

# **FINANCE AGREEMENT**

Made and entered into between:

## **NELSON MANDELA BAY METROPOLITAN MUNICIPALITY**

(herein represented by Mr. Mpilo Mbambisa in his capacity as Municipal Manager)

(hereinafter referred to as the NMBMM)

and

## **THE RICHMOND HILL SRA NPC**

Registration No. 2014/257578/08

(herein represented by MR. KEVIN SLATTERY in his capacity as Director, he being  
duly authorised and warranting his authority)

(hereinafter referred to as the Company)

## 1. Definitions

1.1 In this Agreement, unless the context otherwise indicates or requires, the following words will have the meaning assigned to each respectively as follows:

1.1.1 "**Act**" means the Local Government: Municipal Property Rates Act 6 of 2004;

1.1.2 "**Additional Rate**" means the additional rate to be paid by owners of rateable property within the Richmond Hill Special Rating Area as contemplated in sections 19(1)(d) and 22(1)(b) of the Act, part 8 of the Property Rates Policy adopted under the By-Law and the Policy as amended or replaced;

1.1.3 "**Agreement**" means this Agreement and all annexures hereto and any subsequent amendments or alterations agreed in writing by the Parties;

1.1.4 "**Annexures**" means the Annexures attached to this Agreement;

1.1.5 "**Annual Budget**" means the Annual Budget of the Company as approved by the NMBMM being:

R840 000.00 for the financial year 2014/2015;

R924 000.00 for the financial year 2015/2016;

R1 016 000.00 for the financial year 2016/2017;

R1 118 040.00 for the financial year 2017/2018; and

R1 229 844.00 for the financial year 2018/2019.

1.1.6 "**Business Day**" means any calendar day other than a Saturday, Sunday or statutory public holiday in the Republic of South Africa;

1.1.7 "**Business Plan**" means the Business Plan of the Company as approved by the NMBMM when establishing the Richmond Hill Special Rating Area (the SRA);

1.1.8 "**By-Law**" means the Nelson Mandela Bay Metropolitan Municipality: Property Rates By-Law published in Provincial Gazette Extraordinary dated 10 March 2009;

1.1.9 "**CFO**" means the Chief Financial Officer of the NMBMM, or his/her nominee;

- 1.1.10        "**Company**" means the Richmond Hill SRA NPC Registration number **2014/257578/08**;
- 1.1.11        "**Executive Officer**" means an executive officer or similar person appointed by the Company to manage and operate the affairs of the SRA;
- 1.1.12        "**Fruitless and Wasteful Expenditure**" has the meaning assigned to it in the Local Government: Municipal Finance Management Act, No. 56 of 2003;
- 1.1.13        "**Implementation Plan**" means the plan which the Company must adopt and implement in terms its Business Plan;"
- 1.1.14        "**Monthly Budget**" means one twelfth of the Company's Annual Budget;
- 1.1.15        "**NMBMM**" means the Nelson Mandela Bay Metropolitan Municipality established in terms of the Local Government: Municipal Structures Act 117 of 1998;
- 1.1.16        "**Parties**" means the NMBMM and the Company and "Party" means either one of them, as the context may indicate;
- 1.1.17        "**Policy**" means the Nelson Mandela Bay Metropolitan Municipality Special Rating Policy adopted by the NMBMM on 27 March 2014;
- 1.1.18        "**Property Rates Policy**" means the Nelson Mandela Bay Metropolitan Municipality Property Rates Policy adopted under the By-Law from time to time;
- 1.1.19        "**Signature Date**" means the date of signature of this Agreement by the last Party signing;
- 1.1.20        "**SRA**" means the Richmond Hill Special Rating Area established by the NMBMM in terms of Section 22 of the Property Rates Act and which shall be managed by the Company.
- 1.2            In this Agreement:
- 1.2.1            references to a statutory provision include any subordinate legislation made from time to time under that provision and include that provision as modified or re-enacted from time to time;
- 1.2.2            words importing any particular gender include the other genders (ie the masculine, feminine and neuter genders, as the case may be); the singular

includes the plural and *vice versa*; and natural persons include artificial persons and *vice versa*;

1.2.3 any definition, wherever it appears in this Agreement, shall bear the same meaning and apply throughout this Agreement unless otherwise stated or inconsistent with the context in which it appears;

1.2.4 where any number of days is prescribed, those days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which event the last day shall be the next succeeding Business Day;

1.2.5 where the day upon or by which any act is required to be performed is not a Business Day, the Parties shall be deemed to have intended such act to be performed upon or by the next succeeding Business Day;

1.2.6 any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated as having not been written (ie *pro non scripto*) and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

1.3 The expiration or termination of this Agreement shall not affect such provisions of this Agreement which are expressly provided to operate after any such expiration or termination, or which of necessity, must continue to have effect after such expiration or termination, notwithstanding that the relevant provisions themselves do not provide for this.

## 2. **Recordal**

2.1 On 27 March 2014 the NMBMM approved the establishment of the SRA with effect from 1 July 2014.

2.2 The Additional Rate has been levied by the NMBMM since 1 July 2014.

2.3 The Company is to serve as the Management Body of the SRA and was registered on 20 November 2014

- 2.4 In terms of paragraph 13.4 of the Policy, the Company is obliged to enter into an Agreement with the NMBMM to regulate, inter alia, the mechanisms and manner of payment and other terms upon which payment to the Company is to be made.

**NOW THEREFORE** the parties agree as follows:

### **3. Duration of the Agreement**

This Agreement shall commence on the Signature Date and will terminate on the dissolution or winding up of the SRA as provided for in paragraph 14 of the Policy.

### **4. Relationship between the Company and the NMBMM**

- 4.1 The Parties specifically record that the Company shall at all times be an independent company and shall have no authority to act as an agent of the NMBMM or bind the NMBMM in any way except as otherwise expressly recorded in this Agreement.
- 4.2 The Parties agree that the relationship between the Parties shall be governed by the terms of this Agreement and nothing contained herein shall be deemed to constitute a partnership, joint venture or the like between them.
- 4.3 Notwithstanding the provisions of clause 4.2, the Parties shall act toward each other with the utmost good faith and undertake to do or to procure the doing of such things and to perform or procure the performance of all acts necessary for or incidental to the implementation of this Agreement.

### **5. Financial Framework**

#### **5.1 Financial governance**

- 5.1.1 The Company agrees to open and maintain at least one bank account, register for VAT (when applicable) and provide the NMBMM with its VAT registration number, and a copy of its VAT 103 certificate.
- 5.1.2 The Company will pay all income received into a bank account in the name of the Company.
- 5.1.3 The Executive Officer of the Company, who is accountable to its board of directors, will administer the bank account(s).

5.1.4 The NMBMM shall make payments directly to the Company. The Company's bank account details are:

Account Name: The Richmond Hill SRA NPC

Name of Bank: Standard Bank

Branch Number: 051001

Bank Account Number: 080292771

5.2 Financial year

The financial year of the Company will be the same as that of the NMBMM, being 1 July to 30 June.

5.3 Audit

Audited financial statements approved by the board of directors in respect of the Company's previous financial year must be submitted to the NMBMM by 31 August of each financial year.

5.4 Responsibilities of the Executive Officer

5.4.1 For purposes of this Agreement the powers or duties delegated to the Executive Officer may be sub-delegated to an official of the Company.

5.4.2 The Parties acknowledge and accept that the Executive Officer of the Company is responsible for the financial management of the Company. This responsibility includes implementing and monitoring the Company's annual budget and ensuring –

5.4.2.1 that resources are used effectively,

5.4.2.2 full and proper financial records are kept, including the monthly reconciliation of all revenue received and accounts to be paid;

5.4.2.3 the development and maintenance of appropriate expenditure management systems;

5.4.2.4 that a monthly income and expenditure report is submitted to the NMBMM by the 15<sup>th</sup> of the following month;

- 5.4.2.5 that audited financial statements, approved by the board of directors, are submitted to the NMBMM by 31 August annually;
- 5.4.2.6 that a tax clearance certificate is submitted to the NMBMM annually;
- 5.4.2.7 that an updated list of the Company members, is submitted to the NMBMM by 31 January annually;
- 5.4.2.8 that appropriate control systems are maintained;
- 5.4.2.9 that unauthorised, irregular or Fruitless and Wasteful Expenditure is prevented;
- 5.4.2.10 that disciplinary or other legal proceedings are instituted when required;
- 5.4.2.11 that its Annual General Meeting be advertised, by inter alia, publishing a notice in at least two daily newspapers circulating in the SRA; and
- 5.4.2.12 that within two months after the Annual General Meeting was held, the Executive Officer will report to the NMBMM.

## 5.5 Financial matters to be reported to the NMBMM

- 5.5.1 The Executive Officer, in acting in the best interests of the Company, must report in writing to the board of directors and the NMBMM any serious or persistent financial problems experienced by the Company
- 5.5.2 The board of directors must promptly report in writing to the NMBMM any irregular or Fruitless and Wasteful Expenditure. The board of directors must also report any irregular expenditure or other loss resulting from real or suspected criminal conduct.
- 5.5.3 The Executive Officer must report to the NMBMM any interference by a councillor outside of that councillor's assigned duties, relating to the financial affairs of the Company or the responsibilities of the board of directors.

## 6. **Determining the Additional Rate**

- 6.1 The Additional Rate which shall be an additional rate to be imposed and recovered by the NMBMM from owners of properties situate within the SRA, shall subject to such properties being rateable properties and be a percentage of the annual rate in Rand value payable in respect of such property as determined in accordance with the Property Rates Policy expressed as cents in the Rand so

calculated that the aggregate thereof equals the Company's Annual Budget amounts reflected in 1.1.5 above.

- 6.2 should the Company wish to amend its Annual Budget from that stated in 1.1.5, the Company shall submit a detailed revised Annual Budget to the NMBMM on or before 31 January preceding the year in which the Company wishes to implement its revised Annual Budget in order for the NMBMM to raise the Additional Rates in accordance with its budget process.

**7. Payment of Additional Rate**

- 7.1 It is recorded that the NMBMM has levied the Additional Rate for the 2014/2015 financial year on individual property owners as determined in terms of 6.1 above from 1 July 2014 and shall continue to levy such Additional Rate as determined in 6.1 above for the ensuing years with due regard to 1.1.5 above and any further approved Annual Budget submitted in accordance with 6.2 above.
- 7.2 The Additional Rate due in terms of clause 7.1 shall be a debt due to the NMBMM and collected in the same manner as other property rates imposed by the NMBMM. Under no circumstances will the Company be entitled to endeavour to recover any Additional Rate payable by any person liable therefore.
- 7.3 Having regard to the date of signature hereof, the NMBMM shall pay the Company the Monthly Budget, less a 5% retention, for the months of July, August, September, October, November and December 2014 within fourteen (14) days of the Signature Date whereafter each subsequent Monthly Budget amount, less a 5% retention, shall be paid by the NMBMM to the Company on or before the last day of the month following the Monthly Budget month. For the sake of certainty, the Monthly Budget, less a 5% retention, for the month of January 2015 shall be payable by the NMBMM to the Company on or before 28 February 2015 and so forth.
- 7.4 All payments referred to in 7.3 above shall be subject to the Company providing the NMBMM with a VAT Invoice (inclusive of VAT when applicable) in respect of such Monthly Budget amounts less the 5% retention within fourteen (14) days of due date.
- 7.5 The NMBMM shall retain an amount equal to 5% of each Monthly Budget amount which shall be deposited into a retention fund to be established by the NMBMM and the amount of such retention fund shall be reconciled after 31 July each year against the aggregate of the additional rates received by the NMBMM during such preceding financial year and:



- 7.5.1 should the aggregate of the additional rates received by the NMBMM during the said financial year exceed the aggregate of the Monthly Budget amounts paid by the NMBMM to the Company, such excess shall be paid by the NMBMM to the Company on or before 31 August in each year and the NMBMM shall retain the balance of the retention fund to defray costs;
- 7.5.2 should the aggregate of the Additional Rates received by the NMBMM during the said financial year be less than the aggregate Monthly Budget amounts paid by the NMBMM to the Company, the NMBMM shall retain the retention fund for its own account to defray costs.
- 7.6 Notwithstanding anything to the contrary herein contained, should the aggregate Additional Rates received by the NMBMM in any one month be less than 70% of that which is due and payable to the NMBMM, in such month, then and in that event, the NMBMM shall be under no obligation to make payment of the Monthly Budget amount to the Company in respect of the month in question and the NMBMM shall, under such circumstances, only be obliged to pay to the Company the aggregate of the actual amounts received on account of the Additional Rates but under such circumstances the NMBMM shall not retain the 5% retention hereinbefore referred to.
- 7.7 In instances where the additional rate is paid annually by a consumer (such rates being raised at the end of August and payable at the end of September in each year) the NMBMM shall apportion such annual payment made in relation to the Monthly Budget and shall not be obliged to pay to the Company the whole of the annual Additional Rate paid by the consumer but only the applicable monthly portion thereof.
- 7.8 The NMBMM shall on the 15<sup>th</sup> of each month following the month when any payment is made by the NMBMM to the Company, provide the Company with a schedule reflecting the properties to which such payment by the NMBMM to the Company pertains so as to allow the Company to identify properties falling within the SRA who have failed to pay the Additional Rate.

## **8. Warranties and Undertakings by the SRA**

The Company warrants and undertakes that:

- 8.1 each official exercising financial management responsibilities will act with honesty and in the best interests of the SRA and disclose to the NMBMM all available facts that may influence the decisions of the NMBMM and the board of directors;

8.2 it is fully organised, equipped, staffed, qualified and able to render the financial services; and

8.3 it shall observe all applicable laws, ordinances, rules and regulations and service standards in relation to improving and upgrading the special rating area.

## 9. **Domicilium and Notices**

9.1 The parties choose *domicilium citandi et executandi* for all purposes of the giving of any notice, the payment of any sum, the serving of any process and for any other purpose arising from this Agreement as follows:

9.1.1 The NMBMM c/o the Municipal Manager  
Vuyisile Mini Square  
Port Elizabeth

9.1.2 The Company 11 Mackay Street  
Richmond Hill  
Port Elizabeth  
6001

9.2 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing.

9.3 Any notice given in terms of this Agreement shall be in writing and shall:

9.3.1 if delivered by hand be deemed to have been duly received by the addressee on the date of delivery; and

9.3.2 if transmitted by facsimile be deemed to have been received by the addressee 1 (one) Business Day after despatch.

9.4 Notwithstanding anything to the contrary contained in this Agreement, a written notice or communication actually received by one of the Parties from another including by way of e-mail addressed to the persons referred to in 9.3 shall be adequate written notice or communication to such Party.

## 10. **No Variation**

No variation of, or addition or agreed cancellation to this Agreement shall be of any force or effect unless it is reduced to writing and signed by or on behalf of both the parties.

**11. Whole Agreement**

The Agreement contains the whole agreement between the parties and neither party shall be bound by any warranty, condition, undertaking or obligation, oral or written, express or implied, other than those contained herein.

**12. Indulgences and Leniencies**

No indulgence, leniency or extension of time which a party (the "grantor") may grant or show to another, will in any way prejudice the grantor or preclude the grantor from exercising any of its rights in the future.

**13. Prohibition of Cession and Assignment**

The Company shall not be entitled to cede or assign any of its rights, or delegate any of its obligations hereunder without the prior written consent of the NMBMM first being obtained.

**14. Breach and Termination**

Should the Company:

- 14.1 commit any act of insolvency as defined in the Insolvency Act, No. 24 of 1936; or
- 14.2 be wound up, whether provisionally or finally and whether compulsorily or voluntarily or be placed under judicial management; or
- 14.3 enter into any arrangement or compromise with the general body of its creditors; or
- 14.4 be the subject of any resolution passed for its winding up or dissolution; or
- 14.5 have a judgment given against it in any court of law which, if appealable, is not appealed against within the period allowed for the lodging of such an appeal or, if not subject to an appeal, remains unsatisfied for a period of 10 (ten) days; or
- 14.6 breach any of the terms and conditions of this agreement, and fail to remedy such breach within a period of 7 (seven) Business Days after receipt of written notice by the NMBMM requiring it to do so,

then the NMBMM shall be entitled forthwith to cancel this Agreement by notice in writing to the the Company which entitlement is without prejudice to any other rights of the NMBMM in terms of this Agreement or the Policy.

15. **Costs**

Each party shall bear its own costs in the negotiation, drafting, conclusion and implementation of this Agreement.

SIGNED on behalf of the NMBMM at Port Elizabeth on \_\_\_\_\_ day of FEBRUARY 2015 in the presence of the undersigned witnesses:

\_\_\_\_\_  
**For and on behalf of the  
NMBMM**

**AS WITNESSES:**

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

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

SIGNED on behalf of Richmond Hill SRA NPC at PORT ELIZABETH on this \_\_\_\_\_ day of FEBRUARY 2015 in the presence of the undersigned witnesses:

\_\_\_\_\_  
**For and on behalf of the  
Company**

**AS WITNESSES:**

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

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