



THE ADMINISTRATOR



10705710



**MEMORANDUM OF AGREEMENT ENTERED INTO  
BY AND BETWEEN**

**THE SEDIBENG DISTRICT MUNICIPALITY, here in represented by  
STANLEY KHANYILE in his capacity as the Municipal Manager, duly authorized thereto,  
(hereinafter referred to as the "Sedibeng");**

**AND**

**MIDVAAL LOCAL MUNICIPALITY, herein represented by  
ALBERT DE KLERK in his capacity as the Municipal Manager, duly authorized  
S/O. Masicli thereto, (hereinafter referred to as "Midvaal").**

**WHEREAS** in terms of section 84 (1)(i)(j) of the Local Government: Municipal Structures Act 117 of 1998, as amended, the Sedibeng is the competent authority for the rendering of specialized fire fighting services for its entire area of jurisdiction;

**AND WHEREAS** the Sedibeng and Midvaal wish to enter into an agreement in terms of which Midvaal will carry out the specialized Fire Fighting and Rescue Services in their area of operation on behalf of the Sedibeng under the terms and conditions set out herein below.

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NOW THEREFORE the parties agree as follows:

**I. DEFINITIONS**

- a. "Competent Authority" refers to the Sedibeng, being a category C municipality established in terms of the Municipal Structures Act (1998 (Act No. 117 of 1998) as well as the Local Government Demarcation Act (No. 27 of 1998);
- b. "Competent Authority's Area" refers to the area of jurisdiction of the Competent Authority established in terms of the Municipal Structures Act, 1998 (Act No. 177 of 1998) as well as the Local Government Demarcation Act (No. 27 of 1998);
- c. "Midvaal" refers to Midvaal Local Municipality, being a category B Municipality, established in terms of the Municipal Structures Act, (Act No.117 of 1998) as well as the Local Government Demarcation Act (No. 27 of 1998), rendering Specialized Fire Fighting Services;
- d. "Fire Services" refers to Fire Brigade Services as contemplated in the Fire Brigade Act, Act 27 of 1987, Sec 1 (xii);
- e. "Specialized Fire Fighting Services" refers to those emergency incidents such as mountain, veld and chemical fires, as referred to in Section 84(1)(j) of the Municipal Structures Act;
- f. "All veld and forest fires are dealt with under the National Veld and Forest Act (No. 101 of 1998)" This law defines a veld fire as a "veld, forest or mountain fire where veld means the open countryside beyond the urban limit or homestead boundary". Veld fires are therefore any fire which occurs outside the boundaries of urban build areas and pose the potential of running out of control.
- g. "Hazardous Material/ chemical substances" refers to substances that present an unusual danger due to properties of toxicity, chemical reactivity or decomposition, corrosive, etiological hazards, or similar properties;
- h. "Hazmat Incident" refers to an incident where hazardous material or chemical substance is involved;
- i. "Incident" refers to a fire or hazmat emergency that necessitates the involvement of the fire fighting services;
- j. "Equipment" refers to firefighting equipment, hazmat vehicles and protective clothing;
- k. "Extinguishing agent" means suppression, extinguishing or a containment substance used for fire fighting purposes.
- l. "Private Service Provider" with reference to specialized fire fighting services, means fire fighting agencies other than Local Fire Brigade Services.

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## 2. ROLES AND RESPONSIBILITIES OF MIDVAAL

Midvaal shall have the following roles and responsibilities:

- 2.1 To take all reasonable steps to prevent the escalation of an incident from reaching catastrophic levels.
- 2.2 To take all reasonable steps to prevent an incident from becoming an environmental disaster affecting water, soil, air, etc.
- 2.3 Take all reasonable steps to contain and minimize the effects of an incident.
- 2.4 To take all reasonable steps to remedy the effects of an incident;
- 2.5 Submit to the Sedibeng a projection of costs reasonably expected to finance the Specialised Fire Fighting and Rescue Services for the following financial year;
- 2.6 Take all reasonable steps as far as possible that no illegal disposal or dumping of hazardous waste occurs in its area of operation;
- 2.7 Report to the Sedibeng on all incidents within twenty four (24) hours of the occurrence of such incidents, alternatively within reasonable timethereafter.
- 2.8 To submitted claims to the Sedibeng relating to specialized fire fighting and rescue incidents within a period of 30 days of the rendering of the service, provided that:
  - 2.8.1 Such claims are within the promulgated tariff;
  - 2.8.2 Such claims must be in the prescribed format;
  - 2.8.3 The claim must be submitted in line with Midvaal tariffs and charges.

