



**MEMORANDUM OF AGREEMENT  
FOR PRE - PAYMENTS  
2011/20112 FINANCIAL YEAR**

Entered into by and between:

**THE WESTERN CAPE PROVINCIAL GOVERNMENT**

(Represented by MR JJC Mouton, in his capacity as Head of Branch (Provincial Roads and Transport Management) of the Department Transport and Public Works.

(hereinafter referred to as "the Province")

and

**OVERBERG DISTRICT MUNICIPALITY**

(Represented by ROLAND FRED BUTLER in his/her capacity as ACTING MUNICIPAL MANAGER duly authorised thereto)

(hereinafter referred to as "the District Municipality")

**PREAMBLE**

WHEREAS the parties have reached an agreement in terms of which the Province will allocate the sum of R 34,773,000 (rands) to the District Municipality for the purpose of maintaining proclaimed provincial roads as identified and specified by the District Roads Engineer in the area under the control of the District Municipality; this amount will include R12,650,000 (rands) for capital works and R 22,123,000 (rands) for current expenditure inclusive of all indirect costs and administration fees



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

The Province shall effect payment of the sum of R 34,773,000 (rands) for the 2011/2012 (1 April 2011 to 31 March 2012) financial year, subject to the following conditions and stipulations

1. The Municipal Manager of the District Municipality hereby confirms that effective, efficient and transparent financial management and internal control systems are in place. In support of this, the District Municipality will furnish the Province with the most recent financial statements prepared by a registered accountant.
2. A registered accountant shall be appointed to prepare the District Municipality's financial statements in respect of the financial year(s) during which this agreement remains in force.
3. Funds may only be utilised for the purposes for which it has been approved (inclusive of financial provisions for material requirements in terms of the Mineral and Petroleum Resources Development Act 28/2002 and Regulations).
4. The District Municipality must, upon signature of this agreement submit
  - 4.1 a business and project management plan to the value of the allocated amount and where necessary assist with the loading of this plan onto the departmental RPM system;
  - 4.2 a cash flow statement iaw the project management plan including detailed analysis of the indirect and administration costs and fees for the allocated amount;
  - 4.3 the mutually agreed deliverables iaw with the project management plan,
  - 4.4 a functional organogram indicating all filled and vacant posts

Funds will only be allocated as indicated in the Preamble.

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5. Prepayments in relation to the allocated amount, based on estimated payments only, shall be deposited into a separate trust account opened in the name of the District Municipality with a banking institution or building society in the Republic and invested at the most beneficial interest rate until the funds can be utilised for the purpose for which it has been approved. If a District Municipality so prefers, a separate suspense account can also be utilised for this purpose.
6. Interest
  - 6.1 Interest earned shall only be for the benefit of approved projects.
  - 6.2 Where late payments occur the District Municipality is entitled to interest paid (after prepayments are invested) due to the fact that projects had to be financed out of District Municipality funds.
7. Should a Project not commence within six (6) months after the funds have been paid over, these funds, with interest, must immediately be refunded to the Department: Transport & Public Works.
8. Surplus funds, including available interest, on completion of the project must be paid back to the Department: Transport & Public Works immediately, clearly indicating the departmental reference of the project.
9. Expenditure vouchers, including cashed cheques, indicating the project numbers, must be retained for audit purposes.
10. An audited financial statement which indicates the total allocation, total expenditure (based on payments only) and total interest generated, must be forwarded to the Deputy Director-General: Transport within six (6) months of completion of the project or at the end of the District Municipality's financial year.

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11. The following documentation and statements must also be forwarded to the Deputy Director-General: Transport within six (6) months of completion of the project, or at the end of the District Municipality's financial year:
  - 11.1 Audit report
  - 11.2 Financial statements consisting of the following:
    - 11.2.1 Income statement;
    - 11.2.2 Balance sheet;
    - 11.2.3 Cash-flow statement;
    - 11.2.4 Financial Provisions being held by Banks or Building societies for Provincial road building/maintenance purposes
    - 11.2.5 Notes to the financial statements, and
    - 11.2.6 Any other documentation required by legislation
  - 11.3 A report by the Municipal Manager, which refers to the following:
    - 11.3.1 functions and objectives of the District Municipality in terms of legislation or otherwise;
    - 11.3.2 the extent to which the District Municipality achieved its objectives and deliverables for the financial year concerned;
    - 11.3.3 appropriate performance information regarding the economical, effective and appropriate utilisation of funds; and
    - 11.3.4 an indication of other funds, if any, received from the State, as well as any undertaking given by the State

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The Municipal Manager of the District Municipality must confirm that the utilisation of the funds was audited internally or externally. This confirmation must form part of the report referred to in clause 11.3.

