

SERVICE PROVIDER AGREEMENT



on the Go for Growth

WATERBERG DISTRICT MUNICIPALITY

Entered into by:

WATERBERG DISTRICT MUNICIPALITY
(the Client')

And

Registration Company Name: **SUDUCO ASSET AUCTIONEERS**
(The Service Provider')

In respect of the **AUCTIONEERING SERVICES**

A handwritten signature in black ink, appearing to be 'M. B.' or similar.

A handwritten signature in black ink, appearing to be 'A. B.' or similar.

Preamble

Whereas:

The Waterberg District Municipality and Suduco Asset Auctioneers enter into an agreement for the provision of auctioneering services for the Waterberg District Municipality.

It is therefore agreed as follows:

1. Parties:

The parties to this agreement are:

- 1.1 Waterberg District Municipality (hereinafter referred to as "the client"), represented by **F Nogilana Raphela**, in his duly authorized capacity as Acting Municipal Manager of Waterberg District Municipality; and
- 1.2 Suduco Asset Auctioneers (hereinafter referred to as "the Service Provider"), represented herein by **J. Bezuidenhout**, in his duly authorized capacity as Managing Director of Suduco Asset Auctioneers

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. '**business day**' means any working day, excluding Saturdays, Sundays and public holidays;
 - 2.2.2. '**Client**' means the Waterberg District Municipality;




- 2.2.3. '**commencement date**' means the date on which the parties commenced with the performance of their obligations, **09 June 2014**
- 2.2.4. '**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;
- 2.2.5. '**key result**' means an indicator or yardstick in terms of which the Service Provider's successful performance of its obligations may be gauged;
- 2.2.6. '**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;
- 2.2.7. '**prime rate**' means the variable interest rate as charged and calculated by the Service Provider's bankers from time to time;
- 2.2.8. '**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;
- 2.2.9. '**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;
- 2.2.10. '**Remuneration schedule**' means the details of remuneration.
- 2.2.11. '**Service Provider**' means Suduco Asset Auctioneers, under the registration name: Suduco Asset Auctioneers, a company established in 2008 under Registration number **2008/037750/23**
- 2.2.12. '**services**' refers to the professional work to be performed by the Service Provider in terms of this Agreement, as per page 4;
- 2.2.13. '**Tender**' means Tender **No. WD(Q/2013/14-30) (Vote 01/0309)**, advertised by the Client and being in respect



of the provision of auctioneering services for the 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 Paragraph 7 to this Agreement upon the terms and conditions set out herein.
- 3.2. The Service Provider will commence and complete the performance of the provision of Auctioneering services for the Waterberg District Municipality as indicated in the project proposal and in the letter of appointment or on such other dates as may be agreed by the parties.
- 3.3. The duration of the project is for approximately 1(one) month, commencing on **Monday 09 June 2014** and ending **Tuesday 30 June 2014**.

4. **Team**

The team members that will be involved in the project must be according to the proposal and where a team member resigns or leaves the institution the client must be informed in writing through Supply Chain Management and the Project Manager.

5. **Shareholders**

In case where the shareholders of the company change during the period, the client must be informed in writing of such changes.

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. All tender documents comprising the Tender (Schedule 1);
 - 6.1.2. The Service Provider's proposal (Schedule 2);

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

6.1.4. This Agreement.

6.1.5. National Treasury Conditions of Contract

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

7. **Scope of Services**

Auctioneering services for Waterberg District Municipality assets including:

- Advertising of auction
- Towing of vehicles to a centralised place
- Commission on sold assets

8. **Price**

The contract price in respect of the Tender is as per the pricing schedules provided in by Suduco Asset Auctioneers proposal as follows:

8.1 Suduco Asset Auctioneers is appointed for the provision of auctioneering services for the Waterberg District Municipality as reflected in the table below:

	VAT EXCLUSIVE	VAT INCLUSIVE
Advertising	R10 000.00	R11 400.00
Towing	R 4 500.00	R 5 130.00
Commission	3.45%	

9. **Continuous Service Agreement**

9.1 The Service Provider, Suduco Asset Auctioneers, agrees to:

- a) Supply consumables at the Service Provider's preferred price applicable at the date of delivery of such consumables to the client with continuous service agreement.

9.2 The Client, Waterberg District Municipality, agrees to:

- a) Pay the Service Provider as set out in the pricing schedule in Clause 8.
- b) Provide access at any time or times during working hours to any authorized representative of the Service Provider for any purpose of this agreement.
- c) Pay a full amount due to the Service Provider by the **end of the auctioneering process**, upon receipt of an invoice.
- d) Supply the Service Provider in a manner determined by the Service Provider, from time to time, with information about the assets to be sold. The Client's contact person with regard to the above is **Maureen Ngoepe**, contact number is **014 718 3300/14**.

10. **Assets and ownership**

Assets to be auctioned remain assets of Waterberg District Municipality until the day they are sold through an auction.

11. **Obligations of the Service Provider**

- 11.1. The aforesated services shall be rendered diligently and to the standard required by the Client.
- 11.2 The Service provider appoints **Mr Johan. Bezuidenhout**, in his capacity as Manager of Suduco Asset Auctioneers as the project manager and key point of contact and liason for all matters relating to the project by and between the Service Provider and Client.
- 11.3 The Service Provider will, amongst others, render the following services;
 - Advertising of the auction
 - Towing of vehicles to a centralised place
 - Auctioneering services
- 11.4 The Service Provider shall be responsible for the registration of Bidders on the auction day and to collect all money for registration.
- 11.5 All capital made during the auction process shall be collected

by the Service Provider within seven (7) days after the auction has been completed.

12. **Obligations of the Client**

12.1 The Client shall provide reasonable support to the Service Provider to enable it to perform its duties.

12.2 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.

12.3 The Client appoints **Ms Maureen Ngoepe** in her capacity as Senior Admin Officer of the Waterberg District Municipality as the project manager and key point of contact and liason for all matters relating to the project by and between the Service Provider and Client.

13. **Payment to the Client**

The Service Provider shall pay all capital collected during the auction into Waterberg District Municipality's banking account within seven (7) days after collection from the bidders.

The banking details are as follows:

Bank	:	FNB
Account Number	:	53170034748
Type of account	:	Cheque
Branch	:	Modimolle

14. **Remuneration**

14.1. The Client hereby agrees to remunerate the Service Provider strictly in accordance with the quotation.

14.2. If the Client defaults or falls into arrears with 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, the payment may exceed (30 days).

15. **Variations and cancellations**

No agreement 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.

16. **Limitation of liability**

16.1. 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.

16.2. 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.

17. **Amicable Settlement**

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.

18. **Disputes**

18.1. 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:

18.1.1. 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,

18.1.2. The parties shall seek ways and means to resolve the dispute in the most expedient manner.

18.2. Should the dispute not be resolved within 10 (ten) business days of the commencement of mediation it shall be referred to arbitration. Accordingly :

18.2.1. 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,

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

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

19. **Breach**

19.1. 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.

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

19.3. Timeframe for this project is 36 (thirty-six) months upon receipt of the appointment letter or earlier.

19.4. Any request for an extension on timeframe must be done in writing and be approved by the Accounting Officer or penalties will be imposed on the Service Provider.

19.5. Penalties in case of breach, extension on timeframe or inferior quality of goods will be determined by the client on his/her own discretion (penalties can be from 2% - 25%).

20. **Termination**

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

20.2. 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.

21. **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.

22. **Whole agreement**

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

23. ***Domicilium citandi et executandi***

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

23.1.1. **Client :**

Acting Municipal Manager
Waterberg District Municipality
Harry Gwala Street
Private Bag X 1018
Modimolle
0510

Contact numbers:

Tel: 014 718 3300/11
Fax: 014 717 3886
Email: admin@waterberg.gov.za

23.1.2. **Service Provider :**

The Manager
Suduco Asset Auctioneers
Plt 15 Dalmada
P. O. Box 215
Polokwane
0700

Contact numbers:

Tel: 015 263 6167
Cell: 083 477 2246
Email: johan@suducoauctioneers.com

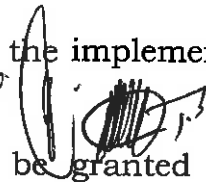
23.2. Either party may change its *domicilium citandi et executandi* by giving written notice to the other, the new address

becoming effective at the expiry of 10 (ten) business days from the communication of notification.

24. Amendments and alterations

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

25. Penalty Clause

- 25.1 The expiry date for the implementation period for this project is ~~30 June 2014~~ 09 July 2014 
- 25.2 No extension will be granted for this project without good motivation and any failure to deliver the expected results before or on the specified date of the **30 June 2014** will automatically result in penalties to be effected by WDM.
- 25.3 The penalties for delays in completion will be calculated as 1% of the total once-off project amount for every delayed week.
- 25.4 The penalties for non-performance will be calculated from 2% to 25% of the total project amount on the discretion of the municipality. Penalty percentage can be increased from 25% depending on the severity of the penalty.
- 25.5 National Treasury Conditions of Contract will also apply in terms of penalties imposed.

26. Confidentiality

- 26.1 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 the 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:

- 26.1.1 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 obligations hereunder;
- 26.1.2 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;
- 26.1.3 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 of 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
- 26.1.4 which is independently developed by or on behalf of the Receiving Party.

27.2 All Parties shall:

- 27.2.1 hold the other Party's Confidential Information in the strictest confidence;
- 27.2.2 not make use thereof other than for the performance of its obligations under the Agreement; and
- 27.2.3 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.

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

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

27.5 In the case of a release, announcement or document which is required 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.

28. Warrant of Authority

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

Signed at **Modimolle** this 12 day June of 2014.

AS WITNESSES:

1.



For and on behalf of the Client




2.



F NOGILANA-RAPHELA
 Acting **Municipal Manager**

Signed at **Polokwane** this 12 day June of 2014.

AS WITNESSES:

1.



For and on behalf of the
Service Provider

2.



J. Bezuidenhout
Manager

