



**SERVICE DELIVERY AGREEMENT IN TERMS OF SECTION 78 OF MUNICIPAL
SYSTEMS ACT 32 OF 2000 AS AMENDED.**

Between

EMALAHLENI LOCAL MUNICIPALITY

**(Hereinafter represented by Humphrey Sizwe Mayisela as the Municipal
Manager)**

AND

SERVICE PROVIDER

(Hereinafter represented by _____ as a

**_____ and duly authorised by the service
provider)**

PREAMBLE:

WHEREAS Local Government strives to ensure access to basic requirements for dignified life and the necessity of providing services to communities in a sustainable manner. These service delivery outcomes for the provision of refuse collection through external mechanism are crafted in terms of Section 78 of Municipal System Act 32 of 2000 read with NEM: Waste Act, 2008

WHEREAS The Constitution of the Republic of South Africa, 1996 (Constitution) and the relevant legislative instruments based thereon, encourages corporative efforts aimed at attaining the Constitutional mandate of ensuring the delivery of basic services to all South African citizens.

WHEREAS the Emalahleni Local Municipality wishes to utilise the services of external service providers for the collection of domestic and business /non –hazardous industrial waste in targeted areas for the attainment of its Constitutional mandate, therefore, the Service Delivery Outcomes hereinafter attached as **Annexure** shall become an integral part of this agreement.

AND WHEREAS the Emalahleni Local Municipality shall follow a competitive bidding process in terms of the Municipal Finance Management Regulations (2003) for the appointment of a service provider for refuse collection.

PROBLEM STATEMENT:

The exponential growth in the housing population in Emalahleni and the poor payment rate of municipal consumer accounts are some of dominant factors which result in unsustainable provision of services. The shortage of refuse collection vehicles has resulted in perpetual refuse collection backlogs and wide spread illegal dumping and an unhealthy environment. The nonexistence of refuse collection services in the newly developed townships of Siyanqoba, and Empumelelweni as well as the informal areas has promoted behavioural practices of illegal dumping and unhealthy environment conditions in the municipality.

The municipality still faces a challenge of providing a full level of refuse collection service to all the newly established areas and waste management in general. To this effect, the municipality commissioned a section 78 study which aimed to find sustainable solutions to the problem.

The study recommended, amongst others, that the municipality should adopt and implement an alternative “External” model of providing the core waste management services so as to meet its legal obligations.

Therefore, this service delivery agreement serves as a contractual obligation between the municipality and an external service provider.

PART I: DEFINITIONS AND INTERPRETATION AND GENERAL

1. DEFINITIONS

In this Agreement, the following words or terms shall have the meanings assigned to them below:

- 1.1. **“Acts”** and/or **“Legislation”** means all applicable national legislation, regulations and other statutory instruments, all local government legislation and ELM by-laws, and all orders, directives, rulings, determinations having force in the Republic of South Africa including without limitations the Companies Act, No71 of 2008.
- 1.2. **“Agreement”** means this document together with all Annexures hereto after been signed by the Emalahleni local Municipality and a Service provider/s.
- 1.3. **“Municipality”** means the Emalahleni Local Municipality located in the Nkangala District Municipality in the Mpumalanga Province area, duly established in terms of the national legislation, herein represented by Mr Humphrey Sizwe Mayisela in his capacity as Municipal Manager, and he being authorised thereto in terms of Council Resolution : C015/18
- 1.4. **“Services”** means the totality of the services which are to be provided by the Service Provider” to the Municipality in terms of this Agreement, which services shall include all work, tasks or functions associated with, ancillary to or reasonably required to be undertaken in the rendering of the service and as may be amended by the parties by mutual agreement from time to time.
- 1.5. **“Service fee”** means the fee payable by the Municipality to the Service Provider in terms of this Agreement for the due performance by the Service Provider of the services.

- 1.6. **“Service Provider”** means an organisation appointed by Emalahleni Local Municipality through a competitive bidding process to carry out refuse collection of waste in terms of the Service Delivery Outcomes.
- 1.7. **“Effective Date”** means the date of commencement of this Agreement. Any reference to the effective date shall be reference to the date of the last signature of this Agreement,
- 1.8. **“Implementation Period”** means the time from commencement of project-related activities to the end of the initial service support period of the operations phase.
- 1.9. **“MFMA”** means the Municipal Finance Management Act; 2003 (Act No. 56 of 2003)
- 1.10. **“Project”** means the refuse collection service through external mechanism within municipal jurisdiction in terms of this agreement.
- 1.11. **“Parties”** means the Emalahleni Local Municipality and Service Provider.
- 1.12. **“Service delivery outcomes”** means a list of activities and/or deliverables and/or works are to be executed by the service provider.

