

AGREEMENT ENTERED INTO BY AND BETWEEN

KWAZULU-NATAL
DEPARTMENT OF SPORT AND RECREATION
(Hereinafter referred to as the Department)

Duly represented herein by

MRS R NAIDOO

In her Capacity as the Head of Department
And duly authorized to sign this agreement on behalf of
The Member of the Executive Council

AND

EMANDLANGENI MUNICIPALITY
(Hereinafter referred to as the "Municipality")
Duly represented herein by

Mrs GPN Ntshangase
In his/ her Capacity as the Municipality Manager
And duly authorized to sign this agreement

DEPARTMENT	Witness 1	Witness 2	MUNICIPALITY	Witness 1	Witness 2
f	B	THA	GPN	J	Kmt

PREAMBLE

WHEREAS the Department of Sport and Recreation has a constitutional obligation to promote and develop sport and recreation in municipalities within its jurisdiction

AND WHEREAS the EMANDLANGENI Municipality wishes to build BENS DROP SPORTSFIELD PHASE II

AND WHEREAS the Department of Sport and Recreation has made funds available to assist the Municipality with the project

NOW THEREFORE the parties deem it expedient to record the terms of their agreement in writing, in order to establish the terms and conditions on which the Department will fund the building of the sports facility.

THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION AND DEFINITION

- 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 hereof.
- 1.2 Unless a contrary intention clearly appears any one gender includes the other gender, a natural person includes a judicial person and vice versa, and the singular includes the plural and vice versa.
- 1.3 The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely-

“Agreement” means this agreement together with all its schedules and annexures, each of which is an integral part of this agreement and shall be interpreted and construed accordingly

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"Department" means the Kwazulu-Natal Department of Sport and Recreation

"Municipality" means the EMANDLANGENI Municipality

"Parties" means the Department and the Municipality, and a reference to "party" shall be a reference to either one of them as so determined by the context







"Project" means the provision of sports facilities within the EMANDLANGENI municipality, namely BENSDROP SPORTSFIELD PHASE II

"Project manager" means the person appointed by the Department to manage the implementation of the project

"Signature date" means the date of signature of this Agreement by the party last signing

- 1.4 When any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.
- 1.5 Words and expressions defined in any sub clause, for the purpose of the clause for which that sub clause forms part, bear the meaning assigned to such words and expressions in that sub clause.
- 1.6 This Agreement is governed by and construed in accordance with the laws of the Republic of South Africa and any reference to a provision of a statute, rule or regulation must be construed as a reference to that provision as amended or extended from time to time.

2. SUPERCESSION

DEPARTMENT	Witness 1	Witness 2	MUNICIPALITY	Witness 1	Witness 2
					






- 2.1 This agreement constitutes a binding agreement between the parties and shall replace, supersede and cancel in its entirety, with effect from date of signature, any other agreement, whether written or oral, in force between the parties relating to the project.

3. APPOINTMENT

- 3.1 The Municipality is hereby appointed by the Department to undertake the project and accepts full responsibility and accountability for the project, subject to the terms and conditions of this agreement. The Municipality declares that it implements effective, efficient and transparent financial management and internal control systems as contemplated in Section 38(j) of the Public Finance Management Act No. 1 of 1999 and in the Municipal Finance Management Act No. 56 of 2003.
- 3.2 The Department shall appoint a Project Manager to oversee the implementation of the project and the Municipality shall fully co-operate with the Project Manager.

4. FINANCIAL ARRANGEMENTS




- 4.1 The Department shall transfer an amount of R 2 100 000 (TWO MILLION AND ONE HUNDRED THOUSAND RAND) as set out hereunder, to the Municipality:
- 4.1.1 The first 25% (twenty-five percent) of the grant shall be transferred within 30 (thirty) days of the date of last signature herein.
- 4.1.2 The second 25% (twenty-five percent) of the grant shall be transferred upon appointment of the contractor and site establishment.
- 4.1.3 The third 25% (twenty-five percent) of the grant shall be transferred receipt of a certificate from the project manager stating that the project has reached 50% physical completion.

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- 4.1.4 The final 25% being the balance of the grant shall be transferred upon receipt of a certificate from the project manager stating that the project has reached 80% physical completion.
- 4.2 If for any reason whatsoever, the contract price exceeds the total sum, the Municipality shall be liable for the difference between the contract price and the total sum.
- 4.3 Should it not be possible for the Municipality to pay the difference between the contract price and the total sum, then the Municipality shall in consultation with the Department reprioritise the scope of the project.
- 4.4 The Municipality undertakes to use the monies exclusively for the execution of the project.
- 4.5 Any interest on the amount contemplated in clause 4.1 or VAT rebates on the grant must be utilised for the project
- 4.6 Any savings on the grant must be returned to the Department upon completion of the project, unless written permission is obtained by the Municipality from the Department to retain the savings.

5. BUSINESS PLAN

- 5.1 The Municipality must within 30 days of the appointment of a Project Manager by the Department, submit a signed business plan for the project to the Department. The Department must within 30 days from the date of receipt of the business plan inform the Municipality, in writing, if the business plan is approved and if not state reason therefore.
- 5.2 The business plan must be in the format of annexure A and include a time schedule and specify-

DEPARTMENT	Witness 1	Witness 2	MUNICIPALITY	Witness 1	Witness 2
					

- 5.2.1 the scope of the project
 - 5.2.2 the project programme which must include tasks, human resources and proposed expenditure
 - 5.2.3 the phasing of the project
 - 5.2.4 measurable outputs and milestones and
 - 5.2.5 a budget
 - 5.2.6 estimated number of jobs to be created within the project area
- 5.3 This agreement will lapse and be of no force or effect if the business plan is not submitted by the Municipality and approved by the Department within the period contemplated in clause 5.1.
- 5.4 Where a task is delayed by more than two months the business plan must be amended in accordance with clause 22.

6. FINANCIAL CONTROLS

- 6.1 The Municipality will only effect payment for expenses claimed in terms of the project if it is satisfied that-
- 6.1.1 the services provided meet the objectives of the project and
 - 6.1.2 the expenses were validly incurred in terms of the business plan
- 6.2 The Municipality must provide the Department with-
- 6.2.1 a monthly statement of all payments in respect of the project and
 - 6.2.2 any additional financial statements regarding the grant, including income, expenditure and savings relating to the project, if requested to do so.

DEPARTMENT	Witness 1	Witness 2	MUNICIPALITY	Witness 1	Witness 2
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

7. OBLIGATIONS OF THE MUNICIPALITY

7.1 The Municipality shall-

- 7.1.1 consider all information concerning this agreement as confidential, and shall not divulge any information in this regard, except with the express, written consent of the Department;
- 7.1.2 ensure that all land and site issues are resolved prior to this agreement being concluded. This includes but is not limited to Environmental Impact Assessments, access roads, electrical, water and sanitation services;
- 7.1.3 do all such things necessary to manage and implement the successful completion of the project;
- 7.1.4 report monthly to the Department in the format contained in annexure B;
- 7.1.5 prepare detailed and accurate budgets, cash flow statements, maintain proper accounting procedures and financial records and to exercise proper financial discipline;
- 7.1.6 make available to the Department, free of charge, all reports pertaining to the project, including progress reports;
- 7.1.7 invite the Department's Head of Facilities or his/her delegate to sit on all committees and meetings that are set up or convened by the Municipality to discuss any matter related to the Project;
- 7.1.7 be responsible, at its own expense, for the operation and maintenance of the Facility and do all things necessary to keep the facility in the same working order and condition as is on date of handover;
- 7.1.8 be liable for all costs relating to the advertising of the tender and all associated costs arising therefrom;
- 7.1.9 erect a signboard, according to the specifications of the Department, at the entrance of the facility.

8. PERFORMANCE AND RELATIONSHIP MANAGEMENT

8.1 The Department shall conduct a monthly review and will keep a performance

DEPARTMENT	Witness 1	Witness 2	MUNICIPALITY	Witness 1	Witness 2
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report for the purpose of assessing whether or not the conditions of this Agreement are being met and to identify any shortcomings.

- 8.2 The Municipality shall link up with other role players both within the project area and within the Province, as and when necessary, in order to ensure effective utilisation of the Sport and Recreation Facilities and Infrastructure Development Funding.
- 8.3 The parties undertake to form a Project Steering Committee and a Liaison Committee, consisting of mutually agreed to representatives, for the purpose of coordinating all matters relating to the project.
- 8.4 Notwithstanding clause 8.2 the Municipality's Head of Technical Services and the Department's Head of Facilities must attend all meetings of the liaison and steering committees as well as monthly meetings and report on the progress of the project, unless exceptional circumstances dictate otherwise.
- 8.5 The parties undertake to provide such input and attend such meetings as are reasonable required from time to time.

9. WARRANTIES

The Municipality warrants that-

- 9.1 it shall execute the project with promptness, due diligence, skill and expertise;
- 9.2 any service providers appointed to assist in the execution of the project shall be appointed in accordance with the provisions of Section 76 (b) (v) of the Local Government: Municipal Systems Act 23 of 2000 and The Preferential Procurement Policy Act 5 of 2000;
- 9.3 any service providers used to execute the project will be provided with written terms of reference;
- 9.4 it and its service providers, if any, shall at all times comply with all legislation relating to the project, including but not limited to health and occupational safety, labour and environmental regulations and requirements;
- 9.5 all information provided by it and upon which the Department has placed significant reliance in entering into this agreement is accurate and complete and
- 9.6 it shall at all times have and comply with all the legal requirements and with the terms and conditions of all necessary licences, certificates, authorisations and consents required

DEPARTMENT	Witness 1	Witness 2	MUNICIPALITY	Witness 1	Witness 2
					

incurred by the Municipality as a result of any negligence or wilful act or omission on the part of the Municipality.

13. OWNERSHIP AND FORMAT OF INTELLECTUAL PROPERTY

13.1 Ownership of all documents, materials, data and information in whatever manner or format, whether hard copy, digital, video tape, audio tape or otherwise, pertaining to the project will vest in the Municipality, provided that -

13.1.1 the municipality must furnish a hard copy and electronic copy of the final report, plan or similar document free of charge to the Department and

13.1.2 The Department reserves the right to make reports, plans or similar documents received by it as part of this agreement available to the public free of charge in downloadable electronic form through its website.

14. PUBLICITY

14.1 The Municipality undertakes that it will make no statement of any kind, whether written or verbal, to the media in connection with this Agreement or the Project, without first obtaining the Department's approval of such statement.

14.2 In liaising with and or making statements to the media, the Municipality undertakes insofar as it is reasonably practical, to emphasize that funding for the project has been provided by the Department.

15. ABANDONMENT OF THE PROJECT

15.1 The Municipality must immediately notify the Department in writing if the Municipality finds that it is incapable of executing the project.

15.2 The project must be regarded as abandoned if the commencement thereof is postponed for longer than four months after the date of signature of this agreement due to no fault on the

DEPARTMENT	Witness 1	Witness 2	MUNICIPALITY	Witness 1	Witness 2
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part of the Department, unless the Municipality requested an extension of time as provided for in clause 22.

15.3 If the project is abandoned the Municipality must within two months of abandonment refund the Department the balance of the grant.

16. TERMINATION AND COMPLETION OF THE PROJECT AND CLOSE-OUT REPORT

16.1 This agreement terminates upon the Municipality effecting the final payment in respect of this project, unless the project was abandoned.

16.2 Upon completion of the project the Municipality must submit a close-out report, which must include, if applicable-

16.2.1 a project overview, including an analysis of problems encountered,

16.2.2 a report on achievements, including an assessment of the project against the project objectives,

16.2.3 a certified audited statement of expenditure,

16.2.4 the way forward,

16.2.5 the budgetary implications of the way forward.

17. BREACH OF AGREEMENT







17.1 If either party fails to meet its obligation in terms of this agreement, the innocent party may, at its choice, without prejudice to any other rights and remedies the party may have, and

after giving seven (7) days written notice to the defaulting party at its *domicilium*, calling the latter to remedy the breach, do one of the following-

17.1.1 cancel the agreement or

17.1.2 enforce the terms of the agreement and

17.1.3 in any event claim any damages that it may have suffered as a result of the breach.

DEPARTMENT	Witness 1	Witness 2	MUNICIPALITY	Witness 1	Witness 2
					

18. DISPUTE SETTLEMENT

18.1 Either party to the agreement may, in the event of any dispute arising out of the agreement, refer the dispute for resolution as contemplated in the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005)

19. DOMICILIUM AND NOTICES

19.1 The parties choose their *domicilium citandi et executandi* for purposes of giving any notice, the payment of any sum, the serving of any process and for any other purpose arising from this agreement, as follows-

The Department: 135 Pietermaritz Street
Pietermaritzburg
3200
Facsimile: 033 -- 3945063

The Municipality:

Facsimile:

19.2 Either party, upon written notice to the other party, may vary its physical address or facsimile number, to any other physical address of facsimile number, within the Republic of South Africa.

19.3 Any notice given by either party to the other party, which-

19.3.1 is delivered by hand during the normal business hours of the addressee at the







19.3.2 addressee's *domicilium* will be deemed to have been received by the addressee at the time of delivery,

DEPARTMENT	Witness 1	Witness 2	MUNICIPALITY	Witness 1	Witness 2
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19.3.3 is posted by prepaid registered post from an address within the Republic of South Africa to the addressee at the addressee's *domicilium* will be deemed to have been received by the addressee on the seventh day after the date of posting, and
19.3.4 is sent by facsimile during the normal business hours of the addressee to the
19.3.5 addressee's *domicilium* will be deemed to have been received on the date and time of successful transmission thereof.

20. GENERAL

- 20.1 This agreement together with its appendices constitutes the sole record of the agreement between the parties in regard to its subject matter, and neither party will be bound by any representation, express or implied term, warranty, promise or the like not recorded herein, or reduced to writing and signed by both parties.
- 20.2 No variation, modification, addition, alteration, erasure or abandonment of any clause of this agreement or consent to deviation from the agreement will be valid unless such variation, modification, addition, alteration, erasure or abandonment of any clause of this agreement or consent to deviation is recorded in writing and signed by both parties.
- 20.3 No grace, delay, relaxation, leniency or indulgence granted by the Department to the Municipality will be deemed to be an abandonment of any right by the Department contemplated in this agreement and any such grace, delay, relaxation, leniency or indulgence will not prevent the Department from insisting on strict future compliance by the Municipality with all the terms and conditions of this agreement.
- 20.4 Each clause of this agreement is severable from each of the other clauses and if any clause in this agreement is found to be void, invalid or unenforceable for any reason the remaining clauses will remain in full force and effect.
- 20.5 The provisions of this Agreement will be binding upon the successors-in-title of the parties and the right and obligations of each party arising out of or pursuant to this agreement will devolve upon and bind its successors-in-title.
- 20.6 The Municipality may not cede, assign, transfer or otherwise make over any of its rights or obligations contemplated in this agreement, without prior express, written consent of the Department.

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21. COSTS





- 21.1 Each party must bear its own costs of and incidental to the negotiation and preparation of this agreement.
- 21.2 Any costs including attorney and own client costs and collection commission, incurred by the Department arising out of a breach of this agreement will be borne by the Municipality.

22. AMENDMENT OF THE AGREEMENT


22.1 The Municipality must notify the Department in writing if-

- 22.2.1 a task will be delayed by more than two (2) months,
- 22.2.2 the scope or period of the project needs to be increased or reduced
or
- 22.2.3 or any other term of the agreement needs to be amended.

22.2 In the event that the Department, in its sole discretion, agrees to amend any term or condition of this agreement, subsequent to a notice from the Municipality as contemplated in clause 22.1, the agreement must be reduced to writing and attached as an addendum to this agreement.

DEPARTMENT	Witness 1	Witness 2	MUNICIPALITY	Witness 1	Witness 2
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SIGNED AT DURBAN ON THIS 24th DAY OF MARCH 2014



HEAD OF DEPARTMENT
FOR KWAZULU-NATAL DEPARTMENT OF
SPORT AND RECREATION

As Witnesses:

1. Mazizi Mkhize
FULL NAMES




SIGNATURE

2. _____
FULL NAMES

SIGNATURE

SIGNED AT UTRECHT ON THIS 18 DAY OF MARCH 2014



FOR MUNICIPALITY

As Witnesses:

1. S JORDAN
FULL NAMES






SIGNATURE

2. Kmt. MASONDO
FULL NAMES



SIGNATURE

DEPARTMENT	Witness 1	Witness 2	MUNICIPALITY	Witness 1	Witness 2
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