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Republic of South Africa



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CITY PLANNING AND DEVELOPMENT

CONTROL OF OUTDOOR ADVERTISING AGREEMENT

Memorandum of agreement entered into by and between

City of Mbombela
herein represented by

MR.N DIAMOND

In his duly authorised capacity as

MUNICIPAL MANAGER

(Henceforth referred to as “CoM”)

And

.....

Registration No.

herein represented by

.....

in the duly authorised capacity as

.....

(Henceforth referred to as the “**Company**”)

PREAMBLE

WHEREAS the **company** submitted an application to continue to operate an already existing and erected billboard, as approved by CoM on the **site** indicated on the site plan that is attached hereto as Annexure “A”,

AND WHEREAS CoM has approved the application by the **company** and the **company** is thus authorised to continue to operate the existing billboard on the site or sites **as mentioned in Annexure A** subject to the terms and conditions hereinafter;

IT IS HEREBY AGREED AS FOLLOWS:

1. INTERPRETATION

In this Agreement, unless otherwise provided or the context otherwise requires:-

- a. “**By-laws for the Control of Outdoor Advertising**” means the by-laws for the control of outdoor advertising of CoM as amended from time to time;
- b. “**CFO**” means the Chief Financial Officer of CoM or his nominee;
- c. “**commencement date**” means the first day of the month following the date of signature of this agreement by the last party signing (signature date);
- d. “**CoM**” means the City of Mbombela;
- e. “**face**” means that portion of the **billboard** bearing the advertisers’ advertisement;
- f. “**GM: CPD means the General Manager: City Planning and Development**;
- g. “**parties**” means CoM and the **company**;
- h. “**property**” means the **property** that vests in CoM in terms of section 63 of the Local Government Ordinance 1939, (Ordinance 17 of 1939) and on which the site is situated;
- i. “**BILLBOARD**” means any screen or board larger than 4m², supported by a free standing structure which also includes a gantry that spans the road, which is used or intended to be used for the purpose of posting, displaying or exhibiting an advertisement and which is also commonly known as an advertising hoarding. The main function of a billboard is to advertise non-locality bound products, activities or services;
- j. “**site**” means that portion of the **property** approved by the City of Mbombela on

which the billboard is erected as per annexure A attached;

- k. **CSD**" means Community Services Department;
- l. **Wayleave**" means the authorisation to perform work within road reserves and/servitudes of CoM;
- m. any reference to one gender includes the other gender;
- n. any reference to natural persons includes legal persons and vice versa;
- o. any reference to the singular shall include the plural and vice versa;
- p. **LED**" means Local Economic Development;

2. DURATION OF AGREEMENT

- 2.1 This agreement shall be for a period of 9 (Nine) years and 11 (Eleven) months calculated from the **commencement date** and shall continue thereafter for the initial period on application for renewal of the agreement by the Company's at least six months prior to the expiry date of this agreement.
- 2.2 The company's should produce proof of work done through Cooperate Social Investment projects (CSI) within the City of Mbombela area on an annual basis but failing to produce the proof of CSI projects by the Company's will not result in the termination nor a breach of this contract. The CSI projects to be implemented through the LED unit.
- 2.3 The agreement shall be reviewable annually, in terms of the provisions of the Municipal System Act and the Municipal Finance Management Act.

3. REMUNERATION

- 3.1 The **company's** shall pay CoM a monthly amount equal to **R60-00** per square meter, per face in Category A, (Mbombela, White River, Hazyview and Rocky Drift) and **R30-00** per square meter, per face in Category B, (Matsulu, KaBokweni, KaNyamazane, Barberton, Karino and Tekwane) to CoM, (Vat Exclusive)
- 3.2 The amount(s) payable to CoM in terms of this agreement shall be payable after three months from commencement date monthly in arrears on or before the 30th

day from, the date of receipt of invoice in terms of clause 3.1 above.

