

SERVICE LEVEL AGREEMENT

Entered into by and between

BERGRIVIER MUNICIPALITY

("the Municipality")

and

BERGRIVIER TOURISM ORGANISATION

(Local Tourism Organisation)

("the LTO")

Handwritten signatures and initials:
Y.O.
MB
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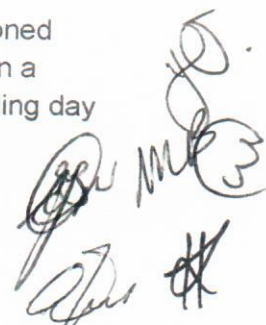
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1. DEFINITIONS AND INTERPRETATION

1.1 In this agreement, unless the context indicates a contrary intention, clause headings are for convenience and shall not be used in its interpretation, a natural person includes an artificial person and vice versa, the singular includes the plural and vice versa, and the following expressions bear the meanings assigned to them below and cognate expressions bear corresponding meanings: -

- 1.1.1 “**the Act**” means the Tourism Act 1993, which is currently under review and awaiting proclamation;
- 1.1.2 “**agreement**” means the agreement as set out in this document, including the annexures hereto;
- 1.1.3 “**commencement date**” means the commencement date of this agreement;
- 1.1.4 “**date of signature**” means the date on which the last-signing party signs this agreement;
- 1.1.5 “**DMO**” means the Destination Marketing Organisation, established in terms of the Act, with its registered address as 7th Floor NBS Waldorf Building, 80 St. George’s Mall, Cape Town, 8001 (Fax No: (021) 487 4803) and trading under the name “Wesgro”
- 1.1.6 “**IDP**” Integrated Development Plan’
- 1.1.7 “**LTO**” means the BERGRIVIER TOURISM ORGANISATION, which is the local tourism organization in the Bergrivier municipal area;
- 1.1.8 “**local community**” means the community residing within the municipality’s area of jurisdiction;
- 1.1.9 “**member(s)**” means any person or business that offers products and is a member of the LTO, and membership shall have the corresponding meaning;
- 1.1.10 “**Municipality**” means the BERGRIVIER MUNICIPALITY;
- 1.1.11 “**Municipality’s area**” currently known as WCO 13;
- 1.1.12 “**parties**” means the municipality and the LTO;
- 1.1.13 “**products**” means those tourism services that are offered, including but not limited to accommodation, wine farm operations, tour operations, shops and stores, and conventions and events.

1.2 When any number of days is prescribed in this agreement, they shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.



- 1.3 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 1.4 Expressions defined in this agreement shall bear the same meanings in schedules to this agreement, which do not themselves contain their own definitions.
- 1.5 This agreement shall be binding and enforceable by the estates, executors, administrators, trustees, assigns or liquidators of the parties as fully and effectually as if they had signed this agreement in the first instance. Reference to any party shall include such party's estate, executors, administrators, trustees, assigns or liquidators, as the case may be.
- 1.6 Unless stated otherwise, all amounts referred to in this agreement are exclusive of VAT. Insofar as any VAT is payable on such amounts, it shall be paid by the party making the payment in question.
- 1.7 In the event of any conflict between the terms and conditions of this agreement and the annexures, the terms and conditions as set out in the annexures will prevail.

2. PREAMBLE

- 2.1 The DMO and municipalities have a legislative mandate to promote and develop tourism in the Western Cape Province.
- 2.2 The Act provides that the DMO may accredit a local tourism association or any similar organisation established or recognised by a municipality;
- 2.3 Whereas the Municipality recognizes the LTO as a local association, marketing and supporting tourism activities within the Municipality's jurisdiction;
- 2.4 The LTO has been invited by the Municipality to become a Partner in fulfilling the Municipality's tourism responsibilities, and the Municipality has undertaken to support the efforts of the LTO in promoting tourism;
- 2.5 Whereas the Municipality is committed to compile an annual tourism budget for subsequent current financial years, and within its means to allocate funds being for operational needs as well as special tourism development projects;
- 2.6 Whereas the LTO confirms and the Municipality is satisfied that effective, efficient and transparent financial management and internal control systems are in place and it will comply with all reporting, financial management and auditing requirements as stipulated in the agreement;
- 2.7 Whereas the LTO furnishes the Municipality with recent financial statements within periods agreed by both parties;

