

MEMORANDUM OF AGREEMENT



Entered into between

O R TAMBO DISTRICT MUNICIPALITY

[Hereinafter referred to as "THE MUNICIPALITY"]

And

THE NATIONAL DEVELOPMENT AGENCY

[Hereinafter referred to as "the NDA"]

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1. INTRODUCTION

- 1.1. Rural development is one of the key priorities of the Government of the Republic of South Africa, aimed at creating sustainable rural communities throughout the country that are characterized by social cohesion;
- 1.2. The O R Tambo District Municipality mission statement is to "provide services in fulfilling its mandate through a developmental local government approach. O R Tambo shall pursue a socio-economic development agenda that will provide an improved quality of life and affirm the dignity of its people".
- 1.3. The mission statement of the NDA is to "Facilitate sustainable development by strengthening civil society organisations involved in poverty eradication through, enhanced grant funding and research";
- 1.4. The National Development Agency and the O R Tambo District Municipality are currently implementing food security programmes.
- 1.5. The Parties have agreed to enter into this Agreement to develop synergies that may flow from their joint co-operation in respect of the delivery towards the Government priority of food security and job creation.
- 1.6. The Parties hereby reduce in writing the terms and conditions upon which their relationship will be governed in terms of this Agreement.

2. DEFINITIONS AND INTERPRETATION

In this Agreement, unless inconsistent with or otherwise indicated by the context –

- 2.1. "**Agreement**" means the/this Agreement as set out in this document, including all appendices hereto (if any);
- 2.2. "**Business Day**" means a day which is not a Saturday, Sunday or an official public holiday in the Republic of South Africa;
- 2.3. "**Municipality**" means the O R Tambo District Municipality;
- 2.4. "**Effective Date**" means the **01 July 2015**, irrespective of the Signature Date;
- 2.5. "**Government**" means the Government of the Republic of South Africa;

- 2.6. **“ORTDM”** means O R Tambo District Municipality
- 2.7. **“NDA”** means The National Development Agency (NDA) a schedule 3A public entity, established through section Z of the National Development Agency Act (No. 108 of 1998) as amended;
- 2.8. **“Mvula Trust”** means The Mvula Trust, an NGO contracted by the NDA to implement the household food security programme
- 2.9. **“Implementation Plans”** means the costed work plans to be developed by both the NDA and the Municipality which will set out in sufficient details how the programme is to be implemented;
- 2.10. **“Programme”** means the Household Food Security project, which strengthens the capacity of rural communities to respond proactively to meeting their food, nutrition and livelihood needs;
- 2.11. **“Project Budget”** means the Project Funds contributed by the NDA AND ORTDM;
- 2.12. **“Parties”** means the O R Tambo District Municipality and the National Development Agency and the word **“Party”** shall mean either of them as the context may require;
- 2.13. **“Project Funds”** means the R 2, 016, 000 (Two Million and Sixteen Thousand Rands) as project implementation amount to be utilised by the NDA for the implementation of this Agreement; and the NDA contribution of R2 266 470.
- 2.14. **“Programme Steering Committee”** means the committee to be established by the Parties in terms of clause 8 below;
- 2.15. **“Project”** means the projects to be implemented by the Parties under this Agreement which will include but not be limited to training of matriculants and / or out of school youth in sustainable food security programmes at household level.
- 2.16. **“Youth facilitators”** means the unemployment youth, undergraduates and unemployed women interested in participating in the project.
- 2.17. **“Project Areas”** means the following Project Areas in the O R Tambo District Municipality where the Project will be implemented unless the Parties agreed otherwise in writing:

- 2.16.1 King Sabata Dalindyebo : Mvezo and Matyenengqina
- 2.16.2 Nyandeni Local Municipality : Zinduneni
- 2.16.3 Ingquza Hill Municipality: Lusikisiki, Flagstaff
- 2.18. **“Service Providers”** means the various entities which will be procured and contracted directly to the NDA to provide services relating to the household food security in identified sites;
- 2.19. **“Signature Date”** means the date of signature of this Agreement by the Party signing last in time;
- 2.20. **“Year”** means a financial year commencing on the 01 May 2015 and ending on the 30 June 2017
- 2.21. The words **“shall”**, **“will”** and **“must”** used in the context of any obligation or restriction imposed on a Party have the same meaning;
- 2.22. The clause headings in this Agreement have been inserted for convenience only and shall not be taken into account in its interpretation;
- 2.23. Where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that the term has not been defined in this interpretation clause.
- 2.24. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to that provision as if it were a substantive clause in the body of this Agreement, notwithstanding that it is only contained in the interpretation clause;
- 2.25. If any period is referred to in this Agreement by way of a reference to a number of days or weeks or months or other intervals, the period shall be reckoned exclusively of the first day and inclusively of the last day of the relevant interval, unless the last day falls on a day which is not a Business Day, in which case the last day shall be the next succeeding Business Day.

