



**IMPLEMENTATION PROTOCOL FOR A PROVINCE TO EXERCISE THE  
PUBLIC TRANSPORT CONTRACTING FUNCTION ON BEHALF OF A  
MUNICIPALITY**

**Between:**

**THE NORTHERN CAPE PROVINCIAL GOVERNMENT**

In its Department of Transport, Safety and Liaison, herein represented by **Mr. Lesego Wolfe** in his capacity as **Accounting Officer**, duly authorized thereto,

and

**THE PIXLEY KA SEME DISTRICT MUNICIPALITY**

a Municipality established in terms of section 12 of the Local Government: Municipal Structures Act 117 of 1998 ("the Municipality"), herein represented by **Mr. PISTEBE L. E.** in his capacity as **Municipal Manager**, duly authorized thereto.

on

The Provincial Department acting as contracting authority in terms of the National Land Transport Act, 2009 (Act No. 5 of 2009) ("the Act") on behalf of the Municipality to conclude a negotiated contract in terms of section 41 of the Act.

R N.V. [Signature] [Signature]

## PREAMBLE

### Whereas:

- In terms of the Constitution the provincial sphere of government is responsible for public transport services in the Province, and municipalities are responsible for municipal public transport;
- The roles of the spheres of government are more fully described in section 11 of the National Land Transport Act, 2009 (Act No. 5 of 2009) ("the Act");
- Section 11(1)(c)(xxvi) of the Act has allocated to municipalities the function of concluding negotiated contracts and subsidized service contracts for public transport services;
- The Municipality wishes to conclude a negotiated contract for public transport services in the area of **Vanderkloof; Phillipstown; Petrusville** routes in terms of its integrated transport plan and/ or Integrated Public Transport Network designs. This area corresponds to the area in which current unsubsidized bus services are provided.
- The Municipality acknowledges its inability to enter into negotiated contract as envisaged by section 41 of the Act due to lack of the capacity to negotiate with operators to provide the services;
- The Provincial Department is willing and able to undertake such negotiations process on behalf of the Municipality in terms of section 11(1)(b)(v) of the Act;
- The parties desire through mutual co-ordination and co-operation to implement integrated public transport systems which support the plans and aspirations of the three spheres of government, as contemplated in Chapter 3 of the Constitution and the Intergovernmental Framework Relations Act, 1995 (Act No. 13 of 2005); and
- The parties are required to comply with the requirements of those Acts and the requirements set out in the Public Transport Operations Grant Framework emanating from the relevant Division of Revenue Act).

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Now therefore the parties agree as follows:

**1. Definitions**

For the purpose of this Protocol, any word or expression to which a meaning has been assigned by the Act bears that meaning and, unless the context indicates otherwise—

“contract” means the negotiated contract/subsidized service contract to be concluded by the Provincial Department in terms of this Protocol;

“DORA” means the Division of Revenue Act for the year in question;

“DoT” means the Department of Transport in the national sphere of government;

“integrated transport plan” or “ITP” means an integrated transport plan as contemplated in section 36 of the Act;

“IPTN” means an integrated public transport network as defined in the Act;

“MFMA” means the Local Government: Financial Management Act, 2003 (Act No. 56 of 2003);

“Model Documents” means the Model Tender and Contract Documents published by the Minister under Notice 1058 of 8 August 2006;

“Parties” means the Provincial Department and Municipality, or either of them, as the context indicates;

“PFMA” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

“PRASA” means the Passenger Rail Agency of South Africa (formerly the South African Rail Commuter Corporation Limited);

“Province” means the ..... Province;

“provincial land transport framework” means the Provincial Land Transport Framework of the Province contemplated in section 35 of the Act;

“PTIC” means the Province’s Public Transport Integration Committee established by the DORA Act 12 of 2009;

“services” means the public transport services to be provided in terms of the contract;

“SUMS” means the electronic Subsidy Management System developed and maintained by the DoT, or any temporary manual system to replace it; and

"the Act" means the National Land Transport Act, 2009 (Act No. 5 of 2009).

## **2. Purpose of Protocol**

**2.1** The aim of this Protocol is to: —

- a) Provide the terms and conditions upon which the Provincial Department will undertake the process of concluding the abovementioned negotiated contract as well as the negotiation process that must precede it;

**2.2** The objectives, priorities, aims and desired outcomes of this Protocol are: —

- a) To implement the Act, DORA and other legislation relevant to public transport;
- b) To implement the Municipality's integrated transport plan;
- c) To provide for efficient and effective public transport through the establishment of an integrated public transport network (IPTN)\*;
- d) To provide for the Provincial Department to assist and capacitate the Municipality in the contracting process.

**2.3** The Parties agree to act in common in pursuit of the aims and objectives of this Protocol, which shall be implemented in accordance with the following:

- a) The Act;
- b) The DORA;
- c) The Public Transport Operations Grant Framework (PTOG) emanating from DORA;
- d) Relevant national, provincial and local policies on public transport;
- e) The Province's provincial land transport framework;
- f) The Municipality's integrated transport plan;
- g) The Municipality's IPTN.

## **3. Parties to the Protocol**

The Parties to this Protocol are as set out on page 1 of this Protocol.

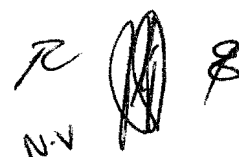
## **4. Roles and responsibilities**

Subject to the Act, the roles and responsibilities of the Parties are: —

### **4.1 The Provincial Department**

The roles and responsibilities of the Provincial Department in terms of this Protocol are to: —

- a) Take all necessary steps in terms of the PFMA and provincial procurement procedures to request tenders for the relevant services or Negotiate with

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operators to conclude the envisaged negotiated contract in terms of section 41 of the Act;

- b) Use SUMS and appoint a supervision and monitoring team to monitor the services in the manner provided for in the Model Documents or as otherwise decided between the Parties;
- c) Apply measures in accordance with DoT guidelines and the Model Documents to monitor services and check and validate subsidy claims and report to the Municipality on this on at least a quarterly basis to enable the municipality to monitor and update its ITP and its budgeting process;
- d) Establish adequate mechanisms to provide financial and operational data;
- e) Liaise with the PTIC as contemplated in the DORA Grant Framework;
- f) Provide advice, assistance and capacity building to the Municipality as contemplated in clause 4.3 a) below by involving its officials in all stages of the process in fulfillment of its obligations in terms of section 11(1)(b)(v) of the Act;
- g) Provide and share information on the services with the Municipality and other municipalities in whose areas the services take place;
- h) Issue operating licences for the vehicles to be used on the contract through its Provincial Regulatory Entity (PRE), or Operating Licensing Board.

#### **4.2 The Municipality**

The roles and responsibilities of the Municipality in terms of this Protocol are—



- a) To provide not less than 2 (two) officials of the Municipality to work with the officials of the Provincial Department on the negotiating/tendering process\* and on supervising and monitoring the services to enable them to build knowledge, experience and capacity in the field of public transport contracting;
- b) In its capacity as planning authority, prepare the required ITP for its area and ensure that the ITP is up to date, and to monitor its implementation;
- c) To liaise with neighbouring municipalities where the services are provided in their municipal areas;

The roles and responsibilities of other key stakeholders are:

#### **4.3 The National Department of Transport**

The roles and responsibilities of the DoT are:

- a) The DoT will provide support to both the Province and Municipality regarding the process, management and monitoring process.

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## **5. Workplan**

- 5.1** The Parties agree to the Workplan attached as Annexure "A".
- 5.2** The Parties undertake to supplement the Workplan with their individual departmental workplans and such amendment shall be effective only after approval by the Department.
- 5.3** Individual workplans are attached as follows:
- a) Workplan of the Provincial Department;
  - b) Workplan of the Municipality.

## **6. Contributing resources**

The Parties agreed to contribute financial and non-financial resources and associated costs as follows:

### **6.1 National Department of Transport**

- a) To provide specialised team to provide assistance during the negotiations;

### **6.2 Provincial Department**

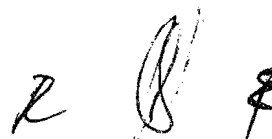
- a) Responsible for the payment of the contract from the PTOG for the duration of the contract.

### **6.3 District Municipality**

- a) Provide officials to assist the negotiation process and service monitoring.

### **6.4 The funding arrangements for the contract will be as follows:**

- *The Provincial Department presents quarterly payment certificates to the Municipality;*
- *The Provincial Department pays monthly certificates;*
- *The Operator submit monthly invoice and service report to the Provincial Department;*
- *The Provincial Department uses PTOG funds to meet the financial obligations of the contract.*

  
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## **7. Managing protocol**

The Parties undertake to use the Province's Public Transport Integration Committee (PTIC) as an institutional mechanism for the effective management and implementation of this Protocol and of the contract.

## **8. Good faith and reasonableness**

**8.1** In their dealings with each other for purposes of this Protocol the Parties—

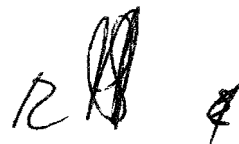
- a) Undertake to act in good faith and reasonably;
- b) Warrant that they shall not do anything or refrain from doing anything that might prejudice or detract from each others' powers and functions;
- c) Undertake otherwise to act in accordance with the requirements of Chapter 3 of the Constitution.

**8.2** This Protocol does not detract from, limit or affect the statutory powers and functions of the Parties.

## **9. Dispute resolution**

Any dispute or disagreement arising between the Parties with regard to the implementation, application, interpretation or breach of this Protocol shall be settled as follows:

- a) The Parties must initially make all reasonable efforts to settle the dispute or disagreement by consultation and negotiation by applying the principles in Chapter 3 of the Constitution.
- b) Should the consultation and negotiation process fail, any Party may declare a dispute in writing and give notice thereof to all of the other Party/Parties\*.
- c) If the difference remains unresolved, the Parties may agree to proceed to mediation by appointing a mutually acceptable mediator, in terms of an agreement to do so in writing.
- d) As an alternative, any Party may start arbitration proceedings by written notice to the other/others\*.
- e) The Parties must agree on an arbitrator within 14 days, failing which the national Minister responsible for provincial and local government must nominate an arbitrator.

  
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- f) The arbitrator must conduct the arbitration in a manner which he or she considers appropriate to determine the matter fairly and quickly, and must deal with the substantial merits with a minimum of formality.
- g) The Parties to the dispute must share the costs of the arbitration equally, unless the arbitrator rules otherwise.
- h) The arbitrator's determination is final and binding on the Parties unless a Party who is dissatisfied with the determination declares a dispute in terms of section 41 of the Intergovernmental Relations Framework Act 13 of 2005 within seven days of the date of the arbitrator's determination.
- i) Where a dispute is declared under section 41 of the Intergovernmental Relations Framework Act, the provisions of Chapter 4 of that Act will apply.

## **10. Confidentiality**


- 10.1 All Parties shall treat information furnished by other Parties for the purpose of execution of this Protocol, as confidential.
- 10.2 A Party so furnished with information shall not disclose it to another person without the prior written consent of the Party furnishing it, and shall take reasonable steps to ensure that it is not disclosed to other persons.

## **11. Duration, execution and amendment**

- 11.1 This Protocol will commence on the date of its signing by the last Party and will remain in effect until mutually terminated by all of the Parties in writing or until termination of the contract, whichever is sooner.
- 11.2 This Protocol and its Annexures constitute the whole agreement between the Parties relating to the subject matter of this Protocol.
- 11.3 There are no conditions, representations or terms, whether oral or in writing and whether express or implied, that apply to this Protocol, save for those contained in this Protocol and its Annexures.
- 11.4 No amendment, alteration, addition or variation of this Protocol shall be of any force or effect unless reduced to writing and signed on behalf of the Parties. Such changes shall be incorporated as an addendum to this Protocol.

## **12. Domicilium**

- 12.1 The Parties choose the physical addresses set out hereunder as their domicilia citandi et executandi for all purposes under this Protocol:

  
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a) The Northern Cape Department of Transport, Safety and Liaison,  
Ocean Echo Building  
Corner Lennox and Sydney Street  
P.O. Box 1368  
Kimberley  
8300

b) The Pixley ka Seme District Municipality

*INDUSTRIAL AREA.*  
.....  
*CONVERT RD*  
.....  
*DE AAR*  
.....  
*7000*

13.2 Notice of change of address must be given in writing and delivered to the other Party/all other Parties\* by hand delivery acknowledged by a signature of an authorized person, or by registered post.

#### 14. Indicators to measure the effective implementation of the Protocol

The indicators to measure effective implementation of this Protocol are those set out in the DORA framework and the workplan referred to in clause 5 above.

#### 15. Oversight mechanisms and procedures

The mechanisms and procedures to monitor effective implementation of this Protocol are those set out in DORA and the DORA Framework as well as the supervision and monitoring process set out in clause 4.1 above.

#### 16. MANAGING PROTOCOL

16.1 Management and monitoring of the implementation of this Protocol will be executed through the Protocol Project Management Committee ("PPMC") which shall be constitute by officials from Department, the Municipality and NDOT responsible for implementation of the objectives of this protocol.

16.2 The PPMC shall be chaired by the hosting province, DTSL and shall meet quarterly to oversee the implementation of the project.


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- 16.3 As soon as possible after the commencement date of the protocol, parties shall each appoint at least one official as Project Champion to serve in the PPMC and notify the other party of such appointment as well as the details of the appointee.
- 16.4 Either party shall be entitled, at any time, to terminate the appointment of its Project Champion by notice to the other party.
- 16.5 Each party's Project Champion shall be authorised to manage this Protocol on behalf of the Party making the appointment and parties shall ensure that their Project Champion will have the necessary skills, expertise, and experience to carry out such responsibility.
- 16.6 All communications concerning the management of this Protocol shall, unless otherwise agreed to between the Parties, take place between the Parties' Project Champion.
- 16.7 Each project champion shall report to his or her principal on quarterly basis in terms of progress on the project and the service provided.

**17. SIGNATURES**

Dated and signed at **KIMBERLEY** on this 09 day of FEBRUARY 2016.

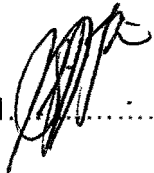
AS WITNESSES

1. ....   
 L Wolfe  
 Acting HOD

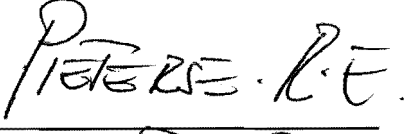
2. ....

Dated and signed at DE AAR on this 19 day of FEBRUARY 2016.

AS WITNESSES

1.  .....

2. Present by: .....

  
 Municipal Manager:

  
 N.V.