

INCLUSIONARY SERVICES AGREEMENT

MEMORANDUM OF AGREEMENT ENTERED INTO BY AND BETWEEN

THE LOCAL MUNICIPALITY OF EMFULENI

and

THE LOCAL MUNICIPALITY OF MIDVAAL



MEMORANDUM OF AGREEMENT ENTERED INTO BY AND BETWEEN

THE LOCAL MUNICIPALITY OF EMFULENI (hereinafter referred to as "EMFULENI LM")

herein represented by MR SAMUEL SEQOANJANE SHABALALA in his capacity as Municipal Manager duly authorized thereto by the EMFULENI LM;

and

THE LOCAL MUNICIPALITY OF MIDVAAL (hereinafter referred to as "MIDVAAL LM")

herein represented by THOMAS WILLEM PEETERS
~~MR ALBERTUS STEPHANUS ABRAHAM DE KLERK~~ In his capacity as a
Municipal Manager of the MIDVAAL LM duly authorized thereto.

WHEREAS

Both parties were established in terms of Section 12 (1) read with Section 14(2) of Act 117 of 1998 and bound by the terms and conditions laid down there under as set out in General notice 6765 of 2000 published in the Provincial Gazette Number 141 on 1 October 2000;

WHEREAS

Section 41 of the said notice deals specifically with the succession in law in respect of assets, resources, liabilities, obligation rights and all the administrative and other records of disestablished municipalities which section reads as follows:

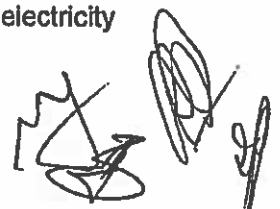
- (1) In terms of section 14(1) of the Municipal Structures Act the new municipalities, as from the effective date, became the successors in law of the disestablished municipalities in

respect of all the assets, resources, liabilities, obligations, rights and all the administrative and other records of a disestablished municipality to the extent that the whole or any portion of the area of the disestablished municipality falls within the boundaries of the district municipal area in accordance with the following rules:

- (a) Assets, resources, liabilities, obligations, rights and administrative and other recordings relating to a specific function and power of a disestablished municipality or the performance of a specific area, are allocated to the new municipality which, in terms of section 84(1) and (2) or 85 of the Municipal Structures Act, is responsible for the performance of the specific function and power in that specific area.
 - (b) Assets, resources, liabilities, obligations, rights and administrative records other than those referred to in sub-clause (a) are allocated to the new municipality in whose area the administrative headquarters responsible for the control of such assets, liabilities, and administrative records, immediately before the effective date, was located.
- (2) A new municipality to whom assets, resources, liabilities obligations, rights or records were allocated in terms of sub-clause (1) may, by agreement with another new municipality within the district municipal area, and must if the MEC directs, transfer or cede any of those assets, resources, liabilities or records to that other new municipality.

WHEREAS

Both parties were desirous to enter into specific agreements in terms of section 45 of the Notice for the purpose of facilitating the continuation of efficient and effective service delivery in their respective areas and subsequent have entered into an agreement for water and sanitation on 25 July 2002 and an agreement for electricity



on 11 May 2004 to deal with the most practical manner of service delivery in respect of such demarcated areas.

WHEREAS

Due to development that has taken place in both Local Municipalities since the signing of the previous agreements the need has arisen to update the mentioned previous Service Agreements and it is practically the best service delivery option to utilize the existing Services Agreement between the parties to service the said areas as provided hereafter.

WHEREAS

It is recorded that the areas mentioned hereafter, services are not provided by the areas' own municipality, due to the relevant networks that exist at the time of the signing of this agreement:

Service: Water

Area	Situated In Municipality	Receive service from Municipality
Risiville/McKay Estates	Midvaal	Emfuleni
Duncanville Extension 3	Midvaal	Emfuleni
Lakeside Estates & Ext 1	Midvaal	Emfuleni

Service: Sewerage

Area	Situated in Municipality	Receive service from Municipality
Risiville/McKay Estates	Midvaal	Emfuleni
Duncanville Extension 3	Midvaal	Emfuleni
Lakeside Estates & Ext 1	Midvaal	Emfuleni
Roshnee	Emfuleni	Midvaal
Rust-ter-Vaal	Emfuleni	Midvaal

Service: Electricity

Area	Situated In Municipality	Receive services from Municipality
Risiville/McKay Estates	Midvaal	Emfuleni
Duncanville Extension 3	Midvaal	Emfuleni
Three Rivers	Emfuleni	Midvaal

