

SERVICE PROVIDER AGREEMENT



Waterberg
District Municipality

on the Go for Growth

WATERBERG DISTRICT MUNICIPALITY

Entered into by:

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

And

SML PROJECTS PTY LTD

Registration Company Name: SML PROJECTS PTY LTD

Registration no: 2012/050752/07

(‘The Service Provider’)

**In respect of the Provision of APPOINTMENT OF PROFESSIONAL
CONSULTANTS FOR PROVISION OF PROJECT MANAGEMENT UNIT (PMU)
FUNCTION ON BEHALF OF INFRASTRUCTURE DEVELOPMENT
DEPARTMENT**

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Preamble

Whereas:

Waterberg District Municipality wants to appointment the professional consultants for provision of project management unit (PMU) function on behalf of infrastructure development department express its intention to appoint SML Projects (Pty) Ltd as the professional engineers for the programme.

SML Projects (Pty) Ltd therefore accept its appointment with the terms and conditions expressed below:

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 ;

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- 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, to be submitted 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 SML Projects under the registration name: SML Projects (Pty) LTD a company established in 2012 under Registration number 2012/050752/07;
- 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;
- 1.2.13. **'Tender'** means Tender No. WDM/2014/15-13, as advertised by the Client and being in respect of the Appointment of professional

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**consultants for provision of Project Management Unit (PMU)
function on behalf of Infrastructure Development Department**

- 1.2.14. **'Project Duration'** the entire timeframe for provision of project management unit function
- 1.2.15. **'Capital projects'** means all the projects implemented by the 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 13 July 2016 renewable annually depending on availability of funding and performance for maximum period of three (03) years. The completion date of the project will be dependent on the project plan and implementation schedules.

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.

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- 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.

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. Letter of appointment,

- 5.1.2. This Agreement, and,

- 5.1.3. 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

The SML Projects (Pty) Ltd will be responsible for the planning, designs, and project management, appraisal functions of MIG Business Plans, EIA Processes, Geotechnical

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Engineering, Land Acquisitions, Scope of Work for the Contractors and Consultants in the project Management Unit

6.1. The scope of work will include but not limited to:

- **Compiling business plans with technical reports of various capital projects**
- **Conduct project feasibility studies as per ward community needs**
- **Follow upon appraisals and approvals of relevant business plans**
- **Knowledge of MIS and MIG processes is essential**
- **Formulate terms of reference for appointment of consultants on various projects to do the following:**
 - **Design**
 - **Land acquisitioning and legalities**
 - **EIA Processes**
 - **Ensure that projects are properly registered and budgeted**
 - **Attend to legal matters relating to projects**
 - **Compile project plans for all the projects**
 - **Formulate the project scope for the appointment of contractors**
 - **Conduct financial due diligence and project budgeting**
 - **Conduct financial cash-flows and projections of the projects**
 - **Procurement processes for the appointment of contractors**
- **Upon successful appointment of contractors, hand over projects to the PMU for final implementation To do asset management ; breaking down asset components (capitalizing the asset)**
- **Do proper record keeping for all the projects**
- **Bring their workstations to the municipality to execute their duties and offices will be allocated by the municipality**
- **Attend departmental meetings as and when required**
- **Attend meetings within the municipal and provincial boundaries**
- **Interact with all stakeholders in particular personnel from**
 - **COGTA**
 - **Department of Water Affairs**
 - **Councillors**
 - **DBSA**
 - **Department Agriculture and Environmental Affairs**

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- Communities
- Management
- Other stakeholders
- The municipality may time to time request for full engineering services
- Office space complete with furniture will be allocated to the Service Provider. (NB: All assets procured through the programme's budget must remain assets of the municipality)
 - A Service Provider should provide insurance cover for his or her personnel including their assets in the municipal premises.

7. Deliverables

The responsibilities of the consultants amongst others will be as follows:

- Project Planning and Performance reporting
- ICT and Document Management
- Project Management
- Financial Management
- Governance
- Capacity building

8. Price

- 8.1 The contract price in respect of the project is as per the quotation provided in by SML Projects (Pty) Ltd for an amount of R 11 253.51 (VAT exclusive) and R 12 829.00 (VAT inclusive) per total unit rate (see attached annexure A)
- 8.2 If SML Projects (Pty) Ltd as PMU consultants are given responsibilities to do the designs of the project , the designs shall be paid as per provided rates per unit rate but should not be more than the latest ECSA guideline rates.
- 8.3 SML Projects (Pty) Ltd is appointed for the Provision of Project Management Unit (PMU) function on behalf of Infrastructure Development Department, the

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tendered rates per unit rate as per the attached annexure A will be used for the first 12 months and must remain fixed.

