

# NDLAMBE MUNICIPALITY



## RETURNABLE DOCUMENT

**TENDER 01/2425- NOTICE 156/2024**

### **WAYLEAVES FOR THE INSTALLATION OF FIBRE BROADBAND CABLING AND APPURTENANT RETICULATION**

<b>NAME OF BIDDER</b>	:	.....
<b>BIDDERS CSD NO.</b>	:	.....
<b>CONTACT PERSON</b>	:	.....
<b>TELEPHONE NO.</b>	:	.....
<b>EMAIL ADDRESS</b>	:	.....
<b>PHYSICAL ADDRESS</b>	:	..... ..... .....

# TENDER 01/2425

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## WAYLEAVES FOR THE INSTALLATION OF FIBRE BROADBAND CABLING AND APPURTENANT RETICULATION

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## NDLAMBE LOCAL MUNICIPALITY

TENDER 01/2425

### INVITATION TO SUBMIT PROPOSALS

#### WAYLEAVES FOR THE INSTALLATION OF FIBRE BROADBAND CABLING AND APPURTENANT RETICULATION

Applications are hereby invited from suitably qualified service providers for the granting of wayleaves for the installation of Fibre Broadband Cabling in the area of jurisdiction of Ndlambe Local Municipality. For the purposes of the consideration and adjudication of proposals, the Ndlambe area will be divided as follows:

Area	Package	Towns
East	A	Kleinemonde/Seafiel, Bathurst, Port Alfred
West	B	Alexandria, Cannon Rocks, Boknes, Boesmansriviermond, Kenton-on-Sea, Kasouga

Awards will be made up to a maximum of the two highest scoring service providers in each of the two abovementioned areas. For quality assurance, the highest scoring bidders must meet a minimum score of 70% on the scoring matrix. Full details are set out in the returnable document.

#### SCORING MATRIX

#	Category	Maximum Points Allocation
1	Experience	20
2	Expertise – Project Team	30
3	Installation Areas	50

Prospective service providers are advised that a **NON-COMPULSORY VIRTUAL CLARIFICATION MEETING** will be held on **08 August 2024 at 10h00**. Bidders wishing to join the meeting, should access the following link:

[Join the meeting now](#)

Alternatively, bidders can request the link by sending an e-mail request to the SCM office at [tenders@ndlambe.gov.za](mailto:tenders@ndlambe.gov.za).

#### PROPOSAL CONDITIONS:

- All applications for Wayleaves shall be made on the Ndlambe Local Municipality Wayleave Application form per in "Addendum 2" of the Ndlambe Local Municipality Wayleave Policy Manual (included in the returnable document).
- Applications are to be accompanied by covering letters on the applicant's official letterhead, clearly and comprehensively stating the Wayleave Applicants' reasons for requiring such Wayleave.
- Above ground reticulation proposals will not be considered.**
- Applications must also include:
  - a detailed description of the work to be executed,
  - four sets of technical drawings of their proposed works and maps depicting the precise location of where the proposed services will be installed and their position e.g. height above ground or depth below surface level, and position and extent of existing third-party service infrastructure such as street poles, pylons, manholes, chambers and junction boxes,
  - the timeframe within which the works are to be installed and/or constructed,
  - the location of work to be done, and
  - method statements describing how the works are to be executed.
- Wayleave Applicants must have given notice to other stakeholders which have ownership of installed service infrastructure such as ESKOM, TELKOM, SANRAL, the Eastern Cape Provincial Department of Public Works & Roads, Vodacom, and MTN of their intention to commence works within the vicinity of the area where said services have been installed, and provide evidence that consultation has taken place with these entities with respect to the location of their services, technical conditions and methods for working within the vicinity of said installed services.
- It must further be noted that applicants are expected to liaise with the owners of the existing installed service infrastructure and to incorporate these owners' inputs in the applicants' proposals:
  - Openserve/Telkom
  - Herotel/Igen**These service providers are not required to respond to this Request for Proposals.**
- Third-party stakeholders (owners of existing installed service infrastructure) must revert with their inputs and comments in respect of the technical conditions and methods of working within the vicinity of said installed services within 5 (five) days of having received notification from the Wayleave Applicant, and submitted Wayleave Application must be accompanied by the abovementioned inputs and comments as received from the third-party stakeholders.
- Approval of the Wayleave Application is conditional upon proof of written notification and consent arising from said third party consultations being submitted to Ndlambe Local Municipality.**

**N.B. The returnable document, which includes the approved Ndlambe LM Wayleave Application Form and Policy, abovementioned manual and relevant fees, etc., may be downloaded, free of charge from <https://ndlambe.gov.za/web/returnable-bid-documents/> from 01 August 2024.**

Applications, supporting documents and externally endorsed documents must be placed in a sealed envelopes marked "**NOTICE 156/2024 – WAYLEAVE APPLICATION**" and placed in the tender box at the **Supply Chain Management Unit, 44 Campbell Street, Port Alfred** not later than 12h00 on **15 August 2024**.

***N.B. ENVELOPES NOT MARKED AS INDICATED ABOVE WILL NOT BE OPENED AND SUCH BIDS WILL, AS A RESULT, BE DISQUALIFIED.***

For enquiries contact Mr S Babama – e-mail [sbabama@ndlambe.gov.za](mailto:sbabama@ndlambe.gov.za)

**NOTICE NUMBER: 156/2024  
01 August 2024**

**ADV R DUMEZWENI  
MUNICIPAL MANAGER**

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## Points scoring matrix – Package A - Ndlambe East

#	Category		Sub-points	Maximum Points Allocation
<b>1</b>	<b>Experience</b>			<b>20</b>
	5 points for each project successfully completed - In order to claim points, the bidder should attach signed Appointment letters (by the Accounting Officer) <b>and</b> reference letters signed off by Client.		5 points for each compliant project up to a maximum of 20 points (four projects)	
<b>2</b>	<b>Expertise – Project Team</b>			<b>30</b>
2.1	Experience - 5 points for 2 years' experience (CVs to be attached). 3 compliant team members will score the maximum 15 points		15	
2.2	Qualifications – Project Team - certificates with certified original stamps to be provided			
2.2.1	Certificate in Optic Fibre Installation (COFI-SA)		5	
2.2.2	Certificate in IT Security/Networking		5	
2.2.3	Degree in the built environment or equivalent		5	
<b>3</b>	<b>Installation Areas</b>			<b>40</b>
3.1	Inclusion of all suburbs in the Package area – to be stated in methodology		30	
3.1.1	Kleinemonde/Seafiel	3		
3.1.2	Bathurst - Central	3		
3.1.3	Bathurst – Freestone	3		
3.1.4	Bathurst - Nolutkanyo	3		
3.1.5	Port Alfred – Central	3		
3.1.6	Port Alfred – Thornhill	3		
3.1.7	Port Alfred - Nkwenkwezi	3		
3.1.8	Port Alfred – Nomzamo	3		
3.1.9	Port Alfred – East Bank	3		
3.1.10	Port Alfred – West Bank	3		
3.2	Detailed work plan (clear and unambiguous location coverage plans)		10	
3.3	Time frames (clear implementation plan)		10	
	<b>TOTAL POINTS</b>			<b>100</b>

## Points scoring matrix – Package B - Ndlambe West

#	Category		Sub-points	Maximum Points Allocation
<b>1</b>	<b>Experience</b>			<b>20</b>
	5 points for each project successfully completed - In order to claim points, the bidder should attach signed Appointment letters (by the Accounting Officer) <b>and</b> reference letters signed off by Client.		5 points for each compliant project up to a maximum of 20 points (four projects)	
<b>2</b>	<b>Expertise – Project Team</b>			<b>30</b>
2.1	Experience - 5 points for 2 years' experience (CVs to be attached). 3 compliant team members will score the maximum 15 points		15	
2.2	Qualifications – Project Team - certificates with certified original stamps to be provided			
2.2.1	Certificate in Optic Fibre Installation (COFI-SA)		5	
2.2.2	Certificate in IT Security/Networking		5	
2.2.3	Degree in the built environment or equivalent		5	
<b>3</b>	<b>Installation Areas</b>			<b>40</b>
3.1	Inclusion of all suburbs in the Package area		30	
3.1.1	Alexandria - Central	2		
3.1.2	Alexandria – Wentzel Park	2		
3.1.3	Alexandria - KwaNonqubela	2		
3.1.4	Cannon Rocks	2		
3.1.5	Boknes	2		
3.1.6	Klipfontein	2		
3.1.7	Boesmansriviermond - Central	2		
3.1.8	Boesmansriviermond – Rivers Bend	2		
3.1.9	Boesmansriviermond - Marselle	3		
3.1.10	Kenton-on-Sea – Ekuphumleni	3		
3.1.11	Kenton-on-Sea – Central	2		
3.1.12	Kenton-on-Sea – Merry Hill	2		
3.1.13	Kenton-on-Sea – Kenton Eco Estate	2		
3.1.14	Kasouga	2		
3.2	Detailed work plan (clear and unambiguous location coverage plans)		10	
3.3	Time frames (clear implementation plan)		10	
	<b>TOTAL POINTS</b>			<b>100</b>

# NDLAMBE MUNICIPALITY



## NOTICE 156/2024 - REQUEST FOR PROPOSALS 10/2024

### WAYLEAVES FOR THE INSTALLATION OF FIBRE BROADBAND CABLING AND APPURTENANT RETICULATION

#### DOCUMENTATION REQUIRED TO BE SUBMITTED

#	Description	
1	Ndlambe Local Municipality Wayleave Application	
2	Covering letters on the applicant's official letterhead, stating the applicant's reasons for requiring such Wayleave.	
3	A detailed description of the work to be executed	
4	<b>Four</b> sets of technical drawings of their proposed works and maps depicting the precise location of where the proposed services will be installed and their position e.g. height above ground or depth below surface level, and position and extent of existing third-party service infrastructure such as street poles, pylons, manholes, chambers and junction boxes. <b>Note that no above ground reticulation will be considered.</b>	
5	Points scoring data (refer to the Points Scoring Matrix pages):	
5.1	Experience - signed Appointment letters (by the Accounting Officer) and reference letters signed off by Client.	
5.2	Expertise – Project Team	
5.2.1	Experience - CVs of up to 3 team members with a minimum of 2 years' experience each	
5.2.2	Qualifications - certificates with certified original stamps to be provided:	
5.2.2.1	Certificate in Optic Fibre Installation (COFI-SA)	
5.2.2.2	Certificate in IT Security/Networking	
5.2.2.3	Degree in the built environment or equivalent	
5.3	Methodology	
5.3.1	Detailed work plan (clear and unambiguous location coverage plans)	
5.3.2	Time frames (clear implementation plan)	
5.4	Funding Agreement - Evidence of immediate availability of funding to execute the works to be provided	
6	All forms in the returnable document to be duly completed	
7	If Specific Goals points are claimed:	
7.1	An original or certified copy of B-BBEE certificate or sworn affidavit:	
7.1.1	In the case of an Affidavit, both the Commissioner of Oaths stamp for the Affidavit itself (the "commissioning") AND a "true copy" stamp (which certifies the document as being a true copy of the original) are required i.e. TWO stamps are required.	
7.1.2	In the case of a B-BBEE Certificate, only a "true copy" stamp and signature (which certifies the document as being an accurate copy) is required i.e. ONE stamp is required.	
7.2	Proof of address by means of a municipal water or electricity account, Billing Clearance Certificate or Lease Agreement.	
8	If required by law, audited annual financial statements for the past three years or since the date of establishment if established during the past three years	

