

SERVICE PROVIDER AGREEMENT



on the Go for Growth

WATERBERG DISTRICT MUNICIPALITY

Entered into by:

The Waterberg District Municipality
(Herein referred to as 'the Client/ Buyer')

And

NTT TOYOTA MOKOPANE
Registration Number: 2006/009043/07
(Herein referred to as 'The Service Provider / Seller')

In respect of the procurement of three new Pool Vehicles

T.S. M.S. [Signature] [Signature]

Preamble

Whereas:

Waterberg District has identified a need to procure three new pool vehicles: two sedans and one bakkie.

Waterberg District Municipality appointed NTT Toyota Mokopane to sell and service its three new pool vehicles: two sedans (Corolla Quest 1.6) and 1 bakkie (Hilux 2.45 diesel 4WD)

NTT Toyota Mokopane expressed its intention to sell and service the two new 1.6 Corolla Quest and one 2.5 Hilux 4WD to Waterberg District under the terms and conditions stipulated below.

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. **'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. **'Service Provider'** means, **Whelpton Investments (Pty) Ltd T/A NTT Toyota Mokopane** under the registration name: Whelpton Investments Trading as Toyota Mokopane established in 2006 under Registration number : **2006/009043/07**
- 1.2.11. **'services'** refers to the professional work to be performed by the Service Provider in terms of this Agreement, as per page 5;

Handwritten signatures and initials at the bottom of the page. From left to right: 'TS', 'M.S.', 'B.F.', and a large stylized signature.

- 1.2.12. **Tender**, means tender No: WDM/2014/15-07 advertised by the client and being in respect of the Supply and delivery of two Corolla Quest 1.6 and one Hilux 2.5 bakkie
- 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 which is the 25 June 2015** and complete at the end of the end of the maintenance plan.
- 2.3. The **warranty period**, shall commence from the official date for handing over the equipment and shall be a minimum period of twelve (12) months.

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:

Three handwritten signatures in black ink are located at the bottom of the page. The first signature on the left is a simple, stylized mark. The middle signature is more complex and appears to be a name. The signature on the right is a large, bold, stylized letter 'A'.

- 4.1.1. (a) All tender documents comprising the tender (schedule 1)
 (b) The Services Provider's proposal (Schedule 3)

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

- 4.1.3. (a) Letter of appointment (Schedule 3);
 (a) order and,

4.1.4. Copy of 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.

5. TERMS OF REFERENCE:

2 X 1.6 Sedan vehicles (Petrol)

Supply and deliver two (2) x 1.6 sedans (White) with the following specifications

Engine and Drivetrain	
Number of cylinders and arrangement	4 in-line
Fuel type	Petrol
Maximum power (KW @ r/min)	90 @ 6000
Maximum torque (Nm @ r/min)	154 @ 5200
Bore x Stroke (mm)	805 x 78.5
Displacement (cm ³)	1598
Compression ratio	10.2:1
Rear suspension	Torsion (Beam)
Front suspension	MarcPherson(Coil)
Exhaust emissions control	Euro 2
Service plan	5 years/90 000km
Warranty	3 years/100 000km
Exterior features	
Wheels	15" steel

T.S. R.F.
 M-S A

Tyre size	195/65 R15
Luggage door garnish	Chrome plated
Door outside handle	Colour coded
Exterior rear-view mirror	Electric & colour coded
High mount stop lamp	LED type
Light remind warning: auto cut	Standard
Light control system: Follow me home	Standard
Intermittent wiper	Standard
Interior Features	
Steering Column adjustment	Tilt and telescopic
Steering wheel	3-spoke urethane
Power steering	standard
Electric windows	Front 9(D1-touch Auto)
Interior rear-view mirror	Day and night
Cup holder	Standard
Instrument panel centre cluster	Piano black
Glove box	Standard
Air conditioner	Manual
Rear seat	60:40 Split/fold
Seat cover material	Fabric
Multi-information Display (on-board computer)	Standard
Audio	Radio CD
Speakers	6
Audio jack	Standard
USB	Standard
Manual Headlamp levelling	Standard
Carpets	Standard
Sun visor: driver and front passenger 9mirror and lamp)	Standard
Seat back pocket (front passenger seat only)	
Steering wheel switches: MID, Bluetooth and audio	Standard
Heater	Standard
Front seat slide and recline (manual)	Standard
Safety and Security	
Electronic Brake-force Distribution (EBD)	Standard
Anti-lock Braking System (ABS)	Standard
Brake Assist System (BAS)	Standard
Front-wheel brake	15" Disc
Rear wheel brake	15"Disc (Built-in)
Auto door lock	Standard
Wireless door lock	Remote
Child protector	Rear door only
Anti-theft system	Immobiliser and alarm
Child restraint system	ISO-FIX and Top Tether x3
Airbags: (Driver and front passenger and side)	Standard
Airbag manual on-off switch	Standard
Occupant detection	Standard
Seat belt warning (Driver's side)	Buzzer& Lamp(D+P)
Dimensions and capacities	

