



SERVICE LEVEL AGREEMENT

Made and entered into by and between

Eden District Municipality

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

(Herein represented by **GODFREY WINSTON LOUW** in his capacity as

Municipal Manager duly authorised thereto)

(Hereinafter referred to as "the District Municipality")

And

WorleyParsons RSA (PTY) Ltd

(Registration number 1989/002048/07 and herein represented by **JOHAN ANDRÉ SWART**, in his capacity as **Location Manager**

duly authorised thereto)

(Hereinafter referred to as "the Service Provider")

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PREAMBLE:

WHEREAS: the District Municipality requires the service of a Service Provider to *provide for the supply and delivery of services as required according to The District Municipal TENDER nr E/04/10-11.*

AND WHEREAS: the District Municipality nominates and appoints the Service Provider to provide or render the services and required the Service Provider to **extended its services** as per specifications set out in **ANNEXURE "A"- SCOPE OF SERVICE ;**

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 Services and budget, which includes the work plan and budget.

1.1.3 **"Commencement Date"** means the date when the service will officially commence on 30th June 2012 notwithstanding date of signature of this agreement.

1.1.4 **"Parties"** mean the Service Provider and Eden District Municipality.

1.1.5 **"Signature Date"** shall mean the date of signature of this agreement by the last party signing.

1.1.6 **"Tender"** shall mean the tender by the Service Provider for the provision of the services to the District Municipality.

1.1.7 **"Unremedied material breach"** means a breach of an obligation of the agreement which has not been remedied within the time period given and which is not the subject of a corrective action plan agreed to by the District Municipality

1.1.8 **"VAT"** shall mean value added tax payable in terms of the Value Added Tax Act 1991, as amended;

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1.1.9 "Day" shall mean a calendar day and when any number of days is prescribed in this agreement, they shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.

1.1.10 "Month" means a calendar month and more specifically:

1.1.10.1 in reference to a number of months from a specific date, a calendar month commencing on that date or the same date of any subsequent month; and

1.1.10.2 in any other context, a calendar month, that is, one of the 12 (twelve) months of the calendar, and "monthly" has the corresponding meaning.

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

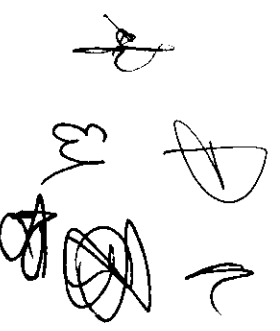
2.1 The District Municipality hereby **extended** the services in terms of the tender awarded to the Service Provider.

2.2 The Parties wish to enter into an agreement governing the provision of or to render the **extended** services as required by the District Municipality which they hereby do, on the terms and conditions of this agreement.

3. APPOINTMENT

3.1 The Service Provider, in accepting this **extended** 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 Service Provider shall perform the obligations or rendering services to the District Municipality in accordance with the provisions of this agreement 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 District Municipality.

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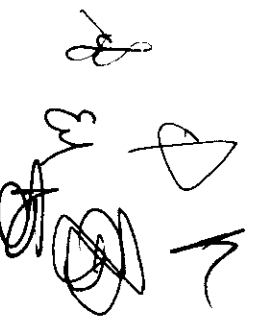
- 3.3 Subject to the other provisions of this agreement, the appointment is personal to the Service Provider. However in the event of unforeseen circumstances the Service Provider shall be entitled with prior written permission to sub- contract some of the services or deliverables. Notwithstanding the conclusion of a sub- contract, the Service Provider shall remain liable to the District Municipality for the performance of this agreement.
- 3.4 Prior to the appointment of the said Service Provider shall prepare an appropriate Terms of Reference for the work that needs to be carried out by the sub- contractor. The District Municipality must be provided with a copy of such Terms of Reference for review and comments prior to finalisation by the Service Provider.
- 3.5 The conditions applied in this agreement to the Service Provider must in turn be applied in any contract with the sub-contractor appointed by the Service Provider.
- 3.6 The Service Provider shall keep copies of all the written contracts that it has entered into relating to, or associated with its power, rights, duties or obligations in terms of this agreement and shall on request provide information in respect thereof to the District Municipality.
- 3.7 The Service Provider represents and warrants to and acknowledges that, except to the extent otherwise expressly provided in this agreement, the sole relationship between the District Municipality and the Service Provider is that of an Independent Contractor.
- 3.8 Nothing in this agreement shall constitute an employer/employee relationship or an agency or a partnership between the Parties, nor shall it authorise the Service Provider to incur liability on behalf of the District Municipality, save to the extent expressly provided herein.

4. COMMENCEMENT AND DURATION

Notwithstanding the date of signature of this agreement, the agreement shall commence on 30th June 2012 and shall terminate upon completion of the services described in this agreement and as in "Annexure A", which shall not exceed two years from the date of commencement of this agreement, unless the provisions of clause 6.4 (*performance of service*) are timeously invoked, save for the provisions of clauses, 10 and 11.

5. RIGHTS AND RESPONSIBILITIES OF THE MUNICIPALITY

- 5.1 The District Municipality undertakes to compensate the Service Provider for services rendered, subject to the provisions of this agreement and completion of the services rendered and compliance of the prescriptions, thereof.
- 5.2 The District Municipality undertakes to render all reasonable assistance to the Service Provider to enable it to supply the services and shall ensure that all matters referred to it for consideration or approval is handled in an expeditious manner.
 - 5.2.1 The District Municipality shall be entitled to withhold disbursements of funding to the Service Provider in the event that the Service Providers

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performance and / or execution of its obligations are not in compliance with this agreement.

5.2.2 The District Municipality shall be entitled to stop payments to the Service Provider temporary or permanently after completion of any stage in the event that the funding or overall budget allocated from National Treasury (Project Development Facility) or The Development Bank of Southern Africa Limited is reduced, delayed or stopped due to the fact that no or limited funding is made available to the Eden District Municipality for reasons of no compliance with conditions as stipulated in the agreements concluded between the co-funders of the project, National Treasury (Project Development Facility), The Development Bank of Southern Africa Limited and Eden District Municipality.