# NDLAMBE LOCAL MUNICIPALITY



## WAYLEAVE POLICY

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# 1. DEFINITIONS

- 1.1 “**Approved/Approval**” means granting of permission by the municipality to the Wayleave Applicant to commence with the works on a specified site.
- 1.2 “**Backfilling**” refers to the replacement of the structural layers in the trench or excavation and includes the base, sub-base, selected and subgrade, but exclude the surfacing.
- 1.3 “**Certificate of Completion**” means the document issued by the supervising municipal official or professional engineer as proof that the works have been completed in accordance with the requirements of the approval letter and contract.
- 1.4 “**Completion Notice**” means the document submitted by the Wayleave Permit Holder to the supervising municipal official or supervising engineer when the works have been completed.
- 1.5 “**Constitution**” means the *Constitution of the Republic of South Africa, 1996, as amended*.
- 1.6 “**Contractor**” means a natural or juristic person or partnership appointed by the Wayleave Applicant for carrying out the Works.
- 1.7 “**Emergency Work**” means any work that is urgently required to prevent or end a dangerous situation, to prevent or end an unplanned interruption in the supply of a service, or to avoid any substantial losses.
- 1.8 “**Engineer**” means a person registered as a Professional Engineer/ Technologist in terms of the *Engineering Professions Act, 2000*, appointed and funded by the Wayleave Applicant to supervise the technical aspects of the Works and ensure compliance with the Conditions of Approval of the Wayleave. Presence of such a person is required to control the Works wherever any excavation is involved.
- 1.9 “**Environment**” has the meaning assigned to it in section 1 of the *National Environmental Management Act 107 of 1998*, as amended from time to time.
- 1.10 “**Legislation**” means any applicable law, proclamation, ordinance, act of Parliament or enactment having force of law.
- 1.11 “**Local community**” in relation to the Municipality means that body of persons comprising:
- (a) the residents of the Municipality;
  - (b) the ratepayers of the Municipality;
  - (c) any civic organisations and non-governmental, private sector or labour organisations or bodies which are involved in local affairs within the Municipality; and
  - (d) visitors and other people residing outside of the municipal area who, because of their presence in the municipal area, make use of services or facilities provided by the Municipality.
- 1.12 “**Ndlambe Fibre Operating/Installation Areas**” means;
- 1.12.1 Alexandria - Town and Wentzel Park
  - 1.12.2 Alexandria - KwaNonqubela
  - 1.12.3 Boknes
  - 1.12.4 Cannon Rocks
  - 1.12.3 Bushmans River Mouth and Marselle
  - 1.12.4 Kenton on Sea and Ekuphumleni
  - 1.12.5 Port Alfred Town and Station Hill
  - 1.12.6 Nemato, Nkwenkwezi and Thornhill
  - 1.12.7 Bathurst town and KwaNolukhanyo
  - 1.12.8 Kleinemond/Seafield
  - 1.12.9 Kasouga

- 1.13 “**NLM Wayleave Application Procedure Manual**” means the document forming “Addendum 1” of Ndlambe Local Municipality Wayleave Policy Manual, outlining the procedure and general requirements Service Agencies must comply with before submitting a wayleave application to the Ndlambe Local Municipality (NLM).
- 1.14 “**Municipal Directorate or Unit**” means any Directorate or SubDirectorate that belongs to, or is controlled, by the Municipality.
- 1.15 “**Municipality or NLM**” means the Ndlambe Local Municipality, and includes any political structure, political office bearer, duly authorised agent thereof, or a Wayleave Permit Holder fulfilling a responsibility under this by-law assigned to it in terms of the *Local Government: Municipal Systems Act 2000 (Act 32 of 2000)* or any other law, as the case may be, or any employee thereof acting in connection with a bylaw by virtue of a power vested in the Municipality and delegated, to such political structure, political office bearer, agent or employee.
- 1.16 “**Municipal Manager**” means the head of administration and also the Accounting Officer of the Municipality.
- 1.17 “**Owner**” means:
- (a) the person in whose name the property is registered;
  - (b) in the case where the person in whose name the property is registered, is insolvent or deceased, or is disqualified in terms of any legal action, the person who is responsible for administration or control of the property as curator, trustee, executor, administrator, legal manager, liquidator, usufructuary, servitude holder or any other duly authorised or appointed representative;
  - (c) in the case where the Municipality or Wayleave Permit Holder is unable to establish the identity of such person, the person who is entitled to derive benefit from the property or any buildings thereon;
  - (d) in the case of a lease agreement entered into for a period of 30 (thirty) years or longer, or for the natural life of the lessee or any other person mentioned in the lease, or is renewable from time to time at the will of the lessee indefinitely or for a period of periods which, together with the first period of the lease, amounts to 30 (thirty) years, the lessee or any other person to whom he has ceded his right, title and interest under the lease, or gratuitous successor to the lessee;
  - (e) in relation to:
    - (i) a piece of land delineated on a sectional title plan and which is registered in terms of the *Sectional Title Act 95 of 1986*, without limited it to the developer or body corporate of the common property;
    - (ii) a section as defined in the *Sectional Title Act 95 of 1986*, the person in whose name that section is registered in terms of a “sectional title deed”, including the lawfully appointed representative or agent of such person;
  - (f) any legal entity including but not limited to:
    - (i) a company registered in terms of the *Companies Act 61 of 1973*, a trust *inter vivos*, *trust mortis causa*, a close corporation registered in terms of the *Close Corporations Act 69 of 1984* and any voluntary organisation;
    - (ii) any provincial or national government department, or local authority;
    - (iii) any Municipality or management body established in terms of any legal framework applicable to the Republic of South Africa; and
    - (iv) any embassy or other foreign entity in whose name the property is registered;
  - (g) in relation to property owned by the Municipality and which has been disposed of, but which has not been transferred to the person to whom it has been disposed of, from the date of the disposition concerned, such person; and

- (h) in relation to property owned by or under the control or management of the Municipality while held under a lease or any express or tacit extension thereof or under any other contract or under servitude or right analogous thereto, the person so holding the immovable property.
- 1.18 **“Property”** means:
- (a) immovable property registered in the name of a person/ owner including in the case of a sectional title scheme, a sectional title unit registered in the name of any person/ owner;
  - (b) a right registered against immovable property in the name of a person excluding a mortgage bond registered against the property’
  - (c) any piece of land, the external surface boundaries of which are delineated on:
    - (i) a general plan or diagram registered in terms of the *Land Survey Act 9 of 1927* in or in terms of the *Deeds Registries Act 47 of 1937* or;
    - (ii) a sectional plan registered in terms of the *Sectional Titles Act 95 of 1986*, which is situated within the area of the Municipality;
  - (d) a land tenure right registered in the name of a person or granted to a person in terms of legislation; or
  - (e) public service infrastructure.
- 1.19 **“Public road”** means any road, street or thoroughfare or any other place (whether a thoroughfare or not) which is commonly used by the public or any section thereof or to which the public or any section thereof has a right of access and includes:
- (a) the verge of any such road, street or thoroughfare;
  - (b) any bridge or draft traversed by any such road, street or thoroughfare; and
  - (c) any other work or object forming part of or connected with or belonging to such road, street or thoroughfare.
- 1.20 **“Public Road Reserve”** means the full width of a public road, and includes the verge and the roadway.
- 1.21 **“Reinstatement”** means the replacing of the bituminous surfacing, or paving blocks, in the case of roads, or the paving blocks, paving slabs, bituminous surfacing, or grass, in the case of footways and verges.
- 1.22 **“Routine Maintenance Work”** is defined as all types of work involved in maintaining the services in the public road reserves and does not require excavation, traffic control or reinstatement activities.
- 1.23 **“Security Deposit”** means the returnable bank guarantee issued by the Wayleave Applicant in favour of the Municipality in respect of each Wayleave approval issued, the amount of which will be determined by the Municipality.
- 1.24 **“Service”** means any system for supplying a public need that a Service Agency has on or intends to install within the geographical jurisdiction of the NLM.
- 1.25 **“Service Agency”** means any Municipal Department, public agency or utility that owns a Service within the geographical jurisdiction of the NLM.
- 1.26 **“Service delivery”** is the distribution of basic resources citizens depend on like water, electricity, sanitation infrastructure, land, housing and other infrastructure.
- 1.27 **“Service-Sharing Installation”** means installations of a service which are designed to utilise existing ducting or pipelines without the need for excavations, except minimal excavation/construction at junctions, or terminals.
- 1.28 **“Site”** means the land made available by the Municipality or land owner on, under, over, in, or through which the Works are to be executed or carried out and it includes the land covered by a servitude registered in the name of the Owner.
- 1.29 **“Structures Act”** means the *Local Government: Municipal Structures Act 117 of 1998* and the regulations promulgated in terms thereof.
- 1.30 **“Supervising Municipal Official”** means a person appointed by the Ndlambe Local Municipality to ensure compliance with the Conditions of Approval of the

- Wayleave.
- 1.31 “**Systems Act**” means the *Local Government: Municipal Systems Act 32 of 2000* and the regulations promulgated in terms thereof.
- 1.32 “**Tariff Policy**” means the Tariff Policy of the Municipality adopted in terms of the provisions of section 74(1) of the *Systems Act* as amended from time to time.
- 1.33 “**Tariff Schedule**” means the schedule containing details pertaining to the levels and application of the various fees, charges or tariffs as approved by the Municipality from time to time.
- 1.34 “**Wayleave**” means an agreement between the land owner and the Wayleave Permit Holder pertaining to the installation of services within, or upon, the land, or road reserve.
- 1.35 “**Wayleave Application**” means the natural or juristic person or partnership named as the Applicant in the Wayleave application form and it includes a developer of land on which a servitude is registered and serve(s) installed.
- 1.36 “**Wayleave Administration and Supervision Fees**” means the tariff amount that is payable by the Wayleave Applicant upon submission of a wayleave application form. Which fee is determined by the Municipality and is standardised and non-refundable.
- 1.37 “**Wayleave Permit**” means the signed document/s issued by the Wayleave Management Unit, detailing the work which has been approved and the period during which the work shall be carried out and includes approved drawings/plans and generally Conditions of Approval.
- 1.38 “**Wayleave Permit Holder**” means the person, institution or Service Agency who is in possession of a Wayleave Permit approved by the Wayleave Management Unit.
- 1.39 “**Wayleave Officer**” means the designated members of the Wayleave Management Unit with the sole responsibility to carry out the administrative functions of receiving, verifying and ensuring that wayleave applications conform to the prescribed NLM legal land procedural requirements.
- 1.40 “**Wayleave Management Unit - Technical Directorate**” means the body of three (3) officials established by the Municipality and designated the sole responsibility to carry out the administrative functions of receiving and processing applications for wayleaves, obtaining comments from the various internal and external service agencies, and conveying its recommendations in writing to the Applicant.
- 1.41 “**Works**” means the installation and construction activities designed, supervised and executed in accordance with the Wayleave application and conditions.

## 2. INTRODUCTION

- 2.1 The *Constitution of the Republic of South Africa, 1996 as amended*, mandates local government with the responsibility to provide communities with services in a sustainable manner, and to promote social and economic development, and to further promote the social and economic development of the community and participate in national and provincial development programmes.
- 2.2 The demand for services and infrastructure within our communities whether in the form of fibre optics, GSM or any form of telecoms, FTTH (Fibre to the Home), roads and stormwater pipes, electrical, water and sanitation networks, waste disposal sites and public facilities requires that the Ndlambe Local Municipality (NLM) as the custodian of community infrastructure in its geographical area, implement robust management practices factoring in a sound knowledge of the location, technical characteristics, capacity, utilisation, cost characteristics, risk

- exposure and requirements for the protection of such assets, so as to effectively manage them and make sustainable improvements in service delivery.
- 2.3 The context for developing the Ndlambe Local Municipality (NLM) Wayleave Policy (“the policy”) is to ensure that the future and current services infrastructure representing a considerable financial investment within and upon land falling within the geographical area under the jurisdiction of the Municipality are installed, maintained, rehabilitated and where necessary, replaced without considerable delay, inconvenience, damage, danger and additional costs to the owners of said infrastructure, members of the community and the Municipality.
- 2.4 The purpose of this policy is to:
- 2.4.1 Provide guidance to municipality’s infrastructure authorities on the accommodation of engineering and other related services or utilities within the road reserve and building restriction area;
  - 2.4.2 Provide a framework for service agencies, landowners and the municipality to work together for the public benefit while upholding the right of these service agencies to access municipal land to deploy their infrastructure and services;
  - 2.4.3 To simplify, streamline, co-ordinate and accelerate infrastructure deployment processes to enable the deployment of services to our communities;
  - 2.4.4 To protect and mitigate the risks to infrastructure and services currently installed within the geographical area under the jurisdiction of the NLM.
- 2.5 The principles that underpin the policy are:
- 2.5.1 Infrastructure development is pivotal in advancing socioeconomic development and the attainment of national social and economic developmental goals and objectives;
  - 2.5.2 Service agencies have the right to enter upon municipal land to deploy infrastructure and services, but must exercise these rights respectfully and with due caution;
  - 2.5.3 The deployment of service facilities must be done in an environmentally friendly manner, avoiding duplication of infrastructure wherever possible;
  - 2.5.4 To expedite approvals to access property to deploy service infrastructure and facilities;
  - 2.5.5 Coordination and cooperation between the municipality, service agencies and wayleave applicants.

### **3. WHAT IS A WAYLEAVE?**

A wayleave is an agreement between the landowner and the Wayleave Permit Holder pertaining to the installation of services within, or upon, the land, or road reserve. Wayleaves are generally used to grant access to the land, or road reserve, by the Wayleave Permit Holder to install the service. The wayleave relates more to the actual construction activities than to the eventual conveyancing of services.

## 4. LEGAL FRAMEWORK

The guidelines of this wayleave policy manual have been developed with reference to the *Constitution of the Republic of South Africa, 1996, as amended*, various other Acts and Regulations, as well as the Common Law. The policy covers both public and private services.

### 4.1 The NMLM's right to impose rates and tariffs

- a) Section 229 of the Constitution empowers a municipality to impose rates on property and surcharges on fees for service provided by or on behalf of the municipality, and if authorised by National Legislation, other taxes, levies and duties appropriate to Local Government.
- b) The following sections and chapters of the *Municipal Systems Act 32 of 2000* also empower the NMLM to impose rates and tariffs:
  - i. Section 4(1)(c) empowers the Municipal Council to finance the affairs of the municipality by charging fees for services, and imposing surcharges on fees, rates on property and, to the extent authorised by national legislation, other taxes, levies.
  - ii. Section 74 and, in particular, subsections 2(e), (f) and (g), makes specific provision for the generation of income by the municipality over and above recovering actual costs, and provides for the structuring of a tariff structure as a policy instrument to promote local economic development and the introduction of special tariffs for certain categories of commercial and industries uses.

### 4.2 Ownership and Protection of Services

- (a) According to South African Common Law, once a service has been installed on immovable property, the owner of such immovable property also becomes the owner of the service (through accession). The aforementioned principle, however, may be amended by way of legislation such as the *Electricity Regulation Act 4 of 2006*, which states "Any asset belonging to a licensee that is lawfully constructed, erected, used, placed, installed or affixed to any land or premises not belonging to that licensee, remains the property of that licensee notwithstanding the fact that such an asset may be of a fixed or permanent nature".
- (b) *The Electronic Communications Act 36 of 2005* at section 22 also allows a Wayleave Permit Holder (licensee) enter upon any land, including any street, road, footpath or land reserved for public purposes, any railway, and any waterway of the Republic and b) construct and maintain an electronic communications network or electronic communications facilities upon, under, over, along or across any land, including any street, road, footpath or land reserved for public purposes, any railway and any waterway of the Republic". Section 22(2) directs that in taking such action "due regard must be had to applicable law and the environmental policy of the Republic".
- (c) It is therefore not necessary to protect the said services where same has been installed in the road reserve of a public road, by way of a servitude. The reason being that the installation, protection, maintenance and eventual removal of such services (which are normally dealt with by way of a notarial deed of servitude where such service is to be installed over private land), and are dealt with by way of legislation and such legislation affords the rights and protection that normally form a servitude.
- (d) While the owner of immovable property can grant, or be legally required to grant, a servitude (or wayleave) to a Wayleave Permit Holder, either as a lump sum or as a rental, for the accommodation of the service in the road reserve.

#### 4.3 Servitude

- (a) A servitude is a right of use of land that is registered in favour of a person or body (the Wayleave Permit Holder) which is not the owner of the land. The owner of the land on which a servitude is registered cannot unilaterally terminate the servitude or transfer the land free from the servitude without the consent of the Wayleave Permit Holder.
- (b) Registration of a servitude does not mean that ownership in the service is retained by the Wayleave Permit Holder but only provides a limited right in terms of which the *dominium* (full ownership) of the land is made subject to the creation of a common law right in favour of the Wayleave Permit Holder to use a portion of land for a specific purpose. Upon registration of a servitude, certain subsidiary rights and obligations relevant to the existence of such a servitude are prescribed either by the common law or in terms of an agreement, referred to as a “notarial deed of servitude”. The common law and/or a notarial deed of servitude determine the way in which rights accruing from registration of such a servitude may be exercised, the duty to maintain the servitude area, and financial arrangements relevant to the installation of such a servitude.
- (c) Bulk services are normally accommodated in their own servitudes, but distribution services (utilities) of all types are typically accommodated in road reserves. Public utility organisations such as Telkom, Eskom and others generally register reserves and/or servitudes for their services.

#### 4.4 Responsibility for provision of services

- (a) The *Constitution of the Republic of South Africa, 1996, as amended* mandates local government with the responsibility of ensuring that services are provided to communities in a sustainable manner, and to promote social and economic development. Local government is further directed to promote the social and economic development of the community and participate in national and provincial development programmes.
- (b) The *Municipal Systems Act 32 of 2000* at section 73 provides that the municipality has a general duty to give effect to the provisions of the *Constitution of the Republic of South Africa, 1996, as amended* and give priority to the basic needs of the local community by promoting the development of the local community; and ensuring that all members of the local community have access to at least the minimum level of basic municipal services. The Ndlambe Local Municipality therefore has a duty to mitigate the risk exposure of assets located within its area of jurisdiction and to put in place practicable and reasonable measures for their protection.
- (c) The demand for services and infrastructure within our communities also requires that parastatal and private entities partner with the municipality and coordinate the process of developing infrastructure and the delivery of services in our communities.

#### 4.5 Local Government functional areas of competence

- (a) In terms of section 156(1) read with Parts B of Schedules 4 and 5 of the *Constitution of the Republic of South Africa, 1996, as amended*, municipalities (local authorities) have the following exclusive infrastructure related functional areas of competence in addition to others as per the schedules:
  - Municipal Roads;
  - Traffic and parking;
  - Street lighting;
  - Fencing and fences;

- Stormwater management (built-up areas);
  - Billboards and advertisements;
  - Potable water supply;
  - Domestic waste water and sewerage disposal;
  - Electricity and gas reticulation; and
  - Municipal public works (in respect to own needs).
- (b) Provincial governments have the following exclusive infrastructure related to functional areas of competence:
- Provincial roads and traffic; and
  - Public works and housing.
- (c) National functional areas not defined as the functions of municipalities or provincial governments are the following:
- National roads (regulated by *SANRAL Act 7 of 1998*). The Act contains strict requirements for the installation of services on such roads (section 48);
  - Electricity supply (regulated by the *Electricity Regulation Act 4 of 2006*);
  - Electronic Communications (regulated by the *Electronic Communications Act 36 of 2005*); and
  - Broadband services (regulated by the *Broadband Infraco Act 33 of 2007*).
- 4.6 The right to access municipal land for the installation and maintenance of services
- (a) The *Advertising on Roads and Ribbon Development Act No 21 of 1940* at section 9 states that “Subject to the provisions of section 9A no person shall erect or permit the erection of any structure or any other thing which is attached to the land on which it stands, or construct or lay or permit the construction or laying of anything under or below the surface of any land within a distance of ninety-five metres from the centre line of a building restriction road except in accordance with the permission in writing granted by the controlling authority concerned”.
- (b) Section 9A further states that, “no person shall - ... (b) construct or lay anything beneath the surface of the land; (d) permit the erection of a structure on, or the construction or laying of anything beneath the surface of the land ... except in accordance with a written permission granted by the controlling authority concerned.”. Accordingly, these provisions allow the municipality to control placement of any number of things be it services, structures, rail lines, etc. near municipal road reserves and the adjacent areas.
- 4.6.1 Section 24 of the *Electronic Communications Act 36 of 2005* further allows the Wayleave Permit Holder (licensee) “after providing thirty (30) days prior written notice to the local authority or person owning or responsible for the care and maintenance of any street, road or footpath -
- (a) to construct and maintain in the manner specified in that notice any pipes, tunnels or tubes required for electronic communications network facilities under any such street, road or footpath;
  - (b) alter or remove any pipes, tunnels or tubes required for electronic communications network facilities under any such street, road or footpath and may for such purposes break or open up any street, road or footpath; and
  - (c) alter the position of any pipe, not being a sewer drain or main, for the supply of water, gas or electricity.
- (c) While the policy is trying to facilitate access for fibre installation, it is in the

municipality's interest to ensure longterm availability of its infrastructure to be used for the purpose. It is important to prevent possible stampede and damage to the infrastructure, to achieve this objective, Ndlambe will limit the number of approved service providers to 3 per fibre operation or installation area.

- (d) Furthermore, approved installation, should be aligned to Ndlambe spatial development framework. The document emphasises an integrated development approach, this principle cuts across different types of development. Approval of applications would be subject to a minimum of 33% installation in Townships forming part of the designated installation area.

## **5. WHERE CAN SERVICE AGENCIES CONSTRUCT OR INSTALL SERVICES?**

Control over the manner of installation of services on municipal land falls within the ambit of municipal planning, which, in terms of the Constitution is a municipal competency. The NLM discourages the installation of overhead services infrastructure, with the exception of electrical related service infrastructure only. The installation of overhead fibre optic infrastructure is specifically prohibited. Road reserves are generally suitable to accommodate services that are provided in the form of pipes or cables, either underground, or overhead, however, structures that are not in the form of pipes or cables must be very small (less than 0.5m wide) and capable of installation directly adjacent to the road reserve boundary. Pedestrian sidewalks and pavements are suitable for accommodating underground services, for example, stormwater, water sanitation, electricity and communication cables.

Road reserves and pedestrian sidewalks, however, are not suitable for accommodating larger structures whether above or below ground, said structures must be located outside the road reserve.

- 5.1 There are several benefits associated with the accommodation of services in road reserves. These include the following:
  - 5.1.1 Each property, or asset, must be accessible by a road and it is therefore logical that road reserves should as far as possible accommodate services to properties. The cost of providing services would be very high if each service must be placed in an exclusive reserve; and
  - 5.1.2 The road reserve also has the advantage that a road is available that can provide easy access to the installed services for maintenance and operational purposes. A further aspect is that road reserves could create significant obstacles if services had to be located outside them. It is therefore essential that the majority of services are accommodated in road reserves.
- 5.2 There are however, several issues which such accommodation of services in the road reserves must take into account, including the following:
  - 5.2.1 Traffic flow can be interrupted and road safety can be affected when services are installed or maintained;
  - 5.2.2 The road surface and pavement structure may be damaged during installation or maintenance of services;
  - 5.2.3 The services, such as poles for the support of overhead cables, can create obstacles within the road reserve and create a potential road safety hazard;
  - 5.2.4 Spillage as a result of the failure or breakage of structures or insufficient capacity of services can create problems in the road reserve and can cause damage to the road pavement and surface;

5.2.5 The width of the road reserve may have to be increased in order to accommodate the services; and

5.2.6 Relocation of services can be a significant cost when roads are upgraded or diverted.

### 5.3 Typical accommodation of services in road reserves

#	Service	Type	Typical Accommodation
5.3.1	<b>Stormwater</b>		Generally underground in urban areas, surface in rural areas. Within road reserve
5.3.2	<b>Watercourse, rivers, dams, irrigation pipes</b>		Not in road reserve
5.3.3	<b>Water supply:</b>		
5.3.3.1		Potable bulk (municipality or Wayleave Permit Holder)	Not normally in road reserve
5.3.3.2		Potable distribution (municipality)	Underground, adjacent or near to low side of road reserve. 0.7m wide, 1.0m deep
5.3.3.3		Fire hydrant	Maximum 1,5m from reserve boundary (low side)
5.3.4	<b>Sewerage (waste water):</b>		
5.3.4.1		Bulk (municipality)	Not normally in road reserve
5.3.4.2		Distribution (municipality)	On low or high side, adjacent or near to road reserve boundary. 1.0m wide, minimum 1.5m, preferably 3.5m deep
5.3.5	<b>Electricity:</b>		
5.3.5.1		High voltage (>22kV) (Eskom)	Generally overhead but sometimes underground in oil cooled pipelines. Outside road reserve. 7.5m minimum vertical
5.3.5.2		Low voltage urban (>22kV)	Underground or overhead in road reserve
5.3.5.3		Low voltage rural (<22kV)	Generally overhead outside road reserve
5.3.5.4		Distribution (municipal)	Generally underground, adjacent or near to the high side boundary within the road reserve, or overhead in same location. 1.0m wide
5.3.6	<b>Telephone and telecommunications:</b>		
5.3.6.1		Rural	Overhead within the road reserve, adjacent or near to the boundary. Within a sleeve at least 1.0m deep if underground with warning tape 0.5m deep Poles to be outside road reserve when crossing the road, with cables minimum 6.5m clearance (7.5m for super load routes)
5.3.6.2		Urban	Underground, adjacent or near to the low side of road reserve boundary.
5.3.7	<b>Gas or Steam</b>		Underground pipe within or outside road reserve
5.3.8	<b>Oil or fuel</b>		Normally outside road reserve

