

SERVICE PROVIDER AGREEMENT



WATERBERG DISTRICT
MUNICIPALITY

2013 -11- 1 9

TEL: 014 718 3300
FAX: 014 717 3886

WATERBERG DISTRICT MUNICIPALITY

Entered into by:

The Waterberg District Municipality

(hereinafter referred to as "**WDM**" represented herein by M V Letsoalo in his capacity as the Municipal Manager duly authorized)

and

MOOKGOPONG LOCAL MUNICIPALITY

(hereinafter referred to as "**MLM**" represented by ^{N.P.} P Magwala in his capacity as Municipal Manager duly authorized)

in respect of the co-funding of the implementation of Mookgopong Sewer Connection in Mookgopong

N.P.
M.V. Letsoalo
P. Magwala

WHEREAS the Waterberg District Municipality and Mookgopong Local Municipality enter into an agreement for the co-funding of the implementation of Mookgopong Sewer Connection in Mookgopong




And

WHEREAS the parties wish to reduce their agreement to writing.

1. Interpretation

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

- 1.1 the singular includes the plural and vice versa;
- 1.2 the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely :
 - 1.2.1 '**business day**' means any working day, excluding Saturdays, Sundays and public holidays;
 - 1.2.2 '**Client**' means the Waterberg District Municipality;
 - 1.2.3 '**commencement date**' means the date on which the parties commenced with the performance of their obligations.
 - 1.2.4 '**contract price**' means the total amount of 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;

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- 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 set out in Annexure A to this agreement;
- 1.2.11 **'Service Provider'** means The company or companies appointed by Waterberg District Municipality to execute the works on the project;
- 1.2.12 **'services'** refers to the professional work to be performed by the Service Provider in terms of this Agreement, as described in the annexures;
- 1.3 Figures are referred to in numerals and in letters and if there is any conflict between the two then the letters shall prevail; and,
- 1.4 Expressions defined in this Agreement shall bear the same meanings in schedules or annexures to this Agreement, which do not themselves, contain their own definitions.

NOW THEREFORE Parties agree as follows:

2 EXTENT OF TERMS AND CONDITIONS

- 2.1 This agreement consists of the terms and conditions set out in the documentation listed as follows:
- 2.1.1 This agreement.
- 2.2 In the event of conflict between provisions of any of the foretasted documentation and this Agreement, the provisions of this Agreement shall prevail.

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3 APPOINTMENT OF THE SERVICE PROVIDER

Waterberg District Municipality will appoint Service Providers in line with the Supply Chain Management Policy of WDM.

4 IMPLEMENTATION OF MOOKGOPONG SEWER CONNECTION

The parties agree that Waterberg District Municipality shall successfully manage the implementation of the Mookgopong Sewer Connection and hand over the project to Mookgopong Local Municipality after completion for maintenance.

5 CO-FUNDING OF THE PROJECTS

The total cost of the project eligible for funding is R8, 677,126.68 as quoted. In order to ensure successful implementation of the project, the co-funding parties shall make monetary contributions as follows:

WDM : R6, 877,126.68

Mookgopong : R1 800,000.00
Municipality

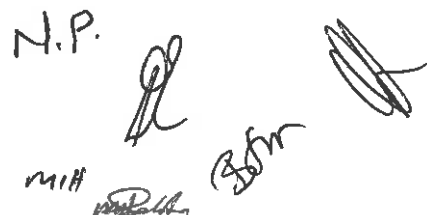
The duration of the agreement is dependent upon Service Provider's submitted schedule commencing five days after the signing of the agreement until 30 June 2014.

6 SCOPE OF WORK

DUTIES AND RESPONSIBILITIES

A. Waterberg District Municipality

- ❖ WDM to manage the project from the initial phase until closure
- ❖ WDM will appoint the Service Providers
- ❖ WDM will be monitoring the performance by the service provider during project implementation;
- ❖ The contribution made by the WDM will be as per item 5 of this agreement for the following.

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➤ R6, 877,126.68

B. MOOKGOPONG LOCAL MUNICIPALITY

❖ The remaining R1, 800,000.00 will be Mookgopong Municipality's contribution.

❖ MLM will Provide the information of the existing services

NB: If Mookgophong Local Municipality provides the WDM with incorrect information which leads to WDM incurring additional expenditure, MLM will be responsible for the additional costs on the project.

7. DISBURSEMENT OF funds

MLM's contribution of R1, 800,000.00 will be disbursed to WDM in a once off payment in advance during 2013/14 financial year.

8. LIABILITIES INTERMSOF ASSETS

Assets procured from this co-funding are not the ownership of WDM and WDM thus cannot be held reliable for any claims arising from or for these assets.

9. REPORTING

Waterberg District Municipality shall provide a progress report to the steering committee regarding funding disbursement and progress on the project of a monthly basis. Mookgopong Local Municipality should form part of project team and attend monthly progress meeting and site visits.