5.3 Additional to or in conjunction with the provisions of clause 11, the District 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

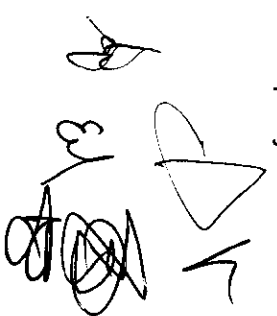
6.1 The Service Provider shall, at all times, acknowledge and adhere to the content of this agreement and all Annexure's during the performance of its services.

6.2 The Service Provider undertakes to perform the services with the reasonable skill, care standards of professional and ethical competence and integrity of a professional in the relevant discipline and shall adhere to the acceptable standards in the industry.

6.3 The Service Provider shall execute and finalize its duties within the prescribed time period, as determined in clause 4 above.

6.4 If, at any time during the currency of this agreement, the Service Provider should encounter any conditions impeding timely completion of the services, the Service Provider shall promptly notify the District Municipality, in writing, of the delay, its cause(s) and the proposed action plan to accelerate the progress, and if necessary, revise and re-submit the relevant project schedule. The District Municipality shall evaluate the situation and may, extend the Service Provider's time for performance, with or without the imposition of penalties, in which case the penalties will be limited to a maximum amount of 5% of the value of the fees to be paid to the Service Provider. The extension shall constitute an amendment to this agreement and will be contained in a duly signed addendum.

6.5 The District Municipality may at any time carry out any of the Service Providers obligations in terms of which the Service Provider has failed to carry out in the period specified by the District Municipality after being required by the District Municipality to do so, and the District Municipality may exercise such right in addition to or instead of (but without prejudice to) any other right which it may have in terms hereof and the Service Provider shall pay to the District Municipality

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on demand all costs and expenses incurred by the District Municipality in carrying out the Service providers neglected obligations.

7. SCOPE OF SERVICE

The Service Provider will be responsible for the **extended services** as required according to Tender nr E/04/10-11 and as per specifications set out in **ANNEXURE "A". SCOPE OF SERVICE.**

8. CHANGE OF SCOPE OF SERVICE

8.1 The District Municipality shall, during the period of this agreement, be entitled to propose, and subsequently request the Service Provider to make changes to, or deviate from the scope of service, provided that such changes fall within the general scope and principles of the agreement, and is reasonable and technically possible.

8.2 If the District Municipality proposes a change, it shall send to the Service Provider a request which will explain the proposed change and shall include the following:

- 8.2.1 a brief description of the change;
- 8.2.2 the impact of the change on the timeframes;
- 8.2.3 an estimated cost of change
- 8.2.4 the effect on warranties and guarantees if any, and
- 8.2.5 the effect on any other provision of the agreement.

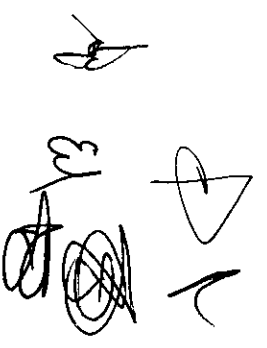
8.3 The Service Provider may, during the period of this agreement, propose to the District Municipality any change to the scope of work that the Service Provider considers necessary or desirable to improve the quality of service. The Service Provider shall provide a proposal as envisaged in sub clauses 8.2.1 – 8.2.5 above, to document such proposal. The District Municipality may, at its discretion, approve or reject such change. The District Municipality may elect to request the Service Provider to make a presentation to its representatives in terms of the proposal.

8.4 The pricing of any change shall, as far as is practical, be calculated in accordance with rates and process as included in the agreement. The pricing schedule for any change shall be agreed upon in writing and signed by both Parties prior to any change being undertaken.

8.5 Neither the District Municipality, nor the Service Provider, shall accept rights and responsibilities for any performance relating to a deviation from the scope of work provided for in this agreement without a duly signed addendum hereto, which addendum shall reflect fully the approved changes.

9. REVIEW OF AGREEMENT

9.1 The Service Provider and the District Municipality must each appoint an authorised representative who shall –

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- 9.1.1 meet when necessary at the District Municipality's offices;
- 9.1.2 not be entitled to take decisions that will bind the parties unless, as far as the District Municipality is concerned, such decisions are approved in writing by the Municipal Manager;
- 9.1.3 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.

10. FEES AND DISBURSEMENTS

- 10.1 The value for the services rendered for the duration of the initial period of the agreement amounts to a total cost of R 1 888 613.00 (one million eight hundred and eighty eight thousand, six hundred and thirteen rand) (VAT inclusive) which will be disbursed as set out in ANNEXURE "A", after performance of the services by the Service Provider in accordance with the requirements and standards set out in this agreement.

- 10.2 The Service Provider will submit written invoices on the a letterhead of the Service Provider and where no letterhead exists provide certified statements for the services rendered in order to process the payment timeously. The payments will be inclusive of VAT and in compliance with the deliverables or Scope of Service and budget and where applicable, include a report highlighting any risks and mitigation strategies affecting performance / budget.

- 10.3 The District Municipality undertakes to ensure that a payment in respect of the invoice(s) received from the Service Provider, shall be effected within 30 days of the submission of the invoice(s) to the District Municipality, provided that should the signature date differ from the commencement date of this agreement, invoices shall only be submitted after the signature date and fees and costs for performance of services that has been delivered prior to the signing hereof.

- 10.4 As consideration for the services rendered by or provides to the District Municipality in terms of this agreement, the District Municipality shall pay the Service Provider only for those service fees reflected in the price schedule, annexed hereto as Annexure "A".

11. BREACH AND CANCELLATION OF CONTRACT

- 11.1 Apart from the provisions of clause 12 below, the District Municipality shall be entitled to cancel (at no cost to the District Municipality) this agreement in writing with immediate effect in the event the Service Provider breach any other provision of this agreement and fails to remedy such breach within 14 (fourteen) business days of receipt of a written notice from the District Municipality, calling upon it to do so. In this instance, the District Municipality may elect to exercise its rights under clause 10.2. Provided that in the event the default is a material breach of a nature that is impossible to cure the termination shall be immediate and shall become effective after the District Municipality gave a written notice of cancellation to the Service Provider.

