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TENDER 69/2017

**Specific Conditions of Contract
(Supply Agreement)**

between

Zaaymans Garage

and

Dr Beyers Naudé Local Municipality

Specific Conditions of Contract (Supply Agreement)

Parties **Zaaymans Garage (Supplier)**

Dr Beyers Naudé Local Municipality (Purchaser)

1. Introduction

- 1.1. The Supplier has been awarded Tender 69/2017 by the Purchaser to supply fuel and oil to municipal vehicles in the Dr Beyers Naudé Local Region.
- 1.2. The Parties have agreed that the General Conditions of Contract will be applicable to this Agreement as if each provision therein has been included in this Agreement. To the extent that there are conflicts or inconsistencies between this Agreement and the General Conditions of Contract, the provisions in this Agreement will prevail.

2. Definitions and interpretation

2.1. In this Agreement:

- 2.1.1. **Agreement** means this Specific Conditions of Contract (Supply Agreement);
- 2.1.2. **Business Day** means any day other than a Saturday, Sunday or official public holiday;
- 2.1.3. **General Conditions of Contract** means Government Procurement: General Conditions of Contract, July 2010 as published by the National Treasury, Republic of South Africa;
- 2.1.4. **Parties** means the supplier and the Purchaser and **Party** means, as the context requires, any one of them;
- 2.1.5. **Products** means the products supplied by the Supplier to the Purchaser, listed in clause 4 below, which list may be supplemented from time to time;
- 2.1.6. **Purchaser** means Dr Beyers Naudé Local Municipality;
- 2.1.7. **Signature Date** means the date of the last signature to this Agreement; and
- 2.1.8. **Supplier** means Zaaymans Garage, registration number 1992/011803/23, a closed corporation incorporated according to the laws of South Africa.

- 2.2. Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- 2.3. The headings do not govern or affect the interpretation of this Agreement.
- 2.4. If any provision in a definition confers rights, or imposes obligations on any Party, effect is given to it as a substantive provision of this Agreement.
- 2.5. Unless the context indicates otherwise an expression which denotes any gender includes both the others; reference to a natural person includes a juristic person; the singular includes the plural, and the plural includes the singular.
- 2.6. Any number of days prescribed in this Agreement excludes the first day and includes the last day and any relevant action or notice may be validly done or given on the last day.
- 2.7. Unless the context indicates otherwise if the day for payment of any amount or performance of any obligation falls on a day which is not a Business Day, that day will be the previous Business Day.
- 2.8. The words "including" and "in particular" are without limitation.
- 2.9. Any reference to a document or instrument includes the document or instrument as ceded, delegated, novated, altered, supplemented or replaced from time to time.
- 2.10. A reference to a Party includes that Party's successors-in-title and permitted assigns.
- 2.11. The rule of interpretation that, in the event of ambiguity, the contract must be interpreted against the party responsible for the drafting of the contract does not apply.
- 2.12. The termination of this Agreement does not affect those of its provisions which expressly provide that they will operate after termination, or which must continue to have effect after termination, or which must by implication continue to have effect after termination.

3. Duration

The terms of this Agreement will be valid for three years

4. Products

4.1. The Products to be supplied by the Supplier to the Purchaser in terms of this Agreement are:

4.1.1. Fuels

4.1.1.1. Petrol Leaded

4.1.1.2. Petrol 95 Octane Unleaded

4.1.1.3. Diesel

4.1.2.Oils

4.1.2.1. Multi Grade 15W40

4.1.2.2. Gear Oil

4.1.2.3. Hydraulic Oil

4.1.2.4. Automatic Transmission Oil

4.1.2.5. Dieselube 700 15w-40

4.2. The Supplier reserves the right to supplement any of the above products with a product of a similar nature and price should any of the above products no longer be produced or should a product of a better quality become available. All supplementations of this nature will be communicated to the Purchaser in writing within four weeks of the Supplier becoming aware of the need for such supplementation.

5. Deposit and price

5.1. The Purchaser will pay to the Supplier a deposit of R20 000 before any Products will be supplied to the Purchaser.

5.2. The price (per litre) of the Products (including all relevant taxes) as at 31 October 2017 are:

5.2.1.Fuels

5.2.1.1.	Petrol Leaded	R 13.80
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5.2.1.2.	Petrol 95 Octane Unleaded	R 13.80
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5.2.1.3.	Diesel	R 13.57
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5.2.2.Oils

5.2.2.1.	Multi Grade 15W40	R 76.00
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5.2.2.2.	Gear Oil	R 70.00
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5.2.2.3.	Hydraulic Oil	R 20.00
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5.2.2.4.	Automatic Transmission Oil	R 76.00
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5.2.2.5.	Dieselube 700 15w-40	R82.00
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5.3. The price of the fuels will change at midnight on the first Wednesday of each month, according to the regulated price changes enforced on fuels.

5.4. Oil prices will increase in accordance with price changes as per lubricant suppliers.

6. Payment

6.1. The Supplier will provide the Purchaser with an account at the end of each month. Payment of this account is due by the 25th of the following month by means of electronic transfer into the bank account nominated by the Supplier.

6.2. Should the Purchaser wish to query any amount included in such account, such query must be submitted in writing to the Supplier at zaaymans@icon.co.za before the 15th of the month following the month to which such account relates.

6.3. No payment may be withheld as a result of a query being submitted.

7. Supply of fuels

7.1. It is the sole responsibility of the driver of each vehicle to ensure that the correct type of fuel is dispensed into the vehicle.

7.2. Only vehicles marked with the official logo and vehicle code of the municipality may fill up, if no vehicle code or logo can be identified as in the case of other machinery such as generators, an official purchase must be submitted at the fuel station before any fuel can be issued.

8. Supply of oils

8.1. The Supplier will top up vehicles with oil in volumes of 500 ml. This will be recorded on the account slip of each transaction.

8.2. No unopened oil will be supplied to the driver of any vehicle unless a written order for such oil is received from the Purchaser.

8.3. Specialised oils, such as hydraulic oils, must be ordered one week in advance.

9. Accounts

- 9.1. Each transaction will be captured on an account slip and billed to the Purchaser's fuel account. Such account slip must bear the initials and surname of the driver and must be signed by him or her.
- 9.2. The Purchaser will provide the Supplier with a list of vehicle registration numbers, organised by department, which list will be proof of the vehicles eligible to purchase fuel and oil from the Supplier. The updating of this list is the sole responsibility of the Purchaser.

10. General

- 10.1. Except for what is stipulated in clause 1.2 above, this Agreement is the whole agreement between the Parties in regard to its subject matter.
- 10.2. No addition to or variation or consensual cancellation of this Agreement, including this clause, has effect unless in writing and signed by the Parties.
- 10.3. No indulgence by a Party to another Party, or failure strictly to enforce the terms of this Agreement, is to be construed as a waiver or be capable of founding an estoppel.
- 10.4. The Parties undertake to do everything reasonable in their power necessary for or incidental to the effectiveness and performance of this Agreement.
- 10.5. Save as is specifically provided in this Agreement, no Party is entitled to cede any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other Party affected by the transfer of rights or obligations which may not be unreasonably withheld.
- 10.6. Any illegal or unenforceable provision of this Agreement may be severed and the remaining provisions of this Agreement continue in force.

11. Notices and addresses

11.1. Notices

Any notice, consent, approval or other communication in connection with this Agreement (Notice) will be in writing, in English.

11.2. Addresses

- 11.2.1. Each Party chooses the physical address, fax number and/or email address corresponding to its name below as the address to which any Notice must be sent.

11.2.1.1. Supplier:

11.2.1.1.1.	Physical address:	34Knysna StreetWillowmore
11.2.1.1.2.	Fax number:	(044) 923 1007
11.2.1.1.3.	Email address:	<u>zaaymans@icon.co.za</u>
11.2.1.1.4.	Marked for the attention of:	Izak Van Der Vyver

11.2.1.2. Purchaser:

11.2.1.2.1.	Physical address:	12-14 Caledon str Graaff-Reinet
11.2.1.2.2.	Fax number:	(049) 892 6137
11.2.1.2.3.	Email address:	finance@bnlm.gov.za
11.2.1.2.4.	Marked for the attention of:	Dr E. Rankwana

11.2.2. Any Party may by Notice to the other Party change its address and/or the person, if any, for whose attention any Notice must be marked.

11.3. Effective on receipt

11.3.1. Any Notice takes effect when received by the recipient (or on any later date specified in the Notice) and, unless the contrary is proved, is deemed to be received:

11.3.1.1. on the day of delivery, if delivered by hand to a responsible person at the recipient's physical address. If delivery is not on a Business Day, or is after ordinary business hours on a Business Day, the Notice is deemed to be received on the Business Day after the date of delivery;

11.3.1.2. on the first Business Day after the date of transmission, if sent by fax to the recipient's fax number; and

11.3.1.3. on the first Business Day after the date of transmission, if sent by email to the recipient's email address.

11.3.2. Despite anything to the contrary in this Agreement, a Notice actually received by a Party is effective even though it was not sent, or delivered, or sent and delivered to its address.

11.4. Service of legal process

11.4.1. Each Party chooses its physical address referred to above as its address at which legal process and other documents in legal proceedings in connection with this Agreement may be served (*domicilium citandi et executandi*).

11.4.2. Any Party may by Notice to other Party change its address at which legal process and other documents in legal proceedings in connection with this Agreement may be served to another physical address in South Africa.

12. Applicable law

This Agreement is governed by South African law.

13. Jurisdiction

The Parties unconditionally consent and submit to the non-exclusive jurisdiction of the Magistrate's Court in regard to all matters arising from this Agreement.

14. Counterparts

This Agreement may be executed in counterparts, each of which will be an original and which together constitute the same agreement.

Signed at WILLOWMORE on the 22 day of NOVEMBER 2017.

For and on behalf of
Zaaymans Garage

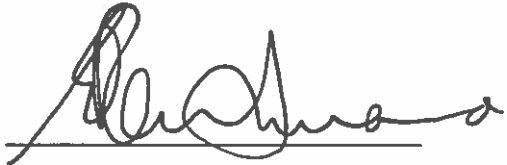


Name: Zzak Van Der Vyver
Who warrants authority

Signed at GRAFF-REINTJ on the 27 day of November 2017.

For and on behalf of

Dr Beyers Naudé Local Municipality

A handwritten signature in black ink, appearing to read 'Dr E Rankwana', written over a horizontal line.

Name: Dr E Rankwana

Capacity: Municipal Manager

Who warrants authority