

IMPLEMENTATION PROTOCOL

Concluded by and between:

**THE DEPARTMENT OF SOCIAL DEVELOPMENT
BERGRIVIER SERVICE DELIVERY AREA**



AND

BERGRIVIER MUNICIPALITY



**FOR THE IMPLEMENTATION OF PROJECTS AND INITIATIVES IN SUPPORT OF
THE DEPARTMENT'S SOCIAL DEVELOPMENT PROGRAMMES**

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Concluded by and between:

(Herein represented by Adv. Albert Fritz, in his capacity as Provincial Minister of Social Development and Dr. Robert MacDonald in his capacity as Acting Head of the Department of Social Development)

(Hereinafter referred to as "the DEPARTMENT")

And

BERGRIVIER MUNICIPALITY

(Herein represented by Adv. Hanlie Linde, in her capacity as Municipal Manager of the Bergrivier Municipality)

(Hereinafter referred to as "the MUNICIPALITY")



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PREAMBLE

- A. WHEREAS the MUNICIPALITY through its Strategic Services Department in the office of the Municipal Manager undertakes a range of programmes and initiatives in support of the developmental agenda that has been set for local government to follow as contained in the Constitution of the Republic of South Africa ("the Constitution") and White Paper on Local Government which do not align to the functions of Local Government as listed in the Constitution;
- B. AND WHEREAS the MUNICIPALITY is desirous of supporting and complementing the social developmental work undertaken by the DEPARTMENT utilising its own human, financial and other resources. The programmes and initiatives undertaken by the MUNICIPALITY in support of the work undertaken by the Department are contained in Annexure "A" to this Protocol;
- C. AND WHEREAS the MUNICIPALITY and the DEPARTMENT undertake to collaborate in the preparation of their respective budget and planning exercises on an annual basis to ensure that synergies are maximised and duplication is avoided;
- D. AND WHEREAS *Section 35(1) of the Intergovernmental Relations Framework Act, 2005 (Act 13 of 2005)* provides that where the implementation of a policy, the exercise of a statutory power, the performance of a statutory function or the provision of a service depend on the participation of organs of state in government, those organs must co-ordinate their actions in such a manner as may be appropriate or required in the circumstances, and may do so by entering into an implementation protocol;
- E. AND WHEREAS *Section 35(2)(c)* provides that an implementation protocol will materially assist the organs of state participating in the provisioning of a service in a specific area to co-ordinate their efforts in that area;

F. AND WHEREAS *Section 35(2)(d)* provides that an implementation protocol must be considered where an organ of state to which primary responsibility for the implementation of the policy, the exercise of the statutory power, the performance of the statutory function or the provision of the service has been assigned lacks the necessary capacity;

G. NOW THEREFORE the parties hereby enter into an implementation protocol for purposes of executing projects and initiatives in support of addressing the developmental needs of communities and individuals either in collaboration with each other or on their own.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

The headings of the clauses in this Protocol are for the purposes of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Protocol nor any clause hereof. In this Protocol, unless a contrary intention clearly appears:

1.1 Words importing –

1.1.1 any one gender includes the other gender;

1.1.2 the singular includes the plural and vice versa; and

1.1.3 natural persons include created entities (corporate or non-corporate) and vice versa.

1.2 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, effect shall be given to it as



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if it were a substantive clause in the body of the Protocol, notwithstanding that it is only contained in the interpretation clause.

1.3 When any number of days is prescribed in this Protocol, it shall be reckoned exclusively of the first and inclusively of the last day.

1.4 This Protocol includes as an integral part the Programme information, contained in Annexure "A" attached hereto.

1.5 The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have a corresponding meaning, namely:

1.5.1 "**Commencement date**" means the last date of signature of any party to the Protocol;

1.5.2 "**Law**" means the law governing the Protocol and shall be the law of the Republic of South Africa;

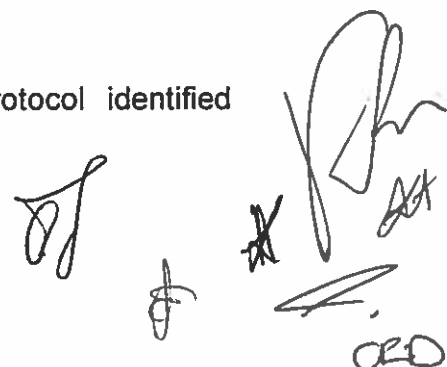
1.5.3 "**Month**" means a calendar month, and more specifically:

(a) 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

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

1.5.4 "**Notice**" means a written notice;

1.5.5 "**Parties**" mean the parties to this Protocol identified herein;

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- 1.5.6 **"Programmes"** means all Social Developmental initiatives as listed in Annexure "A" attached hereto and any and all amendments as agreed in writing from time to time;
- 1.5.7 **"Termination date"** means the date 2 months from the date when members of the provincial legislature is sworn in, subsequent to a general election in terms of the Electoral Act, 1998 (Act 73 of 1998)
- 1.5.8 **"the Department"** means the Provincial Government of the Western Cape via its Department of Social Development;
- 1.5.9 **"the Municipality"** means the Bergrivier Municipality, established in terms of the *Local Government: Municipal Structures Act 117 of 1998* read with the *Province of the Western Cape: Provincial Gazette 5588 dated 22 September 2000 as amended*.

