

SERVICE LEVEL AGREEMENT



MADE AND ENTERED INTO BY AND BETWEEN:

LEPHALALE LOCAL MUNICIPALITY

Represented herein by **MR. AS NAIDOO** in his capacity as
The Municipal Manager authorized by Municipal Resolution as Accounting Officer of the
Lephalale Local Municipality
(Hereinafter referred to as LLM)

AND

WATERBERG DISTRICT MUNICIPALITY

Represented herein by **MR. MV LETSOALO** in his capacity as
The Municipal Manager authorized by Municipal Resolution as Accounting Officer of the
Waterberg District Municipality
(Hereinafter referred to as WDM)

In respect of the funding of the implementation of Lephalale Recycling Clubs Project;

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WHEREAS the Waterberg District Municipality and Lephalale Local Municipality enter into an agreement for the co-funding of the implementation of the Lephalale Recycling Clubs Project for Lephalale Local Municipality,

And

The Parties wish to reduce their agreement to writing,

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 (WDM);
 - 1.2.3. '**commencement date**' means the date on which the parties commenced with the performance of their obligations.
 - 1.2.4. '**contract price**' means the total amount of reimbursements that will be claimed by the Service Provider (LLM) for the performance of the services in terms of this Agreement;

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- 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. **'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;
- 1.2.7. **'prime rate'** means the variable interest rate as charged and calculated by the Service Provider's bankers from time to time;
- 1.2.8. **'project'** means the services to be performed by the service provider appointed by Lephalale Local Municipality (the implementing agent) in terms of the agreement and the corresponding obligations to be fulfilled by WDM.
- 1.2.9. **'project plan'** means the strategy prepared by the parties for the successful completion of the Project, submitted within a reasonable time, prior to the commencement of the Project;
- 1.2.10. **'remuneration schedule'** means the details of remuneration set out in to this Agreement;
- 1.2.11. **'services'** refers to the professional work to be performed by LLM and the service provider;
- 1.2.12. **'Service Provider'** means the Lephalale Local Municipality (LLM) situated in Lephalale as the implementing agent procuring the service from their appointed Service Provider;

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1.2.13. **'Tender'** means this appointment, appointed through co-funding process with another organ of state by the WDM and being in respect of the co-funding of the implementation of Lephalale Recycling Clubs Project for the 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 and Duration

2.1. WDM hereby appoints the LLM to carry out the services / project manage the implementation of this project by their duly appointed service provider detailed in Paragraph 4 of this Agreement upon the terms and conditions set out herein.

2.2. The Service Provider/s will commence and complete the performance of the services on the Lephalale Recycling Clubs Project for LLM as indicated in the project proposal, project charter and in the appointment letter or on such other dates as may be agreed by the parties.

2.3. The duration of the co-funding agreement is for a term of approximately 4 months, commencing on the signature date of the last party signing this agreement and the project itself should be completed within 2 months.

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3. APPOINTMENT OF THE PROJECT MANAGEMENT SERVICES

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

4. Team

- 4.1. 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 and the Project Manager.
- 4.2. In case where one of the team members mentioned in the proposal leaves an institution, the company must replace such a member with a member equivalent (in terms of the rank, qualification and the experience) or more.

5. EXTENT OF TERMS AND CONDITIONS

- 5.1. This Agreement also encompasses and includes the terms and conditions set out in the documentation listed as follows:
 - 5.1.1. LLM Request for Funding;
 - 5.1.2. LLM Business Plan;
 - 5.1.3. This Agreement;
 - 5.1.4. The Letter of Appointment; and

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5.1.5. The National Treasury General Conditions of Contract

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

6. CO-FUNDING OF THE PROJECTS

6.1 The total cost of the project eligible for funding is R 420,000-00 exclusive of Vat. In order to ensure successful implementation of the project, WDM shall fund the requested amount of the project to the maximum value of R 420,000 exclusive of Vat, but dependant on the proof of appointment and expenditure submitted.

