 **"the/this agreement"** means the agreement contained in this document and the annexure hereto ;
- 2.1.2 **"business day"** means a day which is not a Saturday, Sunday or official public holiday in the Republic of South Africa;
- 2.1.3 **"deliverable items"** means the deliverable items to be produced by the Service Provider for the Customer in terms of this agreement, as set out in the Annexure.
- 2.1.4 **"effective date"** means the date on which the last parties signature is appended to this agreement.
- 2.1.5 **"including"** (or words of similar meaning) means to include without limitation, and if the expression is used with reference to specific examples the *"eiusdem generis"* rule shall not apply;
- 2.1.6 **"law"** means any law of general application and includes the common law and any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment of legislative measure of government (including local and provincial government) statutory or regulatory body which has the force of law;
- 2.1.7 **"parties"** means the Customer and the Service Provider;
- 2.1.8 **"payable deliverable"** means a deliverable item, which once delivered by the Service Provider to the Customer, shall be payable to the Service Provider by the Customer as set out in the Annexure;



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- 2.1.9 "person" means any person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality;
- 2.1.10 "project" means the project as set out in the Schedule;
- 2.1.11 "schedule" means the Schedule attached hereto which is an integral part of this agreement;
- 2.1.12 "services" means the services to be rendered by the Service Provider, including the delivery of the deliverable items, as set out in Annexure A as and when required;
- 2.1.13 "signature date" means (or words of similar meaning) in relation to this agreement or any other document means the date on which this agreement or other document (as the case may be) is signed by the party signing it last in time;
- 2.1.14 "termination date" means the date on which all the requested deliverable items constituting the services are delivered in full by the Service Provider to the Customer, alternatively the end of the 2017/2018 financial year;
- 2.1.15 "writing" (or words of similar meaning) means legible writing and in English and excludes any form of electronic communication contemplated in the Electronic Communications and Transactions Act, 25 of 2002;
- 2.1.16 "annexure" means the annexure hereto and forms an integral part of this agreement;
- 2.1.17 "PKSDM" means Pixley Ka Seme District Municipality.



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- 2.2 Any reference to –
- 2.2.1 the singular includes the plural and vice versa;
- 2.2.2 natural persons includes juristic persons and vice versa;
- 2.2.3 any one sex or gender includes the other sexes or genders, as the case may be;
- 2.2.4 any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment or legislative measure of government (including local or provincial government) statutory or regulatory body which has the force of law means the relevant enactment or legislative measure as at the date of signature of this agreement and as amended or re-enacted from time to time;
- 2.2.5 a party includes a reference to that party's successors in title and assigns allowed at law.
- 2.3 The clause headings in this agreement have been inserted for convenience only and shall not be taken into account in its interpretation.
- 2.4 Words and expressions defined in any sub-clause shall, for the purpose of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.
- 2.5 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, effect shall be given to that provision as if it were a substantive clause in the body of the agreement, notwithstanding that it is only contained in the interpretation clause.



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- 2.6 If any period is referred to in this agreement by way of a reference to a number of days or weeks or months or other intervals, the period shall be reckoned exclusively of the 1st (first) day and inclusively of the last day of the relevant interval, unless the last day falls on a day which is not a business day, in which case the last day shall be the next succeeding business day.
- 2.7 If the due date for performance of any obligation in terms of this agreement is a day which is not a business day then (unless otherwise stipulated) the due date for performance of the relevant obligation shall be the immediately preceding business day.
- 2.8 If any obligation or act is required to be performed on a particular day it shall be performed (unless otherwise stipulated) by 16h00 on that day.
- 2.9 This agreement shall be governed, interpreted and enforced in accordance with the laws of the Republic of South Africa from time to time.
- 2.10 If amounts or figures are specified in numerals and in words and if there is any discrepancy between the numerals and the words then the words shall apply.
- 2.11 The rule of construction that this agreement shall be interpreted against the party responsible for the drafting of this agreement, shall not apply.

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3 APPOINTMENT OF SERVICE PROVIDER

3.1 The Customer hereby appoints the Service Provider, who hereby accepts this appointment, to provide the services to the Customer.

3.2 The Service Provider hereby acknowledge and agrees that -

3.2.1 the punctual performance of the requested services is a material term of this agreement and as such the Service Provider shall render the services strictly by the delivery dates;

4 DURATION

This agreement shall commence on the effective date and terminate on the termination date, alternatively the end of the 2017/2018 financial year unless terminated earlier by either party in terms of this agreement.

5 DELIVERABLE ITEMS

5.1 It is a material term of this agreement that the Customer retains the right to only subscribe to certain deliverable items as and when required.

5.2 The Customer will request the deliverable items in writing as and when required.

5.3 In rendering the services, the Service Provider shall deliver the requested deliverable items as set out in Annexure A.

5.4 The Service Provider shall deliver the deliverable items in the form and with substance set out in Annexure A.

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6 WARRANTY OF QUALITY CONTROL

6.1 The Service Provider hereby warrants to the Customer, which warranties the Customer hereby accepts and records are material representations which induced the Customer to enter into this agreement, that the Service Provider shall –

6.1.1 exercise reasonable skill, care and diligence in rendering the services and in the performance of all its obligations in terms of this agreement.

6.1.2 at all times display such proficient level of skill, care and diligence in providing the services, as is reasonably expected of a qualified, experienced and skilled Service Provider in its field of practice.

7 CONTACT PERSONNEL

Each party shall appoint and notify the other party in writing of a designated employee who shall be authorised to act as the primary contact person for each party in dealing with the other party in respect of each party's obligations in terms of this agreement and who will issue all consents or approvals and make all requests on behalf of each party. The names of the initial contact persons are set out in the Schedule.

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8 RELATIONSHIP BETWEEN THE PARTIES

- 8.1 The parties shall for the duration of this agreement be independent contractors to each other. No provision contained herein shall be construed to confer to the Service Provider the status of being an agent, employee, partner or co-venturer of the Customer. No person associated with the Service Provider in the performance of the provisions of the Service Provider's obligations in terms of this agreement shall be deemed to be an employee, agent or contractor of the Customer.
- 8.2 Neither the Service Provider, nor any of its officers, directors, employees or sub-contractors shall have the authority to represent, bind or act on behalf of the Customer in its performance of the Service Provider's obligations in terms of this agreement without the prior written consent of the Customer.

9 PRICE

- 9.1 The total contract price payable for the deliverable items, inclusive of VAT, by PKSDM, to the contractor, shall not exceed the amount of R2 276 984.70 (Two Million Two Hundred Seventy Six Thousand Nine Hundred Eighty Four Rand and Seventy Cent).

10 PAYMENT

- 10.1 The Customer shall make payment of the price in accordance with the supply chain regulations of the Customer.
- 10.2 Payment shall be made to the Service Provider's bank account specified on the invoice, within (30) days after the receipt of the invoice by the Customer.

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11 INTELLECTUAL PROPERTY RIGHTS AND INFRINGEMENT

- 11.1 The intellectual property rights for all deliverable items developed and supplied in terms of this agreement shall vest with the Customer.
- 11.2 The Service Provider shall upon termination of this agreement, deliver all items constituting the subject matter of the intellectual property rights, together a detailed inventory in respect thereof, to the Customer.
- 11.3 Unless agreed otherwise in writing, nothing in this agreement shall confer or be deemed to confer on the Service Provider any rights in or licence to use the Customer's intellectual property right other than in the performance of its obligations in terms of this agreement.
- 11.4 Either party ("**the infringing party**") shall ensure that the use by the other party ("**the non-infringing party**") of the information including the deliverable items shall not infringe any third party's intellectual property rights.
- 11.5 If it is established that such use infringes any third party's intellectual property right, the infringing party:
- 11.5.1 shall at its own expense and risk take such measures as to ensure that the infringement is obviated and that the non-infringing party's use of the information is not affected;
- 11.5.2 hereby indemnifies the non-infringing party against any claims brought by such third parties, provided that the non-infringing party notifies the infringing party in writing of such claims forthwith and permits the infringing party to defend any such claim.



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12 NON-SOLICITATION

Neither party shall directly or indirectly solicit for employment, and/or entice away or endeavour to, any of the employees of the other party during the subsistence of this agreement and for a period of 1 (one) year thereafter.

13 GOOD FAITH

In implementing this agreement and in all further dealings with each other, the parties each undertake to observe good faith in giving effect to the spirit and purpose of this agreement.

14 ANTI-CORRUPTION

14.1 The Service Provider hereby undertakes that it shall not make, nor cause to be made, any offer, gift, payment, consideration or benefit of any kind whatsoever, which could be construed as an illegal or corrupt practice, either directly or indirectly to any director, official, employee or representative of the Customer or any other person, as an inducement or reward in relation to the entering into or execution of this agreement.

