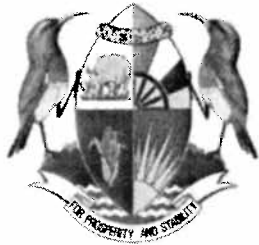


# SERVICE PROVIDER AGREEMENT



**Waterberg**  
District Municipality

*on the Go for Growth*

## WATERBERG DISTRICT MUNICIPALITY

Entered into by:

**The Waterberg District Municipality**  
(‘the Client’)

And

**MOK Development Consultants & Plan Associates Business Trust CC**  
Registration Company Name: MOK Development Consultants & Plan Associates  
Business Trust CC  
(‘The Service Provider’)

In respect of the **Mookgophong CBD Development Plan** by Waterberg District  
Municipality.



**Preamble**

**Whereas:**

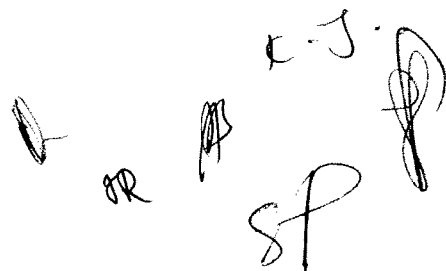
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**It is therefore agreed as follows:**

**1. Interpretation**

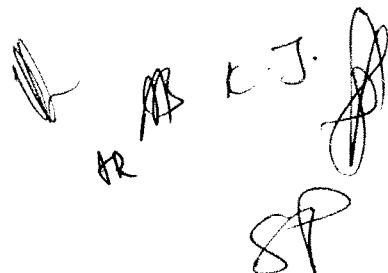
The headings of the paragraphs in this Agreement are for the purposes of reference only and shall not be used in the interpretation of this Agreement. In this Agreement, unless a contrary intention clearly appears:

- 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;



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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 in terms of the Tender and the corresponding obligations to be fulfilled by the Client;
- 1.2.9. **'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;
- 1.2.10. **'Remuneration schedule'** means the details of remuneration.
- 1.2.11. **'Service Provider'** means a Joint Venture between **MOK Development Consultants & Plan Associates Business Trust CC**, under the registration name: MOK Development Consultants and Plan Associates Business Trust CC , a company established in 2002 under Registration number 2002/071192/23 and a company established in 1998 under Registration number IT1330/98 respectively;
- 1.2.12. **'services'** refers to the professional work to be performed by the Service Provider in terms of this Agreement, as per page 5;

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1.2.13. **'Tender'** means Tender **No. WDM/2011/12-22**, as advertised by the Client and being in respect of the Mookgophong CBD Development Plan to 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

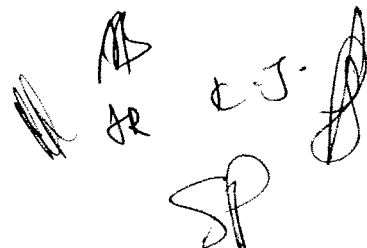
2.1. The Client hereby appoints the Service Provider to carry out the services detailed in Paragraph 6 to this Agreement upon the terms and conditions set out herein.

2.2. The Service Provider will commence **upon date of signature of service level agreement** and complete in a period not exceeding seven (7) months from the date of signature for the performance of the services as agreed by both parties.

## 3. Team

3.1. 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.

3.2. 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.

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#### 4. Shareholders

- 4.1 In case where the shareholdings of the company changes during the year the client must be informed of such changes.

#### 5. Extent of terms and conditions

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

5.1.1. All tender documents comprising the Tender (Schedule 1);

5.1.2. The Service Provider's proposal (Schedule 2);

5.1.3. Letter of appointment (Schedule 3); and,

5.1.4. This Agreement.

5.1.5. The National Treasury General Conditions of Contract

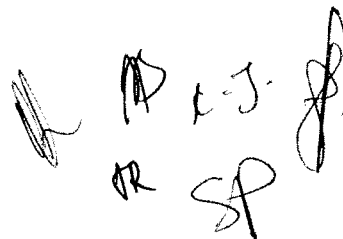
- 5.2. In the event of conflict between the provisions of any of the aforesaid documentation and this Agreement, the provisions of this Agreement shall prevail.

- 5.3. 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.

#### 6. Scope of Services

##### **PHASE 1: RESEARCH TO DETERMINE THE STATUS QUO**

Thorough research will form the backbone of the study. All the **available information** will be collected. This will include previous studies done, existing information at the Mookgophong Local Council offices, information from other Consultants, as well as all other relevant information that exist.

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The research should focus on amongst other information pertaining to the following:

1. Land in the CBD which is available for rezoning.
2. Land in the CBD which is already rezoned.
3. Potential business rights / office rights not utilised.
4. Projects approved by the Mookgophong Council.
5. Projects implemented.
6. Previous research done on the CBD.
7. Traffic patterns with their current and envisaged impact on future development in the CBD.
8. Critical landscape elements impacting on the CBD.
9. Illegal business and office uses in the Mookgophong CBD.
10. The nature and extend of re-development in the CBD.
11. The existing policies & bylaws of Council on the CBD.

## **PHASE 2: EVALUATION OF CRITICAL ISSUES**

The second study phase will be an evaluation of critical issues that cannot be separated from the future development of the Mookgophong CBD within the context of business development in Waterberg. The following critical issues amongst others, and their influence on the development of the CBD, must be evaluated:

1. The role of Mookgophong CBD's in the municipal areas
2. The role of Mookgophong CBD's in sub-regional context of Limpopo Province
3. Nodal points in the CBD
4. Capital Investment Framework
5. The impact of illegal activities in town and the CBD
6. Proposed new developments which may / will impact on the CBD

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7. Current and anticipated future traffic patterns
8. Other critical factors

### **PHASE 3: ANALYSIS AND INTERPRETATION**

In the third phase of the study the work done and information obtained, must be analysed and interpreted to identify problem areas, opportunities as well as constraints for the future development of the CBD.

### **PHASE 4: CONCLUSIONS**

In Phase 4 of the study specific conclusions will be drawn based on the findings of the previous phases. Alternative development scenarios must be formulated on the influence of the various factors that have an impact on the existing and future development of the CBD. The issues of the hierarchy of business centres must be addressed with specific reference to the CBD.

### **PHASE 5: RECOMMENDATIONS**

During the fifth and final phase of the study, recommendations must be made to the Council regarding the various matters covered in the study. If so required, changes in Policy or proposals for further studies may also be done, depending on the findings of the study.

#### **7. Deliverables**

- 7.1 Mookgophong CBD Development Plan to Waterberg District Municipality in accordance with the bid specifications within seven (7) months.

#### **8. Price**

- 8.1 The contract price in respect of the Tender is as per the pricing schedules provided in by MOK Development Consultants and Plan Associates Business Trust proposal as follows:

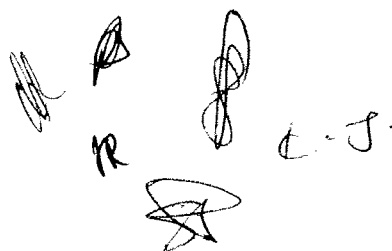
- 8.2 MOK Development Consultants and Plan Associates Business Trust CC is appointed for Mookgophong CBD Development Plan to Waterberg District Municipality at **R473 100.00 (VAT inclusive), if VAT registered and R415 000.00 (VAT exclusive) or if not VAT registered.**

**9. Obligations of the Service Provider and submission of monthly reports**

- 9.1. The aforesaid services shall be rendered diligently and to the reasonable standard and expectations as required by the Client.
- 9.2. The service provider is required to submit written progress reports on or before the **07<sup>th</sup> of every month** to the Supply Chain Management Unit (SCMU) and the Project Manager until the project is fully completed.
- 9.3. The service provider appoints Mr Joseph Mokoena in his personal capacity as Implementation and Support Manager of Mookgophong CBD Development Plan to Waterberg District Municipality as 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.

**10. Obligations of the Client**

- 10.1. The Client shall ensure that the Service Provider has reasonable access to and the support of whatever information or personnel, respectively, may be necessary for the Service Provider to fulfil its obligations.
- 10.2. The Client appoints Mr. P. Siebe in his capacity as the Divisional Manager: Development Planning of Waterberg District Municipality as 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.

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## 11. Remuneration


- 11.1. The Client hereby agrees to remunerate the Service Provider strictly in accordance with the provisions of Schedule 3 (letter of appointment).
- 11.2. Payment of the Contract value will be made in tranches on completion of specific deliverables as tabled in section 6, 7 and 8.
- 11.3. The Client hereby agrees to remunerate the Service Provider strictly in accordance with the project plan payment breakdown approved by the Client. The payment schedule of the Service Provider must be attached in this agreement, for payment to be effected per session.
- 11.4. The Client shall upon the Service Provider submission of a valid tax invoice and approval by the Client that the deliverables contained therein have been achieved, pay the invoiced amount to the Service Provider within thirty (30) days of receipt of invoice.
- 11.5. 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).

## 12. Retention

- 12.1 The **10%** of the total project amount will be retained or reserved by the Waterberg District Municipality for quality assurance. This will be paid back to the Service Provider 3 months after the expiry date of the contact.

## 13. Variations and cancellations

- 13.1. 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.

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**14. Limitation of liability**

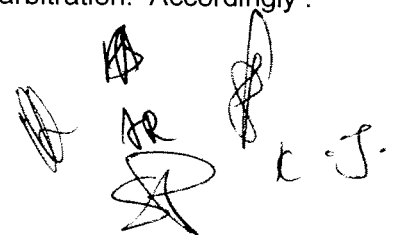
- 14.1. The Service Provider hereby protects and secures the Client against all legal liability with regard to any claims that may arise as a result of a breach of contract or negligence on the part of the Service Provider in respect of its obligations in terms of this Agreement.
  
- 14.2. The maximum 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 for the obligations that form the subject of the breach of contract or negligence as at the time that the cause of action arose.

**15. Amicable Settlement**

- 15.1. 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.

**16. Disputes**

- 16.1. 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:
  - 16.1.1. 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,
  - 16.1.2. The parties shall seek ways and means to resolve the dispute in the most expedient manner.
  
- 16.2. Should the dispute not be resolved within 10 (ten) business days of the commencement of mediation it shall be referred to arbitration. Accordingly :

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16.2.1. 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,

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

16.3. Nothing in this paragraph shall prevent either party from approaching the High Court for suitable judicial relief.

### 17. Breach

17.1. 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.

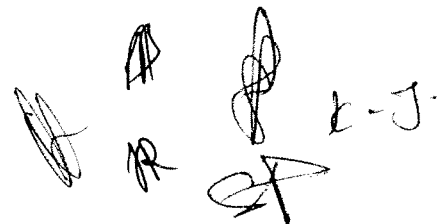
17.2. Should the party in breach have failed to rectify the breach within the aforesaid time period, the other party may cancel this Agreement and claim recovery of damages.

17.3. Timeframe for this project is **seven (7) months** upon date of signature of service level agreement.

17.4. 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.

### 18. Termination

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

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- 18.2. The aforesaid 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.

**19. Severability**

- 19.1. 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.

**20. Whole agreement**

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

**21. *Domicilium citandi et executandi***

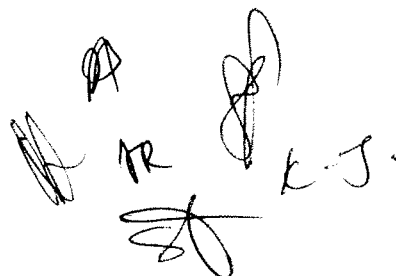
- 21.1. The parties choose as their *domicilia citandi et executandi* the addresses set out hereunder :

**21.1.1. Client :**

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

**21.1.2. Service Provider :**

MOK Development Consultants & Plan Associates Business Trust  
P.O Box 3643  
MOKOPANE  
0600

Handwritten signatures of the parties, including initials and full names, located at the bottom right of the page.

21.2. 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.

**22. Amendments and alterations**

22.1. 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.

**23. Penalty Clause**

Penalty will be imposed on the following cases:-

- Late delivery.
- Poor Quality.
- Non- compliance to scope of work, reporting requirements and any other tender documents requirements.
- Any other misrepresentation or poor performance.

The expiry date of the implementation period for this project is **seven (7) 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.

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**24. Confidentiality**

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

24.1.1 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;

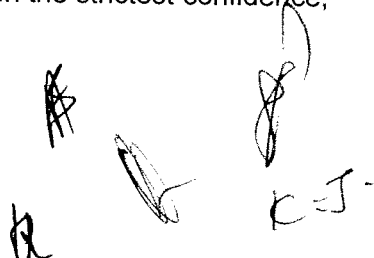
24.1.1 which was or is already known to the Receiving Party before it had been or will be disclosed by the Disclosing Party, provided that such information may not reasonably be considered by the Receiving Party as confidential;

24.1.2 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

24.1.4 which is independently developed by or on behalf of the Receiving Party.

24.2 All Parties shall:

24.2.1 hold the other parties Confidential Information in the strictest confidence;



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24.2.2 not make use thereof other than for the performance of its obligations under the Agreement; and

24.2.3 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.

24.3 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.

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

24.5 In the case of a release, announcement or document which is require 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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25. Warrant of Authority

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

Signed at **Modimolle** on this 16<sup>th</sup> day February of 2012.

AS WITNESSES:

1. [Signature] For and on behalf of the Client

2. K.J. Margobela [Signature]  
**MV LETSOALO**  
WDM Municipal Manager

Signed at **Modimolle** this 16<sup>th</sup> day FEBRUARY of 2012.

AS WITNESSES:

1. [Signature] For and on behalf of the Service Provider

2. [Signature] [Signature]  
**MOK Development Consultants & Plan Associates**

[Handwritten initials]