



Notice is hereby given in terms of Section 29 of the Local Government: Municipal Structures Act, Act 117 of 1998, that a **COUNCIL MEETING** of the 2016/2021 term of the Garden Route District Municipality will be held **via Zoom**, on **FRIDAY, 22 JANUARY 2021** at **11:00** to consider the items as set out in the agenda.

*Kennis geskied hiermee ingevolge Artikel 29 van die Wet op Plaaslike Regering: Munisipale Strukture, 1998, Wet 117 van 1998, dat 'n **RAADSVERGADERING** van die 2016/2021 termyn van die Garden Route Distriksmunisipaliteit gehou sal word **via Zoom** op **VRYDAG, 22 JANUARIE 2021** om **11:00** ten einde oorweging aan die items soos in die agenda uiteengesit, te skenk.*

KuKhutshwe isaziso ngokwemiqathango yoMhlathi 29 woRhulumente Basekhaya: Umthetho Wezolawulo loMasipala, 1998, uMthetho 117 wango 1998, sokuba **iNTLANGANISO** yexesha lika 2016/2021 loMasipala Wesithili se Garden Route izakubanjwa ngobuxhakaxhaka **be Zoom** **NGOLWESIHLANU, 22 KWEYEMQUNGU 2021** ngentsimbi ye **11:00** ukuqwalasela imiba ebekwe kwi agenda.

MR MG STRATU

Municipal Manager
Munisipale Bestuurder
uManejala kaMasipala

Date: 21 JANUARY 2020

ADDENDUM

SECTION C		
REPORTS FROM THE OFFICE OF THE MUNICIPAL MANAGER / ITEMS VANAF DIE KANTOOR VAN DIE MUNISIPALE BESTUURDER / IMIBA EVELA KWI OFISI YOMPHATHI MASIPALA		
C.3	<p>MEMORANDUM OF AGREEMENT BETWEEN GARDEN ROUTE DISTRICT MUNICIPALITY, NATIONAL AND PROVINCIAL DEPARTMENT OF HUMAN SETTLEMENT AND THE HOUSING DEVELOPMENT AGENCY / MEMORANDUM VAN OORENKOMS TUSSEN GARDEN ROUTE DISTRIKSMUNISIPALITEIT, NASIONALE EN PROVINSIALE DEPARTEMENT VAN MENSLIKE NEDERSETTINGS EN BEHUISING ONTWIKKELINGSAGENTSAP</p> <p><i>Refer: Report dated 21 January 2020 from the Municipal Manager (MG Stratu) Strategic Manager in the Office of the Municipal Manager (T Loliwe)</i></p>	3 – 34

1. MEMORANDUM OF AGREEMENT BETWEEN GARDEN ROUTE DISTRICT MUNICIPALITY, NATIONAL AND PROVINCIAL DEPARTMENT OF HUMAN SETTLEMENT AND THE HOUSING DEVELOPMENT AGENCY / MEMORANDUM VAN OOREENKOMS TUSSEN GARDEN ROUTE DISTRIKSMUNISIPALITEIT, NASIONALE EN PROVINSIALE DEPARTEMENT VAN MENSLIKE NEDERSETTINGS EN BEHUISING ONTWIKKELINGSAGENTSAP /

2 PURPOSE -

To request Council to authorise the Executive Mayor and or the Municipal Manager to sign the Memorandum of Agreement (MOA) between Garden Route District Municipality and National;Provincial Department of Human Settlement And The Housing Development Agency.

3. DELEGATED AUTHORITY

Council

4. EXECUTIVE SUMMARY

Knysna and Bitou Municipalities have been identified by the Minister of Human Settlements as some of the priority areas in terms of Human Settlements development in the Western Cape Province. Several potential project sites between the two municipalities were identified and are packaged as the Southern Cape Corridor Development (SCCD) Catalytic Project.

The Southern Cape Development Corridor was approved as a National Catalytic project in February 2016. The HDA, in partnership with the three spheres of government, has identified several potential sites in Knysna and Bitou which have now been packaged into a business plan with the aim of unlocking funding for the Southern Cape Corridor Development (SCCD) project.

The HDA and the National Department of Human Settlement approached Garden Route District Municipality to take over the facilitation of the project, in line with District Development Model. This should unlock the current constraints which have seen this project stall for number of years.

5. RECOMMENDATIONS

That Council grants the Executive Mayor and or the Municipal Manager delegation to sign the MOA on behalf of Garden Route District Municipality.

6. DISCUSSION / CONTENTS

6.1. Background

The District Municipality received a request from both the National Department of Human Settlement and the Housing Development Agency to take over the facilitation of the Southern Cape Corridor Development. The Director General of Human Settlement formally engaged the Municipality on 11 September 2020 and a meeting was also held with the representatives of the Housing Development Agency on 09 October 2020. Garden Route District Municipality agreed to be part of the project, subject to council approval.

6.2 Discussion

Having met the National Department of Human Settlement and the Housing Development Agency, it was agreed that a technical presentation be made to council regarding the Southern Cape Corridor Development. This Presentation was done to full council on 30 October 2020, where council resolved to be part of the project.

Subsequent to the council meeting, the same presentation was also made to the DCF and it was agreed that following the District Based Model on this Catalytic project was the best approach.

Council further approved an amended structure to accommodate two official that will be appointed as Human Settlement Practitioners.

This function will be fully funded by the National Department of Human Settlement. Subsequent to the above resolution, an MOA has been signed with the National Department of Human Settlement to give effect to the transfer of the two officials to Garden Route District Municipality.

The signing of the attached MOA further advances the desire of the District to play a meaningful role in addressing regional Human Settlement challenges.

Further to this, a Human Settlement workshop will be arranged by administration, which will include councillors and officials. The purpose of the workshop will be to clarify the new role that the district will be playing in Human Settlement space.

6.3 Financial Implications

No Financial Implication

6.4 Legal Implications

Intergovernmental Relations Framework Act 13 of 2005

The Constitution of the Republic of South Africa, 1996

Local Government: Municipal Systems Act, 32 of 2000

6.5 Staff Implications

Existing staff and two additional staff members as previously approved, will be utilised.

6.6 Previous / Relevant Council Resolutions:

Extract from minutes of the Council meeting that took place on 30 June 2020:

"H.3 **REQUEST FOR HOUSING ACCREDITATION LEVEL ONE (1) APPLICATION /**
VERSOEK VIR BEHUISINGS-AKKREDITASIE (VLAK EEN [1]) AANSOEK /
ISICELO SOLWAMKELO LWEZINDLU KWINGANABA LOKUQLA (1)

Refer: Report (2/5/12) dated 19 June 2020 from the Executive Manager Planning Economic Development (L Menze)(pg 382-498)

RESOLVED

1. That Council takes note of the process to be undertaken to apply for Housing Accreditation.

2. That Council supports and grants Municipal Manager and management authority to proceed with the application for Housing Accreditation for Level One (1) accreditation to MEC of Human Settlements in the Western Cape.
3. That progress reports be submitted to Council on a regular basis.

6.7 Risk Implications

- Duplication of efforts between B Municipalities and the District
- Project Failure
- Lack of adequate funding for the project
- Lack of Buy-in from the Municipalities

Various strategies have been implemented to address the above Risks.

6.8 Comments from Executive Management:

6.8.1 Executive Manager: Roads and Transport Planning Services

None

6.8.2 Executive Manager: Economic Development and Planning

None

6.8.3 Executive Manager: Community Services

None

6.8.4 Executive Manager: Corporate Services

None

6.8.5 Executive Manager: Financial Services

None

8.8.6 Manager Legal Services

None

MEMORANDUM OF AGREEMENT

between the

MINISTER OF HUMAN SETTLEMENTS, WATER AND SANITATION

Represented herein by **Ms LN Sisulu** (MP) in her capacity as **Minister** and therefore being duly authorized to undertake and execute this Memorandum
(Hereinafter referred to as "**MHSWS**")

and

**MEMBER OF THE EXECUTIVE COUNCIL IN THE WESTERN CAPE PROVINCIAL
DEPARTMENT OF HUMAN SETTLEMENTS**

Herein represented by **Mr Tertuis Simmers**, in his capacity as the **Member of the Executive Council** Department of Human Settlement, and he being duly authorized hereto.

(Hereinafter referred to as "**the Provincial Department**")

and

MAYOR OF THE DISTRICT OF GARDEN ROUTE DISTRICT MUNICIPALITY

Herein represented by **Ald Memory Booysen**, in his capacity as the **Executive Mayor** of the Garden Route District Municipality, and he being duly authorized hereto.

(Hereinafter referred to as "**GRDM**")

and

ACTING CHAIRPERSON OF THE HOUSING DEVELOPMENT AGENCY (HDA)

herein represented by **Adv. Johnny Motlogelwa**, in his capacity as the **Acting Chairperson** and he being duly authorized hereto.

(Hereinafter referred to as "**the Implementing Agent/IA**")

in respect of

SOUTHERN CORRIDOR INTEGRATED HUMAN SETTLEMENTS PROGRAMME

PREAMBLE

Recordal the Southern Corridor Integrated Human Settlement Programme was approved by MINMEC on 1 February 2016 as one of the 50 national Human Settlements catalytic projects.

Whereas the Southern Corridor Programme seeks to provide formal settlement solutions to residents of selected informal settlements, particularly near alongside the N2 freeway. These settlements are prioritized due to the age of settlement, size, density, poor services, fire risks and high need. These include projects managed by the Western Cape Provincial Government and the City of Cape Town.

Whereas the Southern Corridor Programme is listed in the CoCT Integrated Development Plan (2012-17) and was approved by MINMEC1 on 1 February 2016, as one of a number of catalytic human settlement programmes in the country

Whereas the Parties are desirous and have collectively decided to join efforts to ensure eradication of housing backlog, improvement in the delivery of basic services and the redevelopment of several areas within key municipalities in the province situated within the Priority Housing Development Areas in accordance with each party's legislative competencies and limited available resources. This will be implemented through a District Development Model.

- Whereas** the Constitution provides that everyone has a right to have their dignity respected and the right to have access to adequate housing. The imperative to provide decent housing is also reflected in the Freedom Charter of 1955 which provided “houses, security and comfort” and that “slums shall be demolished, and new suburbs built where all have transport, roads, lighting, playing fields, crèches and social centers”,
- Whereas** the Constitution, the Housing Act, the Intergovernmental Relations Framework Act and the Municipal Systems Act give all three spheres of government various responsibilities for the provision of access to adequate housing, basic services and the mandate to all spheres of government to co-operate with one another in mutual trust and good faith in matters of common interest:
- Whereas** municipalities are required, within the process of municipal integrated development planning process to take all reasonable and necessary steps within the framework of national and provincial housing legislation and policy, to ensure that people who live within a municipal jurisdiction have access to adequate housing, on a progressive basis;
- And whereas** the Comprehensive Plan, approved by Cabinet in September in 2004, requires all three spheres of government to collaborate to ensure the development of sustainable human settlements that provide residents with safe environment and adequate access to economic opportunities, basic services, transport, education, health and community facilities;
- And whereas** the Parties have committed to draft an Implementation Protocol which will enable the development of an Action Plan in support of the programme in this memorandum of agreement;

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS**1 DEFINITIONS AND INTERPRETATION**

- 1.1 In this Agreement, unless the context indicates otherwise, headings of the clauses in this Agreement are for purposes of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Memorandum of Agreement nor any clause hereof, unless a contrary intention clearly appears.
- 1.2 Words importing:
- 1.2.1 Any one gender includes the other two genders:
 - 1.2.2 The singular includes the plural and *vice versa*; and
 - 1.2.3 Natural persons include created entities (corporate or unincorporated) and the state and *vice versa*.
- 1.3 The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:
- 1.3.1 **“MOA”** means this Memorandum of Agreement and any annexure/s attached and/or to be attached in the future as agreed to in this Agreement:
 - 1.3.2 **“Comprehensive Plan”** means the Breaking New Ground: A Comprehensive Plan for the Development of Sustainable Human Settlements as approved by Cabinet in September 2004;
 - 1.3.3 **“HDA”** means the Housing Development Agency, a national public entity established in accordance with section 3 of the **Housing Development Agency Act 23 of 2008**;
 - 1.3.4 **“Minister”** means the National Cabinet Member responsible for Human Settlements, Water and Sanitation;

- 1.3.5 “**Member of the Executive Council**” means the MEC responsible for Cooperative Government, Human Settlements Affairs in Western Cape Province;
- 1.3.6 “**District and or Municipal Managers**” means the District and or Municipality Managers;
- 1.3.7 “**Party**” or “**Parties**” means the National Department of Human Settlements, Provincial Department of Cooperative Governance, Human Settlements in Western Cape, **Garden Route District Municipality** and the Housing Development Agency;
- 1.3.8 “**Implementation Protocol and Plans**” means the approved Protocol and Plan for Southern Cape Corridor Integrated Human Settlements Programme by the Programme Manager setting out details of deliverables with specific time frames.

2. PURPOSE OF THE MOA

The purpose of this MOA is to: -

- 2.1 **To formalize the relationship between the parties and to serve as a basis for the drafting of an Implementation Protocol which** will enable the development of a Joint Action Plan for Human Settlements and Priority Development Areas Plan for **the Province and key Municipalities**; within which the Parties shall cooperate to ensure the implementation and delivery of the Southern Cape Corridor Integrated Human Settlements Programme located within the Garden Route District Municipality in the Western Cape and in accordance with applicable legal prescripts;).
- 2.2 To establish and operationalization of the Intergovernmental Steering Committee made up of the Accounting officers of the Parties and/or their mandated representatives as well as senior representatives of relevant sector departments which will:

- 2.2.1 ensure the operational coordination between the Parties and provide direction regarding policy, programme and project planning and the implementation of the Programme.
- 2.2.2 ensure that the Programme is implemented in accordance with the approved Implementation Plan; and advise and report to MINMEC on a regular basis.
- 2.2.3 which will serve as a forum for guidance on the implementation of the Programme.

3. INTERGOVERNMENTAL STEERING COMMITTEE

- 3.1 The Intergovernmental Steering Committee (ISC) shall be established by the Director-General, comprising of the Director-General, the Provincial Head of Department for Human Settlements, the District Municipal Manager; the Chief Executive Officer of the Human Settlement Entities and relevant senior Sector Departments senior managers and any other official designated by the Minister of Human Settlements to exercise oversight over the implementation of the Agreement:
- 3.2 The Steering Committee shall comprise of at least three (3) representatives from each of the Parties to this Protocol, who shall decide on the frequency of meetings to be held, and the way directives will be given by the Steering Committee to the Implementing Agent.
- 3.3 All meetings shall have minutes which shall form basis of the way in which the Steering Committee shall be constituted; and meet from time to time.
- 3.4 All minutes relating to the agreed process of the Steering Committee shall be delivered to the Programme Manager, who shall ensure that activities and/or resolutions in the minutes are undertaken.

4 CONFIDENTIALITY

- 4.1 Save for such disclosure as may be required in terms of the Law, the Parties undertake, in favour of each other, not to disclose the contents of any communications between the Parties, all information and other materials supplied to or received by either of them from the other which relates in any way to this Agreement and all information which is confidential to either Party (together the *Confidential Information*) shall be kept confidential by the other Party unless or until the disclosing Party can reasonably demonstrate that:
- 4.1.1 any such Confidential Information is, or part of it is, already currently available to the public, which is not in breach of any confidentiality obligation in terms of this Agreement; or
 - 4.1.2 any such Confidential Information has been lawfully obtained from any third Party; or
 - 4.1.3 the Confidential Information is already lawfully known to the relevant Party at the time that Party receives such information; or
 - 4.1.4 the relevant Party is obliged by law to disclose such Confidential Information, in which case this obligation in respect of that information shall cease.

5 DISPUTE RESOLUTION

Any dispute arising from this Agreement shall be resolved in accordance with the principles and procedures contained in Chapter 4 of the Intergovernmental Relations Framework Act, 2005 (Act 13 of 2005).

6 NOTICES AND DOMICILIA

- 6.1 The Parties choose the following addresses as their respective *domicilium citandi et executandi* and as set out in clause 6.2 for all purposes arising out of or in connection with this Agreement, at which addresses all processes and notices arising out of or in connection with this Agreement, its breach or termination, may validly be served upon or delivered to the Parties.

6.2 For the purpose of this Agreement the Parties' respective addresses shall be-

6.2.1 The Minister of Human Settlements

Republic of South Africa
Govan Mbeki House
240 Justice Mahomed Street
Sunnyside
Pretoria

6.2.2 The MEC for Human Settlements

Western Cape Provincial Government
4th Floor, ISM Building
27 Wale Street
Cape Town.

6.2.3 The Mayor for the District of Garden Route Municipality

54 York Street
Dormehls Drift
George.

6.2.4 The Acting Chairperson of the Housing Development Agency

6-10 Riviera Road
Killarney, Johannesburg.

or at such other address in the Republic of South Africa, not being a post office box or *poste restante*, of which the Party concerned may notify the other in writing.

Each Party shall be entitled, from time to time by written notice to the other, to vary its *domicilium* to any other address within the Republic of South Africa which is not a post office box or poste restante.

6.2.5 Any notice given in terms of this Agreement shall be in writing and shall-

6.2.5.1 If delivered by hand, be deemed to have been duly received by the addressee on the date of delivery; or

6.2.5.2 If forwarded by pre-paid registered post, be deemed to have been received by the addressee 4 (four) business days after the date of postage.

6.2.5.3 Notwithstanding anything to the contrary contained in this Agreement, a written notice or communication actually received by a Party or Parties from the other Party or Parties shall be adequate written notice of communication to such party.

7 WARRANTY OF AUTHORITY

Each Party warrants that it has the power, authority and legal right to sign and perform this MOA.

THUS DONE AND SIGNED AT _____ ON ____ OF _____ 2021.

**Minister for Human Settlements
Hon. Lindiwe Sisulu, MP**

THUS DONE AND SIGNED AT _____ ON ____ OF _____ 2021

Mr. Tertuis Simmers, MPL
Member of the Executive Council

THUS DONE AND SIGNED AT _____ ON____ OF
_____2021

Ald. Memory Booyen
Executive Mayor of the District of
Garden Route

THUS DONE AND SIGNED AT _____ ON____ OF
_____2021

Adv. Johnny Motlogelwa
Acting Chairperson of HDA

IMPLEMENTATION PROTOCOL

between the

DIRECTOR GENERAL OF HUMAN SETTLEMENTS

Represented herein by **Mr Mbulelo Tshangana** in his capacity as **Director General** and therefore being duly authorized to undertake and execute this Implementation

Protocol

(hereinafter referred to as “**the National Department**”)

and

HEAD OF DEPARTMENT OF HUMAN SETTLEMENTS: WESTERN CAPE

Represented herein by **Ms Jacqueline Samson** in her capacity as **Head of Department** and therefore being duly authorized to undertake and execute this

Implementation Protocol

(hereinafter referred to as “**the Provincial Department**”)

and

GARDEN ROUTE MUNICIPALITY

Represented herein by **Mr Monde Stratu** in his capacity as **District Manager** and therefore being duly authorized to undertake and execute this Implementation

Protocol

(hereinafter referred to as “**the Municipality**”)

and

THE HOUSING DEVELOPMENT AGENCY

(a juristic person established in terms of the HDA Act)

Represented herein by **Mr Mikki Xayiya** in his capacity as **Acting Chief Executive Officer** and therefore being duly authorized to undertake and execute this

Implementation Protocol

(hereinafter referred to as “the Implementing Agent”)

for
GARDEN ROUTE SOUTHERN CORRIDOR HUMAN SETTLEMENTS
DEVELOPMENT PROGRAMME

PREAMBLE

WHEREAS

the Garden Route Southern Corridor Human Settlements Development Programme has been identified as a human settlements development Programme in which all three spheres of government will work together to develop sustainable settlements, by providing security of tenure, access to immovable assets and basic services and privacy.

AND WHEREAS

the National Department of Human Settlements, the Provincial Department, the Municipality and the Implementing Agent wish to conclude an Implementation Protocol to implement the Programme within the Garden Route Local Municipality to ensure the creation of sustainable human settlements.

ACCORDINGLY

the Parties have agreed that the Implementing Agent shall assist and work with the National Department, Provincial Department and the Municipality to plan and implement the Programme in terms of this Protocol and as encapsulated in Section 7(1) of the HDA Act.

THEREFORE IT IS AGREED AS FOLLOWS:

1. INTERPRETATION AND DEFINITIONS:

1.1. The clause headings are for convenience and shall be disregarded in interpreting this Protocol.

1.2. Unless the context clearly indicates a contrary intention:

1.2.1. Words importing:

1.2.1.1. the singular shall include the plural and vice versa;

1.2.1.2. any one gender shall include the other gender; and

1.2.1.3. natural persons include created entities (corporate or non-corporate) and vice versa;

1.2.2. the annexures (if any) to this Protocol shall be deemed to be incorporated and form part of this Protocol;

1.2.3. this Protocol shall be read in conjunction with the Memorandum of Agreement and in the event of conflict, the terms of this Protocol shall prevail.

1.3. In this Protocol, unless inconsistent with the context, the following words and expressions shall have the meanings hereby ascribed to them:

1.3.1. “**HDA Act**” means the Housing Development Agency Act No. 23 of 2008,

1.3.2. “**Protocol**” means this Implementation Protocol, including any annexures hereto and any amendment recorded in writing and signed by the Parties,

1.3.3. “**Approved Implementation Plans**” means an Implementation Plan agreed upon among the National Department and the Provincial Department and the Municipality in accordance with the provisions of clause 4 of this agreement;

1.3.4. “**Beneficiaries**” means the individuals and/or families meeting the prescribed beneficiary criteria as set out in applicable Housing legislation and policies for qualification of housing assistance,

1.3.5. “**Bulk Infrastructure**” means all external water and sewerage and storm water services to which internal services and the individual Programmes within the Programme are to be linked.

1.3.6. “**Implementation Plan**” means an Implementation Plan prepared by the Implementing Agent for the Programme or parts of the Programme and submitted to the National Department, the Provincial Department and the Municipality for approval and as updated from time to time.

1.3.7. “**Contract Value**” shall mean the total value of the Programme or part thereof including Programme management fees as comprehensively stipulated in the Approved Implementation Plans.

1.3.8. “**Contractors**” means all service providers procured by the Implementing Agent in terms of this Protocol and to ensure that the Deliverables of this Programme are successfully delivered.

1.3.9. “**Deliverables**” means such outcomes for which any of the Parties to this Protocol are responsible as stipulated in the Approved Implementation Plan and any directives and agreed work schedules in respect of any phase of the Programme.

- 1.3.10. **“Funding agreements”** means the agreements to be concluded between the Provincial Department, Municipality and the Agency regulating the terms and conditions upon which funding shall be made available for the project for the purposes of funding the various phases of the Programme,
- 1.3.11. **“Programme”** means the Garden Route Southern Corridor Human Settlements Development Programme whose location, nature and the scope will be fully detailed in the Approved Implementation Plan;
- 1.3.12. **“Directive”** means such instruction/s issued by the National Department and the Provincial Department relative to the Programme.
- 1.3.13. **“DORA”** means the annual Division of Revenue Act and any subsequent Annual Division of Revenue Act approved and adopted by Parliament annually until this agreement is formally terminated by the Parties.
- 1.3.14. **“Legislation/Policies”** means such legislation/policies as may be applicable to the Programme from time to time, which shall include, but not be limited to:
- i) The Public Finance Management Act, 1999 (Act no. 1 of 1999);
 - ii) The HDA Act;
 - iii) The Local Government: Municipal Finance Management Act, 2003 (Act no. 56 of 2003);
 - iv) The Housing Act, 1997 (Act no. 107 of 1997) as amended;
 - v) The National Building Regulations and Building Standards Act 103 of 1977;
 - vi) The Intergovernmental Relations Framework Act, 2005 (Act no. 13 of 2005);
 - vii) The Municipal Systems Act, 2000 (Act no. 32 of 2000);
 - viii) All Municipal by-laws;
 - ix) The Supply Chain Management Policy of the Implementing Agent;
 - x) The annual Division of Revenue Act;
 - xi) The National Human Settlements Policies and Programmes together with the Implementation Guidelines for the

Comprehensive Plan for the Development of Sustainable Human Settlements,

- 1.3.15. “**Memorandum of Agreement/MOA**” means the agreement entered into between the National Minister of Human Settlements, the Minister of Human Settlements in the Western Cape Government, the Executive Mayor of the Garden Route Local Municipality and the Housing Development Agency.
- 1.3.16. “**Municipality**” means the Garden Route Local Municipality as established in terms of the Municipal Systems Act (Act 32 of 2000)
- 1.3.17. “**Parties**” means the National Department, the Provincial Department, the Municipality and the Implementing Agent as fully described on the first page of this Protocol.
- 1.3.18. “**Signature Date**” means the date of last signature hereof by the Parties.
- 1.3.19. “**Steering Committee**” means a committee herein established by the Parties consisting of the administrative Heads of each of the Parties and/or their duly appointed nominees,
- 1.3.20. “**Technical Task Team**” means a team to be established by the Parties to facilitate the technical aspects of the Programme including the Programme management team, which, at all times; shall be subject to the directions and/or instructions furnished from time to time by the Steering Committee.
- 1.3.21. “**Units**” means Housing units and all ancillary services to be constructed in terms of this Protocol.

2. APPOINTMENT

- 2.1. Subject to the terms and conditions of this Protocol, the Implementing Agent will be (or has been) appointed by the Provincial Department for the implementation of the Programme in accordance with Approved Implementation Plan/s and relevant Directives.

- 2.2. The Implementing Agent shall at all times comply with the applicable Legislation and Policies. In the event of any activity to be undertaken by the Implementing Agent potentially being in conflict with the Legislation or Policies or in the event of the Implementing Agent being of the opinion that it is prevented by the Legislation or Policies from executing any activity pertinent to the Programme, such circumstance/s shall immediately be referred to the Steering Committee for guidance and decision.
- 2.3. The Parties agree that the Programme shall be undertaken on the basis of co-operative management with all stakeholders so as to ensure its successful implementation and finalization and strict adherence to all time frames relative thereto.
- 2.4. The appointment of the Implementing Agent will be/has been on the understanding that the Implementing Agent has the necessary experience and expertise in matters related to the delivery of the Programme or that the Implementing Agent will procure such expertise if required.
- 2.5. The Implementing Agent undertakes to implement the Programme with professionalism, due care and skill required to fulfil the terms and conditions of this Implementation Protocol, and in accordance with and in strict adherence to prevailing best practice and applicable legislation.

3. DURATION

- 3.1. This Protocol shall be deemed to have commenced on _____ 2021 notwithstanding the signature date and shall be valid until completion of the Programme, unless terminated prior thereto in accordance with any provision of this Protocol.
- 3.2. Subject to the provisions relating to breach of this Protocol and clause 17 relating to dispute resolution, this Protocol may be terminated by mutual agreement among the National Department, the Provincial Department and Municipality. The termination of the Implementing Protocol will provide sufficient grounds for the Provincial Department to terminate the appointment of the Implementing Agent,

4. THE GARDEN ROUTE SOUTHERN CORRIDOR HUMAN SETTLEMENTS DEVELOPMENT PROGRAMME

- 4.1. The Implementing Agent shall propose Implementation Plans relating to the Programme or parts thereof; to the National and Provincial Departments as well as the Municipality. Upon approval of the Implementation Plan, the Provincial Department will pay to the Implementing Agent, the proposed Capital and the Management cost of the relevant part of the Programme recorded in the Implementation Plan or part thereof.
- 4.2. Upon receipt of sufficient funds to implement a part of the Programme, the Implementing Agent will be deemed to be appointed for that particular part of the Programme on behalf of the Provincial Department. The Implementing Agent will then implement that part of the Programme set out in the Implementation Plan in terms of this Protocol.

5. **FUNDING**

The Provincial Department shall make funds available for each part of the Programme and pay those funds to the Implementing Agent who shall then administer and disburse those funds in terms of the Implementation Plan, the Public Finance Management Act including any other legal prescript applicable.

6. **ROLES AND RESPONSIBILITIES OF THE NATIONAL DEPARTMENT**

The National Department shall:-

- 6.1. Disburse funds as legislated and ensure that the Implementing Agent is provided with the necessary financial and other support.
- 6.2. Expediently process applications for the approvals that are required for the implementation of the Programme, coordinate all activities relating to funding thereof and facilitate the approval of the Implementation Plans;
- 6.3. Where applicable, secure funding for the Programme and make budget provision thereof, aligned with affordability and in compliance with the PFMA, the DORA and any other relevant legislation and within such time-frames as shall be agreed with the relevant stakeholders and the Implementing Agent;
- 6.4. Assist in facilitating the unblocking of procedural bottlenecks that affect or may affect the Programme;

- 6.5. Keep the Implementing Agent informed of all changes in policies and processes within the National Department that could impact on the Programme;
- 6.6. Appoint an official as the National Department's prime representative in the engagement with the Implementing Agent with appropriate authority and to attend and report to the Steering Committee and Technical Task Team;
- 6.7. Subject to Clause 12 below and in consultation with the Provincial Department, be entitled to recommend the termination of the appointment of the Implementing Agent in the event of the Implementing Agent's failure to adhere to the terms and conditions of this Protocol, the Approved Implementation Plans, any directive issued by the National or Provincial Departments or any directive issued by the Steering Committee, in which event the completed works shall be restored to the Provincial Department.

7. ROLES AND RESPONSIBILITIES OF THE PROVINCIAL DEPARTMENT AS DEVELOPER

The Provincial Department shall:-

- 7.1. Disburse funds to the Implementing Agent in order to successfully deliver on its obligations.
- 7.2. Expeditiously process applications for the approvals that are required for the implementation of the Programme and facilitate the approval of applications for the implementation of the Programme;
- 7.3. Designate the areas for the Programme;
- 7.4. Secure the active support for the Programme from the various stakeholders responsible for the provision and/or implementation of municipal services, community services and more as required by the Programme;
- 7.5. Convey details of all planning for the future phases of the Programme to the Implementing Agent as soon as practically possible and participate with the Implementing Agent in all future planning pertaining of the Programme.;
- 7.6. Participate in the development of a communications strategy to be developed in conjunction with all Parties and retain the responsibility of interacting with the community via its Ward Councillors.
- 7.7. Assist in facilitating the unblocking of procedural bottlenecks that affect or may affect the Programme;

- 7.8. Keep the Implementing Agent informed of all changes in policies and processes within the Provincial and National Departments that could impact on the implementation of the Programme;
- 7.9. Appoint officials as the Provincial Department's prime representatives with the appropriate authority in the engagement with the Implementing Agent and to the representatives on the Steering Committee and the Technical Task Team;
- 7.10. Attend and report to the Steering Committee and Technical Task Team;
- 7.11. Establish a monthly financial auditing procedure for the Programme.

8. ROLES AND RESPONSIBILITIES OF THE MUNICIPALITY

The Municipality shall:

- 8.1. Consent to the Implementing Agent undertaking all land assembly related activities pertaining to the Programme in line with the Integrated Development Plan of the Municipality,
- 8.3. Appoint a senior representative or representatives to the Steering Committee and Technical Task Team,
- 8.4. Advise the Steering Committee and Technical Task Team on all material decisions in relation to the Programme where the responsibility for making such decisions rests with the Municipality,
- 8.5. Avail the resources required for community participation

9. ROLES AND RESPONSIBILITIES OF THE IMPLEMENTING AGENT

Accepting its appointment the Implementing Agent shall:

- 9.1. Implement and manage the Programme to ensure that implementation is in accordance with this Protocol, relevant legislation and policies.
- 9.2. Prepare and develop Implementation Plans for approval by the National and Provincial Departments of Human Settlements and the Municipality for each part of the Programme that will indicate, inter alia, the number of units targeted, time period thereof, location of the Programme and the envisaged cost per deliverable.
- 9.3. Once Implementation Plans are approved, implement Deliverables and any Directive issued by the National and/or Provincial Departments via the Steering Committee according to agreed work schedules in respect of any phase of the Programme.

- 9.4. Make payments to all Contractors appointed on the Programme in terms of services rendered and invoices authorized by the Implementing Agent. In this regard, such payments shall be allocated to specific deliverables on the Programme.
- 9.5. Work with all stakeholders to ensure that the Programme objectives are adequately and timeously achieved.
- 9.6. Implement a quality control system linked to payment certification.
- 9.7. Ensure that deliverables and all related internal civil works are constructed in accordance with the norms, standards and requirements stipulated by the Municipality and in compliance to Legislation/Policies;
- 9.8. Conclude contracts with suitable Contractors in relation to the Programme and in compliance with the Implementing Agent's Supply Chain Management Policy and the approval of the Technical Task Team;
- 9.9. Participate and take all such steps as may be necessary to assist the Contractors in complying with the provisions this Protocol.
- 9.10. Take full and direct responsibility for the successful implementation and delivery of the Programme;
- 9.11. On a monthly basis, or at such other times as may be reasonably required, prepare and submit to the Steering Committee progress reports that incorporate financial and non-financial performance including procurement reports in relation to the Programme;
- 9.12. Consult with the National and Provincial Departments via the Steering Committee in relation to all funding and budgetary issues and comply with such directives of the National and the Provincial Department in relation to the funds provided;
- 9.13. Engage the National and/or Provincial Departments in any matter in which its intervention may facilitate the achievement of the Programme's Deliverables;
- 9.14. Designate an official to represent the Implementing Agent on the Steering Committee and Technical Task Team;
- 9.15. Attend and report to the Steering Committee and Technical Task Team and provide a secretarial service (notices, agendas and minutes) to the latter;
- 9.16. Assist and cooperate with all monitoring, evaluation and auditing procedures as required by the Provincial and/or National Departments;

- 9.17. Engage with the Parties and relevant stakeholders to ensure the timeous provision of Bulk Infrastructure required to implement the Programme;
- 9.18. Without exception, confine the Programme to the budget approved by the National and Provincial Departments.
- 9.19. Continue with the Programme and ensure the Deliverables are timeously met with due regard to the Approved Implementation Plan and the Directives from time to time issued by the National and Provincial Departments via the Steering Committee;
- 9.20. Submit cash flows with each phase of the Implementation Plan in relation to the Programme to the National and Provincial Departments for approval which on approval will be regarded as binding;
- 9.21. Facilitate one site meeting per month for attendance by the Steering Committee and the Technical Task Team or as maybe required where all site related matters will be discussed;
- 9.22. Ensure compliance with the Occupational Health and Safety Act, Act no. 85 of 1993 and all Environmental legislation pertaining to the Programme and in particular procure such Record of Decision and or Environmental Impact Assessment, which may be required.
- 9.23. Establish monitoring and evaluation procedures for the Programme that will yield monthly reports in respect of the deliverables and furnish both National Department the Provincial Department with a copy of such monthly reports;

10. **STEERING COMMITTEE**

- 10.1. The Steering Committee will comprise not more than 2 (two) representatives from each of the Parties, who shall at their first meeting formulate an Operating Procedure which spells out the frequency of meetings to be held, the chairperson of that meeting, and the manner in which directives will be given by the Steering Committee to the Implementing Agent.
- 10.2. All meetings of the Steering Committee will be minuted.
- 10.3. All minutes relating to the agreed process of the Steering Committee will be delivered to the Implementing Agent, who will ensure that those activities in the minutes are undertaken.

11. **PROGRAMME MANAGEMENT FEES**

11.1. The Implementing Agent shall be paid for the provision of Programme, programme management fees as follows:

11.1.1. Upon approval of Implementation Plan, the Provincial Department will make available to the Implementing Agent, the total amount of funds required to implement that part of the Programme referred to in the Implementation Plan, including the management fee.

11.1.2. The Implementing Agent shall charge a management fee which shall not exceed 5% (five percent) of the total value of the completed work invoiced by Contractors.

11.1.3. The Implementing Agent shall furnish the National and Provincial Departments with monthly, quarterly and annual reports with supporting documentation, being full reports of the implementation of the Programme and the funds disbursed to Contractors.

12. **PERFORMANCE ASSESSMENT**

12.1. The Provincial Department will be entitled from time to time to assess the Implementing Agent's performance and notify the Implementing Agent of their findings.

12.2. Where there has been under-performance, the Implementing Agent will prepare a plan and Programme to remedy any areas of under-performance and to notify the Provincial Department thereof. Such notification shall include instances where the under-performance has been due to Contractors not properly performing and what steps the Implementing Agent took to remedy that under-performance by a Contractor.

12.3. Continued under-performance following a proposal to remedy that under-performance not being implemented, shall constitute a breach of this Protocol.

13. **CONFIDENTIALITY**

13.1. Each Party ("the Receiving Party") shall treat and hold as secret and confidential all information, which is not readily available in the ordinary course of business and which it may receive from the other Party ("the Disclosing Party") or which becomes known to it during the currency of, and pursuant to, this Protocol, including, without any limitation, the information

regarding the product, its origin, destination, price, customer or shipping data (“Confidential Information”).

- 13.2. Under no circumstances shall the Receiving Party disclose or communicate any Confidential Information to any third party without the Disclosing Party’s prior written consent.
- 13.3. The Receiving Party shall restrict the dissemination of Confidential Information of the Disclosing Party to only those of its personnel who are actively involved in the execution of this Protocol and then on a “need to know basis” and shall initiate and implement reasonably acceptable internal security measures and procedures to prevent unauthorized disclosure and shall take all practical steps to impress upon those of its personnel who need to be given access to the Confidential Information, the secret and confidential nature thereof.
- 13.4. The Receiving Party shall not copy Confidential Information unless and to the extent that such copying is necessary for the purpose of executing its obligations under this Protocol.
- 13.5. The foregoing obligations shall not apply to any information which:
 - 13.5.1. Is lawfully in the public domain at the time of disclosure;
 - 13.5.2. Subsequently becomes lawfully part of the public domain by publication or otherwise;
 - 13.5.3. Subsequently becomes available to the receiving Party from a source other than the Disclosing Party which is lawfully entitled, without any limitation on disclosure, to disclose such Confidential Information; or
 - 13.5.4. Is disclosed pursuant to a requirement or request by operation of law, regulation or court order;
 - 13.5.5. The Receiving Party can demonstrate that was independently developed by such Party without reference to the Confidential Information disclosed by the Disclosing Party.

14. **BREACH AND TERMINATION**

Should either Party (“the Defaulting Party”) commit a breach of any material provision of this Protocol and fail to remedy such breach within 21 (twenty one) days of the other Party (“the Non-Defaulting Party”) calling upon it in writing to do so, then the Non-Defaulting Party shall be entitled, without

prejudice to any other rights or remedies it may have in terms of this Protocol or at law, to claim specific performance or terminate this Protocol

15. INDEMNITY

- 15.1. The HDA indemnifies the National and Provincial Department for any claim for damages, including, but not limited to, loss of income, consequential or incidental damages, whether in delict or based on this Protocol, for an amount equal to the Contract Value; and
- 15.2. Each Party to this Protocol remains liable for any liability arising out of its negligence or omission in respect of loss, damages, costs, claims, demands or proceedings of whatever nature which may arise from implementation of directives or instructions from the National or Provincial Departments, the Implementing Agent and the Steering Committee necessitating variations to mutually agreed plans.

16. RISK MANAGEMENT

As construction activities are likely required to be undertaken in the immediate vicinity of people's homes, the Implementing Agent shall ensure that additional precautions are required from the Contractors to minimise danger to the public such as barricades, notices and increased Public Liability Insurance to the satisfaction of the Parties.

17. RELATIONSHIP BETWEEN THE PARTIES

The Parties agree that they have no intention of creating a partnership and shall not hold out to any third person that they are partners. This Protocol shall not constitute and shall not be deemed a partnership between the Parties hereto or subsequently joined, but is merely intended to record the terms of the contractual association between the Parties.

18. DISPUTE RESOLUTION

Any disputes arising from this Protocol shall be resolved in accordance with the principles and procedures contained in Chapter 4 of the Intergovernmental Relations Framework Act, 2005 (Act 13 of 2005).

19. **DOMICILIUM CITANDI ET EXECUTANDI**

19.1. The Parties choose the following addresses as being their domicilium citandi et executandi for the delivery and service of any notices:

A: **The Director General,**

National Department of Human Settlements

Govan Mbeki House

240 Justice Mohamed Street

Pretoria

0002

B: **The Head of Department,**

Western Cape Department of Human Settlements

27 Wale Street

Cape Town

C: **The Municipal Manager**

54 York Street

Dormehls Drift, George

D: **The Chief Executive Officer,**

Housing Development Agency

Block A, Riviera Office Park

6-10 Riviera Road

Killarney

Johannesburg

19.2. Any Party may give notice of change of address stated in sub-paragraph 19.1 above, to another address.

19.3. Every notice to be given by one Party to the other, in terms of this Protocol, shall be in writing and shall be either:

19.3.1. Delivered by hand to the domicilium citandi et executandi of the other, in which case it shall irrefutably be deemed to have been given, and such

Party shall be deemed to have been informed of the contents of such notice on the date of delivery; and

19.3.2. Posted by prepaid registered post to such other Party's domicilium citandi et executandi, in which case it shall irrefutably be deemed to have been given to the such Party, and such Party shall be deemed to have been informed of the contents of such notice on the 5th (Fifth) business day (excluding Sundays and public holidays) after posting.

19.4. Notwithstanding anything to the contrary herein contained, a written notice as communication actually received by one of the Parties from the other shall be and adequate written notice as communication to such Party, notwithstanding that it was not sent or delivered at the Party's chosen domicilium citandi et executandi.

20. **GENERAL AND ADMINISTRATIVE PROVISIONS**

20.1. Cessions / Transfers

The Parties shall not be entitled to make over to any third party or to cede, delegate or otherwise dispose of or encumber their interest in this Protocol, or any of its rights or obligations in terms of this Protocol, without the written consent of the other Parties.

20.2. Waiver

No waiver by either Party shall be binding unless reflected in writing and shall be strictly interpreted as referring only to the particular waiver in respect of which same had been given.

20.3. Sole Protocol

This Protocol contains the whole of the contractual relationship between the Parties and no representations, understandings or undertakings preceding the signature of this Protocol and not contained herein, shall in any way be binding upon the Parties.

20.4. Amendments

Any of the provisions of this Protocol may be amended but only by way of a written deed of amendment signed by the Parties, in which inter alia the specific clauses so intended to be amended, are stated.

THUS DONE AND SIGNED AT _____ ON THIS ____ DAY OF
_____ 2021

MR MBULELO TSHANGANA

For and on behalf of the National Department of Human Settlements

THUS DONE AND SIGNED AT _____ ON THIS ____ DAY OF
_____ 2021

MS JACQUELINE SAMSON

For and on behalf of the Western Cape Provincial Department
of Human Settlements

THUS DONE AND SIGNED AT _____ ON THIS ____ DAY OF
_____ 2021

MR MONDE STRATU

For and on behalf of the Garden Route Local Municipality

THUS DONE AND SIGNED AT _____ ON THIS ____ DAY OF
_____ 2021

MR MIKKI XAYIYA

For and on behalf of the HDA

