

MEMORANDUM OF UNDERSTANDING

made and entered into by and between

NORTHERN CAPE ECONOMIC DEVELOPMENT, TRADE & INVESTMENTS PROMOTION AGENCY

(hereinafter referred to as the "**NCEDA**")

Herein represented by **MR. THOBELA DIKENI** in his

capacity as the **CHIEF EXECUTIVE OFFICER** duly authorised to sign this Agreement

and

DAWID KRUIPER LOCAL MUNICIPALITY

(hereinafter referred to as the "**MUNICIPALITY**")

Herein represented by **MR. ELIAS NTOBA** in his

capacity as the **MUNICIPAL MANAGER**, duly authorised to sign this Agreement

Which document shall be referred to as the "**MEMORANDUM OF UNDERSTANDING**"

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MEMORANDUM OF UNDERSTANDING BETWEEN THE NORTHERN CAPE ECONOMIC
DEVELOPMENT, TRADE & INVESTMENT PROMOTION AGENCY AND DAWID KRUIPER LOCAL
MUNICIPALITY

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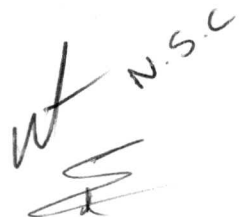
1. PREAMBLE

WHEREAS the NORTHERN CAPE ECONOMIC DEVELOPMENT AGENCY ("NCEDA") was formed in terms of the Northern Cape Economic Development, Trade and Investment Promotion Agency Act of 2008 (Act 4 of 2008) as a response to the challenge of translating high level investment and business opportunities in the area into actual business operations that may contribute directly to economic growth and social equity for the people of the Northern Cape.

AND WHEREAS NCEDA is listed under schedule 3D of the Public Finance Management Act No.1 of 1999 ("PFMA").

AND WHEREAS NCEDA's core operations are focused on Investment Recruitment, Business Facilitation, Aftercare, Trade Development & Promotion, Export Development, Export Promotion, Export Facilitation (Client Interactions), Retention & Expansion and Advocacy

AND WHEREAS NCEDA should consist of an economic development unit and a trade & investment promotion unit. The objective of the Agency is to ensure enterprise development that will significantly contribute to economic growth and development within the Northern Cape Province.



AND WHEREAS NCEDA desires to set up a Special Economic Zone (as defined in the Special Economic Zones Act No.16 of 2014) in the Northern Cape Province in order to achieve economic development in the Province.

AND WHEREAS THE DAWID KUIPER LOCAL MUNICIPALITY ("the MUNICIPALITY") is a municipality as contemplated in Section 2 of the Local Government Municipal System Act 32 of 2000 and section 151 of the Constitution of the Republic of South Africa Act, No 108 of 1996 (hereinafter referred to as "The Constitution") with its Head Office in Upington.

AND WHEREAS NCEDA AND THE MUNICIPALITY entered into this Agreement with the intention to cooperate regarding the establishment of the Special Economic Zone in Upington within the jurisdiction of Dawid Kuiper Local Municipality on the terms and conditions contained herein.

NOW THEREFORE THE PARTIES HERETO AGREE AS FOLLOWS:

2. DEFINITIONS

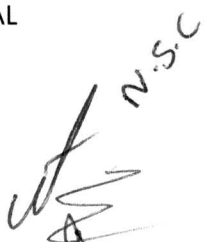
In this Memorandum of Understanding (MOU), unless clearly inconsistent with or otherwise indicated by the context:

"MOU" means the Memorandum of Understanding as concluded by the Parties;



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- "NCEDA"** means **NORTHERN CAPE ECONOMIC DEVELOPMENT, TRADE AND INVESTMENT AGENCY;**
- "MUNICIPALITY"** means Dawid Kruiper Local Municipality;
- "Parties"** "Parties" means NCEDA and the Municipality "Party" means either of them as the context may indicate or require;
- "Services"** means the provision of various services by the Municipality to NCEDA relating to the following areas of mutual concern:
- establishment and development of a Special Economic Zone in Upington within Northern Cape Province;
- "Applicable Law"** means any legislation, regulation, rules of practice of all the Courts in the Republic of South Africa, bylaw, policy or directive document in existence as at, or coming into existence after the Commencement Date which is of relevance to the rendering of the Services in terms hereof and is issued by any sphere of government or organ of state;
- "JSC"** means Joint Steering Committee;



"SEZ" means an area designated a Special Economic Zone in terms of the SEZ Act No.16 of 2014.

"Signature Date" means the date on which this Agreement shall be signed by the last signing Party;

3. INTERPRETATION

- 3.1 The headings to the various sections of this MOU and the index are inserted for reference purposes only, and shall in no way govern or affect the construction of this MOU.
- 3.2 Words importing persons shall include bodies corporate and vice versa.
- 3.3 The singular shall include the plural, and vice versa, and reference to any gender shall include the other gender.
- 3.4 Any reference to a statutory provision shall include a reference to that provision as modified, amended, replaced, or re-enacted from time to time.
- 3.5 If any provision in a definition is a substantive provision, conferring rights or imposing obligations on any party, effect shall be given to it as if it were a substantive clause in the body of the MOU, notwithstanding that it is only contained in the definitions clause.