2. INTERPRETATION

- 2.1. References to the “Parties” shall include the Parties’ respective successors in title and, if permitted in this Agreement, their respective cessionaries and assignees.
- 2.2. References to a “person” shall include an individual, firm, company, corporation, juristic person, Responsible Authority, and any trust, organisation, association or partnership, whether or not having separate legal personality.
- 2.3. References to “Clauses”, “Schedules” and “general terms” are references to the Clauses, schedules, specific terms and general terms of this Agreement.
- 2.4. The headings of Clauses, sub-Clauses and Schedules are included for convenience only and shall not affect the interpretation of this Agreement.
- 2.5. The Schedules to this Agreement are an integral part of this Agreement and references to this Agreement shall include the Schedules.
- 2.6. Words importing the singular number shall include the plural and vice versa, and words importing either gender or the neuter shall include both genders and the neuter; and
- 2.7. Any reference to “days” in this Agreement means calendar days.
- 2.8. Conflict of Documents

3. GOALS & OBJECTIVES OF THE AGREEMENT

3.1. The **purpose** of this Agreement is to ensure that the proper elements and commitments are in place to provide consistent refuse collection service, support and delivery to the targeted community by the Service Provider(s).

3.2. The **goal** of this Agreement is to obtain mutual agreement for refuse collection service provision between the Service Provider(s) and the Municipality.

3.3. The **objectives** of this Agreement are to:

- (a) Provide clear reference to service ownership, accountability, roles and/or responsibilities.
- (b) Present a clear, concise and measurable description of service provision to the municipal rate payers in the targeted areas.
- (c) Match perceptions of expected service provision with actual service support & delivery.

4. PERIODIC REVIEW

This Agreement is valid from the **effective Date** outlined herein and is valid until is terminated.

This Agreement shall be reviewed when necessary upon agreement between the parties to the agreement and provided mutual agreement is obtained from the primary stakeholders, which are residents in the targeted areas and labour unions of the municipality.

PART II: NOW THEREFORE THE PARTIES AGREE AS HEREINAFTER:

5. PROJECT SCOPE

The project scope is as outlined in details in the attached **Annexure**, hereinafter also referred to as “Service Delivery Outcomes”, which is an integral part of this agreement.

The project scope covers seven service delivery outcomes, namely;

- (a) Refuse collection,
- (b) Transportation of waste,
- (c) Waste collection team/ personnel,
- (d) Cleaning,

- (e) Recycling,
- (f) General and
- (g) Monitoring and evaluation

6. TARGETED AREAS FOR THE SERVICE DELIVERY AGREEMENT.

The service provider/s shall be responsible for the following areas in terms of this agreement:

Service Area	No. of houses
Bankenveld	643
Reyno Ridge Proper	1 489
Reyno Ridge Extensions	1 879
Ben Fleur	1 121
Duvha Park x 1 – 21	2 150
Duvha Park	490
Tasbet Park X 1, 2, 3, 7, 12, 14, 24, 26	2 807
Southview – 576	576
Khayalami	114

7. OBLIGATIONS OF THE SERVICE PROVIDER

- 7.1. The Service Provider hereby agrees to carry out its responsibilities on the terms and conditions contained in this agreement.
- 7.2. The Service Provider hereby agrees to provide/ render the services as provided for in the attached Service Delivery Outcomes and hereinafter referred to as **Annexure**.
- 7.3. The service provider shall ensure that the performance of its obligations to the Municipality shall be given reasonable priority considering the nature and scope of the other activities of the Service Provider or any other services provided.

8. OBLIGATIONS OF THE MUNICIPALITY

- 8.1. The Municipality hereby agrees to carry out its responsibilities on the terms and conditions contained in this agreement.
- 8.2. The municipality shall pay to the Service Provider the service fee for the service specified in the quotation or tender.
- 8.3. The municipality shall pay the service provider the price per month

9. TERMS OF PAYMENT

- 9.1. Services will be performed on a firm fixed price basis. Any additional or unscheduled services or deliverables to be provided by service provider outside the scope of work must be mutually agreed upon in writing signed by both parties hereto referencing this Agreement.
- 9.2. Payment shall only be made by the municipality upon submission of invoice by the service provider and invoices will contain a description of the services or deliverables provided by the service provider.
- 9.3. If any invoice is not paid when due (within sixty days), the service provider may suspend provision of services without liability or penalty until final resolution of the matter.

10. BREACH AND PENALTIES

- 10.1. In the event of any failure by the Service Provider to render services in accordance with the Service Delivery Outcomes hereinafter referred to as Annexure, the municipality shall deduct an amount of money that is equivalent to ten percent per day of failure to render such service.
- 10.2. The amount to be deducted shall be calculated over a period for which the service was not rendered in a particular month.
- 10.3. The amount shall be deducted every time upon submission of the invoice by the Service Provider for the month.

PART III: GENERAL PROVISIONS

11. LEGISLATIVE COMPLIANCE

Each Party shall be responsible for complying with any legislative requirements that applies to the implementation of the Project.

12. WHOLE AGREEMENT

This agreement including Annexures constitutes the entire agreement between the Parties in connection with its subject matter.

13. MODIFICATION OF AGREEMENT

- 13.1. Any and all amendments to this agreement shall be submitted in writing and signed by both Parties.
- 13.2. No amendment, modification, addition, or extension of this agreement shall be considered binding if not conducted in the prescribed manner.

14. INSURANCE

Service Provider shall maintain adequate insurance coverage and minimum coverage limits for its business as required by any applicable law or regulation, including Workers' Compensation insurance as required by any applicable law or regulation, or otherwise as determined in its reasonable discretion. Service Providers lack of insurance coverage shall limit any liability under this agreement.

15. TERMINATION

- 15.1. The municipality reserves the right to terminate the project in whole or in part, upon [30] days written notice to service provider. In the event that the project is terminated by the municipality prior to completion, the service provider shall use its best efforts to conclude or transfer the project, as directed by municipality, as expeditiously as possible. The service provider shall not undertake further work, incur additional expenses, or enter into further commitments with regard to the project after receiving such notice of termination from municipality, except as mutually agreed upon by the parties. In the event of termination of a project as described above, the service provider shall be entitled to all payments due and owing under this agreement at the time of service provider's receipt of the written notice of termination for work completed and in progress;
- 15.2. Failure by either party to comply in any material respect with any of its obligations in this agreement shall entitle the other party to give notice to the party in default requiring it to cure such default. If such default is not cured within [30] days after receipt of such notice, the notifying party shall be entitled to terminate this agreement by giving notice of such termination to take effect immediately. The right of either party to terminate this Service Agreement, as herein provided, shall not be affected in any way by its waiver of, or failure to take action with respect to, any previous default.

16. CONFIDENTIALITY AND NON-DISCLOSURE

16.1. For purposes of this Agreement,

“Confidential Information” shall mean information or material proprietary to a Party or designated as confidential by such Party (the “Disclosing Party”), as well as information about which a Party (the “Receiving Party”) obtains knowledge or access, through or as a result of this Service Delivery Agreement (including information conceived, originated, discovered or developed in whole or in part by Service Provider hereunder). Confidential Information does not include:

- (a) Confidential Information that is generally known to the public at the time of disclosure by the disclosing party; or
- (b) Confidential Information that becomes generally known to the public through no fault of the receiving party; or
- (c) Confidential Information that was lawfully in the possession of the receiving party prior to signing this Agreement; or

16.2. Service Provider will not use Municipality’s name, likeness, or logo (Municipal “Identity”), without Municipality’s prior written consent, to include use or reference to Customer’s Identity, directly or indirectly, in conjunction with any other clients or potential clients, any client lists, advertisements, news releases or releases to any professional or trade publications.

17. SUBCONTRACTING

The service provider may, at its option, subcontract work under the scope of work but service provider’s use of subcontractors shall not affect its responsibilities under the applicable scope of work. Moreover, service provider shall be fully responsible for work done by its subcontractors within the scope of the applicable scope of work as it is for work done by its own employees.

18. FORCE MAJEURE

18.1. Neither Party to this agreement shall be liable for any failure to perform under this agreement when such failure is due to causes beyond that Party’s reasonable control, including, but not limited to, acts of state or governmental authorities, acts

of terrorism, natural catastrophe, fire, storm, flood, earthquakes, accident, and prolonged shortage of energy. In the event of such delay, the date of delivery or time for completion will be extended by a period of time reasonably necessary by both Service Provider and Municipality.

- 18.2. If the delay remains in effect for a period in excess of thirty days, the Municipality may terminate this agreement immediately upon written notice to Service Provider.

19. INDEMNITY

_____ **(Name of Service Provider)**
hereby indemnify the Municipality against any claim, action or legal proceeding arising from damage to or loss of property or the injury or death of any person resulting from the negligence of employees of the other party or of the appointed Service Provider in the performance of
Its obligations under this agreement.

20. DOMICILIUM CITANDI ET EXECUTANDI

SIGNED at **eMalahleni** on this the _____ day of _____ **2021**.

AS WITNESSES:

1. _____

2. _____

**EMALAHLENI LOCAL MUNICIPALITY
SIZWE HAMPHERY MAISELA
MUNICIPAL MANAGER**

SIGNED at **eMalahleni** on this the _____ day of _____ **2021**.

AS WITNESSES:

1. _____

2. _____

**(NAME OF EXTERNAL SERVICE PROVIDER
duly authorised to sign this agreement)**