



## **AGREEMENT**

**ENTERED INTO BY AND BETWEEN MBOMBELA LOCAL MUNICIPALITY**

HEREIN REFERRED TO AS "MLM"

REPRESENTED BY **Mr. F. S. Sibozu** IN HIS

CAPACITY AS **Acting Municipal Manager**

Duly authorized thereto

And

## **DDP VALUERS**

HEREIN REFERRED TO AS **SERVICE PROVIDER**

DULY REPRESENTED BY **Mr. T. Geysler** IN HIS

CAPACITY AS **Managing Director of the company**

## **ANNEXURES**

The following documents are incorporated into and form part of this agreement:

- a) **Copy of appointment letter**
- b) **Copy of Acceptance Letter**
- c) **Detailed project plan and cash flow projections**
- d) **Bid Number 157/2011**
- e) **Contract form MBD 7.2**
- f) **General conditions of contract (GCC)**

**WHEREBY THE PARTIES AGREE AS FOLLOWS:**

**1. INTERPRETATION**

1.1 In this Agreement, unless the context otherwise indicates—

**“Agreement”** means this agreement, comprising all the parts and annexures attached hereto or referred to in the agreement, together with all changes control notes and other amendments executed by the parties in writing;

**“Equipment”** means all furniture, fixtures, fittings, machinery and such other equipment which may be added hereto by written agreement of the parties.

**“Executing authority”** means the Accounting Officer of the institution;

**“MLM”** mean Mbombela Local Municipality as an employer;

**“Personnel”** means any employee, agent, service provider, sub-contractor or other representative of the parties;

**“Services”** means the services to be provided by the Service Provider in terms of the Agreement;

**“Service provider”** mean DDP Valuers (Pty) Ltd

**“Working days”** means any day, except Saturdays, Sundays and public holidays, in terms of the Public Holidays Act, 1994 (Act 36 of 1994), and shall be calculated exclusive of the first and inclusive of the last day.

1.2 In the Agreement, unless the context otherwise indicates—

- (a) The masculine includes the feminine;
- (b) The singular includes the plural; and
- (c) Any reference to a natural person includes a juristic person.

1.3 The head notes to the clauses of the Agreement are included for reference purposes only and shall not affect the interpretation of the provisions to which they relate.

1.4 In the event of a conflict between any provision of this agreement and any Annexure thereto, the parties accept and agree that the expression which, in the sole opinion of MLM is favorable to it shall be accepted as the prevailing and applicable provision.

## 2. APPOINTMENT

- 2.1 MLM hereby appoints the Service Provider to provide the services set out in the Agreement and the Terms of Reference. Such services shall be provided in accordance with the Agreement, the Terms of Reference and the work plan.
- 2.2.1 The Service Provider shall ensure that the person or persons who provide the services under the Agreement are suitably qualified, experienced and able to carry out the work required.
- 2.2.2 Key Performance Areas :
- 2.2.2.1 Value all properties as at the determined date of valuation within the area of jurisdiction in accordance with chapter 5 of the Municipal Property Rates Act, 2004 (Act no 6 of 2004) as amended and the date of valuation is determined to be 02 July 2013;
  - 2.2.2.2 Prepare supplementary valuation roll to maintain the current valuation roll for the remaining period of the valuation cycle;
  - 2.2.2.3 Prepare a general valuation and supplementary valuation roll(s) of all properties in the municipality for the new valuation cycle;
  - 2.2.2.4 Sign and certify the valuation roll(s);
  - 2.2.2.5 Submit the valuation roll to the municipal manager within a prescribed period;
  - 2.2.2.6 Compilation of a register of Specialized Properties;
  - 2.2.2.7 Provide market report on any of properties as and when required;
  - 2.2.2.8 Consider, process and finalize objections;
  - 2.2.2.9 Attend appeal board hearings;
  - 2.2.2.10 Generally, provide the municipality with appropriate administrative support related to valuation processes including but not limited, printing and posting of section 49 notices and handling valuation related queries.;
  - 2.2.2.11 Transferring skills to the internal municipal valuation staff on valuation related processes, including training and mentoring of municipal appointed candidate valuers;
  - 2.2.2.12 Conduct regular back-ups on daily, weekly and monthly basis as set out in schedule 4 of the tender document;
  - 2.2.2.13 Provide monthly progress report to the project steering committee.

~~Date of Valuation: \_\_\_\_\_~~

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## 3. COMMENCEMENT AND DURATION OF CONTRACT

- 3.1 The contract period will be 6 years and 3 months
- 3.1 Notwithstanding the date of signing hereof, this Agreement commences on 01 April 2012 ending 30 June 2018
- 3.2 MLM may, at its sole discretion extend the duration of this Agreement for a further period as it may deem necessary and agreed upon from time to time, including but not limited to extending the Agreement on a month to month basis.

- 3.3 In the event that MLM wants to exercise its discretion in terms of Clause 3.2 of this Agreement, MLM shall in writing notify the Service Provider (30) days prior to the date on which this agreement comes to an end or earlier.
- 3.4 Within a period of seven (7) days of receipt of a letter of intention to extend the Agreement, the Service Provider must in writing inform MLM whether it accepts the extension of the agreement or not.
- 3.5 The extension of this Agreement shall be on the same terms and conditions as set out in this Agreement, unless otherwise agreed to by the parties and such further agreed terms shall be reduced to writing and signed by the parties
- 3.6 Any extension of this agreement for whatever period shall not create or be perceived by the Service Provider as creating any reasonable expectation for further extension or appointment of the Service Provider in future procurement of services which are the subject of this Agreement, any similar services or any services related to the one to be rendered by the Service Provider in terms of this Agreement.

#### **4. PAYMENT**

- 4.1 The Service Provider shall be paid by MLM for services rendered
- 4.2 Payments shall be effected as per the project payment read with schedule 3 of the tender document attached herein as annexure (b).
- 4.3 All claims shall be VAT inclusive and are subject to 10% retention;
- 4.4 Retention shall be release on submission of final closure report on the general valuation roll and objection process for such valuation roll.

#### **5. PENALTY CLAUSE**

- 5.1 Notwithstanding any provision of this Agreement, MLM shall have the right to impose penalties on the Service Provider for non-compliance with any of its obligations, including but not limited to outstanding work as per the project implementation plan and poor performance.
- 5.2 The performance evaluation report by the Project Manager as set out in Clause 8.2 of this Agreement shall be the sole basis on which MLM can impose a penalty on the Service Provider.
- 5.3 Upon deciding to impose a penalty for whatever reason, MLM shall, without soliciting a response from the Service Provider, inform the Service Provider of such decision in writing and the reason therefore.
- 5.4 MLM shall impose penalties as set out in clause 6.3 of the tender document for non-compliance, or poor performance by the Service Provider
- 5.5 Subject to Clause 5.6 of this Agreement, the penalty payable shall be represented by the applicable percent of the payment due to the Service Provider at the time of

non-compliance by the Service Provider.

- 5.6 MLM shall deduct any such a penalty from any monthly payment due to the Service Provider.

## **6. OBLIGATIONS OF MLM**

MLM shall:

- 6.1 Pay the Service Provider all monies due within 30 days of the submission of the invoice.
- 6.2 Provide access to the information as set out in clause 11 of the tender document.
- 6.3 Be responsible for the evaluation of the Service Provider in accordance with this agreement.

## **7. OBLIGATIONS OF SERVICE PROVIDER**

The Service Provider shall:

- 7.1 Carry out the services with diligence in terms of the provisions of this Agreement, observe any applicable laws, regulations and instructions;
- 7.2 Provide adequate support and technical back up for the performance of its obligations under this Agreement;
- 7.3 Deliver to MLM and the Project Manager and or Project Steering Committee, monthly reports or as may be required from time to time on the progress and overall performance of its obligations under this Agreement;
- 7.4 Take out and maintain, at own cost, adequate public liability and professional indemnity insurance as set out in clause **7 of Form D** of the tender document; Insurance and shall furnish full particulars of such insurance policies to MLM. In the event that no amount has been agreed upon, the Service Provider shall ensure and take adequate cover to settle any claim that may be instituted or preferred against MLM, emanating directly or indirectly from this Agreement or the work performed by the Service Provider under this Agreement;
- 7.5 Take out and maintain, at own cost, the relevant insurance for all machinery and / or equipment required for performance of its obligations under this Agreement;
- 7.6 Hold in confidence any documents and / or information acquired or provided during Performance of any obligations provided for in this Agreement;
- 7.7 Not publish or in any manner make available to any third party, without the written consent of MLM, any information referred to in this Agreement or acquired in the course of performance of obligations under this Agreement;

- 7.8 ensure that all data obtained and/ or supplied is accurate notwithstanding the source of such data; and
- 7.9 not transfer, assign, cede or sublet his contract to any other party without having obtained the written permission of MLM.

## 8. PROJECT MANAGER

- 8.1 MLM shall within a period of 14 days of signing this Agreement, appoint a Project Manager and accordingly inform the Service Provider of the name, address, contact numbers and e-mail of the Project Manager.
- 8.2 The Project Manager shall be responsible for the following:
  - (a) Receive reports, progress reports and performance reports generated by the service providers' Project Leader
- 8.3 Any report generated by the Project Manager shall be binding and enforceable on the Service Provider.

## 9. INDEMNITY AND LIABILITIES

- 9.1 MLM shall not be liable for any act or omission of whatever nature that has been committed by the Service Provider, its agents, personnel, staff members or representatives in connection with the performance of its obligations under this Agreement or any such service on behalf of MLM.
- 9.2 The Service Provider hereby indemnifies MLM against any claims or court actions, including all legal costs in respect thereof, that may be instituted by any person against MLM arising out of any act, omission or default on the part of the Service Provider or, any person performing work on behalf of the Service Provider, in the provision of services under this Agreement.
- 9.3 The Service Provider accepts any liability to pay compensation for proven financial damages and losses suffered by MLM as a result of breach of any of the obligations under this Agreement.
- 9.4 The Service Provider's individual and / or collective liability to and with MLM arising out of or relating to this Agreement, including and without limitation on account of performance or non-performance of obligations, and regardless of the cause of action, whether in contract, *delict* or otherwise will be determined by the actual damages or negotiated settlement of damages suffered and proven by MLM against the Service Provider or a third party against MLM and the Service Provider.

9.5 In the event of any claim instituted against either one of the parties, individually or collectively, the party which has received a letter of demand, summons, motion proceedings or any papers instituting a civil or criminal claim, shall without delay inform the other. In the case of the Service Provider, the claim shall further be submitted to its insurer for it to be settled as provided for in this Agreement.

#### **10. BREACH**

If a Party is in default or breach of any obligation which arises in terms of this Agreement and that defaulting Party fails to remedy such default or breach within 7 working days after receipt of a written notice given by the aggrieved Party calling upon the defaulting Party to remedy such default or breach, then the aggrieved Party may, without prejudice to any other rights which it may have in terms hereof or at law—

- (a) Claim specific performance;
- (b) Cancel the Agreement, such cancellation to be effective immediately on receipt by the defaulting Party of a written notice to that effect.

#### **11. INDEPENDENT SUPPLIER**

The Service Provider is employed as an independent supplier and not as an agent of MLM and has no authority to bind or represent the MLM in any matter.

#### **12. GOOD FAITH AND REASONABLENESS**

In their dealings with each other for purposes of the Agreement, the Parties—

- (a) Undertake to act in good faith and reasonably; and
- (b) Warrant that they shall not do anything or shall refrain from doing anything that might prejudice or detract from the rights or obligations of each other.

#### **13. CONFLICT OF INTEREST**

- 13.1 Neither the Service Provider nor their personnel shall engage in any activity which Conflict with or could potentially conflict with the services to be provided in terms of the Agreement.
- 13.2 The Service Provider shall notify MLM immediately of any activities or circumstances which give rise to or could potentially give rise to such conflict of interest and shall inform MLM how the Service Provider intends dealing with such conflict.

#### **14. FORCE MAJEURE**

- 14.1 *Force majeure* shall be considered to be circumstances where the performance of any obligation in terms of the Agreement are suspended or postponed by-

- (a) Strikes or lock-outs or any combination thereof by employees of either of the Parties;
- (b) War or civil commotion;
- (c) Any cause, except as may otherwise be provided for in the Agreement, beyond the reasonable control of either of the Parties; and
- (d) Any natural disaster.

14.2 If the completion of any obligation be delayed as a result of *force majeure*, the Party who is unable to perform its obligation shall, within 7 working days of the occurrence of such *force majeure*, give notice thereof in writing to the other Party and request an extension of time in which to comply with its obligation. On receipt of such notice and supporting particulars of the claim, the other Party may in writing grant an extension of time as may be justified.

14.3 The Party who is incapable of performing its obligation shall not be liable for any such claim which the other Party may have as a result of such obligation not being performed provided that the reason why it cannot perform its obligation is due to *force majeure* and provided further that the notice referred to in 13.2 has been duly delivered.

