

# **SERVICE LEVEL AGREEMENT**

Made and entered into by and between

## **Knysna Municipality**

A municipality duly established in terms of Local Government Municipal  
Structures Act 117 of 1998

(Herein represented by **Dr Louis Scheepers** in his capacity as Acting **Municipal  
Manager** duly authorised thereto)

(Hereinafter referred to as “**the Municipality**”)

and

## **Western Cape Economic Development Partnership**

(Registration number **2012/015958/08** and herein represented by  
**Andrew Borraine**, in his capacity as **Chief Executive** duly authorised thereto)

(Hereinafter referred to as “**WCEDP**”)

### **PREAMBLE:**

**WHEREAS:** the Municipality wishes to contribute towards a regional approach to development through the South Cape Economic Partnership (SCEP), coordinated and match-funded by the Western Cape Economic Development Partnership, with the aim of enabling more effective regional collaboration on cross-boundary development projects, as agreed amongst municipalities in the Garden Route district on 5 April 2016 and during the SCEP review on 4 December 2019.

**AND WHEREAS:** the Municipality nominates and appoints the WCEDP to provide or render the services as required;

**NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:**

**1. INTERPRETATION**

- 1.1 The headings to the clauses of this Agreement are for reference purposes only and shall in no way govern or affect the interpretation of nor modify nor amplify the terms of this agreement nor any clause hereof, and unless the context dictates otherwise, the words and expressions set forth below shall bear the following meanings and cognate expressions shall bear corresponding meanings:
- 1.1.1 **“Agreement”** shall mean this Service Level Agreement, and all annexures attached hereto and “this agreement” or “the agreement” shall bear the same meaning.
- 1.1.2 **“Annexure A”** means the attached scope of deliverables and budget, which includes the work plan and budget.
- 1.1.3 **“Commencement Date”** means the date when the agreement will officially commence.
- 1.1.4 **“Parties”** mean the WCEDP and XXX Municipality.
- 1.1.5 **“Signature Date”** shall mean the date of signature of this Agreement by the last party signing.
- 1.1.6 **“VAT”** shall mean value added tax payable in terms of the Value Added Tax Act 1991, as amended.
- 1.2 Expressions defined in this agreement shall bear the same meanings in schedules and Annexures to this agreement, which do not themselves contain their own definitions.
- 1.3 In the event of any inconsistency between the provisions of this Service Level Agreement and the terms and conditions contained in Annexure “A”, the provisions of this Service Level Agreement shall prevail over the terms and conditions contained in the said Annexure “A”.

**2. RECORDAL**

- 2.1 The Municipality wishes to contribute towards a regional approach to development through the South Cape Economic Partnership (SCEP), coordinated and match-funded by the Western Cape Economic Development Partnership, with the aim of enabling more effective regional collaboration on cross-boundary development projects. The role of SCEP is not to deliver work or to substitute for local government mandates, but rather to provide a structure through which local governments in the Garden Route can partner more effectively with each other, and with the private sector and civil society.

- 2.2 The Parties wish to enter into an Agreement governing the execution of the required deliverables identified and agreed on by all stakeholders involved. The Municipality hereby enters into an agreement with the WCEDP to render the institutional and financial administrative services as well as fulfill an advisory role behalf of and to the SCEP which will be responsible for the coordination and implementation of identified regional economic projects and processes, on the terms and conditions of this Agreement.

### **3. APPOINTMENT**

- 3.1 The WCEDP, in accepting this appointment, expressly warrants that it possesses or has ready access to the infrastructure and or appropriate skills to execute all its obligations in terms of this agreement.
- 3.2 The WCEDP shall perform the obligations with due care and diligence and apply generally accepted practices and shall endeavor to act at all times in the best interests of the Municipality and the Garden Route region.
- 3.3 Subject to the other provisions of this Agreement, the Service Level Agreement is personal to the WCEDP.

### **4. COMMENCEMENT AND DURATION**

- 4.1 Notwithstanding the date of signature of this agreement, the agreement shall commence on 1 July 2020 and shall terminate 30 June 2022.

### **5. RIGHTS AND RESPONSIBILITIES OF THE MUNICIPALITY**

- 5.1 The Municipality undertakes to pay over funds in accordance to the amount of R 110 000, 00 (One hundred and ten thousand rand) for year 2020/21 and R 110 000,00 (One hundred and ten thousand rand) for year 2021/22 and R 120 000,00 (One hundred and twenty thousand rand)) for the year 2022/23 to achieve the agreed objectives, subject to the provisions of this agreement and the satisfactory achievement of all deliverables.
- 5.2 The Municipality undertakes to render all reasonable assistance to the partnership to enable it to achieve the deliverables and shall ensure that all matters referred to it for consideration or approval is handled in an expeditious manner.
- 5.2.1 The Municipality undertakes to pay the agreed amount which has been pre-determined against the municipal contribution towards the regional gross domestic product (GDPR) indicators.
- 5.2.2 Additional to or in conjunction with the provisions of the above clause, the Municipality must give the Partner notice of the intention to withhold or stop the disbursement of funding stating the reasons and give the Partner an opportunity to submit written representations, within 7 (seven) days, as to why the allocation should not be withheld or stopped.

