



MANGAUNG

METRO MUNICIPALITY
METRO MUNISIPALITEIT
LEKGOTLA LA MOTSE

DIRECTORATE
HUMAN SETTLEMENTS &
HOUSING

02 August 2017

THE SPEAKER

COUNCIL ITEM

SUBJECT : REQUEST FOR COUNCIL APPROVAL FOR THE SIGNING AND FINALISATION OF THE MASTER ADDENDUM WITH MESSRS CALGRO M3 HOLDING LIMITED ON VISTA PARK EXTENSION THREE DEVELOPMENT

1. PURPOSE

The purpose of this submission is to request Council to approve the signing and finalisation of the master addendum with Messrs Calgro M3 Holding Limited on Vista Park Extension 3 development.

2. STRATEGIC INTENT

Promote Sustainable Human Settlements and Improved Quality of Household Life

3. FOR CONSIDERATION AND APPROVAL BY

Council

4. BACKGROUND AND DISCUSSION

During the year 2011 and as part of the implementation of the development of seven (7) land parcels, the Mangaung Metropolitan Municipality called for proposals and invited bidders for the development of amongst others, Vista Park Extension 3 under Notice No.28/2011.

The bid specification for the tender specifically mentioned that 30% of single residential sites will be reserved for disposal by the municipality. Clause 2.2.1 of the Land Availability Agreement further emphasised that "30 % (Thirty Percent) of serviced single residential sites/erven is availed to the Municipality free of charge and to be disposed of or be dealt with by the Municipality at its discretion, with the proceeds accruing exclusively to or for the benefit of the Municipality".

To demonstrate urgency in implementing this catalytic project; the Services Agreement concluded between the two parties provided that "*The Municipality herewith authorizes the Developer to secure all such necessary and available infrastructure funding to install all the Bulk Services required for the Vista Park Extension 3 Property as and when same is required for the purposes of the development of the said properties, on its behalf*".

For the last years, the Municipality has not been able to make the necessary budgetary provisions for the external services works relating to the upgrading of the bulk water pipeline located in the vicinity of Vista Park Extension 3 as depicted on the site plan attached hereto as Annexure A. This has affected the project negatively in that it has delayed the construction of internal reticulation that is necessary for the delivery of housing and other related facilities and/or amenities for both Vista Park Extensions 2 and 3 and postponing the upgrading of the water pipeline and sewer works further will affect service delivery and will continue to deprive the Municipality of possible growth in its revenue base.

5. PROPOSAL: MASTER ADDENDUM

The Master Addendum proposes that the Developer attends to the bulk water pipeline and sewer works located in the vicinity of Vista Park Extension 3 as depicted on the site plan attached hereto as Annexure A at the expense of the Municipality on the following terms and conditions:

- 5.1. The Municipality shall pay the agreed works cost to the Developer within 6 (six) months of the date of certification, in writing, by the Municipality's designated representative that the Developer has completed the bulk water pipeline and sewer works.
- 5.2. Should the Municipality fail to pay the Developer within the aforementioned 6 (six) month period; payment will automatically be effected by reducing the 313 (three hundred and thirteen) serviced single residential sites/erven to be availed by the Developer to the Municipality in terms of clause 2.2.1 of the Land Availability Agreement by 299 (two hundred and ninety nine) sites/erven.

6. RECOMMENDATION

It is recommended that:

6.1. The Council approves the signing and finalisation of the master addendum with Messrs Calgro M3 Holding Limited on Vista Park Extension Three (3) development in so far as the external services works relating to the upgrading of the bulk water pipeline and sewer works located in the vicinity of Vista Park Extension 3 as depicted on the site plan attached hereto as Annexure A are concerned, and

6.2. That the City Manager be authorized to sign and finalise the master addendum with Messrs Calgro M3 Holding Limited on this development.



**MD MOKOENA
GM: MIXED DEVELOPMENTS**

~~Supported / Not Supported~~



**ADV. M. IN PHALADI
HEAD: HUMAN SETTLEMENTS**

DATE 23.8.17

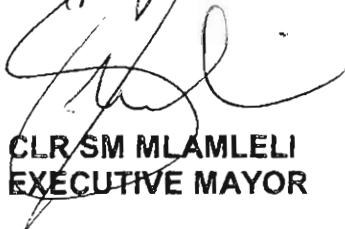
~~Recommended / Not Recommended~~



**ADV. M. MWA
CITY MANAGER**

DATE 19/09/2017

~~Recommended / Not Recommended~~



**CLR. SM MLAMLELI
EXECUTIVE MAYOR**

DATE 19.9.17

**MASTER ADDENDUM
LAND AVAILABILITY AGREEMENT
SERVICES AGREEMENT**

1. PARTIES

PENNYVILLE ZAMIMPHILO RELOCATIONS (PTY) LTD
(A wholly owned subsidiary of CALGRO M3 HOLDINGS LIMITED)
Registration number: 2005/027240/07
("the Developer")

and

MANGAUNG METROPOLITAN MUNICIPALITY
("the Municipality")

(collectively referred to as "the Parties")

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2. INTRODUCTION

- 2.1 The Parties record that they entered into a Land Availability Agreement and Services Agreement in respect of the development of Vista Park Extension 3 on or about 14 September 2014.
- 2.2 The Parties wish to record their agreement reached relating to the provision of certain of the External Services that were to be installed by the Municipality under and in terms of the Services Agreement.
- 2.3 The Municipality herewith acknowledges that no budget is currently available for the installation of the External Services and therefore hereby agrees that the Developer will undertake the External Services works relating to the upgrading of the water pipeline and sewer supply located in the vicinity of Vista Park Extension 3 as depicted on the site plan attached hereto as Annexure A (“the Water Pipeline & Sewer Works”), in accordance with the terms of this master addendum (*“the Master Addendum”*).
- 2.4 The Parties have agreed to amend the Land Availability Agreement, to reflect the agreement reached relating to the Water Pipeline & Sewer Works (pursuant to the Services Agreement), and all matters incidental thereto, by entering into this Master Addendum.
- 2.5 This Master Addendum supplements and must be read with the Land Availability Agreement and Services Agreement. To the extent of any inconsistency between the said agreements and this Master Addendum, this Master Addendum prevails over the Land Availability Agreement and Services Agreement.

3. INTERPRETATION

The definitions given in the Land Availability Agreement and Services Agreement shall apply to this Master Addendum, unless the context indicates otherwise.

4. THE WATER PIPELINE & SEWER WORKS

- 4.1 The Parties record that the Developer, in terms of clause 2.2 of the Services Agreement, is entitled to assist and undertake the functions of the Municipality in respect of the External Services.

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4.2 The Parties hereby expressly agree that the Developer will attend to the Water Pipeline & Sewer Works at the expense of the Municipality on the following terms and conditions –

4.2.1 subject to the Developer obtaining the necessary funding to execute the Water Pipeline & Sewer Works, on terms and conditions acceptable to the Developer, the Developer shall undertake the Water Pipeline & Sewer Works on the areas and in accordance with the specifications depicted on Annexure A hereto, and at the agreed cost contained in Annexure B hereto, being R27 315 757.66 (excl. VAT) ("Agreed Works Cost");

4.2.2 The Municipality shall pay the Agreed Works Cost referred to in clause 4.2.3 below, to the Developer within 6 (six) months of the date of certification, in writing, of the Municipality's designated representative, that the Developer has completed the Water Pipeline & Sewer Works. Such payment will be made without commission, deduction or set-off into the bank account nominated by the Developer;

4.2.3 the Developer shall have the right to appoint the professional team to undertake the Water Pipeline & Sewer Works;

4.3 Should the Municipality fail to pay the Developer within the aforementioned 6 (six) month period, the Parties hereby agree that:

4.3.1 payment will automatically be effected by reducing the 313 (three hundred and thirteen) serviced single residential sites/erven to be availed by the Developer to the Municipality in terms of clause 2.2.1 of the Land Availability Agreement by 299 (two hundred and ninety nine) sites/erven, calculated in accordance with the cost of services per single residential site/erf of R91 335.04 (ninety one thousand three hundred and thirty five thousand rand and four cents) per site/per erf (being R56 796.89 for civil infrastructure and R34 538.15 for electrical infrastructure per site/erf) as depicted in Annexure "B" hereto, which sites/erven will be retained by the Developer to be dealt with in accordance with the provisions of the Land Availability Agreement for its benefit;

4.3.2 The remaining 14 (fourteen) single residential site/erf shall be delivered by the Developer to the Municipality in accordance with the provisions of clause 2.2.1 of

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the Land Availability Agreement, unless agreed otherwise in writing between the Parties.

5 AMENDMENTS TO THE MAIN AGREEMENT

The Parties hereby agree to amend the Land Availability Agreement and Services Agreement to the extent that may be necessary to incorporate the provisions of this Master Addendum.

6 REMAINING CONDITIONS OF THE AGREEMENTS

Other than the specific amendments to the Land Availability Agreement and Services Agreement in terms of this Master Addendum, the balance of the terms and conditions of the Land Availability Agreement and Services Agreement will remain in full force and effect.

7 MISCELLANEOUS

- 7.1 This Master Addendum contains all of the express provisions agreed on by the Parties with regard to the subject matter hereof and the Parties waive the right to rely on any alleged express provision not contained hereon.
- 7.2 No Party may rely on any representation which allegedly induced that Party to enter into this Master Addendum, unless the representation is recorded herein.
- 7.3 No agreement varying, adding to, deleting from or cancelling this Master Addendum and no waiver of any right under this Master Addendum shall be affected, unless reduced to writing and signed by or on behalf of the Parties.
- 7.4 No relaxation by a Party of any of its rights in terms of this Master Addendum at any time shall prejudice or be a waiver of its rights (unless it is a written waiver) and it shall be entitled to exercise its rights thereafter as if such relaxation had not taken place.
- 7.5 Except where otherwise stated, no Party may cede any of its rights or delegate or assign any of its obligations in terms of this Master Addendum without the prior written consent of the other Party.

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7.6 Since the provisions of this Master Addendum have been settled by negotiation, the rule of construction that clauses shall be interpreted against the interest of the Party principally responsible for drafting shall not apply.

THUS DONE AND SIGNED ON BEHALF OF THE MUNICIPALITY AT BLOEMFONTEIN ON THIS ____ DAY OF _____ 2017 IN THE PRESENCE OF THE UNDERSIGNED WITNESSES.

AS WITNESSES:

1. _____
_____ Print Name

2. _____
_____ Print Name

MUNICIPALITY

Particulars of signatory who warrants that he/she is authorised thereto

THUS DONE AND SIGNED ON BEHALF OF THE DEVELOPER AT _____ ON THIS ____ DAY OF _____ 20 ____ IN THE PRESENCE OF THE UNDERSIGNED WITNESSES.

AS WITNESSES:

1. _____
_____ Print Name

2. _____
_____ Print Name

DEVELOPER

Particulars of signatory who warrants that he/she is authorised thereto

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