



FRANCES BAARD

District Municipality / Distriksmun
Masepala Wa Sedika / U Masepala

Tel: (053) 838 0911
Fax: (053) 861 1538
frances.baard@fbdm.co.za
www.francesbaard.gov.za
Frances Baard District Municipality | Private Bag

Enquiries/ Navrae/ Dipatlisiso/ Imibuzo:

Reference/ Verw./ Tshupetso/ Isalathiso:

Copy to:
EO: Community Services
+
Keith Williams
30/8/2018

29 August 2018

The Acting Municipal Manager
Sol Plaatje Municipality
Private Bag X 5030
DAMBERLEY
8301

Dear Ms R Sebolecwe

RE: AUTHORISATION OF SOL PLAATJE MUNICIPALITY TO ENFORCE THE FOODSTUFFS, COSMETICS AND DISINFECTANTS ACT, 1972 (AS AMENDED)

The above matter bears reference.

Frances Baard District Municipality (FBDM) and Sol Plaatje Municipality has signed a service level agreement (SLA) on 09 July 2018, wherein it was agreed that Sol Plaatje Municipality will render municipal health services (MHS) in the Sol Plaatje Municipal area on behalf of FBDM.

Attached, please find the authorisation letter for Sol Plaatje Municipality to enforce the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (as amended).

We trust that you will find the above in order.

Yours faithfully,

Bogatsu
.....
MS ZM BOGATSU
MUNICIPAL MANAGER

SOL PLAATJE MUNICIPALITY

29 AUG 2018
OFFICE OF THE MUNICIPAL MANAGER

Address all correspondence to The Municipal Manager
Rig alle korrespondensie aan Die Munisipale Bestuurder
Thumela yonke imbalelwano ku maneJala kaMasipala
Lebisa Makwalo otlhe go mo tsamaisa wa Masepala



FRANCES BAARD

District Municipality / Distriksmunisipaliteit
Masepala Wa Sedika / U Masepala We Sithili

Tel: (053) 838 0911
Fax: (053) 861 1538
frances.baard@fbdm.co.za
www.francesbaard.gov.za
Frances Baard District Municipality | Private Bag X6088 Kimberley | 8301

Enquiries/ Navrae/ Dipatlisiso/ Imibuzo: Cllr. P Marekwa
Reference/ Verw./ Tshupetso/ Isalathiso: 18/3/4/1

24 August 2018

The Acting Municipal Manager
Sol Plaatje Municipality
Private Bag X5030
KIMBERLEY
01

Dear Ms. Ruth Sebolecwe

AUTHORISATION UNDER THE FOODSTUFFS, COSMETICS AND DISINFECTANTS ACT, 1972 (AS AMENDED)

I, **Patrick Marekwa**, with the powers vested in me under section 80 (1)(c) of the National Health Act, 2003 (Act No. 61 of 2003), hereby authorise **Sol Plaatje Local Municipality** to enforce the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (as amended) within your area of jurisdiction through duly authorised officers.

I trust that you will find the above in order.

Yours faithfully,

.....
CLLR PATRICK MAREKWA
EXECUTIVE MAYOR

Address all correspondence to The Municipal Manager
Rig alle korrespondensie aan Die Munisipale Bestuurder
Thumela yonke imbaelwano ku maneJala kaMasipala
Lebisa Makwalo otlhe go mo tsamaisa wa Masepala

SERVICE LEVEL AGREEMENT

entered into by and between:

THE FRANCES BAARD DISTRICT MUNICIPALITY

(Hereinafter referred to as FBDM)

AND

SOL PLAATJE LOCAL MUNICIPALITY

(Hereinafter referred to as "SPLM")

[Handwritten signatures and initials]
A signature on the left, followed by initials "B" and "EB" stacked vertically, and initials "KG" and "K" stacked vertically.

1. PREAMBLE

WHEREAS:-

- 1.1 The objective of this agreement is to formalize the relationship between the FBDM and the SPLM regarding the rendering of Municipal Health Services (MHS) and to establish the terms and conditions under which SPLM will render the MHS on behalf of FBDM;
- 1.2 The FBDM and SPLM acknowledges that in terms of section 84(1)(i) of the Local Government: Municipal Structures Act 117 of 1998, the FBDM is solely responsible to render MHS services within the district of Frances Baard but due to the FBDM not having the necessary in-house capacity and internal structures in place as yet at the date of signature and commencement of this agreement, the parties agree that the SPLM will continue to render MHS services on behalf of FBDM in its area of jurisdiction until such time as the FBDM secures the required in-house resources but not later than three years or at any other earlier or later date as may be determined by the parties; and
- 1.3 The parties have reached agreement on the terms and conditions of the appointment of SPLM to render MHS on behalf of FBDM and wish to record those terms and conditions in writing, as they hereby do.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

In this Agreement, unless the context otherwise requires, the following capitalised terms shall have the meanings assigned to them below and cognate expressions shall have corresponding meanings.