T.S

R.S


M.S

Fuel tank capacity (litr)	55
Luggage capacity	452
Towing capacity (Braked)(kg)	1300
Towing capacity (unbraked) (kg)	450
Length (mm)	4620
Height (mm)	1465
Width (mm)	1755
Wheelbase (mm)	2700
Rear tread (mm)	1535
Turning circle(tyres,m)	5.4
Gross combined mass (kg)	3060
Gross vehicle mass (kg)	1760
Colour and fuel type	
Colour	White
Fuel type	Petrol

B.1 X 2.5 litre Single Cab bakkie

Supply and delivery of one (1) Single cab bakkie 2.5 litre with the following specifications.

Front suspension:independent double wishbone, stabiliser bar	Standard
Rear suspension: rigid axle, leaf springs	Standard
Number of cylinders and arrangement	4 in-line
Maximum power (kW @ r/min)	75@ 3600
Maximum torque (Nm @ r/min)	200@1400-3400
Valve mechanism	DOHC, 16 Valves
Displacement (cm ³)	2494
Fuel system	Common rail diesel
Transmission	5-speed manual
Turbo charger	Standard
Driven wheels	
Wheels	15" Steel
Tyre size	205/70R15C 6JJ
Front grille	Black painted
Mirror housings and exterior door handles	Black
Manual Air-conditioner	Yes
Radio tuner with RDS, front-loading CD player with MP3 functionality	Yes
Seat trim	PVC
Break system load sensing, proportioning and bypass valve	Standard
Safety cell cabin protection	Standard
Door impact beams	Standard
Energy absorbing steering wheel	Standard
Wireless door lock	Standard
Spare wheel and anti-theft lock	Standard
Transponder key immobilizer and alarm	Standard

TS

 MSA

Colour and Fuel Type	
Colour	White
Fuel type	Diesel

6. WARRANTY :

6.1 The warranty period shall commence from the official date in service applicable to the vehicle and shall be 3 years/100 000km, whichever comes first.

7. SERVICING OF THE VEHICLES :

7.1 NTT Toyota will be responsible for the servicing of all three vehicles, that is, two Corolla Quest 1.6 ^{ml} and one Hilux 2.5 bakkie as per the prescribed service plan of 5 years/90 000km, whichever comes first. ^{service plan three years 145 000 km}

8. PRICE :

8.1 The contract price in respect of the tender is as per the pricing schedules provided in by Whelpton Investments (Pty) Ltd T/A NTT Toyota Mokopane bearing the Registration No: 2006/009043/07, proposes as follows :

8.1.2 Whelpton Investments (Pty) Ltd T/A NTT Toyota Mokopane is appointed for the supply and delivery of two (2) Corolla Quest 1.6 (white) and one(1) Hilux 2.5 bakkie (white), as per the specification for the Waterberg District Municipality at amount of **R532 879.16 (VAT exclusive)** and **R607 482.24 (VAT inclusive)**.

9. REMUNERATION/PAYMENT:

9.1 Payment will be done to the Service Provider (Seller) by means of once off Cheque or electronic funds transfer (EFT) payment once the vehicle has been inspected and ready for delivery.

9.2 Maintenance and/or repair of vehicles shall be paid by means of an order or cheque and will be paid once the service has been rendered as per the quotation submitted.

TS
M.S.
JBF

10. TRANSFER OF OWNERSHIP/REGISTRATION/ LICENSING OF THE NEW VEHICLE :

10.1 The seller (Service provider) shall be responsible for the registration and licensing of the vehicle. The seller shall liaise with the proxy of the municipality (Ms MM Ngoepe) to collect the necessary registration documents and completion of registration forms thereof.

10.2 The Seller (Service Provider) shall within 5 days upon receipt of the agreed full sale price, transfer ownership of the two Corolla Quest 1.6 and one Hilux bakkie 2.5 to the names of the Client (Buyer) Waterberg District Municipality.

10.3 The Seller shall within 5 days upon receipt of the full agreed sale price, at its own costs register the sold vehicle into the names of the client (Buyer).

10.4 After licensing, the seller shall be responsible for the purchasing of the number plates and the installation thereof.