### **6. PERFORMANCE OF SERVICES**

- 6.1 The WCEDP undertakes to annually contribute an amount that is equivalent to the municipal payment towards this partnership agreement and shall, at all times, acknowledge and adhere to the content of this Agreement and all Annexure's during the execution of its obligations.
- 6.2 The WCEDP undertakes to execute the deliverables with the highest standards of professional and ethical competence and integrity and shall adhere to the highest standards in the industry.
- 6.3 The WCEDP shall execute and finalize its obligations within the prescribed time period.
- 6.5 The WCEDP and the Municipality may each appoint an authorised representative who shall –
  - 6.5.1. serve on the South Cape Economic Partnership Forum who will continue to meet at least quarterly and as and when necessary
  - 6.5.2. not be entitled to take decisions that will bind the parties unless, approved by the relevant authorized representatives.
  - 6.5.3. not be entitled to take decisions that would have the effect of amending this agreement unless such decisions are reduced to writing and signed on behalf of the parties by their duly authorised representatives.

## **7. FEES AND DISBURSEMENTS**

- 7.1. **The total value for the duration of the Agreement amounts to a total cost of R 110 000, 00 (One hundred and ten thousand rand) and R 110 000, 00 (One hundred and ten thousand rand) and R 120 000,00 (One hundred and twenty thousand rand) for 2020/21, 2021/22 and 2022/23 financial years respectively.**
- 7.2. The WCEDP will submit written invoices in all financial years on its letterhead and provide quarterly reports in order for payments to be processed timeously.
- 7.3. The Municipality undertakes to ensure that a payment in respect of the invoice(s) received from the WCEDP, shall be affected within 30 days of the submission of the invoice(s) to the Municipality.

## **8. CONFLICTS OF INTEREST**

The WCEDP/SCEP shall not engage in any activity which may conflict with the interests of the municipality under this Agreement.

## **9. LEGAL COMPLIANCE AND LEGISLATIVE/REGULATORY CHANGES**

- 9.1. The WCEDP shall, at all times during the duration of this Agreement, comply with all relevant laws, by-laws and policies and requirements of applicable authorities in the execution of its duties as determined in this Agreement.
- 9.2. The WCEDP shall obtain all approvals, licenses and permits required from municipal, governmental and other authorities having competent jurisdiction, to perform their duties in terms of this agreement.

## **10. SEVERABILITY AND VARIATION**

- 10.1. The Parties agree that no other terms or conditions, variations or representations, whether oral or written, and whether express or implied, or otherwise shall be of force, other than those contained in this Agreement and the addendum containing the specific project deliverables to follow.

## **11. DISPUTE RESOLUTION**

- 11.1 Without detracting from any party's right to institute action or motion proceedings in the High Court or other Court of competent jurisdiction in respect of any dispute that may arise out of this Agreement, the parties may, by mutual consent, follow the mediation and/or arbitration procedure.
- 11.2 Mediation
  - 11.2.1 Subject to the provisions of clause 19.1 any dispute arising out of this agreement may be referred by the parties without legal representation to a Mediator.
  - 11.2.2 The dispute shall be heard by the Mediator at a place and time to be determined by him or her in consultation with the parties.
  - 11.2.3 The Mediator shall be selected by agreement between the parties.
  - 11.2.4 If an Agreement can not be reached upon a particular Mediator within 3 (three) business days after the parties have agreed to refer the matter to mediation, then the President for the time being of the Law Society of the Cape of Good Hope shall nominate the Mediator within 7 (seven) business days after the parties have failed to agree.
  - 11.2.5 The Mediator shall at his or her sole discretion determine, whether the reference to him or her shall be made in the form of written or verbal representations, provided that in making this determination he or she shall consult with the parties and may be guided by their common reasonable desire of the form in which the said representations are to be made.

- 11.2.6 The parties shall have 7 (seven) business days within which to finalise their representations. The Mediator shall within 7 (seven) business days of receipt of the representations express in writing an opinion on the matter and furnish the parties each with a copy thereof by hand or by registered post.
- 11.2.7 The opinion so expressed by the Mediator shall be final and binding upon the parties unless a party is unwilling to accept the opinion expressed by the Mediator. In such event, the aggrieved party must deal with the dispute. The expressed opinion of the Mediator shall not prejudice the rights of a party in any manner whatsoever in the event of it proceeding to arbitration.
- 11.2.8 The costs of mediation shall be determined by the Mediator.
- 11.2.9 Liability for such costs shall be apportioned by the Mediator and shall be due and payable to the Mediator on presentation of his or her written account.

