

SERVICE PROVIDER AGREEMENT



on the Go for Growth

WATERBERG DISTRICT MUNICIPALITY

Entered into by:

Lephalale Local Municipality
(the Client')

Represented herein by **Mr AS Naidoo** in his capacity as the Municipal Manager authorised by Municipal Resolution as Accounting Officer of the Lephalale Municipality
(Hereinafter referred to as LLM)

And

Waterberg District Municipality

Represented herein by **Mr MV Letsoalo** in his capacity as the Municipal Manager authorised by Municipal Resolution as Accounting Officer of Waterberg District Municipality

(Hereinafter referred to as WDM)

In respect of the funding of the implementation of Lephalale Mobile Offices Project;

PAID

A handwritten signature in the bottom right corner of the page.

PREAMBLE

Whereas Waterberg District Municipality and Lephalale Local Municipality enter into an agreement for the co-funding of the acquisition of mobile Office Units for Lephalale Local Municipality

It is therefore agreed as follows:

1. INTERPREATION

The headings of the paragraphs in this Agreement are for the purposes of reference only and shall not be used in the interpretation of this Agreement. In this Agreement, unless a contrary intention clearly appears:

- 1.1 the singular includes the plural and vice versa;
- 1.2 the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely :
 - 1.2.1 '**business day**' means any working day, excluding Saturdays, Sundays and public holidays;
 - 1.2.2 '**Client**' means the Waterberg District Municipality;
 - 1.2.3 '**commencement date**' means the 1ST July 2012
 - 1.2.4 '**termination date**' means the 30th September 2012
 - 1.2.5 '**contract price**' means the total amount of fees that will be charged by the Service Provider, including disbursements and VAT, for the performance of the services in terms of this Agreement;
 - 1.2.6 '**key result**' means an indicator or yardstick in terms of which the Service Provider's successful performance of its obligations may be gauged;
 - 1.2.7 '**methodology**' means the professional expertise and the system of methods required by the Service Provider to perform the obligations set out in terms of this Agreement;

PAID

[Handwritten signature]

[Handwritten signature]

- 1.2.8 **'prime rate'** means the variable interest rate as charged and calculated by the Service Provider's bankers from time to time;
- 1.2.9 **'project'** means the services to be performed by the Service Provider in terms of the Tender and the corresponding obligations to be fulfilled by the Client;
- 1.2.10 **'project plan'** means the strategy prepared by the parties for the successful completion of the Project submit within a reasonable time, prior to commencement of project;
- 1.2.11 **'Service Provider'** means Lephalale Local Municipality situated in Lephalale as the implementing agent procuring the service from their appointed Service Provider
- 1.2.12 **'services'** refers to the professional work to be performed by the Service Provider in terms of this Agreement, as per page 4;
- 1.2.13 **'Tender'** means Tender means this appointment, appointed through a co- funding process with another state organ by the WDM and being in respect of the co-funding of the implementation of Lephalale Mobile Office units for LLM by the WDM.
- 1.3 Figures are referred to in numerals and in letters and if there is any conflict between the two then the letters shall prevail; and,
- 1.4 Expressions defined in this Agreement shall bear the same meanings in schedules or annexures to this Agreement, which do not themselves, contain their own definitions.

NOW THEREFORE Parties agree as follows:

2. **APPOINTMENT OF DURATION**

- 2.1 WDM hereby appoints LLM to carry out the services of the procurement of the three mobile offices by LLM as indicated in the project proposal, project charter and in the appointment letter or on any such other dates as many as be agreed by both parties.
- 2.2 The shall ensure that the service provider will complete the project within three months from date of employment for the performance

READ

[Handwritten signature]

[Handwritten signature]
m.c
[Handwritten signature]
R

of the services on Lephalale Mobile Office Units as indicated in the project proposal, project charter and in the appointment letter or on any such other dates as many as be agreed by both parties.

- 2.3 The duration of co-funding agreement is for a term of approximately 3 months commencing on the 1st July 2012 ending the 30th September 2012.

3. **Description of services to be rendered by LLM**

LLM shall use the funds received from WDM to implement the project of Procurement of three mobile offices which will be an asset of Council. LLM when procuring the services must adhere to all SCM Regulations and LLM Supply Chain Policy.

4. **Appointment of the Project Management Services**

The role of project management will be performed by LLM as the implementing agent on this project.

5. **TEAM**

- 5.1. The team members that will be involved in the project must be as according to the proposal and where a team member resigns or leave the institution, the client must be informed in writing through Supply Chain Management and the Project Manager.
- 5.2 In case where one of the team members mentioned in the proposal leaves an institution, the municipality must replace such a member with a member equivalent (in terms of the rank, qualification and the experience) or more.