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- 3.6 When any number of days are 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;
- 3.7 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 3.8 The rule of construction that the agreement shall be interpreted against the party responsible for the drafting or preparation of the agreement shall not apply.

4. OBJECTIVE

The objective of this Memorandum of Understanding is to promote the development of cooperation between the Parties in the establishment of a Special Economic Zone within the jurisdiction of the Municipality.

5 SCOPE OF COOPERATION

- 5.1 The scope of cooperation as mutually agreed by the Parties in this MOU shall include, amongst others, the following:



- (a) exchange of information and sharing of experiences by delegated officials;
- (b) cooperation in the establishment of the Special Economic Zone within the jurisdiction of the Municipality;
- (c) cooperate in the transfer and registration of the land identified for the establishment of the Special Economic Zone within the jurisdiction of the Municipality;
- (d) cooperate in conducting negotiations with other relevant stakeholders (such as surrounding communities) in the establishment of the Special Economic Zone within the jurisdiction of the Municipality;
- (e) act in good faith to implement the terms and conditions of this MOU;
- (f) explore further ways and means to invite investors in the establishment of the Special Economic Zone.

6. COMMENCEMENT AND DURATION

6.1 This Agreement shall commence on the signature date by both Parties and shall endure until the completion of the Special Economic Zone Project within the jurisdiction of the Municipality. The agreement shall terminate automatically upon completion of the SEZ project and there is no obligation on either Party to give the prior notice. In the event of the Agreement being extended, it shall be on the terms, conditions and discretion of the Parties.



- 6.2 The period of this MOU may be extended further by a duration that shall be determined and confirmed in writing subject to mutual agreement by the Parties.

7. IMPLEMENTATION

In realising the objective mentioned in Clause 4, and implementing the scope of cooperation mentioned in Clause 5 above, the Parties will initiate and conduct relevant activities based on mutually beneficial cooperation.

8. COSTS

The costs for the implementation of this SEZ cooperation agreement , both Parties agree not to impose any financial obligation on either Party and shall make available resources based on reciprocal basis, unless the Parties agree otherwise in writing.

9. JOINT COMMITTEE

- 9.1 The Parties agree to establish a Joint Steering Committee to ensure smooth cooperation in the project.

- 9.2 The composition and terms of reference of the JSC will be decided by the Parties.

- 9.3 The JSC shall convene a meeting at any time agreed by both Parties and documents shall



be exchanged in lieu of the meeting.

- 9.4 The JSC is assigned to discuss progress made and any challenges in the cooperation and to optimise the available ways to and means for further development and cooperative relations and other issues of common interest to to both Parties in relation to the Special Economic Zone establishment.

10. DISPUTE RESOLUTION

- 10.1 The Parties agree that it is in their best interest to resolve any dispute or differences concerning the interpretation and/or implementation of this MOU amicably through consultation and/or negotiations before resorting to legal remedies.
- 10.2 Accordingly, as a first measure in an attempt to resolve any disputes arising pursuant to this MOU, the Parties agree that the signatories to this MOU shall attempt to resolve all issues as soon as such issues arise. If the signatories are unable to reach a resolution within one (1) month, the dispute shall be dealt with in accordance with clause 12 below.
- 10.3 Any dispute arising out of this MOU between the Parties shall be settled in terms of the legislated provisions of the Intergovernmental Relations Framework Act 13 of 2005.



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11. INTELLECTUAL PROPERTY RIGHTS

All right, title and interest in and to all Intellectual Property relating to any products owned by the Parties, their vendors and/or suppliers and the software used to implement such products shall at all times remain the sole property of such Parties, their vendors or suppliers.

12. LIMITATION ON CESSION

The right and obligations of the Parties in terms of this MOU shall not be capable of being ceded, assigned or delegated by either of them to another person, save with the prior written consent of the other party, which consent shall be at the sole discretion of the party required to give such consent.

13. INDULGENCIES, WAIVER, LENIENCY AND EXTENSIONS

No extension of time, latitude, waiver or other indulgence which may be given or allowed by either party to the other, shall constitute a waiver or novation of this MOU, or affect such party's rights, or prevent such party from strictly enforcing due compliance with each and every provision of this MOU.



14. THIRD PARTY RIGHTS

This MOU shall not create or give rise to, nor shall it be intended to create or give rise to, any third party rights.

15. WHOLE AGREEMENT

This MOU constitutes the entire agreement between the parties regarding the subject matter hereof and all prior representations or agreements not expressly incorporated herein shall be of no force or effect whatsoever. No agreement, guarantees or representations, whether verbal or in writing, have been concluded, issued or made, upon which any party is relying in concluding this agreement, save to the extent set-out herein.

16. NO VARIATION

No variation of, or addition to or agreed cancellation of this MOU shall be any force or effect unless it is reduced to writing and signed by or on behalf of the parties.

