



GAUTENG PROVINCE

SPORT, ARTS, CULTURE AND RECREATION
REPUBLIC OF SOUTH AFRICA

Enquiries: Noluthando Zuma
Email: Noluthando.zuma@gauteng.gov.za
082 580 7240
Ref: 5. SP028

**TO : VRP SKOSANA
SECRETARY TO THE LEGISLATURE**

**FROM : MS MORAKANE MOSUPYOE
MEMBER OF EXECUTIVE COUNCIL**

SUBJECT: RE: QUESTIONS POSED BY LEGISLATURE

5.SP028 Further to 5. SP008, could the MEC please indicate the following:

**i. what did the department pay R1 million to 999 Music for
Response**

Payment of Artists

**ii. Please outline the procurement process instituted by the department
to secure the services provided by 999 Music for the 31 December
Music Festival of the 2015/16 financial year;**

Response

It was through a transfer process.

**iii. please confirm if the department had a formal agreement in place
with 999 Music.**

Response

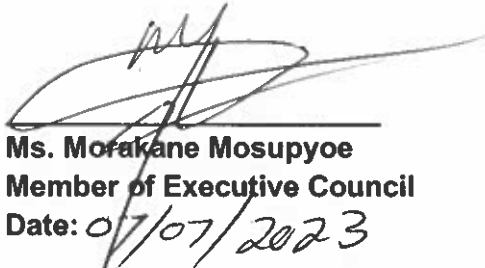
The department did enter into a formal agreement with 999.

- iv. **Please provide a copy of the contractual agreement between the department and 999 Music**

Response

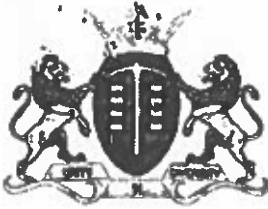
Please refer to annexure A

Yours sincerely

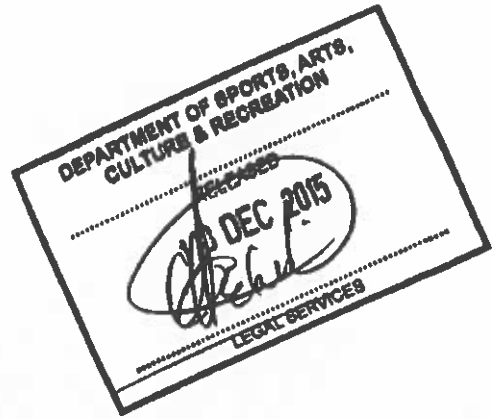


Ms. Morakane Mosupyoe
Member of Executive Council
Date: 07/07/2023

cc: the Leader of Government Business – Ms N Nkomo-Ralehoko
cc: the Director General of Gauteng, Mr. Edward Mosuwe
cc: the Deputy Director: Leader of Government Business, Ms. L Bob
cc: the Assistant Director: Leader of Government Business, Ms. N Khumalo



GAUTENG PROVINCE
SPORT, ARTS, CULTURE AND RECREATION
REPUBLIC OF SOUTH AFRICA



TRANSFER AGREEMENT

Entered into by and between:

DEPARTMENT OF SPORT, ARTS, CULTURE AND RECREATION
GAUTENG PROVINCIAL GOVERNMENT
(hereinafter referred to as the "Transferor")

and represented by **Ms Tlissetso Motloung**
in her capacity as the **Acting Head of department**

and

999 MUSIC CC
Registration No: 1995/047485/23
(Hereinafter referred to as "the Transferee")

and represented by **Mr Arthur Sello Mafokate**
being duly authorised to sign this agreement
in his capacity as **Member**

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PREAMBLE

WHEREAS

The Transferor is authorised to allocate a transfer of grant funding to the Transferee to the maximum amount of R1 000 000.00 (ONE MILLION RAND), which amount includes Value Added Tax, for the financial support to the New year's Music Concert 2015 taking place on 31 December 2015 at Mary Fitzgerald Square in Johannesburg.