- "approval"** means the authorization of one or more of the employees to act as Inspectors in terms of section 10 of the FCDA;
- "assets"** means any immovable property or movable property owned or under the control of SPLM which SPLM use to render the services;

[Handwritten signatures and initials]
EB MSH K
KG

| | |
|-------------------------------|--|
| "assignment" | means the assignment of the MHS to FBDM in terms of section 32(2) of the NHA which is expressly delegated to SPLM in terms of this agreement; |
| "business days" | any day except a Saturday, Sunday or public holiday in the Republic of South Africa; |
| "collective agreement" | any agreement which meets the requirements of a "collective agreement" as defined in the LRA which forms part of the conditions of service of the employees; |
| "commencement date" | irrespective of the signature date, the commencement date of the agreement shall be effective date; |
| "consideration" | the payments to be paid by FBDM to SPLM for the provision of services as set out in this agreement; |
| "Constitution" | the Constitution of the Republic of South Africa, 108 of 1996; |
| "day" | shall mean a normal calendar day, inclusive of Saturdays, Sundays and any public holiday in the Republic of South Africa; |
| "effective date" | shall be the last day of signing of this agreement by the parties; |
| "employees" or | |
| "the employees" | the employees of SPLM as appointed by SPLM to render the services and paid by SPLM from the funding; |

[Handwritten signatures and initials]
 EB MBN K KG

"FCDA" means the Foodstuffs, Cosmetics and Disinfectants Act, 54 of 1972 and any regulations promulgated in terms thereof.

"MHS" means the Municipal Health Services to be rendered by SPLM on behalf of FBDM as defined in section 1 of the NHA specifically as follows for purposes of this agreement:

- Water quality monitoring,
- Food control
- Waste management
- Health surveillance of premises,
- Surveillance and prevention of communicable diseases, excluding immunizations,
- Vector control,
- Environmental pollution control,
- Disposal of the dead,
- Chemical safety

"NHA" the National Health Act, 61 of 2003 and any regulations promulgated in terms thereof;

"Law" legislation, common law, any proclamation, ordinance, regulation, rule, notice, judgment or order by any Court or other relevant authority that is applicable within the boundaries of the Republic of South Africa;

"LRA" the Labour Relations Act, 66 of 1995;

lum *IP* *K*
MSH
EB *KG*

| | |
|--------------------------------|--|
| "parties" | FBDM and SPLM and any reference to "a party" shall refer to one of the relevant parties as required by the context; |
| "performance standards" | means the performance standards agreed to in Schedule "1 and 2" hereto as made provision for in terms of section 32(3)(c) of the NHA; |
| "resources" | the resources made available by the SPLM to FBDM in terms section 32(3) of the NHA; |
| "services" | means the rendering of MHS by SPLM on behalf of FBDM within the municipal boundaries of SPM only as determined by the Law, which shall include the rendering of services by SPLM on behalf of FBDM in terms of FCDA; |
| "signature date" | the date of signature hereto of the last party signing this agreement; |
| the agreement" or | |
| "this agreement" | this agreement between the parties with annexures thereto; and |

2.2 Interpretation

This agreement shall be interpreted according to the following provisions, unless the context requires otherwise:

- 2.2.1 References to the provisions of any law shall include such provisions as amended, re-enacted or consolidated from time to time in so far as such amendment, re-enactment or consolidation applies or is capable of applying to any transaction entered into under this agreement.
- 2.2.2 References to "clauses", "sub-clauses" and "attachments" are references to the clauses, sub-clauses and annexures of this agreement.

EB *MBH* *KG* *K*

- 2.2.3 The headings of clauses, sub-clauses and annexures are included for convenience only and shall not affect the interpretation of this agreement.
- 2.2.4 The attachments to this agreement are an integral part of this agreement and references to this agreement shall include the attachments.
- 2.2.5 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.
- 2.2.6 References to a "person" shall include any organ of state, individual, firm, company, corporation, juristic person, responsible Authority, and any trust, organization, association or partnership, whether or not having separate legal personality.
- 2.2.7 The number of days indicated to commit an act or indicated for any other purpose, is calculated by excluding the first day and including the last day.
- 2.2.8 The parties acknowledge that each of them has had the opportunity to take legal advice concerning this agreement, and agree that no provision or word used in this agreement shall be interpreted to the disadvantage of either party because that party was responsible for or participated in the preparation or drafting of this agreement or any part of it.
- 2.2.9 In the event of a conflict between the provisions of this agreement and the annexures hereto, the provisions of this agreement shall prevail.
- 2.2.10 In the event of a conflict between the provisions of this agreement and the existing agreement, the provisions of this agreement shall prevail.

3 RECORDAL

It is recorded that –

- 3.1 SPLM currently renders MHS within its municipal boundaries in terms of section 34 of the NHA;
- 3.2 The Council of the SPLM has provided the approval after consultation with FBDM ;and
- 3.3 FBDM wishes SPLM to render the services on its behalf in return for the payment of the funding as provided for in terms of this agreement.

Handwritten signatures and initials:
A large signature, possibly "Lum", with a circled "B" above it.
Initials "K." to the right.
Below the signature, the initials "MIN" and "EB" are written.
To the right of "MIN" and "EB", the initials "KG" are written.

4 RESOLUTIVE CONDITIONS

Depending on the issues needing further resolution, it is the responsibility of the respective parties to this agreement to obtain the relevant authority in order to comply with this agreement. Accordingly, it is the responsibility of the respective accounting officers of the parties to ensure that the relevant approvals and/or authorizations are obtained in order to fulfil the objectives of this agreement.

5 GOOD FAITH AND CO-OPERATIVE GOVERNANCE

In the spirit of Co-operative Governance, the parties warrant and undertake that in the implementation of this agreement and in their dealings with each other pursuant to this agreement, must observe the utmost good faith and they undertake to give full effect and intent to the purpose of this agreement. More specifically, it is important that the parties strive to co-operate with each other by:

5.1 Assisting and co-operating with each other in good faith to the implementation and rendering of MHS.

5.2 Setting up appropriate structures and systems to facilitate this agreement.

5.3 Consulting with each other from time to time in regard to any assistance or advice which any party may require in connection with fulfilling its obligations under this agreement.

5.4 Generally to exercise good faith and to co-operate in their dealing with each other.

6 DURATION

This agreement commences on the effective date and will terminate at the end of 3 (three) years from the commencement date, or earlier if it is terminated by one of the parties on the grounds of breach in accordance with the provisions of clause 8 of this agreement.

lum *B* *K*
MJM
EB *KG*

7 FUNDING CONTRIBUTION

In exchange for the MHS to be provided by the SPLM, the FBDM hereby agree to contribute and transfer an amount of R 500 000.00 (five hundred thousand rand) over to SPLM as funding for the MHS starting from the 2017/18 budget, upon approval by Council. Payment of the amount shall be effected not later than 30 June 2018. The funding contribution shall be adjusted annually as may be agreed to by the parties from time to time for the duration of this agreement.

8 BREACH AND CANCELLATION

Any breach or cancellation of this agreement shall be dealt with in accordance with the provisions of the Intergovernmental Relations Framework Act, 13 of 2005 provided that in the event of FBDM failing to pay over the funding as set in clause 7 of this agreement, SPLM may cancel the agreement on its own accord with immediate effect in which event FBDM will not be liable to SPLM for any cost relating to rendering of the services unless such costs to be paid is agreed to by the parties in writing

9 CONFIDENTIALITY

9.1 The parties unconditionally agree not to disclose to third parties any information provided by either party as may be required for the performance of services as set out in this agreement unless the party concerned has received prior written consent of the other party to make such disclosure.

9.2 This clause shall survive the termination of this agreement.

10 RIGHTS AND OBLIGATIONS OF FBDM

FBDM shall-

10.1.1 obtain and secure the funding to ensure that it can pay of the funding to SPLM;

Handwritten signatures and initials:
A signature (possibly "Aur")
B
MJN
EB
K
KG

- 10.1.2 pay over the funding promptly into the a bank account held in the name of SPLM and which has been designated by SPLM for such purposes;
- 10.1.3 provide all reasonable assistance to SLPM as may be required by this agreement to enable SPLM to successfully perform its obligations in terms of this Agreement;
- 10.1.4 attend all Monitoring Committee meetings and implement the decisions made during such meetings; and
- 10.1.5 at its own discretion be allowed to accompany employees rendering the services for the duration of this Agreement.