- 2.26. If the due date for performance of any obligation in terms of this Agreement is a day which is not a Business Day then (unless otherwise stipulated) the due date for performance of the relevant obligation shall be the succeeding Business Day;
- 2.27. This Agreement shall be governed, interpreted and enforced in accordance with the laws of the Republic of South Africa.

3. APPOINTMENT AND RELATIONSHIP OF THE PARTIES

- 3.1. The Municipality agrees to work with the NDA in the establishment of 300 household food gardens in 5 sites within the O R Tambo District Municipality
- 3.2. The Parties agree that the relationship between them will be that of independent contractors and the Labour Relations Act (No. 66 of 1995) and the Basic Conditions of Employment Act (No.75 of 1997) will not be applicable to this relationship.

4. THE AREAS OF COLLABORATION

- 4.1. Community mobilisation – identification of facilitators.
- 4.2. Signing and management of service level agreement with the Mvula Trust
- 4.3. Contacting and training of 70 youth in household food security practices and nutrition;
- 4.4. Establishment of 300 household food gardens
- 4.5. Identify and train cooperatives to resuscitate the 5 nurseries' project
- 4.6. Monitoring and evaluation of the projects
- 4.7. The NDA will contribute R 2 266 470 and ORTDM will contribute R2 016 000 (Two Million and Sixteen Thousand rands) as part of EPWP – Community Works Programme, project funding.

5. DURATION AND TERMINATION OF THIS AGREEMENT

- 5.1. Irrespective of the date of signature of this Agreement, it will commence on the Effective Date and shall endure for a period of (24) twenty four months or up to the point of depletion of the Project Funds whichever shall occur first unless terminated earlier or extended to a future date by both parties in writing.
- 5.2. Save for instances of breach of this Agreement where less notice is required, either party may terminate this agreement by giving **three (3) months** written notice to the other.
- 5.3. Should either party give notice of termination of this Agreement, then, notwithstanding any dispute about the validity or efficacy of such notice, the NDA shall:
- 5.4. On demand, immediately make available to the Municipality all records, agreements, accounts, and other information generated pursuant to this Agreement;
- 5.5. On demand cede and assign all rights and obligations which emanate from agreements entered into between the NDA and the service providers in pursuance of this Agreement; and
- 5.6. On demand transfer back to the Municipality all the unutilised or uncommitted funds plus interest accrued in the dedicated bank account.

6. THE PROGRAMME FUNDS AND FINANCIAL PROCEDURES

- 6.1. The Municipality retains the overall accountability of transferring their own contribution of the Programme Budget relating to the implementation of this Agreement.
- 6.2. The Municipality contribution of the Programme Budget will be paid directly to the facilitators as stipends for a period of twenty four months from the effective date hereof.
- 6.3. Unless the Parties Agreed otherwise in writing, any portion of the Project Funds not utilised and all interest accrued therein, shall be transferred back to the District Municipality at the end of the Programme provided that all the accounts for the service providers have been settled and after all bank costs and charges have been deducted. Preference is for accrued interest to be accounted for and re-invested into the programme to be disbursed to agree upon projects.

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- 6.4. The NDA will in addition to other reports, account to the Municipality quarterly in respect of the Programme Funds. The Programme may be audited by the Auditor – General in its sole discretion and in such case, a copy of the final audit report will be forwarded to the Municipality.
- 6.5. The utilisation of the funds received from the Municipality shall be clearly indicated on the Mvula Trust Financial statements.
- 6.6. The Municipality will also be liable for all the costs, expenses, liabilities and damages incurred by the service providers procured by the NDA, in the event the Municipality decides to cancel or suspend the Programme or any portion thereof for whatever reason, or vice versa.

7. RESPONSIBILITIES OF THE PARTIES

The Parties shall in respect of the Programme and prior to its implementation, develop the Implementation Plan, costed production plans and associated development indicators which will form an integral part of this Agreement: which shall include monitoring and management support.

7.1 THE NDA

The responsibilities of the NDA will include:

- 7.1.1 providing programme management support through the Provincial Office
- 7.1.2 oversee and monitor the establishment of household food gardens;
- 7.1.3 facilitate establishment of the Programme Steering Committee
- 7.1.4 develop and implement operational plans
- 7.1.5 submit progress reports to the ORTDM;
- 7.1.6 recruiting, training and support of facilitators of the programme;
- 7.1.7 monitoring of implementing agent;
- 7.1.8 in its sole discretion, identify and use dedicated NDA staff in provinces in ensuring that there is a sufficient and efficient personnel for the purpose of implementing and monitoring the programme.

7.1.9 adhering to and strictly acting in terms of the generally accepted accounting principles in the financial administration of the Project Funds;

7.1.10 ensuring that there is full compliance with all the provisions of the Public Finance Management Act applicable to it as the Public Entity as well as other legislation that may be applicable in terms of the implementation of this Agreement;

7.1.11 providing written reports to the Municipality in accordance with clause 8 below;

7.2 The District Municipality

7.2.1 It shall be the responsibility of the Municipality to pay facilitators stipends as specified in Clause 6.2 above;

7.2.2 The Municipality shall ensure the proper monitoring of the Programme Implementation at the local/municipal level;

7.2.3 The Municipality shall pay for the resourcing of the 5 nurseries infrastructure and payment of manpower

7.2.4 At the termination or expiry of this Agreement, the Municipality will give its full co-operation with regard to the closing out of the Programme and will without delay, give disposal instructions with regard to any possible balances that may be incurred.

8. REPORTING

8.1 The NDA undertakes to prepare and circulate:-

8.1.1 Quarterly progress reports to the Municipality in a format to be provided by the NDA; and

8.2 In addition to the above, the NDA shall from time to time provide the Municipality and/or the Programme Steering Committee with such further information as they may reasonable request.

8.3 It is recorded that the NDA shall give access and submit information relating to implementation of the Programme to Auditors appointed by the Municipality.

9. THE PROGRAMME STEERING COMMITTEE

- 9.1 The Parties shall establish a Programme Steering Committee which shall have a maximum of (ward representatives), the Municipality shall appoint 3 (three) representatives, and the NDA shall be entitled to appoint two members.
- 9.2 The functions of the Programme Steering Committee will include, but not be limited to:
- 9.2.1 review the Programme costed implementation plans, production plans and the progress reports;
 - 9.2.2 consider the monitoring and evaluation reports on the Programme;
 - 9.2.3 monitor the progress in the implementation of the Projects; and
 - 9.2.4 consider financial reports on the programme; and
 - 9.2.5 conduct *in loco* inspections
- 9.3 A member appointed by the ORTDM in terms of clause 9.1 shall be the chairperson of the Programme Steering Committee meetings.

10. CONFIDENTIALITY

- 10.1 The Parties acknowledge that any information supplied in connection with this Agreement or in connection with each other's technical, industrial or business affairs may consist of confidential or proprietary data, disclosure of which without the Parties consent for use by third parties might be damaging to the Disclosing Party concerned.
- 10.2 The receiving party therefore agrees to hold such material and information in the strictest confidence, to prevent any copying thereof by whatever means and not to make use thereof other than for the purposes of this Agreement and to release it only to such properly authorised **directors, employees or** third parties requiring such information for the purposes of this Agreement and agree not to release or disclose it to any other person who has not signed an agreement expressly binding itself not to use or disclose it other than for the purposes of this Agreement.

10.3 The undertakings and obligations contained in this clause do not apply to information which -

10.3.1 is publicly available at the date of disclosure or thereafter becomes publicly available from sources other than the Parties;

10.3.2 is already in possession of the receiving party prior to its receipt by or disclosure to such receiving party;

10.3.3 is required by law or any regulatory authority to be disclosed;

10.4 The Parties shall take such precautions as may be necessary to maintain the secrecy and confidentiality of such material and information in respect of its directors, employees, agents, and/or directors or employees or agents of any assignee, sub-contractor or distributor or any other person to whom any such confidential or proprietary data may have been or will be disclosed.

11. PUBLICITY AND ACKNOWLEDGEMENT

11.1 The Municipality shall give due prominence to the NDA in publications intended for public distribution that relate to the Programme.

11.2 No Party will publish any announcement, description or advertisement regarding the subject matter of this Agreement without the prior written approval of the other Party as to the format and content thereof. Such restriction will only apply to publicity through advertisements or promotional material through the means of the print media, billboards, flyers, radio or television.

12. DISPUTE RESOLUTION

12.1 Any Party may refer any dispute arising from or in connection with this Agreement to the Executives of the Parties ("**the authorities**") for resolution. In the event that the authorities are unable to resolve the dispute within fourteen (14) Business Days after it has been referred to them, the dispute shall be referred to and be finally resolved by the Arbitration Foundation of South Africa ("**the Foundation**") in accordance with the rules of the Foundation by an arbitrator or arbitrators appointed by the Foundation.

12.2 The decision of the arbitrator shall be final and binding on the Parties to the dispute and may be made an order of any competent Court at the instance of any of the Parties to the dispute.

12.3 The provisions of this clause -

12.3.1 constitute an irrevocable consent by the Parties to any proceedings in terms hereof and no Party shall be entitled to withdraw there from or claim at any such proceedings that it is not bound by such provisions;

12.3.2 are severable from the rest of this Agreement and shall remain in effect despite termination of or invalidity for any reason of this Agreement.

13. BREACH

In the event of either Party ("**the defaulting party**") committing a breach of the material terms of this Agreement and failing to remedy such breach within a period of **fourteen (14) Business Days** after receipt of a written notice from another Party ("**the aggrieved party**") calling upon the defaulting party so to remedy, then the aggrieved party shall be entitled, at its sole discretion and without prejudice to any of its other rights in law, either to claim specific performance of the terms of this Agreement without further notice, or to cancel the Agreement and claim and recover damages from the defaulting party.

14. GENERAL

14.1 This document and annexure "A" hereto contain the entire MOA between the Parties and neither Party shall be bound by any undertaking, representation or warranty not recorded herein or added hereto as provided herein.

14.2 No alteration, variation, addition or agreed cancellation of this MOA shall be of any force or effect unless reduced to writing as an addendum to this MOA and signed by the parties or their duly authorized signatories.

14.3 No failure or delay on the part of either Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof, or the exercise of any other right, power or privilege. The rights and

remedies herein expressly provided are cumulative and not exclusive of any rights or remedies which the Parties would otherwise have.

- 14.4 No indulgence, leniency or extension of time which either Party ("the Grantor") may grant or show to the other shall in any way prejudice the Grantor or preclude the Grantor from exercising any of its rights in the future.
- 14.5 Both parties shall pay their own costs relating to the preparation and settlement of this MOA.
- 14.6 This MOA shall be for the personal benefit of each of the Parties and may not be assigned in whole or in part by either Party without the prior consent of the other Party, except that a Party's interest shall be assignable without the consent of the others in pursuance of any merger, consolidation or reorganization or voluntary sale or transfer of all or substantially all the assigning Party's assets where the merged, consolidated or reorganized corporation or entity resulting there from or the transferee of such sale or transfer has the authority and power effectively to perform that Party's obligations to the other under this MOA.
- 14.7 If any clause or term of this MOA should be invalid, unenforceable or illegal, then the remaining terms and provisions of this MOA shall be deemed to be severable there from and shall continue in full force and effect unless such invalidity, unenforceability or illegality goes to the root of this MOA. The specific details of the projects to be implemented shall be covered in the Service Level Agreement to be entered by the parties.
- 14.8 The Parties choose their addresses mentioned in this MOA for the purpose of any notices or legal process that may be served in terms of this MOA.

15. DOMICILIUM CITANDI ET EXECUTANDI

15. 1 The Municipality chooses as its *domicilium citandi et executandi* for the services of all documents and notices at:-

O R Tambo House

Myezo Park

Nelson Mandela Drive

Postal

Private Bag x6043

Mthatha

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15.2 The NDA chooses its *domicilium citandi et executandi* for the service of all documents and notices at:-

26 Wellington Road

Parktown

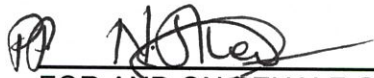
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15.3 Either Party may change its *domicilium citandi et executandi* by means of a written notice to the other Party, provided that such *domicilium* must be a physical address within the Republic.

15.4 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 seven (7) Business Days after the proven date of posting.

THUS DONE AND SIGNED AT:.....LUSIKISIKI.....ON THIS.....2nd
DAY OF.....JUNE.....2015

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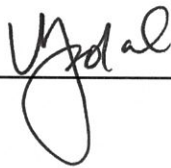


FOR AND ON BEHALF OF THE NDA
Ms VUYELWA NHLAPO IN HER CAPACITY AS
THE NDA CEO, duly authorised hereto

AS WITNESSES:

NAME: *V. MPOKELI*

DESIGNATION: *Programme Manager*

SIGNATURE: 



FOR AND ON BEHALF OF THE MUNICIPALITY
MR. OWEN N. HLAZO IN HIS CAPACITY
AS MUNICIPAL MANAGER

AS WITNESSES:

NAME:

DESIGNATION: *Member of Mayoral Committee*

SIGNATURE: 