

MEMORANDUM OF AGREEMENT

ENTERED INTO BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA THROUGH ITS
DEPARTMENT OF MINERAL RESOURCES AND ENERGY

(Hereinafter referred to as the "Department")

AND

UMDONI LOCAL MUNICIPALITY

(Hereinafter referred to as "the Municipality")

In respect of the:

Energy Efficiency and Demand Side Management (EEDSM) Programme for

01 JULY 2024 TO 30 JUNE 2025

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1. PREAMBLE

WHEREAS the Government of the Republic of South Africa through the Department of Mineral Resources and Energy (the "**Department**"), in terms of the White Paper on Energy Policy (1998) and the National Energy Act, 34 of 2008 has assumed both the political and part of the financial responsibility for Energy Efficiency;

AND WHEREAS the Municipality has accepted the conditional grant in respect of the Energy Efficiency and Demand Side Management Programme for determination of energy consumption baselines, issuing and display of Energy Performance Certificates for buildings and implementation of energy efficiency measures in municipal facilities within the municipal area of jurisdiction;

AND WHEREAS the Municipality has agreed to participate in the Municipal Energy Management System (MEMS) with the aim of consolidating energy consumption data of municipality's facilities.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

2. INTERPRETATION AND DEFINITIONS

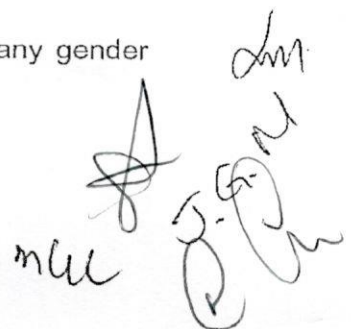
2.1 INTERPRETATION

2.1.1 The head notes to the various clauses of this Agreement and the Index are inserted for reference purposes only and shall in no way govern or affect the construction of this Agreement.

2.1.2 This document including the Preamble and the Annexures constitute the sole record of agreement between the Parties relating to its subject matter and cancels and novates any prior verbal or written communication relating to such subject matter, whether express or implied, including any letters, drafts agreements, memoranda or minutes.

2.1.3 Words in persons shall include juristic entities and vice versa.

2.1.4 The singular shall include the plural and vice versa and reference to any gender

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shall include the other gender.

2.1.5 Any reference to a statutory provision shall include a reference to that provision as amended from time to time.

2.1.6 The rule of interpretation that an agreement, or any part of an agreement, is to be interpreted against the Party responsible for the drafting or preparation of the agreement, shall not apply and the Parties hereby waive the reliance on any such rule of interpretation.

2.1.7 In the event of any conflict between this Agreement and the annexures attached hereto, the provisions of this Agreement will prevail.

2.2 DEFINITIONS

Unless the context indicates otherwise, the following expressions shall bear the meanings assigned to them and cognate expressions shall bear corresponding meanings:

2.2.1 "Agreement" means this Memorandum of Agreement and the annexures attached or referred to herein;

2.2.2 "Cost per Installation" means the costs incurred for the Installation of energy efficient technologies in municipal facilities;

2.2.3 "Day" means any day excluding public holidays, Saturdays and Sundays;

2.2.4 "Department" means the Department of Mineral Resources and Energy;

2.2.5 "DoRA" means the Division of Revenue Act, as published in 2024 and any subsequent amendments thereto;

2.2.6 "EPC" Energy Performance Certificates of Buildings;

2.2.7 "Installation" means retrofit with energy efficient technologies in municipal facilities under the Energy Efficiency and Demand Side Management Programme;

2.2.8 "MFMA" means the Local Government: Municipal Finance

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Management Act, 2003 (Act 56 of 2003);

2.2.9 "Minister"

means the Minister of Mineral Resources and Energy for the Republic of South Africa (or his / her duly authorized representative) or any other Minister of the Republic of South Africa designated as being responsible for the Energy Portfolio, or acting as such;

2.2.10 "Month"

means a calendar month;

2.2.11 "Municipal Facilities"

means Immovable Property that is owned [or leased] by the Municipality;

2.2.12 "PFMA"

means the Public Finance Management Act, 1999 (Act 1 of 1999);