14.2 Any such practice shall constitute a ground for termination of this agreement by the Customer.

15 BREACH

In the event of either of the parties ("**the defaulting party**") committing a breach of any of the terms of this agreement and failing to remedy such breach within a period of 10 (ten) days after receipt of a written notice from another party ("**the aggrieved party**") calling upon the defaulting party so to remedy, then the aggrieved party shall be entitled, at its sole discretion and without prejudice to any of its other rights in law, either to claim specific performance of the terms of this agreement or to cancel this agreement forthwith and without further notice, claim and recover damages from the defaulting party.

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16 TERMINATION FOR CONVENIENCE

The Customer may terminate this agreement for convenience and without cause at any time by giving the other party at least 30 (thirty) days' prior notice, designating the termination date.

17 NOTICES AND DOMICILIA

17.1 The parties choose as their *domicilia citandi et executandi* their respective addresses set out in the clause 1 for all purposes arising out of or in connection with this agreement at which addresses all processes and notices arising out of or in connection with this agreement, its breach or termination may validly be served upon or delivered to the parties.

17.2 For purposes of this agreement the parties' respective addresses shall be as set out in the Schedule or at such other address in the Republic of South Africa of which the party concerned may notify the others in writing provided that no street address mentioned shall be changed to a post office box or *poste restante*.

17.3 Any notice given in terms of this agreement shall be in writing and shall -

17.3.1 if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;

17.3.2 if transmitted by fax be deemed to have been received by the addressee on the day following the date of dispatch, unless the contrary is proved.

17.4 Notwithstanding anything to the contrary contained or implied in this agreement, a written notice or communication actually received by one of the parties from another including by way of fax transmission shall be adequate written notice or communication to such party.

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18 DISPUTE RESOLUTION AND JURISDICTION

- 18.1 Any disputes arising from or in connection with this agreement shall, at the sole, unfettered discretion of the Customer, be finally resolved in accordance with the rules of the Arbitration Foundation of Southern Africa by a single arbitrator appointed by the Foundation.
- 18.2 The dispute resolution procedure contained in this clause applies to any dispute, claim or difference between the parties arising out of or relating to this agreement.
- 18.3 A dispute may not be deemed to be a dispute until one of the parties has provided written notice conveying the nature and scope of the dispute to the other party.
- 18.4 All disputes must first be referred to the a mediation committee consisting out of the contract managers of the parties and a representative of either party mediation committee, for resolution. An agreement reached by the mediation committee shall be reduced to writing and shall be binding on the parties.
- 18.5 If the parties are unable to resolve any dispute within 10 (ten) working days of referral to the mediation committee, either party may refer the matter to arbitration.
- 18.6 The arbitration must be conducted in accordance with the provisions of the Arbitration Act, 1965 (Act 42 of 1965), as amended from time to time), provided that:
- 18.6.1 A single arbitrator is appointed
- 18.6.2 The arbitrator must be a practicing council or attorney of not less than 10 (ten) years standing, agreed upon by the parties within 10 (ten) days after the date on which the arbitration is being called for.



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- 18.7 If the parties fails to reach agreement within 10 (ten) days after arbitration has been called for on regarding the appointment of the arbitrator, such arbitrator must be appointed by the President for the time being of the Law society of the Cape Law Society.
- 18.8 The arbitration proceedings must take place in Kimberley at a venue and time determined by the arbitrator.
- 18.9 The arbitration proceedings must be held informally and in a summery manner, and procedural requirements and formalities must be determined by the arbitrator. In determining such formalities and procedure the arbitrator does not need to observe the normal strict rules of evidence or usual formalities of procedure.
- 18.10 The decision of the arbitrator is final and binding on the parties.
- 18.11 The cost of the arbitration proceedings must be born by the parties as decided by the arbitrator.
- 18.12 The arbitration clause shall not prevent the parties from access to an appropriate court of law for:
- 18.12.1 Interim relief in the form of an interdict, mandamus, or an order for specific performance pending the outcome of an arbitration in terms whereof or in respect of such arbitration or expert determination, as the case may be; and
- 18.12.2 an order for the payment of a liquidated amount of money on the basis of the facts which are not bona fide in dispute at the commencement of the proceedings.