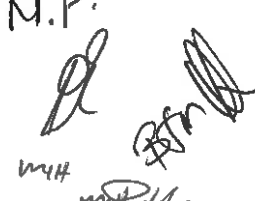
10. SUPPLY CHAIN MANAGEMENT

The Supply Chain procedures and policy of the Waterberg District Municipality will be utilized to implement the project as per MFMA.

11. VARIATION AND CANCELLATION

No agreements varying adding to, deleting from or cancelling this agreement shall be of force or legal effect unless reduced to writing and signed by or on behalf of the parties.

12. LIMITATION OF LIABILITY

M.P.

 M.H.
 M.P.

12.1 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.

12.2 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.

13 AMICABLE SETTLEMENT

13.1 If any dispute in terms of this contract, either party may give five (5) days in written notice to the other of such dispute, whereupon the parties shall meet promptly and in good faith attempt to reach an amicable settlement.

14. ARBITRATION

14.1 Should the parties fail to settle the dispute amicably as provided for in paragraph 6 above either party may within ten (10) calendar days refer the dispute for arbitration.

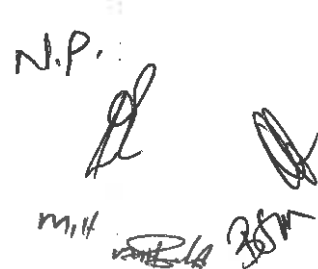
14.2 The arbitration shall be held:

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

14.2.2 The arbitration shall be a person agreed between the parties, failing that person a person nominated by the Chairperson for the time of the Law of Society of South Africa.

14.2.3 The arbitration shall be a practising attorney of not less than five (5) years standing as such.

14.2.4 The arbitration shall arbitrate on the dispute within thirty (30) calendar days of his/her appointment and do so with due regard to the rules of nature justice.

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- 14.2.5 The arbitrator shall immediately on his/her appointment advise the parties of the procedure to be followed and arbitrate the dispute in an expeditious manner.
- 14.2.6 The arbitrator shall make an award/orders relating to the subject matter of the dispute and costs of the arbitration or relating to any other matter arising there from.
- 14.2.7 The decision of the arbitrator shall be final and binding on the parties and may at the option of either party be made an order of Magistrates Court of competent jurisdiction.

15. BREACH

- a) 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.
- b) 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.

16. TERMINATION

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

17. SEVERABILITY

Any provision of this agreement found or held invalid or unenforceable, such terms shall be severable and the validity of all other terms shall not be affected thereby.

18. ENTIRE CONTRACT

This agreement constitutes the entire contract between the parties with regard to matters dealt with herein and no representation terms

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conditions or warranties not contained herein shall be binding upon parties.

19. DOMICILIUM

The parties choose domicilia citandi et executandi for all payments to be made and notices, demands or communications intended for either party for all purpose of an in connection with this agreement as follows:

WATERBERG DISTRICT MUNICIPALITY
Harry Gwala Street
Modimolle
0510

AND

MOOKGOPONG LOCAL MUNICIPALITY
Corner Mandela drive and Six Street
Mookgopong
0560

The parties shall be entitled to change their domicilium from time to time provided that any new domicilium selected by it shall be situated in the Republic of South Africa, shall be an address other than a box number, and any such change only be effective upon receipt in writing by other party of such change.

A notice, communication or payment, sent by one party to another party unless otherwise proved shall be deemed to be received.

- ❖ On the same day, if delivered by hand.
- ❖ In the same day if sent by telefax, cablegram or telex
- ❖ On the tenth day after posting, if sent by prepaid registered mail.

Notwithstanding anything to the contrary herein contained a written notice or communication or payment actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent or delivered at the chosen domicilium citandi et executandi.

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20. WARRANT OF AUTHORITY

The person signing this agreement on behalf of the parties warrants their authority to do so.

THUS DONE AND SIGNED AT *Momodou* ON
THIS *05* DAY OF *NOVEMBER* 2013 IN

THE PRESENCE OF THE UNDERSIGNED WITNESSES

AS WITNESSES:

For and on behalf of the Waterberg District Municipality

1. *Mabgate*

M V Letsoalo
.....
**M V LETSOALO
MUNICIPAL MANAGER**

2. *[Signature]*

THUS DONE AND SIGNED AT *Mookgophong* ON
THIS *5th* DAY OF *November* 2013 IN

THE PRESENCE OF THE UNDERSIGNED WITNESSES

AS WITNESSES:

For and on behalf of Mookgopong Municipality

[Signature] *[Signature]* *N.P.*
M.H. Bofm

1. 

N.P. 
P Magwala
MUNICIPAL MANAGER

2. 

Duly authorized hereto