2.2.13 "Programme"

means the Municipal Energy Efficiency and Demand Side Management ("EEDSM") Programme, the objectives of which are; the determination of energy consumption baseline, installation of an energy management system, supply and installation of energy efficient technologies within Municipal facilities and issuing and display of EPCs as set out in "**Annexure A**";

2.2.14 "Programme Creditors"

means the contractors, consultants and the service providers procured by the Municipality to determine the energy consumption baseline, supply, install energy efficiency technologies and measure and verify energy efficiency savings of the Programme activities in the municipal facilities;

2.2.15 "Programme Funds"

means the funds allocated to implement the activities in the Programme as set out in "**Annexure A**", which funds are to be transferred by the Department, in accordance with the DoRA to the Municipality;

- 2.2.16 "Project Sites" means the municipal facilities under the custodianship of the Municipality at which the Municipality shall implement the Programme activities, as listed in "Annexure A".
- 2.2.17 "Project Steering Committee" means a governance structure of the programme which is responsible for business issues associated with the project;
- 2.2.18 "Signature Date" means the date of signature of the last Party signing this Agreement; and
- 2.2.19 "the Parties" means the Department and the Municipality; and individually referred to as a "Party".

3. THE PROGRAMME

- 3.1. It is recorded and agreed upon by the Parties that the Programme will focus on the determination of energy consumption baseline, installation of an energy management system, supply and installation of energy efficient technologies within Municipal facilities, issuing and display of EPCs.

3.2 Duration of the Programme

- 3.2.1 Irrespective of the Signature Date, the implementation of the Programme shall be over a period of twelve (12) months, from 1 July 2024 to 30 June 2025.
- 3.2.2. The contract period referred to in clause 3.2.1 may be extended by agreement between the Parties and subject to the Parties' respective prescripts for approval.

4. THE PROGRAMME FUNDS AND FINANCIAL PROCEDURES

- 4.1 The Department shall retain overall accountability for transferring the Programme Funds relating to the implementation of the Programme.
- 4.2 The total amount of the funds allocated to the Municipality for the implementation of this Programme is **R3,000,000.00 (Three Million Rand)**. These funds shall also be indicated in the Allocation Letter to be submitted by the Department to the

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Municipality within 30 (thirty) Days of the promulgation of the DoRA.

- 4.3 The allocation stated in Clause 4.2 above is based on the allocation published in the DoRA of 2024. Should there be any adjustments, upon publication of such adjustment by National Treasury, this agreement will be deemed to be amended to the revised amount. Should there be a substantial reduction of the allocation, the Municipality will only be bound to perform to the extent that of the allocated funds.
- 4.4 The Programme Funds shall be transferred to the Municipality by the Department in terms of DoRA and in accordance with the 2024 Local Government Payment Schedule approved by the Director-General: National Treasury.
- 4.5 The Parties agree that the Municipality shall use a 5% of the Programme Funds allocated to them for activities related to Project Management and Administration. The expenditure related to these funds shall be reflected in the monthly and quarterly reports presented to the Department.

5. RESPONSIBILITIES OF THE PARTIES

5.1 THE DEPARTMENT

- 5.1.1 The Department shall be responsible, in accordance with this Agreement, to transfer the Programme Funds to the Municipality, as per approved payment schedule by National Treasury, in terms of the DoRA.
- 5.1.2 In the event of the Municipality failing to comply with the conditions of the grant, and in accordance with the provisions of DoRA, the Department may:
- 5.1.2.1 withhold the transfer of the Programme funds as stipulated in the DoRA;
 - 5.1.2.2 amend the payment schedule; and
 - 5.1.2.3 conduct an audit on the procurement process and financial expenditure.

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- 5.1.3 The Department shall be responsible for approving the technical specifications, energy audits reports, and all other reports related to the implementation of the Programme submitted by the Municipality.
- 5.1.4 The Department may on written request by the Municipality assist with strategic direction on the implementation of the Agreement.
- 5.1.5 The Department shall take responsibility for the establishment and coordination of the Project Steering Committee as a governance structure which is responsible for the business issues associated with the project that are essential to the ensuring the delivery of the outputs and outcomes.
- 5.1.6 The Department shall take responsibility to implement the measuring and verification function related to the implementation of the programme by the Municipality. The Department shall remain the custodian of the data which has been created from the implementation of measuring and verification (M&V) function.