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19 NEW LAWS AND INABILITY TO PERFORM

- 19.1 If any law comes into operation subsequent to the signature of this agreement which law affects any aspect or matter or issue contained in this agreement, the parties undertake to enter into negotiations in good faith regarding a variation of this agreement in order to ensure that neither this agreement nor its implementation constitutes a contravention of such law.
- 19.2 If either party is prevented from performing any of its obligations in terms of this agreement as a result of any existing or new law or as a result of any event beyond its reasonable control whether or not foreseeable, including general power failures, breakdown of telecommunication networks or computers, political intervention, imposition of sanctions, riot or insurrection, it shall not be liable for any failure to perform its obligations under this agreement while such event persists and shall have the right (unless such event has or is likely to persist for a period not exceeding 30 (thirty) days) to terminate this agreement at any time after the intervention of or becoming aware of such event.
- 19.3 If this agreement is terminated by either party in accordance with the provisions of this clause neither party shall have any claim or obligation in respect of any loss suffered or damages incurred as a result of such cancellation.

20 SEVERABILITY

Each and every provision of this agreement (excluding only those provisions which are essential at law for a valid and binding agreement to be constituted) shall be deemed to be separate and severable from the remaining provisions of this agreement. If any of the provisions of this agreement (excluding only those provisions which are essential at law for a valid and binding agreement to be constituted) is found by any court of



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competent jurisdiction to be invalid and/or unenforceable then, notwithstanding such invalidity and/or unenforceability, the remaining provisions of this agreement shall be and remain of full force and effect.

21 ASSIGNMENT

The Service Provider may not assign, transfer, sub-contract or otherwise part with this agreement or any part thereof or any right or obligation under it, without obtaining the Customer's prior written consent thereto.

22 GENERAL

- 22.1 This agreement constitutes the whole agreement between the parties as to the subject matter hereof and no agreements, representations or warranties between the parties regarding the subject matter hereof other than those set out herein are binding on the parties.
- 22.2 No addition to or variation, consensual cancellation or novation of this agreement and no waiver of any right arising from this agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by all the parties or their duly authorised representatives.
- 22.3 No latitude, extension of time or other indulgence which may be given or allowed by the Customer to the Service Provider in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of the Customer arising from this agreement, and no single or partial exercise of any right by the Customer under this agreement, shall in any circumstances be construed to be an implied consent or election by the Customer or operate as a waiver or a novation of or otherwise affect any of the Customer's rights in terms of or arising from this agreement or estop or preclude the Customer from enforcing at any time and without notice,



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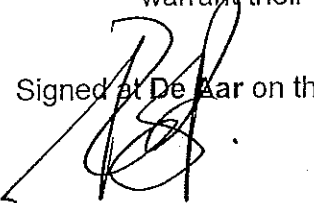
strict and punctual compliance with each and every provision or term hereof.

22.4 This agreement is signed by the parties on the dates and at the places indicated opposite their respective names.

22.5 This agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument.

22.6 The persons signing this agreement in a representative capacity warrant their authority to do so.

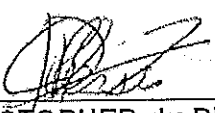
Signed at De Aar on this _____ day of _____ 2016.


RE PIETERSE
Obo
Pixley Ka Seme DM

Witnesses:


2. _____

Signed at De Aar on this _____ day of _____ 2016.


CHRISTOPHER du PLESSIS
Obo
Royal Haskoning DHV

Witnesses:

1. _____

2. _____

SCHEDULE

- 1 A description of the deliverable items referred to in this agreement is contained in Annexure A hereto;
- 2 A description of the payable deliverables referred to in this agreement is contained in Annexure A hereto;
- 3 This project as referred to in clause 2.1.10 entails the Appointment of professional services for the development of Rural Roads Asset Management Services (RRAMS);
- 4 Nominated address and contact person for PKSDM;
 - 4.1 **Hennie Greef**
Pixley Ka Seme DM
Culvert Road
De Aar, 7000
Tel: 053 6312529
- 5 Nominated address and contact person for Royal Haskoning DHV Pty(Ltd.)
 - 5.1 **Christopher du Plessis**
3rd Floor Rose stad Building
Nelson Mandela Drive
Bloemfontein, 9301