6 **EXTENT AND TERMS OF CONDITIONS**

This Agreement consists of the terms and conditions set out in the documentation listed as follows:

- 6.1.1 LLM Request for funding
- 6.1.2 LLM Business Plan
- 6.1.3 The Agreement and,
- 6.1.4 Letter of appointment by LLM appointing a service provider

[Handwritten signature]

[Handwritten signature]

[Handwritten signature]

- 6.2 In the event of conflict between the provisions of any of the aforestated documentation and this Agreement, the provisions of this Agreement shall prevail.

7 CO-FUNDING OF THE PROJECTS

- 7.1 The total cost of the project eligible for funding is R430 000 Vat Inclusive. In order to ensure successful implementation of the project, WDM shall fund the requested amount of the project to the maximum value of R430 000 but dependent on proof of appointment of the service provider.
- 7.2 LLM shall be responsible to provide the project management and implementation of the project, providing staff and resources to ensure that the service provider is appointed in line with the SCM Regulations and the contract is subsequently managed to ensure value for money is achieved. LLM shall monitor the project to ensure implementation in line with the scope and quality required of this project within the specified timelines.

8 DURATION

The duration of the agreement is 3 months commencing on the 1st July 2012 ending on the 30th September 2012 irrespective of date of signature by the parties.

9 SCOPE OF WORK (DUTIES AND RESPONSIBILITIES)

9.1 WATERBERG DISTRICT MUNICIPALITY

- WDM to serve on the Project Steering Committee ,if applicable;
- WDM will be monitoring the performance by the Service Provider during project implementation upon submission if supporting evidence by LLM.
- The contribution made by the WDM will be R430 000.
- WDM to transfer the funds as properly invoiced (payment within 30 days of issue of invoice.
- To give guidance through the WDM SCM Unit ,if LLM so requests

PAID

SA
SC

W.K.
[Signature]

9.2 LEPHALALE LOCAL MUNICIPALITY

- To implement the project as appears under clause 4 of this agreement
- To administer all WDM & LLM funds to the project within the limitations of the budget.
- To invoice WDM for expenses/costs incurred in implementing the project.
- To provide all relevant administrative support to the project.
- To monitor the performance of the appointed Service Provider.
- To ensure that all deliverables of the project are met to the required standard and timelines.
- To ensure that project appointment and implementation adheres to all relevant regulatory requirements.

NB. Any additional work which is not part of the initial agreement will have to be requested in writing and approval is given to initial work

10 PRICE

The contract price in respect of the agreement is as per the approximate pricing schedule provided in by LLM.

Total price for mobile units for Lephalale Local Municipality is **R430 000 (VAT inclusive), if VAT registered and R369 800.00 (VAT exclusive), if not VAT registered.**

11 DISBURSEMENT OF FUNDS

WDM's maximum contribution of R430 000 will be transferred to LLM in advance upon LLM providing WDM with proof of appointment of service provider and a pro-forma invoice for the successful completion of the project by LLM. LLM to provide WDM with proof that requirement of SCM Regulations was adhered to in the appointment.

The WDM shall upon the LLM's submission of a pro-forma invoice been achieved, pay the invoiced amount to the LLM within 14 days of receipt of invoice.

If the WDM defaults or fails into arrears with any payment the LLM reserves its right to claim payment of interest at the prime rate, calculated 30 days after the date of invoice to actual date of payment.

PAID

[Handwritten signature]

[Handwritten signature]
[Handwritten signature]
[Handwritten signature]

12 LIABILITIES IN TERMS OF ASSETS

Assets procured from this project will remain in ownership of the LLM and WDM thus cannot be held liable for any claims arising from or for these assets

13 REPORTING

LLM shall provide a progress report to the WDM regarding the project on a monthly basis. In addition to the project report, a monthly account/reconciliation will be submitted to WDM clearly indicating the utilisation of funds.

14 SUPPLY CHAIN MANAGEMENT

The Supply Chain Management procedures as required in terms of the policy of the LLM and the SCM Regulations will be utilised to implement the project and procure goods or services.

15. OBLIGATIONS OF THE SERVICE PROVIDER/ PROJECT MANAGER (LLM)

- 15.1. The aforesaid services shall be rendered diligently and to the reasonable standard and expectations as required by the Client.
- 15.2. The Service Provider shall keep the client updated and appraised on progress and issues in relation to the project on a structured and regular basis.
- 15.3. LLM shall provide reasonable support to the Service Provider to enable it to perform its duties.
- 15.4. The Service Provider appoints the Municipal Manager in his capacity as the Accounting Officer as the Project Manager and key point of contact and liaison for all matters relating to the project for all matters relating to the project by and between the WDM and the LLM.