11 RIGHTS AND OBLIGATIONS OF SPLM

11.1 SPLM shall –

- 11.1.1 be entitled to exercise all its functions as a local municipality in terms of the Law without the exercising of such functions being construed to constitute a breach of the terms of the provisions of this agreement;
- 11.1.2 render the services in accordance with performance standards as set out in Schedule 1 and 2 of this agreement and which shall form part of this agreement and shall be read as if herein specifically incorporated;
- 11.1.3 ensure that its actions in rendering the services at all times comply with the provisions of the Law;
- 11.1.4 maintain the assets as it sole property and be responsible for all costs relating thereto;
- 11.1.5 ensure that it complies with all labour related legislation pertaining to its employees rendering the services in terms of this Agreement;
- 11.1.6 inform FBDM immediately by way of written report of any event or incident that occurred during the rendering of the services which resulted in or may result in damage to any property, any injury to any person or the death of a person due to any reason whatsoever. These reports shall be provided by hand delivery to FBDM and to any e-mail address designated by FBDM in writing for delivery purposes;

[Handwritten signatures and initials]
Luvu
MTH.
EB
KG

- 11.1.7 submit its invoices upon in the agreed upon format to ensure that FBDM can pay the funding to SPLM;
- 11.1.8 ensure that the services are rendered in a competent manner and a duty of care basis;
- 11.1.9 obtain FBDM's prior written approval of any media statement (including but not limited to a press release, news broadcast or any other form) relating to any matter regulated by this agreement;
- 11.1.10 carry out operational planning and management in respect of the MHS and must report thereon to FBDM on a monthly basis;
- 11.1.11 promptly communicate to FBDM in the event of any interruption in the provision of MHS and provide written notice of any anticipated interruption of the services; and
- 11.1.12 comply with all relevant applicable environmental health norms and standards in the from commencement of this agreement within its available resources.

12 MONITORING COMMITTEE

It is recorded that the parties anticipate establishing a monitoring committee which shall have the powers and function to:

- 12.1 monitor the performance of the SPLM in respect of MHS;
- 12.2 monitor the implementation of this agreement;
- 12.3 to handle, manage and make recommendations to the parties in respect of any issues related which are not dealt with by this agreement.

13 DISPUTE RESOLUTION

- 13.1 In the event that a dispute arises as a result of the implementation of this agreement, such dispute will be handled in accordance with the provisions of Chapter 4 of the Intergovernmental Relations Framework Act, No. 97 of 1997 and its Regulations.

Handwritten signatures and initials:
A signature, possibly "Amin", followed by initials "B" and "R".
Below these are the initials "MUN", "EB", and "KG".

13.2 The parties specifically agree that, in the event of a dispute between them arising out of this agreement, neither party shall interrupt or suspend the performance of its obligation under this agreement pending resolution of the dispute.

14 LIMITATION OF LIABILITY

14.1 Except in cases of criminal negligence or gross negligence or wilful misconduct or any other failure from SPLM's employee to exercise the highest degree of skill, care and diligence that can be expected of any reasonable person in the performance of MHS on behalf of FBDM, the FBDM indemnifies the SPLM against all third party legal liability that may arise in respect of the performance of MHS.

14.2 Notwithstanding any provision to the contrary in this agreement, FBDM shall not be entitled to institute any delictual, contractual or other claim against SPLM for any indirect or consequential losses or damages due to any cause whatsoever, with the exception of any claims founded on the gross negligence or willful conduct of the employees in rendering the services.

15 MISCELLANEOUS

15.1 This agreement shall be governed by and construed in accordance with the Law.

15.2 The parties agree that the High Court of South Africa (Northern Cape High Court, Kimberley) shall have exclusive jurisdiction to hear and decide any application, action, suit, proceeding or dispute in connection with this agreement, and irrevocably submits to the jurisdiction of the stated court in the event that the parties fails to amicably resolve any dispute in accordance with the provisions of clause 13 of this agreement.

15.3 No party may without the prior written consent of the other party, delegate, assign, cede, transfer or in any other way alienate or dispose of any of its rights or obligations in terms of this agreement to any other person, which consent may not be unreasonably withheld.

15.4 No provision of this agreement (including, without limitation, the provisions of this clause) may be amended, substituted or otherwise varied, and no provision may be added to or incorporated in this agreement, except (in any such case) by an agreement in writing signed by the duly authorised representatives of the parties.

