

MEMORANDUM OF UNDERSTANDING

ENTERED INTO BY AND BETWEEN:

Ugu District Municipality

Herein represented by Mr Dhanpalan D. Naidoo
in his capacity as Municipal Manager,
duly authorised to sign this agreement.
(Hereinafter referred to as “Ugu”)

AND

Hibiscus Coast Local Municipality

Herein represented by Mr Maxwell S. Mbili
in his capacity as Municipal Manager
duly authorised to sign this agreement
(Hereinafter referred to as “Hibiscus”)

Whereas: Hibiscus as Local Municipality is the Parent Municipality of Hibiscus Coast Development Agency (Pty) Ltd NPC, with registration number 2002/030541/08, also known as the Hibiscus Coast Development Agency, (herein after referred to as the Agency);

And Whereas: Ugu is the District Municipality within which area of jurisdiction as District Municipality, Hibiscus as Local municipality is situated;

And Whereas: Hibiscus is seeking to transfer the ownership with respect to the Agency also known as the Hibiscus Coast Development Agency, as per the stipulations contained herein;

And Whereas: The KZN-Legislature resolved that each District Municipality within the Province should establish development agencies;

And Whereas: Both parties hereto have taken formal resolutions with respect to the intention to transfer ownership of the Agency from Hibiscus to Ugu;

And whereas: Ugu entered into this Agreement with the Hibiscus, with the intention to take over the Agency based on the terms and conditions contained herein;

And Whereas: Ugu is in the process of following a section 78 of the Local Government Municipal Systems Act (herein after referred to as the Systems Act), process to establish whether or not it will render its district economic development function via an external mechanism.

And Whereas: The parties hereto, in addition to the Formal funding by the parties as per their respective approved budgets for the 2014/2015 financial years, as well as the indications given by the Private Sector, is desirous to maximise the Funding and Support opportunities presented by the Private Sector in favour of the furtherance of the Agency's purpose and functions.

Now therefore the parties agree as follows:

1 LEGAL REQUIREMENTS

That the parties hereto agree to comply with all the relevant legislation applicable to the transfer of the ownership in the Agency from Hibiscus to Ugu, and to take all actions necessary and sign all documentation to effect the transfer of ownership of the Agency to Ugu.

2 OWNERSHIP AND FUNDING OF THE AGENCY.

- 2.1 The parties hereto agree that the funds budgeted for by Hibiscus with respect to the Agency, will be paid over to the agency, in line with the Service Level Agreement concluded between Hibiscus and the Agency prior to the conclusion of this Agreement; to fund the administration and functioning of the Agency ; and
- 2.2 The parties hereto also agree that Ugu will only make available the funds budgeted for in its approved budget for the 2014/2015 financial year, with respect to the Agency after the signing of this Agreement.

3 EFFECTIVE DATE.

This Agreement will come into effect on 01 July 2014.

4 ACCOUNTABILITY OF UGU

Ugu will set up and run an agreed accountability process, in accordance with the requirements of the relevant and applicable legislation, including, but not limited to Local Government: Municipal Systems Act, the Companies Act and the Local Government: Municipal Finance Management Act, and the parties agree that such processes shall at all times during the existence hereof be duly reviewed, amended and maintained in line with legislative development of applicable legislation.

5 THE AGENCY'S MEMORANDUM OF INCORPORATION

The parties hereto agree that current Memorandum of Incorporation is, in principle, suited for the purpose of the establishment and the current functioning of the Agency, and to do or ensure that whatever is necessary is done to protect the interests of all parties concerned; and that the current Memorandum of Incorporation will be amended once the Section 78 of the Systems Act as mentioned above has been duly completed.

6 DIRECTORS OF THE AGENCY

The parties hereto agree that the current directors of the company will remain as the directors of the Agency and that Directors will, if necessary, be removed, replaced and appointed as per the stipulations in the relevant legislation.

7. DISPUTE RESOLUTION

Any dispute which may arise in terms of this Agreement shall be settled by the Parties in terms of the provisions set out in the Intergovernmental Relations Framework Act

8. SEVERABILITY

Any provision in this contract which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this contract shall, as to such jurisdiction, be ineffective to the extent of such prohibition or un-enforceability and shall be treated *pro no scripto* and severed from the balance of this contract, without invalidating the remaining provisions of this contract or affecting the validity or enforceability of such provision.

9. PRESERVATION OF THE POWERS AND DUTIES OF THE PARTIES HERETO

Nothing in this contract shall curtail the statutory powers of the Agency, Hibiscus and/or Ugu in the exercising of its function and responsibility in terms hereof.

10. ASSIGNMENT, TRANSFER, CESSION AND DELEGATION

No party shall be entitled to assign, transfer, cede or delegate of its rights and obligations in terms of this contract without the prior written consent of the other party.

11. CONTRACT BINDING ON SUCCESSORS-IN-TITLE

This contract shall be binding on any successor in title of any of the Parties.

12. GOOD FAITH

The parties shall in their dealings with each other display the utmost good faith and undertake to do all such things, perform all necessary acts and procure the taking of all necessary steps and sign all such other documents that may be necessary or incidental or conducive to give effect to the intention and the terms and conditions of the contract.

13. DOMICILIUM CITANDI ET EXECUTANDI

- 13.1 The parties choose as their *domicilia citandi et executandi* for all purposes under this contract, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the following addresses –

UGU

Physical: 28 Connor Street
Port Shepstone
4240.

Postal: P O Box 33
Port Shepstone
4240

Telefax: 039 682 1720

Contact person: Mr D D Naidoo

HIBISCUS

Physical: 10 Connor Street
Port Shepstone
4240.

Postal: P O Box 5
Port Shepstone.
4240
Telefax: 039

Contact person: Mr M S Mbili

- 13.2 Any notice or communication required or permitted to be given in terms of this contract shall be valid and effective only if in writing, but it shall be competent to give notice by telefax.
- 13.3 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chose *domicilium citandi et executandi*.

14. WHOLE AGREEMENT, NO AMENDMENT

- 14.1 This contract including the annexures constitutes the whole agreement between parties relating to the subject matter hereof and supersedes, all previous contracts or arrangements, whether oral or written, between the parties. No representations, warranties or other terms and conditions of whatever nature not contained or recorded herein have been made or agreed to.
- 14.2 No amendment or consensual cancellation of this contract or any provision or term hereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this contract and no settlement of any disputes arising under this contract and no extends of time, waiver or relaxation or suspension of or agreement not to enforce or to suspend or postpone the enforcement of any of the provisions or terms of this contract or of any agreement, bill of exchange or other document issued pursuant to or in terms of this contract shall be binding unless recorded in a written document signed by the parties. Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.

14.3 No extension of time or waiver or relaxation of any of the provisions or terms of this contract, bill of exchange or other document issued or executed pursuant or in terms of this contract, shall operate as soon an estoppel against any party in respect of its rights under this contract, nor shall it operate so as to preclude such party thereafter from exercising its rights strictly in accordance with this contract.

14.4 To the extent permissible by law no party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.

In witness whereof, UGU have executed this agreement on this..... day of
..... 2014 at

WITNESS

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UGU

In witness whereof, HIBISCUS have executed this agreement on this..... day of
..... 2014 at

WITNESS

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HIBISCUS