### 11.3 Arbitration

- 11.3.1 the parties may agree to refer any dispute arising out of this agreement to Arbitration.
- 11.3.2 Arbitration shall be held in Cape Town and otherwise in accordance with the provisions of the Arbitration Act, No. 42 of 1965, as amended from time to time, it being intended that if possible it shall be held and concluded within 10 (ten) business days after it has been demanded.
- 11.3.3 Save as otherwise specifically provided herein, the Arbitrator shall be, if the matter in dispute is:
- (a) primarily a legal matter, a practising Advocate of the Cape Bar; and
  - (b) any other matter, an independent and suitably qualified person as may be agreed upon between the parties to the dispute.
- 11.3.4 If agreement cannot be reached on whether the question in dispute falls under 11.3.3(a) or 11.3.3(b) and/or upon a particular Arbitrator within 3 (three) business days after arbitration has been demanded, then the Chairperson for the time being of the Cape Bar Council shall:
- (a) determine whether the question in dispute falls under 11.3.3(a) or 11.3.3(b); and/or
  - (b) nominate the Arbitrator within 7 (seven) business days after the parties have failed to agree.
- 11.3.5 The Arbitrator shall give his or her decision within 5 (five) business days after the completion of the arbitration. The Arbitrator may determine that the costs of the arbitration are to be paid by either or all of the parties, as the case may be.

11.3.6 The decision of the Arbitrator shall be final and binding and may be made an order of the Cape of Good Hope Provincial Division of the High Court upon the application by any party to the arbitration.

## 12. NOTICES AND DOMICILIUM

12.1. The Parties hereto select as their respective *domicilia citandi et executandi* (“*domicilium*”) the following physical addresses, and for the purpose of giving or sending any notice, the payment of invoices the serving of any process and for any other purpose provided for or required hereunder:

### THE XXX MUNICIPALITY:

**Physical Address:**

**Postal Address:**

Tel No: 000 – 000 000

E- mail:

### WESTERN CAPE ECONOMIC DEVELOPMENT PARTNERSHIP

**Physical Address:**

**Postal Address:**

24<sup>th</sup> Floor  
Atterbury House  
9 Riebeeck Street  
Cape Town  
8000

24<sup>th</sup> Floor  
Atterbury House  
9 Riebeeck Street  
Cape Town  
8000

Tel No: 021 832 0200

E- mail: [andrew@wcedp.co.za](mailto:andrew@wcedp.co.za)

12.2 Each party shall be entitled to nominate a physical address, not being a post box or poste restante, in substitution for the address set out above in respect of it at any time by giving the other party hereto 21 (twenty one) day's written notice of such change of address;

12.3. Where, in terms of this Agreement any communication is required to be in writing, the term "writing" shall include communications by facsimile and email. Communications by facsimile and email shall, unless the contrary is proved by the addressee, be deemed to have been received by the addressee 48 hours after the time of transmission Communications by e-mail shall be deemed to have been received by the addressee upon receipt of an e-mail acknowledging such receipt.

**13. SIGNATURE**

Thus done and signed by the parties hereto, who warrant by their signature to this Agreement that they are authorized to sign this Agreement and acknowledge that they have read the terms and conditions of this Agreement, that they understand all such terms and conditions of this agreement to be bound thereby.

**The XXX Municipality**

**SIGNED AT.....ON THIS .....DAY OF.....20.....**

Signature: \_\_\_\_\_  
MUNICIPAL MANAGER

**AS WITNESSES:** 1. \_\_\_\_\_  
2. \_\_\_\_\_

**The Western Cape Economic Development Partnership**

**SIGNED AT ..... ON THIS.....DAY OF .....20.....**

Signature: \_\_\_\_\_  
Capacity.....  
(Print Name).....

**AS WITNESSES** 1. \_\_\_\_\_  
2. \_\_\_\_\_



**ANNEXURE A - SCEP Partnering Agreement and Deliverables**  
2020 / 21 to 2022 / 23

In terms of this Agreement, the WCEDP, with the necessary support of the Municipality, commits to the following:

- Support growth and development in the Garden Route by applying a regional approach to the identification of economic, social and ecological risks and opportunities – using the Garden Route District Municipality Growth & Development Strategy as a base.
- Support the implementation of growth and development strategies and projects for the Garden Route functional region growth sectors, taking into account the environmental, social and economic opportunities and constraints, and identifying regional projects that can benefit local municipalities, as well as supporting local initiatives that could have a regional impact.
- Provide a framework for collaboration, learning and adaption, in order to align actions and increase impact. This will help guide investment and development decisions and provide the framework through which municipal coordination will be facilitated in consolidating the region as a sustainable system.
- In partnership with SCEP municipalities co-develop a Regional Engagement strategy process and plan.
- Facilitate constructive interaction between business, local authorities and other key stakeholders influencing the business environment – within the agreed task team and sector focus areas as well as specifically designed and facilitated quarterly business engagements.
- Serve as a vehicle towards developing strategic intergovernmental collaboration and partnerships with key stakeholders across the region, province and country towards regional economic growth; Provide a platform for addressing barriers and formulate solutions for towards regional economic growth. Act as regional liaison and coordinator with the Provincial JDA process.
- Facilitate capacity building opportunities for contributing municipalities, focusing on building adaptive leadership capabilities and improved collaboration.