13. A progress report showing plan versus progress must be submitted in writing to the Regional Manager and the Roads Maintenance Infrastructure Coordinator every month. The first report must be submitted by end April 2011 and every month thereafter for the duration of this agreement. The Province reserves its right to request additional information pertaining to any matters or issues raised in or relevant matters or issues omitted from a progress report.
14. The Chief Financial Officer of the District Municipality must submit a Monthly Expenditure (payments only) Statement for April 2011 by early May 2011 and every month thereafter for the duration of this Agreement to the Districts Roads Engineer and Roads Infrastructure Maintenance Coordinator in order to arrange the necessary journal entry on the Department's Financial Management System (BAS) and the department's RPM system.
15. Authorised officials of the Province shall be granted access to the financial records of the District Municipality at all times and shall be entitled to inspect the District Municipality's records at its premises without any obligation to furnish prior notice.
16. Should the District Municipality breach any or all of the terms and conditions contained in this agreement, the Province, without detriment to any other remedy which may be available to it in law, shall be entitled to immediately and without notice to the District Municipality, cancel the agreement and reclaim all (remaining) funds allocated, together with interest thereon.
17. This memorandum of agreement with the attached Service Delivery Agreement constitutes the sole agreement and only agreement between the parties and no amendments thereto shall be of any force or effect unless reduced to writing and signed by both parties;
18. If any of the clauses of this agreement or annexures thereto are found to be invalid or not binding on the parties, such finding will not affect the validity of this agreement and the parties agree to be bound by the other provisions of the agreement.

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16. In the event of a dispute the parties agree to observe and adhere to the principles of Chapter 3 of the Constitution of the Republic of South Africa, 1996 and Chapter 4 of the Intergovernmental Relations Framework Act, 2005 ( Act No 13 of 2005 ).

SIGNED AT ON THIS DAY OF 2011

THE PROVINCE

(Represented by MR JJC Mouton, in his capacity as Acting Head of Branch of the Department Transport and Public Works.)

AS WITNESSES:

- 1. [Signature]
2. [Signature]

SIGNED AT BREDASDORP ON THIS 22nd DAY OF March 2011

THE DISTRICT MUNICIPALITY

(Represented by R.F. BURTON in his/her capacity as Municipal Manager, duly authorised thereto).

AS WITNESSES:

- 1. [Signature]
2. [Signature]

## **SERVICE DELIVERY AGREEMENT**

**Between**

**THE PROVINCIAL GOVERNMENT WESTERN CAPE**

**And**

**OVERBERG DISTRICT MUNICIPALITY**

**(dated 16 March 2011)**

### **AGREEMENT**

The District Municipality (DM) undertakes to maintain, repair, protect and manage the proclaimed Provincial Roads in their area as identified by the District Roads Engineer (DRE) in a safe and reliable condition within the legal framework of the various Ordinances, Acts and Regulations.

The Provincial Government Western Cape via the District Roads Engineer will supply the necessary funds, specifications, plant and Professional Engineering support and also measure, monitor, manage the works, delegate and instruct, if and when necessary.

This document also forms part of the financial agreement.

### **PERSONNEL ISSUES**

A functional organogram must be agreed to by both parties. If approved by the District Road Engineer, the District Municipality must maintain the organogram. Any vacant post, before it is advertised, must first be approved by the District Roads Engineer before it can be filled. Funds will be made available to maintain the approved organogram.

Reasonable administration overhead (Agency fee) and indirect costs must be budgeted for in detail for each year and provided to the District Roads Engineer for approval with a copy to the Provincial Roads Branch Head Office. In the event of unforeseen expenditure (e.g. floods, reseal etc.) the District Municipality will then also provide a budget for reasonable additional administration overhead costs that will also have to be approved. See also "Administration Overhead (agency fee) and Indirect Costs" below

In emergencies (e.g. floods) contract workers can be hired with the prior approval of the District Road Engineer, depending on the availability of funds.

### **PLANT & EQUIPMENT**

Plant and equipment must be discussed and planned for each year, with the District Road Engineer and Mechanical Engineer Head( Head office), at a yearly meeting prior to the start of the Provincial Financial Year.

Plant and equipment will be supplied by Provincial Government Western Cape and must be maintained and utilized to the optimum.

In the event of unforeseen circumstances (e.g. floods) prior approval to hire-in private plant must be given by the District Roads Engineer. Tenders to hire in private plant must be asked for on a yearly basis by the District Municipality.

The District Municipalities as well as the District Roads Engineers must utilize workshops across regions, if and when required. The combining,utilization and rationalisation of mechanical resources and workshops must be implemented wherever practically possible and economic.