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11.2 In the event that the District Municipality cancels this agreement for breach of any of its provisions by the Service Provider the District Municipality shall be entitled to claim damages and / or specific performance from the Service Provider. Alternatively, the District Municipality may appoint a third party for the performance of services not completed by the Service Provider at the time of cancellation, in which case the District Municipality shall first pay the remuneration due to such third party from the amount owed to the Service Provider, and thereafter remunerate the Service Provider from the balance of such amount, only after damages have been subtracted, should any damages for breach be due to the District Municipality.

12. TERMINATION OF AGREEMENT

12.1 The District Municipality shall be entitled to terminate this agreement forthwith by means of a 30 (thirty) day's written notice of cancellation to the Service Provider, if the Service Provider:

12.1.1 is placed under provisional of final sequestration or liquidation or commits an act of insolvency in terms of section 8 of the Insolvency Act 24 of 1936, as amended; or take any steps whatsoever for its voluntary winding up or generally do or commit to do anything to be done which may materially prejudice the District Municipality's rights under this agreement.

12.1.2 provided incorrect information, commits a fraudulent or dishonest act during the bid process;

12.1.3 commits a fraudulent or dishonest act, including the fabrication of material relating to any part of this agreement;

12.1.4 is guilty of any conduct, which is prejudicial to the District Municipality's interests;

12.1.5 if civil judgment is entered against the Service Provider, which may materially prejudice the District Municipality rights under this agreement.

12.1.6 by reason of an un-remedied material breach of the agreement, the fact of which is not in dispute;

12.1.7 if the parties agree thereto in writing.

12.2 In the event of a termination of this agreement for any reason, such termination shall be without prejudice to any claims that may have accrued to the District Municipality or the Service Provider as at the date of termination.

12.3 Upon termination of this agreement for any reason the Service Provider shall as soon as reasonably possible return to the District Municipality, if any, all books, documents, records and other information obtained from the District Municipality in terms of this agreement. Notwithstanding the foregoing, the Service Provider may retain back-up copies of all information in its computer systems to the extent that routine computer back-up procedures create copies in the associated back-up or

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archival computer storage system. These back-up or archived computer copies shall remain subject to the provisions of this Agreement and shall only be retained for the period the Service Provider normally archives its back-up system.;

12.4 The District Municipality shall not be liable for compensating the Service Provider for any uncompleted work, provided the conduct of the Service Provider was the sole cause for work not been completed in accordance with the provisions of this Agreement.

13. COPYRIGHT / INTELLECTUAL PROPERTY RIGHTS

13.1 Copyright pertaining to any material, completed papers, assignments, investigations, plans, memoranda or and any other information in printed or electronic format generated through the activities of this agreement, will become the property of the District Municipality upon payment to the Service Provider in terms of the provisions of this agreement.

13.2 Should the Service Provider wish to reproduce any reports it produced in the execution of this agreement, it will obtain prior written approval from the District Municipality.

13.3 The Service Provider will not assert any copyright or establish any claim with regard to this information.

14. CONFLICTS OF INTEREST

The Service Provider shall not engage in any activity which may conflict with the interests of the District Municipality under this agreement.

15. LEGAL COMPLIANCE AND LEGISLATIVE/REGULATORY CHANGES

15.1 The Service Provider 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.

15.2 The Service Provider 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.

15.3 Should –

15.3.1 any of the terms or conditions of this agreement be inconsistent with any statutory or regulatory provisions which the District Municipality has to comply with; or

15.3.2 compliance by the District Municipality with the terms and conditions of this agreement constitute a failure by the District Municipality to comply with any statutory or regulatory provisions applicable to the District Municipality, the provisions of this agreement shall be deemed, insofar as possible, to be amended accordingly: Provided that the remainder of the provisions of this agreement shall remain valid and effective. To the



extent that the statutory or regulatory provisions concerned render the preceding provisions of this clause 15.3 ineffective, the parties shall in good faith renegotiate the relevant provisions of this agreement, having due regard to such provisions and to the principles contained herein.

15.4 Should any statutory or regulatory changes render anything contained in this agreement inconsistent with such regulatory or statutory provisions, the provisions of clause 15.3.2 shall apply *mutatis mutandis*.

16. SEVERABILITY AND VARIATION

16.1 This agreement, together with its Annexures, constitutes the entire agreement between the Parties and no amendment, alternation, addition or variation of any right, term or condition of this agreement, including of this clause, will be of any force or effect unless reduced to writing and signed by the Parties to this agreement.

16.2 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.

16.3 This agreement replaces any other previous verbal or written agreement entered into between parties.

16.4 In the event of any clause in this agreement or part of any clause being found to be invalid for any reason whatsoever, such clause or part thereof shall be severable from the remainder of this agreement and shall not affect the validity of such remainder

17. WAIVER

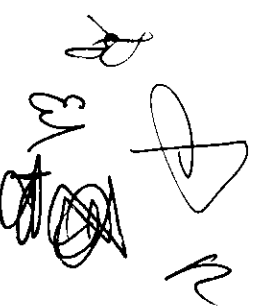
17.1 No waiver of any of the terms and conditions of this agreement shall be binding unless expressed in writing and signed by the party giving the same, and any such waiver shall be affected only in the specific instance and for the purpose given.

17.2 No failure or delay on the part of either party in exercising any right, power or privilege precludes any other or further exercising thereof or the exercising of any other right, power or privilege.

17.3 No indulgence, leniency or extension of time which any party ("the Grantor") may grant or show the other party, shall in any way prejudice the Grantor or preclude the Grantor from exercising any of its rights in terms of this agreement.

18. CESSION

The Service Provider shall not be entitled to cede or assign any of its rights or delegate any of its obligations or duties, nor any part thereof acquired in terms of this agreement, without the prior written consent of the District Municipality.

