



OFFICE OF THE MUNICIPAL MANAGER

NOTICE IN TERMS OF SECTION 33 OF THE LOCAL GOVERNMENT MUNICIPAL FINANCE MANAGEMENT ACT, NO.56 OF 2003

Notice is hereby given in terms of Section 33 of the Local Government: Municipal Finance Management Act, No. 56 of 2003 that the Rand West City Local Municipality ("the Municipality") intends entering into contract relating to the External Engineering Services Funding Shortfall for the Montrose City Mega Development.

The Municipality shall over a period of 10 (ten) to 20 (twenty) years, commencing in the calendar month following the final completion of the external Engineering Services retain 10% of the gross profit remaining after deduction of the monthly operational expenses of the Municipality incurred in providing municipal services in the Montrose City Mega Development from the monthly Montrose City Municipal Services Revenues and shall pay the balance of 90% to the Turnkey Developer until the Municipality has reimbursed the Turnkey Developer the External Engineering Services Funding Shortfall in full.

Notice is further given in accordance with Section 21A and Section 21 of the Local Government Municipal Systems Act, No. 32 of 2000 that –

1. The local community and other interested persons/parties are invited to submit comments or representations to the Municipality in respect of the proposed draft Supplemental Agreement to the Engineering Services Agreement relating to the Montrose City Mega Development. Such comments or representations must be received by no later than 10 July 2019 via electronic mail on the email address provided below or be delivered to the mailing address provided hereunder.
2. Copies of the proposed Supplemental Agreement and information statement summarizing the Municipality's obligations in terms of the Agreement are available for inspection at the locations listed hereunder and will be accessible on www.randwestcity.gov.za (official website of the Municipality).

Further details and clarity may be requested via email on Lireen.Human@Randwestcity.gov.za or 011 411 0357

Mailing Address

The Municipal Manager
Rand West City Local Municipality
Cnr Pollock & Sutherland Streets
RANDFONTEIN
Email: Lireen.Human@Randwestcity.gov.za

SUBMISSIONS MUST BE MARKED: Supplemental Agreement to Engineering Services Agreement (Montrose City Mega Development) Section 33 Process

Rand West City Local Municipality

Cnr Pollock & Sutherland Streets, Randfontein 1759 / P O Box 218, Randfontein 1760

Tel: 011 411 0000, Fax 011 693 1736 Website: www.randwestcity.gov.za





RAND WEST CITY
LOCAL MUNICIPALITY

Persons who are physical disabled or unable to write but need to participate in the process may present themselves during office hours at the offices of the Municipality listed above where a staff member will assist them to transcribe the relevant comments or representation.

THEMBA GOBA
MUNICIPAL MANAGER
Date: 23./05/2019

SUPPLEMENTAL AGREEMENT
to the
ENGINEERING AND ESSENTIAL SERVICES AGREEMENT
relating to the
MONTROSE CITY MEGA DEVELOPMENT
concluded between
RAND WEST CITY LOCAL MUNICIPALITY
and
SCM PROPERTIES AND DEVELOPMENT (PTY) LTD
in August 2017

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ENGINEERING AND ESSENTIAL SERVICES SUPPLEMENTAL AGREEMENT

entered into by and between

RAND WEST CITY LOCAL MUNICIPALITY

Represented herein by

_____ in his/her capacity as

_____ having been duly authorized hereto
in terms of a resolution of the Municipality, dated the

_____ day of _____ 2018,
(a copy of which resolution is annexed hereto as Schedule 1)

and

SCM PROPERTIES AND DEVELOPMENT (PTY) LTD

(Registration Number 2011/118259/07)

Represented herein by

MR SAM MHLABA
in his capacity as **DIRECTOR**
having been duly authorized hereto by a Company Resolution,

dated the _____ day of _____ 2018

(a copy of which resolution is annexed hereto as Schedule 2)

WHEREAS:

- (A) This Supplemental Agreement is supplemental to an Engineering and Essential Services Agreement concluded between Rand West City Local Municipality and SCM Properties and Development Proprietary Limited (Registration Number 2011/11825907) in August 2017 (the "**Principal Agreement**") in respect of the supply, installation and construction of those engineering services intended in Section 116 (1) of the Town Planning and Townships Ordinance, 1986 (Ordinance No: 15/1986) in respect the township development known as the Montrose City Mega Development on the following properties:
- (i) undeveloped and unserviced land of Portion 80 of the Farm Middelvlei 255, Registration Division I.Q., Province of Gauteng, measuring 106.4916 (one zero six comma four nine one six) hectares and held by Deed of Transfer number T T40699/2012; and
 - (ii) Portion 81 of the Farm Middelvlei 255, Registration Division I.Q., Province of Gauteng, measuring 106.4916 (one zero six comma four nine one six) hectares and held by Deed of Transfer number T T40699/2012.
- (B) The Principal Agreement records the sources of funding which the Municipality has to fund its portion of the costs of installing the External Engineering Services.
- (C) The Turnkey Developer agreed under the Principal Agreement to install the External Engineering Services for the Municipality and fund such installation using a combination of grant funding and long term bridging finance to be procured by the Turnkey Developer.
- (D) The Municipality is legally obliged to reimburse the Turnkey Developer the costs incurred by the Turnkey Developer in installing the External Engineering Services less the Turnkey Developer's agreed contribution to those costs by allocating from its funding sources funds to effect the reimbursement.
- (E) The Turnkey developer will use the municipal sources of funds allocated and paid to it by the Municipality from time to time to repay its bridging finance.
- (F) The Municipality and the Turnkey Developer have identified further sources of municipal funding available to the Municipality and have agreed to supplement the list of sources of funding in this Supplemental Agreement and to clarify the basis of allocating sources of municipal funding to ensure the full reimbursement of the Municipality's agreed portion of the costs incurred by the Turnkey Developer in installing the External Engineering Services.

NOW IT IS AGREED as follows:

1 Interpretation

1.1 Definitions in Principal Agreement

Unless the context otherwise requires and except as mentioned below, words and expressions defined in the Principal Agreement shall have the same meanings when used in this Supplemental Agreement. In addition, the following new definitions are inserted:

- 1.1.1 As a new clause 1.37: **Renewable Energy Revenue Share** has the meaning given to it in clause 2.1.19(b) below;
- 1.1.2 As a new clause 1.38: **Water Savings Revenue Share** has the meaning given to in clause 2.1.19(c);
- 1.1.3 As a new clause 1.39: **Montrose City Municipal Services Revenues** has the meaning given to it in the line after clause 2.1.19(c);
- 1.1.4 As a new clause 1.40: **Grant Funding** has the meaning given to it in the last paragraph of clause 2.1.19;
- 1.1.5 As a new clause 1.41: **Municipal Sources Funds** has the meaning given to it in the last paragraph of clause 2.1.13;
- 1.1.6 As a new clause 1.44: **Municipality's External Engineering Services Refund Amount** has the meaning given to it in the new clause 5.3B(2) set out in clause 2.3 below; and
- 1.1.7 As a new clause 1.47: **External Engineering Services Funding Shortfall** has the meaning given to it in in the new clause 5.2C(4) set out in clause 2.4 below.

1.2 Interpretation of Principal Agreement

References in the Principal Agreement to "**this Agreement**" shall be references to the Principal Agreement as amended by this Supplemental Agreement and words such as "**herein**", "**hereof**", "**hereunder**", "**hereafter**", "**hereby**" and "**hereto**", where they appear in the Principal Agreement, shall be construed accordingly.

2 Amendments to the Principal Agreement

- 2.1 Clause 5.3 is amended by inserting the following additional sources of funding:
 - 2.1.1 a Regional Bulk Infrastructure Grant (RBIG);
 - 2.1.2 a Department of Cooperative Governance and Traditional Affairs Grant (CoGTA);

- 2.1.3 a Human Settlements Grant to assist Mining Towns;
- 2.1.4 Water services infrastructure grant – Water and Sanitation (professional service);
- 2.1.5 Integrated city development grant – National Treasury (professional services)
- 2.1.6 Public transport network grant - Transport (professional services)
- 2.1.7 Urban settlements development grant – Human Settlements
- 2.1.8 Energy demand and efficiency management grant – Dept of Energy;
- 2.1.9 Gauteng Department of Roads and Transport (GAUTRANS);
- 2.1.10 Department of Infrastructure Development (DID);
- 2.1.11 Gauteng Infrastructure Finance Agency (GIFA);
- 2.1.12 Gauteng Partnership Funding (GPF);
- 2.1.13 Gauteng Department of Human Settlements (GDHS);
- 2.1.14 West Rand District Municipality (WRDM);
- 2.1.15 Critical Infrastructure Programme (CIP) (Department of Trade and Industry (DTI));
- 2.1.16 Jobs Fund (National Treasury);
- 2.1.17 Transnet SOC;
- 2.1.18 Passenger Rail Agency South Africa SOC; and
- 2.1.19 municipal revenues that will be generated from municipal services the Municipality will deliver to the Montrose Mega City Development, including:
 - (a) distribution of electricity, water reticulation, sewer reticulation, refuse removal and rates and taxes;
 - (b) the revenues collected by the Municipality, the Turnkey Developer or any subsidiary of the Turnkey Developer from any independent power producer appointed by or on behalf of the Turnkey Developer to finance, design, build, own and operate any renewable energy generation facility for the Development (**Renewable Energy Revenue Share**); and
 - (c) the revenues collected by the Municipality, the Turnkey Developer or any subsidiary of the Turnkey Developer from any contractor appointed by or on behalf of the Turnkey

Developer to finance, design, build, own and operate any water and/or sanitation saving and recycling schemes or solutions for the Development (**Water Savings Revenue Share**);

(collectively the **Montrose City Municipal Services Revenues**),

(the sources listed from clauses 2.1.1 to clause 2.1.18 collectively with the sources of funding listed in clause 5.3 of the Principal Agreement referred to as **Grant Funding**, and together with the Montrose City Municipal Services Revenues referred to as the **Municipal Sources of Funds**).

2.2 A new clause 5.3A is inserted as follows:

The Municipal Sources of Funds will be allocated to funding the Municipality's contribution to the cost of installing the External Engineering Services as follows:

5.3A(1) the following sources Grant Funding on an equitable basis when considered together with other Mega Housing Projects being conducted within the jurisdiction of Rand West Local Municipality:

5.3A(1)(i) the Municipal Infrastructure Grant Fund;

5.3A(1)(ii) the grant from the Department of Energy for bulk electrical services; and

5.3A(1)(iii) the Human Settlements Grant to assist Mining Towns;

5.3A(2) the Municipality has agreed with the Turnkey Developer that the Turnkey Developer will run the process of applying for and obtaining funds from the following sources of Grant Funding and these will therefore be allocated to the Development on an exclusive basis:

5.3A(2)(i) grant funding provided by National Treasury or Provincial Government;

5.3A(2)(ii) the Regional Bulk Infrastructure Grant (RBIG);

5.3A(2)(iii) the Department of Cooperative Governance and Traditional Affairs Grant (CoGTA);

5.3A(2)(iv) the Urban Settlements Development Grant (USDG);

5.3A(2)(v) the Gauteng Department of Roads and Transport (GAUTRANS);

5.3A(2)(vi) the Department of Infrastructure Development (DID);

5.3A(2)(vii) the Department of Trade and Industry (DTI);

5.3A(2)(viii) the Gauteng Infrastructure Finance Agency (GIFA);

- 5.3A(2)(ix) the Gauteng Partnership Funding (GPF);
- 5.3A(2)(x) the Gauteng Department of Human Settlements (GDHS);
- 5.3A(2)(xi) the West Rand District Municipality (WRDM);
- 5.3A(2)(xii) Critical Infrastructure Programme (CIP) (Department of Trade and Industry (DTI));
- 5.3A(2)(xiii) Jobs Fund (National Treasury);
- 5.3A(2)(xiv) Transnet SOC;
- 5.3A(2)(xv) Passenger Rail Agency South Africa SOC;
- 5.3A(2)(xvi) the Renewable Energy Revenue Share
- 5.3A(2)(xvii) the Water Savings Revenue Share.

2.3 A new clause 5.3B is inserted as follows:

The total projected costs of installing all the External Engineering Services which is to be funded by the Turnkey Developer is currently estimated to be about R806 540 000.00 (including VAT). As the Turnkey Developer has undertaken to procure Grant Funding for the Municipality and the Turnkey Developer will have to obtain long term loans from financial institutions to finance the portion of the costs of the installation of the External Bulk Engineering Services (including the Link Services) not covered by Grant Funding:

- 5.3B(1) and taking into consideration that the External Bulk Engineering Services will remain the property of the Municipality after installation, the contribution to the costs of the External Bulk Engineering Services (including the Link Services) is 100%, and the obligation of the Turnkey Developer to make a capital contribution to the External Bulk Engineering Services (including the electricity External Bulk Engineering Services contribution of R66 000 000.00 (sixty six million Rand) is waived by the Municipality (and accordingly clause 5.5.1.2 is deleted);
- 5.3B(2) and taking into consideration the current aggregate annual municipal revenues, as well is the increase in such revenues as and when phases 1 and 2 of the Development progress, it is likely that the reimbursement of the Turnkey Developer of the costs of the Municipality's 100% contribution to the External Bulk Engineering (and the Link Services) (**Municipality's External Engineering Services Refund Amount**) will be amortised over a period of 10 (ten) to 20 (twenty) years, which will be done in accordance with clause 5.3D.

2.4 A new clause 5.3C is inserted as follows:

The contribution to the Internal Engineering Services is allocated 100% to the Turnkey Developer with the exception on internal electrical reticulation.

2.5 A new clause 5.3D is inserted as follows:

5.3D(1) The Grant Funding applied for by the Municipality (to the extent approved by the relevant institutions) is expected to be disbursed by the relevant institution annually to the Municipality over a period of about ten years.

5.3D(2) Schedule 3 to this Supplemental Agreement sets out the list of Grant Funding with projections of:

5.3D(2)(i) The amount which has been or will be applied for;

5.3D(2)(ii) The amount which is expected will be approved,

5.3D(3) The Municipality hereby cedes the Grant Funding to the Turnkey Developer in payment of a portion of the Municipality's External Engineering Services Refund Amount. The Municipality shall notify the providers of the Grant Funding within 10 days of the date on which the party which last signs this Agreement signs it that it has ceded its rights to the Grant Funding to the Turnkey Developer, and such notice shall also notify the providers of the Grant Funding that the Turnkey Developer has or will cede its rights under this Agreement to Montrose City Bulk Engineering Services Funding (Pty) Ltd (Registration Number: 2018/424500/07) and that therefore the Grant Funding must be paid to that company.

5.3D(4) The projected shortfall between expected approved Grant Funding and the Municipality's External Engineering Services Refund Amount is hereafter referred to as the **External Engineering Services Funding Shortfall**;

5.3D(5) The Municipality shall over the period of 10 (ten) to 20 (twenty) years, commencing in the calendar month following the final completion of the External Engineering Services retain 10% the gross profit remaining after deduction of the monthly operational expenses of the Municipality incurred in providing municipal services in the Montrose City Mega Development from the monthly Montrose City Municipal Services Revenues and shall pay the balance of 90% to the Turnkey Developer until the Municipality has reimbursed the Turnkey Developer the External Engineering Services Funding Shortfall in full.

3 Miscellaneous

3.1 Continuation of Principal Agreement

Except to the extent amended by this Supplemental Agreement, the provisions of the Principal Agreement shall continue in full force and effect and the Principal Agreement and this Supplemental Agreement shall be read and construed as one instrument.

3.2 Counterparts

This Supplemental Agreement may be executed in any number of counterparts and by the different parties on separate counterparts, each of which when so executed and delivered shall be an original but all counterparts shall together constitute one and the same instrument.

3.3 Partial invalidity

If, at any time, any provision of this Supplemental Agreement is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision in any other respect or under the law of any other jurisdiction will be affected or impaired in any way.

[REST OF PAGE INTENTIONALLY LEFT BLANK]

SIGNED at _____ on this the _____ day of _____ 2018

in the presence of the undersigned witnesses:

AS WITNESS

1. _____

2. _____

for and on behalf of the
**RAND WEST CITY LOCAL
MUNICIPALITY**

SIGNED at _____ on this the _____ day of _____ 2018

in the presence of the undersigned witnesses:

AS WITNESS

1. _____

2. _____

for and on behalf of the
**SCM PROPERTIES AND
DEVELOPMENT (PTY) LTD**