5.2 THE MUNICIPALITY

- 5.2.1 The Municipality shall implement the Programme in order to: a) attain the facilities inventory of all municipal infrastructure and energy consumption baseline; b) issue and display EPCs for buildings; and c) install efficient technologies within municipal facilities as set out in "Annexure A". In addition, the Municipality may under no circumstance implement work using the Programme Funds on a business plan that has not been formally approved by the Department.
- 5.2.2 The Municipality shall utilise the Programme Funds to pay the Programme Creditors for services duly rendered in terms of this Agreement upon receipt of invoices.
- 5.2.3 The Municipality shall spend at least 50% of the first tranche of the budget allocated by end of October and provide a report of such expenditure by the end of October, failing which a portion of the grant will be stopped and re-allocated in terms of DoRA.

- 5.2.4 The Municipality shall verify that the work performed by the Programme Creditors comply with the requirements and/or standards prescribed by the Department in this Agreement, prior to making any payments.
- 5.2.5 The Municipality shall ensure that energy consumption baseline measurements are taken and approved by the Department in respect of all municipal facilities prior to commencement of any work.
- 5.2.6 The Municipality shall submit monthly, quarterly and annual written performance reports on the progress of the Programme to the Department.
- 5.2.7 The Municipality shall report to the Department, as required and in terms of the DoRA.
- 5.2.8 In implementing the Programme, the Municipality shall:
- 5.2.8.1 incur and facilitate payment of capital costs, installation expenses, necessary operational costs, and expenses respectively, including but not limited to all applicable taxes, levies and overhead costs.
 - 5.2.8.2 apply its own approved procurement processes, norms and criteria as a local sphere of government, identify and secure services of the Programme Creditors required for the execution of this Agreement and also facilitate payment of such Programme Creditors.
 - 5.2.8.3 act in accordance with the provisions of Section 217 of the Constitution of the Republic of South Africa 1996.
 - 5.2.8.4 ensure that, in facilitating the roll out of the Programme, reference is made to the relevant South African Bureau of Standard (SABS) approved standards and codes of practice. Where such standards do not exist then reference must be made to international standards.

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- 5.2.8.5 Ensure that with the long-term Energy Efficiency and Demand Side Management Programme all the standard requirements are met through clearly established energy efficiency principles, as set out in the White Paper on Energy Policy dated December 1998 and the National Energy Efficiency Strategy of 2005, as amended from time to time.
- 5.2.8.6 ensure that in the Programme roll out reference is made to all relevant standards as mentioned in clause 5.2.8.4 herein and that it proceeds in a structured and orderly fashion and within a pre-determined time frame as set out in the business and implementation plans to be submitted to the Department of Mineral Resources and Energy within three months of signing the Agreement.
- 5.2.8.7 Ensure that all replaced old and inefficient technology is crushed and disposed of in accordance with environmental prescripts. The municipality shall submit crushing certificates indicating the quantity and type of crushed and disposed technology to the Department as part and included in the annual performance report.
- 5.2.8.8 Failure to submit such certificate/s shall constitute breach of the Agreement and the grant conditions as outlined in this Agreement and the DoRA.
- 5.2.8.9 Procure energy efficiency technologies as per the standardised technical specifications and from the panel of energy efficiency technology suppliers approved and/or pre-qualified by the Department in line with the EEDSM grant Framework and Division of Revenue Act of 2024.
- 5.2.8.10 Commit to energy savings (in kWh) to be achieved through the retrofits to the Department.

5.2.8.11 Ensure that within the first quarter of the municipal financial year, the municipality completes the procurement of required technologies or services and submits a procurement progress report to the Department.

5.2.9 All additional costs and expenses above the allocated budget incurred in the implementation of the approved projects as per the business plan shall be the responsibility of the Municipality.

5.2.10 The Municipality shall comply with the conditions of the conditional grants as set out in the DoRA and the grant framework in respect of EEDSM.

5.2.11 The Municipality shall create one job for every million rand allocated to the Municipality for the duration of the EEDSM programme i.e., from 1 July 2024 to 30 June 2025.

6. INSPECTION

The Department will be entitled, at any time and upon request, to inspect all books, records and documents in the possession or under the control of the Municipality which relate to any matter contemplated in this Agreement; and to interview any person appointed in relation to any projects in the Programme in order to ascertain whether the Municipality has complied and/or is complying with its obligations under this Agreement.