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19. DISPUTE RESOLUTION

19.1 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 as set out in clauses 19.2 and 19.3.

19.2 Mediation

19.2.1 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.

19.2.2 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.

19.2.3 The Mediator shall be selected by agreement between the parties.

19.2.4 If an agreement cannot 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.

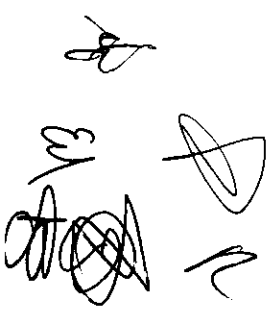
19.2.5 The Mediator shall at his or her sole discretion determine, whether the reference to him or her shall be made in the form of written or verbal representations, provided that in making this determination he or she shall consult with the parties and may be guided by their common reasonable desire of the form in which the said representations are to be made.

19.2.6 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.

19.2.7 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 in terms of clause 19.3. 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.

19.2.8 The costs of mediation shall be determined by the Mediator.

19.2.9 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.

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19.3 Arbitration

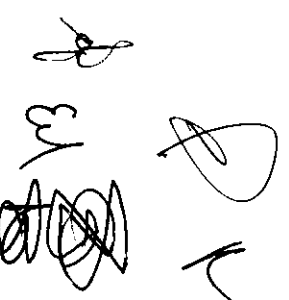
- 19.3.1 Subject to the provisions of clause 19.1, the parties may agree to refer any dispute arising out of this agreement to Arbitration.
- 19.3.2 Arbitration shall be held in George and otherwise in accordance with the provisions of the Arbitration Act, No. 42 of 1965, as amended from time to time, it being intended that if possible it shall be held and concluded within 10 (ten) business days after it has been demanded.
- 19.3.3 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.
- 19.3.4 If agreement cannot be reached on whether the question in dispute falls under 19.3.3(a) or 19.3.3(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 19.3.3(a) or 19.3.3(b); and/or
 - (b) nominate the Arbitrator within 7 (seven) business days after the parties have failed to agree.
- 19.3.5 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.
- 19.3.6 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.

20. DAMAGES AND LIABILITY

- 20.1 The District Municipality will not be held accountable for any loss, damage or injury incurred by the Service Provider and/or any of its agents, employees or any other person affiliated thereto in respect of this agreement, throughout the duration of this agreement.

20.2

Notwithstanding any other clause of this Agreement, neither Party is liable to the other in contract, in delict, by operation of statute or otherwise for any kind of indirect or consequential loss or damage, arising out of or in connection with this Agreement, incurred or suffered by a Party, or any other person.

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The overall liability of the Service Provider in respect of any claim arising out of or in connection with this Agreement, the Services, the Project or otherwise, whether arising in contract (including but not limited to indemnities, warranties and implied warranties), in delict, by operation of statute or otherwise is limited to twice the value of the fees to be earned by the Service Provider under this Agreement.

21. INDEMNITY

21.1 The Service Provider hereby indemnifies the District Municipality and holds it harmless against any cost, expense (including legal costs and expenses on an party and party basis), fine, penalty, loss or other liability resulting from a breach of contract, negligence or violation of law for:

21.1.2 the death of or injury to third parties; to the extent caused or contributed to by any act or omission of the Service Provider, its employees, subcontractors, agents or invitees, irrespective of where it occurs.

21.2 The person or persons who sign this agreement on behalf of the Service Provider, by their signature to this agreement, warrants that the Service Provider shall comply with its obligations in terms of this agreement.

21.3 The Service Provider hereby indemnifies the District Municipality against any loss or damage of any nature that may arise for the District Municipality out of the Service Provider's failure to comply with any law or regulation.

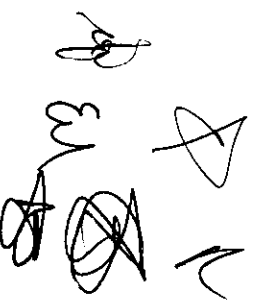
21.4 The Service Provider will be responsible for taking out any appropriate insurance coverage for the purpose of this agreement.

22. FORCE MAJEURE

22.1 The parties shall not be liable to one another for a failure to perform any of their obligations in terms of this agreement if such failure is a result of:

- war, whether declared or not, civil war, civil violence or disobedience, riots any revolutions, acts of piracy, acts of sabotage;
- natural disasters such as violent storms, cyclones, earthquakes, floods and destruction by lightning;
- explosions, fires and destruction of plant, equipment, machinery
- a statutory enactment rendering this agreement or any part thereof inoperable, and
- strikes by employees of any party

22.1.1 Relief from liability for non-performance by reason of the provisions of this clause shall commence on the date upon which the party seeking

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relief gives notice of the impediment relied upon and shall terminate upon the date upon which such impediment ceases to exist.

22.2 If the performance of a material part of this agreement is suspended due to force majeure that Party shall give the other Party written notice of the condition of force majeure.

22.3 Such notice shall be given by fax or email within one (1) day and confirmed by formal letter within three (3) working days of the date on which the condition of force majeure takes effect.

22.4 The party affected by force majeure event-

22.4.1 shall take all reasonable steps to mitigate the consequences of such an event upon the performance of its obligations under this agreement, resume performance of its obligations affected by the event of force majeure as soon as practicable and use all reasonable endeavours to remedy its failure to perform; and

22.4.2 Dates or times allowed for performance shall be adjusted by mutual agreement between the Parties, to allow for the effects of such force majeure, provided such notice is given.

22.5 Performance of other material parts of this agreement still due and possible of performance by the Party affected by force majeure shall be rendered whilst the condition of force majeure persists, unless the other party agrees in writing to the non-rendering of such performance.

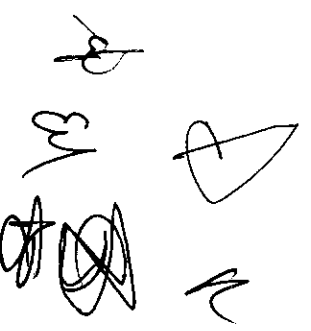
22.6 If a period of 90 (ninety) days has elapsed, and the condition of force majeure persists, rendering performance impossible, either Party shall be entitled to cancel this agreement by written notice on conditions as agreed upon.