17. SEVERABILITY

17.1. If any particular provision and/or term of this MOU is found to be defective or



unenforceable or is cancelled for any reason (whether by any competent court or otherwise) then the remaining provision and/or terms shall continue to be of full force and effect.

17.2. Each provision and/or terms of this MOU shall accordingly be construed as entirely separate and separately enforceable in the widest sense from the other provisions and/or terms hereof.

18. LAWS AND JURISDICTION

This MOU shall be governed and interpreted in accordance with the laws of South Africa and shall be subject to the exclusive jurisdiction of its courts.

19. TERMINATION

Any Party will be entitled at any time to review progress made and the success of the Project undertaken in terms of this MOU. If any Party is dissatisfied with progress made and the results of the work undertaken it shall be entitled to terminate this MOU after



providing the other Party with thirty (30) days written notice of termination, with reasons.

20. CONFIDENTIALITY

20.1 All confidential information related to this Agreement will be regarded as confidential and may not be disclosed or published by either Party, its employees and to any person or to a person not working on a specific matter within or for and on behalf of either Party. This includes information regarding:

20.1 internal policy discussions related to new or evolving policies or revisions to any other Party's policies which have not been formally determined and have not been announced to the public;

20.1.2 the Parties' discussions which are confidential in nature or meetings where confidential matters are discussed;

20.1.2.1 minutes of meetings, including submissions, which are confidential in nature;

20.1.2.2 internal or external submissions which are confidential in nature; and

20.1.2.3 any other matter which the Parties would reasonably regard as being confidential.



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20.2 Parties shall not release any information whatsoever about any activities undertaken for and on behalf of the other to the electronic or print media.

20.3 Both Parties shall hold in confidence all information received from the other Party directly or indirectly, which could possibly harm the good name, reputation and standing of the respective Parties.

20.4 The above mentioned obligations on confidentiality shall not apply to any information which is

20.4.1 already lawfully in the public domain at the time of disclosure;

20.4.2 becomes lawfully part of the public domain by publication or otherwise;

20.4.3 becomes available to a Party from a source other than the other Party, which source is lawfully entitled without any restriction on disclosure to disclose such confidential information; or

20.4.5 is disclosed pursuant to a requirement or request by operation of law, regulation or court order.

21. *DOMICILIUM CITANDI ET EXECUTANDI*

21.1 The Parties choose as their *domicilium citandi et executandi* for all purpose arising from this MOU, the addresses specified below:



(i) **NCEDA's *Domicilium Citandi et Executandi***

NORTHERN CAPE ECONOMIC DEVELOPMENT, TRADE

INVESTMENT PROMOTION AGENCY

1 Kekewich Drive,

Monument Heights,

Kimberley

8300.

(ii) **MUNICIPALITY's *Domicilium Citandi et Executandi***

DAWID KRUIPER LOCAL MUNICIPALITY

Civic Centre

Mutual Street

Upington

8801

21.2 Any Party may change its *domicilium citandi et executandi* by means of written notice to the other Party, provided that such *domicilium* shall be a physical address within the Republic of South Africa.

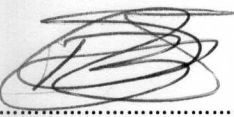
21.3 All notices contemplated under this MOU shall be delivered by hand, in which event such notice shall be deemed to have been received on the date of delivery; or sent by pre-paid registered post, in which event such notice shall be deemed to have



been received by the addressee seven (7) business days after the proven date of posting.

THUS DONE AND SIGNED AT UPINGTON ON THIS 15th DAY OF JUNE 2018

AS WITNESSED:

1. 




**For NORTHERN CAPE ECONOMIC DEVELOPMENT,
TRADE AND INVESTMENT PROMOTION AGENCY**

2. 

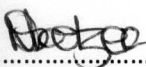
THUS DONE AND SIGNED AT UPINGTON ON THIS 15th DAY OF JUNE 2018

AS WITNESSED:

1. 



For DAWID KRUIPER MUNICIPALITY

2. 

NOTULE: RAADSVERGADERING GEHOU OP DINSDAG, 24 APRIL 2018

12. MEMORANDUM OF UNDERSTANDING BETWEEN DAWID KRUIPER LOCAL MUNICIPALITY (DKM)/ NORTHERN CAPE ECONOMIC DEVELOPMENTS, TRADE & INVESTMENT PROMOTION AGENCY (NCEDA): (CM): (OFFICE OF THE MUNICIPAL MANAGER)

12/4/2018 RESOLUTION

1. That Council approves the Memorandum of Understanding (MOU) between Northern Cape Economic Development, Trade & Investments Promotion Agency (NCEDA) and Dawid Kruiper Municipality (DKM).
2. That the Municipal Manager is mandated to sign the Memorandum of Understanding (MOU) on behalf of the Dawid Kruiper Municipality (DKM).
3. That a progress report on the development of the SEZ be tabled at the next meeting.
4. That the development of the SEZ be placed as a standing item on the Council agenda.