

8/2/19  
6/13/7/2

# SERVICE PROVIDER AGREEMENT



*on the Go for Growth*

## WATERBERG DISTRICT MUNICIPALITY

Entered into by:

**WATERBERG DISTRICT MUNICIPALITY**

(Herein referred to as 'the Client/ Buyer')

And

**DIKALA SERVICES (PTY) LTD**

Registration Number:

(Herein referred to as 'The Service Provider / Seller')

In respect of the Repair and Maintenance of WDM Fleet and Equipment

*[Handwritten signatures]*  
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## Preamble

### Whereas:

Waterberg District has identified a need to have the Repair and Maintenance contract for all WDM Vehicles and Equipment.

Waterberg District Municipality appointed **Dikala Services (Pty) Ltd** for the repair and Maintenance of WDM Fleet and Equipment.

Dikala Services (Pty) Ltd expressed its intention to repair and maintain Waterberg District Municipality Fleet and Equipment 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 ;**

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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 submit within a reasonable time, prior to commencement of project;
- 1.2.10. **'Service Provider'** means Dikala Services (Pty) Ltd, under the registration name: Dikala Services (Pty) Ltd established in 2015 under Registration number 2015/272446/07;
- 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;
- 1.2.12. **Tender**, means tender No: WDM/2018/19-01 advertised by the client and being in respect of the Repair and Maintenance of WDM Fleet and Equipment.

- 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..**

## **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:
  - 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 afore-stated 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

### SECTION A:

1. **Chassis cab repair and maintenance:** This will be in accordance with the respective original equipment manufacturers (OEM) service maintenance directives.

- 1.1. Brakes,
- 1.2. Full Service Schedule as per manufacture,
- 1.3. Mufflers and exhaust systems,
- 1.4. Transmissions,
- 1.5. Body parts(wear & tear)
- 1.6. Automobile electrification,
- 1.7. Automotive air conditioner repairs,
- 1.8. Wheel alignment,
- 1.9. Wheel balancing,
- 1.10. Tyres,
- 1.11. Batteries,
- 1.12. Parts replacement,
- 1.13. Periodic tests and adjustment,
- 1.14. Prognostics,
- 1.15. Suspension-rear and front,
- 1.16. Fluid replacement,
- 1.17. Lights.
- 1.18. Towing services
- 1.19. Call out services

**SECTION B:**

1. **Firefighting Pump:** This will need to be conducted bi-annually and will include the following:

- 1.1. Valves :- Pump suction, discharge and bypass valves fully open
- 1.2. Piping :- Free of leaks
- 1.3. Suction Line :- Pressure gauge normal
- 1.4. Inspect/ test :- PTO service and repair where necessary
- 1.5. Inspect, service:- pump drive-lines, re-torque centre bolt mountings
- 1.6. Inspect :- gauges for calibration, adjust/ replace where necessary
- 1.7. Inspect :- discharge seals, suction hoses and replace where necessary
- 1.8. Service :- pump controls and valves.
- 1.9. Reservoir/Tanks (If applicable) :- Suction reservoir or tank full
- 1.10. Controller Pilot Light :- Light Pilot light (power on) illuminated
- 1.11. Fuel Tank :- Fuel tank at least two-thirds full
- 1.12. Controller :- Selector switch in "AUTO" position
- 1.13. Batteries :- Voltage readings normal
- 1.14. Charging :- current readings normal
- 1.15. Pilot lights off terminals free of corrosion
- 1.16. Engine Oil :- Engine oil is full and Replace pump gear oil
- 1.17. Cooling Water :- Cooling water is full
- 1.18. Engine Running Time :- Meter is reading
- 1.19. Perform full pump test:
  - 1.19.1. From Tank.
  - 1.19.2. Hydrant.
  - 1.19.3. Draft(pump)
- 1.20 Service test of Fire Fighting Hose

**SECTION C:**

1. **Superstructure Service:** This will need to be conducted bi-annually and will include the following:

- 1.1. Inspect/Clean/ service and adjust roller shutter doors.
- 1.2. Inspect/ repair locker lights.
- 1.3. Re-torque locker adjustable trays.
- 1.4. Service and test roof monitor.
- 1.5. Re-torque superstructure mountings.
- 1.6. Service/ test led flashers.
- 1.7. Service/ test PA siren, lightbar and speaker.
- 1.8. Service/ test winch.
- 1.9. Inspect/ test rear work lights.
- 1.10. Service electrical harness, and connectors, repair and replace where necessary.

## 6. GUARANTEE :

The guarantee period for service or repairs shall be for a maximum period of **six (6) months**

## 7. MAINTENANCE

Dikala Services (Pty) Ltd will be responsible for the repairs and maintenance of all, and not limited to the items listed under Section A, B and C as indicated in the Tender document including all other extra items that will be added after signing of this contract.

## 8. PRICE :

8.1. The contract price in respect of the tender is as per the pricing schedules provided in by the Dikala Services (Pty) Ltd bearing the Registration NO: **2015/27446/07** proposed as follows:

8.1.1. Dikala Services (Pty) Ltd is appointed for the Repair and Maintenance of Fleet and Equipment as per specification for the Waterberg District Municipality.