## 3. ROLES AND RESPONSIBILITIES OF SEDIBENG

In order to enable Midvaal to perform the function as agreed, the Sedibeng undertakes to:

- 3.1 Monitor all Specialized Fire fighting Services activities rendered by Midvaal within its area of operation;
- 3.2 Compensate Midvaal for expenses incurred with regard to activities relating to Specialized Fire Fighting Services within its area of jurisdiction;
- 3.3 Scrutinize and settle claims submitted by Midvaal relating to Specialized fire fighting and rescue incidents within a period of 30 days of receipt thereof, provided that:
  - 3.3.1 Such claims are within the agreed tariff;
  - 3.3.2 Such claims be in the prescribed format;
  - 3.3.3 The claim must be submitted in line with Midvaal Local Municipality tariffs and charges (which may be reviewed from time to time by Midvaal).

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**4. USE OF MIDVAAL FOR HAZMAT INCIDENTS**

In the event that a Local Fire Service is incapable of effectively dealing with an incident and a need arises to employ the services of a Private Service Provider the following will apply:

- 4.1 Midvaal should attempt to locate the owner of the property in respect of which the service was rendered;
- 4.1.1 Should Midvaal, after a diligent attempt, fail to trace the owner, the District should accordingly be informed, and of the need to utilize private service providers;
- 4.1.2 Sedibeng shall then assess, in consultation with the Midvaal Chief Fire Officer, the need for the engagement of the private service provider and the possible costs therefore, and, based on this, give a go-ahead for the use of a private service provider;
- 4.1.3 The Sedibeng shall settle all accounts rendered in respect of a private service provider engaged provided that the procedure outlined above has been followed.
- 4.2 In the event that the owner of the property in respect of which the specialized fire fighting and rescue service is required is located, Midvaal will contact and notify them of the incident, and of the possible liability by the owner of costs incurred in rendering the service.
- 4.3. Should the owner fail to settle the amount claimed for the service, Midvaal shall have the right to institute legal action to recover the amount owed.

**5. OWNERSHIP OF ASSETS**

- 5.1 Ownership of all assets attaching to Specialized Fire and Rescue Services, including but not limited to motor vehicles and equipment, shall vest in Midvaal.
- 5.2 Midvaal shall be solely responsible for the upkeep of all the assets, which shall include but not be limited to insurance, maintenance and licensing.

**6. CO-OPERATION AND DISPUTE RESOLUTION**

- 6.1 The parties undertake at all times to render to each other every possible assistance and to extend to each other maximum co-operation for purposes of obtaining the objectives of this agreement.
- 6.2 The parties shall at all time consult with each other in utmost good faith and shall conduct the affairs between them in the highest degree of integrity.

**7. RESOLUTION OF DISPUTES**

- 7.1 However, in the event that a dispute arises out of the operation of this Agreement, the Parties shall take steps to resolve the same through negotiation, first by senior representatives of each Party, and then the Municipalities concerned.
- 7.2 If the dispute has not been resolved by such negotiation within 5 (five) Business Days of the commencement thereof, then the parties shall refer the dispute to arbitration.

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7.3 Failing the negotiations referred to above, the dispute shall be submitted to arbitration for final resolution in accordance with the rules of the Arbitration Foundation of Southern Africa ("AFSA") by an arbitrator or arbitrators agreed to between the parties to the dispute and failing such agreement within 5 (five) Business Days of a request therefore by either party, appointed by AFSA, by means of arbitration to be held in Johannesburg.

7.4 Each party to this Agreement irrevocably:

7.4.1 Consents to any arbitration in terms of the aforesaid rules being conducted as a matter of urgency; and

7.4.2 Authorizes the other to apply, on behalf of both parties to such dispute, in writing to the secretariat of AFSA in terms of the aforesaid rules for any such arbitration to be conducted as a matter of urgency, provided that the party which intends so applying first notifies the other party in writing of its intention to do so.

7.5 Notwithstanding anything to the contrary contained in this clause 6, either party shall be entitled to apply for, and if successful, be granted, an interdict from any competent court having jurisdiction.

7.6 For the purposes of clause 7 and for the purposes of having any award made by the arbitrator/s being made an order of court, each party hereby submits itself to the Witwatersrand Local Division of the High Court of South Africa.

7.7 This clause 6 constitutes an irrevocable consent by each of the parties to any proceedings in terms hereof, is severable from the rest of the agreement and shall, notwithstanding the termination of this Agreement, remain in full force and effect.

#### 8. DURATION

Notwithstanding the date of signature hereof, this agreement shall come into effect on the 1 July 2019 and shall endure until the 30 June 2022.

#### 9. WAIVER, AMENDMENTS AND ALTERATION

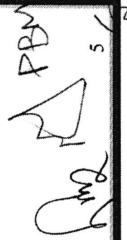
9.1 Any indulgence, extension of time or shall not be construed as a waiver of any of the rights of each Party in terms of this Agreement.

9.2 Any alterations, amendments or additions to this Agreement shall not be valid unless reduced to writing and signed by both Parties.

#### 10. DOMICILIUM

The Parties choose the following addresses as their *domicilia citandi et executandi*:

10.1 Sedibeng : Municipal Buildings  
Corner Leslie and Beaconsfield  
Vereeniging  
1939

 RBW  
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