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- 2.8 Whereas the LTO undertakes to comply with and confirms that it is conversant with the Municipality's policies relating to transformation black economic empowerment and all other similar policies;
- 2.9 Whereas it is agreed between the parties that this agreement relates only to the operational needs of the LTO and is in no way whatsoever related to special development projects that the Municipality may wish to have during the financial year;
- 2.10 Whereas the LTO will endeavour to comply with the requirements of the Municipality's IDP and LED programmes, within a partnership between the two organizations;
- 2.11 Whereas it is recognized that it is the Municipality's responsibility to initiate and develop projects within its LED programme, it is the LTO's responsibility to support and market those with a tourism link;
- 2.12 The Municipality undertakes to support any fundraising proposal prepared by the LTO in their attempts to garner additional funds for marketing and events, once they are registered as an Non Profit Organisation.

3. PURPOSE OF THIS AGREEMENT

This agreement intends to: -

- 3.1 record the terms upon which the municipality and the BTO will jointly promote the development of tourism in the Bergivier municipal area;
- 3.2 set out the services that are to be jointly delivered by the respective parties;
- 3.3 set out the financial and other obligations placed on the municipality in order to facilitate and support the LTO.

4. COMMENCEMENT AND DURATION

This agreement shall, notwithstanding the date of signature, commence on 1 April 2013 and shall endure until 31 March 2016.

5. CO-OPERATION AGREEMENT

The LTO has been selected by the Municipality as a strategic partner to promote tourism in its municipal area. The LTO agrees to this partnership in the spirit of co-operation towards sustainable tourism development.

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6. FUNDING AND OTHER SUPPORT

- 6.1 The Municipality shall provide financial and other support to the LTO, in accordance with the schedule set out in Annexure "B" hereto.
- 6.2 The LTO may receive funding from other sources other than the Municipality, such as from membership fees, sponsorships, revenue from sale of promotional items, commission on bookings and referrals and any other lawful source.

7. OBLIGATIONS OF THE LTO

Services

- 7.1 The LTO's core responsibility is to market, develop and promote local tourism. To this end, the LTO must: -
- 7.1.1 formulate a local tourism policy and strategy in accordance with the DMO's tourism related planning activities and the Municipality's IDP and Local Economic Development Initiatives;
- 7.1.2 adopt and comply with the Municipality's procurement and transformation policies, the Broad-Based Black Economic Empowerment Act, Act 53 of 2003 and the Tourism BEE Charter and Scorecard;
- 7.1.3 identify tourism development opportunities within the municipal area and communicate such opportunities to the Municipality;
- 7.1.4 assist in the integration of completed tourism development projects to the mainstream tourism system;
- 7.1.6 assist to develop, promote and demonstrate tourism skills and awareness building within the local community in order to achieve the maximum sustainable benefits from tourism;
- 7.1.7 be responsive to the needs of the public in general and the tourism sector in particular, in the Municipality's area;
- 7.1.8 actively participate in the transformation of the tourism sector;
- 7.1.9 assist, where possible, with the advancement of tourism industry emerging businesses and persons;
- 7.1.10 develop and manage a comprehensive database of all the member products in the Municipality's area and continuously update it, which data will at all times be accessible by the Municipality;
- 7.1.11 identify and promote the heritage, cultural and natural assets of its area;
- 7.1.12 produce and distribute appropriate tourism literature;

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- 7.1.13 establish a forum where product owners can discuss matters of common administrative, organisational developmental, financial and marketing interest;
- 7.1.14 foster co-operation amongst product owners for the purpose of promoting the tourism industry by acting in the best interest of the local communities and industry;
- 7.1.15 stimulate and co-ordinate the development of tourism infrastructure;
- 7.1.16 foster efficiency and professionalism in all tourism operations;
- 7.1.17 ensure that members load accurate and truthful information on their E-business systems and that images are loaded correctly and to the required specifications; and
- 7.1.18 continuously update the events calendar.
- 7.1.19 communicate effectively with the Municipality on a regular basis.
- 7.2 The LTO must develop a culture of broad-based participation and in so doing must encourage and create conditions for the various stakeholders to comment on and, where applicable, participate in the affairs of the LTO.
- 7.3 The LTO must develop its strategy in conjunction and co-operation with the municipality and the DMO.

Performance

- 7.4 The work of the LTO and its performance will be monitored and progress measured at least once a year.
- 7.5 The municipality shall give the LTO opportunities to present their progress to Council at least twice a year.
- 7.6 Copies of minutes of all committee meetings and progress reports will be provided to the Municipality.

Governance

- 7.7 The LTO shall be governed by an executive committee, comprising the chair of the LTO and the chairs of the town committees.

The Management committee

- 7.8 The LTO shall establish a management committee as contemplated in its Constitution. One Councilor of the Municipality and one official employed by the Municipality shall

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have the right to attend the meetings of the management committee, receive agendas and minutes for such meetings, but without any voting rights.

7.9 The functions of the management committee are to:

7.9.1 provide strategic direction;

7.9.2 ensure that strategic and policy decisions are translated into executable plans, and monitor the implementation of such plans;

7.9.3 approve any tourism project of the LTO;

7.9.4 policy decision making;

7.9.5 provision and maintenance of the LTO constitution;

7.9.6 monitor long term objectives of the LTO and ensure that the LTO's plans are implemented;

7.9.7 monitor and manage the LTO's finances;

7.9.8 source partnership agreements to enhance the performance of the LTO;

7.9.9 lobby funding from various institutions such as government bodies and the private sector;

7.9.10 create a platform for closer working relationships with other LTOs, the Regional Tourism Organisation, the municipality and the DMO;

7.9.11 monitor and manage, where applicable, the LTO's administrative matters, including the purchase of office equipment and furniture;

7.9.12 appoint appropriate staff;

7.9.13 attend to matters relating to the requests and requirements of the local visitor information centres;

7.9.14 apply and comply with the requirements of the province's Direct Marketing Organisation for accreditation;

7.9.15 compile an annual operating budget for submission to the municipality, within their timing framework.

Financial administration

7.10 The LTO must ensure that the spending of funds received from the municipality is in accordance with its budget.

7.11 The LTO shall:-

7.11.1 maintain an effective system of expenditure control;

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- 7.11.2 maintain a management, accounting and information system which
- 7.11.2.1 recognises expenditure when it is incurred;
- 7.11.2.2 accounts for creditors of the LTO;
- 7.11.2.3 accounts for payments made by the LTO;
- 7.11.2.4 maintain a system of internal control in respect of creditors and payments.
- 7.12 The financial year of the LTO shall be the same as that of the Municipality.
- 7.13 The LTO shall provide audited financial statements and report on the accounts, financial statements and financial management of the LTO.
- 7.14 The LTO must maintain a bank account in the name of the LTO. All monies received by the LTO from the Municipality must be paid into this bank account promptly.
- 7.15 The LTO may not open a bank account, for purposes of this agreement: -
- 7.16.1 abroad;
- 7.16.2 with an institution not registered as a bank in terms of the Banks Act, Act 94 of 1990;
- 7.16.3 otherwise than in the name of the LTO.
- 7.17 The LTO must submit to the municipality details of the bank account within 30 (thirty) days of date of signature, and annually before the start of each financial year;
- 7.18 The LTO shall comply with Section 67 of the Municipal Finance Management Act 56 of 2003 and sign any agreement with the Municipality required in terms of Section 67 of the MFMA.

Reporting

- 7.19 The LTO shall report to the municipality on the following matters:
- 7.19.1 quarterly, the activities of the LTO during the previous reporting period with regards to its obligations in terms of this agreement;
- 7.19.2 the financial position of the LTO by providing the municipality with—
- 7.19.2.1 quarterly management accounts for the previous period;
- 7.19.2.2 financial statements within (3) months of the end of each financial year;
- 7.19.2.3 the report of the auditors on such financial statements.
- 7.20 The LTO shall submit to the municipality an annual report

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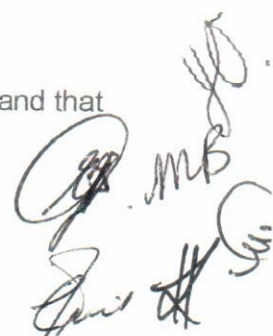
8. BLACK ECONOMIC EMPOWERMENT AND SKILLS TRANSFER

The LTO acknowledges that it has, *inter alia*, been appointed by the Municipality on the basis that it complies with criteria acceptable to the municipality in respect of black economic empowerment.

- 8.1 The LTO shall, where possible, comply with the municipality's procurement policy, the Broad-Based Black Economic Empowerment Act, Act 53 of 2003 and the Tourism BEE Charter and Scorecard
- 8.2 The LTO undertakes to provide the municipality with details regarding the structure of the LTO and the municipality reserves the right to investigate the accuracy of the declaration made by the LTO in this regard, which undertakes to co-operate with the municipality during any such investigation.
- 8.3 Should the investigation referred to in clause 8.2 above show that there is a material difference between the structure of the LTO and the position as declared by the LTO, the municipality shall be entitled, in addition to any remedy available to it at law or under this agreement, to cancel this agreement on 30 (thirty) days written notice to the LTO.
- 8.4 The LTO may not change its structure in respect of black economic empowerment without the consent of the municipality, which consent may be withheld by the municipality in its sole and absolute discretion.

9. OBLIGATIONS OF THE MUNICIPALITY

- 9.1 The Municipality shall provide strategic guidance to the LTO, which will be aligned to the National Development Plan, municipality's IDP and local economic development programs.
- 9.2 The Municipality will inform the LTO of its budget cycle and process so as to assist the LTO in determining the extent of the financial support that the LTO will require from the Municipality.
- 9.3.1 The Municipality shall facilitate and ensure the regular flow of communication between the Municipality and the LTO on matters relating to this agreement.
- 9.4 The Municipality will within its means and where possible provide office accommodation and infrastructure to enable each Visitor Information Centre to provide services to the public and in a location easily accessible to tourists, as required by the accreditation criteria.
- 9.5 The Municipality undertakes to ensure that all municipal officers appointed to committees are made aware of the importance of participation within the LTO and that

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such officers will be required to undertake to work within the LTO with all due commitment, diligence and expediency.

- 9.6 The Municipality shall within its means allocate funds for operational needs as well as funds for special development projects. Such funds will be dispersed quarterly to the LTO on production of the financial reporting requirements.
- 9.7 The Municipality shall provide such assistance, information and advice to the LTO to enable the LTO to proactively seek and procure funding from other governmental bodies and departments to enable the LTO to supplement and expand on its funding from the Municipality.
- 9.8 The Municipality shall not use the LTO to channel external funds to projects, but will refer donors directly to the project organizers.
- 9.9 The Municipality shall grant the LTO the opportunity to present progress reports at relevant Municipal meetings, at least twice a year.

10. RELATIONSHIP BETWEEN THE PARTIES

- 10.1 The LTO shall not be entitled to enter into any agreements on behalf of the Municipality or to bind the Municipality in any other way save as set out in this agreement.
- 10.2 The Municipality shall not be entitled to enter into any agreements on behalf of the LTO or to bind the LOT in any other way save as set out in this agreement.
- 10.3 Nothing in this agreement shall constitute an employer/employee relationship or a partnership between the parties.