## 9. REMUNERATION/PAYMENT:

9.1. Maintenance and/or repair of vehicles and equipment shall be paid by means of an EFT and will be paid once the service has been rendered as per the invoice submitted.

## 10. OBLIGATIONS OF THE SERVICE PROVIDER

10.1 The Service Provider appoints **Lesetja Ben Poto** in his capacity as the Director and 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.

10.2 Ensuring that the turnaround call out time does not exceed 2hours per 100km.

10.3. Ensuring that all spares and material used for this contract are SABS, ISO or agency approved.

10.4 Ensuring that vehicles and equipment are kept in a safe, secured and lockable workshop, not exposed to natural hazards or theft.

10.5 Ensuring that the workshop area is more than 90 square metres in size as per the Tender document.

10.6 Repair time not exceeding 5 hours unless indicated so in the form of writing.

10.7 Ensuring that technical maintenance is done via approved and registered dealer workshops.

10.8 Conducting regular inspection on all vehicles to check roadworthy fitness and take the necessary corrective measures.

10.9 Monitor maintenance of vehicles to check service intervals and kilometres travelled. Maintenance be done as per vehicle or equipment manufacturing requirements and intervals.

10.10 While in the Service Provider's possession, Municipal vehicles should be driven by drivers having a valid South African license cards as approved by the South African Traffic Department in line with the Act.

10.11 The Service Provider will be responsible for all traffic fines issued to their employees or drivers while driving municipal vehicles.

10.12 In case of emergencies or unforeseen circumstances, the Service Provider will provide a replacement vehicle to assist the driver.

10.13 Have regular meetings with the Client on a quarterly basis or whenever necessary.

10.14 Compile and submit monthly reports to the Project Manager on or before the 07<sup>th</sup> days of every month.

## 11. OBLIGATIONS OF THE CLIENT

11.1 The Client shall ensure that the Service Provider has reasonable access 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 **GM Seleka** in her capacity as the Manager Corporate Support and Shared Service of Waterberg District Municipality and key point of contact and liaison for all matters relating to the project by and between the Service Provider and the Client.

## 12. INSURANCE

The Service Provider shall provide an insurance cover of more than R10 million.

## 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.

## 13 LIMITATION AND LIABILITY

13.1 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.

13.2 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.

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#### 14 AMICABLE SETTLEMENT

- 14.1 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.

#### 15 DISPUTES

- 15.1 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:

- 15.1.1 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,
- 15.1.2 The parties shall seek ways and means to resolve the dispute in the most expedient manner.
- 15.1.3 Should the dispute not be resolved within 10 (ten) business days of the commencement of mediation it shall be referred to arbitration. Accordingly :
- 15.1.4 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,
- 15.1.5 The rules of AFSA shall govern the conduct of the arbitration.

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

## 16 BREACH

16.1 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.

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

16.3 Timeframe for this project is **thirty-six (36) months** upon date of signature of service level agreement.

16.4 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.

## 17 TERMINATION

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

17.1 The afore-stated termination shall not prejudice either party's rights in respect of the obligations

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

## 18 SEVERABILITY

18.1. 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.

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## 19 WHOLE AGREEMENT

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

## 20 AMENDMENT AND ALTERATIONS

20.1 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.

## 21 PENALTY CLAUSE

Penalty will be imposed on the following cases:-

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

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.

## 22 CONFIDENTIALITY

22.1 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:

- 22.1.1 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;
- 22.1.2 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;
- 22.1.3 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
- 22.1.4 which is independently developed by or on behalf of the Receiving Party.

## **22.2 All Parties shall:**

- 22.2.1 hold the other parties Confidential Information in the strictest confidence;
- 22.2.2 not make use thereof other than for the performance of its obligations under the Agreement; and
- 22.2.3 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.
- 22.3 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.
- 22.4 The Parties' obligation in terms of this clause will survive the termination of this Agreement including the termination thereof by the effusion of time.

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- 22.5 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.

### 23. Warrant of Authority

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

### 24. *Domicilium citandi et executandi*

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

i. **Client :**

Office of the Municipal Manager  
Waterberg District Municipality

Physical

44 Harry Gwala Street  
MODIMOLLE  
0510

Postal

Private Bag X1018  
MODIMOLLE  
0510

Contact details

Tel: 014 718 3300  
Fax: 014 717 3886  
Email: mngoepe@waterberg.gov.za

ii. **Service Provider :**

Dikala Services (Pty) Ltd

Physical

634 Windsor Street

Postal

P O Box 50539

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CM MM

GARSFONTEIN

MORELETA VILLAGE

0097

Roodekuil 496 KR 136

BELA-BELA

0480

Contact details

Tel: 012 993 3132

Cell: 082 407 6210

Fax: 086 514 3831

Email: ben@dikalagroup.co.za

- b. 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 14 day of MARCH 2019.

**AS WITNESSES:**

1. G. M. Sefeng For and on behalf of the Client
2. T. S. Mendaka MM MALULEKA  
Municipal Manager

Signed at Modimolle this 18 day of MARCH 2019.

**AS WITNESSES:**

1. \_\_\_\_\_ For and on behalf of the

T.S.  
G.M. Sefeng

Service Provider

2.

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**LESETJA BEN POTO**  
**Director**

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