16. OBLIGATIONS OF THE WDM

- 16.1. WDM shall provide reasonable support to LLM to enable it to perform its duties.

16.1

16.1

16.1

- 16.2. The client appoints Divisional Manager: Strategic Support & Planning of WDM as the key point of contact and liaison for all matters relating to the project

17. **VARIATIONS AND CANCELLATION**

No agreement varying, adding to deleting from or cancelling this agreement shall be of force or legal effect unless reduced to writing and signed by or on behalf of the parties

18. **LIMITATION OF LIABILITY**

- 18.1 The Service Provider hereby protects and secures the client against All legal liability with regard to any claims that may arise as a result of a breach of contract or negligence on the part of the service provider in respect of its obligations in terms of this agreement.
- 18.2 The maximum liability of the Service provider in respect of the aforesaid claims shall be limited to the aggregate of fees that have accrued to the Service Provider that form the subject of the breach of contract or negligence as at the time that the cause of action arose.

19. **AMICABLE SETTLEMENT**

If any dispute arises in terms of this contract either party may give five(5) days written notice to the other of such dispute, whereupon the parties meet promptly and in good faith to reach an amicable settlement.

20. **DISPUTES AND ARBITRATION**

- 20.1 In the event that a dispute arises between the client and the Service provider it shall be referred to mediation within five (5) days of either party declaring a dispute. In this regard
- 20.1.1 A mediator shall be appointed by the parties, alternatively by the chair of the Attorneys Association in the province where the dispute arose, to preside over the mediation and
- 20.1.2. The parties shall seek ways and means to resolve the dispute in the most expedient way.

PAID

[Handwritten signature]

[Handwritten signature] RL

- 20.1.3. Should the dispute not be resolved within ten (10) business days of the commencement of mediation it shall be referred to arbitration accordingly.
- 20.1.4. An arbitrator shall be appointed by the parties alternatively by the chair of the Arbitration Foundation of South Africa ('AFSA') to preside over the arbitration; and,
- 20.1.5. The rules of AFSA shall govern the conduct of the arbitration.

The arbitration shall be held

- 20.1.6. At the domicilia citandi et executandi of the municipality or such other venue as may agreed by the parties.
- 20.1.7. The arbitrator shall be a practising attorney of not less five (5) standing as such.
- 20.1.8. The arbitrator shall arbitrate on the dispute within 30 days calendar of his her /her appointment and do so with due regard to the rules of natural justice.
- 20.1.9. The arbitrator shall immediately on his/ her appointment advice the parties of the procedure to be followed and arbitrate the dispute in an expeditious manner.
- 20.1.10. The arbitrator shall make an award/ orders relating to the subject matter of the dispute and costs of the arbitration or relating to any matter arising therefrom.
- 20.1.11. The decision of the arbitrator shall be final and binding on the parties and may at the option of either party be made an order of Magistrate Court of competent jurisdiction.
- 20.2. Nothing in this paragraph shall prevent nor preclude either party from approaching the appropriate South African Court of Law for suitable relief.

21. BREACH

- 21.1 If either party breaches this Agreement or fails to perform any of its obligations, then the other party shall provide written notice, calling upon the first party to rectify its breach within a period of not less than 10 (ten) business days.

PAID

- 21.2 Should the party in breach have failed to rectify the breach within the aforestated time period, the other party may cancel this Agreement and claim recovery of damages.
- 21.3 Any request for an extension on timeframe must be done in writing and be approved by the Accounting Officer or penalties will be imposed on the Service Provider.

22 TERMINATION

- 22.2 This Agreement may be terminated upon 20 (twenty) business days' written notice, after the terminating party has consulted the other about its intention.
- 22.3 The aforestated termination shall not prejudice either party's rights in respect of the obligations already performed or to be performed as at the date of termination.

23 SEVERABILITY

Any provision of this agreement found or held invalid or unenforceable, such terms shall be severable and the validity of all other terms shall not be affected thereby.

24 WHOLE AGREEMENT

This Agreement constitutes the whole agreement between the parties unless supplemented by further agreements, which shall be in writing.