[Handwritten signatures and initials]
B K
NTH
EB
KG

- 15.5 Any relaxation, indulgence or delay (collectively referred to as "indulgence") by either party in exercising, or any failure by either party to exercise, any right under this agreement shall not be construed as a waiver of that right and shall not affect the ability of that party subsequently to exercise that right or to pursue any remedy, nor shall any Indulgence constitute a waiver of any other right (whether against that party or any other person).
- 15.6 The waiver of any right under this agreement shall be binding on the waiving party only to the extent that the waiver has been reduced to writing and signed by the duly authorised representative(s) of the waiving party.
- 15.7 This agreement supersedes all prior agreements, representations, communications, negotiations and understandings between the parties concerning the subject matter of this agreement.
- 15.8 Whenever possible, each provision of this agreement shall be interpreted in a manner which makes it effective and valid under the law, but if any provision of this agreement is held to be illegal, invalid or unenforceable under the law, that illegality, invalidity or unenforceability shall not affect the other provisions of this agreement, all of which shall remain in full force.
- 15.9 This agreement shall govern all aspects of and all contractual relationships relating to the transfer of the business unit. In the event of any conflict between this agreement and any associated agreement on any matter affecting the parties, including all questions of interpretation, this agreement shall prevail.
- 15.10 All notices and any other communications whatsoever (including, without limitation, any approval, consent, demand, query or request) by either party in terms of this agreement or relating to it shall be given in writing, and shall be sent by registered post, or delivered by hand, or transmitted by facsimile to the recipient party at its relevant address set out below:

15.10.1 if to the FBDM, at:

Physical Address: 51 Drakensberg Avenue, Carters Glen, Kimberley

Postal address: Private Bag X6088, Kimberley, 8301

Facsimile number: 053 861 1538

Marked for the attention of: The Municipal Manager

[Handwritten signatures and initials]
K
K.G.
EB

15.10.2 if to SPLM, at:

Address: Civic Centre, Sol Plaatje Boulevard, Kimberley

Postal address: Private Bag X5030, Kimberley, 8300

Facsimile number: 053 8311064

Marked for the attention of: The Municipal Manager

15.11 Either party may, by written notice to the other party, change any of the addresses at which, or the designated person for whose attention those notices or other communications are to be given.

15.12 Any notice or other communication given by any party to the other party which –

15.12.1 is sent by registered post to the addressee at its specified address shall be rebuttably presumed to have been received by the addressee on the 7th (SEVENTH) day after the date of posting; or

15.12.2 is delivered by hand during the normal business hours of the addressee at its specified address or via e-mail to its specified e-mail address shall be rebuttably presumed to have been received by the addressee at the time of delivery; or

15.12.3 is transmitted by facsimile copier to the addressee at the addressee's specified facsimile number shall be rebuttably presumed to have been received by the addressee on the date of transmission as indicated on the sender's facsimile transmission report, unless the contrary is proved.

15.13 The parties choose their respective physical addresses in clause 15.10 as their respective *domicilia citandi et executandi* at which all documents relating to any legal proceedings to which they are a party may be served. If that address is changed to another address which is not a physical address in the Republic of South Africa, then the original address shall remain the *domicilium citandi et executandi* of the relevant party until it nominates a new physical address within the Republic of South Africa in writing, to be its new *domicilium citandi et executandi*.

Quana B K
MTH
EB KG

- 15.14 The parties agree to perform, or procure the performance, of all further things, and delivery of all further documents, as may be required by law or as may be desirable or necessary to implement or give effect to this agreement and the transfer contemplated therein.
- 15.15 By entering into this agreement, the parties confirm that there are no impediments or restrictions to their doing so and that this agreement does not violate the provisions of any agreement between any of the parties and any third party.
- 15.16 Nothing in this agreement shall be construed as creating a partnership between the FBDM and SPLM. Save as expressly provided for in this agreement, neither party will be, or deemed to be, an agent of other and or hold itself out as having authority or power to bind the other party in any way.
- 15.17 In the event that any of the terms of this agreement are found to be invalid, unlawful or unenforceable, such term will be severable and the remaining provisions shall remain of full force and effect. If any invalid term is incapable of amendment to render it valid, the parties agree to negotiate an amendment to remove the invalidity.

16 COSTS

Each party shall pay its own costs relating to and in connection with the negotiation, preparation, drafting and signature of this agreement, and any amendments thereto.

Thus done and signed at Kimberley on this 11th day of July 2018

As witnesses:

[Signature]

[Signature]

[Signature] B K
 M.J.M.
 E.B.
 K.G.

Rogent

On behalf of FBDM
Name of signatory: Ms Z.M. Bogatsu
Capacity: Municipal Manager

Thus done and signed at Kimberley on this 9th day of July 2018

As witnesses:

[Signature]
[Signature]

[Signature]

On behalf of SPLM
Name of signatory: G. H. Akharwaray
Capacity: Municipal Manager

SCHEDULE 1

Municipal Health Services provision specifications, requirements and information as per the norms and standards

The parties to the agreement recognize that the services to be rendered by the SPLM Municipality within the 2017/18 financial year, will include those listed and defined as **Municipal Health Services** by Environmental Health Practitioners as authorized in terms of legislation and registered with the Health Professions Council of SA.