And;

Funds being available for the purpose thereof, the parties wish to establish a contractual framework that will enable the Transferor to obtain from the Transferee an undertaking that the funds transferred shall be used in a provident and responsible manner exclusively for the purposes of the project as further outlined in Annexure A hereto.

The Transferor shall have the sole discretion to decide whether or not the funds have been used responsibly for the intended project and may on this basis decide not to provide further funding to the Transferee.

THEREFORE THE PARTIES HERETO AGREE AS FOLLOWS:


1. DEFINITIONS AND INTERPRETATION

- a. The headings of the clauses in this agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this agreement nor any clause hereof. In this agreement, unless a contrary intention is clear.

Formulated by D Mokolokolo on behalf of Legal Advisory Services 2015

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b. Words importing

- i. any one gender include the other gender;
- ii. the singular include the plural and vice versa; and
- iii. natural persons include created entities (corporate or unincorporated) and vice versa.

c. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, effect shall be given to it as if it were substantive clause in the body of the agreement, notwithstanding that it is only contained in the interpretation clause.

d. If any period is referred to in this agreement by way of reference to a number of days, the days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.

e. Schedules and Annexures to this agreement shall form an integral part of this agreement and this agreement shall be read in conjunction with such Schedules and Annexures, all of which should be taken into account in the interpretation of the agreement. Should there be a conflict between the provisions of the schedules and /or Annexure with that of the agreement the latter shall prevail.

f. This agreement shall be governed by, construed and interpreted in accordance with the laws of the Republic of South Africa.

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g. The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have a corresponding meaning, namely:

i. "Transferor" means the Department of Sport, Art, Culture and Recreation - Gauteng Provincial Government;

ii. "HOD" means the Head of the Department, Gauteng Department of Sports, Art, Culture and Recreation;

iii. "Parties" mean the parties to this agreement as more fully described on the first page of this agreement.

iv. "The Transferee" means 999 Music, a Close Corporation, duly registered with registration no:1995/047485/23, in accordance with the Laws of the Republic of South Africa.

v. "This agreement" means this document being an agreement between the parties and the annexures thereto.

vi. "BANK ACCOUNT" shall mean the bank account kept in the name of the Transferee, the details of which are as follows:

Name of Bank: NEDBANK BANK
Name of Account Holder: 999 MUSIC
Branch Code/Number: 168642/ Midrand
Account Number: 1686104995
Type of Account: CHEQUES ACCOUNT

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vii. **FUND TRANSFERS** shall mean an amount up to a maximum as stated and defined in preamble to this agreement.

viii. **"PROJECT"** shall mean the project as more fully defined in Annexure A hereto

2. THE SCOPE OF THE AGREEMENT

a. The Transferee hereby undertakes to render sound, professional and satisfactory services as more fully described in this agreement and as further set out in Annexure A hereto

b. To the extent that is possible to do so, the Transferee hereby undertakes that any information or document submitted by it in terms of this agreement shall be true and correct and waives any right of lien that it may have over the professional work contained and within such document or information flowing herefrom.

c. Notwithstanding anything contained in this agreement, the Transferor reserves the discretion to verify and confirm any information or document submitted by the Transferee in the performance and execution of its duties and obligations in terms of this agreement.

d. The Transferee undertakes to act in good faith and afford all reasonable and necessary co-operation in fulfilling its obligations in terms of its agreement.

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3. COMMENCEMENT, DURATION AND TERMINATION

The agreement shall commence upon signature of this agreement.

4. FEES, PAYMENT AND OVERPAYMENT

- a. The method and conditions for payment to be made to the Transferee in terms of this agreement are contained in Annexure "A", which is appended to this document.
- b. The Transferee shall provide the Transferor with a full report upon the concluding of this event, within 7 (SEVEN) days of the event having been concluded. The report shall be responsive to the criteria as set out in this agreement.
- c. The Transferor reserves the right to examine the report submitted against the scope of work and to allow its authorised auditors to do likewise.
- d. If at any stage the Transferor makes a payment to the Transferee in an amount in excess of the amount to which the Transferee is entitled to, the Transferor shall be entitled to claim a refund from the Transferee of any such overpayment.
- e. In the event that the Transferee and/or any of its members fail to make such payment by a date stipulated in the letter of demand from the Transferor, the amount owing shall accrue interest at a rate equal to the published prime overdraft rate charged by the South African Banking Institutions.