7. AMENDMENTS TO PROJECTS IN THE PROGRAMME

7.1 Any amendment to the approved business plan shall be approved by the Department, in writing, prior to project implementation. The approval thereof shall not be unreasonably withheld.

7.2 Such request for scope amendment to an approved business plan, shall be submitted to the Department by no later than 31 January of the following year.

7.3 Accordingly, all variances with the Programme targets (as set out in "Annexure A") shall be reconciled monthly in arrears by the Municipality and shall be reflected in its monthly reports to be provided to the Department in accordance with this

Agreement.

- 7.4 Payments shall then be accordingly amended, provided that the average Cost per Installation remains the same.
- 7.5 Additional expenses that would lead to an escalation of such costs may only be incurred with the prior written approval of the Department.

8. MONITORING AND REPORTING

- 8.1 The Department may appoint a third party to evaluate and carry out any technical or financial audit whenever it is considered necessary and in order to monitor the execution of the Programme.
- 8.2 The Municipality shall comply with the provisions of the DoRA and MFMA. Accordingly, proper financial statements shall be maintained and made available to the Department, or its authorised representatives, for purposes of inspection and audit.
- 8.3 The Department shall supply National Treasury with such information as may be required in terms of Section 10(2) of the DoRA, when required. The Department shall submit such information to the National Treasury, after having been provided with same by the Municipality within 10 days after each month, in accordance with section 12(2) of the DoRA.
- 8.4 The Municipality shall supply any information related to the Programme as and when requested in writing by the Department or its authorised representatives. The Department or its representatives shall at all times have access to all documents, information, project sites, and installations subject to providing Municipality with at least 7 (seven) days written notice of such an intended visit.
- 8.5 The Department may, in order to fulfil its obligation to exercise macro-control in terms of the PFMA and in accordance with this Agreement, appoint a person, to impose such controls as the Department may deem necessary after written notification referred to in clause 8.4 is given to the Municipality. Such controls shall include, but shall not be limited to the following:

- 8.5.1 Audit of the asset procurement process;
- 8.5.2 Independent and/or random inspection of any installation;
- 8.5.3 Introduction and implementation of such monthly and quarterly controls as the Department may deem necessary; and
- 8.5.4 Recommendations on shortcomings of the Municipality's micro-control measures.

9. BREACH

- 9.1 Should any Party commit a breach of any provision of this Agreement and fail to remedy such breach within 14 (fourteen) days of receiving written notice from the other requiring it to do so, then and in that event, the other Party (the aggrieved party) shall be entitled, without prejudice to its other rights in law, to cancel this Agreement or claim specific performance of the defaulting Party's obligations without prejudice to the aggrieved Party's right to claim damages.
- 9.2 Should either Party dispute the existence of a breach entitling the aggrieved Party to the abovementioned rights and remedies, the dispute will be referred, at the request of either Party for determination by an arbitrator appointed as per clause 10 below.
- 9.3 Failure to finalise the projects within the stipulated time limits due to the delay in the transfer of Programme Funds, delays in the approval of variation orders and/or circumstances beyond the Municipality's control will not constitute a breach of this Agreement.

10. RESOLUTION OF DISPUTES

- 10.1 Any dispute which arises out of this Agreement shall be referred to the Director-General of the Department of Mineral Resources and Energy, the Municipal Manager of the Municipality or their appointed representatives, who shall endeavour to settle the dispute through mediation and negotiations, failing which either Party may in writing refer the matter to arbitration in accordance with the rules of the Arbitration Foundation of Southern Africa.

- 10.2 The Arbitrator shall at all times have regard for the intention of the Parties and shall resolve the dispute in a summary manner.
- 10.3 Any award made by the Arbitrator:
- 10.3.1 shall be final and binding upon the Parties;
 - 10.3.2 shall be carried into effect by the Parties;
 - 10.3.3 may only be made an order of court if the party concerned fails to abide by the terms of the award; and
 - 10.3.4 may include an order directing the unsuccessful party to pay the costs of the arbitration and the expenses incurred by the successful party.
- 10.4 This Clause shall survive the termination of the Agreement.
- 10.5 This Clause shall constitute each Party's irrevocable consent to the arbitration proceedings, and no Party shall be entitled to withdraw there from or to claim that such Party is not bound by this clause.