The SPLM Municipality shall ensure the performance of all aspects of service administration and the effective day-to-day functioning of the service in accordance with national and provincial policy, norms, standards and frameworks within resource constraints.

The SPLM shall submit monthly and quarterly service reports in respect of the rendering of the agreed services to the FBDM.

These reports must be submitted respectively no later than the 10th (tenth) and 15th (fifteenth) day of the month and the end of the quarter during which services were rendered. Timeous submission of all required reports is a requirement, which must be consistently fulfilled.

AW
NBM
R.
EB KG

These reports should provide details on the:

- performance of the SPLM in respect of the agreed services, of which the reports shall be in the agreed format as determined by the parties.
- statistical information, as may be required by the FBDM.
- Progress in terms of deliverables on MHS as per the Integrated Development Plan of the SPLM municipality.

The SPLM shall submit an annual report, detailing service related matters, no later than 30 days after the end of the financial year, ending 30th June, detailing performance of the SPLM in respect of the agreed services.

- The SPLM shall keep accounting records so as to record the transactions, which take place in terms of this Agreement, including all receipts and expenditure in respect of the agreed services, and shall make such accounting records available to the FBDM as and when requested.

[Handwritten signatures and initials]
A signature, followed by initials "MJH", "EB", and "KG".

SCHEDULE 2

Norms and Quality Standards

The norms and standards of the service in terms of quality, equity, efficiency and access to services within the SPLM will be undertaken by the parties on a quarterly basis.

The parties will develop and sustain a municipal health information system and provide data in order to monitor targets and service levels and will also provide each other with this information as part of the monthly and quarterly reports which is a core requirement to the agreement.

Specified Human Resource Development Programs are to be negotiated between the parties to the Agreement and undertaken on an annual basis as continuous development is a requirement to maintain registration as a Health Practitioner with the Health Professions Council of South Africa.

[Handwritten signatures and initials]
MSH K
EB KG

E2. RECOMMENDATIONS TO COUNCIL BY EXECUTIVE MAYOR

15. EM116/04/18 / COM21/04/18: Service Level Agreement: Municipal Health Services

K D Williams

26 January 2018

Purpose

The purpose of the item is to obtain approval and to formalise a Service Level Agreement for Sol Plaatje Municipality to provide Municipal Health Services (MHS) on behalf of Frances Baard within the area of responsibility of Sol Plaatje Municipality.

Background

The Constitution of the Republic of South Africa (Act 108 of 1996) states that "everyone has the right to a clean and healthy environment".

The Constitution of the Republic of South Africa (Act 108 of 1996) sec 155 (1) (b) defines Sol Plaatje Municipality (SPM) as a local municipality and sec 155 (1) (c) defines Frances Baard District Municipality (FBDM) as such. The Constitution sec 156 read with Part B Schedule 4 defines the provision of MHS as a function of the District Municipality.

The Municipal Structures Act (Act 117 of 1998) sec 84 (1) (MSA) allocates the function of MHS to District Municipalities. However, Section 84 (3) of the said Act clearly states that Sec 84 (1) does NOT prevent a local municipality from performing functions allocated to a district municipality.

The National Health Act (Act 61 of 2003) and the MINMEC decision dated 12 August 2003 also determines the legislative and executive mandate for the delivery of Municipal Health Services to be a function of District Municipalities, in this case the Frances Baard District Municipality.

The National Health Act (NHA) also defines the scope of Municipal Health Services (MHS) namely:

- Water quality monitoring
- Food control
- Waste management
- Health surveillance of premises
- Surveillance and prevention of communicable diseases
- Vector control
- Environmental pollution control
- Disposal of the dead
- Chemical safety.

In terms of Sec 78 of the MSA a District Municipality must conduct an assessment regarding function, capabilities and resources at its disposal as well as the required resources so as to enable the effective delivery of MHS within its area of jurisdiction. FBDM conducted such an investigation in 2015. In the assessment it was determined that FBDM neither had the resources (personnel and finance) nor the capability to deliver MHS within the area of SPM. During this process, SPM Environmental Health Services Section has been delivering MHS within the area of SPM. This was done to ensure the health of residents and communities and to maintain integrity of the environment.

E2. RECOMMENDATIONS TO COUNCIL BY EXECUTIVE MAYOR

In order to comply with legislation and to ensure effective service delivery, FBDM was to investigate other avenues to ensure service delivery. A resolution was taken by FBDM Council to enter into negotiations for a SLA between SPM and FBDM.