6.2 LLM as co-funder shall be responsible to provide the project management and implementation of the project, providing staff and resources to ensure that the service provider/s is appointed in line with SCM Regulations and that 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.

7. DURATION OF THE AGREEMENT

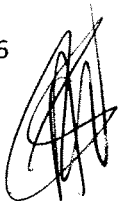
The duration of the agreement is approximately four (4) months commencing on signature date of the last party signing this agreement.

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8. SCOPE OF WORK (DUTIES AND RESPONSIBILITIES)

8.1 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 of supporting evidence by LLM;
- The contribution made by the WDM will be R 420,000 for the following:
 - Lephalale Recycling Clubs Project
 - Supply, delivery & installation of bailing machine estimated at maximum R 300,000
 - Fencing of the recycling sites estimated at R 120,000
- WDM to transfer the funds as properly invoiced (payment within thirty days of issue of invoice)
- To give guidance through the WDM SCM Unit, if LLM so requests.

8.2 LEPHALALE LOCAL MUNICIPALITY

- 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 (e.g. administration of the tender process, purchasing of machinery and so on.)
- To monitor the performance of the appointed service provider/s.
- Ensuring that all deliverables of the project are met to the required standard and timelines.
- Ensuring that the 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 prior to initial work done.

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9. Price

The contract price for WDM in respect of the Tender is as per the approximate pricing schedule provided by LLM is as follows (to a maximum of R 420,000 Vat exclusive):

9.1 Supply, delivery & installation of bailing machine	R 300,000
9.2 Fencing of the recycling sites	R 120,000
Total	R 420,000

The final amount funded by WDM will be determined on the actual amounts of the above appointments but up to a maximum of R 420,000 Vat exclusive.

10. Disbursement of Funds

WDM's maximum contribution of R 420,000 will not be transferred in advance to LLM but reimbursements will be paid on invoices and proof of actual expenditure submitted subsequent to the initial submission of proof that requirements of the SCM Regulations was adhered to in the appointment/s.

11. 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.

12. 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/recon will be submitted to WDM clearly indicating the utilization of the funds.

13. Supply Chain Management

The Supply Chain 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 / services.

14. Obligations of the Service Provider to be appointed by LLM

- 14.1. The aforementioned services shall be rendered diligently and to the reasonable standard and expectations as required by the Client and Funder.
- 14.2. The Service Provider shall keep the Client and Funder updated and appraised on progress and issues in relation to the project on a structured and regular basis.
- 14.3. The Service provider the project manager and key point of contact and liaison for all matters relating to the project by and between the Service Provider and the Client and the Funder to be identified once service provider has been appointed.

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 Bob Naidoo in his capacity as Municipal Manager of LLM as the project manager and key point of contact and liaison for all matters relating to the project by and between the WDM and the LLM.

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16. Obligations of the Client / Funder

- 16.1 The Client shall provide reasonable support to LLM to enable it to perform its duties.
- 16.2 The Client appoints Philemon Molebaloa in his capacity as Divisional Manager Strategic Planning of WDM as the key point of contact and liaison for all matters relating to the project.

17. Remuneration

- 16.1 The WDM shall pay LLM the amount not exceeding R 420,000 excluding VAT ("the Contract Value") on the following terms:
- 16.2 Payment of the Contract Value will be made in tranches on completion of specific deliverables as tabled in section 9 above. Claims will be submitted by LLM once expenditure has been incurred by LLM.
- 16.3 The WDM shall, upon the LLM's submission of a valid tax invoice and approval by the WDM that the deliverables contained therein have been achieved, pay the invoiced amount to the LLM within thirty (30) days of receipt of invoice.
- 16.4 If the WDM defaults or falls into arrears with any payment the LLM reserves its right to claim payment of interest at the prime rate, calculated from 30 (thirty) days after date of invoice to actual date of payment.

18. VARIATIONS AND CANCELLATIONS

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.

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19. 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 afore stated 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.

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

21. Disputes and Arbitration

21.1 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:

21.1.1 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,

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21.1.2 The parties shall seek ways and means to resolve the dispute in the most expedient manner.

