

Appendix B:

EXAMPLE OF MEMORANDUM OF AGREEMENT (MoA)

Between:

PARTY

and

PARTY

1. THE PARTIES

The parties to this Agreement are:

- The PARTY, (hereinafter referred to as "The PARTY") and represented by THE PARTY in their duly authorised here to.
- The PARTY, (hereinafter referred to as "The PARTY") a voluntary, non-profit and non-political association of interested and affected members of the community, herein represented by THE PARTY, who warrants his authority to enter into this agreement.

2. INTRODUCTION

The SITE (hereinafter referred to as "THE SITE") is a declared Biodiversity Agreement Site in terms of the Western Cape Nature Conservation Board Act (No. 15 of 1998) and is managed by the Directorate.

Various community groups and individuals have been involved with THE SITE SINCE SAID DATE especially with the "THE SITE" project which evolved into the establishment of the PARTY.

The SITE is managed in accordance with a LEGISLATIVE FRAMEWORK. One of the objectives of the LEGISLATURE is to facilitate stakeholder engagement by developing and maintaining mutually beneficial partnerships with communities and interest groups.

The aim of this Agreement is to state the terms that will govern the relationship and interaction between the Parties related to the SITE.

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3. ROLES AND RESPONSIBILITIES

3.1 The PARTY:

- 3.1.1 Will be responsible for all the day to day management and control within the SITE in line with the LEGISLATURE and subject to availability of resources.
- 3.1.2 Will ensure that a designated PARTY representative is allocated who will be responsible for the management of the SITE.
- 3.1.3 Will recognise The PARTY as the legitimate community role player in the management of the SITE.
- 3.1.4 Will ensure that all activities are conducted in compliance with relevant legislation, policies, rules and regulations.
- 3.1.5 Will ensure that quality services are provided to users and stakeholders at all times.
- 3.1.6 Will be responsible to identify, propose, plan, coordinate and implement capital and operational projects within the SITE in line with approved budgets and plans.
- 3.1.7 Will consult with The PARTY regarding all projects, plans, budgets, etc. related to the SITE.
- 3.1.8 Will provide material, technical and organisational support and assistance to The PARTY in the execution of The SITES roles and responsibilities related to the SITE subject to availability of resources and in line with the LEGISLATURE.
- 3.1.9 Will attend all relevant meetings including the AGM.
- 3.1.10 Will be obliged to monitor any funding received for the SITE in terms of any applicable legislation.
- 3.1.11 Authorises the PARTY to use and benefit from funding opportunities arising from the use of facilities at SITE to contribute to the improvement and management of the SITE, in consultation with and as approved by THE PARTY.

3.2 The PARTY:

- 3.2.1 Will support The PARTY in the management of the SITE.
- 3.2.2 Will recognise The PARTY as landowner and managing authority of the SITE.
- 3.2.3 Will be involved in the development and implementation of plans, projects and initiatives.
- 3.2.4 Will undertake work within the SITE which is in line with the LEGISLATURE and approved by THE PARTY.
- 3.2.5 Will assist The PARTY with public participation processes.
- 3.2.6 Will build awareness and promote the SITE through education, events and media

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3.2 The PARTY:

- 3.2.7 Will submit monthly reports of all funding received for the improvement and maintenance of the SITE and inform the PARTY of the manner in which the money is or was utilised.
- 3.2.8 Will allow the PARTY reasonable access to the financial report of the PARTY upon written request. Such request should not be unreasonably withheld.
- 3.2.9 Will not use the PARTY'S name, emblem or letterhead without prior consent from The PARTY.
- 3.2.10 Hereby indemnifies the PARTY against injuries, damages or loss incurred by any person, business or organisation as a result of work undertaken by The PARTY within the SITE.
- 3.2.11 Will adhere to the PARTY Events By-law in respect of all events organised by the PARTY which fall within the ambit of this by-law, including the requirement for public liability insurance, if applicable.
- 3.2.12 Will direct all correspondence, requests, complaints, etc. through the designated PARTY representative for the SITE.
- 3.2.13 Will be responsible for the Forum's administration, finances and resources.

3.3 Both Parties

- 3.3.1 In the implementation of this agreement the parties undertake to observe the utmost good faith and they warrant in their dealings with each other that they shall neither do anything and shall refrain from doing anything which might prejudice or detract from the rights, assets or interests of the other or from the intention or spirit of this agreement.
- 3.3.2 The parties undertake to conduct themselves in a transparent, non-confrontational, considerate and cooperative spirit when interacting with each other or any other party.
- 3.3.3 The parties shall meet informally whenever the need arises but formally at least once every 3 months to attend to SITE matters.

3.4 Other Role Players

Although PARTY is the managing line department for the SITE a number of other PARTY line departments are responsible for specific services within the conservation area. See Annexure 1 for a table listing those departments and their roles and responsibilities.

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4. MEDIA STATEMENT

- Committee Member: Projects, or such other Committee Member as may be tasked with oversight of SITE matters. Should either party seek the agreement of the other with regard to an intended media release in the category described, such agreement must be issued timeously and should not be unreasonably withheld.
- 4.2 It shall not be necessary for the PARTY to obtain mutual agreement in respect of statements released by it which do not pertain to governance issues and have no bearing on the role of the PARTY as local authority in relation to SITE.

5. TERM AND TERMINATION

This agreement shall come into effect upon signature by both parties and shall continue to be in force and effect until terminated by either party by written notice. The notice period shall not be less than SAID TIMEFRAME and not be more than SAID TIMEFRAME. The agreement is subject to review by the PARTY every SAID TIMEFRAME and renewal by mutual decision of the parties.

6. SETTLEMENT OF DISPUTES

- 6.1 Should any dispute, disagreement or claim arise between the Parties (referred hereinafter to as "the dispute") concerning this agreement, the Parties shall first endeavour to resolve the dispute by negotiation which negotiation shall be conducted by a representative(s) of each Party.
- 6.2 Should such dispute not be resolved within one month of the dispute being declared, or such or within such extended period as may be agreed by the Parties, it shall be resolved by mediation in accordance with the rules of the Arbitration Foundation of South Africa (AFSA) by a mediator appointed by AFSA.
- 6.3 Should the dispute not be resolved by mediation within one month of the referral of the dispute to AFSA, or within such extended period as may be agreed by the parties, it shall be resolved by arbitration in accordance with the rules of AFSA by an arbitrator appointed by AFSA.
- 6.4 Unless otherwise agreed in writing by all the parties, any such negotiation, mediation or arbitration shall be held in SAID CITY.
- 6.5 Notwithstanding the provisions of the clauses above any party may seek urgent relief from a competent court.

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7. NOTICES AND DOMICILIUM

The Parties choose as their domicilium citandi et executandi for all purposes under this agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercising of any option) the following addresses:

The PARTY:

Position:

THE SITE:

Tel:

Mobile:

E-mail:

The PARTY:

Position:

THE SITE:

Tel:

Mobile:

E-mail:

Any notice or communication required or permitted to be given in terms of this agreement shall be valid and effective only if in writing but it shall be considered competent if given by e-mail.

Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen domicilium citandi et executandi.

8. CESSION AND ASSIGNMENT

No Party shall cede or assign its rights or obligations under this agreement without the prior written consent of the other Party, which consent may not be withheld unnecessarily. Any cession or assignment agreed to by a Party will not relieve the other Party of any obligations with respect to any covenant, condition or obligation required to be performed by that Party under this agreement.

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9. WAIVER

The failure of either Party to insist upon the strict performance of any provision of this agreement or to exercise any right, power or remedy consequent upon a breach hereof shall not constitute a waiver by such Party to require strict and punctual compliance with each and every provision of this agreement or stop such Party to exercise its rights in terms of this agreement.

10. CONFIDENTIALITY

All information and data generated through this partnership is to be handled with care and not to be distributed without prior agreement by both Parties.

11. COSTS

Each party shall bear its own legal costs of and incidental to the drafting, negotiation and finalisation and completion of this agreement.

SIGNED AT

ON THIS