MHS is a highly regulated environment and currently at least 14 Acts with published regulations are applicable to MHS. There are also several By-laws applicable. Several of such pieces of legislation require specific authorization of the organisation and/or individual EHPs.

The Foodstuffs, Cosmetics and Disinfectants Act (Act 54 of 1972) requires that an entity MUST be authorised to perform the function stipulated in the said Act. This authorisation is provided by the National Dept. of Health and must be gazetted as such. This includes inspections of food premises, investigations, issuing of Certificates of Acceptability, food samples for chemical, bacteriological and histological analysis as well as any resultant actions required.

During November 2016, SPM was de-authorised under the Foodstuffs, Cosmetics and Disinfectants Act regarding the provision of services under the mentioned Act and FBDM was authorised as only functional entity to conduct the described function. This has a profound impact on service delivery regarding food safety with very negative exposure of communities and individuals to food borne diseases.

Section 32 (2) of the NHA makes provision for a negotiated SLA to be entered into between the two municipalities thus providing a legal mandate to SPM for the delivery of MHS.

Several attempts were made by SPM to FBDM to formulate and thus legalise the delivery of MHS and in 2016 meetings were convened to negotiate an SLA between SPM and FBDM for the delivery of MHS by SPM within the SPM area of jurisdiction. Keeping in mind the FBDM Council Resolution, it was decided that in the interest of service delivery to the communities of Kimberley and protection, monitoring and eradication of diseases of communities, terms of the SLA were negotiated.

Food Safety is not the only function that cannot be performed, all functions as described in the definition of Municipal Health Services cannot be performed due to lack of mandate.

Meetings were held between the management of SPM and FBDM to discuss the non-compliance issues and the details of the SLA. The details of the SLA were agreed upon and are at the stage presentation to Councils for debate and approval.

Annexures

Service Level Agreement

ANNEXURE

p. 1 - 18

Motivation

To ensure legislative compliance as well as to protect the health of communities, to limit health risks and nuisances within communities and to limit and/or prevent adverse effects on the environment, it is critical that SPM assume responsibility for the provision of MHS within its area of jurisdiction. This can only be achieved through the approval of a SLA between SPM and FBDM. Upon putting in place an approved SLA, a clear mandate is given to SPM Environmental Health Services to perform a vital function currently being denied to communities.

E2. RECOMMENDATIONS TO COUNCIL BY EXECUTIVE MAYOR

Personnel Implications

Personnel component:

- Environmental Health
 - Manager: Environmental Health Services
 - Current 4x Environmental Health Practitioners.
 - 3x vacant positions. These posts have been budgeted for. To be staffed in FY 17/18.
- Vector Control Section
 - Supervisor: Vector Control
 - 3x Vector Control Assistants

Cognisance must be taken that the National Norm (expressed as ratio) for personnel component for delivery of MHS is 1 EHP : 10 000 of the population. This necessitates the requirement of 28 EHPs within the SPM environment.

Financial Implications

Budget SPM:

| | |
|----------|-------------|
| FY 17/18 | R 7 269 891 |
| FY 18/19 | R 7 653 542 |
| FY 19/20 | R 8 108 247 |
| FY 20/21 | R 8 554 200 |

Budget FBDM

The FBDM receives the allocated Equitable Share (as allocated by National Government) for the delivery of MHS within the area of FBDM. This includes SPM area. The funding is allocated for the provision of MHS.

| | |
|----------|------------------|
| FY 17/18 | R 500 000 |
| FY 18/19 | to be negotiated |
| FY 19/20 | to be negotiated |
| FY 20/21 | to be negotiated |

Legal Authority and Implications

Constitution of SA
Municipal Structures Act
National Health Act
MINMEC Resolution 2003
Foodstuffs, Cosmetics and Disinfectants Act.

Other:

National Environment Management Act
National Environment Waste Act

E2. RECOMMENDATIONS TO COUNCIL BY EXECUTIVE MAYOR

National Air Quality Air
Occupational Health and Safety Act
Water Act
Environmental Conservation Act
Meat Safety Act
Tobacco Products Amendment Act (as amended)
Regulations relating Funeral Parlours
Regulations relating to Food Premises (R 926)
Regulations relating to the Powers of Inspections (R 323)

Consultation

Municipal Manager SPM
Municipal Manager FBDM
Executive Director: Community Services and Social Development SPM
Acting Executive Director: Community Services and Social Development FBDM
NCDOH
SALGA NC

Contact Person

K D Williams
Contact number: 053 8306605

At the Community Services Committee meeting held 17 April 2018 it was resolved per resolution COM21/04/18:

- 1. That Council authorize the Municipal Manager to sign the Service Level Agreement as a matter of urgency.*
- 2. That the matter be expedited to the Mayoral Committee meeting scheduled 25 April 2018 for approval.*

EM116/04/18 / COM21/04/18 EXECUTIVE MAYOR RESOLVED TO RECOMMEND TO COUNCIL:

That approval be granted for an SLA to be entered into between SPM and FBDM for the provision of MHS by the Environmental Health Services Section of SPM within its area of jurisdiction. (See attached SLA).