- 3.3 The rental amount payable (as per clause 3.1 above) by the **company's** for each succeeding year of this agreement shall escalate by 10% on each anniversary of this agreement whichever the Municipality decides.
- 3.4 In the event of the company being unable to rent advertising space on any **face** of the **billboard**, the **company** shall still be liable for the payment of a monthly amount indicated in clause 3.1
- 3.5 The amount payable to CoM shall be paid at the address referred to in clause 18.1.1 of this agreement and shall be free of any bank exchange, commission or other deduction of any nature.
- 3.6 Should the **company** by any means fail or neglect to pay any monthly payments in terms of this agreement promptly before or on the due date mentioned in clause 3.2, such late payment shall bear compounded interest at the prime overdraft rate of the official bank of CoM until such failure is rectified by the **company**.

4. APPROVALS AND CONSENTS

- 4.1. CoM hereby undertakes:

4.1.1 that it has the authority to enter into this agreement, and that this agreement (and the process by which this agreement has been negotiated and awarded) fully complies with all applicable laws, and that it has complied with all legislative and regulatory procedures in procuring and entering into this agreement.

4.1.2 that the consent provided to the company for the site in terms of the By-laws for the Control of Outdoor Advertising shall endure for the duration of this agreement.

5. ERECTION of BILLBOARDS

- 5.1 The **billboard** shall be erected at the **company's** own expense.
- 5.2 (i) The **billboard** shall be neatly and properly erected in accordance with the approved drawings and specifications, and finished in a workmanlike manner and no Billboard shall be constructed without prior approval of plans by the municipality.
- 5.2(ii) Should the company construct without approvals of all plans, the agreement shall be nullified for all structures.
- 5.2 (iii) It is the responsibility of such a company to engage with all service Departments before the erection of the Billboard infrastructure.
- 5.3 In the event of any damage caused to the road or any underground services during the erection, maintenance or any other actions by the **company** of the **billboard**, the **company** shall at its own cost repair such damage to the satisfaction of CoM.

6. ELECTRICITY SUPPLY

- 6.1 CoM shall endeavour to provide the **company** with a continuous supply of electricity to illuminate the **billboard** if required, but all costs pertaining to such supply, namely the cost of the electricity cable connections, the electricity meter and the connection of the billboard to CoM's electricity supply as well as the maintenance of the aforementioned system, shall be for the account of the **company**.
- 6.2 The cost of electricity consumed shall be for the account of the **company**. However, if for whatever reason, the electricity supply cannot be metered, CoM shall, in accordance with a generally acceptable power consumption formula determine what it considers to be a fair and reasonable cost for both parties for the electricity consumed and the **company** shall make payment therefore on demand.
- 6.3 The City of Mbombela has programmes to enhance and promote green energy programmes and it is highly recommended that your company infrastructure be

compatible with renewal energy infrastructure programmes.

7. PUBLIC LIABILITY AND INDEMNITY

7.1 The company shall at its own cost take out and maintain adequate public liability insurance in respect of any claim which may be made against CoM and/or the company arising from the presence of the billboard on the site. The policy shall provide for adequate coverage for all public liability claims per event, with the number of events unlimited; Written proof that the full premium has been paid shall be submitted to the CFO for approval within 14 (fourteen) days of request, provided that the CFO shall further be provided with written proof of each annual renewal of the said policy within the first seven days of request.

7.2 The **company** indemnifies CoM against any claims of whatever nature as well as legal costs (inclusive of costs on the attorney/client scale), which may directly arise from the presence of the billboard on the site subject to such indemnification being limited to the cover and amounts provided for in the company's public liability insurance referred to in clause 7.1

8. MAINTENANCE OF THE BILLBOARD

8.1 The **company** shall keep and maintain the **billboard** and its surrounds in a safe, clean, neat and tidy condition to the reasonable satisfaction of CoM.

8.2 The company is encouraged to utilize local skills and services within local communities and such database shall be provided by the LED unit.

8.3 The company is encouraged to spend 30% of the construction costs and other operational costs to the local skills and SMMES within local communities and such programmes shall be presented to the LED unit on a monthly basis.

9. ALTERATIONS TO THE BILLBOARD

9.1.1 Subject to compliance with the relevant legislation, the **parties** agree that the **company** shall, with the prior written consent of CoM, which consent shall not

unreasonably be withheld, have the right to change the:

- (1) Design or format of the billboard, subject to such additional conditions as determined by CoM.
- (2) The company shall not permit the display of any advertising on the billboard that is obscene, offensive and contrary to public morality or of a contentious nature.

