

# AGREEMENT

Memorandum of agreement entered into by and between

THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY

herein represented by Dr Verna J. Nel

in her capacity as Acting Strategic Executive Director: City Planning, Development and Regional Services

she being duly authorised in terms of the municipality's Bylaws for the control of outdoor advertising (notice 355 of 2006, promulgated 1 February 2006),

(hereinafter referred to as the "**Municipality**")

and

.....

Registration No. ....

herein represented by .....

in his capacity as .....

he being duly authorised thereto in terms of a resolution dated .....

a certified copy of which is attached hereto as Annexure "B"

(herein after referred to as the "**Company**")

## PREAMBLE

WHEREAS the **company** submitted an application to erect a **sign** that is described on the schedule that is attached hereto as Annexure "C", on the **property** indicated on the site plan that is attached hereto as Annexure "D",

AND WHEREAS the **Municipality** has approved the application by the **company** by resolution on 12 December 2007 a certified copy of which is attached hereto as Annexure "A", and the **company** is thus authorised to erect a **sign** on the **property** 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. "**Bylaws for the Control of Outdoor Advertising**" means the bylaws for the control of outdoor advertising of the City of Tshwane Metropolitan Municipality as amended from time to time;
- b. "**Chief Financial Officer**" means the Chief Financial Officer of the City of Tshwane Metropolitan Municipality or his/her delegatee;
- c. "**commencement date**" means the first day of the month following the date of signature of this agreement by the authorised representative on behalf of the Municipality;
- d. "**face**" means that portion of the **sign** bearing the advertisers' advertisement;
- e. "**Company**" means .....,  
registration no. ....a company with limited liability  
incorporated under the company laws applicable in the Republic of South Africa  
or in the instance of a Close Corporation or a Section 21 company that Close  
Corporation or Section 21 Company;
- f. "**Executive Director: Roads and Stormwater**" means the Executive Director:  
Roads and Stormwater of the City of Tshwane Metropolitan Municipality or  
his/her delegatee;
- g. "**Executive Director : Electricity**" means the Executive Director: Electricity of  
the City of Tshwane Metropolitan Municipality or his/her delegatee;
- h. "**gross income**" means the gross payment paid by advertisers to the **company**  
for advertising on the **sign** including any agent's commission or similar  
compensation that may be directly or indirectly payable by the **company** or by

the advertiser from time to time to a third party, which amount shall be exclusive of Value-added tax;

- i. **“municipality”** means the City of Tshwane Metropolitan Municipality;
- j. **“parties”** means the **municipality** and the **company**;
- k. **“property”** means the **property** that vests in the **municipality** in terms of section 63 of the Local Government Ordinance 1939, (Ordinance 17 of 1939) on which the **company** will erect the sign;
- l. **“sign”** means a free standing advertising structure with one or more changeable **faces**, which may be illuminated;
- m. **“site”** means that portion of the **property** approved by the **Strategic Executive Director: City Planning, Development and Regional Services** as more fully described in Annexure “C” hereto;
- n. **“Strategic Executive Director: City Planning, Development and Regional Services”** means the Strategic Executive Director: City Planning, Development and Regional Services of the City of Tshwane Metropolitan Municipality or his delegatee;
- o. **“Strategic Executive Director: Public Works and Infrastructure development”** means the Strategic Executive Director: Public Works and Infrastructure development of the City of Tshwane Metropolitan Municipality or his delegatee;
- p. **“wayleave”** means the formal approval by the **Executive Director: Roads and Stormwater** to carry out work in the public road reserve and/or the **property**.
- q. any reference to one gender includes the other gender;
- r. any reference to natural persons includes legal persons and vice versa; and any reference to the singular shall include the plural and vice versa;

## 2. DURATION OF AGREEMENT

- 2.1 This agreement shall be for a period of 5 (five) years calculated from the **commencement date**.
- 2.2 After the expiry of this agreement as mentioned in clause 2.1 above, the **company’s** right to utilize the **site** as contained in this agreement shall cease to exist and no action on the part of the **municipality** will be construed as an tacit extension of the initial period mentioned in clause 2.1 above.

2.3 This agreement shall upon expiry thereof continue on a month to month basis until either party has given the other 30 days written notice of cancellation thereof.

### 3. REMUNERATION

3.1 The **company** shall pay the **municipality** a monthly amount equal to 20% (twenty per cent) of the **gross income** per month payable to the **company** by advertisers for advertising on the **sign**.

3.2 The amount(s) payable to the **municipality** in terms of this agreement shall be payable from **commencement date** in arrears on or before the 7<sup>th</sup> day of each month.

3.3 In the event of the **company** being unable to rent advertising space on any **face** of the **sign**, the **company** shall still be liable for the payment of the monthly amount to the **municipality**, which amount shall be equal to the last monthly payment made by the **company** to the **municipality**, until the **company** again derives income from the relevant **face** of the **sign**. Where no previous monthly amount has been determined, or an outdoor advertising structure has not yet been erected, a fixed monthly amount of R58.32 per square meter of sign area (excluding VAT) escalating at 8% per annum.

3.4 The **company** shall, together with each monthly payment, submit to the **municipality** a certified statement of the **gross income** per month payable for the advertising on the **sign**. In addition to this, the **company** shall submit audited financial statements of **gross income** generated by the **sign** within three months of the **company's** financial year-end.

3.5 The amount payable to the **municipality** 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 the **municipality** until such failure is rectified by the **company**.

#### **4. ERECTION AND USE OF SIGN(S)**

- 4.1. The following shall be submitted by the **company** to the **Executive Director: Roads and Stormwater** and the **Strategic Executive Director: City Planning, Development and Regional Services** in respect of each **sign** to be erected:
  - a. detailed drawings and specifications of the proposed **sign**, which must comply with the specifications as laid down by the **Executive Director: Roads and Stormwater** and the **Strategic Executive Director: City Planning, Development and Regional Services**;
  - b. an engineer's certificate certifying that the proposed **sign** was designed by a professional structural engineer;
  - c. detailed specifications of electrical connections, lights and wiring for approval by the **Executive Director: Electricity**.
- 4.2 The construction/erection of the **sign** shall not be commenced with, without the prior written approval of the **municipality** subject to any condition the **Strategic Executive Director: City Planning, Development and Regional Services** may deem appropriate.
- 4.3 The **company** shall further apply in the prescribed manner for **wayleave** approval from the **Executive Director: Roads and Stormwater** which application shall include service plans identifying and indicating all underground services of Telkom and the **municipality** or any other service provider of any nature where the **sign** is to be constructed.
- 4.4 Should the company not apply in the prescribed manner for wayleave approval prior to erecting the sign, the municipality may terminate the agreement.
- 4.5 If a continuous supply of electricity is required to illuminate the **sign**, the **company** shall apply in the prescribed manner to the **Executive Director:**

**Electricity** for a connection to the **municipality's** electricity supply.

- 4.6 The **company** shall provide the **municipality** with a deposit or bank guarantee acceptable to the **Chief Financial Officer** equal to 10% of the cost of the **sign**, to be used by the **municipality** to remove the **sign** in the event of the **company's** failure/ inability to remove the **sign** when instructed by the **municipality** to do so in terms of this agreement.
- 4.7 The **sign** shall be erected at the **company's** own expense.
- 4.8 The **sign** shall be neatly and properly erected in accordance with the approved drawings and specifications, and finished in a workmanlike manner.
- 4.9 The **company** shall at its own cost repair to the satisfaction of the **municipality** damage caused to the road or underground services during the erection or maintenance of the sign or due to any other actions.
- 4.10 Any **face** of the sign which has not been rented to an advertiser to display an advertisement(s), shall display advertising material to the satisfaction of the **Strategic Executive Director: City Planning, Development and Regional Services**.

## **5. ELECTRICITY SUPPLY**

- 5.1 The **municipality** shall endeavour to provide the **company** with a continuous supply of electricity to illuminate the **sign** 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 sign to the **municipality's** electricity supply as well as the maintenance of the aforementioned system, shall be for the account of the **company**.
- 5.2 The cost of electricity consumed shall be for the account of the **company**. However, if for whatever reason, the electricity supply cannot be metered, the **municipality** shall, in accordance with generally acceptable power consumption formulae determine what it considers to be a fair and reasonable cost for the electricity consumed and the **company** shall make payment therefore on

demand.

- 5.3 Should the company obtain an electrical connection without following the prescribed procedures, the municipality may terminate the agreement.

## 6. PUBLIC LIABILITY AND INDEMNITY

- 6.1 The **company** shall at its own cost and to the satisfaction of the **Chief Financial Officer** take out and maintain for the duration of this agreement and any extension thereof, a public liability insurance policy in terms of which the **municipality** and the **company** are fully covered for their respective rights, interests and liabilities. The policy shall provide for coverage of at least R5 000 000 (five million Rand) per event, with the number of events unlimited; Provided that the **Chief Financial Officer** reserves the right, in his/his sole discretion, to require such increased coverage under the said policy which he/she may deem necessary. Written proof that the full premium has been paid shall be submitted to the **Chief Financial Officer** for approval within 14 (fourteen) days of date of signature of this agreement, provided that the **Chief Financial Officer** shall further be provided with written proof of each annual renewal of the said policy until expiry of this agreement or of such extended term as may be agreed upon between the **parties**.
- 6.2 The **company** indemnifies the **municipality** against any claims of whatever nature as well as legal costs (inclusive of costs on the attorney/client scale), which may directly result from any actions or omissions by the **company** resulting from this agreement.

## 7. MAINTENANCE OF THE SIGN

The **company** shall keep and maintain the **sign** and its surrounds in a safe, clean, neat and tidy condition to the satisfaction of the **Strategic Executive Director: City Planning, Development and Regional Services**.

## 8. ALTERATIONS TO THE SIGN

8.1 Subject to compliance with the relevant legislation, the **parties** agree that the **company** shall, during the currency of this agreement, have the right at any time, with the prior written consent of the **Strategic Executive Director: City Planning, Development and Regional Services**, which consent shall not unreasonably be withheld,

(1) to change the content of advertisements on the **sign**

(2) to change the design or format of the **sign**

subject thereto that such change/s must be submitted to the **Strategic Executive Director: City Planning, Development and Regional Services** for approval thereof and such change/s are subject to additional conditions as may be determined by the **Strategic Executive Director: City Planning, Development and Regional Services**.

## 9. COMPANY'S ACCESS TO SITE

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

## 10. OBSCURING OF THE SIGN

In the event of the **sign** being obscured due to actions of the **municipality** 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 the **municipality**, the **company** shall be entitled to identify in cooperation with the **Strategic Executive Director: City Planning, Development and Regional Services**, a replacement **site** of equal value within 60 (sixty) days which the **municipality** shall make available to the **company**, failing which this agreement

shall lapse. The cost of the relocation of the **sign** (if applicable) shall be for the account of the **company**.

## 11. CESSION OF RIGHTS

11.1 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 the **Strategic Executive Director: City Planning, Development and Regional Services**, 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 **sign**.

11.2 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 the prior written consent of the **Strategic Executive Director: City Planning, Development and Regional Services**, which consent shall not be unreasonably withheld.

## 12. BREACH

12.1 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 the **municipality** 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 3.6, the **Strategic Executive Director: City Planning, Development and Regional Services** shall have the right forthwith to cancel this agreement and to terminate the **company's** rights hereunder, without prejudice to any claim that the **municipality** 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.

12.2 Should the **company** at any time be in breach of this agreement, as mentioned in Clause 12.1 above, the **Municipality** reserves its rights not to consider,

adjudicate and/or approve any new applications for any signs lodged by the **company** with the **Municipality**, until such time as the breach of the **company** has been rectified.

### 13. RIGHT TO TERMINATE LEASE

13.1 With the exception of alterations to the **sign** in terms of clause 8, should the right to display advertisements on the **sign** be refused, prohibited, restricted or curtailed by any legislation, bylaw, court order or decision of any statutory planning or other authority, the **company** shall have the right to terminate this agreement, by giving 1 (one) month's written notice of such intent.

13.2 Notwithstanding clause 3.3, should the **company** be unable to rent out advertising space on the **sign** for a consecutive period of 6 (six) 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. The **sign** must be erected within 90 days of signature of this agreement, failing which the **Strategic Executive Director: City Planning, Development and Regional Services** may terminate the agreement if an acceptable motivation for lack of progress has not been supplied.

### 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 **sign**.

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 signal stop line is crossed.

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

- 15.2 If, the **sign** erected does not comply with par. 15.1.1, 15.1.2 and 15.1.3 the **Strategic Executive Director: City Planning, Development and Regional Services** may instruct the **company** to relocate the **sign** to a **site** agreed upon by the **parties**, failing which the **sign** is to be removed within 60 (sixty) days of notification to move such **sign**. The relocation or removal of the **sign** 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 **sign** as a result of roadworks of whatever nature or the relocation or upgrading of services or whatever other reason deemed necessary by the **municipality**, the **sign** may be relocated to a temporary or permanent **site** approved by the **Strategic Executive Director: City Planning, Development and Regional Services**. The **company** shall move the **sign** within 60 (sixty) days of written notification to move such **sign**, provided that, should an acceptable relocation **site** not be identified within this period, the **sign** shall immediately be removed by the **company**. All costs involved in the relocation or removal of the **sign** shall be for the account of the **company**. The **municipality** shall not be liable for any damages of any nature arising from such actions.
- 15.4 The **municipality** may in its sole discretion carry out any maintenance and effect any alterations to its **property** at any time and should such maintenance and/or alterations effect the **sign**, the **municipality** shall not be liable for any damage to the **sign** arising from such maintenance and/or alterations, whether such damage was caused by negligence, or was the result of the action of the **municipality**, its employees, contractors or representatives. The **municipality** shall furthermore not be liable for any loss of income or any damage, caused by such maintenance/alterations, that the **company** may suffer.
- 15.5 The **sign** is to comply with Fig. 1.24.3 and Table 1.4 - Volume 1 Part 1, of the South African Road Traffic Signs Manual (1993) as revised from time to time and the meaning and contents of which the **company** is familiar with. The **company** shall comply with Paragraph 1.9.1 in the Manual.
- 15.6 The minimum clearance of the **sign** or part thereof from overhead streetlight conductors supplying the streetlights must be at least 2 (two) metres at all times.

