

FG19/04/17 WESTERN CAPE ECONOMIC DEVELOPMENT PARTNERSHIP SERVICE  
LEVEL AGREEMENT

UNANIMOUSLY RESOLVED

- [a] That the report on the Western Cape Economic Development Partnership Service Level Agreement, be noted;
- [b] That the Acting Municipal Manager ensure that the criteria described in Section 67(a) of the Municipal Finance Management Act, 56 of 2003, is ~~incorporated~~ incorporated in the agreement mentioned in [a] above;
- [c] That the Acting Municipal Manager be authorised to conclude a new three year Service Level Agreement with the Western Cape Economic Development Partnership to run until 31 July 2020; and
- [d] That a contribution of R 275 000, 00 (Two-Hundred-and-Seventy-five Thousand) Rand for the duration of the Service Level Agreement, with disbursements of this contribution to be made in the amounts of R 75 000,00 (Seventy-Five Thousand Rand) for the 2017/18 financial year, R 100 000, 00 (One Hundred Thousand) for the 2018/19 financial year and R 100 000,00 (One Hundred Thousand) for the 2019/20 financial year, subject to compliance with the provisions of section 67 of the Municipal Finance Management Act, 56 of 2003, be approved.

File Number: 9/1/2/13

Execution: Director : Planning and Development  
Manager : LED

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# **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 **Mr Kam Chetty** in his capacity as **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 make its contribution towards the operational fund for the formation of the South Cape Economic Partnership as a sub-structure of the Western Cape Economic Development Partnership as agreed amongst municipalities in the South Cape area on 5 April 2016.

**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 Knysna 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".

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## 2. RECORDAL

- 2.1 The Municipality wishes to support and contribute towards the formalization of the South Cape Economic Partnership (SCEP) as a sub-structure of the WCEDP in order to ensure a vehicle able to manage and coordinate cross boarder economic development projects.
- 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 partnership will be responsible for the management, coordination and implementation of identified 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 or render services to the satisfaction of the Municipality and shall carry out such services / 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.

## 4. COMMENCEMENT AND DURATION

- 4.1 Notwithstanding the date of signature of this agreement, the agreement shall commence on 5<sup>th</sup> April 2017 and shall terminate two years after commencement of this agreement.

## 5. RIGHTS AND RESPONSIBILITIES OF THE MUNICIPALITY

- 5.1 The Municipality undertakes to pay over funds to the amount of R 75 000, 00 (Seventy-five Thousand) Rand for year 2017/18, R 100 000, 00 (One Hundred Thousand) for year 2018/19 and R 100 000,00 (One Hundred Thousand) for year 2019/20 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 shall be entitled to withhold disbursements of funding in the event that the Municipality is not satisfied with the performance and / or execution of obligations in compliance with this agreement.



- 5.2.2 Additional to or in conjunction with the provisions of the above clause, the Municipality must give the Service Provider notice of the intention to withhold or stop the disbursement of funding stating the reasons and give the Service Provider 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 contribute the amount of R 275 000, 00 (**Two Hundred and Seventy Five Thousand Rands**) towards this partnership agreement for the 2017/2018 financial year 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 Business Partnership who will continue to meet bi-monthly and as and when necessary
  - 6.5.2. not be entitled to take decisions that will bind the parties unless, as far as the Municipality is concerned, such decisions are approved in writing by the Municipal Manager;
  - 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 R75 000, 00 (Seventy-five Thousand Rands); R100 000, 00 (One Hundred Thousand Rands) and R100 000,00 (One Hundred Thousand Rands in the 2017/18, 2018/19 and 2019/20 financial years respectively.**
- 7.2. The WCEDP will submit written invoices in both 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 effected within 30 days of the submission of the invoice(s) to the Municipality.

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**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 11.3.1 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 Knysna 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 KNYSNA MUNICIPALITY:

**Physical Address:**

Knysna Municipality  
3 Clyde Street  
Knysna  
6570

**Postal Address:**

Knysna Municipality  
PO Box 21  
Knysna  
6570

Tel No: 044 302 6300

E- mail: knysna@knysna.gov.za

### WESTERN CAPE ECONOMIC DEVELOPMENT PARTNERSHIP

**Physical Address:**

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

**Postal Address:**

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

Tel No: \_\_\_\_\_

Fax No: \_\_\_\_\_

E- mail: \_\_\_\_\_

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.

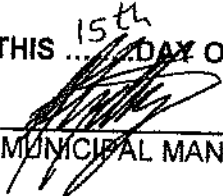
**13. SIGNATURE**

Thus done and signed by the parties hereto, who warrant by their signature to this Agreement that they are authorised 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.

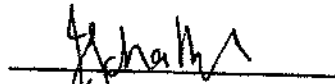
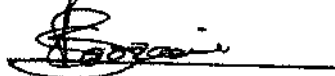
**The Municipality**

SIGNED AT KNYSNA ON THIS 15<sup>th</sup> DAY OF September 2017

Signature:

  
MUNICIPAL MANAGER represented by

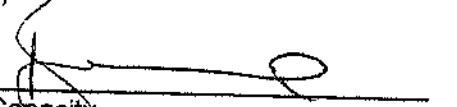
**AS WITNESSES:**

1. 
2. 



**The Western Cape Economic Development Partnership**

SIGNED AT ..... ON THIS 7 DAY OF .....20.....

Signature:

  
Capacity.....  
(Print Name) A. Bokorine

**AS WITNESSES**

1. 
2. 

## ANNEXURE "A" – DELIVERABLES / SCOPE OF SERVICES,

### Strategic Objectives

The partners have agreed on a set of objectives for the SCEP through a revised Partnership Charter in 2015. The medium-term partnership objectives are to:

- Facilitate constructive interaction between Business Chambers from neighboring towns, local authorities and other key stakeholders influencing the business environment;
- Promote and support collaborative leadership and shared growth within the economic delivery system of the South Cape economic region;
- Be a channel for communication and managing conflict within the regional business environment;
- Serve as a vehicle towards developing strategic collaboration and partnerships with key stakeholders across the region, province and country; and
- Provide a platform for the formulation of solutions to pressing business related issues, problems and challenges.

### Budget

The total value for the duration of the Agreement amounts to a total cost of R75 000, 00 (Seventy-five Thousand Rands); R100 000, 00 (One Hundred Thousand Rands) and R100 000,00 (One Hundred Thousand Rands in the 2017/18, 2018/19 and 2019/20 financial years respectively.

This forms part of a total contribution from all member municipalities.