C56/06/18 RESOLVED:

As recommended.

ITEM: COUN 01 07/2017

DEPARTMENT OF ADMINISTRATION: *REQUEST FOR COUNCIL TO AUTHORISE A PAYMENT TO SOL PLAATJE LOCAL MUNICIPALITY FOR RENDERING OF MUNICIPAL HEALTH SERVICES*

(18/3/3/1/R) (KGG) (SPECIAL COUNCIL MEETING: 30 AUGUST 2017)

The Acting Municipal Manager reports as follows:

Background

The power and function and subsequent accountability, for the rendering of municipal health services (MHS) is that of the Frances Baard District Municipality (FBDM) since 2004 as prescribed by the Constitution of the Republic of South Africa 1996, Municipal Structures Act, 117 of 1998 and the National Health Act 61 of 2003, respectively. The municipality sanctioned a section 78 assessment in 2015 to decide on the mechanism to provide this function. The report highlighted that FBDM do not have the necessary resources (human and financial) to provide municipal health services for the entire district.

As part of the responsibility of the municipality, Council approved the request for authorisation on 24 June 2015 (**ITEM: COUN 02 06/15**) to the Minister of Health to enforce the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act 54 of 1972 as amended). FBDM was authorised on 11 November 2016 through government gazette No. 40421 by the Minister of Health to enforce this Act in the Frances Baard district through authorised environmental health practitioners (EHPs). The local municipalities who were previously authorised have consequently been withdrawn from rendering the services as statutorily required. The de-authorisation of Phokwane Local Municipality (PLM) and Sol Plaatje Local Municipality (SPLM) has created a challenge with regard to the rendering of MHS with specific reference to food safety which is an activity of MHS.

FBDM is currently rendering MHS in Dikgatlong and Magareng local municipalities, while PLM and SPLM are rendering the services in their own municipal areas at their own cost. The FBDM however, has negotiated a memorandum of understanding (MOU) with PLM to render MHS at their own cost in their municipal jurisdiction until 30 June 2018, where after FBDM will take over the service and personnel.

Financial implication

The municipality is currently negotiating a MOU with SPLM to render the services in their municipal area on behalf of FBDM for a period of three (3) years commencing in 2017/18 financial years. In exchange for the MHS to be provided by the SPLM, the SPLM has requested the FBDM to contribute and transfer an amount of R500, 000 (five hundred thousand rand) over to SPLM as a co-funding for the MHS in the 2017/18 budget, upon approval by Council.

The FBDM has been allocated an amount of R 8, 5 million for 2017/18 financial year (R 8, 9 million for 2018/19 financial year) as equitable share grant for the rendering of the MHS in the entire Frances Baard district. A commitment of R500, 000 to SPLM is marginal compared to the allocation the FBDM receives on yearly basis, hence the request to Council to commit the amount indicated. The two municipalities also agreed that the funding contribution shall be adjusted annually as may be agreed by the parties from time to time for the duration of this agreement.

Due to the legal implications, it is important that the MOU between FBDM and SPLM be finalised to ensure the continued rendering of MHS in the Sol Plaatje municipal area.

**The Acting Municipal Manager in consultation with the Assistant Director:
Finance recommends as follows:**

RECOMMENDATIONS

- 1. Council takes note of the report;**
- 2. Council approves a commitment of R500, 000 (five hundred thousand rand) from the 2017/18 budget through an adjustment budget to the SPLM for the rendering of MHS in the Sol Plaatje municipal area on behalf of the FBDM; and**
- 3. Council approves that the commitment be made upon approval after the 2017/18 adjustment budget in January 2018.**

RESOLVED

- 1. Council resolved to commitment R500, 000 (five hundred thousand rand) from the 2017/18 budget through an adjustment budget to the SPLM for the rendering of MHS in the Sol Plaatje municipal area on behalf of the FBDM.**
- 2. Council resolved to approve that a Service Level Agreement be entered into between FBDM and SPLM.**



SPEAKER



DATE