23. SURVIVAL OF TERMS

The provisions of clauses 10, 12, 19 & 20 of this agreement, shall survive the expiration or termination of this agreement.

24. NOTICES AND DOMICILIUM

24.1 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:

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THE DISTRICT MUNICIPALITY:

Physical Address:

Eden District Municipality
54 York Street
George
6529

Postal Address:

Eden District Municipality
PO Box 12
George
6530

Tel No: 044 803 1300

Fax No: 044 874 1013

E- mail: records@edendm.co.za for the attention of the Municipal Manager

SERVICE PROVIDER

Physical Address:

WorleyParsons RSA PTY LTD
Corobay Corner, c/o Corobay & Aramist Ave.
Waterkloof Glen
0102

Postal Address:

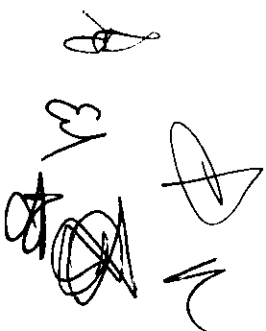
P O Box 22
Mentyn
0063

Tel No: 012 745 2083

Fax No: 012 745 2001

E- mail: chris.liebenberg@worleyparsons.com

- 24.2 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;
- 24.3 Any notice to be given in terms hereof shall be given by hand delivery thereof to the hand delivery address of the addressee set out above, or by posting by registered post to the postal address of the addressee set out above;
- 24.4 Any notice given and any payment made by a party to the other ("the addressee") which:
 - 24.4.1 Is delivered by hand during the normal business hours of the addressee at the addressee's domicile for the time being shall be presumed, until the contrary is proved by the addressee, to have been received by the addressee at the time of delivery;
 - 24.4.2 Is posted by prepaid registered post to the addressee at the addressee's domicile for the time being shall be presumed, until the contrary is proved by the addressee on the fourteenth day after the date of posting.



24.5 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.

25. SIGNATURE

Thus done and signed by the parties hereto, who warrant by their signature to this agreement that they are authorise 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 GEORGE ON THIS 14 DAY OF MARCH 2013.

Signature:


MUNICIPAL MANAGER
GODFREY WINSTON LOUW

AS WITNESSES:

1. 
2. 

The Service Provider

SIGNED AT PRETORIA ON THIS 11 DAY OF MARCH 2014

Signature:


LOCATION MANAGER
JOHAN ANDRÉ SWART

AS WITNESSES

1. Chantre
2. Bondamp



ANNEXURE "A"

DELIVERABLES / SCOPE OF SERVICES, TIME TABLE AND -, PAYMENTS SCHEDULE, ETC.

1. Scope of Works (Public, Private Partnership Regional Landfill Facility)

Stage 2

During this stage a feasibility study in terms of Section 78 (3) of the Municipal Systems Act, section 120 of the MFMA and the South African Treasury Municipal PPP Regulations in terms of the MFMA needs to be undertaken.

Stage 3


During this stage, and in accordance with the applicable legislation as mentioned above, the Service Provider is to assist the Eden District Municipality in compiling appropriate agreements and tender documentation for the calling of tenders by suitable contractors to submit tenders for the management of the landfill sites and their associated facilities. It is the intention that these agreements will last more than three years, and thus the Service Provider must provide support to the Eden District Municipality in obtaining appropriate approvals for entering into contracts in excess of three years in accordance with section 33 of the MFMA. It is also anticipated that the agreements which would be concluded with the successful Contractor would include incentives to reduce the disposal of waste at landfill sites, to save airspace and to provide incentives for the re-use, recycling and recovery of materials. The Service Provider must allow for tender evaluation and for recommendations to Eden District Municipality after evaluation of the tenders. Allowance must be made for assistance with contract negotiations and contract implementation with the successful Tenderer.

General

The Service provider needs to allow for all services, excluding specialist legal services, so that the requirements of the MSA, MFMA and Treasury Municipal PPP guidelines are met.

DELIVERABLES

1. A report on the Feasibility Study as set out in Stage 2 within twelve weeks of the instruction from Eden District Municipality to proceed with Stage 2.
2. Draft tender documentation and a draft agreement as set out in Stage 3 within twelve weeks of the instruction from Eden District Municipality to proceed with Stage 3.
3. a Tender Evaluation Report within three weeks of the tenders having been made available to the successful Service Provider.
4. Monthly progress reports.

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2. Scope of Work (Waste Conversion Technology)

2.1 PPP Feasibility Study

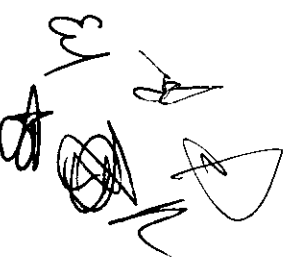
Using similar criteria that determined that composting and recycling are municipal support activities because they merely enhance the final disposal through the maximization of landfill space, National Treasury has agreed that waste conversion is also a municipal support activity and not a municipal service as defined in the new Municipal Services Delivery and PPP Guidelines (the Guidelines). Therefore the feasibility study is subject only to the PPP provisions as in Section 120 of the Municipal Finance Management Act (MFMA) and not Section 78 of the Municipal Systems Act (MSA). The MFMA permits the assessment of technical and service delivery options prior to detailed public notification and input, which will then only be required in the event that Eden DM proceeds with procurement of one or more of the recommended options.

Furthermore, since there are no major waste conversion technology facilities operating in South Africa that can be used as a Public Sector Comparator (PSC) and it is extremely unlikely that Eden District Municipality will be able to finance, construct and operate a conversion technology facility on its own, the development of a PSC is not necessary and a simplified value assessment can be used.

The execution of the project will follow the methodology of the existing landfill PPP project as well as the National Treasury Municipal PPP Guidelines, as set out below.

