

AGENCY AGREEMENT

entered into by and between

THE MUNICIPALITY

(Herein represented by, in his/her Municipality as, duly authorised thereto)

(Hereinafter referred to as "the Municipality")

and

THE NATIONAL OR PROVINCIAL DEPARTMENT OR STATE OWNED ENTERPRISE

(Herein represented by DELEGATED Director General, in the capacity as Head of Department, duly authorised thereto)

(Hereinafter referred to as "the NATIONAL, PROVINCIAL AND STATE OWNED ENTERPRISES)

(Hereinafter collectively referred to as "the Parties")

in respect of

THE UNLAWFUL INVASION AND/OR OCCUPATION OF LAND

PREAMBLE

- A.** The unlawful invasion and/or occupation of land poses numerous problems for the three spheres of government including the State Owned Enterprises in respect of land use planning, strategic development and the diversion and allocation of resources.

- B.** In the spirit of co-operative governance, and in terms of section 238 of the Constitution of the Republic of South Africa, 1996, the Parties have agreed to enter into an agreement in terms of which the Municipality will assist the National Departments Provincial Departments and State Owned Enterprises to prevent unlawful invasion and/or occupation of their land that falls within the Municipality's area of jurisdiction, and will act as the National, Provincial and State Owned enterprises agent in this regard.

- C.** The Parties wish to record their agreement in writing

NOW THEREFORE THE PARTIES AGREES AS FOLLOWS:

1. INTERPRETATION

- 1.1 The headings of the clauses in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Agreement nor any clause thereof.

- 1.2 In this Agreement, unless a contrary intention is clear, the following shall apply:
 - 1.2.1 Words importing one gender include the other gender; the singular includes the plural and vice versa; and natural persons include created entities (corporate or unincorporated) and vice versa.

- 1.2.2 Words and expressions defined in any sub-clause shall, for the purpose of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.
- 1.2.3 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to it as if it were a substantive clause in the body of the Agreement, notwithstanding that it is only contained in the interpretation clause.
- 1.2.4 If any period is referred to in this Agreement by way of reference to a number of days, the days shall be reckoned exclusively of the first and inclusively of the last day.
- 1.3 The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have a corresponding meaning:
- 1.3.1 **“Agreement”** means this Agency Agreement together with all annexures thereto, and **“this Agreement”** has a corresponding meaning;
- 1.3.2 **“Building(s) or Structure(s)”** includes any hut, shack, tent or similar structure or any other form of temporary or permanent dwelling or shelter;
- 1.3.3 The Municipality refers to all categories of municipalities, meaning local, district and metropolitan municipalities
- 1.3.4 **“Commencement Date”** means the date of signature of this Agency Agreement by the Party signing last in time;
- 1.3.5 **“Constructive Eviction”** means any act or omission, including the deprivation of access to land, which is calculated or likely to induce a person to vacate occupied land;

- 1.3.6 **“Day”** means any day of the week, excluding Saturdays, Sundays and public holidays in the Republic of South Africa;
- 1.3.7 **“Evict”** means to deprive a person of occupation of a building or structure, or the land on which such building or structure is erected, against his or her will, and **“eviction(s)”** has a corresponding meaning;
- 1.3.8 **“The Department”** means the responsible department of the Municipality;
- 1.3.9 “Law Enforcement” Definition
- 1.3.10 “Law Enforcement Interregional Agreement” Definition
- 1.3.11 **“Organ of State”** means an organ of state as defined in section 239 of the Constitution of the Republic of South Africa, 108 of 1996;
- 1.3.12 **“Owner”** means the registered owner of land, including an Organ of State;
- 1.3.13 **“Parties”** means the Municipality and National, Provincial and State Owned Enterprises , and **“Party”** means either one of them as the context may require;
- 1.3.14 **“Person in Charge”** means a person who has or at the relevant time had legal authority to give permission to a person to enter or reside upon the land in question;
- 1.3.15 “SAPS” definition
- 1.3.16 “Schedule of Fees” Definition
- 1.3.17 **“Unlawful Invasion and/or Occupation”** means the invasion or occupation of land without the consent of the owner or person in charge, or without any other right in law to occupy such land. For the purposes of this definition, “consent” means the express or tacit consent,

whether in writing or otherwise, of the owner or person in charge to the occupation by the occupier of the land in question;

1.3.18 “**National Department, Provincial Department and State Owned Enterprises**” means the Organ of State that has signed this agreement with a municipality.

1.3.19 “**National Departments, Provincial Departments and State Owned Enterprises land**” means land owned by a specific Organ of State within the Municipality's area of jurisdiction and includes all buildings or structures on such land.