10. COMPANY'S ACCESS TO SITE

The **company** or its duly authorised employees, agents, consultants and representatives shall be entitled at any reasonable time to access to the **site** to change the advertisement, to carry out repairs, alterations and the general maintenance of the **billboard** or, where applicable, to carry out the reconstruction of the **billboard**, provided that the **company** shall notify CoM at least seven (7) working days prior to the commencement of any of the aforementioned actions, if it is foreseen that such action/s may in any way impede normal traffic flow.

11. OBSCURING OF THE BILLBOARD

In the event of the **billboard** being obscured due to actions or omissions of CoM to the extent that it has been rendered unfit for the display of advertisements, then, provided that the cause of such obscuration cannot be removed by CoM, the **company** shall be entitled to identify in cooperation with CoM, a replacement **site** of equal value within 60 (sixty) days which CoM shall make available to the **company**, failing which this agreement shall lapse. Where the agreement lapses in this event, the parties shall still continue to cooperate with each other with the aim of identifying a replacement site of equal value. When a replacement site is identified, CoM shall issue the company with a new consent for such site and conclude a new lease for such replacement site based on the same terms and conditions as contained in the lease agreement which had lapsed. The cost of the relocation of the **billboard** (if applicable) shall be for the account of the **company**.

12. CESSION OF RIGHTS

12.1 The **company** shall not be entitled to cede its rights or any part thereof under this agreement or to assign its title or interest or delegate its obligations in terms of this agreement without the prior written consent of CoM, which consent shall not be unreasonably withheld. This clause will not prevent the company from entering into the normal advertising contract with third parties in respect of the advertisement displays on the **billboard**.

12.2 The **company** shall not be entitled to transfer any of its shares or members interest to any third party that would effectively pass control to such third party without first notifying CoM.

13. BREACH

Should the **company** at any time during the currency of this agreement fail to pay the amounts due in terms of this agreement on due date and remain in default for 7 (seven) days after the receipt of a written notice from CoM requiring the payments to be made, or commit any other breach of the conditions of the agreement and fail to rectify the breach within 14 (fourteen) days of the receipt of written notice requiring it to remedy the breach, then, notwithstanding the provisions of clause 3.5, CoM shall have the right forthwith to cancel this agreement and to terminate the **company's** rights hereunder on written notice, without prejudice to any claim that CoM may have against the **company** for payment of any charges or fees outstanding and/or any damage which it may sustain by reason of termination of this agreement.

14. RIGHT TO TERMINATE LEASE

14.1 With the exception of alterations to the **billboard** in terms of clause 9, should the right to display advertisements on the **billboard** be refused, prohibited, restricted or curtailed by any legislation, bylaw, court order or decision of any statutory planning or other authority, the **company** shall be entitled to identify in cooperation with CoM, a replacement site of equal value within 60 (sixty) days which CoM shall make available to the company, failing which the company shall have the right to terminate this agreement, by giving one month's written notice of such intent.

14.2 Notwithstanding clause 3.3, should the **company** be unable to rent out advertising space on the **billboard** for a consecutive period of 5 (five) months, then the **company** in its sole discretion shall have the right to terminate this agreement, by giving 1 (one) month's written notice of such intent.

14.3 The company shall be entitled to terminate this agreement on 3 (three) months written notice to CoM.

14.4 In the event the company intends to terminate the agreement before the end of the contract, the company shall be liable to pay Council fee to Council for a period of 12 months, in order to allow Council to find another entity to utilise the space.

15. SPECIAL CONDITIONS

15.1 In addition to the safety standards set out in the applicable bylaws, legislative enactments or regulatory provisions, the following conditions shall apply:

15.1.1 The visibility of traffic signals or traffic signs may not be affected by the **billboard**.

15.1.2 All traffic signal heads must be clearly visible to oncoming motorists, without any advertisement in the background, from a distance of 100 (one hundred) meters before the signal and stay visible until the stop line is crossed

15.1.3 The occurrence of road accidents should not increase as a result of the erection of the **billboard** in a particular location.

15.2 If, the **billboard** erected does not comply with clause. 15.1.1, 15.1.2 and 15.1.3 CoM may instruct the **company** to relocate the **billboard** to a **site** agreed upon by the **parties**, failing which the **billboard** is to be removed within 60 (sixty) days of notification to move such **billboard**. The relocation or removal of the **billboard** is the responsibility of the **company**, and the costs involved shall be for the account of the **company**.