11. OBLIGATIONS OF THE SERVICE PROVIDER (SELLER)

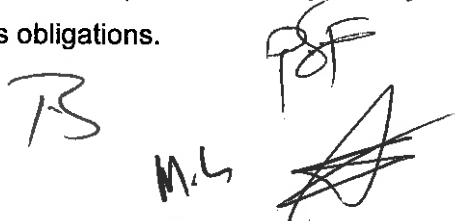
11.1 Service Provider must within 5 days upon receipt of the full purchase price deliver to the Client's principal place of business 01 Harry Gwala street in Modimolle .

11.2 The Service Provider register the vehicle at any nearest Traffic Department and insure that the purchased vehicle is road worthy.

11.3 The Service Provider will be responsible for the service ,repairs and or replacement of any fittings and the supply of the of the vehicle with any other parts including the tyres, which are not part of the motor plan and even beyond motor plan period through the submission of quotations first .

12. OBLIGATIONS OF THE CLIENT (BUYER)

12.1 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.

RS
M.L
P.F


12.2 The Client appoints Ms **MM Ngoepe** in her capacity as the Senior Admin Officer 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.

12.3 To pay the Service Provider the agreed purchase price within 5 days upon conclusion of the sale agreement and/or Service Level Agreement (whatever is signed first).

13. VARIATIONS OF CANCELLATION

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.

14. LIMITATIONS OF LIABILITY

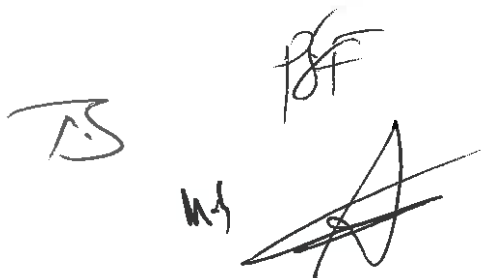
14.1 The Service Provider hereby protects and secures the Client against all legal liability with regard to any claims that may arise as a result of a breach of contract or negligence on the part of the Service Provider in respect of its obligations in terms of this Agreement.

14.2 The maximum liability of the Service Provider in respect of the aforestated 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

Handwritten initials and signatures. On the left, the initials 'T.S.' are written. In the center, there are initials 'M.S.'. On the right, there is a large, stylized signature that appears to be 'P.F.'.

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.
- 16.1.3. Should the dispute not be resolved within 10 (ten) business days of the commencement of mediation it shall be referred to arbitration. Accordingly :
- 16.1.4. 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,
- 16.1.5. The rules of AFSA shall govern the conduct of the arbitration.

16.2 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 **One (01)** week 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

TS RF
ML A

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.

18.2 The aforestated termination shall not prejudice either party's rights in respect of the obligations

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

19. SEVERABILTY

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. AMENDMENTS

21.1 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.

22. PENALTY CLAUSE

Penalty will be imposed on the following cases:-

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

AS P.S
M.S ~~A~~

The expiry date of the implementation period for this project is **One (01) week 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.

23. CONFIDENTIALITY

23.1 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:

23.1.1 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;

23.1.1 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;

23.1.2 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),

TS MS A

provided that such information may not reasonably be considered by the Receiving Party as confidential; and

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

23.2 All Parties shall:

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

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

23.2.3 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.

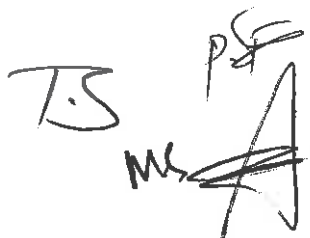
23.3 No parties shall be entitled to use the name of the other Party in publicity releases or advertising or for other promotional purposes without procuring the prior written approval of the Party concerned.

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

23.5 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.

24. WARRANT OF AUAUTHORITY

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



Handwritten signatures: T.S., P.S.F., and M.S.

25. DOMICILIUM CITANDI ET EXECUTANDI

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

25.1.1 Client :

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

25.1.2 Service Provider :

Office of the Director
Whelpton Investments (Pty) Ltd T/A NTT Toyota Mokopane
44 Thabo Mbeki Street
Mokopane
0600

25.2 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 25th day of June 2015.


AS WITNESSES:

1.



For and on behalf of the Client (Buyer)

2.



SM Mabotja

Municipal Manager


Signed at Mokopane on this 25th day of June 2015.

AS WITNESSES:

1. 

For and on behalf of the
Service Provider (Seller)

2. 


_____ **NTT Toyota Mokopane**


NTT Toyota Mokopane