## 5.4 Types of work in the Public Road Reserve

- 5.4.1 Work in the public road reserves includes the digging of trenches, tunnelling, erection of signboards, erection of structures, street shaping, planting of trees in the public road reserves and any other work that may affect motorists, cyclists, pedestrians, the road, footways, kerbing, traffic signs, traffic signals, street lighting, underground or overhead services or any other structure or service that is contained within the public road reserves.
- 5.4.2 The types of work that require approval from the relevant Service Agencies before a Wayleave is granted are deemed to constitute the provision of a new service and will be conducted according to the procedures in NLM, Wayleave Application Procedures and Conditions Manual. In general, such work refers to the positioning of a new service, excavation in the public road reserves, traffic control and reinstatement of the roadway and pavements. Examples include *inter alia*:
- 5.4.3 Work relating to the installation or maintenance of underground or overhead services by Council's Service Agencies like Roads and Transportation, Water and Sanitation, Electricity, Land and Environmental Planning and City Planning.
- 5.4.4 Work relating to the installation or maintenance of underground or overhead services done by non-Council Service Agencies such as telecommunication, data cables, electricity, gas, oil and regional water supply.
- 5.4.5 The erection of structures that require approved building plans in terms of the *National Building Regulations and Building Standards Act 103 Of 1997*.
- 5.4.6 The erection of advertising signs and structures that require approval in terms of the relevant by-laws.
- 5.4.7 Works in the public road reserves, such as construction of new roads, road widening or accesses to developments, paving, bollards, garden walls, etc. undertaken by developers or private property owners.
- 5.4.8 The installation of new connection points for municipal services, such as water, sewers, electricity and stormwater drainage from developments.
- 5.4.9 The types of work for which prior approval from Service Agencies cannot be obtained due to the nature of the work is deemed Emergency Work and must be undertaken according to the procedures set out in NLM Wayleave Application Procedures and Manual as constituted in "Addendum 1" of the Ndlambe Local Municipality Wayleave Policy Manual.
- 5.4.10 The types of work that do not include any construction, excavation, traffic control or reinstatement work are deemed routine maintenance work and permission for conducting such works must be sought from the office of the Municipal Manger - Wayleave Management Unit who will then consult with the municipal Wayleave Officers.

## 6. GENERAL REQUIREMENTS IN RESPECT OF THE WORKS

- 6.1 No wayleave applicant, contractor, or their agents, may commence work within the geographical area falling under the jurisdiction of the municipality without having submitted a wayleave application and having received approval in accordance with the requirements as outlined in the municipality's Wayleave Application and

- Procedures and Conditions Manual.
- 6.2 Control over the manner of installation of services on municipal land falls within the ambit of municipal planning, any installation of services on municipal land is subject to the applicable national and provincial legislation, municipal spatial planning and land use management policies and by-laws, together with the applicable environmental policies and by-laws.
- 6.3 Wayleave Applicants must prior to or at the time of submitting their wayleave applications, engage in consultations with other stakeholders who have ownership of installed service infrastructure e.g. **ESKOM, TELKOM, SANRAL, the Eastern Cape Provincial Department of Public Works & Roads (in respect of provincial roads and other amenities), Vodacom, MTN, and Sasol**, and have given them notification of their intention to commence works within the vicinity of the area where said services have been installed.
- 6.4 Third-party stakeholders (owners of existing installed service infrastructure) must revert with their inputs and comments in respect of the technical conditions and methods of working within the vicinity of said installed services within 5 (five) days of having received notification from the Wayleave Applicant.
- 6.5 The submitted Wayleave Application must be accompanied by the abovementioned inputs and comments as received from the third-part stakeholders,
- 6.6 Approval of the Wayleave Application is conditional upon proof of written notification and consent arising from said third party consultations being submitted to the NLM.
- 6.7 Applicants are required to submit four (4) sets of technical drawings of their proposed works with a depiction and description of their position i.e. height above ground or depth below surface leave. The technical drawings must be accompanied by a map or Orthophoto depicting the precise location of where the proposed services will be installed and the position and extent of existing third-party service infrastructure such as street poles, pylons, manholes, chambers and junction boxes.
- 6.8 The applicant shall at his own cost, where as-built drawings are not available, provide Ground Penetrating Radar (GPR) scan images depicting depth and position of metallic and non-metallic underground services and associated piping and utilities.
- 6.9 Consent given by the NLM to wayleave holders to commence with the works shall lapse, if the described works have not been executed within a period of three (3) months from date of authorisation, unless the Wayleave Permit Holder has submitted a written request for extension of time not less than 30 days before the expiry of the three- month validity period.

## **7. WORKS INSTALLATION REQUIREMENTS**

- 7.1 Commencement of works by Wayleave Permit Holders constitutes an undertaking by them that they fully understand all wayleave specific general and special conditions.
- 7.2 The municipality reserves the right to inspect the works during such periods as may be necessary to ascertain compliance with, and to require correction of deviations from any agreed terms and conditions of the wayleave permit.
- 7.3 The municipality may assign a municipal official or engineer to inspect the works. Such inspection shall in no way relieve the service agency of any duty of responsibility nor shall such inspection absolve the service owner from any liability for loss, damage, or injury to persons or property.
- 7.4 The assigned municipal official, or engineer, shall meet with the successful wayleave applicants' engineer and site supervisory team on site, to review the

- workplans, wayleave general and special conditions and work method procedures.
- 7.5 A Service-Sharing Installation approach shall be encouraged, whereby a single trench approach is supported whenever it is technically feasible. An obligation should be put in place that service agencies are to include excess capacity in their deployment (especially at road crossings) and to lease said spare capacity to other licenses at reasonable rates.
  - 7.6 The NLM prefers the open trenching excavation method as against thrust boring, specifically in urban environs and protected precincts. Where thrust boring cannot be avoided it must be performed in a controlled manner as per approved work method statement as submitted to the municipality, and under the supervision of a designated municipal official, or engineer.
  - 7.7 Excavation works requiring road crossing must be designed and supervised by a professionally registered engineer in compliance with nationally accepted COTO guidelines and specifications. The municipality will also designate a municipal official or engineer to monitor and where necessary, supervise the execution of said road crossing works.
  - 7.8 Where the municipality determines that a Wayleave Permit Holder installed infrastructure and/or equipment (or part thereof) must be relocated for whatever reason, said relocation cost shall be borne by the Wayleave Permit Holder at no cost to the municipality.

## **8. ONSITE SAFETY REQUIREMENTS**

- 8.1 The execution of the works requires the Wayleave Permit Holder to comply with all safety regulations, in particular provisions of the *Occupational Health and Safety Act No 85 of 1993* (General Safety Regulations Section 13) regarding demolition and excavation works.
- 8.2 The Wayleave Permit Holder shall in writing, designate an employee with the duty of supervising the performance of the works in terms of Regulation Section 11 of the *Occupational Health and Safety Act No 85 of 1993*.
- 8.3 The Wayleave Permit, design and technical drawings, maps, work method statements and health and safety file must at all times be kept on site and be available for reference and inspection while the works are in progress.
- 8.4 During the initial installation or construction of the facilities or during their repair, removal, relocation, maintenance or any other miscellaneous operations, all necessary barricades, suitable and sufficient lights, danger signals, signs and other traffic control devices shall be erected and maintained and all necessary precautions for the protection of the works and safety of the public shall be taken. This work shall be carried out in consultation with and to the satisfaction of the supervising municipal official or supervising municipal professional engineer.
- 8.5 Work shall be planned so that closure of lanes, intersecting roads and accesses is kept to a minimum. At no time shall permission be granted for the road to be closed entirely. All traffic control and safety devices used for the protection of work areas shall conform to the national standard specifications for road maintenance and working in the road reserve.

## 9. BACKFILLING AND REINSTATEMENT

- 9.1 The Wayleave Permit Holder may not leave the site unattended for more than five (5) calendar days without permanently reinstating the site.
- 9.2 The designated supervising municipal official, or professional engineer where required, may direct that a specialist third party contractor be used to carry out backfilling or reinstatement works subject to special work procedure methods and care, this is to ensure that minimum damage is inflicted upon areas pre-designated by the municipality as protected precincts.
- 9.3 Backfilling, however, must in all cases be done by the Wayleave Permit Holder in accordance with the specifications as for example, set out in clause 9.10 below.
- 9.4 Adequate preventative measures must be taken to ensure that no water (e.g. due to rain) flows into the open trenches since this will result in the weakening of the structural layers of the road. Any water that is present in the trenches must be pumped out before backfilling.
- 9.5 Water must be pumped into the stormwater system and not into sewer manholes. Any material that has become wet must be removed from the bottom of the trench before backfilling.
- 9.6 The Wayleave Permit Holder must prevent foreign materials from entering the drains and ensure that silting does not occur either from pumping operations or as a result of rain. If any silting or other contamination does occur, the Wayleave Permit Holder must clean the drains or request the supervising municipal official or engineer to do so at cost to be charged to the permit holder.
- 9.7 Reinstatement works will be done by the municipality's Roads and Stormwater Division in accordance with specified technical specifications which are informed by national technical recommendations and guidelines for various classes of roadways. Where the municipality grants written permission to the permit holder to execute reinstatement works, then the reinstatement specification must also be approved in advance by the municipality's Wayleave Management Unit.
- 9.8 Permanent Backfilling and Reinstatement done by the Wayleave Permit Holder will be subject to a defects-guarantee period of twelve (12) months from date of completion of the works. If permanent reinstatement is done by the municipality's roads Infrastructure Unit the Wayleave Permit Holder will then be charged for the permanent Reinstatement at the applicable rates defined by the NLM's Wayleave officers.
- 9.9 The municipality's reinstatement specifications for roads, pavements and footpaths:
- a) Pedestrian Walkways
    - a1) Backfill - *in situ* material from trench excavation placed in 150mm thickness or sand compacted at 100% or G9 if imported;
    - a2) 100mm G5 over approved backfill; 25mm sand under approved pavers or 25mm continuously graded premix.
  - b) Carriageway Crossings
    - b1) Backfill - *in situ* material from trench excavation, min G9 placed in 150mm thickness or sand compacted at 100% or G7 if imported.
    - b2) Light duty crossing 100mm G5 over approved backfill, 25mm sand under approved pavers, or 30mm continuously graded premix.
    - b3) Heavy duty crossings: 150mm G5, 25mm sand under approved pavers, or 30mm continuously graded premix.
    - b4) Extra Heavy-duty crossings require 200mm, G2 base, placed in two

layers with thicknesses of 100mm each, 25mm sand under approved pavers, or 50mm premix.

c) Roadways

General:

- c1) Joints to be sealed with Via Seal and mixed in with fine sand;
- c2) Wearing course to overlap underlying layer by 40mm on each side;
- c3) Base course to overlap underlying layer by 150mm on each side.

Layer works for road crossings for other roads (Class 5);

c4) Backfill - min G9 material from trench excavation placed in 150mm thickness or 4 sand compacted at 100%;

c5) 1 No 150mm G7 layer;

c6) 1 No 150mm thick G5 layer;

c7) 1 No 150mm thick G3 Base Course layer, G3 material with a 26.5mm maximum aggregate size, compacted to 98% Mod AASHTO maximum density;

c8) 30mm continuously graded asphalt wearing course;

d) Layer works for main roads and carrying heavy traffic (Class 3, 4 and Heavy Vehicle route);

d1) Backfill to be stabilised material, G9 from trench excavation (G7 if imported), placed in 150mm thickness and compacted to minimum of 93% of modified AASHTO maximum density (or 100% compaction for sand) (backfill to be stabilised with 2% cement unless sand);

d2) 1 No G7 layer 150mm thick stabilised with 2% cement;

d3) 2 No G4 layer 150mm thick each;

1 No G2 Base Course layer 150mm thick, G2 material with 26.5mm maximum aggregate size, compacted to 98% Mod AASHTO maximum density;

d4) 40mm continuously graded medium asphalt wearing course.

## 10. GIS SERVICES AND SERVITUDE DATABASE

10.1 It is of utmost importance that the municipality obtains licenses and pays subscriptions for a Graphical Information Systems (GIS) database showing the precise location of all installed services and servitudes. Upon completion of the works, Wayleave Permit Holders must submit as-built drawings to the designated municipal supervising professional engineer in the required format, for approval by the Wayleave Management Unit.

10.2 The positions of all servitudes must be determined by a qualified land surveyor. The as-built drawings will then be used to populate and update the in-house GIS Services and Servitude Database. The submission of as-built drawings is a precondition to the issuing of a NLM issued Certificate of Completion.

## 11. COMPLETION NOTICE AND CERTIFICATE OF COMPLETION

11.1 On completion of the work, the Wayleave Permit Holder must fill in the Completion Notice and submit it to the municipal Wayleave Officer within two (2) working days. The supervising municipal official or engineer will then set up a site meeting with the Wayleave Permit Holder to conduct an onsite inspection and will issue a Certificate of Completion if all requirements have been met.

11.2 The 12-month guarantee period for permanent Reinstatements by the Wayleave Permit Holder, or the two (2)-week maintenance period for temporary Reinstatements by the Wayleave Permit Holder, will then commence.

11.3 Completion means that all construction and installation work has been executed and that all materials, equipment and rubble have been removed and the site is

- completely cleared and cleaned and that either the permanent, or temporary reinstatement, as applicable, has been done by the Wayleave Permit Holder.
- 11.4 Completion also requires that all applicable documentation and as- builds as specified on the Wayleave form be handed to the supervising municipal official or engineer for recording in the GIS Services and Servitude Database.
- 11.5 If the work involves more than one street link (street block) then a Completion Notice must be submitted after completion of each segment of the work.

## **12. EMERGENCY REPAIR WORK TO DAMAGED INSTALLED SERVICES AND INFRASTRUCTURE**

- 12.1 All incidents on site requiring works to prevent, or end a dangerous situation, or to prevent, or end an unplanned interruption in the supply of a service, or to avoid any substantial losses, must immediately be reported to the designated supervising municipal official, or engineer, the municipal service unit responsible for the affected service and the municipal Emergency and Disaster Management Sub-directorate.
- 12.2 The Wayleave Permit Holder must ensure that the telephone and cell phone contact details of relevant persons and local medical and municipal emergency services are readily available to workers at all times and are also updated in the onsite Occupational Health & Safety File.
- 12.3 Containment and remedial works must be executed in accordance with all procedures, specifications and instructions of the supervising municipal official or engineer, officials of the municipal service unit responsible for the affected service and/or the municipal fire and rescue services.
- 12.4 Where an instruction has been issued for the cessation of works, notice of resumption of all site activities will be granted by the supervising municipal official or engineer after a determination that all necessary Emergency Works have been completed.
- 12.5 The responsibility remains with the Service Agency to ensure that their technical drawings and as-built drawings are updated according to the alterations made during the Emergency Work.
- 12.6 The Wayleave Permit Holder shall be responsible for any costs incurred by the municipality arising from the reinstatement of disrupted or damaged municipal services or repairs thereto, including any costs related to the reinstatement of disrupted or damaged installations belonging to other service agencies.
- 12.7 A post emergency situation report must be completed and signed by the Wayleave Permit Holder together with the designated supervising municipal official or engineer before submission to the designated municipal Wayleave Officer.
- 12.8 All emergency related works must be done in accordance with all procedures and specifications applicable to the type of work as determined by the municipality.

## **13. WAYLEAVE COSTS: ADMINISTRATION AND SUPERVISION FEES**

- 13.1 The Administration and Supervision Fees are standardised non- refundable upfront payments, the value of which is set-out in a tariff schedule as determined and compiled by the Municipal Council on the recommendation of the NLM Budget and Treasury Directorate in consultation and the Wayleave Officers and Wayleave Management Unit.
- 13.2 The Administration and Supervision Fees also cover the municipality's compensation for use and occupation to its land, services offered by the Municipal Wayleave Officers and Wayleave Management Unit to process the wayleave

application and to administer the process upon approval, and to cover the costs of the municipal official or engineer designated to inspect and where necessary supervise the execution of the works.

13.3 The categories of Administration and Supervision Fees payable to the municipality are as per table below:

	<b>Service rendered</b>	<b>Unit</b>	<b>Remarks</b>
1	Administration fee for a miscellaneous permit to use the road reserve for a period of one month or less other than to install an underground service	per permit / event / incident	For the temporary use of the road reserve including for the placement or storage of an item such as a chemical toilet, container, ladder, scaffolding, mobile crane, or materials; pumping of concrete; loading or offloading, or the excavation of a trial hole. The permit will state the time limit. The fee is payable in advance.
2	Administration fee for a wayleave or permit to use the road reserve to install an underground service	per permit / event / incident	For the use of the road reserve to install a pipe, tunnel, cable or duct for water, electricity, communication or other service. The fee is payable in advance.
3	Supervision fee for a wayleave or permit to install an underground service	per permit / event / incident	Includes the costs of supervising the installation and rehabilitation. The fee is payable in advance.
4	Unauthorised commencement of use of the road reserve	per permit / event / incident	For the commencement of use of the road reserve or commencement of installation of an underground service before the municipality issues a permit or wayleave. Includes 100% surcharge. The surcharge applies regardless of whether the municipality later issues a permit or wayleave.
5	Special event / street party / film shoot permit	per permit / event / incident	For special events/street parties/film shoots to Economic & Social Development, Film & Events Office.
6	Permit Fee (Misc permits)	per permit	For the temporary placement of toilets (chemical), containers, ladders, loading, offloading, concrete pumping, mobile cranes, excavation of trial holes in footways and verges, materials storage, scaffolding, containers and tower cranes on short term duration (< 1 month). Fee payable in advance.
7	Application fee for the utilisation of roads, footways or road verges for periods < 1 month	per application	The application fee is payable in advance.

## 14. WAYLEAVE COSTS: REFUNDABLE SECURITY BANK GUARANTEE

14.1 Upon approval of the Wayleave Application, the Wayleave Permit will be required to issue security in the form of a bank guarantee in favour of the NLM, the amount of which will be determined based on the following:

- The nature of the work (e.g. the manner of the installation work);
- The impact of the work proposed (i.e. taking into account the nature and value of the surfaces, or land area affected); and
- the extent of the surfaces or land area affected, taking into account the length of the trench (per m<sup>2</sup>), the situation of the trench and the nature of the surface.

No security will be payable or required for work done by Internal Municipal Directorates themselves.

- 14.2 The municipality will hold this security for a period of twelve (12) months making up the defects liability period. The municipality reserves the right to use this security bank guarantee to recover any costs it incurs as a result of defective, substandard or non-compliant works by the Wayleave Permit Holder.
- 14.3 The municipality reserves its right to recover any costs actually incurred for remedial or rehabilitation work that it must perform as a result of defective, substandard or non-compliant work by a Wayleave Permit Holder, irrespective of whether a security guarantee is deemed released and restored to the issuer.
- 14.4 The municipality may upon further inspection and satisfaction that there are no defects arising consequent to the installation of services, or that applicant has made good such defects in the road reserve, restatement of the road surface, pavement layers, footpaths etc. release and restore the security guarantee to the applicant.
- 14.5 It is an express condition of this approval that the Wayleave Permit Holder indemnifies and holds the municipality harmless against any claims, demands, or losses incurred as a result of any work performed in terms of the application form and under any Wayleave approval.
- 14.6 It is the responsibility of the Wayleave Permit Holder to ensure that any of its contractors or agents engaged in the implementation of the work is in possession of valid and sufficient public liability insurance cover.

## **15. DISPUTE RESOLUTION**

All disputes, claims, controversies, or disagreements of whatever nature arising out of, or in connection with, this policy, including any question regarding its existence, validity, interpretation, termination or enforceability, shall be resolved in accordance with the laws of South Africa.

## **16. ADDENDA**

- 16.1 ADDENDUM 1 - Wayleave Application Procedures and Conditions Manual
- 16.2 ADDENDUM 2 - Wayleave Application Form
- 16.3 ADDENDUM 3 - Wayleave Application Result Letter
- 16.4 ADDENDUM 4 - Tariffs and Fees

# ADDENDUM 1:

## Wayleave Application Procedures and Conditions Manual

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## 1. DEFINITIONS

- 1.1 “ **Approved/Approval**” means granting of permission by the municipality to the Wayleave Applicant to commence with the works on a specified site.
- 1.2 “ **Contractor**” means a natural or juristic person, or partnership, appointed by the Wayleave Applicant for carrying out the works.
- 1.3 “ **Emergency work**” means any work that is urgently required to prevent, or end a dangerous situation, to prevent, or end, an unplanned interruption in the supply of a service, or to avoid any substantial losses.
- 1.4 “ **Legislation**” means any applicable law, municipal by-law, proclamation, ordinance, act of Parliament or enactment having force of law.
- 1.5 “ **Municipal Directorate or Unit**” means any Directorate or sub-Directorate that belongs to or is controlled by the municipality.
- 1.6 “ **Municipality or NLM**” means the Ndlambe Local Municipality, and includes any political structure, political office bearer, duly authorised agent thereof, or a Wayleave Permit Holder fulfilling a responsibility under this by-law assigned to it in terms of the *Local Government: Municipal Systems Act 2000 (Act 32 of 2000)* or any other law, as the case may be, or any employee thereof acting in connection with a by-law by virtue of a power vested in the municipality and delegated, to such political structure, political office bearer, agent or employee.

- 1.7 “ **Service**” means any system for supplying a public need that a Service Agency has on, or intends, to install within the geographical jurisdiction of the NLM.
- 1.8 “ **Site**” means the land made available by the municipality or land owner on, under, over, in, or through which the works are to be executed or carried out and it includes the land covered by a servitude registered in the name of the owner.
- 1.9 “ **Security Deposit**” means the returnable bank guarantee issued by the Wayleave Applicant in favour of the municipality in respect of each Wayleave approval issued, the amount of which will be determined by the municipality.
- 1.10 “ **Service Agency**” means any municipal department, public agency or utility that has a service within the geographical jurisdiction of the NLM.
- 1.11 “ **Supervising Municipal Official**” means a person appointed by the Ndlambe Local Municipality to ensure compliance with the Conditions of Approval of the Wayleave. The presence of such a person is required to control the works wherever any excavation is involved.
- 1.12 “ **Wayleave**” means an agreement between the landowner and the Wayleave Permit Holder pertaining to the installation of services within or upon the land or road reserve.

**1.13 “ Wayleave Applicant”** means the natural or juristic person or partnership named as the Applicant in the Wayleave application form and it includes a developer of land on which a servitude is registered and service(s) installed.

**1.14 “ Wayleave Administration and Supervision Fees”** means standardised and non-refundable tariff amounts as determined by the municipality, that are payable by the Wayleave Applicant upon submission of a Wayleave application form.

**1.15 “ Wayleave Permit”** means the signed document/s issued by the Wayleave Management Unit, detailing the work which has been approved and the period during which the work shall be carried out, and includes approved drawings/plans and Conditions of Approval.

**1.16 “ Wayleave Officer”** means the designated members of the Wayleave Management Unit with the sole responsibility to carry out the administrative functions of receiving and verifying and ensuring that Wayleave applications conform to the prescribed municipal legal and procedural requirements, checking whether Wayleave Applicants have consulted with the various internal departments and external service agencies and to provide record-keeping of each Wayleave application and installation.

**1.17 “ Wayleave Management Unit - Technical Directorate”** means the person/official/institutional body established by the municipality with the sole responsibility to carry out the administrative functions of receiving and processing applications for Wayleaves, obtaining comments from the various internal and external service agencies,

and conveying this decision in writing to the applicant, namely to approve with conditions, or reject with reasons, any application.

- 1.18 “**Works**” mean the installation and construction activities designed, supervised and executed in accordance with the Wayleave application and conditions.

## 2. INTRODUCTION

- 2.1 The development of a municipal Wayleave application, approval, implementation and monitoring process is an important management instrument in regulating legislative or private access and entry on any municipal or private land for the purposes of constructing, installing and maintaining public and private infrastructure and for the creation of rights of way for such works.

*A wayleave may be defined as a permission granted by a landowner whether public or private, to a contractor to work at a specified time in a specified area, generally in exchange for payment and typically for purposes such as the erection or installation of infrastructure.*

- 2.2 Through the granting of a Wayleave certificate or approval, the municipality is able to control the installation of services, specify installation and protection requirements for installed services, and verify that the service designs meet the engineering and other standards as prescribed nationally and by the municipality.

2.3 The structure responsible for the co-ordination of these permissions within the municipality is the Wayleave Management Unit through its service installation and construction co-ordination role, the minimisation of collateral damage due to new installations or construction activities.

### 3. APPLICATION FOR A WAYLEAVE

3.1 Wayleave approvals and the resulting agreements are required for the installation or construction of services such as GSM or any form of telecoms, FTTH (Fibre To The Home), roads and stormwater, pipes, electrical (electrical cables and overhead power lines), water and sanitation networks, waste disposal sites and public facilities within the NLM geographical area.

3.2 The aforementioned services may be classed broadly into the following categories: e.g. underground services or above-ground services; as well as according to ownership: e.g. whether by a private or juristic person (or company) or public utility organisation such as **ESKOM, TELKOM** etc.

STEP 1: Submission of Wayleave Application to Wayleave Management Unit - Technical Directorate for Authorisation

Step 1.1 No Wayleave Permit Holder, contractor or their agents may commence work within the geographical area falling under the municipality's jurisdiction without having submitted a Wayleave application and receiving municipal approval of same.

Step 1.2 All applications for Wayleaves shall be made in the NLM Wayleave Application Form as shown in "**Addendum 2**" of the Ndlambe Local Municipality Wayleave Policy Manual accompanied by a covering letter on the applicant's official letterhead, clearly and comprehensively stating the Wayleave Applicants' reasons for requiring the Wayleave.

The Wayleave Application must include a detailed description of the work to be executed, the timeframe within which the works are to be installed and/or constructed, the location of work to be done and method statements describing how the works are to be executed.

Step 1.3 The Wayleave Application together with all supporting documentation must be directed to the Wayleave Management Unit – Technical Directorate, a failure to submit all information requested will delay the process of considering the application.

Step 1.4 Wayleave Applicants must have given notice to other stakeholders which have ownership of installed service infrastructure such as **ESKOM, TELKOM, SANRAL, the**

**Eastern Cape Provincial Department of Public Works & Roads, Vodacom, and MTN** of their intention to commence works within the vicinity of the area where said services have been installed, and adduce proof that consultation has taken place with these entities with respect to the location of their services, technical conditions and methods for working within the vicinity of said installed services.

- Step 1.5 Third-party stakeholders (owners of existing installed service infrastructure) must revert with their inputs and comments in respect of the technical conditions and methods of working within the vicinity of said installed services within 5 (five) days of having received notification from the Wayleave Applicant.
- Step 1.6 The submitted Wayleave Application must be accompanied by the abovementioned inputs and comments as received from the third-party stakeholders.
- Step 1.7 Approval of the Wayleave Application is conditional upon proof of written notification and consent arising from said third party consultations being submitted to the NLM.
- Step 1.8 Applicants are required to submit four sets of technical drawings of their proposed works and maps depicting the precise location of where the proposed services will be installed and their position e.g. height above ground or depth below surface level, and position and extent of existing third-party service infrastructure such as street poles, pylons, manholes, chambers and junction boxes.

## STEP 2: Payment of “Wayleave Administration and Supervision Fees” and “Security Deposit”

It is mandatory that all Wayleave Applications are accompanied by the payment of the stipulated standardised and non-refundable application Administration and Supervision Fees fee as determined by the municipality.

## STEP 3: Evaluation of application by NLM Wayleave Officers

The municipality’s Wayleave Officers will communicate receipt of the Wayleave Application to the Wayleave Applicant in writing and check whether the application is compliant with all legal and technical requirements, and further request any additional information where necessary.

## STEP 4: Consideration of application by NLM Wayleave Management Unit

Step 4.1 The submitted application and supporting documents are then forwarded to the municipal Wayleave Management Unit which will request technical inputs, comments and related conditions from the municipal Planning and Human Settlement Directorate, Sanitation, Mechanical Engineering and Electrical Distribution Directorates and the Roads and Transport Directorate.

Step 4.2 Wayleave Management Unit assesses these submissions and records its recommendations in a report which *inter alia* details the application, comments from various Service Agencies

consulted, an assessment of the design and technical drawings submitted, work method statements, confirmation of payment of the application processing fees, security deposits and procurement of public liability insurance cover. This report will then be submitted for the consideration and approval by the Municipal Manager.

#### STEP 5: Approval of application by the Municipal Manager

- Step 5.1 The decision whether to approve or decline the Wayleave Application ultimately rests with the Municipal Manager, who will then proceed to inform the Wayleave Applicant as to the outcome of the application by issuing a Wayleave Application Approval letter as shown in “ **Addendum 3**” .
- Step 5.2 Where the application has been successful the Wayleave approval will be registered and a Wayleave permit will be issued. The applicant will then be given notice as to when they may commence with the works, and they will at all times be required to take note of any of the special conditions attached to execution of the works.
- Step 5.3 It is anticipated that the municipality should take 18 (eighteen) working days to approve a submitted Wayleave application where the Wayleave Applicant has submitted all the necessary supporting documentation.
- Step 5.4 A refundable security deposit equivalent to a yet to be determined gross percentage (%) estimated value of works will

be required from the successful Wayleave Applicant before commencing with the works. Security deposits will not be charged for work done by Internal Municipal Departments themselves.

#### STEP 6: Supervision and Inspection of the Works by the NLM

The municipality will designate a municipal official or engineer to inspect and where necessary supervise the execution of the works. The said official will ensure that all works are executed in accordance with the procedures and specifications as outlined in the submitted and approved work method statements.

#### STEP 7: Completion Notice and Certificate of Completion

- Step 7.1 Completion of the works entails the clearance and cleaning of all materials, equipment and rubble from the work site.
- Step 7.2 Upon the completion of the works the municipality's designated engineer and the Wayleave Permit Holder's designated engineer shall jointly conduct a site inspection and prepare a Completion Report accompanied by all applicable documentation and as-builds (revised sets of drawings) to be submitted to the municipality's Wayleave Officers. A Certificate of Completion will only be issued upon satisfaction that the works have been properly executed and all attendant conditions have been met.

Step 7.3 The Municipal Budget and Treasury Directorate will only refund the security deposit upon the presentation of the Certificate of Completion and the effluxion of the stipulated 12-month defects liability period.

#### 4. GENERAL REQUIREMENTS

- (a) Control over the manner of installation of services on municipal land falls within the ambit of municipal planning, any installation of services on municipal land is subject to the applicable national and provincial legislation, municipal spatial planning and land use management policies and by-laws, together with the applicable environmental policies and by-laws.
- (b) The Wayleave Permit Holder shall accept responsibility for all costs associated with and immediately effecting all repairs arising from their installation and construction activities, including any repairs and costs arising from damage to existing infrastructure and/or the interruption of services.
- (c) The execution of the works requires the Wayleave Permit Holder to comply with all safety regulations, in particular provisions of the *Occupational Health and Safety Act No 85 of 1993* (General Safety Regulations Section 13) regarding demolition and excavation works.
- (d) The Wayleave Permit Holder shall in writing designate an employee with the duty of supervising the performance of the works in terms of Regulation Section 11 of the *Occupational Health and Safety Act No 85 of 1993*.

- (e) The Wayleave Permit Holder shall cause photographs (in a digital format) of the site to be taken prior to commencement with the works to record any existing damage or faults found on or adjacent to the site. These photographs and a written report on such damage or faults must be provided to the Wayleave Officers before commencing with the works.
- (f) Should no such photographic record be submitted to the Wayleave Officers, the site will be deemed to have been handed over to the Wayleave Permit Holder in good condition.
- (g) The Wayleave Permit, design and technical drawings, maps, work method statements and health and safety file must be kept on site at all times while the works are in progress.
- (h) The use of machinery on site will be prohibited unless the position of all installed services has been exposed by hand excavation or said services are clearly outlined in the maps accompanying the Wayleave Application.

## **5. REQUIREMENTS IN RESPECT OF THE WORKS**

- (a) Excavation works requiring road crossing must be designed and supervised by a professionally registered civil engineer in compliance with COTO guidelines and specifications. The municipality will also designate a municipal officer or engineer to inspect and where necessary supervise the execution of said road crossing works.

- (b) Where it is necessary to close roads to traffic, a notification of said closure must be submitted in writing by the Wayleave Applicant to the municipal Wayleave Officer and the municipal traffic department at least 3 weeks before the intended date of closure. No road closure shall be approved unless approval has been granted by the Wayleave Management Unit.
- (c) All incidents on site creating an emergency situation (situations requiring immediate attention) must immediately be reported to the designated supervising engineer, the municipal service unit responsible for the affected service and the municipal fire and rescue services.
- (d) Any defects found in the design, construction and repairs of the road crossing and other areas, will be made good to the account of the Wayleave Permit Holder for a period of twelve (12) months after completion of the works.
- (e) On completion of the works it is the responsibility of the Wayleave Permit Holder to rehabilitate the surrounding environment to the condition in which it was found.

6. **LIABILITY FOR DAMAGES TO INSTALLED SERVICES AND INFRASTRUCTURE**

- 6.1 The Wayleave Permit Holder shall be responsible for all costs and repairs to existing infrastructure and/or the interruption of services from their installation and construction activities.

6.2 The Wayleave Permit Holder will be required to issue security in the form of a bank guarantee in favour of the NLM, the amount of which will be determined based on the following:

- The nature of the work (e.g. the manner of the installation work)
- The impact of the work proposed (i.e. taking into account the nature and value of the surfaces or land area affected); and
- The extent of the surfaces or land area affected, taking into account the length of the trench (per m<sup>2</sup>), the situation of the trench and the nature of the surface.

No security will be required for work done by Internal Municipal Directorates themselves.

6.3 The municipality will hold this security for a period of twelve (12) months making up the defects liability period. The municipality reserves the right to use this security bank guarantee to recover any costs it incurs as a result of defective, substandard or non-compliant works by the Wayleave Permit Holder.

6.4 The municipality reserves its right to recover any costs actually incurred for remedial or rehabilitation work that it must perform as a result of defective, substandard or non-compliant work by a Wayleave Permit Holder, irrespective of whether a security guarantee is deemed released and restored to the issuer.

6.5 The municipality may upon further inspection and satisfaction that there are no defects arising consequent to the installation of services or that applicant has made good such defects in the road reserve, reinstatement of the road surface, pavement layers, footpaths, etc. release and restore the security guarantee to the applicant.

## Addendum 2: Wayleave Application Form



## NDLAMBE MUNICIPALITY

### NDLAMBE LOCAL MUNICIPALITY WAYLEAVE APPLICATION FORM

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	<p>Office of the Municipal Manager - Wayleave Management Physical Address: Campbell St, Port Alfred, 6170 Postal Address: P.O. Box 13, Port Alfred, 6170 Tel: 046 604 5500 Web: <a href="http://www.ndlambe.gov.za">www.ndlambe.gov.za</a></p>
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**A: CONTRACT DETAILS**

*WAYLEAVE APPLICANT:*

The Wayleave Applicant is the Company or person that pays for the project, design and construction and in whom ownership of the infrastructure or service vests. (NOT the agent/person/company/subcontractor/engineer, that completes the application form on behalf of the Wayleave Applicant).

Company Name: \_\_\_\_\_  
Trading As: \_\_\_\_\_  
Company Type: \_\_\_\_\_  
Company Registration Number: \_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Contact Tel: \_\_\_\_\_  
Contact Fax: \_\_\_\_\_  
Email: \_\_\_\_\_  
Physical Address: \_\_\_\_\_  
\_\_\_\_\_  
City and Province: \_\_\_\_\_

*APPLICANT'S ENGINEER"*

Name: \_\_\_\_\_ Email: \_\_\_\_\_  
Engineering Council of South  
Africa (ESCA) Professional  
Registration Number \_\_\_\_\_ Email: \_\_\_\_\_  
Contact Cell: \_\_\_\_\_ Tel: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

*CONTRACTOR:* \_\_\_\_\_  
Contact Person: \_\_\_\_\_ Email: \_\_\_\_\_  
Contact Cell: \_\_\_\_\_ Tel: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_



**F: SERVICE TYPE & CAPACITY DETAIL& METHOD**

Water Supply		Sewer & Stormwater		Gas		Electricity		Telecommunication	
CONSTRUCTION METHOD	Open Trench		Drilling		Jacking		Pavement Construction		
	Pylon Construction		Suspension		Excavation		In Existing Structure		
CAPACITY OF SERVICE		DIMENSION / SIZE OF SERVICE:							

**G: LOCATION OF SERVICES IN THE ROAD RESERVE RUNNING PARALLEL TO THE ROAD**

Kilometer distance to Kilometer distance	Distance from Central Line (left or right)	Burled Cable/Pole/Pole Line/Other	
		Depth/Height (m)	Size & Type

**H: LOCATION OF SERVICES CROSSING THE ROAD RESERVE**

Kilometer distance	Burled Cable/Pole/Pole Line/Other		Size, Type & Class of Sleeve/Duct	Road Surface
	Depth/Height (m)	Size & Type		
Underground Crossings – Indicated Trench/Jack: Is re-instated to be carried out by NLM? (Y/N)			Give trench dimensions length X width (m <sup>2</sup> )	

**I: LOCATION OF SERVICE(S) ON BRIDGE STRUCTURE WORKS**

Kilometer distance	Bridge No	Bridge Name	Attach four copies of drawing indicating proposed location and method of fixing to the structure. (e.g. galvanized brackets, stainless steel bolts & sleeve type)

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J: FINANCIAL INFORMATION	
TOTAL RAND VALUE OF WORKS	
PUBLIC LIAMILITY INSURANCE DETAILS	

K: ENCLOSED DRAWINGS		
TYPE	DRAWING NUMBER	TITLE

**L: APPROVALS CONTACT DETAILS**

The Wayleave Applicant has given notice to the following service agencies that they will be working within the vicinity of their services and said agencies have given the applicant their conditions for conducting such work and have expressed no objection to them applying for a wayleave and to executing said works within the vicinity of their installations.

AGENCY	REMARKS ON PRELIMINARY REQUEST/ SIGNATURE/DATE	DETAIL DESIGN TO BE REVIEWED BY AGENCY (Y/N)	REMARKS ON DETAIL DESIGN/SIGNATURE/DATE
ESKOM			
TELKOM			
SANRAL			
EASTERN CAPE PROVINCIAL DEP OF PUBLIC WORKS AND ROADS			

AGENCY	REMARKS ON PRELIMINARY REQUEST/ SIGNATURE/DATE	DETAIL DESIGN TO BE REVIEWED BY AGENCY (Y/N)	REMARKS ON DETAIL DESIGN/SIGNATURE/DATE
MTN			
VODACOM			
SASOL			
Light Fibre Infrastructure			
Liquid Telecommunication			
Other			

FOR OFFICIAL USE ONLY (NLM) Wayleave Officers	
Receiving Official's Name	
<b>SIGNATURE</b>	
Date Received	
Total Rand Value of Security Deposit Required	
Public Liability Insurance Confirmation	

FOR OFFICIAL USE ONLY Wayleave Management Unit	
WAYLEAVE APPLICATION NUMBER	
COMMENTS	
RECOMMENDATIONS TO MUNICIPAL MANAGER	

UNDERTAKING / INDEMNITY

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I, the undersigned hereby,

- Accept the terms and conditions of the Wayleave approval and all the conditions as outlined by other affected service agencies.
- Accept responsibility for all costs associated with the work, including any damages to other services, the reinstatement of services, the cost of any tests that may be required and any claims that may result from the work until the permanent reinstatement is completed.
- Indemnifies the Ndlambe Local Municipality (NLM) against any claim(s), cost or damage or loss of whatsoever nature that may be incurred or sustained by the municipality, the Wayleave Applicant or any third party and also against all actions, legal proceedings and claims of whatsoever nature that may be instituted or made against the municipality arising out of, by reason of, or in any way whatsoever caused by or connected with the exercising by the applicant of the rights granted by the Wayleave application as well as in respect of cost which may be incurred by the municipality in examining or resisting any such demands, actions, legal proceedings and claims, instituted by any person or party for injury to person(s) loss of life or
- damage to or loss of property, arising directly or indirectly exercising the permission granted with approval of this Wayleave application.

Signed at ..... on the ..... day of  
.....

---

For and on behalf of **Wayleave Applicant**

---

**Witness**

### **GENERAL REQUIREMENTS**

- (a) No Wayleave Permit Holder, contractor or their agents may commence work within the geographical area falling under the jurisdiction of the Ndlambe Local Municipality (NLM) without having submitted a Wayleave application and having received municipal approval.
- (b) The approved Wayleave form and standard specification document must at all times be available on site.
- (c) The execution of the works requires the Wayleave Permit Holder to comply with all safety regulations, in particular provisions of the *Occupational Health and Safety Act No 85 of 1993* (General Safety Regulations Section 13) regarding demolition and excavation works.
- (d) The permit holder shall in writing designate an employee with the duty of supervising the performance of the works in terms of Regulation Section 11 of the *Occupational Health and Safety Act No 85 of 1993*.

- (e) The permit holder shall cause photographs (in a digital format) of the site to be taken prior to commencement with the works to record any existing damage or faults found on or adjacent to the site. These photographs and a written report on such damage or faults must be provided to the Wayleave Officers before commencing with the works.
- (f) Should no such photographic record be submitted to the Wayleave Officers, the site will be deemed to have been handed over to the Wayleave Permit Holder in good condition.
- (g) The Wayleave Permit, design and technical drawings, maps, work method statements and health & safety file must be kept at all times while the works are in progress.
- (h) All work must be done in accordance with the specifications as set out in the approved technical drawings submitted by the Wayleave Applicant.
- (i) The use of machinery on site will be prohibited unless the position of all installed services has been exposed by hand excavation or said services are clearly outlined in the maps accompanying the Wayleave Application.
- (j) In the case of emergency work, e.g. burst pipes, the designated supervising municipal official or engineer, the municipal directorate responsible for the affected service and the municipal Emergency

and Disaster Management Sub-Directorate must be immediately notified before the repair work is initiated.

- (k) The Wayleave Permit Holder is responsible for all costs, including any damage to other services, backfilling, reinstatement, tests and any claims that may result. The Wayleave Permit Holder is also responsible for traffic signs, barricading and the safety of motorists, pedestrians and workers.
- (l) Excavation works requiring road crossing must be designed and supervised by a professionally registered civil engineer in compliance with COTO guidelines and specifications. The Ndlambe Local Municipality will also designate a municipal official or engineer to monitor and where necessary supervise the execution of said road crossing works. Any defects found in the design, construction and repairs of the road crossing and other areas will be made good to the account of the Wayleave Permit Holder for a period of twelve (12) months after completion of the works.
- (m) Constructed footways must be reinstated with the original surfacing materials and the supporting layers compacted to specification, to obtain shear strengths at least equal to those of the adjacent undisturbed footway.
- (n) Where it is necessary to close roads to traffic, a notification of said closure must be submitted in writing by the Wayleave Applicant to the municipal Wayleave Officer and the municipal Public Safety Directorate at least three (3) weeks before the intended date of

closure. No road closure shall be approved unless approval has been granted by the Wayleave Management Unit.

- (o) Unconstructed verges must be backfilled in such a way that the verge is in the same condition as it was before excavation.
- (p) On completion of the works it is the responsibility of the Wayleave Permit Holder to rehabilitate the surrounding environment to the condition in which it was found, the site must be cleared and cleaned and all excess material, tools and equipment must be removed.
- (q) Upon completion of the work and rehabilitation of the works site, the Wayleave Permit Holder must fill in the Completion Notice and submit it to the municipal Wayleave Officers within two (2) working days.
- (r) The supervising municipal official or engineer will only certify the work complete upon receipt of the as-built drawings, which will be requested when the Completion Notice is submitted.
- (s) Any excavation left unattended for a period of five (5) calendar days will be made safe by the Ndlambe Local Municipality and charged to the account of the Wayleave Applicant/Service Agency or contractor.

## Addendum 3: Wayleave Application Approval Result Letter

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	<p>Office of the Municipal Manager - Wayleave Management Unit Physical Address: Campbell Street, Port Alfred Postal Address : PO Box 13 Tel: 046 604 5500 Web: www.ndlambe.gov.za</p>
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### Wayleave Application Result

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Dear

**RE: CONFIRMATION OF WAYLEAVE PERMIT - Ref. No.** \_\_\_\_\_

Wayleave Reference No. ....

Description of Work:

.....  
.....  
.....

This Wayleave Work Permit entitles: .....

.....

and it's agencies and sub-contractors under the control of the designated Professional Engineer to perform the following construction and/or installation works at the following location/s of the Ndlambe Local Municipality:

.....  
.....  
.....

during the period: ..... to.....in strict compliance with the following Wayleave Approval conditions:

.....

Permit holders are reminded to familiarise themselves with the general requirements in respect of works, works installation requirements and onsite safety requirements, and should further note that any material deviations or misrepresentations in respect of the above and the given Wayleave Approval conditions may render this Wayleave Permit subject to revocation by the municipality.

Further, it is important that the Wayleave Permit, technical drawings, the approved plans and work method statements are available in the site file for inspection by municipal officials at all times.

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**MUNICIPAL MANAGER: Ndlambe Local Municipality**

**Date:** \_\_\_\_\_



## ADDENDUM 4

### WAYLEAVE TARIFFS – 2023/2024

1	<b>General Fees (PRE-CONSTRUCTION)</b>	<b>Frequency</b>	<b>VAT incl Tari ZAR</b>
1.1	Wayleave application – Basic fee (up to 1 km service installation)	Per application	400-00
1.2	Wayleave application - Additional fee (per extra km or part thereof)	Per application	400-00
2	<b>Security Deposits - based on the value of the work within the public road – non-ECN works (DURING CONSTRUCTION)</b>	<b>Frequency</b>	<b>VAT incl Tari ZAR</b>
2.1	Road closure application – for construction purposes	Per application	450-00
2.2	Use of Public Road Reserves - Basic Charge/Fee during construction	Per day	1 000-00
3	<b>Wayleave Applications for Electronic Communication Network (ECN) utilities (PRE-CONSTRUCTION)</b>	<b>Frequency</b>	<b>VAT incl Tari ZAR</b>
3.1	<b>Security deposit for ECN</b> – refundable once the completion certificates for all work approved have been signed off and submitted. At end of guarantee period of 12 months, the security deposit shall be refunded, or the balance remaining if it has been drawn on to repair poor quality workmanship or damages to other services, shall be refunded - Proof of project value to be submitted.	Per formula	2,5% of Project "Construction" value
3.2	Penalties - without prejudice to Council's other rights or remedies in terms of the applicable by-laws or Wayleave Permit: Upon Inspection, any deviation from Wayleave conditions (per incident, payable immediately)		5 000-00
4	<b>Wayleave Operating Fees for Electronic Communication Network (ECN) utilities (POST CONSTRUCTION) - Billed Monthly</b>		
4.1	Sewer and storm water systems usage	Per kilometre per service per month	910-00
4.2	Public Road Reserve usage in respect of trenching	Per kilometre per service per month	1250-00

**NOTE:** The abovementioned amounts become payable by the successful bidders once the award process has been concluded.



# NDLAMBE LOCAL MUNICIPALITY

## Port Alfred

Causeway Road  
P O Box 13  
Port Alfred  
6170

Phone: (046) 604 5500  
Fax: (046) 604 2702  
portalfred@ndlambe.gov.za  
<http://www.ndlambe.gov.za>

1. No bid will be accepted from persons in the service of the state<sup>1</sup>.
2. Any person, having a kinship with persons in the service of the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid. In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons connected with or related to persons in service of the state, it is required that the bidder or their authorised representative declare their position in relation to the evaluating/adjudicating authority.
- 3 **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**

3.1 Full Name of bidder or his or her representative:.....

3.2 Identity Number: .....

3.3 Position occupied in the Company (director, trustee, hareholder<sup>2</sup>):.....

3.4 Company Registration Number: .....

3.5 Tax Reference Number:.....

3.6 VAT Registration Number: .....

3.7 The names of all directors / trustees / shareholders members, their individual identity numbers and state employee numbers must be indicated in paragraph 4 below.

3.8 Are you presently in the service of the state? **YES / NO**

3.8.1 If yes, furnish particulars. ....

.....

<sup>1</sup>MSCM Regulations: "in the service of the state" means to be –

- (a) a member of –
  - (i) any municipal council;
  - (ii) any provincial legislature; or
  - (iii) the national Assembly or the national Council of provinces;
- (b) a member of the board of directors of any municipal entity;
- (c) an official of any municipality or municipal entity;
- (d) an employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No.1 of 1999);
- (e) a member of the accounting authority of any national or provincial public entity; or
- (f) an employee of Parliament or a provincial legislature.

<sup>2</sup> Shareholder" means a person who owns shares in the company and is actively involved in the management of the company or business and exercises control over the company.

3.9 Have you been in the service of the state for the past twelve months? .....**YES / NO**

3.9.1 If yes, furnish particulars.....

.....

3.10 Do you have any relationship (family, friend, other) with persons in the service of the state and who may be involved with the evaluation and or adjudication of this bid? .....**YES / NO**

3.10.1 If yes, furnish particulars.

.....

.....

3.11 Are you, aware of any relationship (family, friend, other) between any other bidder and any persons in the service of the state who may be involved with the evaluation and or adjudication of this bid? **YES / NO**

3.11.1 If yes, furnish particulars

.....

.....

3.12 Are any of the company’s directors, trustees, managers, principle shareholders or stakeholders in service of the state? **YES / NO**

3.12.1 If yes, furnish particulars.

.....

.....

3.13 Are any spouse, child or parent of the company’s directors trustees, managers, principle shareholders or stakeholders in service of the state? **YES / NO**

3.13.1 If yes, furnish particulars.

.....

.....

3.14 Do you or any of the directors, trustees, managers, principle shareholders, or stakeholders of this company have any interest in any other related companies or business whether or not they are bidding for this contract. **YES / NO**

3.14.1 If yes, furnish particulars:

.....

.....

4. Full details of directors / trustees / members / shareholders:

Full Name	Identity Number	State Employee Number

.....  
**Signature**

.....  
**Date**

.....  
**Capacity**

.....  
**Name of Bidder**



**SPECIFIC GOALS PREFERENTIAL POINTS CLAIM FORM IN TERMS OF THE MUNICIPALITY’S PREFERENTIAL PROCUREMENT POLICY, 2023 AND THE PREFERENTIAL PROCUREMENT REGULATIONS OF 4 NOVEMBER 2022 (Gazette 47452)**

This specific goals preferential points claim form is submitted with bids invited where the estimated procurement amount exceeds R30 000. It contains general information and serves as a claim form for points for **specific goals** as follows:

- Broad-Based Black Economic Empowerment (B-BBEE) Status Level of Contribution, and
- Bidder Locality

**1. GENERAL CONDITIONS**

1.1. The following preference point systems are applicable to all bids:

- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and
- the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).

1.2. Points shall be awarded for:

- 1.2.1. Price;
- 1.2.2. B-BBEE Status Level of Contributor (Specific Goal 1); and
- 1.2.3. Locality of bidder (Specific Goal 2)

1.3. The formulae and methodologies to be applied in calculating price and specific goal points shall be those as set out in the 2022 PPPFA Regulations (the Preferential Procurement Regulations made by the Minister on 4 November 2022) 4 to 7, which formulae and methodologies are subject to amendment by the Minister from time to time.

1.4. The maximum points for this bid are allocated as follows:

#	Component	Maximum Points – value up to R50 million	Maximum Points – value above R50 million
1	Price	80	90
2	B-BBEE Status Level of Contributor	10	5
3	Locality of bidder	10	5
	<b>Total points</b>	<b>100</b>	<b>100</b>

1.5. Failure on the part of a bidder to submit proof of B-BBEE Status level of contributor together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.

1.6. Failure on the part of a bidder to submit proof of locality with the bid, will be interpreted to mean that preference points for Bidder Locality are not claimed.

1.7. Ndlambe Local Municipality reserves the right to require of a bidder, either before a bid is adjudicated or at any time subsequently, to substantiate any claim in regard to specific goals, in any manner required by the municipality.

## 2. DEFINITIONS

- (a) “B-BBEE” means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- (b) “B-BBEE status level of contributor” means the B-BBEE status of an entity in terms of a code of good practice on black economic empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- (c) “bid” means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of goods or services, through price quotations, advertised competitive bidding processes or proposals;
- (d) “Broad-Based Black Economic Empowerment Act” means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (e) “functionality” means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents.
- (g) “prices” includes all applicable taxes less all unconditional discounts;
- (h) “proof of B-BBEE status level of contributor” means:
- 1) B-BBEE Status level certificate issued by an authorized body or person;
  - 2) A sworn affidavit as prescribed by the B-BBEE Codes of Good Practice;
  - 3) Any other requirement prescribed in terms of the B-BBEE Act;
- (i) “rand value” means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;
- (j) “specific goals” means specific goals as contemplated in Para 4 of Ndlambe Municipality’s Preferential Procurement Policy.

## 3. BID DECLARATION – SPECIFIC GOALS

3.1 Bidders who wish to claim points in respect of B-BBEE Status Level of Contribution must complete the following:

B-BBEE STATUS LEVEL OF CONTRIBUTOR CLAIMED IN TERMS OF PARAGRAPHS 1.4

B-BBEE Status Level of Contributor: = \_\_\_\_\_ Points claimed = \_\_\_\_\_ (see below)

B-BBEE Level	Points - value up to R50 million	Points - value above R50 million
1	10	5
2	5	2.5

### N.B. B-BBEE Certificate or Affidavit to be attached.

3.2 Bidders who wish to claim Locality Points must complete the following:

Full physical address of bidder: \_\_\_\_\_

Bidder Locality	Points - value up to R50 million	Points - value above R50 million
Ndlambe LM	10	5

### N.B. a recent Municipal Billing Certificate (not dated earlier than two months before the bid closing date) to be attached.

**4. DECLARATION WITH REGARD TO COMPANY/FIRM**

4.1 Name of company/firm: \_\_\_\_\_

4.2 VAT registration number (if a VAT Vendor) \_\_\_\_\_

4.3 CSD (Central Supplier Database) number: MAAA \_\_\_\_\_

**4.4 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES**

\_\_\_\_\_

**4.5 MUNICIPAL INFORMATION**

Municipality where business is situated: \_\_\_\_\_

Registered Account Number: \_\_\_\_\_

Stand Number: \_\_\_\_\_

4.6 I/we, the undersigned, who is/are duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBE status level of contributor and Locality in paragraphs 1.4 and 3 of the foregoing certificate, qualifies the company/firm for the preference(s) shown and I/we acknowledge that:

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 3, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- iv) If the B-BBEE status level of contributor has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have -
  - (a) disqualify the person from the bidding process;
  - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
  - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
  - (d) recommend that the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted by the National Treasury from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
  - (e) forward the matter for criminal prosecution.

WITNESSES
1.....
2.....

SIGNATURE(S) OF BIDDERS(S)	
DATE:	.....
ADDRESS	.....



**NDLAMBE MUNICIPALITY**

MBD 8

**DECLARATION OF BIDDER’S PAST SUPPLY CHAIN  
MANAGEMENT PRACTICES**

- 1 This Municipal Bidding Document must form part of all bids invited.
- 2 It serves as a declaration to be used by municipalities and municipal entities in ensuring that when goods and services are being procured, all reasonable steps are taken to combat the abuse of the supply chain management system.
- 3 The bid of any bidder may be rejected if that bidder, or any of its directors have:
  - a. abused the municipality’s / municipal entity’s supply chain management system or committed any improper conduct in relation to such system;
  - b. been convicted for fraud or corruption during the past five years;
  - c. willfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
  - d. been listed in the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004).
- 4 **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**

Item	Question	Yes	No
4.1	<p>Is the bidder or any of its directors listed on the National Treasury’s Database of Restricted Suppliers as companies or persons prohibited from doing business with the public sector?</p> <p>(Companies or persons who are listed on this Database were informed in writing of this restriction by the Accounting Officer/Authority of the institution that imposed the restriction after the <i>audi alteram partem</i> rule was applied).</p> <p><b>The Database of Restricted Suppliers now resides on the National Treasury’s website(<a href="http://www.treasury.gov.za">www.treasury.gov.za</a>) and can be accessed by clicking on its link at the bottom of the home page.</b></p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.1.1	<p>If so, furnish particulars:</p>		

4.2	Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)? <b>The Register for Tender Defaulters can be accessed on the National Treasury's website (<a href="http://www.treasury.gov.za">www.treasury.gov.za</a>) by clicking on its link at the bottom of the home page.</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.2.1	If so, furnish particulars:		
4.3	Was the bidder or any of its directors convicted by a court of law (including a court of law outside the Republic of South Africa) for fraud or corruption during the past five years?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.3.1	If so, furnish particulars:		
<b>Item</b>	<b>Question</b>	<b>Yes</b>	<b>No</b>
4.4	Does the bidder or any of its directors owe any municipal rates and taxes or municipal charges to the municipality / municipal entity, or to any other municipality / municipal entity, that is in arrears for more than three months?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.4.1	If so, furnish particulars:		
4.5	Was any contract between the bidder and the municipality / municipal entity or any other organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.7.1	If so, furnish particulars:		

### CERTIFICATION

**I, THE UNDERSIGNED (FULL NAME) .....  
CERTIFY THAT THE INFORMATION FURNISHED ON THIS  
DECLARATION FORM TRUE AND CORRECT.**

**I ACCEPT THAT, IN ADDITION TO CANCELLATION OF A CONTRACT,  
ACTION MAY BE TAKEN AGAINST ME SHOULD THIS DECLARATION PROVE  
TO BE FALSE.**

.....  
**Signature**

.....  
**Date**

.....  
**Position**

.....  
**Name of Bidder**



# NDLAMBE MUNICIPALITY

**MBD 9**

## **CERTIFICATE OF INDEPENDENT BID DETERMINATION**

- 1 This Municipal Bidding Document (MBD) must form part of all bids<sup>1</sup> invited.
- 2 Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).<sup>2</sup> Collusive bidding is a *pe se* prohibition meaning that it cannot be justified under any grounds.
- 3 Municipal Supply Regulation 38 (1) prescribes that a supply chain management policy must provide measures for the combating of abuse of the supply chain management system, and must enable the accounting officer, among others, to:
  - a. take all reasonable steps to prevent such abuse;
  - b. reject the bid of any bidder if that bidder or any of its directors has abused the supply chain management system of the municipality or municipal entity or has committed any improper conduct in relation to such system; and
  - c. cancel a contract awarded to a person if the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract.
- 4 This MBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.
- 5 In order to give effect to the above, the attached Certificate of Bid Determination (MBD 9) must be completed and submitted with the bid:

<sup>1</sup> Includes price quotations, advertised competitive bids, limited bids and proposals.

<sup>2</sup> Bid rigging (or collusive bidding) occurs when businesses, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods and / or services for purchasers who wish to acquire goods and / or services through a bidding process. Bid rigging is, therefore, an agreement between competitors not to compete.



# NDLAMBE MUNICIPALITY

MBD 9

## CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid:

---

(Bid Number and Description)

in response to the invitation for the bid made by:

---

(Name of Municipality / Municipal Entity)

do hereby make the following statements that I certify to be true and complete in every respect:

I certify, on behalf of: \_\_\_\_\_ that:

(Name of Bidder)

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign, the bid, on behalf of the bidder;
5. For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:
  - (a) has been requested to submit a bid in response to this bid invitation;
  - (b) could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and
  - (c) provides the same goods and services as the bidder and/or is in the same line of business as the bidder



# NDLAMBE MUNICIPALITY

## MBD 9

6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium<sup>3</sup> will not be construed as collusive bidding.
7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
  - (a) prices;
  - (b) geographical area where product or service will be rendered (market allocation)
  - (c) methods, factors or formulas used to calculate prices;
  - (d) the intention or decision to submit or not to submit, a bid;
  - (e) the submission of a bid which does not meet the specifications and conditions of the bid; or
  - (f) bidding with the intention not to win the bid.
8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.
9. The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.

<sup>3</sup> Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.



# NDLAMBE MUNICIPALITY

## MBD 9

10. I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

.....  
Signature

.....  
Date

.....  
Position

.....  
Name of Bidder

# CERTIFICATE FOR MUNICIPAL SERVICES

Information required in terms of Ndlambe Municipality's Supply Chain Management Policy, Para 14(5)(b):

**Tender/Quotation Reference or Description:** \_\_\_\_\_

**Name of Bidder:** \_\_\_\_\_

**FURTHER DETAILS OF THE BIDDER/S: Proprietor/Director(s)/Partners, etc:**

Physical Business address of the Bidder	Municipal Account Number(s)

If there is not enough space for all the names, please attach the additional details to the Tender/Quotation documents.

Name of Director/Member/Partner	Identity Number	Physical residential address of Director/Member/Partner	Municipal Account number(s)

I, \_\_\_\_\_, the undersigned,

(full name in block letters) certify that the information furnished on this declaration form is correct and that I/we have no undisputed commitments for municipal services towards a municipality or municipal entity in respect of which payment is overdue for more than 30 days.

\_\_\_\_\_

Signature

THUS DONE AND SIGNED for and on behalf of the Bidder/Contractor

at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_

**Please note:**

**Even if the requested information is not applicable to the Bidder, the table above should be endorsed NOT APPLICABLE and THIS DECLARATION MUST STILL BE SIGNED.**