1. Water – Risiville/McKay Estates

- 1.1 It is recorded that the supply of water to the Risiville Township and McKay Estates, situated in MIDVAAL areas, has continued uninterrupted through the present water reticulation system with EMFULENI from 1 July 2001. It is recorded that the bulk water consumption to these areas are metered separately. The parties hereby agree that EMFULENI will read bulk meters on a monthly basis and MIDVAAL will on receipt of an Invoice from EMFULENI in this regard, pay electronically into the bank account of EMFULENI within seven days from receipt of the invoice, the full amount. The parties hereto agree that the actual consumption of water to Risiville and McKay Estates will be measured and charged at the Rand Water tariff plus VAT and an administration levy of two and a half percent (2.5%) from 1 July 2010.
- 1.2 The parties agree that EMFULENI would do the monthly bulk meter reading at Risiville and McKay Estates at its cost. MIDVAAL will have the right to verify the meter readings. If necessary, MIDVAAL will at its cost, ensure that the water meters comply with SABS standards.
- 1.3 The tariff indicated in 1.1. above, will except in the instance of any statutory amendments to tariffs, be adjusted on 1 July of each year after consultation between EMFULENI and MIDVAAL. Change in tariff (increases or decreases) will take into consideration tariff increases by Rand Water and the inflation rate.
- 1.4 MIDVAAL will at its own cost read the water meters and bill individual consumers in Risiville and McKay Estates.

1.5 MIDVAAL will at its cost maintain the water network to Risiville and McKay Estates.

2. Sewerage: Risiville

2.1 It is recorded that the sewer effluent from the Risiville Township and McKay Estates, situated in the MIDVAAL area, has continued uninterrupted to be transported to and purified at the Leeukuil Water Care Works situated in the EMFULENI area from 1 July 2010. The average daily flow of sewerage from the Risiville Township and McKay Estates into the EMFULENI system is 1 410 (one thousand four hundred and ten) kilolitres per day at the time of signing of this agreement. It is further recorded that no flow meters exist to measure the actual flow of effluent from Risiville and that EMFULENI will at its cost install and maintain flow meters at the place and terms of specifications mutually agreed upon.

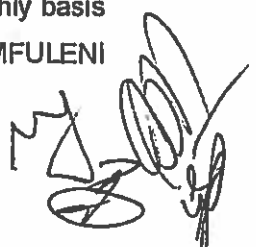
2.2 EMFULENI will bill MIDVAAL for the transportation and treatment of this effluent at the rate of R4.40 per kiloliter excluding VAT. The tariffs indicated will be adjusted on 1 July of each year after consultation between parties. Change in the tariff (increase or decreases) will take into consideration the inflation rate and cost of operation.

2.3 The volume of effluent being discharged into the system of EMFULENI will be verified every six (6) months from the date of signing of this agreement by EMFULENI at the cost of MIDVAAL. Should the effluent vary by more than five percent, the bill to MIDVAAL will reflect the increased or decreased cost and be payable in respect of the following six month period. The stipulation of this clause will lapse once flow meters have been installed by EMFULENI as stated in clause 2.1 above.

2.4 MIDVAAL will maintain the sewer system in the Risiville Township and McKay Estates at its cost.

3. Water: Duncanville Extension 3

3.1 The bulk meters installed by MIDVAAL will be read by Emfuleni on a monthly basis and MIDVAAL will within seven days after receipt of an invoice from EMFULENI

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electronically pay the full amount into the bank account of EMFULENI. The tariff will be equal to the tariff charged by Rand Water plus VAT and an administration levy of 2.5%.

- 3.2 The parties agree that EMFULENI would do the monthly bulk meter reading at Duncanville Extension 3 at its cost. MIDVAAL will have the right to verify the meter readings. If necessary, MIDVAAL will at its cost, ensure that the water meter comply with SABS standards.
- 3.3 The tariff indicated in 3.1 will except in the instance of any statutory amendments to tariffs, be adjusted on 1 July of each year after consultation between EMFULENI and MIDVAAL. Change in tariff (increases or decreases) will take into consideration tariff determinations by Rand Water and the Inflation rate.
- 3.4 MIDVAAL will at its own read the water meter meters and bill individual consumers in Duncanville Extension 3.
- 3.5 MIDVAAL will at its cost maintain the water system in the Duncanville Extension 3 Township.