11. SPECIAL CONDITION

The responsibility of the Municipality to pay Programme Creditors on submission of invoices depends on the transfer of funds by the Department in terms of the DoRA to the Municipality.

12. GENERAL

- 12.1 No amendment or consensual termination of this Agreement will be of force or effect unless reduced to writing and signed by all the Parties.
- 12.2 The relationship between the Parties in terms of this Agreement will involve close collaboration as amongst independent contracting Parties, and in the circumstances will not imply any partnership in the legal sense, nor will it constitute any Party the agent or authorised representative of others.
- 12.3 The rights and obligations of the Parties in terms of this Agreement are personal and are not capable of being ceded, assigned, delegated or transferred by either Party to

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any other person, except with the prior written consent of the other Party.

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

12.5 To the extent that any provision of this Agreement is or may become unenforceable for any reason, it shall be severable from the remainder of this Agreement which shall remain in force.

13. DOMICILIUM CITANDI ET EXECUTANDI

13.1 The Department of Mineral Resources and Energy chooses as its *domicilium citandi et executandi* for the services of all documents and notices at:

The Director General

c/o Mr Xolile Mabusela

Department of Mineral Resources and Energy

192 Visagie Street, Corner Visagie and Paul Kruger Streets

Pretoria

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Tel: +27 (0) 12 406 7697

Email: xolile.mabusela@dmre.gov.za

13.2 The Municipality chooses its *domicilium citandi et executandi* for the service of all documents and notices at:

Address:

Umdoni Municipality
P.O. Box 19
Scottburgh
4180

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

13.4 All notices contemplated under this Agreement must be delivered by hand or sent by prepaid registered post, in which latter event a notice will be deemed to have been received by the addressee (s) seven (7) days after the proven date of posting.

SIGNED at Pretoria this 12 day of June 2024

WITNESSES:

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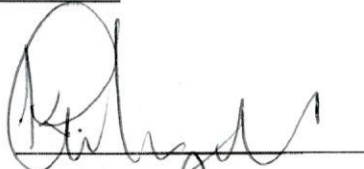


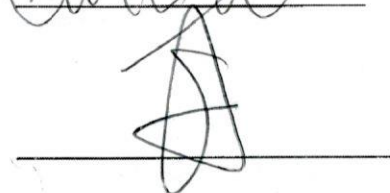
FOR: THE DEPARTMENT

(duly authorised)

SIGNED at Pretoria this 24th day of June 2024

WITNESSES

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FOR: THE MUNICIPALITY

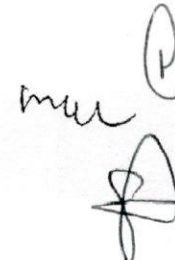
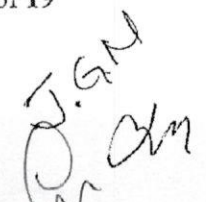
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"ANNEXURE A"

Municipal EEDSM Programme Scope

Municipal Energy Efficiency and Demand Side Management Programme Scope

No.	Project	Activities	Cost (%)
Step 0: Project Management and Administration			5%
1.	Project Administration subject to the Department's approval	Appointment of personnel that will assist with the administration, management, and implementation of the project for a period 12 months. Preferably the municipality should appointment interns with an engineering background.	
Step 1: Energy Efficiency Municipal Planning can include one of the activities below			7%
1.	Appointment of a consultant to determine infrastructure inventory data, collection energy consumption data and the determination of the business plan on the proposed EEDSM projects.	<p>Compile the Municipality's asset register.</p> <p>For Public Lighting the municipality must provide the total number of streetlights and high mast lights that belong to the municipality. Municipalities should use the funds for compiling a municipal building inventory and energy audits in line with the Energy Performance Certificate (EPC) regulations and ultimately use the funds for issuing EPC for buildings that are covered by the regulation. Furthermore, the funds can also be utilized to conduct technical audits including energy consumption data of motors, pumps, etc. and municipal inventory for wastewater treatment plants (WWTP).</p> <p>This includes the compilation of the energy baseline data and determination of the business</p>	