15.3 Should it be necessary to remove the **billboard** as a result of municipal roadwork of whatever nature or the relocation or upgrading of municipal services, the **billboard** may be relocated to a temporary or permanent **site** approved by CoM

and the company. The **company** shall move the **billboard** within 60 (sixty) days of written notification to move such **billboard**, (and CoM shall provide consent and a new lease agreement based on the terms and conditions of this agreement) to the company for the relocation site, provided that, should an acceptable relocation **site** not be identified within this period after the parties have used their endeavours to identify a relocation site, the **billboard** shall immediately be removed by the **company**. All costs involved in the relocation or removal of the **billboard** shall be for the account of the **company**. CoM shall not be liable for any damages of any nature arising from such actions.

- 15.4 CoM may in its sole discretion, but on 14 (fourteen) days written notice to the company, carry out any maintenance and effect any alterations to the **property** at any time and should such maintenance and/or alterations effect the **billboard**, CoM shall not be liable for any damage to the **billboard and face** arising from such maintenance and/or alterations, unless such damage was caused by the negligent acts and/or omissions of the **municipality**, its employees, contractors or representatives.
- 15.5 No existing trees may be removed, cut back or trimmed in order for the **billboard** to be erected.
- 15.6 The existing trees shall be cut back or pruned in consultation with Community Service Department at the request of the Company's and at their expense by a Council approved Contractor and not more than 3 (three) trees (unless otherwise agreed between the company and CoM) would be cut back or trimmed in order to improve the visibility of the billboard. No tree will be pruned to the extent of the trees balance (shape) being negatively impacted. Any palm trees maybe relocated at the company's expense to an appropriate place and maintained for 3 (three) months including watering.
- 15.7 The **billboard** is to be positioned in such a way that it is not necessary to disturb CoM's existing trees or their root system, during or after construction.
- 15.8 Any approval granted in terms of this agreement must be in writing.
- 15.9 Should any condition or term of this agreement be contrary to any existing by-

laws of CoM, the provisions of such by-law shall prevail.

16. COMPLIANCE WITH LEGISLATION AND JURISDICTION

- 16.1 The **company** undertakes to comply at all times with all applicable national, provincial and municipal legislation or similar regulatory provisions in relation to the billboard.

This Agreement will be governed by and construed in accordance with the Law of the Republic of South Africa and all disputes, actions and other matters relating thereto will be determined in accordance with such Law.

The parties to this agreement agree to the jurisdiction of the Magistrates Court in terms of the Magistrates Court Act, Act 32 of 1944 in respect of actions where the jurisdiction of the magistrates court would otherwise have been excluded, but this does not prevent any party from instituting any legal proceedings in the High Court, or any other court having jurisdiction, should that party choose to do so.

17. OWNERSHIP

- 17.1 Ownership of the **billboard** and all accessories thereto shall at all times remain the sole and absolute property of the **company**.
- 17.2 Should this agreement or part thereof be terminated for any reason, the **company** shall at its own expense remove the **billboard** affected by such termination together with its visible foundations and accessories as aforesaid from the **site**, repair any damage caused by the removal of the **billboard** and leave the **site** in a clean, tidy and safe condition to the satisfaction of CoM, within 60 (sixty) days of the date of termination of the agreement, unless otherwise agreed.
- 17.3 Should the **company** fail to remove the **billboard** within the period referred to in clause 17.2, CoM shall be at liberty to remove the **billboard at the cost of the company**.

18. DOMICILIUM CITANDI ET EXECUTANDI

18.1 CoM and the **company** hereby respectively choose their domicilium citandi et executandi as follows:

18.1.1 The **municipality** at:

18.1.2 The **company**:
.....
.....
.....
.....

and a copy of any notice to:

Email address :

or any such other address in South Africa as the **parties** hereto may from time to time advise to the other in writing.

18.2 Any communication or written notice of any manner whatsoever, arising out of or touching or in any way connected with the terms hereof, shall or may be deemed to have been properly and sufficiently served:

18.2.1 if served by hand and a receipt obtained from a responsible person working at the address referred to in either 18.1.1 or 18.1.2 above, on that day;

18.2.2 if sent by prepaid registered mail, 14 (fourteen) days after posting; or

18.2.3 if sent by facsimile, on the same day as dispatched by facsimile.