4. Water: Lakeside Estates

- 4.1 It is recorded that the supply of water to the Lakeside Estates, situated in the MIDVAAL area, has continued uninterrupted through the present water reticulation system of EMFULENI from 1 July 2001. It is further recorded that bulk meters exist to measure the actual flow of water to Lakeside Estates. MIDVAAL will within seven days after receipt of an invoice from EMFULENI electronically pay the full amount into the bank account of EMFULENI. The tariff will be equal to that charged by Rand Water plus VAT and an administration levy of 2.5%.
- 4.2 EMFULENI will read the meters on a monthly basis and MIDVAAL will within seven days after receipt of an invoice from EMFULENI, pay electronically into the bank account of EMFULENI, the full amount.



- 4.3 The parties agree that EMFULENI would do the monthly bulk meter reading at Lakeside Estates at its cost. MIDVAAL will have the right to verify the meter readings and if necessary, MIDVAAL will at its cost ensure that the water meters comply with SABS standards.
- 4.4 The tariff indicated in 4.1 will, except in the instance of any statutory amendments to tariffs, be adjusted on 1 July of each year after consultation between EMFULENI and MIDVAAL. Change in tariff (increases or decreases) will take into consideration tariff determinations by Rand Water and the inflation rate.
- 4.5 MIDVAAL will at its own cost read the water meters and bill individual consumers in Lakeside Estates.
- 4.6 MIDVAAL will at its cost maintain the water system in the Lakeside Estates.

5. Sewer: Duncanville Extension 3

- 5.1 It is recorded that the sewer effluent from the Duncanville Extension 3 Township situated in the MIDVAAL area, has continued uninterruptedly to be transported to and purified at the Leeukuil Water Care Works situated in the EMFULENI area from 1 July 2010. The average daily flow of sewerage from the Duncanville Extension 3 Township into the EMFULENI system is 185 kilolitres per day at the time of the signing of this agreement. It is further recorded that no flow meters exist to measure the actual flow of effluent from Duncanville Ext 3 and that EMFULENI will at its cost install and maintain flow meters at the place and terms of specifications mutually agreed upon.
- 5.2 EMFULENI will bill MIDVAAL for the transportation and treatment of this effluent at the rate of R4.40 per kilolitre excluding VAT. The tariffs indicated will be adjusted on 1 July of each year after consultation between the parties. Change in the tariff (increases or decreases) will take into consideration the inflation rate and cost of operation.
- 5.3 The volume of effluent being discharged into the system of EMFULENI will be verified every six (6) months from the date of signing of this agreement by

EMFULENI at the cost of MIDVAAL. Should the effluent vary by more than five percent, the bill to MIDVAAL will reflect the increased or decreased cost and be payable in respect of the following six month period. The stipulation of this clause will lapse once flow meters have been installed by EMFULENI as stated in clause 5.1 above.

- 5.4 MIDVAAL will maintain the sewer system in the Duncanville Extension 3 Township at its cost. MIDVAAL will have the right to verify the meter readings. After every six month period after commencement of this agreement, the Chief Financial Officers of both parties will verify the meter readings and should be actual consumption vary by more than (5%), the bill to MIDVAAL for the following month will reflect any adjustments agreed upon by the Chief Financial officers. If necessary, MIDVAAL will at its cost, ensure that the meter complies with the SABS standards.

6. Sewer: Roshnee / Rust-ter-Vaal

- 6.1 It is recorded that the sewer effluent from the Roshnee and Rust-ter-Vaal Township situated in the EMFULENI area, has continued uninterruptedly to be transported to and purified at the Meyerton Water Care Works situated in the MIDVAAL area from 1 July 2010. The average daily flow of sewerage from the said Township into the MIDVAAL system is 1 169 kilolitre per day at the time of signing this agreement. It is further recorded that no flow meters exist to measure the actual flow of effluent from Roshnee and Rust-ter-Vaal and that MIDVAAL will at its cost install and maintain flow meters at the place and terms of specifications mutually agreed upon.
- 6.2 MIDVAAL will bill EMFULENI for the transportation and treatment of this effluent at the rate of R4.40 per kilolitre excluding VAT. The tariffs indicated will be adjusted on 1 July of each year after consultation between the parties. Change in the tariff (Increases or decreases) will take into consideration the inflation rate and cost of operation.
- 6.3 The volume of effluent into the system of MIDVAAL will be verified every six (6) months from the date of signing of this agreement by MIDVAAL at the cost of EMFULENI. Should the effluent vary by more than five percent, the bill to EMFULENI will reflected the increased or decreased cost and be payable in respect

of the following six months. The stipulation of this clause will lapse once flow meters have been installed by MIDVAAL as stated in clause 6.1 above.

- 6.4 EMFULENI will maintain the sewer system in the Roshnee/Rust-ter-Vaal Township at its cost. EMFULENI will have the right to verify the meter readings.

7. Sewer: Lakeside Estates

- 7.1 It is recorded that the sewer from the Lakeside Estates situated in the MIDVAAL area, has continued uninterruptedly to be transported to and purified at the Sebokeng Water Care Works situated in the EMFULENI area from 1 July 2010. The average daily flow of sewerage from the Lakeside Estates into the EMFULENI system is 709 kilolitres per day at the time of the signing of this agreement. It is further recorded that no flow meters exist to measure the actual flow of effluent from Lakeside Estates and that EMFULENI will at its cost install and maintain flow meters at the place and terms of specifications mutually agreed upon.
- 7.2 EMFULENI will bill MIDVAAL for the transportation and treatment of this effluent at the rate of R4.40 per kilolitre excluding VAT. The tariffs indicated will be adjusted on 1 July of each year after consultation between the parties. Change in the tariff (increase or decreases) will take into consideration the inflation rate and cost of operation.
- 7.3 The volume of effluent being discharged into the system of EMFULENI will be verified every six (6) months from the date of signing of this agreement by EMFULENI at the cost of MIDVAAL. Should the effluent vary by more than five percent, the bill to MIDVAAL will reflect the increased or decreased cost and be payable in respect of the following six month period. The stipulation of this clause will lapse once flow meters have been installed by EMFULENI as stated in clause 7.1 above.
- 7.4 MIDVAAL will maintain the sewer system in the Lakeside Estates at its cost. MIDVAAL will have the right to verify the meter readings. After every six months period after commencement of this agreement, the Chief Financial Officers of both parties will verify the meter readings and should the actual consumption vary by

more than five percent (5%) of the bill to MIDVAAL for the following month will reflect any adjustments agreed upon by the Chief Financial Officers. If necessary, MIDVAAL will at its cost, ensure that the meters comply with SABS standards.

8. Electricity

The Three Rivers Substation, serving the Three Rivers, Risiville Township and McKay Estates areas, is known as the Three Rivers Substation, and located on Erf 32, Risiville Small Farms, hereinafter indicated as the Substation, is physically located in the MIDVAAL area and it is agreed:

- 8.1 That the Substation cannot be operated by either party for their sole benefit and account as it supplies power to both areas.
- 8.2 That EMFULENI, the current operator, continues to operate and maintain the Substation, without any break in service as it has been doing since 1 July 2001.
- 8.3 That it be recorded that it was determined at 1 July 2010, that 81% of the load taken through the Substation was for EMFULENI consumers whilst the remaining 19% was for MIDVAAL consumers. It is therefore agreed that MIDVAAL will contribute 19% towards the monthly cost of operation and maintaining the Substation and be adjusted where applicable. *// 19% integration*
- 8.4 That any extension of the Substation due to additional power supply required by either party will be negotiated if and when required. The party(ies) requiring additional facilities will bear the cost of the capital expenditure, the additional cost of electricity, distribution thereof, as well as the additional maintenance and operational cost. The pro rata division of the operation and maintenance as referred to in clause 8.3 will be amended in accordance with clause 8.5 after the said extensions have been completed.
- 8.5 That EMFULENI will pay in full the monthly bulk electricity account of ESKOM which includes the Risiville Township, Duncanville Ext 3, Glen Donald and McKay Estates areas. EMFULENI will submit a monthly account to MIDVAAL for all electricity consumed via and metered by the bulk electricity meters commissioned during July

2003. This account will be based on the applicable ESKOM tariffs plus an administrative charge of two and a half percent (2,5%) on the amount payable and taken into account that some EMFULENI consumers are supplied with electricity by MIDVAAL.

- 8.6 That all payments to be made by MIDVAAL to EMFULENI in respect of 8.3 and 8.5 above, be done electronically to EMFULENI within seven working days after MIDVAAL has received a bill from EMFULENI by means of a facsimile or per hand.

9. Payment

It is agreed that if a party to this agreement must be billed, such party will be sent an invoice per hand or telefax on the last working day of a month or as soon as possible thereafter and payment will be made to the other party within seven working days.

10. Interest

It is agreed that if payment in full, in respect of an invoice, as mentioned in Clause 9 is not received in time, interest at prime plus five percent per month will be payable by the defaulting party.

11. Notices

All notices in respect of this agreement should be directed to the Municipal Manager of the parties.

12. Amendment of agreement

The arrangement and procedures in respect of the services mentioned in this agreement will remain in force indefinitely, except where otherwise mentioned in writing and signed by both parties.

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13. Information of developments

Should there be any development of a substantial nature in the areas mentioned in this agreement, which may have an effect on any Municipal Services rendered by the parties hereto or contemplated herein, MIDVAAL OR EMFULENI will inform each other timeously of such development.

14. Disputes

Any disputes emanating from this agreement, shall be referred to the MEC for Local Government and Housing to be dealt with in terms of Section 53 of the Section 12 Notice referred to in the preamble of the Agreement and any applicable legislation.

15. Verification of meter readings

Whenever there is a responsibility in terms of this agreement on a party to verify the readings of a meter, then such party will in writing inform the other party at least seven working days before the readings of a meter is verified, when and where the verifying process will take place.

16. All new infrastructure upgrade or discontinuation of Municipal services by MIDVAAL in areas supplied through an EMFULENI area must be cleared in advance with the Engineering Services Department of EMFULENI and vice versa.

17. The parties hereto, agree that proper arrangements must be made in respect of insurance cover for all assets and that such insurance will include public liability cover in respect of work done by the party or by one party on behalf of the other.

18. Any amendments to this agreement due to practical considerations will be reduced to writing after mutual agreement was reached.

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19. It is hereby agreed that the parties may instead of paying monies over to one another, also set-off debt owed to each other, on condition that it is within the time limits as indicated in the agreement.

20. The parties agree that MIDVAAL or any other person or institution will have no claim against EMFULENI in the event of any situation that prevents EMFULENI from providing Municipal services to MIDVAAL or vice versa.

21. Cession/Assignment

MIDVAAL LM and / or EMFULENI LM shall not, without the prior written consent of the other, cede or assign this agreement.

22. Indemnity

MIDVAAL LM and EMFULENI LM shall and hereby do indemnify each other against any liability, loss, claim or proceedings whatsoever, whether arising in common law or by statute, consequent on personal injuries to or the death of any person arising out of or in the course of or caused by the installation of the services unless due to any act or omission of each others servants or agents.

23. Arbitration

If any dispute or difference shall arise between the MIDVAAL LM and the EMFULENI LM, either during the progress or after completion of the installation of services as to any matter arising there under, such dispute or difference shall be referred for arbitration by an arbitrator appointed by the Chairman of the Engineering Council of South Africa and the award of such arbitrator shall be final and binding on the parties.

The parties agree that prior to commencing arbitration on any dispute or difference they shall first attempt to settle the dispute amicably, which attempts may include mediation, conciliation

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or any other means of resolving the dispute as may be agreed in terms of applicable legislation.

24. Domicilia and notices

The EMFULENI LM chooses *domicilium citandi et executandi* for all purposes of this Agreement at:

CIVIC CENTRE
c/o Kiasle Havenga Street and Frikkie Meyer Blvd
VANDERBIJLPARK

The MIDVAAL LM chooses *domicilium citandi et executandi* for all purposes of this agreement at:

CIVIC CENTRE
c/o Mitcheli and Junius Streets
MEYERTON

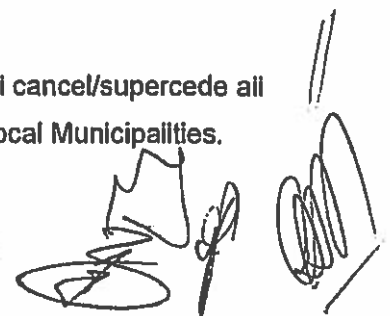
25. MISCELLANEOUS

This agreement correctly reflects the intention of the parties and constitutes the entire agreement between the parties. No variation of, addition to, consensual cancellation or notation of this agreement and waiver by any one party of any of its rights hereunder shall be of any force or effect unless reduced to writing and signed by the parties or their authorized agents.

26. Cost

Each party shall be responsible for payment of their legal cost involved in the drafting of this Agreement.

27. This Services Agreement regulating cross boundary service provision, will cancel/supersede all previous agreements entered into between EMFULENI AND MIDVAAL Local Municipalities.



SIGNED AT VANDERBIJLPARK ON BEHALF OF THE EMFULENI LM ON THIS

15th DAY OF MARCH 20 11

AS WITNESSES:

1. 
2. 


MUNICIPAL MANAGER

SIGNED AT MEYERTON ON BEHALF OF THE MIDVAAL LM ON THIS

17th DAY OF MAY 20 11

AS WITNESSES:

1. 
2. 


Acting MUNICIPAL MANAGER