

FORM OF GUARANTEE

SWARTLAND MUNICIPALITY

CONTRACT MA 730 IR

MANAGEMENT, OPERATION AND MAINTENANCE

OF THE HIGHLANDS WASTE DISPOSAL FACILITY AND THE MATERIAL RECOVERY FACILITY

(To be supplied on the
official letterhead
of "The Bank/Company")

DEMAND GUARANTEE FOR EXECUTION OF CONTRACT

Whereas Swartland Municipality

(hereinafter called "the Municipality")

has agreed to transfer its contract for the MANAGEMENT, OPERATION AND MAINTENANCE OF THE HIGHLANDS WASTE DISPOSAL FACILITY AND THE MATERIAL RECOVERY FACILITY

with Hein Baumgarten (ID No. 680722 5078 080)

to Waste-Gro (Reg. No.)

(hereinafter called "the Contractor")

on new terms and conditions including the 'guaranteed amount'

we, the undersigned

_____ and _____

(Name)

(Name)

(acting herein as)

_____ and _____

(Position)

(Position)

of _____

(herein after called "the *Bank/Company*")

and being duly authorised to sign and incur obligations in the name of the *Bank/Company*, hereby irrevocably and unconditionally guarantee and undertake on behalf of the *Bank/Company* that:

1. The *Bank/Company* shall:
 - 1.1. pay within 14 (Fourteen) days to the Municipality on receipt of its first written demand in respect of any particular amount and without proof of any breach of Contract by the Contractor other than the certificate specified in 1.2. below, amounts in total not exceeding R275 000.00 (TWO HUNDRED AND SEVENTY FIVE THOUSAND RAND) hereinafter referred to as the “guaranteed amount”;
 - 1.2. make such payment(s) to the Municipality upon receipt by the *Bank/Company* of a certificate signed by the Municipal Manager as the accounting officer of the Municipality stating that, in his opinion, the Municipality is entitled in terms of the Contract to call on the *Bank/Company* to make payment and stating the amount which, in the Municipal Manager’s opinion, is a reasonable estimate of the amount which the Municipality is entitled to recover from the *Bank/Company* under this Guarantee.
 - 1.3. make such payment(s) to the Municipality at any address designated by the Municipality for this purpose.
2. The demand for payment together with this Guarantee shall constitute ‘prima facie’ proof of the *Bank/Company*’s indebtedness hereunder for the purpose of any proceedings, including but not limited to, summary judgement or provisional sentence proceedings instituted against the *Bank/Company* in any court of law having jurisdiction.
3. Neither the failure of the Municipality to enforce strict or substantial compliance by the Contractor of its obligations under the Contract, nor any act conduct or omission by the Municipality prejudicial to the interest of the *Bank/Company*, will discharge the *Bank/Company* from liability under this Guarantee.
4. This Guarantee shall
 - 4.1. remain in full force and effect up to and including the date of issue of the Certificate of Completion for the whole or the final portion of the Contract issued by the Municipal Manager, as provided for in the Conditions of Contract, unless the *Bank/Company* is advised in writing by the Municipality of its intention to institute claims, and the particulars thereof, in which event this security shall remain in full force and effect until all such claims have been paid or liquidated.
 - 4.2. exist independently of the Contract or any amendment, variation or novation thereof,
 - 4.3. not be ceded or assigned by the Municipality or otherwise dealt with in any manner whatsoever which has or may have the effect of transferring, encumbering or alienating the Municipality’s rights hereunder;
 - 4.4. be governed by the Laws of the Republic of South Africa.
5. The *Bank/Company* irrevocably states that there are no provisions herein contained which could be construed as being un-businesslike, improper, unconscionable, oppressive, unreasonable, objectionable, onerous and/or ‘*Contra bonos mores*’.
6. The *Bank/Company* hereby irrevocably consents and submits to the jurisdiction of the High Court of South Africa, Western Cape Division for all matters relating to this Guarantee.

7. The *Bank/Company* hereby elects its physical address as set out on the face of this Guarantee for purposes of notices and correspondence to be given in terms hereof and it elects its physical address as its domicilium citandi et executandi. Any notice in terms of this agreement will be sent by prepaid registered post under which circumstances the notice will be deemed to have been received by the *Bank/Company* three (3) days from the date of such registration, or alternatively by delivery, and will be deemed to have been received by such other party on date of delivery by hand.

Signed on this _____ day of _____ 2014.

at _____ (place).

Signature

Signature

As Witnesses:

1. _____

Signature

Name

(Address)

2. _____

Signature

Name

(Address)