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Item	Description	CDP	AL	VP	WV	EK	FK	SB	GM	RM	Total (R)
		1200	1100	1100	900	750	750	550	250	250	
7	Reporting (This includes training for DM staff)										
a	Monthly Reporting for 16 months	4						32			R 22 400.00
b	Quarterly Reporting for 6 Quarters	3						12			R 10 200.00
c	Grant Evaluation Report for 2 years	50						80			R 104 000.00
d	Business Plan for 2016/17	24						40			R 50 800.00
e	RAMP	8	20	80				20			R 130 000.00
										0	R 318 000.00
8	Technical Support (Only actual time spend will be invoiced)										
a	Technical Support March 2016	8			16		4	40		4	R 50 000.00
b	Technical Support April 2016	8			16		4	40		4	R 50 000.00
c	Technical Support May 2016	8			16		4	40		4	R 50 000.00
d	Technical Support June 2016	8			16		4	40		4	R 50 000.00
e	Technical Support July 2016	8			16		4	40		4	R 50 000.00
f	Technical Support August 2016	8			16		4	40		4	R 50 000.00
g	Technical Support September 2016	8			16		4	40		4	R 50 000.00
h	Technical Support October 2016	8			16		4	40		4	R 50 000.00
i	Technical Support November 2016	8			16		4	40		4	R 50 000.00
j	Technical Support December 2016	8			16		4	40		4	R 50 000.00
k	Technical Support January 2017	8			16		4	40		4	R 50 000.00
l	Technical Support February 2017	8			16		4	40		4	R 50 000.00
m	Technical Support March 2017	8			16		4	40		4	R 50 000.00
n	Technical Support April 2017	8			16		4	40		4	R 50 000.00
o	Technical Support May 2017	8			16		4	40		4	R 50 000.00
p	Technical Support June 2017	8			16		4	40		4	R 50 000.00
											Sub Total Cost
											R 800 000.00
9	Disbursements										
a	Travelling & Disbursements (As stated in Proposal)										R 100 000.00
b	Printing of reports and maps										R 30 000.00
											Sub Total Cost
											R 130 000.00
											TOTAL EXCL VAT
											R 1 997 355.00
											14% VAT
											R 279 629.70
											TOTAL INCLUDING VAT
											R 2 276 984.70

CDP Christopher du Plessis (Project Principal)
 VP Vonda Pretorius (Specialist - Transport)
 WV Winas Vukeya (Project Manager)
 SB Samuel Baloyi (Visual Assessor - Supervisor/RAMS Training)
 RM Rosalia Mokhelesi (Admin and Logistics Support)
 GM Godfrey Malema (Visual Assessor - Supervisor/Trainer)
 NM Ntali Monoang (Visual Assessor - Supervisor/Trainer)

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Item	Description	CDP	AL	VP	WV	EK	FK	SB	GM	RM	Total (R)
		1200	1100	1100	900	750	750	550	250	250	
1	Road Visual Condition Assessment System										
a	Setting up of system on computers and tablets	4			4	8	2	4			R 18 100,00
b	Training of Pixley Ka Seme Technicians on TMH18, TMH9 and System				8	8		8			R 17 600,00
c	Execute trial section				8	8		10			R 18 700,00
d	Processing of Field Data and checking TMH18 & TMH9 compliance				4	8		10			R 15 100,00
					Unit Price			Quantity			
e	Windows 8 Computer Tablets				5800			3			R 17 400,00
f	GPS Units (USB)				850			6			R 5 100,00
g	Power Inverters				585			3			R 1 755,00
								Sub Total Cost			R 93 755,00
2	Update Road Asset Data										
a	Obtain Road Network Data	4				16					R 16 800,00
b	Update Road Network from latest Imagery	4			8	40					R 42 000,00
c	Clip road network into Links and Nodes and prepare for MOBICAP	4			8	40					R 42 000,00
								Sub Total Cost			R 100 800,00
3	Training										
a	Pavement assessment			40				40			R 54 000,00
b	Traffic assessment			16				40	40		R 49 600,00
c	Road Inventory assessment				20			40			R 40 000,00
d	Bridge Assessment	40						24			R 61 200,00
e	QGIS Training					40		40			R 52 000,00
								Sub Total Cost			R 255 800,00
4	Traffic Data Analysis										
a	Traffic Data Analysis			40				40			R 66 000,00
								Sub Total Cost			R 66 000,00
5	Visual Assessment Analysis										
a	Management of data assessed				40						R 36 000,00
b	Analysis of Captured Data		40								R 44 000,00
c	Quality Check of Visual Assessment Data			40					80		R 64 000,00
d	QGIS data assessment						40				R 30 000,00
								Sub Total Cost			R 174 000,00
6	Road Inventory Assessment Analysis										
a	Inventory Assessment Analysis	0	0	0	40	0	0	40	0	0	R 58 000,00
								Sub Total Cost			R 58 000,00

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