2. AGENCY, COMMENCEMENT AND DURATION

2.1 The Parties have agreed that the Municipality will assist the National Departments, Provincial Departments and State Owned Enterprises to prevent the unlawful invasion and/or occupation of state owned land that falls within the Municipality's area of jurisdiction, and that the Municipality will act as the National, Provincial and State Owned Enterprises agent in this regard.

2.2 This Agreement shall commence on the Commencement Date and shall terminate on such date as may be agreed upon by the Parties. If no termination date is agreed upon by the Parties, either Party may cancel the Agreement by giving the other Party one year's written notice of cancellation.

3. ROLES AND RESPONSIBILITIES OF THE PARTIES

3.1 Roles and responsibilities of the Municipality

3.1.1 The Municipality shall, through its relevant department during the normal course of patrol of land by its staff, also inspect land owned by *[Insert name of the relevant National Department, Provincial Department or State Owned Enterprise]*. This obligation of the Municipality will at all times be subject to the Municipality having the available resources and manpower to fulfil this obligation.

- 3.1.2 The *[Insert name of the relevant National Department, Provincial Department or State Owned Enterprise]* hereby authorises the Municipality to take the necessary steps on their behalf to prevent the unlawful invasion and/or occupation of their land.
- 3.1.3 The Municipality shall inform the *[Insert name of the relevant National Department, Provincial Department or State Owned Enterprise]* of any unlawful invasion and/or occupation of their land, as soon as reasonably possible.
- 3.1.4 The Municipality may use reasonable force to prevent the unlawful invasion and/or occupation of *[Insert name of the relevant National Department, Provincial Department or State Owned Enterprise]* land and must take reasonable steps to minimise the damage to the property of others while taking steps to prevent the unlawful invasion and/or occupation of the land.
- 3.1.5 The obligations of the Municipality in terms of this Agreement shall at all times be undertaken by the Municipality, subject to the availability of manpower and resources of the Municipality for this purpose. In the event of a planned land invasion and/or unlawful occupation of National, Provincial and State owned enterprises land, the National Provincial and State owned enterprises authorises the Municipality to incur reasonable overtime costs outside normal working hours to prevent such unlawful invasion and/or occupation, the cost of which the *[Insert name of the relevant National Department, Provincial Department or State Owned Enterprise]* agrees to pay, subject to the provisions of clause 3.2.7 below.
- 3.1.6 Although the Municipality will take the necessary steps to prevent the unlawful invasion and/or occupation of *[Insert name of the relevant National Department, Provincial Department or State Owned Enterprise]*

land, the Municipality shall not attend to any evictions on their behalf and shall not apply constructive eviction at any time.

3.2 Roles and responsibilities of the National Department or Provincial Department or State Owned Enterprises

3.2.1 The *[Insert name of the relevant National Department, Provincial Department or State Owned Enterprise]* shall, as soon as is reasonably possible, provide the Municipality with the necessary details of all their land within the municipality's area of jurisdiction.

3.2.2 The National, Provincial and State Owned enterprises acknowledges that the obligation to protect National, provincial and state owned enterprises land rests in the first instance on itself.

3.2.3 The National, Provincial and State Owned Enterprises shall at all times take all reasonable steps to ensure that their land is protected and secured.

3.2.4 The *[Insert name of the relevant National Department, Provincial Department or State Owned Enterprise]*, will inform the Municipality as soon as reasonably possible of any unlawful invasion and/or occupation of National, Provincial and State Owned enterprises land.

3.2.5 The National, Provincial and State Owned Enterprises shall do everything reasonably possible to inform the South African Police Services ("SAPS") of the unlawful invasion and/or occupation of *[Insert name of the relevant National Department, Provincial Department or State Owned Enterprise]* land and to request assistance from the SAPS. The National, Provincial and State Owned Enterprises shall provide proof and/or confirmation of this Agreement to the SAPS if requested to do so by the SAPS.

3.2.6 The *[Insert name of the relevant National Department, Provincial Department or State Owned Enterprise]* shall provide the Municipality with reasonable access to its land for the purposes of this Agreement.

3.2.7 The Parties acknowledge that, in complying with its responsibilities in terms of this Agreement, the Municipality will incur expenses. The Parties will from time to time agree on a written schedule of fees in terms of which the National, Provincial and State Owned Enterprises will reimburse the Municipality for the actual expenses incurred by the Municipality in complying with its obligations in terms of this Agreement. The *[Insert name of the relevant National Department, Provincial Department or State Owned Enterprise]* shall reimburse the Municipality for expenses incurred by it and its partners for support provide through the law enforcement interregional agreement resources in line with the schedule of fees within 30 (thirty) days of receiving an invoice from the Municipality.

4. SETTLEMENT OF DISPUTES

4.1 This Agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa.

4.2 In the event of any dispute arising from this Agreement, the Parties shall make every effort to settle such dispute amicably.

4.3 If the dispute is not capable of being settled between the Parties amicably, such dispute shall be elevated to the senior management / executive or their duly designated representatives for mediation purposes.

4.4 Should the dispute, despite such mediation, remain unresolved for a period of 30 (thirty) days after being referred:

4.4.1 the Parties may, if the dispute is not an intergovernmental dispute as defined in the Intergovernmental Relations Framework Act, 13 of 2005

("the IGR Act"), by mutual consent, follow an arbitration procedure as agreed between them, without detracting from either Party's right to institute action or motion proceedings in the High Court or other Court of competent jurisdiction in respect of any dispute that may arise out of this Agreement;

4.4.2 either Party may, if the dispute is an intergovernmental dispute as defined in the IGR Act, declare such dispute a formal intergovernmental dispute by notifying the other Party of such declaration in writing, in which event the Parties will follow the procedure as outlined in the IGR Act. Should the dispute still remain unresolved, the dispute will be adjudicated by a competent court of law with jurisdiction to hear the matter.

5. BREACH AND TERMINATION

5.1 In the event of an act of default being committed by either Party, the affected Party may, without prejudice to any other right or remedy it may have in law, give written notice to the defaulting Party to remedy such default within 30 (thirty) days of receipt of such notice.

5.2 If the defaulting Party fails to rectify the defect within the 30 (thirty) day notice period, the affected Party shall be entitled, but not obliged, to cancel this Agreement either in whole or in part by giving notice to that effect.

6. STANDARD OF CARE

All obligations to be fulfilled by each Party in terms of this Agreement shall be performed with due care and diligence, in a competent, professional and timely manner, and in conformity with sound business and accounting practices.

7. VARIATION

No addition to or variation, consensual cancellation or novation of this Agreement and no waiver of any right arising from the Agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by both Parties.

8. RELAXATION

No latitude, extension of time or other indulgence which may be given or allowed by any Party to the other Party in respect of the performance of any obligation hereunder or enforcement of any right arising from this Agreement and no single or partial exercise of any right by any Party shall under any circumstances be construed to be an implied consent by such Party or operate as a waiver or a novation of, or otherwise affect any of that Party's rights in terms of or arising from this Agreement or stop such Party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision or term thereof.

9. NO CESSION / TRANSFER

No rights or obligations which either Party may have in terms of this Agreement shall be capable of cession or transfer without the prior written consent of the other Party

10. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Parties as to the subject matter hereof and no agreement, representations or warranties between the Parties other than those set out herein are binding on the Parties.

11. NOTICES AND DOMICILIA

11.1 The Parties choose as their *domicilium citandi et executandi* their respective addresses as set out in this clause for all purposes arising out of or in connection with this Agreement, at which addresses all processes and notices arising out

of or in connection with this Agreement, its breach or termination, may validly be served upon or delivered to the Parties.

11.2 For the purpose of this Agreement the Parties' respective addresses shall be:

The Municipality:

The Director:

Relevant address

The NATIONAL, PROVINCIAL AND STATE OWNED ENTERPRISES:

The Head of Component:

Relevant Address

11.3 Each of the Parties shall be entitled, from time to time by written notice to the other, to vary its *domicilium* to any other physical address within the Department, which address may not be a post office box or poste restante.

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

11.4.1 if delivered by hand, be deemed to have been duly received by the addressee on the date of delivery; or

11.4.2 if forwarded by pre-paid registered post, be deemed to have been received by the addressee 4 (four) days after the date of postage.

11.5 Notwithstanding anything to the contrary contained in this Agreement, a written notice or communication actually received by one of the Parties from the other Party shall be adequate written notice of communication to such Party.

12. WARRANTY OF AUTHORITY

Each Party warrants to the other that it has the power, authority and legal right to sign and perform this Agreement and that this Agreement has been duly authorised by all necessary actions of its officials or structures, if required, and constitutes valid and binding obligations on it in accordance with the terms of this Agreement.

Signed at on this day of 2018

The Municipality [Insert the name of the municipality]

As Witnesses:

1. _____

2. _____

Signed at on this day of 2018

The [Insert name of the relevant National Department, Provincial Department or State Owned Enterprise]

As Witnesses:

1. _____

2. _____