19. SEVERABILITY

Should any of the terms and conditions of this Agreement be held to be invalid, unlawful or unenforceable, such terms and conditions shall be severable from the

remaining terms and conditions which shall continue to be valid and enforceable. If any term or condition held to be invalid is capable of amendment to render it valid, the Parties agree to negotiate an amendment to remove the invalidity.

20. FORCE MAJEURE

In the event of any act beyond the control of the Parties, including but not limited to, an act of God, strike, war, rebellion, riot, civil commotion, lockout, suspension of labor, fire, accident, or (without regard to the foregoing enumeration) of any circumstances arising or action taken beyond the reasonable control of the Parties hereto preventing them or any of them from the performance of any obligation hereunder (any such event hereinafter called "*force majeure* event") then the Party affected by such *force majeure* event shall be relieved of its obligations hereunder during the period that such *force majeure* continues (excluding payment obligations which fell due before the said *force majeure* event). The Party so affected must notify the other party in writing as soon as it becomes aware of a *force majeure* event that will affect its performance under this agreement.

21. RELATIONSHIP BETWEEN THE PARTIES

The Service Provider is an independent contractor and under no circumstances will it be a partner, joint venture partner, agent, or employee of CoM in the performance of its duties and responsibilities pursuant to the Agreement.

All personnel used by the Service Provider will be the Service Provider's employees, contractors, or agents, and the entire management, direction, and control of all such persons will be and remain the responsibility of the Service Provider.

22. DISPUTE RESOLUTION

Prior to the initiation of formal arbitration procedures, the Parties shall, within 5 (five) business days after the arise of any dispute, first attempt to resolve their dispute informally by reference to a joint committee comprised of a single designated

representative of each Party who shall have the authority of the Party he/she represents to settle the dispute.

Should the designated representatives, within 5 (five) business days after the dispute has been referred to them, conclude in good faith that they are unable to settle the dispute or should either Party have failed to appoint a designated representative on the written request of the other within 5 (five) business days after being requested to do so, then either Party may refer the matter for arbitration by giving written notice to that effect to the other party.

Save in respect of those provisions of this Agreement which provide for their own remedies which would be incompatible with arbitration, or in the event of either Party instituting urgent action against the other in any court of competent jurisdiction, any dispute arising from, or in connection with, this Agreement will finally be resolved by arbitration in accordance with the Rules of the Arbitration Foundation of Southern Africa (the "Foundation") or its successor, by an arbitrator or arbitrators appointed by the Foundation.

23. CONVENANT OF GOOD FAITH

Each Party agrees that, in its respective dealings with the other Party under or in connection with this Agreement, it shall act in good faith.

24. WHOLE AGREEMENT AND AMENDMENT

This Agreement constitutes the whole of the Agreement between the Parties relating to the subject matter hereof and no amendment, alteration, addition, variation or consensual cancellation will be of any force or effect unless reduced to writing and signed by the Parties hereto or their duly Authorised Representatives. Any document executed by the Parties purporting to amend, substitute or revoke this Agreement or

any part hereof, shall be titled an "Addendum" to the applicable Service Agreement and assigned a sequential letter to be included in the title.

25. GENERAL

The **parties** do hereby agree and specifically record that:-

- 25.1 this agreement constitutes the sole record containing the terms of their agreement;
- 25.2 neither party has been induced to enter into this agreement and to undertake the respective obligations which they have undertaken in terms hereof by any representations, warranties, whether express or implied or any other matter or condition other than as recorded herein; and
- 25.3 no amendment to or variation of the terms hereof, whether to a material extent or otherwise shall be of any validity or force unless and until the same shall have been reduced to writing and shall have been signed by the **parties**.

SIGNED by CoM aton20..... in the presence of the undersigned witnesses.

AS WITNESSES:

for City of MBOMBELA

1.

2.

.....

NAME:

DESIGNATION

SIGNED by the company aton 20..... in the presence of the undersigned witnesses.

AS WITNESSES:

for

1.

2.

.....

NAME:

DESIGNATION: