

# **MEMORANDUM OF AGREEMENT**

**ENTERED INTO BY AND BETWEEN**

## **DEPARTMENT OF WATER AND SANITATION**

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

Herein represented by

**MS MARGARET-ANN DIEDRICKS**

In her capacity as accounting officer and duly authorised hereto by virtue of the  
Public Finance Management Act, 1999 (Act 1 of 1999)

**AND**


## **THE DEPARTMENT OF ENVIRONMENTAL AFFAIRS**

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

Herein represented by

**MS NOSIPHO NGCABA**

In her capacity as accounting officer and duly authorised hereto by virtue of the  
Public Finance Management Act, 1999 (Act 1 of 1999)

  
Dept. of Water and Sanitation  
LEGAL SERVICES  
APPROVED  
LS 12



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## **2. PREAMBLE**

- 2.1** DWS would like to ensure the implementation of water resource management functions related to watershed services, as per the water resources and pricing strategies. These include the control of waterweeds and terrestrial invasive alien plants, the restoration of degraded landscapes that impact on siltation, and wetlands to improve water quality and regulation. In addition they seek to address unlawful afforestation. DEA, through the Natural Resource Management Programmes, is working with Conservation Agencies, DAFF, DWS and CoGTA, to establish an integrated natural resource management programme in South Africa. The suite of Natural Resources Management Programmes, spearheaded by the Working for Water Programme, ensures that South Africa addresses its responsibilities relating to the management of natural resources, whilst ensuring that meaningful livelihood opportunities are supported for those employed in these Programmes. Seven key sub-programmes can be discerned at present as follows :-

### **2.1.1 Working for Water**

The purpose of this sub-programme is to manage invasive alien species in order to enhance the sustainable use and conservation of our natural resources and support the integrity of South Africa's natural resource capital.

### **2.1.2 Working for Wetlands**

The purpose of this programme is to champion the protection, rehabilitation and sustainable use of South Africa's wetlands through co-operative governance and partnerships.

### **2.1.3 Working for Rivers**

Working for Rivers Programme aims to piece together in a sustainable manner the objectives of aquatic ecosystem health, economic growth, human health and co-dependent land and water use principles. Human behavior lies at the hub of most, if not all, of these aspects and will be treated as the key success factor in the sustainability of the programme. It is necessary to create awareness among South Africans on the importance of caring for the scarce water resources and to actively participate in the protection and management thereof.

### **2.1.4 Working on Fire**



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The purpose of this programme is to enhance the sustainability and protection of life, livelihoods, ecosystem services and natural processes through integrated fire management, in order to contribute to economic empowerment, skills development, social equity and accelerated service delivery.

#### **2.1.5 Working for Ecosystems - (Watershed Management)**

The purpose of this programme is to prevent, where possible the negative impact of land degradation process on ecosystem services important for the protection of biodiversity and food security. Where land is already degraded, this programme will manage the restoration of degraded land for carbon sequestration (linked to climate change considerations), ecological and sustainable harvesting benefits, including addressing erosion and the impact this has on water security/watershed services and the productive potential of agricultural and conservation land, with its nature based recreation and tourism potential.

#### **2.1.6 Working for Forests**

The purpose of this programme is for the sustainable development and management of new afforestation by transforming invading alien plant stands into utilizable resources for both commercial production and the use by neighbouring communities in a manner that will maximize the socio-economic benefits, ensure the sustainable use and maintenance of natural areas and minimize the risk of alien plant invasions. DEA will work with DWS to ensure that Stream Flow Reduction Activity (SFRA) Licenses are issued when needed.

#### **2.1.7 Value Added Industries**

##### **2.1.7.1 Eco-furniture (EF) Programmes**

The EF programme seeks to make optimal use of the biomass cleared through the Working for Water programme, in creating work opportunities to make products that help Government to meet its needs, and champion the pro-poor opportunities within this. The initial focus of the production centres around factories that will be established across the country (because of the need to spread out the employment benefits, the availability of biomass, and transportation costs), with a particular emphasis on the needs of disadvantaged schools, by manufacturing school desks, benches and other furnitures. The programme will build on the



range of products that are possible, such as meeting the needs of hospitals, clinics, community centres, etc, and including the provision of the established Eco-coffins across the country.

#### 2.1.7.2 Working for Energy (WfE) (Biomass to Energy)

The WfE (Biomass) programme seeks to make optimal use of the biomass cleared through the Working for Water programme in creating work opportunities to generate energy. The programme will also promote the general use of biomass through biogas digesters, in providing energy and jobs to the rural poor.

### 2.2 These Programmes also have an overarching objective, to improve livelihoods of beneficiaries through:-

2.2.1 enhancing the financial capital of beneficiaries by developing sustainable SMMEs providing decent job opportunities to beneficiaries;

2.2.2 enhancing the Human Capital of beneficiaries by supporting a safe and healthy work environment and providing skills and education programmes to beneficiaries; and

2.2.3 enhancing the social capital of beneficiaries by supporting the establishment of accessible and effective governance and local support systems.

2.3 The programme is implemented following a labour-intensive approach and integrating operations with social-development initiatives.

2.4 In the spirit of section 41(1) (h) (i), (ii) and (iii) of the Constitution of the Republic of South Africa, the DWS and the DEA have agreed to collaborate in the implementation of Natural Resource Management Programmes projects in priority catchments and land under the control of the DWS and to provide work and training for beneficiaries under DEA's NRM programmes.

2.5 The DWS is desirous of having Natural Resource Management programmes implementing **Compliance Monitoring and Enforcement** Projects with respect to the eradication of unlawful afforestation. These projects will be managed by the DEA and the DWS in accordance with annexure B: Standard Operating Procedures and the relevant regulations of the National Water Act, National Environmental Management and Biodiversity Act, National Environmental Management Act and the Conservation of Agricultural Resources Act.



**WHEREAS**, the DWS is desirous of having Natural Resource Management Programmes (NRM) to be managed by the DEA in priority catchments and state land under its control;

**AND WHEREAS**, the DWS and the DEA have agreed to collaborate in the implementation of the NRM projects;

**AND WHEREAS**, the DWS and the DEA have agreed to make use of the services and expertise of the NRM programmes to fulfil the above objective of improving watershed services.

**AND WHEREAS**, the DWS and the DEA have agreed to share resources related to the implementation of the NRM programmes in order to optimize government investment.

**NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:-**

**3. DEFINITIONS AND INTERPRETATION**

3.1 In this Agreement, unless the contrary appears from the context, the following words and phrases shall have the meanings ascribed to them:-

3.1.1 **"Agreement"** means this Agreement together with all the annexures thereto;

3.1.2 **"BOPs"** means Best Operating Standards;

3.1.2 **"DEA"** means the Department of Environmental Affairs;

3.1.3 **"DWS"** means the Department of Water & Sanitation;

3.1.4 **"Implementing Agent"** means the management authority responsible for the day to day supervision and running of projects in partnership with the NRM programmes.

3.1.5 **"NRM"** means the Natural Resources Management;

3.1.6 **"Parties"** means the DWS and the DEA collectively and **"Party"** refers to either one of them as determined by the context;

3.1.7 **"PMC"** means the Project Management Committee;

3.1.8 "the **Remuneration**" means the amount payable by the DWS to the DEA for the Services;

3.1.9 "the **Services**" mean the Services to be rendered by the DEA in terms of this Agreement;

3.1.10 **SFRA**" means Stream Flow Reduction Activity;

3.1.11 "**WWF**" means Working for Water;

3.2 In this Agreement :-

3.2.1 unless otherwise indicated, any meaning ascribed to a word, phrase or expression in this Agreement, shall bear the same meaning wherever it appears thereafter;

3.2.2 headings to the clauses in this Agreement are only for convenience and reference only and shall not be used in the interpretation of this Agreement.

3.3 This Agreement shall bind the Parties and their respective successors-in-title.

#### 4. **SCOPE OF AGREEMENT**

##### 4.1 **Partnership**

4.1.1 The Parties hereby enter into a partnership to establish, train and deploy natural resource management resources in strategic catchments and state land under the control of the DEA in order to enhance watershed services.

4.1.2 The total capacity to be deployed would be agreed upon on an annual basis between the DWS and the DEA. The DWS will act as partner and do compliance management of the NRM projects in strategic catchments and state land under the control of DWS in order to enhance watershed services.

4.1.3 Development of a DWS/DEA Project Steering Committee to meet on an annual basis or as required to discuss progress on the implementation of the MOA.

##### 4.2 **Working for Water Services**

The DEA agrees to implement projects focusing on the improvement of the following watershed services and outcomes are as follows:

###### 4.2.1 **Improve Flows**

4.2.1.1 Decrease Flood/high flows;



4.2.1.2 Improve Low Flows;

4.2.1.3 Improve yield from existing and new water infrastructure; and

4.2.1.4 Improve the Ecological Reserve, through the restoration and improvement of land management practices and the control of invasive alien plants.

#### **4.2.2 Minimize Sediments**

4.2.2.1 Minimize siltation of rivers, dams and other infrastructure through restoration, improvement of land management practices and the control of invasive alien plants.

#### **4.2.3 Optimize Water quality**

4.2.3.1 Optimizing water quality to minimize purification costs;

4.2.3.2 Minimize waterweeds, and

4.2.3.3 Optimize water quality in areas where water is extracted from rivers in order to minimize health risks through restoration, improvement of land management practices and the control of invasive alien plants.

#### **4.2.4 Address unlawful afforestation**

Where a person has contravened any provisions of the National Water Act, and the DWS has issued a directive in terms of Section 53 Directives to rectify such contraventions, such directive allows the transgressor to take any action specified in the directive to rectify the contravention within a specified time. Where the water user fails to adhere to the requirements of the directive, Section 53(2) allows the DWS to carry out any works and take any other action necessary to rectify the contravention and to recover its reasonable costs from the person on whom the directive was issued.

The DWS and the DEA will ensure that directives issued to Stream Flow Reduction Activity transgressors are implemented to protect the water resources and other water users. Addressing unlawful afforestation will release water to the system for fair allocation, the implementation of the Reserve and the protection of lawful water users.

4.2.5 Through partnerships with the private sector and relevant land use sectors, unlock resources for the restoration of ecological infrastructure and watershed services in order to enhance the investments made by the DEA's Natural Resource Management Programmes, for the protection of water resources in line with the requirements of the National Water Act.





Through DEA's Land User Incentive programmes engage with the relevant land use sectors, including: the sugar and forestry industries, agriculture in general and traditional authorities.

## 5. COMMENCEMENT AND DURATION PERIOD

The Agreement shall commence, notwithstanding the date of signature of this Agreement, on **1 April 2015** and terminate on **31 March 2018**, with the option of an extension if the Parties are satisfied with the performance of the projects/services and upon mutual agreement between both Parties on such terms as the Parties may then agree to in writing.

## 6. RESPONSIBILITIES OF THE PARTIES

### 6.1 The DWS shall, *inter alia*:

- 6.1.1 Fund the project in accordance with Clause 7;
- 6.1.2 Funding from the DWS will specifically cover the services rendered on behalf of the DWS and it shall not be used to acquire any assets;
- 6.1.3 Chair and keep minutes of the Project Steering Committee (PSC) meetings where agreed upon;
- 6.1.4 Conduct regular site visits to monitor progress on the project and to ensure compliance with the best operating procedures as needed;
- 6.1.5 The execution of any work shall be in accordance with the Standard Operating Procedure, which be agreed to by the Parties on an annually for the duration of this Agreement; and
- 6.1.6 Reserve the right to consult and appoint any Professional Service Provider to execute the work should the DEA fail to comply with the terms and conditions of the Annexure B.

### 6.2 The DEA shall, *inter alia*:

- 6.2.1 Implement the projects through its NRM programme as per the Annual Plan of Operations (APO), per project, agreed upon annually basis and signed off by the authorised representatives of the Parties;;



- 6.2.2 Field fully trained NRM certified workers and staff, as per NRM Best Operating Procedures (BOPs);
- 6.2.3 Equip the projects with the correct personnel, appropriately trained workers and operational and protective equipment as per NRM BOPs;
- 6.2.4 Ensure the replacement of badly worn out and broken equipment / tools due to reasonable wear and tear;
- 6.2.5 Follow proper policies and procedures in line with PFMA and the DEA policy frame work on the acquisition, maintenance, safeguarding and disposal of assets and ensure that contingency arrangements are made available for the projects;
- 6.2.6 Ensure the provision of road worthy and licensed vehicles when NRM vehicles are being utilised;
- 6.2.7 Use licensed drivers when NRM vehicles are being utilised;
- 6.2.8 Supply project officers with 6 (six) or more clearing or restoration teams deployed for NRM operations;
- 6.2.9 Operate within the NRM - BOP's when rendering the requested services;
- 6.2.10 Operate under the authority of a suitably qualified and/or experienced NRM person as agreed between the DEA and the DWS;
- 6.2.11 Ensure that all requests for the NRM resources for the DWS projects are routed through the NRM channels for approval;
- 6.2.12 Jointly with the DWS investigate all incidents and accidents; and
- 6.2.13 Carry out inspections to monitor progress on the project and to ensure compliance with the Agreement.

## 7. REMUNERATION

- 7.1 The financial contribution from the DWS will be agreed upon by the Parties on an annual basis, and prior to the start of the financial year. These will includede costs and fees and any other disbursements to the DEA for the services to be rendered under NRM during the relevant financial year. The DWS

contribution is only limited to fees and will not cover payment made for acquisition of assets.

- 7.2. The DEA shall submit claims to the DWS on the work that has been agreed upon and duly executed.. The claim shall be accompanied by relevant deliverables signed by the relevant delegated official. The claim shall include cost breakdown per Water Management Area and the DWS undertake to reimburse the DEA for services rendered.
- 7.3 The DEA shall provide progress reports, as per agreed schedule and timeframes between the DWS and the DEA on services rendered at the end of each quarter. Each Party shall be expected to keep proper records for audits and inspections purposes.
- 7.4 In the event that the project cost exceed the allocated amount as per Clause 7.1 above, the DEA shall notify the DWS in writing and within reasonable time of the additional amount. The additional amount shall be allowed in exceptional circumstances only. The DWS shall respond to the DEA on its ability to assist with additional funding within reasonable time.
- 7.5 The DEA shall submit claims on the work already executed to the DWS Provincial Heads or Project Managers or Executive Offices of the CMAs as the case may be

## 8. PROJECT MANAGEMENT COMMITTEE

- 8.1 A Project Management Committee (PMC) constituting of representatives from the DWS and the DEA shall be established upon signature of this Agreement and shall function on an on-going basis for the duration of this Agreement.
- 8.2 The functions of the PMC shall, *inter alia*, include:
- 8.2.1 The development, on an annual basis, an Annual Plan of Operation, per project and sign-off by the delegated officials of the Parties;
- 8.2.2 Managing and facilitating co-operation and consultation in respect of matters dealt with by each Party in terms of this Agreement;
- 8.2.3 Draft annual plan of operations and related budget in respect to the next financial year for the DWS management review and approval;
- 8.2.4 Proposing any amendments or supplements to this Agreement and/or Annexure "A" hereto that may be necessary from time to time;

8.2.5 Providing management advice to the Parties;

8.2.6 Identifying and utilising such mechanisms as are deemed necessary for the implementation of this Agreement; and

8.2.7 Providing monthly financial and operational reporting to the Parties.

## 9. INDEPENDENCE

The Parties have no authority to act on behalf of or bind each other. They will consult each other on every decision affecting collaboration under the Agreement.

## 10. CONFIDENTIALITY

10.1 Any Party shall treat information furnished by the other Party for purposes of the execution of this Agreement, as confidential.

10.2 Subject to this clause, the Party so furnished with information shall not disclose such information to another person without the prior written consent of the other Party and shall take all reasonable steps to ensure that such information is not disclosed to another person.

10.3 The Parties agree that this Agreement is not intended to restrict use or disclosure of any portion of such information which:

- a) is made known to the public through no default by the receiving Party of its obligations under this Agreement;
- b) is rightfully received by the Receiving Party from a third party having no obligation of confidentiality to the Disclosing Party;
- c) is independently developed by the Receiving Party by persons who did not have access to Confidential Information of the Disclosing Party; or

d) is disclosed by the Receiving Party after receipt of written permission from the disclosing Party.

10.4 The provisions of this clause will survive the termination of this Agreement.

## **11. INDEMNITY**

11.1 The Parties indemnify each other and hold harmless the other against any and all liabilities arising from any acts and/or omissions of the other Party and/or any of either's employees, agents, members and/or appointed officials arising out of this Agreement.

## **12. SERVICE CONDITIONS**

12.1 The Parties shall not be obliged to directly contribute to any pension fund, medical aid or unemployment insurance fund on behalf of each other, its employees or agents.

12.2 The Parties shall faithfully and diligently devote time to the project in terms of this Agreement.

12.3 All work performed as a result of this Agreement shall be of a high standard.

## **13. SETTLEMENT OF DISPUTES**

13.1 Should any disputes and/or differences of opinion arise between the Parties regarding the interpretation of any or all of the provisions of this Agreement during the term of or on the termination thereof that cannot be amicably settled, the aggrieved Party shall forthwith give the other Party 14 (fourteen) days written notice of their dispute and/or difference of opinion.

13.2 After notice in terms of Clause 13.1 above disputes and/or differences of opinion shall be resolved by the PMC.

13.3 Should the matter not be resolved through the PMC then the dispute shall be escalated to the Directors-General of the DWS and the DEA for resolution.

13.4 Where the two Directors-General cannot resolve the dispute, such dispute should be referred to the Ministers of Water and Sanitation and Environmental Affairs who shall attempt to resolve it, and the determination of the Ministers shall be final and binding on the Parties.

## **14. DOMICILIUM AND NOTICES**

- 14.1 Notices in terms of this Agreement must be in writing and will take effect from receipt at the stated *domicilium* address of each Party. Such notices may be given by registered mail, by hand against written confirmation of receipt or by facsimile.
- 14.1.1 Notices posted by registered post shall be deemed to have been received by the addressee on the 7<sup>th</sup> (seventh) business day after posting;
- 14.1.2 Notices delivered by hand shall be deemed to have been received by the addressee on the day of such delivery; and
- 14.1.3 Notices transmitted by facsimile shall be deemed to have been received by the addressee on the same day of such transmission and within business hours.
- 14.2 During the currency of this Agreement, the Parties shall notify each other of any change of address and supply the latter with such new address.
- 14.3 The DEA chooses the following address as *domicilium citandi et executandi* and for the purpose of serving any notice or any other correspondence in terms of this Agreement: \_

Address: The Director-General  
The Department of Environmental Affairs  
Environment House  
Cnr Steve Biko & Soutpansberg Road  
**PRETORIA**  
0001  
Facsimile: (012) 3593646

- 14.4 The DWS chooses the following address as *domicilium citandi et executandi* and for the purpose of serving any notice or any other correspondence in terms of this Agreement:



Address: Director General  
The Department of Water and Sanitation  
10<sup>th</sup> Floor, Sedibeng Building  
185 Francis Baard Street  
**PRETORIA**  
0001  
Facsimile: (012) 336 7532

**15. GENERAL**

- 15.1 No amendment, alteration, cancellation, variation of or addition to this Agreement shall be of any force or effect unless reduced to writing and signed by the Parties or their duly authorized representatives.
- 15.2 No extension of time or other indulgences granted by either Party in respect of their respective obligations will constitute a waiver of the Party's right to enforce compliance with the terms and conditions of this Agreement. Neither shall it constitute a negation of this Agreement.
- 15.3 This Agreement together with Annexures constitutes the entire Agreement between the Parties and neither shall be bound by any undertakings, representations, warranties, promises or the like not recorded therein.

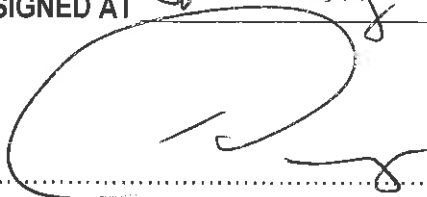
**16. SEVERABILITY**

All the provisions of this Agreement will be severable and no provisions will be affected by the invalidity of any other provisions of the Agreement.

   
Dept. of Water and Sanitation  
LEGAL SERVICES  
APPROVED  
LS 12

AUTHORISED SIGNATURES FOR AND ON BEHALF OF DEPARTMENT OF WATER & SANITATION

SIGNED AT Johannesburg ON THIS 6<sup>th</sup> DAY OF March 2016



DIRECTOR-GENERAL

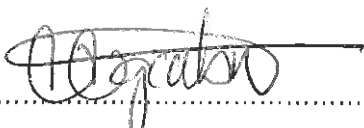
DEPARTMENT OF WATER & SANITATION

WITNESSES: 1 .....

2 .....

AUTHORISED SIGNATURE FOR AND ON BEHALF OF DEPARTMENT OF ENVIRONMENTAL AFFAIRS

SIGNED AT PRETORIA ON THIS 12<sup>th</sup> DAY OF May 2016



DEPARTMENT OF ENVIRONMENTAL AFFAIRS

WITNESSES: 1 .....

2 .....