STAGE 1: THE NEEDS ANALYSIS

- Waste Generation, Collection and Land filling
WP has already done needs analysis on waste disposal in the current project. It will however be prudent to do a detailed waste composition study of the waste going to the new regional landfill for the conversion technology option.
- Avoided Landfill Costs of Land filling
EDM is considering waste conversion options as a way of minimizing waste that requires land filling as well as energy recovery. Therefore, the assessment of conversion options must be performed in the context of saving landfill airspace both now and in the future, and also to include any potential savings in transport costs. WP shall review the anticipated airspace and cost thereof. A key objective in this analysis is to determine the avoided landfill costs resulting from waste conversion, and it will include cost savings realized in the future by extending the life of the landfill. This total avoided landfill cost will be used as a benchmark in later phases of the feasibility study to assess the cost effectiveness of the conversion technologies.
- Waste Characteristics – Energy Value
Using pre-existing and reference waste characteristic data, WP shall perform an assessment of expected energy values for waste generated within EDM. This assessment shall include as-received waste and take into account the planned recycling and composting operations. It is recommended that an actual determination of the calorific value of the waste is performed as this will be important in the feasibility study.



STAGE 2: TECHNICAL SOLUTIONS OPTIONS ANALYSIS

- **Landfill operation**
In the Technical Solutions Analysis, WP will do detailed modelling of the expected impacts which the waste conversion technology will have on the life and operation of the planned landfill. Variables will include future construction costs, environmental regulations, long term environmental risk, inflation and present worth calculation.

- **Technical Options**
Using the result of the above and in consultation with EDM, WP shall develop a list of potential Waste Conversion Technology options for EDM to consider. For each technical option, WP will address the issues included on pages 12 to 15, Module 4 of the PPP Guidelines. WP will then prioritise the options and present its recommendations.

- **Guarantees and Accounting Treatment**
Since most of the waste conversion technology options will include input specifications and guarantees for the waste to be supplied to the facility, commonly referred to as "Put or Pay" provisions, and off-take specifications for the energy produced, referred to as "Take or Pay", the work under this task will focus on how these commitments can be structured while limiting risk to the EDM. The MSA and MFMA and other National Treasury regulations place significant constraints on municipalities in their ability to participate in private facilities or to provide financial guarantees such as those mentioned above. This may be particularly relevant to conversion technologies since some of them do not have an established history of commercial performance and a project may be difficult to finance without a strong public partner and financial guarantees. WP shall assess the PPP risks regarding such guarantees, taking into account the regulatory constraints and provide a summary of issues for consideration by EDM.
WP shall also consider how the new upcoming accounting treatment, which makes PPPs more difficult to structure as off-balance sheet transactions, will affect the project and the credit worthiness of EDM. It will also be necessary to comprehensively assess the roles, responsibilities and liabilities of the local municipalities as well as their financial guarantee.

STAGE 3: SERVICE DELIVERY OPTIONS

Assuming there is value for money, the EDM has decided to pursue Conversion Technology Options only as a PPP and not through other external delivery mechanisms (such as another municipality, municipal entity, etc) as EDM does not believe that other external delivery mechanisms will be able to finance, construct, and operate an conversion technology facility. Since these options are municipal support activities and not municipal services they are not required to follow the provisions of MSA 78 which includes the assessment of internal (public) options as

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well external (private) options. Therefore this task will in general address the items listed in Stage 3 of the Guidelines only for a PPP.

STAGE 4: INTERIM REPORT, SUMMARY AND RECOMMENDATIONS

WP will summarize the evaluations and findings of Stages 1 to 4 in a concise report which will include the landfill, materials recycling facility, builder's rubble processing plant, composting plant and waste conversion facility.

After review and consideration of the interim report, the EDM may select one or more options to consider for implementation.

STAGE 5: DUE DILIGENCE

The project team will identify any key issues that are associated with the selected option, in particular site, traffic and environmental issues, as well as institutional standing of the partners, payment mechanisms and the regulatory regimes for this project.

STAGE 6: VALUE ASSESSMENT

As the PSSC is not necessary, the value assessment will compile financial models that will focus on the affordability of the selected technical option as compared to avoided landfill costs. It will also address in detail the value for money which the various options will present and if that makes the option a viable solution.

STAGE 7: PROCUREMENT PLAN

A Procurement Plan will be compiled as per the requirements of the NT Municipal PPP Guidelines, which will detail all the required steps and timeframes of the procurement phase.

STAGE 8: PREPARE AND SUBMIT FEASIBILITY REPORT TO COUNCIL

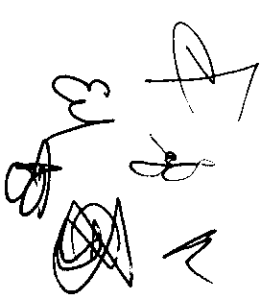
A Financial and Technical Feasibility report will be compiled of the combined project and submitted to Council for approval as well as to National Treasury for their Treasury Views and Recommendations (TVR1). This report will also address any changes which will be required in the rates and taxes of the EDM and partner municipalities.

If Council decides to proceed with the procurement of the project as a PPP, WP will proceed with the procurement phase of the selected option.

2.2 Procurement Phase

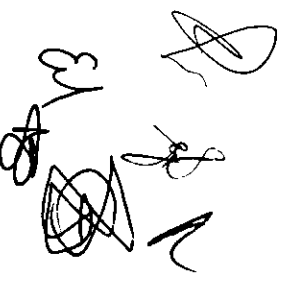
The procurement phase will be executed as per the existing appointment, but with the inclusion of the waste conversion solution as part of one total project. As mentioned before the inclusion of the conversion option will make this part of the total project also more complex due to high capital cost, requirement for more extensive guarantees, power take off agreements, etc. The time frame of the PPP agreement will also have to be extended to probably 20 years, which will increase the complexity of the document significantly.

Herewith the broad outline of the procurement phase again:



Achieving TVR: IIA

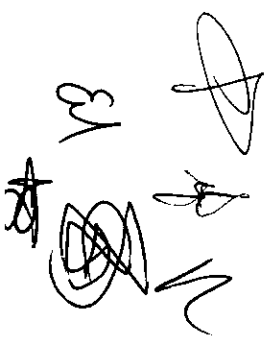
- Identifying the ways in which the outcomes of the feasibility study affect the PPP procurement, for example in relation to the affordability limits, the achievement of value-for-money, the definition of the output specifications, the identification of appropriate payment mechanisms for this project, the identification of any land issues (title, EIA issues and so forth) and the like.
- the preparation of a request for qualification ("RFQ") document, consisting of:
 - Determine the objectives of the RFQ
 - Step 1: Prepare the RFQ document
 - Step 2: Consult with the municipal desk
 - Step 3: Advertise and distribute the RFQ
 - Step 4: Evaluate the responses
 - Step 5: Communicate with bidders
- the preparation of the draft Request for Proposals ("RFP") document (including the draft PPP agreement), which will include –
 - a description of the project;
 - the EDM requirements in respect of the service and standards specifications which the PPP must deliver;
 - the payment mechanism for the project and the penalty regime (i.e. how will the private party be paid and how will it be penalised for non- or under-performance);
- the procurement process and timetable which the EDM will follow;
- instructions to bidders regarding formal compliance issues and the consequences of non-compliance;
- instructions to bidders regarding essential minimum substantive requirements (for example demonstration of the ability to handle specified quantities of various types of waste within particular time periods; demonstration of funding; demonstration of BEE);
- instructions to bidders regarding legal requirements (for example in order to demonstrate the bidder has the legal capacity and authority to undertake the project);
- any arrangements for bidders to undertake a due diligence of the project;

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- the draft PPP agreement, including draft project-specific annexures relating to, for example, the project assets, the specifications and the payment and penalty provisions;
- instructions to bidders as to the commitments required from them (for example the financial models underlying their bids prepared in compliance with the EDM requirements, security requirements and the like);
- how bids will be evaluated;
- the bid formalities;
- Treasury and to the Provincial Treasury, as required by the MFMA and the Municipal PPP Regulations for the purposes of obtaining TVR: IIA; and
- revising and finalising the draft RFP (including the draft PPP agreement), taking into account the views and recommendations given by the National Treasury.

Achieving TVR: IIB

- providing support (technical, financial and legal) to the EDM (specifically to its SCM officials) during the period that bidders are preparing their bids, for example –
 - assisting the EDM to prepare technical, financial or legal clarifications to bidders' questions;
 - attending bidder clarification meetings with the EDM officials;
- undertaking independent technical evaluation of the bids once bids have been submitted, including –
 - undertaking a detailed analysis of the technical, legal, financial, BEE and price components of each bid;
 - assisting in a briefing session with bidders, and dealing with queries during the bidding stage;
 - reporting to the EDM evaluation committee on the evaluation of the bids;
 - depending on the circumstances, making any further recommendations (for example that a BAFO process should be followed, if appropriate);
 - assist the EDM officials in preparing the draft value assessment report, for submission to the National Treasury which will set out inter alia the results of the bid evaluation process and will identify the recommended preferred and reserve bidders; and
 - assist the EDM officials in finalising the value assessment report, for submission to Council, taking into account the views and



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recommendations received from the National and Provincial Treasuries.

Achieving TVR: III

- assist the EDM in negotiations with the preferred (and, if it becomes necessary, the reserve) bidder;
- effect any final amendments to the PPP agreement agreed through the negotiation process;
- assisting the EDM in preparing a contract management plan for the PPP agreement;
- preparing a legal opinion in regard to the legal compliance of the project and the parties' competence and capacity to conclude the PPP agreement and signing that opinion as legal advisers to the EDM
- preparing the TVR: III report to the National Treasury and the Western Cape Provincial Treasury (which will also, in terms of section 33 of the MFMA, be submitted to the Department of Cooperative Governance and Traditional Affairs);
- advising the EDM on compliance with section 33 of the MFMA, including –
- assisting to prepare the information statement required in terms of section 33;
- assisting to consider and categorise the comments and representations made by the public;
- assisting to consider and categorise the views and recommendations received from the National and the Western Cape Provincial Treasuries (which may be in the form of responses to the TVR: III report); and
- Assisting to prepare the report to Council required in terms of section 33.

2.2 Close out Report

Compile a close-out report on the total project

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ACTION	MONTHS(2014/15)													
	MAR	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC	JAN	FEB	MAR	APR
TASK 1: Stage 1: The Needs Analysis Waste Generation and Landfill (Waste composition study) Avoided Landfill Costs and Landfilling Waste Characteristics - Energy Value														
TASK 2: Stage 2: Technical Solutions Analysis Landfill Operation (detailed modeling impacts like dispersion) Technical Options (List of potential WCT to consider) Guarantees and Accounting Treatment														
TASK 3: Stage 3: Service Delivery Options TASK 4: Stage 4: Interim Report, Summary and Recommendations Summarize the evaluations and findings Stages 1-4														
TASK 5: Stage 5: Due Diligence Identify any key issues (Site, Traffic and Environmental issues)														
TASK 6: Stage 6 Value Assessment Assess the affordability of the technical option as compared to the avoided landfill costs.														
TASK 7: Stage 7: Procurement Plan														
Task 8: Stage 8: Prepare and submit feasibility report to council Phase 2B Reviews - TVR1 (60 days) prior council decision public comments and Treasury (30days) to comment) Phase 2c: Council decision														
TASK 9: Procurement Draft timetable Prequalification RFQ Develop a payment mechanism Bid Evaluation criteria Request for proposal document RFP Draft PPP agreement Draft document and obtain TVR 1IA Evaluation of bids														
TASK 10: Treasury review and recommendations: IIB Negotiations with preferred bidder Assist with document 60days and treasury comments 30 days														
TASK 11: Treasury views and recommendations: IIB Final terms and agreements Submission to council for approval														
TASK 12: Compile close out report														

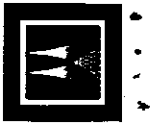
2.3 Project Costing

EDEN DISTRICT MUNICIPALITY: REGIONAL WASTE SOLUTION PPP TRANSACTION ADVISORS			
REVISED TERMS OF REFERENCE TO INCLUDE WASTE CONVERSION TECHNOLOGY SOLUTIONS AT THE MOSSEL BAY REGIONAL LANDFILL			
Original Cost Estimate	Cost estimate for additional work to include Waste Conversion Techn	Remarks	
Section 78 assessment	Section 78 assessment		
Confirmation of Brief	Confirmation of Brief	R 0.00	
Section 78 Service delivery mechanism	Section 78 Service delivery mechanism	R 0.00	
PPP Feasibility Study Stage	PPP Feasibility Study Stage		
Stage 1: The Needs Analysis	Stage 1: The Needs Analysis		
Risk	Waste Generation and landfilling (Waste composition study)	R 48 200.00	The following additional aspects will be addressed/looked at such as Waste composition
Financial Model- Cost of Capital 'Project finance'	Avoided Landfill (stripes and conversion technology options)	R 72 800.00	-Waste composition Study
Project revenues	Waste Characterisation-Energy Value determination	R 20 000.00	-Avoided landfill costs
Preliminary affordability analysis	Stage 2: Technical Solutions Options Analysis		-Determine calorific value of waste
Likely reasonable tariffs/levels of payment	Landfill operations (detail modelling impacts life& operation)	R 12 400.00	-Due to the significantly higher capital cost, and longer conversion life, the accounting treatment
Likely qualitative benefits	Technical Options (Evaluate potential WCT)	R 72 100.00	-Due to the significantly more technically complex plant the technical inputs increase significantly
Stage 2: Technical Solutions Options Analysis	Guarantees and Accounting Treatment	R 97 300.00	-The above all lead to increased time inputs on all components
Technical options: Accounting treatment	Technical options: Accounting treatment	R 43 600.00	-The institutional and local government governance issues become much more complicated
Stage 3: Service Delivery Options	Stage 3: Service Delivery Options	R 133 200.00	
Stage 4: Interim report, Summary and Recommendations	Stage 4: Interim report, Summary and Recommendations	R 94 000.00	
Stage 5: Due Diligence	Stage 5: Due Diligence	R 48 000.00	
Stage 6: Value for money analysis NPV-basis	Stage 6: Value Assessment	R 28 800.00	
Stage 7: Procurement Plan	Stage 7: Procurement Plan	R 19 600.00	
Stage 8: Prepare and submit feasibility report to council	Stage 8: Prepare and submit feasibility report to council	R 65 600.00	
Sub Total Feasibility study	Sub Total Feasibility study	R 755 600.00	
PPP Procurement Phase		PPP Procurement Phase	
Draft time table	Draft time table	R 6 400.00	
Prequalification RFP	Prequalification RFP	R 47 200.00	
Develop a payment mechanism	Develop a payment mechanism	R 78 400.00	
Bid Evaluation Criteria	Bid Evaluation Criteria	R 31 000.00	
Request for proposal document RFP	Request for Proposal document RFP	R 63 200.00	
Draft PPP agreement	Draft PPP agreement	R 72 900.00	
Draft document and obtain VTR11A	Draft document and obtain VTR11A	R 96 800.00	
Evaluation of Bids	Evaluation of Bids	R 51 600.00	
Treasury views and recommendations :iIB	Treasury views and recommendations :iIB	R 0.00	
Negotiations with preferred bidders	Negotiations with preferred bidders	R 140 800.00	
Assist with documents	Assist with documents - legal inputs	R 78 400.00	
Treasury views and recommendations :iII	Treasury views and recommendations :iII	R 0.00	
Final terms and agreement/submission to council for approval	Final terms and agreement/submission to council for approval	R 48 300.00	
Complete close out report	Complete close out report	R 28 800.00	
Sub Total Procurement		R 741 800.00	
Sub Total		R 1 497 400.00	
Contingency (200hrs at R650 /hr)		R 0.00	
Total		R 1 497 400.00	
Combined Total		R 2 302 950.00	
Total 14% VAT		R 322 413.00	
Grand Total		R 2 655 363.00	

We have decided to include the following additional specialists in our team as well due to increased extent and complexity of project:

- Mr J Iouw Local Government PPP Specialist Financial and risk (Local Government Institutional Specialist)
- Mrs Claire Barclay Legal Advisor Local Government. DLA Cliffe Dekker Hofmeyr (PPP Legal advisor)

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WorleyParsons

resources & energy

31 Allen Drive
Lovensstein 7530 PO Box 398, Bellville 7535
South Africa
Telephone: +27 (0)21 912 3000
Facsimile: +27 (0)21 912 3222
www.worleyparsons.com
WorleyParsons RSA (Pty) Ltd
REG NO: 1989/002048/07

Enquiries:
Other Ref:
Ref: DOA1055
File:

CONFIRMATION OF AUTHORITY TO SIGN DOCUMENTATION ON BEHALF OF WORLEYPARSONS RSA (PTY) LTD

REG NO.: 1989/002048/07

By virtue of a resolution of the Board of Directors taken at a meeting held on 29 November 2013, and a Delegation of Authority from the Company Secretary authorised by that Resolution, Mr JOHAN ANDRÉ SWART, (ID No 711015 5256 084), whose signature appears below, has authority to sign the following documentation on behalf of the Company:

The Service Level Agreement between Eden District Municipality and WorleyParsons RSA (Pty) Ltd

SIGNED ON BEHALF OF THE COMPANY:

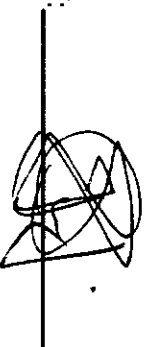


IN HIS CAPACITY AS COMPANY SECRETARY

PD GALLIE

DATE: 18 FEBRUARY 2014

SIGNATURE OF SIGNATORY:



WorleyParsons RSA (Pty) Ltd

• REG NO: 1989/002048/07

Economics

Directors: •DJ Glover (CEO), •DJ Dreyer, •OMN Esterhuysen
•GB Denton (NZ), •FM McKinn (UK), •AM Sepender