- 8.4 If the contract will be renewed based on the availability of funding and performance of the Service provider the escalation for the second and third year will be 8% and 9% respectively for the rates provided.

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

9.1 TECHNICAL (PLANNING)

Assessment and Audit the performance of projects

- Conduct the financial and physical audits and/or assessment of projects.
- Develop an implementation plan for the projects over a defined period

Pre-project allocation

Facilitate and assist with the submission of business plan in line with the Municipality IDPs

- Identify projects' viability and state of readiness in consultation with municipalities through their respective Integrated Development Plans (IDPs) for future projects.
- Engage with relevant Sector Partners for their contribution/inputs in future MIG projects.
- Develop technical report for all water and sewer project in a sectoral guideline.
- Research, collate and recommend inputs to the integrated infrastructure development

Advice on the feasibility and sustainability of future projects

- Facilitate the conducting of feasibility studies on potential or identified future project
- Compiling business plans with technical reports of various projects to be funded through MIG
- Conduct project feasibility studies as per ward community needs
- Follow upon appraisals and approvals of relevant business plans
- Knowledge of MIS and MIG processes is essential

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a) **Formulate terms of reference for appointment of consultants on various projects to do the following:**

- Design
- Land acquisitioning and legalities
- EIA Processes
- Ensure that projects are properly registered and budgeted
- Compile project plans for all the projects
- Formulate the project scope for the appointment of consultants and contractors

9.2 Procurement

Provide technical inputs for purposes of procurement by;

- Participating in BID Committees as may be assigned
- Advising with technical specification of proposals

Research, develop/source and recommend a project management system

- Investigate, recommend and facilitate the establishment of a web-based real-time project management system for efficient progress payment inspection reporting.
- Assist on the technical evaluation aspects of tenders in consultation with Supply Chain Management Unit.
- Compile a Standard Operating Manual for purposes of business process re-engineering

Advise the process of assessing human settlements impact audits

- Facilitate that the department conducts comprehensive provincial audit including, but not limited to occupancy status, structural integrity, ownership and housing statistical data
- Advise and facilitate rectification processes by identifying projects for rectification
- Facilitate the establishment of a suitable process for transfer of title deeds or ownership to all houses through conveyance
- Facilitate the conducting of Occupational Health and Safety at all running or current projects, and provide remedial measures for compliance

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9.3 Technical (IMPLEMENTATION)

Contracts Management

- a) **Monitoring adherence to the delivery programmes (delivery schedule) and cash flows by:**
- Monitoring adherence to the delivery programmes and cash flows by developers,
 - Monitoring that the contractors and/or developers adhere to contractual obligations,
 - Supporting Project Management with adherence to contractual obligations
 - Recommend relevant Project Management Software, such as MS Project, Prince 2 and other
- b) **Quality Assurance and Payment of Claims**
- Ensure Project Inspections Checklist and the Inspectors Guidelines
 - Revise and ensure that the Quality Management Framework is consistently complied with
 - Revise and Standard Procedure for claims processing and ensure the Procedure is consistently complied within municipal system.
 - Ensure that claims received from contractor are registered and processed timeously
 - Ensure OHS compliance during the construction phase
- c) **Proper Contracts filing system with checklists per contract**
- Implement contract filing protocols and processed to ensure proper and complete internal Contract filing by all district offices
 - Implement and monitor use of a Document Movement Register
 - Submit all complete close out files in compliance with municipal archiving protocols
- d) **Advise on subsidy top-up applications and propose Contract amends, accordingly, if approved**
- Advise the municipalities on the need for variation of quantum should Project Management and Monitoring considerations to requirements.

