

MEMORANDUM OF AGREEMENT

Made and Entered into

By and Between

THE ETHEKWINI MUNICIPALITY,

A Category A Municipality duly established in terms of PN 343 of 2000 (KZN)

And seated at City Hall, *Dr Pixley Kaseme Street*, Durban, 4001 (Hereinafter referred to as eTM).

AND

THE URBAN IMPROVEMENTS PRECINCTS (RF) NPC

(REGISTRATION No.2000/026018/08)

A COMPANY ESTABLISHED IN TERMS OF THE COMPANY LAWS OF SOUTH AFRICA

At 2209 Embassy Building, 199 Anton Lembede Street, Durban. (Hereinafter called the UIP Company)

WHEREAS THE CENTRAL BUSINESS DISTRICT, NORTH EAST BUSINESS DISTRICT AND SOUTH BEACH SPECIAL RATING AREAS (SRA's) were established by a resolution of Council in terms of Section 22 of the Local Government: Municipal Property Rates Act 6 of 2004.

AND WHEREAS eTM has in terms of a resolution by its Council, levied an additional rate on property within the boundaries of the Central Business District, North East Business District, and South Beach Special Rating Area's.

AND WHEREAS a Committee established in terms of Section 22 (3) (d) has applied to eTM for a Grant to be given to the UIP Company so as to realize its improvement and upgrading objectives.

AND WHEREAS the UIP Company is a non-profit company established for the purposes of improving or upgrading that area.

AND WHEREAS eTM has allocated a grant to the UIP Company in terms of Section 17(3)(j)(iii) of the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003) (Hereinafter called the MFMA);

AND WHEREAS the grant will not be in compliance with any commercial or other business transaction but will be a grant to a body serving the public or section of the public, by namely, the upgrading and improving of its areas.

AND WHEREAS the UIP Company has accepted the Grant.

NOW THEREFORE the parties agree as follows:-

1. DEFINITION

1 Additional Rate means the additional rate to be paid by owners of rateable property as contemplated in Section 22 of the Municipal Property Rates Act of 2004.

2 Chief Financial Officer means a person designated by the City Manager of the Municipality

3 City Manager means the Administration Head of the Municipality and includes a person formally acting in that capacity

4 Expenditure means spending of allocated funds

5 Financial Year means a year ending 30 June

6 Grantee means the UIP Company

7 SRA means Special Rating Area

8 eTM means eThekweni Municipality

2. Transference of Funds

2.1 eTM agrees to transfer to the grantee the sum collected each month in respect of assessed additional rate relating to the annual budget in the amount of R8,263,000

2.2 the SRA has agreed:-

- a) To comply with all administration, reporting, financial and auditing requirements as are stipulated in Schedule 2 hereto;
- b) To report at least monthly to the Chief Financial Officer on:
 - actual receipts and expenditure against such transfer;
 - matters raised by members and unresolved matters.

3. OBLIGATION OF THE GRANTEE

3.1 The grantee shall issue a certificate to the ETM indicating that the grantee has sufficient capacity, as mentioned in terms of Section 67(1)(a) of MFMA.

3.2 A business plan shall accompany the grantee's submission of annual

Budget needs, which should include the essential elements reflected in schedule 3 hereto.

- 3.3 The grantee shall provide minutes for a general meeting showing that all property owners have been apprised of the annual budget being submitted, with the majority demonstrating their support.
- 3.4 The grantee shall provide ETM with the program on how the grant funding will be utilized, that contains key targets (together with non financial measurements for fulfilling business objectives) and the implementation process/plan.
- 3.5 The grantee shall report to eTM quarterly on performance in providing the services reflected in Schedule 1 hereof.
- 3.6 The grantee shall open and maintain a dedicated bank account for the exclusive use of the grant provided by eTM in terms of this Agreement
- 3.7 The grantee shall keep proper and separate accounting records of the grant, and all disbursements made from the grant, in accordance with generally accepted accounting practices.
- 3.8 The grantee shall report half yearly to eTM on :
 - 3.8.1 how the grant has been appropriated during the first half of the financial year; and
 - 3.8.2 the estimated targets and budget implementation plan until year end.
 - 3.8.3 Within thirty days of the termination or cancellation of this agreement, as the case may be, grantee shall provide eTM with:
 - 3.9.1 a statement of all payments and disbursements made from the grant
 - 3.9.2 an audited report signed by the grantee's accountant, certifying that the grant was utilized and that disbursements were made solely as contemplated in this Agreement and the budget referred to in clause 2.1 hereto.

4. WITHHOLDING OF GRANT PAYMENT

- 4.1 Notwithstanding clause 2.1, eTM will be entitled to withhold any payment due to the grantee in the event of failure to submit monthly financial or operations report, or quarterly performance reports, or audited annual financial statements.
- 4.2 The eTM reserves the right to withhold the grant, including any amounts already transferred to grantee but not yet disbursed, in the event that the eTM is of the reasonable opinion that the grantee has failed to fulfill its obligations as contemplated in this Agreement, or the purpose for which the grant was made available has fallen away.
- 4.3 Appropriate rates adjustments will be made in the event of clause 4.2 being invoked.

5 MISCELLANEOUS PROVISIONS

- 5.1 No addition to, amendment, waiver or consensual cancellation of this agreement or of any of its terms or provisions shall be of any force or effect unless in writing and signed by or on behalf of the parties;
- 5.2 No settlement of any disputes arising under this agreement, and no extension of time, waiver, relaxation or suspension of any of the provisions or terms of this agreement shall be of any force or effect unless in writing and signed by or on behalf of the parties;
- 5.3 No extension of time, indulgence or relaxation of any of the provisions or terms of this agreement which any party to this agreement (“the grantor”) may grant to the other party to this agreement (“the grantee”) shall operate as an estoppel against the grantor in respect of the grantor’s rights under this agreement, nor shall any such extension of time, indulgence or relaxation prejudice or constitute a waiver of the rights of the grantor, who shall not thereby be precluded from exercising any rights against the grantee strictly in accordance with this agreement.

6 INTERPRETATION

In this Agreement:

- 6.1 headings of clauses shall be deemed to have been included for the purpose of convenience and reference only and shall not be used to interpret the clauses to which they relate;
- 6.2 the contra proferentum rule of construction that this agreement shall be interpreted against the party responsible for the drafting or preparation of the agreement, shall not apply.

7 DURATION AND TERMINATION

- 7.1 This Agreement shall come into operation on the 1st day of July 2015 (effective date) and terminate at the end of the financial year (i.e 30 June 2016).
- 7.2 Terminate in the event of a breach of any term or condition contemplated in this Agreement and not rectified as stated in clause 9.
- 7.3 All assets procured by the grantee on behalf of the Central Business District, North East Business District and South Beach Special Rating Area’s ultimately belongs to eThekweni Municipality. Where the Special Rating Area is disestablished for any reason, the Special Rating Area and grantee shall within three months of such disestablishment, utilize the available funds to settle all outstanding liabilities, and thereafter transfer and deliver/convey all the assets reflected in the balance sheet relating to the Special Rating Area to eTM.

8 BREACH

Should any party be in breach of any term of this Agreement, then the aggrieved party shall be entitled to require such breach to be rectified, within seven days of the aggrieved party serving a notice of such breach upon the defaulting party, and until such rectification, the aggrieved party shall not be obliged to perform any corresponding obligation placed on such aggrieved party under this Agreement.

9 DISPUTE RESOLUTION

9.1 In the event that any dispute arise between the parties in terms of this agreement or with respect to the interpretation of this agreement, and such dispute cannot be resolved by the parties within 7 (seven) working days, either party shall refer the dispute to mediator acceptable to both parties and attempt to resolve the matter.

9.2 Should the parties fail to resolve the dispute in terms of clause 10.1, then the matter shall be referred to arbitration.

9.3 The parties shall agree on an Arbitrator within thirty days after a dispute has been declared, failing which either of the parties to the dispute may request the President for the time being of the KZN Law Society to appoint a suitable Arbitrator.

9.4 The decision of the arbitrator shall be final.

DATED AT DURBAN THIS.....DAY OF.....2015

WITNESSES

1.....

2.....

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FOR AND ON BEHALF OF THE
eTthekwini Municipality

DATED AT DURBAN THIS.....DAY OF.....2015

WITNESSES

1.....

2.....

.....
Denis S E Cockhead, Chairman,
FOR AND ON BEHALF OF THE UIP
COMPANY

Urban Improvement Precincts Company

SCHEDULE 1

Improve the quality of life by keeping the area clean, safe and welcoming.

SERVICES

- 1** Respond to all issues raised by residents, business or property owners and pursue related issues to ultimate conclusion.
- 2** Inhibit criminal activity by ensuring that the area is adequately patrolled and guarded, while reviewing criminal occurrences monthly.
- 3** Maintain cleanliness by ensuring daily collection of refuse and cleaning of pissoires, while reviewing performance of cleaning services monthly.

SCHEDULE 2

ADMINISTRATION, REPORTING, FINANCIAL AND AUDITING REQUIREMENTS

1. The grant shall be used solely for the provision set out in Schedule 1 and for no other purpose whatsoever without the prior written consent of the Chief Financial Officer.
2. The UIP Company shall submit its audited financial statements for its financial year to the Chief Financial Officer within 3 (Three) months of its financial year end.
3. The UIP Company may use the grant in conjunction with any other fund any such other persons may contribute for the provision of the said services to the service level contracted for or at such higher level as SRA may determine and shall submit to the Chief Financial Officer all records pertaining to such expenditure and income.
4. The UIP Company shall submit an annual report to the Chief Financial Officer within 3 (Three) months of its financial year end regarding progress in carrying out provisions of its Implementation Plan in the preceding year.
5. The UIP Company shall submit a copy of the minutes for the latest Annual General Meeting within 3 (Three) months of its financial year end to the Chief Financial Officer.
6. If, in the written opinion of the Chief Financial Officer of eTM, the UIP Company is failing to carry out its principal objectives as a party or ceasing to comply with the purposes of the grant, the Chief Financial Officer of eTM is hereby irrevocably appointed by the UIP Company as its lawful attorney and agent to appoint a receiver who shall act as agent of the party and take possession of all such monies.
7. The certificate of the Chief Financial Officer of eTM duly signed by him shall be regarded as prima facie proof of the breach of Item 4 of this Schedule.
8. The certificate signed by the Chief Financial Officer of eTM shall be regarded as prima facie proof of the appointment of the person named therein as the receiver for the UIP Company.
9. The UIP Company shall submit a monthly report to the Chief Financial Officer on actual expenditure against transfer of the grant and such other statistical information and progress details as the Chief Financial Officer may from time to time require.
10. The UIP Company shall from time to time submit a report to the Chief Financial Officer detailing all matters which materially alter the scope of the services set out in Schedule 1 to the agreement and shall also, as and when required, report to the Chief Financial Officer on any situation which materially adversely affects the operation of the UIP Company or any of its agents providing any or all of the services set out in Schedule 1 (whether in whole or part).

11. The UIP Company shall appoint an Auditor who shall audit such financial statements as the law and the Chief Financial Officer of eTM may from time to time determine.
12. The UIP Company shall generally implement effective, efficient, and transparent financial management and internal control systems to guard against fraud, theft and mismanagement and, in particular, shall comply with such instructions for its financial management and internal control system as the Chief Financial Officer from time to time may determine.
13. All reports submitted to the Chief Financial Officer shall, when necessary, include the provision of this agreement and any material problems experienced by the UIP Company with regard to the said grant together with steps taken to deal with such problems or funding shortfalls.

SCHEDULE 3

REQUIREMENTS FOR BUSINESS PLAN

1. The vision, mission and objective for such proposals.
2. Composition of board for the management body and how they will regularly interact with local property owners.
3. What staff and other service providers are intended to be engaged, and what assets exist or intend to be acquired.
4. Annual budget proposed for each year of implementation plan. Such financial plan must reveal how accumulated surpluses will be appropriated that exceeds 30% of budget need, while the funding by additional property rate will not increase more than that stipulated by eTM.