14.4 In the event of *force majeure* continuing for a period of 7 working days, either Party shall be entitled to terminate the Agreement by written notice to the other Party and without any Party incurring any liability to the other Party.

## 15. TERMINATION

15.1 Either Party may, apart from clause 10 also terminate the Agreement without prejudice to any of its rights upon the occurrence of any of the following:

- (a) On commencement of any action for the dissolution and/or liquidation of any Party, except for purposes of an amalgamation or restructuring approved in advance by the other party;
- (b) Any Party receives a court order to be placed under judicial management or to commence liquidation procedures that is not withdrawn or struck out within five working days;
- (c) One Party informs the other that it intends to cease performing its obligations in terms of the Agreement;
- (d) One Party informs the other that it is incapable of completing the contract.

15.2 The Service Provider shall receive remuneration for the services provided to the satisfaction of MLM up to the date of termination of the project.

15.3 Termination of the Agreement shall relieve MLM and the Service Provider of their respective obligations in terms of the Agreement. Notwithstanding such relieve MLM shall be entitled to recover any damages suffered as a result of such termination.

15.4 The Service Provider shall not be entitled to advance a right of retention or any similar right if the Agreement is terminated in terms of this clause, or any other provision of this agreement, or by operation of law or any other circumstances.



16. **DOMICILIUM CITANDI ET EXECUTANDI**

16.1 MLM chooses as its *domicilium citandi et executandi*:

**MBOMBELA LOCAL MUNICIPALITY  
NUMBER 1 NEL STREET  
CIVIC CENTRE  
NELSPRUIT  
1200  
MPUMALANGA PROVINCE, RSA**

The Service Provider chooses as its *domicilium citandi et executandi*:

**DDP VALUERS  
DOMUS BUILDING ROOM 109  
57 KASTEEL AVENUE  
LYNNWOOD GLEN  
PRETORIA  
0081**

16.3 Each of the Parties shall be entitled at any time by way of written notice to the other Party, to change its *domicilium citandi et executandi* to another physical address.

16.4 Any notice in terms of the Agreement shall either be—

- (a) Delivered by hand during normal business hours of the recipient; or
- (b) Sent by prepaid registered post to the address chosen by the addressee.

16.5 A notice in terms of the Agreement shall be considered to be duly received if—

- (a) hand-delivered on the date of delivery;
- (b) Sent by registered post as indicated in clause 16.4(b), 10 days after the date it was posted, unless the contrary is proved.

16.6 Notwithstanding anything to the contrary contained or implied in this Agreement, the written notice or communication actually received by one of the Parties from the other, including by way of facsimile transmission, shall be adequate written notice or communication to such Party.

17 **WHOLE AGREEMENT & OTHERS**

17.1 This Agreement constitutes the entire agreement between the parties and it is acknowledged by the parties that no warranties or representations of whatsoever nature by or on behalf of either party have been made except as recorded in this Agreement.

- 17.2 No variation of this agreement shall be of any force and effect unless reduced to writing and signed by both parties;
- 17.3 No relaxation or indulgence which any party may show to the other shall in any way prejudice or be deemed to be a waiver of its/their rights hereunder.
- 17.4 Notwithstanding the amount claimed, the place where the cause of action arose, the *domiciliumcitandiexcitandi* of either of the parties, any legal proceedings which arises out of this Agreement shall be instituted in Nelspruit Magistrates Court.
- 17.5 A party may not cede any right or obligation in terms of this Agreement to another person without the other party's written consent.
- 17.6 If any provision of this Agreement is or becomes invalid or unenforceable, such provision shall be divisible and be regarded as *pro non scripto* and the remainder of the Agreement shall be regarded as valid and binding unless materially affected.

The parties confirm that their representative signing this Agreement on their behalf are duly authorized and this Agreement shall be binding upon signature of both parties.

**THUS DONE AND SIGNED BY MLM AT NELSPRUIT ON ..... /..... /2012**

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**Mbombela Local Municipality**  
 Herein represented by **F S Sibozza**  
 Duly authorized in his capacity as **Acting Municipal Manager**

As Witnesses

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2. \_\_\_\_\_

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**THUS DONE AND SIGNED BY THE SERVICE PROVIDER AT NELSPRUIT**

**ON...../..... / 2012**

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**DDP Valuers**

Herein represented by **T Geyser**  
Duly authorized in his capacity as **Managing Director**

As Witnesses

1. \_\_\_\_\_

2. \_\_\_\_\_

DRAFT SLA