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- f. The Transferor shall further be entitled to set-off the amount of any such overpayment together with the interest accrued against later payments due to Transferee.

5. OBLIGATIONS OF THE TRANSFEREE

- a. The Transferee shall have the following obligations:-
 - i. to undertake the responsibility of ensuring the professional quality of the event
 - ii. to host the event in accordance with the terms and conditions specified in this agreement.
 - iii. to ensure that the hosting of the events shall be made in accordance with the timelines as contained in this agreement.
 - iv. to ensure that if at any time during the performance of the agreement, if the Transferee should encounter conditions which will impact on timely hosting of the events then the Transferee shall promptly notify the HOD, in writing of such a delay, its probable duration and causes.
 - v. to perform all functions outlined in this agreement.
 - vi. to ensure that it does not, without the Transferor's prior written consent, disclose the agreement, or any provision thereof or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the Transferor in connection therewith, to any person other than a person employed by the Transferee in the performance of the agreement. Disclosure to any such employed persons shall be made in confidence and

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shall extend only as far as may be necessary for purposes of such performance.

- vii. to be entirely responsible for all taxes, duties, license fees etc. incurred with regard to the hosting of the event.

- b. The Transferee warrants that all reports and information submitted by it to the Transferor shall be true and correct and that should any incorrect information be supplied, such will warrant a material breach of this agreement and shall entitle the Transferor to cancel this agreement and claim a full refund of the amount transferred to the Transferee .

- c. The Transferee warrants that all funds transferred to it shall be used solely for the purposes as indicated in this agreement. Should the Transferee fail to utilise the funds for the aforementioned purposes or in the opinion of the Transferor misuses or misallocates such funding then such will warrant a material breach of this agreement and shall entitle the Transferor to cancel this agreement and claim a full refund of the amount transferred to the Transferee.

- d. Should the event not be staged for any reason whatsoever then the Transferee undertakes to return the amount transferred by the Transferor, without deduction or set off within 30 (THIRTY) days from cancellation of such event.

- e. The Transferee indemnifies the Transferor against all third-party claims of infringement of patent, trademark, industrial or design rights arising from the hosting of the event or any part thereof by the Transferor.

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- f. The Transferor acting through its duly authorised representatives including without any limitation, its external auditors is entitled to inspect during business hours and at the premises of the Transferee or such other premises where the services are rendered from, all books, records, and supporting documentation related to the provision of the services and to make copies of and take extracts from such books, records, and supporting documentation for audit purposes.
- g. If the Transferor exercises its afore-mentioned audit rights then it must do so at its own cost and on prior written notice to the Transferee. In the event that any material discrepancies are found the cost of the audit is for the account of the Transferee.
- h. To provide the Transferor with the following documents immediately upon signature of this agreement:
 - i. The most recent audited financial statement of the Service Provider;
 - ii. Copy of the financial policy guiding the Service Provider's financial affairs;
 - iii. Tax clearance certificate;
 - iv. Vendor's entity maintenance form
- f. To provide the Transferor with the following documents, as annexures to the monitoring and evaluation report, following the hosting of the event by the Transferee:
 - i. Proof of receipt of funds (Copy of bank statement);
 - ii. Project report on the stipulations of the submitted proposal and the dictates of this agreement, which will include reconciliation

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of funds received and its expenditure (with copies of supporting documentation attached).

6. BREACH AND TERMINATION

- a. In the event of any of the parties committing a breach of any of the terms and conditions of this agreement, and remaining in default for a period of fourteen (14) days after receipt by it of a written notice from the other party calling for such breach to be remedied, the party delivering the notice shall be entitled to, without prejudice to any other rights it may have in terms of this agreement or in law, terminate this agreement by written notice to that effect given to the defaulting party.

- b. The Transferor may, without prejudice to any other remedy for breach of agreement by written notice of default sent to the Transferee terminate this agreement in whole or part, if:
 - i. The Transferee fails to host the event within the period specified in the agreement, or within any extension which may have been granted by the Transferor;

 - ii. The Transferee fails to perform any obligation(s), or condition(s) under the agreement;

 - iii. The Transferee, in the opinion of the Transferor, has engaged in corrupt or fraudulent practices in competing for or in execution of the agreement.

 - iv. The Transferee fails to submit the monitoring and evaluation report and relevant annexures in terms of the timeframes as set out in this agreement, or at all.

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- v. The Transferor may at any time terminate the agreement by giving written notice to the Transferee if the Transferee becomes bankrupt or otherwise insolvent. In this event then the termination will be without compensation to the Transferee, provided that such termination will not prejudice or affect any right of action, or remedy which has accrued or will accrue thereafter to the Transferor.

7. DISPUTE RESOLUTION AND ARBITRATION

- a. All disputes arising out of or relating to this agreement shall be referred to the HOD or his authorised representative, and the authorised representative of the Transferee, who both shall convene a meeting at a mutually suitable date and place, in order to reach an amicable solution.
- b. The parties hereof agree that should the authorised representatives fail to resolve the dispute, such dispute shall finally be resolved in accordance with Arbitration Foundation of Southern Africa ("AFSA") by an arbitrator appointed by the parties.
- c. In the event that parties do not agree as to who to appoint as an arbitrator, the AFSA shall make the appointment.
- d. Such resolution shall include a right by either party to appeal in terms of Article 22 of the AFSA rules and procedures.
- e. The above provisions shall not preclude either party from seeking relief from a competent court of law.

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8. SUB-CONTRACTING OF WORK

- a. The Transferee undertakes to empower previously disadvantaged community/ individuals by using small and emerging consultants and contractors and ensuring women, youth and the disabled benefit the most.
- b. The Transferee shall notify the Transferor in writing of all Sub-contracts awarded under this agreement; such notification shall not relieve the Transferee from any liability or obligation under this contract.

9. PERFORMANCE

The parties shall do all acts, prepare, present and sign all such documents as maybe required from time to time in order to implement and carry out the objectives of this agreement.

10. CESSION

Neither party shall be entitled to cede or assign any of its rights and obligations under and in terms of this agreement without the specific written approval of such from the other party.

11. GENERAL

- a. In the implementation of this agreement, the parties undertake to observe the utmost good faith and they warrant in their

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dealings with each other that they will refrain from prejudicing the rights, interests and assets of the other.

- b. No failure or delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise of any other right, power or privilege. The rights and remedies herein expressly provided are cumulative and not exclusive of any other rights or remedies that the parties would otherwise have.
- c. No party shall be bound by any undertaking, representation or warranty not recorded herein or added hereto as provided in this agreement.
- d. This agreement is written in English and all other correspondence and documents relating to this agreement that is exchanged between the parties shall also be written in English.
- e. The Transferee shall be responsible for ensuring that the event to be hosted is fully insured against all loss or damage which may arise as a result of a deliberate act, negligence or omission on the part of the Transferee, guests, participants, contractors, sub-contractors, and staff members and indemnifies the Transferor fully in terms of any claims that may arise in this regard.

12. WHOLE AGREEMENT

This agreement constitutes the entire agreement between the parties, and no variation, alteration, addition or cancellation shall be of any force or

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effect unless reduced to writing as an addendum or annexure and signed by or on behalf of the parties.

13. DOMICILIA AND NOTICES

The parties to this agreement choose their respective domicilium citandi et executandi as follows:

THE TRANSFEROR
THE DEPARTMENT OF SPORT, ARTS, CULTURE AND RECREATION
35 RISSIK STREET
JOHANNESBURG
2000

PRIVATE BAG X 33
JOHANNESBURG
2000
TEL NUMBER: 011 355 2810
FOR ATTENTION: CHARMAINE BOTHA

THE TRANSFEREE
999 MUSIC CC
18 BERGER STREET
1686

Tel: 011 315 1535
Fax: 086 588 0999
Cell: 083 457 13301/ 082 452 1912

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a. Any party shall be entitled to change its domicile by giving written notice to the other party, provided such change shall not take effect until the receipt of such notice by the other party.

b. All notices to be given by the parties to each other shall be given to the aforesaid addresses by delivery thereto, by ordinary mail. Such posting will be deemed to be proper service of such notice

14. PROJECT MONITORING AND CONTROL MEETINGS

a. The Department shall convene the aforesaid meetings as and when necessary at its discretion, during the implementation of the project. Such meetings shall be for the purposes of monitoring and evaluating the project implementation, its logistical and managerial arrangements as well as its actual and committed expenditure against the criteria as set out in Annexure A hereto.

b. The Transferee/Service Provider/Grantee shall submit to the Department monthly progress reports, cash flow reports, income and expenditure reports.

c. The Department shall be entitled to call for progress/ status reports of the project, which may be in specific templates and criteria, from the Transferee, at any time as it may deem necessary, during the implementation of this agreement.

d. The Transferee/Service Provider/Grantee must submit progress/ status reports of the project, including a full financial report which will detail the expenditure for that project as well as the number and type and duration of jobs created during the implementation of the project.

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together with all supporting documentation, which may be in specific templates and criteria, from the Transferor. These reports must be submitted as specified by the Department and at least at the close out phase of the project.

15. WARRANTIES

- a. The Transferee warrants that it will execute the project and perform its obligations in terms of this agreement with the required degree of skill, diligence, competence, and care as required by the project.
- b. The Transferee warrants that the persons which it uses to perform the activities required to fulfil its obligations in terms of this agreement will have the required skill, or will be trained by the Transferee so as to acquire within the course of the project the required skill, to perform the activities for which their services are provided.
- c. The Transferee warrants that any persons, whether they be employees, agents, or contractors, which the Transferee uses to perform the activities required to fulfil its obligations in terms of this agreement will perform their obligations in terms of those activities in which their services are provided with the requisite degree of skill, competence, diligence, and care.
- d. The Transferee warrants that they have the requisite skill to exercise the sole responsibility to manage a project of this nature and acknowledge that the full responsibility of project management of this project forms part of their obligations in terms of this agreement.

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- e. The Transferee warrants that the quality control processes that they are obliged to institute in terms of this agreement are sufficient to meet the required standards of this agreement related to the performance of the work of this project.

16. LIMITATION OF LIABILITY

The Transferor shall not be held liable to Transferee for any special, indirect or consequential loss or damages arising under this Agreement, including without limitation, loss of business, profit, revenues and/or data whether arising from negligence, breach of contract or otherwise. The Transferor shall not be held liable to the Transferee or any third party for any loss or damages, arising from the Transferee's act, negligence or omission whatsoever, pursuant to the execution of this agreement.

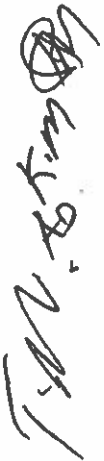
17. LAW AND JURISDICTION

This Agreement shall be governed by and construed in all respects in accordance with the laws of the Republic of South Africa.

18. SEVERABILITY

In the event of any provision of this Agreement being invalid, unlawful or otherwise unenforceable under the mandatory provisions of any applicable law, that provision shall be deemed to be severed from this Agreement and of no force or effect, provided that such invalidity shall not affect the remaining provisions of the Agreement which shall continue to be valid and enforceable. In such event, the Parties shall as soon as reasonably possible after becoming aware of the unenforceability of the severed provision negotiate in good faith an alternative mechanism or provision which would achieve a commercial effect which is the same or as close as

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reasonably possible that which the Parties intended to achieve by means of the severed provision.

19. SUCCESSORS IN TITLE

Reference in this Agreement to the Parties shall include their respective successors in title, permitted assignees and personal representatives.

20. NO PARTNERSHIP

Nothing in this Agreement shall be deemed to create any joint venture, partnership or principal agent relationship between the Parties and neither Party shall hold itself out in its advertising or otherwise in a manner which indicate or imply such relationship with the other Party pursuant to this Agreement.

21. LEGAL COSTS

Each Party will bear its own costs pursuant to or arising from the preparation of this Agreement (including prior drafts and consultations).

22. FORCE MAJEURE

- a. The Transferee shall not be liable for damages, or termination for default if his delay or non-performance under the agreement is due to Force Majeure
- b. If a Force Majeure situation arises the Transferee shall notify the Transferor in writing.

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- c. The Transferee shall continue its obligations under the agreement as far as is reasonably possible and shall seek all reasonable alternate means for performance, not prevented by the Force Majeure.

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Signed at Johannesburg on this 24 day of Dec 2015

Ms Tiisetso Motloung for and on behalf of the Transferor

Full Name T.P. Motloung Signature [Signature]

As Witnesses

Full Name KGANARE MOLUBI Signature [Signature]

Full Name Andiswa Dabisi Signature [Signature]

Signed at Johannesburg on this 18 day of DEC 2015

Mr Arthur Mafokate for and on behalf of the Transferee

Full Name ARTHUR MAFOKATE Signature [Signature]

As Witnesses

Full Name Itus Mofonets Signature [Signature]

Full Name Flayd Malinga Signature [Signature]

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"ANNEXURE B"

PAYMENT SCHEDULE

No	AMOUNT	DATE	PERCENTAGE PAYMENT	CONDITIONS TO BE MET FOR PAYMENT TO BE PROCESSED
1.	R 1 000 000 -00	Within one month from the signature of agreement	100%	Monitoring and evaluation report by the Transferee to be submitted to the Transferor

Payment shall be effected by electronic transfer into the Bank account of the Service Provider, which details are as follows:

Name of Bank: NEDBANK BANK
Name of Account Holder: 999 MUSIC
Branch Code/Number: 168642/ Midrand
Account Number: 1686104995
Type of Account: CHEQUES ACCOUNT

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GAUTENG PROVINCE

SPORT, ARTS, CULTURE AND RECREATION
REPUBLIC OF SOUTH AFRICA

Inquiries: Sifiso Mntsi
Email: Sifiso.Mntsi@gauteng.gov.za
082 933 007
Ref: 5. SP008

TO : VRP SKOSANA
SECRETARY TO THE LEGISLATURE

FROM : MS MORAKANE MOSUPYOE
MEMBER OF EXECUTIVE COUNCIL

SUBJECT: RE: QUESTIONS POSED BY LEGISLATURE

5.SP008. With regard to the 31 December 2022 Music Festival held at Mary Fitzgerald Square, could the MEC please indicate:

(I) did the department partner with the City of Johannesburg for this festival since 2014/15 financial year to-date;

Response

Yes, the Department partnered with COJ in the financial year 2015/2016.

(II) If yes to question (I), please provide details of the partnership;

Response

The department supported the event through a transfer of R1 000 000 as part of major events in the 2015/2016 financial year.

(III) did the department sign any Service Level Agreement (SLA) or Memorandum of Understanding (MOU) with the City of Johannesburg (please provide a copy);

Response

The department did not enter into an MOU with COJ, a direct transfer to the event organisers was made like all other events that were supported in the same financial year

(IV) did the department pay any service providers for this festival since 2014/15 to date;

Response

Yes

(V) please provide a detailed list of service providers that have been paid by the department since the 2014/15 financial year to date; and

Response

999 Music: 2015/2016


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(vi) how much was paid to each service provider since the 2014/15 financial year to date;

Response

An amount of R1000 000.00 was paid in the 2015/2016 financial year to 999 Music

Yours sincerely



Ms. M. M. Mosupye
Member of Executive Council
Date:

cc: the Leader of Government Business – Ms N Nkomo-Ralehoko
cc: the Acting Director General of Gauteng, Mr. Mduduzi Mbada
cc: the Deputy Director: Leader of Government Business, Ms. L Bob
cc: the Assistant Director: Leader of Government Business, Ms. N Khumalo