2. FUNDING

- 2.1 The MUNICIPALITY will make resources available for the implementation of social development programs as outlined in "Annexure A".
- 2.2 The DEPARTMENT makes provision in its budget to fund the cost of its programmes that fall within its functional areas as per the Constitution. The DEPARTMENT will provide the MUNICIPALITY with its approved schedule of programmes annually.
- 2.3 There will be no transfer of funds between the MUNICIPALITY and the DEPARTMENT, unless otherwise agreed by the Parties, in writing, in



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respect of a specific programme-related project or activity, but at all times subject to the availability and appropriation of funds in terms of prevailing prescripts.

- 2.4 In the event of a collaboration in terms of clause 4.3 each Party shall be responsible to fund the extent of its own Programme costs, unless otherwise agreed by the Parties, in writing, in respect of a specific programme or programme-related project or activity, but at all times subject to the availability and appropriation of funds in terms of prevailing prescripts.

3. DURATION

- 3.1 This Protocol commences on the commencement date.
- 3.2 This Protocol shall terminate on the termination date.

4. PROGRAMMES

- 4.1 It is specifically recorded that in terms of this Protocol, the MUNICIPALITY shall primarily be accountable for the Programmes as outlined in Annexure "A" in line with its approved Budget.
- 4.2 It is specifically recorded that in terms of this Protocol, the DEPARTMENT shall continue to be accountable for its Programmes as outlined in clause 2.2 above.
- 4.3 The MUNICIPALITY and the DEPARTMENT are free to collaborate on any specific Programmes as needed



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5 OBLIGATIONS OF THE MUNICIPALITY AND THE DEPARTMENT

- 5.1 Reasonable notice will be provided when either Party proposes to collaborate with the other, as indicated in clause 4.3.
- 5.2 The Parties will consider all proposals as contemplated in clause 5.1 above and provide timely feedback regarding such proposals.
- 5.3 When collaborating on Programmes the Parties will continuously liaise with each other on the implementation of such Programmes.
- 5.4 The Parties will consider a renewal of this Protocol before the termination date thereof.

6. LIAISON BETWEEN THE PARTIES

- 6.1 The Parties agree to liaise through the following persons or their successors, duly authorised by the Parties:

For the Department : Dr Lynette Rossouw (Regional Director)

Phone number : (022) 713 2272

Fax number : (022) 713 2064

For the Municipality : Adv. Hanlie Linde and Alletta Van Sittert

Phone number : (022) 913 6000

Fax number : (022) 913 1406

- 6.2 The Parties may establish a steering committee to oversee the Parties' collaboration as envisaged in clause 4.3 of this Protocol Agreement



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7. DISPUTES

7.1 Any dispute which arises between the Parties in connection with the interpretation of or giving effect to this Protocol shall be resolved amicably through consultation and negotiation.

7.2 Should a dispute remain unresolved, the provisions of *section 41 to section 45* of the *Intergovernmental Relations Framework Act, 2005 (Act.13 of 2005)* shall apply.

8. LIMITATION OF LIABILITY

Notwithstanding anything contained in this Protocol, the Parties' maximum liability shall be limited to the extent of their Programme commitment.

9. ENTIRE AGREEMENT

This Protocol constitutes the entire agreement and supersedes any and all previous agreements regarding this subject matter that may exist between the parties. No representations, either verbal or written, made by either party during the tenure of this Protocol shall be of any force or effect unless agreed to by both parties, reduced to writing, and annexed hereto, as an addendum.

10. NO WAIVER

The failure of either Party to insist upon the strict performance of any provision of this Protocol or to exercise any right, power or remedy consequent upon a breach hereof shall not constitute a waiver by such Party to require strict and punctual compliance with each and every provision of this Protocol.

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11. NOTICES AND DOMICILIUM

11.1. The parties choose as their *domicilia citandi et executandi* the following addresses:-

11.2. THE DEPARTMENT

For the Department : The Department of Social Development

Address : C/o Proses and Mark Streets, Vredenburg

11.3. THE MUNICIPALITY

For the Municipality : Office of the Municipal Manager

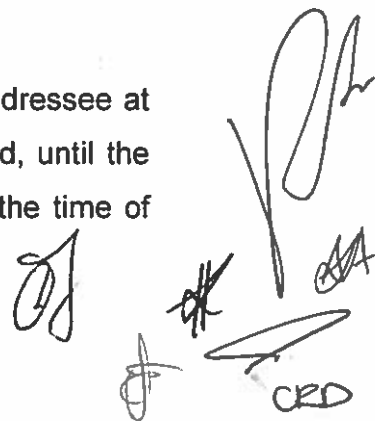
Address : 13 Church Street, Piketberg 7320

11.4. Either party hereto shall be entitled from time to time by written notice to the other party, to vary its *domicilium* to any other physical address.

11.5. Any notice required or permitted to be given in terms of this Protocol shall be valid and effective only if in writing and if received or deemed to have been received by the addressee.

11.6. Any notice given by one party to the other "the addressee" which –

11.6.1 is delivered by hand during the normal business hours of the addressee at the addressee's *domicilium* for the time being shall be presumed, until the contrary is proved, to have been received by the addressee at the time of delivery;

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11.6.2 is posted by prepaid registered post from an address to the addressee at the addressee's *domicilium* for the time being, shall be presumed, until the contrary is proved, to have been received by the addressee on the 7th day after the date of posting;

11.7. Any notice in terms of or in connection with this Protocol shall be valid and effective only if in writing and if received or deemed to have been received by the addressee.

12. SIGNATURES

SIGNED at CAPE TOWN on this 8 day of August 2017 in the presence of the undersigned witnesses.

AS WITNESSES:

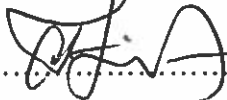
1. 

2. 

FOR THE DEPARTMENT:



Dr. Robert Macdonald (HOD)



MEC Adv. Albert Fritz

AS WITNESSES:

1. 

2. 

FOR THE MUNICIPALITY:



MUNICIPAL MANAGER

ANNEXURE A

The parties have come to the common understanding that Community Development is the cornerstone for a partnership in building sustainable communities and wish to record that:

- The different spheres of government need to combine to work in an integrated manner in building sustainable communities;
- The Provincial Growth and Development Strategy will be compromised if 40% of the provincial population remains poor and vulnerable;
- Social exclusion is one the biggest challenges facing our communities and a threat to our hard-won democracy. This refers to PSO 8:

We hereby declare our shared commitment to the following in the context of community development being:

- Building strategic partnerships towards developing our communities in the Bergrivier area
- Promotion of the ideals of integrated governance
- Integrated, sustainable and community centred policies and programmes
- Co-ordination of shared work areas, responsibilities skills and capacity, resources and concerns

We agree that any partnership for Community Development will be underpinned by the following values and principles being:

- **Inclusiveness**-fostering broad based participation by civil society and the private sector;
- **Results orientated approach**-projects and programmes will ultimately benefit the poorest, most vulnerable;
- **Diversity**- recognizing the uniqueness of every community and its strengths
- **Partnership**-involving co-ordinated participation of all development partners
- **Strength based development** –focusing on human capital, social capital and assets for sustainability



The Parties therefore agree that:

The Department of Social Development and the Bergrivier Municipality will build and strengthen strategic partnerships at Provincial level through partnership agreements and sharing of resources and information;

The Bergrivier Municipality will support the following initiatives in building sustainable communities being:

Youth Development

Early Childhood Development

SMME and Local Development Initiatives

Social Relief and Disaster Management

Strengthening the NGO and CBO Sectors

Sustainable Livelihood (e.g Basic Income Security Programmes/Projects, Food Security, etc.)

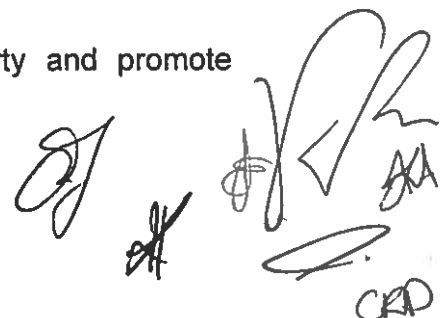
Research cooperation

Establishment of Regional Community Development Practice Forum

It is further recognized by both parties and being representatives of spheres of Government , that we will promote integrated governance, advocate the practice of good governance, strengthening opportunities for all principles of dignity , equity and prosperity for all citizens.

We as representatives of the Bergrivier Municipality and the Department of Social Development (Bergrivier SDA) are present here today to address our mutual concerns and therefore:

1. Agree to commit ourselves to be champions for the MOU
2. Agree to build sustainable communities in fighting poverty and promote economic development



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