If this minimum clearance cannot be achieved, the overhead conductors must be replaced at the **company's** cost, after obtaining approval from the **Executive Director: Electricity**, with an underground cable to ensure the safety of the installation.

- 15.7 No existing trees may be removed, cut back or trimmed in order for the **sign** to be erected.
- 15.8 No existing trees shall be removed, cut back or trimmed in order to improve the visibility of the **sign**.
- 15.9 The **sign** is to be positioned in such a way that it is not necessary to disturb the **municipality's** existing trees or their root system, during or after construction.
- 15.10 Any approval granted in terms of this agreement must be in writing.
- 15.11 Should any condition or term of this agreement be contrary to any existing by-laws of the **municipality**, the provisions of such by-law shall prevail.
- 15.12 Within 30 days after the erection at the **sign**, the **company** shall provide the **Strategic Executive Director: City Planning, Development and Regional Services** with the surveyed GPS co-ordinates of the location of the **sign**.
- 15.13 The City of Tshwane has been designated as a host city for the staging of **2010 FIFA World Cup South Africa** matches, and the municipality must therefore comply with **FIFA's** requirements and stipulations with regard to outdoor advertising. The **company** hereby undertakes to comply with any and all such requirements and stipulations with regard to outdoor advertising, which could include prescriptions with regard to the design, content and placing of advertisements on the **sign**.

## **16. COMPLIANCE WITH LEGISLATION**

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

## 17. OWNERSHIP

- 17.1 Ownership of the **sign** 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 **sign** affected by such termination together with its above ground and below ground foundations and accessories as aforesaid from the **site**, repair any damage caused by the removal of the **sign** and leave the **site** in a clean, tidy and safe condition to the satisfaction of the **Strategic Executive Director: City Planning, Development and Regional Services**, within 60 (sixty) days of the date of termination of the agreement.
- 17.3 Notwithstanding clause 17.1, should the **company** fail to remove the **sign** within the period referred to in clause 17.2, the **municipality** shall be at liberty to remove the **sign** at the cost of the **company**.

## 18. DOMICILIUM CITANDI ET EXECUTANDI

- 18.1 The **municipality** and the **company** hereby respectively choose domicilium citandi et executandi for all purposes arising from or out of this agreement at the addresses hereunder specified

- 18.1.1 The **municipality** at: SAMMY MARKS  
(Suite 305A, 3<sup>rd</sup> Floor)  
CORNER OF VERMEULEN –AND VAN  
DER WALT STREETS  
PRETORIA  
0001
- and a copy of any notice to: P.O. Box 3242  
PRETORIA  
0001
- Fax number: (012) 358 8026

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

.....

.....

.....

and a copy of any notice to: .....

.....

.....

.....

Fax number: .....

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 The said *domicilium citandi et executandi* shall serve not only as a place where legal process is to be served, but shall also serve as the address which the party concerned has selected and chosen to which any communications 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. WHOLE AGREEMENT**

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

19.1 this agreement constitutes the sole record containing the terms of their agreement;

19.2 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

19.3 no amendment to or variation of the terms hereof, whether to a material extent or otherwise or cancellation, including consensual cancellation of this agreement 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 the municipality at .....on this.....day of.....2008  
in the presence of the undersigned witnesses.

AS WITNESSES:

for CITY OF TSHWANE  
METROPOLITAN MUNICIPALITY

1. ....

2. ....

.....  
NAME: Dr Verna J. Nel  
DESIGNATION: Acting Strategic  
Executive Director: City Planning,  
Development and Regional Services

SIGNED by the company at .....on this.....day of ..... 2008  
in the presence of the undersigned witnesses.

AS WITNESSES:

for .....

1. ....

2. ....

.....  
NAME:  
DESIGNATION: