

**CONSULTING SERVICE AGREEMENT
ON
THE WORKS IN KENYA FOR**

**PROJECT NAMES:
Itare Dam under Rift Valley Water Service Board
and
Ruiru II Dam under Athi Water Service Board**

THIS CONSULTING SERVICE AGREEMENT is made and entered into on the date of 26/11/2013 in Nairobi-Kenya (hereinafter referred to as this "Agreement")

BY AND BETWEEN

Cooperativa Muratori & Cementisti – C.M.C. di Ravenna South Africa Branch, a company registered as such under the laws of South Africa with registration number 2004/009246/10, with legal address at CMC South Africa Branch, 2nd Floor, Block A, EOH Business Park, Osborne Lane, Bedfordview – 2007 - South Africa (hereinafter referred to as "Party A")

AND

Stansha Limited (hereinafter referred to as "Party B"), a company incorporated and registered in Kenya under registration number C145285 and with legal address at Capa House, Suite 3, Wood Avenue, Off Argwings Kodhek Road, Nairobi - Kenya

Party A and Party B shall be hereinafter individually referred to as a "Party" and collectively referred to as the "Parties".

PREAMBLE

WHEREAS Party A has assigned Party B as Party A's local consultant for the *Itare Dam and Ruiru II Dam* in Kenya issued under **Rift Valley Water Service Board and Athi Water Services Board** respectively (hereinafter referred to as the "Project") and Party B has accepted such assignment from Party A;

WHEREAS the Parties wish to set forth certain detailed rules of cooperation between them in a binding written document;

NOW THEREFORE, the Parties hereby agree to be bound by the following terms and conditions in the course of their cooperation under this Agreement:

Article 1 Nature of relationship between the Parties

1.1 For the purpose of tendering, and if awarded the Contract, executing and performing the contract for the Project as defined in the Preamble hereinabove (hereinafter referred to as the "Contract") with the RVWSB and AWSB EMPLOYER] (hereinafter referred to as the "Employer"), Party A hereby assigns Party B as a local consultant of Party A with respect to the foregoing Project. Party B shall act in such capacity in accordance with the stipulations under this Agreement.

1.2 It is expressly understood and agreed between the Parties hereto that by entering into this Agreement, it does not mean to form or establish any partnership or other form of business association between the Parties hereto and each Party shall remain a separate entity from the other Party.

1.3 It is also expressly understood and agreed between the Parties hereto that by entering into this Agreement, it does not mean to form or establish any relationship between a principal and an agent.

1.4 Pursuant to the principles of "no partnership and no agency" set forth in the foregoing Sub-clause 1.2 and Sub-clause 1.3, the Parties hereto expressly agree that neither Party is authorized or entrusted with any power, authority or right under this Agreement to make any binding commitment or to incur any debt and liability for and on behalf of the other Party. The Party who makes such commitment or incurs such debt and liability shall be held solely liable for its legal consequences and shall keep the other Party fully indemnified from any consequent losses or damages.

1.5 Pursuant to the principles of "no partnership and no agency" set forth in the foregoing Sub-clause 1.2 and Sub-clause 1.3, the Parties hereto expressly agree that each Party shall have the obligation to strictly observe all applicable laws of the country where the Project is located in the course of implementing this Agreement and each Party shall solely bear any legal consequences for its own activities in connection with this Agreement and neither Party shall be held responsible for the other Party's activities in connection with this Agreement.

1.6 During the validity period of this Agreement, Party B shall not work for any third party that intends to win the bid for the Contract of the same Project specified hereinabove or for other business competitors of Party A in the country where the Project is located.

1.7 During the validity period of this Agreement, Party A shall have the sole discretion to hire additional local consultants or other local cooperation party to work for Party A with respect to the same Project, or to hire additional local consultants or other local cooperation party to work for Party A with respect to other projects in Kenya.

Article 2 Scope of Consulting Service

2.1 The territorial scope of the consulting service of Party B for Party A shall be limited to the territory of Kenya.

2.2 The contractual scope of consulting services shall be as specified under Article 3 of this Agreement.

Article 3 Obligations of Party B

3.1 In this Agreement, during the full period of this Consulting Service Agreement, Party B shall:

- 1) Advise on the strategies and tactics of Party A's participation in the public tendering process or selected invitation for contract negotiation so as to enable Party A to develop a competitive and viable tender for the Project;
- 2) Provide Party A with timely advice as to the best and possible actions to be taken or followed by Party A at different stages so as to enable Party A to respond to the Employer's requirements and/or different situations in a timely and correct manner;
- 3) Assist Party A to review the terms and conditions set forth in the Tender Documents issued by the Employer and provide Party A with Party B's suggestions as to the critical requirements of the tender, in terms of documentation and conformity with the tender requirements, especially among other things those requirements important and/or unique pursuant to the tender practices current in Kenya.
- 4) Review and assist Party A in completion of the formats (Annexes to be filled by Tenderers) included in the Tender Documents issued by the Employer so as to ensure the formats, as completed by Party A, comply with the Employer's requirements and practices. However, Party A may, if it deems necessary, contract an external legal adviser or tax adviser to verify whether Party A's documentation in this respect satisfies the tender requirements and conforms to the laws and regulations of Kenya in which case, Party A will directly cover such adviser's fees;
- 5) Assist Party A to collect and sort out information regarding local laws, regulations and decrees, etc. on customs clearance, import & export of equipment, plant and materials, land transportation and marine shipment, etc;
- 6) Assist Party A to collect and sort out information related to recruitment, employment and dismissal of local staff and labourers (including but not limited to laws and regulations and trade practices on salary, wages,

overtime compensations, welfare, social insurance and medical insurance, income taxes, etc.);

- 7) Assist Party A to collect and sort out information and regulations on expatriate staff working in Kenya for similar project (including but not limited to entry visa, work/residence permit, income and other taxes, fees and dues to be paid by the expatriate employees and the company, etc.);
- 8) Assist Party A to collect and sort out information of local taxations including custom duties, royalties, stamp dues, value added tax, sales tax, income tax and any other taxes, fees, dues or compulsory levies imposed by governmental authorities in relation to the performance of the Contract for the Project;
- 9) Assist Party A to collect and sort out price information of fuel, gas, electricity, water and local materials, equipment and products, etc. as per the requirement of Party A;
- 10) Assist Party A to obtain information on project insurance, including credibility checking of local insurance companies, collecting laws regulations and decrees in respect of insurance for execution and performance of Contract for the Project;
- 11) Promote Party A amongst the Employer and relative government authorities of Kenya as well as local engineering and construction communities so as to gain Party A a favourable and positive position to pursue the Contract for the Project;
- 12) Support in the actions for opening the technical and financial proposals. Party B shall participate with Party A in these events and advise Party A as to responses to any Employer's questions or concerns;
- 13) Assist Party A as to printing, binding and packaging of Party A's tender documentations if so requested;
- 14) Assist personnel of Party A to get the necessary formalities and documents to come to Kenya including entrance visa, labor visas and work permits, recommend travel plans, make hotel reservations and provide local transportation, if necessary and as required by Party A;
- 15) Provide office space and services for Party A's executives, engineers and other staff, during the preparation of the tender in Kenya.
- 16) Provide Party A with consulting services and negotiation techniques in the process of the contract negotiation, and if necessary, participate in the contract negotiation meetings between the Employer and party A;

- 17) Provide to Party A relevant information relating to customs clearance companies, insurance companies, labour brokers, law firms, accounting service companies, local subcontractors, local suppliers, local engineers and technicians for Party A's consideration, if Party A so requires;
- 18) Collect and provide timely to party A relevant information relating to local price indices, changes in local laws and regulation relating to the Project;
- 19) Assist Party A to deal with Customs in the territory of Kenya and handle import-related affairs including but not limited to customs clearance, import of plant for permanent works and import of Party A's (or its subcontractor's) machinery and equipment, etc.
- 20) Assist Party A in dealing with call for payment, variations, claims and disputes between the Employer and Party A;
- 21) Assist Party A in dealing with trade unions, labour offices, police offices, tax offices and local communities during the whole contract period, and deal with the disputes if any;
- 22) Assist Party A to dealing with recruitment, employment and dismissal of local staff and labourers;
- 23) Assist Party A in dealing with public relations necessary to enable the Project to be implemented smoothly;
- 24) In case any unfavourable events against the Project happen, Party B shall assist in alleviating any unfavourable results of such events and assist Party A to solve any such results caused by such events in a diligent and effective manner.
- 25) Provide a quarterly Consulting Service Report to Party A until the expiry of this Consulting Service Agreement.

3.2 In addition to the above, Party B shall also render services concerning the tendering process and concerning signing and performance of the Contract with the Employer in relation to the Project. Before the Employer or any governmental and/or non-governmental agencies or entities intervene in the Project, advise Party A in advance to take prompt actions and damage-control strategies, and assist Party A by continuously providing liaison services in connection with the different stages of the Project.

3.3 Unless otherwise expressly stipulated herein, all costs and expenses incurred by Party B in the course of providing consulting services under this Agreement shall be solely born by Party B. However, if Party A entrusts Party B to incur certain costs or expenses with express prior written consent to reimburse Party B, Party A will subsequently reimburse Party B according to

such consent. For the avoidance of doubt, in the absence of such express prior written consent, no subsequent reimbursement will be made by Party A.

Article 4 Obligations of Party A

4.1 In this Agreement, Party A shall:

- 1) Provide necessary information and documents to Party B to enable the latter to perform its consulting services as per specified under the foregoing Sub-clause 3.1 and Sub-clause 3.2;
- 2) Effect payment for the consulting service Fee in accordance with Article 5 and Article 6 hereinafter

4.2 It is expressly understood and agreed by and between the Parties hereto that as long as the Contract for the Project is not awarded to Party A and the advance payment under the Contract is not paid to Party A by the Employer, Party A shall have no contractual obligation whatsoever to pay any consulting service Fee as defined under Article 5, to Party B, and all costs and expenses incurred by Party B in connection with this Agreement shall be solely born by Party B itself in accordance with Sub-clause 3.3 hereinabove.

Article 5 Consulting Service Fee

5.1 In consideration of Party B's performance of its consulting service under this Agreement, on the pre-condition that Party A is awarded the Contract by the Employer and the Employer has paid advance payment under the Contract, Party A shall pay in accordance with payment schedules specified under Article 6 hereinafter the consulting service fee to Party B, and such fee shall be calculated in accordance with Sub-clause 5.2 below (hereinafter the "Consulting Service Fee").

5.2 The total Consulting Service Fee is equivalent to **3% of the contract Price (excl. VAT)**. Variation subsequent to the signing date of the Contract which may lead to the change of Contract Price shall not be considered in calculating the foregoing Consulting Service Fee, unless the contract price is reduced, in which event the consulting service fee, shall be calculated on the reduced value.

5.3 The aforementioned Consulting Service Fee shall include but not limited to all costs, expenses, overheads, charges, and profits incurred and to be incurred by Party B to fulfill its obligations under this Agreement.

5.4 The aforementioned Consulting Service Fee shall include all taxes, duties or other governmental levies imposed on the Consulting Service Fee under this Agreement by the government of the country where the Project is located, or by the government of the country where Party B is registered, or by the government of the Country where the payment of the Consulting Service Fee is related.

Article 6 Payment of Consulting Service Fee

6.1 The payment of Consulting Service Fee shall be made in the currency of the Project/s as the case may be to the Bank Account designated by Party B in writing and advised to Party A.

6.2 After Party A's signing of the Contract with the Employer for the Project, Party A shall pay Party B the Consulting Service Fee in the following manner:

a) The consulting service fee shall be paid at two months intervals by Party A to Party B on a pro-rata basis. Each amount of interim payment will be calculated on the basis of the formula below:

$$S = 100\% * 3\% * (P - T)$$

Where,

S = each sum of interim payment for the consultancy service fees

P = the accrued progress payment.

T = the accrued Value Added Tax (VAT) if applicable

6.3 It is expressly agreed between the Parties that subsequent to the conclusion of the Contract, in case the Contract is terminated, repudiated or cancelled due to whatever reason, any portion of the Consulting Service Fee that is not due and payable yet shall be cancelled accordingly, and Party B shall not be entitled to payment from Party A of any such unpaid amount of the Consulting Service Fee. Provide always that (i) for any amount of the Consulting Service Fee which is already paid prior to the date of termination, repudiation or cancellation, no refund shall be made; (ii) for any amount of the Consulting Service Fee which has already become due and payable prior to the date of termination, repudiation or cancellation but payment of which is delayed by Party A, such amount of the Consulting Service Fee shall still be paid to Party B.

Article 7 Confidentiality Covenants

7.1 The Party B agrees to keep the contents of this Agreement strictly confidential from any third party or parties.

7.2 It is understood that during the validity period of this Agreement, Party A may release or disclose certain confidential information to Party B to facilitate Party B's consulting services (hereinafter referred to as the "Confidential Information"). Party B hereby agrees to: (i) hold Party A's Confidential Information in the strictest confidence and to take all reasonable precautions to protect such Confidential Information including, without limitation, all precautions that Party B normally would take with respect to its own confidential and proprietary materials, but in no event less than reasonable care; (ii) not to make any use whatsoever at any time of the disclosed Confidential Information except for the sole purpose of providing consulting services under this Agreement; (iii) not to copy, decompile, disassemble or reverse engineer any disclosed Confidential Information; and (iv) not to use any Confidential Information to create any intellectual property, product, service, or technology that is based upon, developed with, derived from, uses, employs, or incorporates, any Confidential Information.