The Districts Roads Engineer's approval is required, where the District Municipality want to use Provincial Plant and Equipment for any reason other than on the maintenance of Provincial proclaimed roads

## **MATERIALS**

Normal day-to-day maintenance materials must be ordered via the DM's procurement section. Any material to be ordered by the DM's, if exceeding the amount of R100, 000-00 must first be approved by the DRE before placing orders. Except for minor routine maintenance materials, the Regional Office will provide road maintenance materials to the District Municipality's when required according to their business and project management plan and formally requested in the monthly planning and progress report (refer Financial Agreement)

## **ASSET MANAGEMENT**

The District Municipality (roads staff) must maintain an asset register, inclusive of all yellow fleet, equipment/movable assets for auditing purposes and inspection by the Provincial Government.

The District Municipality (roads staff) must maintain an asset register of all immovable property and immovable equipment for auditing purposes and inspection by the Provincial Government. Where new personnel are appointed, District Municipality road staff are to ensure that such new personnel sign for equipment on "their charge" ie where they are held responsible for safe-keeping and maintenance

## TASKS

- **Regravel**
- **Reseal**
- **Specific Projects (road construction, reconstruction, rehabilitation, Upgrading, concrete works, gabion works)**
- **Flood damage repair**
- **Normal Maintenance**
- **Developmental Issues**
- **Claimable expenditure (eg reseal for local authorities, mechanical repair or equipment)**
- **As approved by the DRE**

### Developmental Planning:

The DM will supply a supportive role to the District Road Engineer in the approval of applications and also monitoring the implementation thereof.

### Occupational Health and Safety:

A Occupational Health and Safety Plan for the Provincial Financial Year needs to be submitted by the District Municipality for approval by the Districts Roads Engineer before 1 April or soonest thereafter. Copies to be kept by the Districts Municipality and the Districts Roads Engineer for inspection by the Departmental OHS Officer.

The District Municipality is required to appoint an OHS officer, who will be assigned duties from the Municipal Manager, who is a 16.2 Appointee in terms of the OHS Act.

### Public Liability Insurance for District Municipality Work Sites:

The District Municipality is to ensure that its employees and operations are adequately insured while undertaking work or operations on Provincial Proclaimed Roads in terms of this Agreement. Copies of the Insurance Policy covering the District Municipality's operations on such roads must be provided to the District Roads Engineer and any amendment to such Policy.

All claims are to be submitted to the District Roads Engineer with an accompanying report detailing the incident that gave rise to such public claim (public liability claims or losses are not to be submitted directly to the Department's Head Office Claims Section; Departmental regional offices to submit the claim based the DM Report and a regional office report)

**Administration Overhead (Agency fee) and Indirect Costs:**

Reasonable administration (agency fee) overhead and indirect costs may be charged and included in the budget. These charges and costs need to be presented in detail to the Districts Roads Engineer for approval as part of the annual "Estimate of Expenditure" submitted before the budget allocation is decided upon. The approved annual administration fee(agency fee) may not be increased without the District Roads Engineer's approval.

Indirect costs should also be minimized by proper allocation of project and road costs directly associated with such.

**FINANCIAL AGREEMENT**

A separate financial agreement will also have to be signed according to the Public Finance Management Act to regulate the transfer of funds.

**MONITORING & EVALUATION**

Meetings will be held to plan, monitor, approve and communicate on a regular basis.

Yearly meetings:

The District Municipality, with the District Road Engineer's guidance, must do annual planning and budgeting of normal maintenance per road, plant planning, financial planning and also revisit the organogram as well as planning the regravelling and reseal programmes. The DM will assist the DRE where so required, to load the project management plan onto the departmental RPM system.

Monthly/two-monthly meetings:

- Monitor progress on filling of posts (maintaining the organogram)
- Monitor contract workers and private plant hired in
- Monitor maintenance and utilization of plant and economical viability and planning of plant for the next two months

- The buying of material must be planned, discussed and monitored at the meeting law a Materials Resource Plan (MRP)
- Monitor the regravel progress, costs, quality, borrow pits, standards, etc. and do detail planning for the next two months
- Monitor the reseal progress, costs, quality, borrow pits, standards, etc. and do detail planning for the next two months
- Ditto for specific projects e.g. road construction, reconstruction, rehab, upgarding, concrete works etc.
- Monitor normal/routine maintenance funds per road and blading in the regions
- Complete acceptance certificates ("Completion Certificates") for completed projects law the RPM project management plan eg reseal, regravel, flood damage, routine maintenance on structures and other projects
- Complete the Quarterly Performance Report and endorse such by the DM and the DRE. (Ideally based on iMMS reports for blading, blacktop patching and completion certificates for reseal, regravel, flood damage projects, routine maintenance on structures or other projects)

#### Ad Hoc Meetings:

- Borrow pit approvals
- Developmental meetings
- Floods, extra overheads, contract workers, plant

This is the whole service delivery agreement between the parties. Any written changes can be by mutual agreement between the two parties. Any Variations will be added as an addendum to this Agreement.