No.	Project	Activities	Cost (%)
		plan should the municipality not have the capacity and development of technical specifications and designs.	
Step 2 : Implementation of Energy Efficiency Programme			
1.	Retrofits of Municipal facilities	Replacement of inefficient technologies with efficient technologies in buildings, street lighting, traffic lighting, or water purification and pumping plants	86%
		Monitoring of electricity consumption and savings post-retrofitting period	
	Municipal Energy Management system (MEMS)	Installation of smart metering technologies and energy management system including software and hardware and long-term maintenance support as well as consolidation of energy consumption data for municipality's facilities	
2.	Capacity Building & Training	Develop capacity building and training plan for municipal officials working on the targeted infrastructure and on energy projects.	1%
		Create a database of trained technicians or participants	
3.	Energy Efficiency Awareness	Develop a municipal energy efficiency awareness plan	1%
		Design energy efficiency awareness campaigns focused on schools. Branding of municipal vehicles with energy efficiency messages.	
		Conduct workshops/seminars on energy efficiency and demand side management.	

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No.	Project	Activities	Cost (%)
		Conduct live energy efficiency discussions on local radio stations	

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**mineral resources
& energy**

Department:
Mineral Resources and Energy
REPUBLIC OF SOUTH AFRICA

DMRE 11

Matimba House, 192 Visagie Street, Onr Paul Kruger & Visagie, Private Bag X 96, Pretoria, 0001.
Enquiries: Xolile Mabusela Tel: 012 406 7598, Email: Xolile.Mabusela@dmre.gov.za

Ms T C Ndlela
Municipal Manager
Umdoni Local Municipality
Box 19
SCOTTBURG
4180

Dear Ms Ndlela,

**NOTIFICATION OF ALLOCATION: ENERGY EFFICIENCY AND DEMAND SIDE
MANAGEMENT (EEDSM) GRANT 2024/25**

This letter serves to notify the municipality of a **R 3 000,000.00** funding allocated in terms of the EEDSM Grant, for the purposes of assisting the municipality in accelerating the deployment and implementation of energy efficiency technologies and the demand management measures aimed at reducing the municipality's electricity demand. The allocation is made pursuant to the municipality's EEDSM projects proposal submitted to the Department during the funding allocation window. It is further to be noted that the allocation would be used for no other purpose other than the purpose it is allocated for as defined in the DoRA.

Accordingly, and as prescribed in the Division of Revenue Act of 2024 a performance agreement which outlines the scope of the EEDSM programme, the responsibilities of each party and the conditions to which this allocation to the Municipality is subject, would be entered into between the Department of Mineral Resources and Energy (DMRE) and the municipality.

Based on this letter, you are thus advised to begin with project planning including the procurement of services required to support the implementation of proposed EEDSM measures within the allocated budget. Kindly note that the allocation is subject to strict conditions as outlined in the abovementioned agreement to be entered into and the

NOTIFICATION OF ALLOCATION: ENERGY EFFICIENCY AND DEMAND SIDE MANAGEMENT (EEDSM) GRANT 2024/25 – UMDONI

DoRA. Kindly note that any non-compliance or deviations from these conditions may result in the grant being withheld, stopped and re-allocated to other municipalities in line with the requirements of Section 17, 18 and 19 of the 2024 Division of Revenue Act.

Furthermore, and as prescribed in the DoRA Framework, the municipality shall when in implementing the proposed measures for which funding is allocated, comply with the following:

- procure energy efficiency technologies from the Department of Mineral Resources and Energy panel of energy efficiency technology suppliers established in terms of the government procurement policy
- ensure that within the 1st quarter of the municipal financial year and upon approval of the business plan by the Department, the municipality or its service provider appointed, submit a Request for Quotation (RfQ) for the technology required as per approved business plan, to the technology suppliers in the DMRE's panel for the procurement of such technologies required for the implementation of the approved EEDSM projects
- ensure that within the 1st quarter of the municipal financial year, the municipality conclude the procurement of service provider (installation company) if so required for the implementation of the approved projects.

Should you need further clarity please contact Ms. Mantombi Dlamini and Ms. Mpho Mabaso on 012 406 7598/7712 or e-mail: mantombi.dlamini@dmre.gov.za
Mpho.mabaso@dmre.gov.za.

For further reference, please check schedule 5B of 2024 Division of Revenue Act on the National Treasury website www.treasury.gov.za.

Your cooperation in this regard will be highly appreciated.

Yours sincerely,



MR JACOB MBELE
DIRECTOR-GENERAL

DATE: 20 / 6 / 2024