7.3 Party B agrees to indemnify and hold Party A (and its officers and employees) harmless from and against any and all losses, costs, damages and expenses arising as a result of any breach of this Agreement by Party B.

7.4 In case of termination or expiry of this Agreement, Party B shall immediately return to Party A all documents (including but not limited to any Confidential Information, financial models, consultants' reports and other work in progress) obtained from Party A for the purpose of the Project.

7.5 The confidentiality obligation under this Article 7 shall survive the termination or expiry of this Agreement.

Article 8 Governing Law and Settlement of Disputes

8.1 English law shall govern the validity, interpretation and performance of this Agreement.

8.2 Any dispute arising out of or in connection with this Agreement shall be submitted to arbitration in accordance with the Rules of the International Chamber of Commerce in effect at the time of applying for arbitration. Such arbitration proceedings shall take place in Singapore and English shall be the official language for the arbitration proceedings.

8.3 The arbitral award rendered pursuant to Sub-clause 8.2 hereinabove shall be final and binding upon both Parties. Neither Party shall seek any judicial re-judgment or other forms of judicial remedies under any jurisdiction other than for the sole purpose of application for enforcement of the arbitral award.

8.4 The foregoing governing law and arbitration clauses under this Article 8 shall survive the termination or expiry of this Agreement.

Article 9 Entire Agreement And Amendment

9.1 This Agreement contains the entire understanding and agreement of the Parties regarding the subject matter hereof. All previous understandings, promises, consents, or agreements concerning the subject matter hereof, whether written or oral, shall be superseded by this Agreement.

9.2 No amendment, supplement, addendum, or modification of this Agreement shall be valid and binding on the Parties unless made in writing and signed on behalf of each of the Parties by their respective duly authorized officers or representatives.

Article 10 Validity and Expiry Date

10.1 This Agreement shall become effective from the date on which this Agreement is duly signed by both Parties.

10.2 This Agreement shall expire or be terminated automatically upon occurrence of any of the following events:

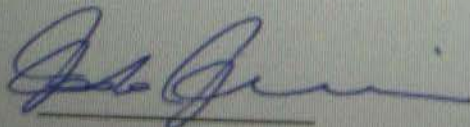
- (i) (The Employer has issued a letter of acceptance for the Contract to any third party other than Party A; or
- (ii) The Project has been cancelled by the Employer or suspended from development for one year subsequent to the signing date of this Agreement; or
- (iii) No progress is made with respect to the bidding process or negotiated award of the Contract for one year subsequent to the signing of this Agreement; or
- (iv) Party A has decided at its sole discretion not to continue its pursuit for the award of the Contract or withdraw from the bidding process for whatever reason and has notified in writing of such decision to Party B; or

- (v) The Contract between Party A and the Employer (if any) is terminated, repudiated or cancelled;
- (vi) The taking-over certificate (or provisional acceptance certificate or other certificate of similar nature) and performance certificate (or final acceptance certificate or other certificate of similar nature) under the Contract have been issued to Party A, and Party B has received all payment of its Consulting Service Fee under this Agreement; or
- (vii) Either of the Parties has become insolvent or bankrupt or has a receiver appointed for its undertaking or assets or goes into liquidation, whether voluntary or otherwise or on proceedings analogous to bankruptcy or liquidation proceedings being instituted against either of the Parties; or
- (viii) Any breach of the terms and conditions by Party B of this Agreement; or
- (ix) The Parties hereto have reached any new written agreement which replaces or supersedes this Agreement.

IN WITNESS WHEREOF, the undersigned, being the authorized representatives of the Parties hereto have caused this Agreement to be executed in duplicate English texts as of the day and the year first written hereinabove.

For and on behalf of

**CMC di Ravenna - South Africa Branch
Party A**



Authorized Signature

Name: PAOLO PORCELLI

Position: CEO SOUTHERN AFRICA

**CMC di Ravenna
South African Branch**

For and on behalf of

**Stansha Limited
Party B**



Authorized Signature

Name: STANLEY MUTHAMA

Position: CED STANSHA LIMITED

LM RNKH - DIRECTOR

STANSHA LIMITED

2000 0000 0000 0000

TEL: +254 202361841

CELL: +254 704598626

DATE: 04/12/2013