

# SERVICE PROVIDER AGREEMENT



*on the Go for Growth*

## **WATERBERG DISTRICT MUNICIPALITY**

Entered into by:

**The Waterberg District Municipality**  
( HEREIN REFERRED TO AS 'the Client' )

And

**Lekoko Consulting**  
Registration Company Name: Lekoko Consulting  
( HEREIN REFERRED TO AS 'The Service Provider' )

In respect of the development of Human Resource Management and Development  
Strategy for Waterberg District Municipality.

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**Preamble**

**Whereas:**

Waterberg District has identified a need to develop a Human Resource Management and Development Strategy.

Waterberg District Municipality appointed Lekoko Consulting to render services.

**It is therefore agreed as follows:**

**1. Interpretation**

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 date on which the parties commenced with the performance of their obligations, namely **date of signature of service level agreement** ;
  - 1.2.4. '**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;
  - 1.2.5. '**key result**' means an indicator or yardstick in terms of which the Service Provider's successful performance of its obligations may be gauged;
  - 1.2.6. '**Lead**' (for purpose of this contract and project) means playing the main role in the development of this project by guiding the WDM officials;

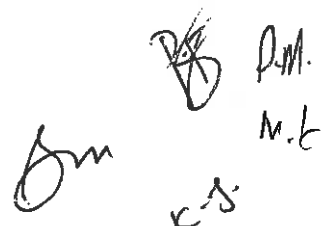
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- 1.2.7. **'methodology'** means the professional expertise and the system of methods required by the Service Provider to perform the obligations set out in terms of this Agreement;
- 1.2.8. **'prime rate'** means the variable interest rate as charged 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. **'Remuneration schedule'** means the details of remuneration.
- 1.2.12. **'Service Provider'** means **Lekoko Consulting**, under the registration name: Lekoko Consulting a company established in 2006 under Registration number 2006/038210/07;
- 1.2.13. **'services'** refers to the professional work to be performed by the Service Provider in terms of this Agreement, as per page 5;
- 1.2.14. **'Advert'** means Advert No. **WDM/2013/14-05**, as advertised by the Client and being in respect of the **development of Human Resource Management Strategy for Waterberg District Municipality**.
- 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.
- 2. Appointment and Duration**
- 2.1. The Client hereby appoints the Service Provider to carry out the services detailed in Paragraph 6 to this Agreement upon the terms and conditions set out herein.


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2.2. The Service Provider will commence upon date of signature of service level agreement and complete in a period not exceeding Five (05) months from the date of signature for the performance of the services as agreed by both parties.

**3. Shareholders**

3.1 In case where the Members of the Close Co-operation changes during the year the client must be informed of such changes.

**4. Extent of terms and conditions**

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

4.1.1. (a) Advert (Schedule 1);  
(b) tender document

4.1.2. The Service Provider's quotation (Schedule 2);

4.1.3. Order (Schedule 3); and,

4.1.4. This Agreement.

4.1.5. The National Treasury General Conditions of Contract

4.2. In the event of conflict between the provisions of any of the aforesaid documentation and this Agreement, the provisions of this Agreement shall prevail.

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

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## 5. Scope of Services

The service provider must develop the Human Resource Management and Development Strategy on behalf of Waterberg District Municipality over a period of five (5) months.

Some of the responsibilities amongst others will include:

1. A document that facilitates the setting up of a broader stakeholder structure (institutional arrangements), including the development of the terms of reference for such a structure, whose main role would be to provide guidance and oversight during the process.
2. A tool to provide human resources, related systems and processes of the municipality should be developed.
3. A profiling exercise of the municipality's human resources, related systems and processes based on the SALGA HRM&D Strategy model should be conducted so as to locate Waterberg on the maturity model.
4. An "as is" or status quo report within the context of the HRM&D based on the profiling exercise referred to in 3 above should be produced.
5. Lead in the development of Human Resource Management and Development Strategy that seeks to close gaps identified by the profiling exercise. In other words, the HRM&D strategy should detail the necessary transformation measures that must happen in order to ensure a sustained development mechanism towards a stable, professional and responsive human capability for the municipality.

The HRM&D strategy must incorporate amongst others, the following elements:

- A determination of the HR planning process and how this fits in with the IDP process;
  - An audit of available resources, competencies, skills and capacities in the district municipality;
  - A determination of internal transformation needs and identified gaps in relation to human resource requirements, competencies, skills and capacities of the district municipality.
  - Developing a human resource management vision, mission and values for a municipality which is part of a developmental local government.
  - Formulate strategies to address all identified HRM&D transformation needs.
6. An implementation plan to inform the rollout of the strategy in a recommended phased out approach compiled.

## 6. Deliverables

- Proposals should be accompanied by a project plan, indicating amongst others, a proposed methodology.

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- A human resource management and development strategy, informed by amongst others the output set out above, in a narrative version. Take in consideration the SALGA National HRM&D Strategy.
- An implementation plan with specific time frames, taking into account the order of priority.
- A summary process report documenting how task/process was undertaken (not more than 5 pages).
- 1 (one) hard copy and 1 (one) electronic copy (CD pdf) of the HRM&D Strategy. The hard copy must be binded as a book, in full colour throughout the document and having hard front cover pages with WDM logo.
- 1 (one) electronic copy (CD) which is not a pdf. (Word document).
- A slide presentation of the above.

#### 7. Responsibilities of Waterberg District Municipality

- Ensure project is implemented according to the scope of work.
- Ensure there is consultation between the service provider and the municipality as per the work plan on the tender document
- Ensure availability of requested documents to be consulted by the service provider during the project implementation.
- Ensure the final draft is as per the deliverables contained in this agreement.