21.1.3 Should the dispute not be resolved within 10 (ten) business days of the commencement of mediation it shall be referred to arbitration. Accordingly :

21.1.4 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,

21.1.5 The rules of AFSA shall govern the conduct of the arbitration.

The arbitration shall be held:

21.1.6 At the domicilia citandi et executandi of the Municipality or such other venue as may be agreed by the parties;

21.1.7 The arbitrator shall be a practicing attorney of not less than five (5) years standing as such;

21.1.8 The arbitrator shall arbitrate on the dispute within thirty (30) calendar days of his/her appointment and do so with due regard to the rules of natural justice;

21.1.9 The arbitrator shall immediately on his/her appointment advise the parties of the procedure to be followed and arbitrate the dispute in an expeditious manner;

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21.1.10 The arbitrator shall make an award/orders relating to the subject matter of the dispute and costs of the arbitration or relating to any other matter arising there from;

21.1.11 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 Magistrates Court of competent jurisdiction

21.2 Nothing in this paragraph shall prevent nor preclude either party from approaching the appropriate South African court of law for suitable judicial relief.

22 Breach

22.1 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.

22.2 Should the party in breach have failed to rectify the breach within the aforesated time period, the other party may cancel this Agreement and claim recovery of damages.

22.3 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.

23 Termination

23.1 This Agreement may be terminated upon 30 (thirty) days' written notice, after the terminating party has consulted the other about its intention and reasons for termination.

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23.2 The aforesated 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.

24 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.

25 Whole agreement

This agreement constitutes the entire contract between the parties with regard to matters dealt with herein and no representations terms conditions or warranties not contained herein shall be binding upon the parties, unless supplemented by further agreements, which shall be in writing.

26 Domicilium

26.1 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:

26.1.1 WATERBERG DISTRICT MUNICIPALITY
Harry Gwala Street
Modimolle
0510

AND

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26.1.2 Lephalale Local Municipality
 CNR Douwater and Joe Slovo
 Onverwacht
 0555

26.2 The parties shall be entitled to change their domicilium from time to time provided that any new domicilium selected by it shall be 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 party of such change.

26.3 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 the tenth day after posting, if sent by prepaid registered mail.

26.4 Notwithstanding anything to the contrary herein 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 domicilium citandi et executandi.

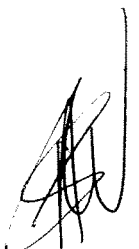
27 Amendments and alterations

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.

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28 Penalty Clause

The expiry date for the implementation period for this project is four (4) 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 disclosed 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 there from and all copies or reproductions of the foregoing. Such Confidential Information shall not include information:

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;

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- 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:

- 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.

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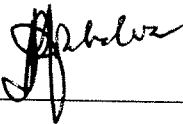
30 Warrant of Authority

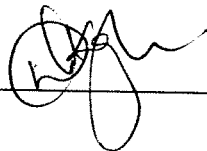
The persons signing this agreement on behalf of the parties warrant their authority to do so.

THUS DONE AND SIGNED AT MODIMOLLE ON THIS 4TH
DAY OF APRIL 2012

THE PRESENCE OF THE UNDERSIGNED WITNESSES

AS WITNESS

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For and on behalf of the WDM



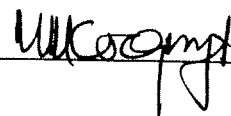
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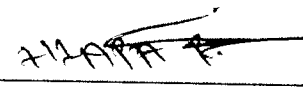
MUNICIPAL MANAGER

THUS DONE AND SIGNED AT LEPHALALE ON THIS 13
DAY OF APRIL 2012.

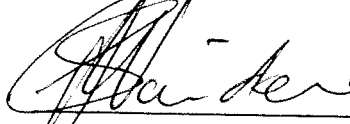
THE PRESENCE OF THE UNDERSIGNED WITNESSES

AS WITNESS

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For and on behalf of LLM



AS NAIDOO

MUNICIPAL MANAGER