

SERVICE PROVIDER AGREEMENT



on the Go for Growth

Entered into by:

The Waterberg District Municipality
(the Client)

And

Aganang Consulting Engineers cc
Registered Company Name: Aganang Consulting Engineers cc
(The Service Provider)

In respect of the Provision of Professional Services for the Development of
Rural Road Asset Management System

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1. Preamble

Whereas the Client requires the Service Provider to provide consulting services to it in respect of the development of a rural roads asset management system, which services the Service Provider is willing and able to provide to the Municipality;

And whereas the parties wish the terms and conditions of the Agreement between them to be recorded in writing.

2. 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:

- 2.1. The singular includes the plural and vice versa.
- 2.2. The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely :
- 2.2.1. '**ACE**' shall refer to the service provider, Aganang Consulting Engineers cc;
- 2.2.2. '**business day**' means any working day, excluding Saturdays, Sundays and public holidays;
- 2.2.3. '**Business Plan**' means Annual Business Plan starting from July of initial year and ending June of the subsequent year, as prepared on behalf of the Client by the Service Provider and being in respect of the **Development of Rural Road Asset Management System DORA Framework**.
- 2.2.4. '**Client**' means the Waterberg District Municipality; A category C municipality as envisaged in Section 155(1) (c) of the Constitution of the Republic of South Africa.
- 2.2.5. '**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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- 2.2.6. **'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;
- 2.2.7. **'DORA'** makes reference to the Division of Revenue Bill as shall be gazetted from time to time by National Treasury in accordance with the Division of Revenue Act.
- 2.2.8. **'Force Majeure'** means an unforeseeable circumstance that prevents the Parties from fulfilling their contractual obligations
- 2.2.9. **'key result'** means an indicator or yardstick in terms of which the Service Provider's successful performance of its obligations may be gauged;
- 2.2.10. **'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;
- 2.2.11. **'prime rate'** means the variable interest rate as charged and calculated by the Service Provider's bankers from time to time;
- 2.2.12. **'project'** means the services to be performed by the Service Provider in terms of the Business Plan as may be amended from time to time and the corresponding obligations to be fulfilled by the Client;
- 2.2.13. **'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 each project financial year;
- 2.2.14. **'Remuneration schedule'** means the details of remuneration.
- 2.2.15. **'Service Provider'** means **Aganang Consulting Engineers cc**, under the registration name: Aganang Consulting Engineers cc a company established in 1997 under Registration number 1997/041404/23;
- 2.2.16. **'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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2.2.17. 'Tender' means this project as designated by the Client and being in respect of the **Development of Rural Road Asset Management System**; and

2.2.18. 'WDM' shall refer to the client, Waterberg District Municipality.

2.3. Figures are referred to in numerals and in letters and if there is any conflict between the two then the letters shall prevail; and,

2.4. 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.

3. Appointment and Duration

3.1. The Client hereby appoints the Service Provider to carry out the services detailed in *Clause 7* to this Agreement upon the terms and conditions set out herein.

3.2. The Service Provider will commence **upon date of signature of service level agreement** and complete **30 June 2020** the performance of the services as agreed by both parties. The completion date of the project will be dependent on the project plan and implementation schedules.

3.3. Notwithstanding the completion date provided for in **Clause 3.2**, the completion date of the project will be dependent on the project plan and implementation schedules.

4. Team

4.1. The team members that will be involved in the project must be as according to the Business Plan submitted and approved, and where a team member resigns or leave the Service Provider, the Client must be informed.

4.2. In case where one of the team members mentioned in the Approved Business Plan leaves the Service Provider, the Service Provider must replace such a member with a member equivalent credentials (in terms of the rank, qualification and the experience) or more.

5. Shareholders

5.1. In case where the shareholdings of the Service Provider ("Company") changes during the year the Client must be informed of such changes.

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6. Extent of Terms and Conditions

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

- 6.1.1. Letter of appointment,
- 6.1.2. Acceptance letter,
- 6.1.3. This Agreement, and,
- 6.1.4. The National Treasury General Conditions of Contract
- 6.1.5. Business Plan

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

6.3. 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.

7. Scope of Services

To meet the conditions for data collection three (3) unemployed graduates must be used to carry out the fieldwork. The graduates will be appointed in consultation with the WDM and you are requested to provide office space, equipment and tools to execute their work.

