

IMPLEMENTATION PROTOCOL

Concluded by and between:

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



AND

OUDTSHOORN MUNICIPALITY



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

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 Head of the Department of Social Development)

(Hereinafter referred to as "the DEPARTMENT")

And

OUTSHOORN MUNICIPALITY

(Herein represented by , in his capacity as..... of the
Oudtshoorn Municipality

(Hereinafter referred to as "the MUNICIPALITY')

TABLE OF CONTENTS

1. DEFINITIONS AND INTERPRETATION	5
2. FUNDING	7
3. DURATION	7
4. PROGRAMMES	8
5. OBLIGATIONS OF THE MUNICIPALITY AND THE DEPARTMENT	8
6. LIAISON BETWEEN THE PARTIES	9
7. DISPUTES	9
8. LIMITATION OF LIABILITY	10
9. ENTIRE AGREEMENT	10
10. NO WAIVER	10
11. NOTICES AND DOMICILIUM	10
12. SIGNATURES	12
ANNEXURE A	13

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

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 day 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;

- 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 Oudtshoorn 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 makes provision in its budget to fund the cost of the Programmes 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

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

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 : Marie Hendricks (Regional Director, DSD)

Phone number : 0814867938

Fax number : 044 – 873 2901

For the Municipality :

Phone number :

Fax number :

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

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.

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 : Marie Hendricks (Regional Director, DSD)

Address : York Park Building, 2nd Floor

C/o York & St John Street, George, 6530

11.3. THE MUNICIPALITY

For the Municipality : Office of the Municipal Manager

Address :

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;


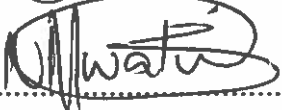
11.6.2 is posted by prepaid registered post from an address to the addressee at the addressee's *domicilium* for the time being, shall be presumed, until the contrary is proved, to have been received by the addressee on the 7th day after the date of posting;

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.

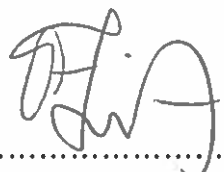
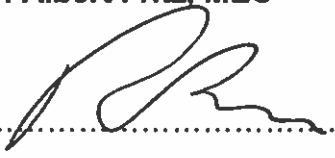
12. SIGNATURES

SIGNED at OUDTSHOORN on this 17 day of MARCH 2017 in the presence of the undersigned witnesses.

AS WITNESSES:

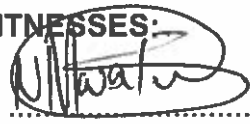

1. 
.....
2. 
.....

FOR THE DEPARTMENT:

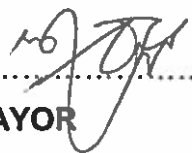


.....
Adv. Albert Fritz, MEC

.....
Dr Robert Macdonald, HOD

OUDTSHOORN
SIGNED at on this 17/03/2017 in the presence of the undersigned witnesses.

AS WITNESSES:

1. 
.....
2. 
.....

FOR THE MUNICIPALITY:


.....
MAYOR

.....
MUNICIPAL MANAGER:
DULY AUTHORISED

ANNEXURE A

DELIVERING OF SOCIAL DEVELOPMENT SERVICES:

DEPARTMENT OF SOCIAL DEVELOPMENT AND OUDTSHOORN MUNICIPALITY

INTRODUCTION

1. SOCIAL DEVELOPMENT - WC.

The, DSD is the lead department in the delivering of Social Development Services arising out of its national legislative and policy mandates. It is however not the only provider of Social Development Services.

Social Development Services in a South African context has three functional areas as per the White Paper on Developmental Social Welfare Services 1997, these areas are

- Social Welfare Services
- Community Development
- Social Security Services

Social Security Services are provided through an agency namely SASSA (South Africa Social Security Agency), whereas the DSD is responsible for the other two areas of service delivery, Social Welfare and Community Development in partnership with a range of stakeholders and partners

2. OUDTSHOORN MUNICIPALITY

Section 152 of the Constitution of the Republic of South Africa states that the objectives of local government are inter alia:

“(a) To promote social and economic development,
(b) To promote a safe and healthy environment, and
(c) To provide the social infrastructure for the implementation of the social development projects in line with the MOU. The municipality will take responsibility for the maintenance of the buildings:

- Centre of Hope for the Game Changer Dignity Project
- Malibongwe Building for Homeless Shelter
- Dysselsdorp Old SAPS Building for the Victims of Violence Shelter

(d) To encourage the involvement of communities and community organizations in the matters of local government”,

Schedule 4 Part B of the Constitution does not provide a comprehensive list of functions which deemed to be in support of promoting social development except for listing child care facilities as a function of the local sphere of government; however

“Effective intergovernmental relations are the very foundation that the hopes of the communities rest on. The needs of the communities are not confined to the functions of local government hence the need for effective and efficient cooperation between all three spheres of government”. Therefore in an effort to contribute towards achieving this goal and addressing the needs of communities in the Oudtshoorn Municipal Area, the Social Development component provides a range of services which has resource implications in the following programmatic areas namely:

- Youth Development
- Family Services
- Early Childhood Development
- Substance Abuse (Local Drug Action Committee)
- Older Persons
- Victim Empowerment
- Services to Children
- Youth in conflict with the Law
- Sustainable Livelihoods