11. NOMINATED REPRESENTATIVES

- 11.1 The parties' representatives for liaison purposes shall be as listed in Annexure "A" hereto.
- 11.2 The parties may vary their representatives from time to time by notifying the other party in writing of its new representative(s).

12. TERMINATION

- 12.1 This agreement shall, unless otherwise provided to the contrary, terminate —
- 12.1.1 on the expiry date as per Clause 4;
- 12.1.2 if the LTO commits any breach of any terms of this agreement and fails to remedy that breach within a period of 14 (fourteen) days after the receipt of

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written notice to that effect by the municipality or fails to complete the remedy of such breach within a reasonable time.

- 12.2 Notwithstanding the provisions of clause 12.1, the municipality may terminate this agreement on not less than 60 (sixty) days prior written notice to such effect to the LTO should the LTO -
- 12.2.1 fail to comply with any provisions of this agreement;
- 12.2.2 infringe the copyright, or any other right, of any third party in the course of its obligations in terms of this agreement;
- 12.2.3 be provisionally or finally liquidated or take any steps whatsoever for its voluntary winding up or generally do or commit to do anything to be done which may materially prejudice the municipality's rights under this agreement.
- 12.3 It is recorded that this agreement is subject to the Act and may be terminated on repeal of the Act or the amendment of the Act, which has the effect of either disestablishing the LTO or restructuring the tourism industry in the Western Cape Province.
- 12.4 Upon the termination of this agreement for any reason whatsoever, the LTO agrees to co-operate with the Municipality to such extent as it may be required for a period of up to 3 (three) months from the date of termination, such period to be determined solely by the Municipality, to ensure an orderly and efficient transition and hand over of the services to the Municipality or another organisation appointed by the Municipality to provide the services.
- 12.5 Where the dispute resolution mechanism has been triggered, the LTO agrees to co-operate with the Municipality to such extent as it may be required to ensure that provision of the services is not interrupted for the duration of the resolution of the dispute.

13. LIMITATION OF LIABILITY

- 13.1 The municipality shall not be held liable in delict, contract, warranty or otherwise for any damage, whether direct or consequential, which arises out of or is pursuant to any act or omission of the LTO, whether intentional or negligent.
- 13.2 Members of the LTO will not be held liable as per its constitution in delict, contract, warranty or otherwise for any damage, whether direct or consequential, which arises out of or is pursuant to any act or omission of the LTO, whether intentional or negligent.

14. INDEMNITY AND WARRANTIES

- 14.1 The LTO warrants that in carrying out its services it will not violate or infringe the rights of any person and indemnifies the municipality and undertakes to keep the municipality

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indemnified in respect of any harm, loss or damage of any nature arising from any such infringements.

- 14.2 Members of the LTO will not be held liable as per its constitution in delict, contract, warranty or otherwise for any damage, whether direct or consequential, which arises out of or is pursuant to any act or omission of the LTO, whether intentional or negligent

15. ASSIGNMENT, CESSION AND DELEGATION

The LTO shall not be entitled to cede any of its rights or delegate any of its obligations in terms of this agreement without the prior written consent of the Municipality and the DMO, which consent may be withheld in the municipality and the DMO's sole and absolute discretion.

16. DISPUTE RESOLUTION


- 16.1 The parties subscribe to principles of co-operation, mutual trust and good faith. These principles must be promoted and adhered to by:
- 16.1.1 assisting and supporting each other;
 - 16.1.2 fostering friendly relations;
 - 16.1.3 informing each other of, and consulting each other on, matters of common interest;
 - 16.1.4 co-ordinating the actions and strategies with each other; and
 - 16.1.5 avoiding legal proceedings against each other.
- 16.2 The parties must make every reasonable effort to settle any dispute between them by means of mechanisms and procedures that may be in place for that purpose.
- 16.3 Any dispute arising out of or in connection with this agreement must, in the first instance, be referred for consideration and possible resolution to a designated representative of the Municipality and the LTO.
- 16.4 Should the persons referred to in clause 16.3 fail to resolve the dispute within 7 (seven) days of it being referred to them (or within such alternative period as they may mutually decide) then the parties must, by agreement appoint a third party to act as mediator, and not as arbitrator, to mediate the resolution of the dispute. Should they not be able to agree on the mediator, then the mediator will be selected by the Provincial Department of Economic Development and Tourism for final resolution.
- 16.5 Under all circumstances, the parties retain the right to approach any Court for relief should the Court's intervention be justified by the circumstances, such as urgency.

17. DOMICILIUM AND NOTICES

- 17.1 The parties choose as *domicilium citandi et executandi* ("domicilium") for the purposes of giving any notice, the payment of any sum, the serving of any process and for any other purpose arising from this agreement at their respective addresses as set out in Annexure "A" hereto.
- 17.2 The parties shall be entitled from time to time by written notice to the others to vary their domicilium to any other address, which is not a post office box or post restante.
- 17.3 Any notice required or permitted to be given in terms of this agreement shall be valid and effective only if in writing.
- 17.4 Any notice given and any payment made by one party to the other "the addressee" which:-
- 17.4.1 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;
- 17.4.2 is posted by prepaid registered post from an address within the Republic of South Africa 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 (seventh) day after the date of posting;
- 17.4.3 is transmitted by telefax (subject to the transmitter retaining the fax transmission slip) shall be deemed (in the absence of proof to the contrary) to have been received within 1 (one) hour of transmission where it is transmitted during normal business hours of the receiving instrument and within 2 (two) hours of the commencement of the following business day where it is transmitted outside those business hours.
- 17.5 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a party from another, including by way of facsimile transmission, shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

18. GENERAL

- 18.1 This document constitutes the sole record of the agreement between the parties.
- 18.2 No party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded in the documents mentioned in 18.1



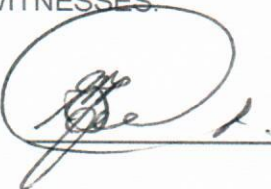
18.3 No addition, variation or agreed cancellation of this agreement shall be of any force and effect unless in writing and signed by or on behalf of the parties.


18.4 No extension of time or indulgence which any party ("the grantor") may grant to the other ("the grantee") shall constitute a waiver of any of the rights of the grantor, who shall not thereby be precluded from exercising any rights against the grantee which may have arisen in the past or which may arise in the future.


18.5 In the event that any of the terms of this agreement are found to be invalid, unlawful or unenforceable, such terms 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.

SIGNED AT Piketberg ON 18 April 2013

AS WITNESSES:

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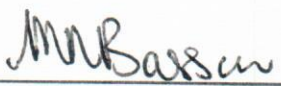
2. 




For and on behalf of the Municipality
the signatory warranting that he/she is
duly authorised to sign this agreement

SIGNED AT Piketberg ON 18 April 2013

AS WITNESSES:

1. 

2. 



For and on behalf of the LTO
the signatory warranting that he/she is
duly authorised to sign this agreement

PAYMENT SCHEDULE

FINANCIAL SUPPORT TO BE GIVEN BY BERGRIVIER MUNICIPALITY

I. FINANCIAL SUPPORT

SCHEDULE OF PAYMENT FINANCIAL YEAR 1 JULY 2013 UNTIL 30 JUNE 2014	
TOTAL FINANCIAL SUPPORT FOR THE FINANCIAL YEAR 1 JULY 2013 UNTIL 30 JUNE 2014	R1 169 000.00
Payable quarterly in advance as follows:	
July 2013	R292 250.00
October 2013	R292 250.00
January 2014	R292 250.00
April 2014	R292 250.00