7.1. The scope of work will be as per the approved business plan and will also include but not limited to:

- 7.1.1. Manage project;
- 7.1.2. Formulate and manage communication plan;
- 7.1.3. Interact with municipal authority as well as role players and stakeholders;
- 7.1.4. Trains and mentor graduates to carry out their allotted tasks;
- 7.1.5. Mobilises graduates by supplying vehicles, data capturing devices and safety equipment;
- 7.1.6. Manages the data capturing;
- 7.1.7. Coordinate all reporting to municipal authority;
- 7.1.8. Monitor progress and submit reports and cash flows;
- 7.1.9. Maintains a dataset of all data collected in the field;

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- 7.1.10. Provides municipalities, provincial and national departments routine access to the data; and
 - 7.1.11. Captures new roads, culverts and bridges for inclusion in the RISFSA datasets.
- 7.2. Graduates would require detailed maps of each ward to carry out their inspections. The Service Provider must:
- 7.2.1. Produce maps complying with the Road Infrastructure Strategic Framework for South Africa (RISFSA) road classifications; and
 - 7.2.2. Ensure all data is geospatially referenced.
- 7.3. The data collected has to be checked for errors and inconsistency and managed in a manner approved by the Department of Transport. The Service Provider:
- 7.3.1. Maintains a dataset of all data collected in the field;
 - 7.3.2. Provides municipalities, provincial and national departments routine access to the data; and
 - 7.3.3. Captures new roads and bridges for inclusion in the RISFSA datasets.
- 7.4. Development of the RRAMS Information Management System

8. Deliverables

- 8.1. Complete Waterberg district municipality Rural Road Asset Management System compatible with the Department of Transport specifications

9. Price

- 9.1. The contract price in respect of the project shall be as per the Business Plan to be approved by the National Department of Transport in alignment to the gazetted DORA financial figures by the National Treasury from time to time
- 9.2. Aganang Consulting Engineers cc is appointed for the Development of Rural Road Asset Management System for the current indicative amounts of R2,129,000.00, R 2,231,000.00 and R 2,358,000.00 Vat Inclusive if VAT registered for three financial years (2017/18, 2018/19 and 2019/20 respectively) as gazetted in the DORA.

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10. Obligations of the Service Provider and Submission of Monthly Reports

- 10.1. The stated services shall be rendered diligently and to the reasonable standard and expectations as required by the Client.
- 10.2. The service provider is required to submit written progress reports on or before the 10th of every month to the Supply Chain Management Unit (SCMU), Project Manager and the National Department of Transport until the project is fully completed.
- 10.3. The service provider appoints **Mr PR Mabidilala** as the project manager and key point of contact and liaison for all matters relating to the project performance by and between the Service Provider and the Client.
- 10.4. The service provider appoints **Mr AN Modingwane** as the project director and strategic of contact and liaison for all matters relating to the project strategic and contractual aspects by and between the Service Provider and the Client.

11. Obligations of the Client

- 11.1. 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.
- 11.2. The Client appoints **Ms B.F. Mthombene** in her capacity as the Divisional Manager Capital Projects 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. Remuneration

- 12.1. The Client hereby agrees to remunerate the Service Provider strictly in accordance with the letter of appointment, as shall be informed by RRAMS DORA allocations and the approved fees breakdown as shall be tabled per financial year.
- 12.2. Payment of the Contract value will be made in tranches on completion of specific deliverables of the project activities.
- 12.3. 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 achieved,

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

- 12.4. 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).

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.

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 thirty (30) 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 thirty (30) business days of either party declaring such a dispute. In this regard:

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- 16.1.1. A mediator shall be appointed by the parties, alternatively by the chair of the Attorneys Association in the Limpopo 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 thirty (30) business days of the commencement of mediation it shall be referred to arbitration accordingly :
- 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 thirty (30) business days.
- 17.2. Should the party in breach have failed to rectify the breach within the aforesaid time period or an agree upon time period by both parties as reasonable, the other party may cancel this Agreement and claim recovery of damages.
- 17.3. The project must be completed by 30 June 2020. The completion date will be dependent on the project plan and implementation schedules.
- 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.

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18. Termination

- 18.1. This Agreement may be terminated upon thirty (30) business days' written notice, after the terminating party has consulted the other about its intention.
- 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

- 19.1 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 :

Aganang Consulting Engineers cc
 10 Church Street
 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 ten (10) business days from the communication of notification.

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22. Amendments and Alterations

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

23. Penalty Clause

23.1. 22.1 Penalty will be imposed on the following cases:-

23.1.1. Late delivery.

23.1.2. Poor Quality.

23.1.3. Non-compliance to scope of work and reporting requirements.

23.1.4. Any other misrepresentation or poor performance.

23.2. The expiry date of the implementation period for this project is **30 June 2020**.

23.3. 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 the Client.

23.4. The penalties will be calculated ranging from **2% to 5%** of the annual project amount on the discretion of the Client. The maximum penalty to the Service Provider shall be limited to the aggregate of fees that have accrued to the Service Provider for the obligations that form the subject of the penalty as at the time that the penalty arose.

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

23.6. 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

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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;

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.

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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.

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 9 day March of 2018.

AS WITNESSES:

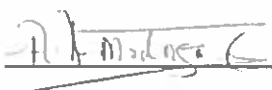
1.  For and on behalf of the Client

2.  
LG TLOBATLA
WDM Acting Municipal Manager

Signed at Modimolle this 9th day March of 2018.

AS WITNESSES:

1.  For and on behalf of the Service Provider
LINAH MODINGWANE

2.  
MESHU KGAPHOLA **AN MODINGWANE**
ACE Executive Director