#### 8. Price

7.1 The price in respect of the advert is as per the pricing schedules provided in by Lekoko Consulting as follows:

- Lekoko Consulting is appointed for the development of Human Resource Management & Development Strategy at R350 075.00 (VAT exclusive) and/ or R 399, 085.50 (VAT Inclusive)

#### 9. Remuneration

9.1. The Client hereby agrees to pay the Service Provider strictly in accordance of the Order no..... of amount of R..... after the delivery of goods as per the specification.

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- 9.2. Upon receipt of the invoice, the Client will pay the Service Provider the invoiced amount as per the Order no..... within (30) days of receipt of invoice.
- 9.3. If the Client defaults or falls into arrears with any payment then the Service Provider reserves its right to claim payment of interest at the prime rate, calculated from 30 (thirty) days after the payment has become due to the actual date of payment. Unless the client is awaiting clarification of issues on the invoice, in which case the payment may exceed (30 days).

**10. Variations and cancellations**

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

**11. Limitation of liability**

- 11.1. 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.
- 11.2. The maximum liability of the Service Provider in respect of the aforesated claims shall be limited to the aggregate of fees that have accrued to the Service Provider for the obligations that form the subject of the breach of contract or negligence as at the time that the cause of action arose.

**12. Amicable Settlement**

- 12.1. 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 shall meet promptly and in good faith attempt to reach an amicable settlement.

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### 13. Disputes

- 13.1. In the event that a dispute arises between the Client and the Service Provider it shall be referred to mediation within 5 (five) business days of either party declaring such a dispute. In this regard:
- 13.1.1. 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,
- 13.1.2. The parties shall seek ways and means to resolve the dispute in the most expedient manner.
- 13.1.3. Should the dispute not be resolved within 10 (ten) business days of the commencement of mediation it shall be referred to arbitration. Accordingly :
- 13.1.4. 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,
- 13.1.5. The rules of AFSA shall govern the conduct of the arbitration.
- 13.2. Nothing in this paragraph shall prevent either party from approaching the High Court for suitable judicial relief.

### 14. Breach

- 14.1. 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.
- 14.2. 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.
- 14.3. Timeframe for this project is Five months (05) upon date of signature of service level agreement.

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14.4. Any request for an extension on timeframe must be done in writing and be approved by the Accounting Officer as an addendum to this agreement or penalties will be imposed on the Service Provider.

**15. Termination**

15.1. This Agreement may be terminated upon 20 (twenty) business days' written notice, after the terminating party has consulted the other about its intention.

15.2. The aforesated termination shall not prejudice either party's rights in respect of the obligations

15.3. Already performed or to be performed as at the date of termination.

**16. Severability**

16.1. 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.

**17. Whole agreement**

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

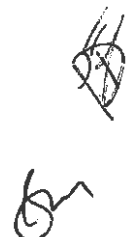
**18. Amendments and alterations**

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

**19. Penalty Clause**

Penalty will be imposed on the following cases:-

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- Late delivery.
- Peer Quality.
- Non- compliance to scope of work

The expiry date of the implementation period for this project is Five (05) months after the date of service level agreement signature.

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

The penalties will be calculated ranging from 2% to 25% of the total project amount on the discretion of the municipality. Penalty percentage may be above 25% if the offence is severe.

All penalties will be on the discretion of the Accounting Officer.

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

## 20. Copyrights

The final draft of HRM&D Strategy and all materials shall be the property of Waterberg District Municipality. The contents of same shall not be reproduced and or altered without knowledge or written consent of the Waterberg District Municipality.

## 21. Confidentiality

**21.1** 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 disclosed in view of the purpose before or after the date of 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

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and other material derived there from and all copies or reproductions of the foregoing. Such Confidential Information shall not include information:

- 21.1.1 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 obligation hereunder;
- 21.1.2 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;
- 21.1.3 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 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
- 21.1.4 which is independently developed by or on behalf of the Receiving Party.

**21.2 All Parties shall:**

- 21.2.1 hold the other parties Confidential Information in the strictest confidence;
- 21.2.2 not make use thereof other than for the performance of its obligations under the Agreement; and
- 21.2.3 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.

**21.3** No parties 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.

**21.4** The Parties' obligation in terms of this clause will survive the termination of this Agreement including the termination thereof by the effusion of time.

**21.5** In the case of a release, announcement or document which is require to be

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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.

## **22. Warrant of Authority**

The persons signing this agreement on behalf of the parties warrant their authority to do so.

## **23. *Domicilium citandi et executandi***


23.1. The parties choose as their *domicilia citandi et executandi* the addresses set out hereunder :

### **23.1.1. Client :**

Office of the Municipal Manager  
Waterberg District Municipality  
Harry Gwala Street  
Modimolle  
0510

### **23.1.2. Service Provider :**

Lekoko Consulting  
37a Voortrekker Street  
Polokwane  
0699

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23.2. Either party may change its *domicilium citandi et executandi* by giving written notice to the other, the new address becoming effective at the expiry of 10 (ten) business days from the communication of notification.

Signed at Modimolle on this 24 day April of 2014.

**AS WITNESSES:**

1.  \_\_\_\_\_ For and on behalf of the Client

2. K.S. Margebela.  \_\_\_\_\_

**F NOGILANA-RAPHELA**  
**WDM Acting Municipal Manager**

Signed at Modimolle this 24 day of April 2014.

**AS WITNESSES:**

1.  \_\_\_\_\_ For and on behalf of the Service Provider

2.  \_\_\_\_\_  \_\_\_\_\_  
**Lekoko Consulting**