9.4. Monthly Reports

a) Monthly reports

- Ensure continuous adherence to submission of Monthly Progress reports by consultants and contractors
- Ensure adherence to the Technical Operations meeting schedule
- Revise the monthly reporting templates

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- Improve the integrity of reports to ensure that all reports are accurate and have a portfolio of evidence (inspection requests, inspection reports and completion reports)
- Facilitate the submission of Monthly Progress Reports and monitor deviations;
- Facilitate that Service Providers submit Monthly Progress Report(s) timeously to relevant authorities within the municipality timeously

b) Employment Statistics

- Propose a collation of employment statistics in addition to the municipal EPWP statistics

c) Capture visual Images of the delivery process

- Facilitate the capturing discretionary images to depict average quality and progress

d) Close out reports

- Develop guidelines on compilation of Close-out Reports
- Facilitate the Preparation and submission of Close out Reports for completed projects

9.5 CONTRACT MANAGEMENT

a) Conclusion of contracts with successful service provider

- Assisting with the drafting of Service Level Agreement for projects
- Maintain duplicate Contracts for all original Contracts
- Continuous monitoring and evaluation of all contacts
- Advise Project Managers on compliance with signed contracts
- Assist and advise on litigation processes
- Provide assistance on negotiations

9.6 PROJECT FINANCE

- Conduct financial due diligence and project budgeting
- Conduct financial cash-flows and projections of the projects

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9.7 SKILLS TRANSFER

a) One on one-the-job training and skills transfer

- Consider the Skill Gap Analysis undertaken by the municipal team
- Identify areas of training and capacity building for implementation
- Facilitate the training of municipal staff in accordance with the skills gap analysis
- Develop a skill development Plan

9.8 The service provider appoints **Mr KS Mojapelo** 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 **Ms N.R Makgata** in her capacity as the Manager Infrastructure Development 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.

11. Remuneration

- 11.1.** The Client hereby agrees to remunerate the Service Provider strictly in accordance with the letter of appointment and schedule of price.
- 11.2.** Payment of the Contract value will be made on a monthly basis on completion of specific deliverables of the programme activities.
- 11.3.** 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

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achieved, pay the invoiced amount to the Service Provider within thirty (30) days of receipt of invoice.

- 11.4. 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. Variations and cancellations

- 12.1. 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.
- 12.2. Any deviatonal that shall be done without prior approval by the client shall be null and void.

13. Ownership Terms and Conditions:

- 13.1. Any International Property rights owned by Waterberg District Municipality to the commencement date of this Business Agreement shall remain vested with Waterberg District Municipality.
- 13.2. Any Intellectual Property rights owned by Service Provider prior to the commencement date of the service level agreement shall remain vested with the Service Provider.
- 13.3. Ownership of any intellectual Property derived, produced or developed by the Service Provider expressly and exclusively for the acting on behalf of the Waterberg District Municipality with the terms and condition of the agreement to be concluded between Waterberg District Municipality and such Service Provider shall remain the property of the Waterberg District Municipality.

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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. The contract will automatically terminate by 30 June 2016 unless there is a letter indicating the extension of contract. The completion date will be dependent on the project plan and implementation schedules.

18. Termination

18.1. The project duration is 12 months renewable annually depending on availability of funding and performance for a maximum period of three (03) years

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

18.3. 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.

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

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

21. *Domicillum 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

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21.1.2. Service Provider :

SML Projects (Pty) Ltd
29 Ismini Avenue
Ismini Office Park
Cnr Outspan and Hillary Drive
Bendor Ext 110
POLOKWANE
0699

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 **13 July 2016**.

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.

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The penalties will be calculated ranging from 2% to 25% of the total programme 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.

24. Maintenance and Warranties

24.1. None.

25. Confidentiality

25.1 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:

25.1.1 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;

25.1.2 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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25.1.3 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

25.1.4 Which is independently developed by or on behalf of the Receiving Party.

25.2 All Parties shall:

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

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

25.2.3 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.

25.3 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.

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

25.5 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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26. Warrant of Authority

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

Signed at Modimolle on this 26 day August 2015 of 2015 *2015*

AS WITNESSES:

1.  _____ For and on behalf of the Client

2.  _____  _____
SM Mabotja
WDM Municipal Manager

Signed at Modimolle this 26 day August of 2015 *2015*

AS WITNESSES:

1.  _____ for and on behalf of the Service Provider

2. _____  _____
SML Projects (Pty) Ltd