25. DOMICILIUM

- 25.1. The parties respectively choose domicilia citandi et executandi for all payments to be made and notices, demands or communications intended for either party for all purpose of and in connection with this agreement as follows:

- 25.1.1 Office of the Municipal Manager
Waterberg District Municipality
Harry Gwala Street
Modimolle

1341

A
SR

M.C.
R

AND

**Lephalale Local Municipality
CNR Douwater and Joe Slovo
Onverwacht
0555**

- 25.3 The parties shall be entitled to change their domicile form time to time provided that any new domicile selected by situated in the Republic of South Africa, shall be an address other than a box number and any such change only be effective upon receipt in writing by other of such change.
- 25.4 A notice, communication or payment, sent by one party, to another party unless otherwise proved shall be deemed to be received.
- On the same day, if delivered by hand.
 - In the same day if sent by telefax, cablegram or telex.
 - On 10th day after posting, if sent by prepaid registered mail.
- 25.5 Notwithstanding anything to the contrary contained a written notice or communication or payment actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent or delivered at the chosen domicile citandi et executandi.
26. **Amendments and alterations**

No amendments and/or alterations to the terms of this Agreement shall be valid or binding unless reduced to writing and signed by both Parties.

27. PENALTY CLAUSE

The expiry date for the implementation period for this project is three (3) months from the signature date of the last party signing this agreement.

No extension will be granted for this project without good motivation and any failure to deliver the expected results before or on the specified conclusion date of this agreement will automatically result in penalties to be effected by WDM per day or per scope.

The penalties will be calculated from 2% to the maximum of 25% of the total project amount on the discretion of the municipality. Penalty percentage can be increased from 25% depending on the severity of the penalty.

National Treasury Conditions of Contract will also apply in terms of penalties imposed.

29. **CONFIDENTIALITY**

29.1 For the purposes of the Agreement , confidential information means any and all information, including but not limited to technical, financial, product and commercial information-disclosed in writing or otherwise by the disclosing party to the receiving party, whether closed in view of the purpose before or after the date of the agreement and shall be deemed to include all documents and other material (including samples, models, and computer software) containing or embodying or based on the confidential information (or part thereof) together with all notes, summaries and other material derived therefrom and all copies or reproductions of the foregoing. Such confidential information shall not include

- 29.1.1 which is generally available to the public or which will become generally available to the public other than by breach by the Receiving Party of its obligations hereunder;
 - 29.1.2 Which was or is already known to the Receiving Party before it had been or will be disclosed by the Disclosing Party, provided that such information may not reasonably be considered by the Receiving Party as confidential;
 - 29.1.3 Which the Receiving Party has received or will receive on a non-confidential basis from any party (including any third party) which is not in breach of an obligation of confidentiality towards the Disclosing Party or any party (including any third party), provided that such information may not reasonably be considered by the Receiving Party as confidential; and
 - 29.1.4 Which is independently developed by or on behalf of the Receiving Party.
- 29.2 Either Party shall:

12/10

AC

RL

- 29.2.1 hold the other Party's Confidential Information in the strictest confidence;
- 29.2.2 not make use thereof other than for the performance of its obligations under the Agreement; and
- 29.2.3 Only release such Confidential Information on a "need to know" basis subject thereto that the persons to whom such Confidential Information is released shall undertake to be bound by the confidentiality obligations contained herein.
- 29.3 Neither Party shall be entitled to use the name of the other Party in publicity releases or advertising or for other promotional purposes without procuring the prior written approval of the Party concerned.
- 29.4 The parties' obligation in terms of this clause will survive the termination of this Agreement including the termination thereof by the effusion of time.
- 29.5 In the case of a release, announcement or document which is required to be given, made or published by law or under the rules of the JSE Securities Exchange South Africa or any other relevant stock exchange, the Party liable so to give, make or publish the same shall give to the other Party as much advance warning thereof as is reasonable in the circumstances together with drafts or a copy thereof as soon as it is at liberty to do so.

The expiry date for the implementation period for this project is **30 September 2012**

No extension will be granted for this project without good motivation and any failure to deliver the expected results before or on the specified date of the **30th September 2012** will automatically result in penalties to be effected by WDM.

Dated at **Lephalale** this 26 day September of 2012

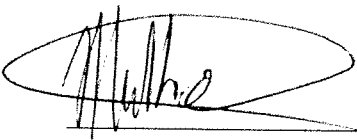
WDM

WDM

WDM

WDM

AS WITNESSES:

1. 

2. 

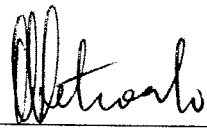

CLIENT

Dated at **Modimolle** this 25th day SEPTEMBER of 2012.

AS WITNESSES:

1. 

2. 


SERVICE PROVIDER



