

9.

MEMORANDUM OF AGREEMENT BETWEEN OVERSTRAND MUNICIPALITY AND NATIONAL DEPARTMENT OF PUBLIC WORKS AND INFRASTRUCTURE

9/1/2/2

S Madikane

Director: Economic and Social Development

14 July 2022

(028) 313 8066

1. Executive Summary

The Hermanus new Harbour development and its existence pose a substantial economic advantage for the area in agriculture and tourism-related activities. The report intends to provide Council with information that will assist in making an informed decision in entering into a Memorandum of Agreement with the Department of Public Works and Infrastructure (DPWI) for three years and as stipulated in the contents of the document.

2. Service Delivery and Budget Implementation Plan - IGNITE

Directorate: Economic, Social Development

3. Compliance with Strategic Priorities

Provision of democratic, accountable, and ethical governance
Provision and maintenance of municipal services
Promotion of tourism, economic and social development

4. Delegated Authority

None

5. Legal Requirements

Intergovernmental Relations Act (2012)

6. Background/Discussion/Evaluation/Conclusion**Background**

The Directorate has been negotiating with DPWI for more than 15 years through the Small Harbour Unit responsible for all proclaimed small Harbours in the country. One of the critical challenges identified throughout was the lack of transformation, resulting in a lack of participation of communities, which directly impacted its existence.

This is in line with the proposed Spatial Economic Development Framework, whose intention is to develop the Harbour around the promotion of tourism, increase the fleet in the Harbour and give SMMEs both formal and informal

space. Discussion around the creation of development spaces occurred and finally gave rise to the Multi-Purpose Centre (MPC) concept launched and implemented in the Overstrand Municipality as a pilot that can be replicated throughout the country.

Discussion

The agreement will provide a suitable platform and opportunity for local communities to display their talent and get exposure to markets. Under the guidance of the municipality, the MPC shall ensure that the stated objectives and proposed activities take place and achieve the stated intended goals/outcome.

Section 2 of the draft Memorandum of Agreement (MOA) (Annexure A) outlines the municipality's obligations as negotiated with the Department. The duties are acceptable, attainable, and within the municipal mandate.

7. Financial Implications

The Municipality will be responsible financially for the following, which responsibilities will be considered during the negotiations of the final MOA:

- Security system
- Rates
- Cleaning
- Internet Connection
- Telephone

Budget Availability/Provision 2022/2023 : Economic & Social Development:

Research and Advisory	20210629091869 - 11110200800000	R300 000
Project Management	20220630033467 - 11110200790000	R 30 000

8. Staff Implications

None

9. Comments from other Departments, Divisions, and Administrations

None

10. Annexures

Annexure A: Memorandum of Agreement

RECOMMENDATION TO THE COUNCIL:

1. that the draft MOA **be noted**;
2. that Council agrees in principle to the Hermanus Harbour Multi-Purpose Centre project;
3. that the Municipal Manager be authorised to negotiate and sign an agreement with the Department of Public Works and Infrastructure for the period of three (3) years as stipulated in the MOA;
4. that, the management and operations of the Multi-Purpose Centre be conducted in the spirit as espoused in the MOA; and
5. that LED, in consultation with the Municipal Manager, develop a project plan detailing staff component, management structure and functions involved, as well as a monthly programme for implementation and submission to Council and DPWI, on a regular basis.

RESPONSIBLE OFFICIAL:**S MADIKANE****TARGET DATE FOR IMPLEMENTATION:****15 AUGUST 2022**

ANNEXURE A

A1
9

public works
& infrastructure

Department:
Public Works and Infrastructure
REPUBLIC OF SOUTH AFRICA



MEMORANDUM OF AGREEMENT (MOA)

INTERGOVERNMENTAL COORDINATION: MANAGEMENT OF THE MULTI-PURPOSE CENTRE IN HERMANUS HARBOUR FOR LOCAL SMME DEVELOPMENT AND BENEFICIATION

Made and entered into between:

NATIONAL DEPARTMENT OF PUBLIC WORKS AND INFRASTRUCTURE

Herein represented by _____ in his/her capacity as _____
and duly authorized to do so (hereinafter referred to as "NDPWI")

and

Overstrand Local Municipality

Herein represented by _____ in his/her capacity as _____
and duly authorized to do so (hereinafter referred to as the "Municipality")

MEMORANDUM OF AGREEMENT (MOA)
BETWEEN THE NATIONAL DEPARTMENT OF PUBLIC WORKS AND INFRASTRUCTURE AND THE OVERSTRAND
MUNICIPALITY

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1. PARTIES

The Parties to this Agreement are:-

- 1.1 **National Department of Public Works and Infrastructure**
- 1.2 **Overstrand Local Municipality**

2. DEFINITIONS

In this Agreement, the following words and phrases have the meanings given to them below:

- 2.1 **"Agreement"** means this Agreement, together with any Annexures thereto.
- 2.2 **"Department"** means the National Department of Public Works and Infrastructure
- 2.3 **"Municipality"** means the Overstrand Local Municipality, established in terms of the Local Government: Municipal Structures Act, 1998 read with the Province of the Western Cape: Provincial Gazette 5588 dated 22 September 2000.
- 2.4 **"Hermanus Harbour"** means: the new Hermanus Harbour, which falls within the physical and jurisdictional boundary of the Overstrand Local Municipality.
- 2.5 **"MPC"** means the Multi-Purpose Centre that has been refurbished by the NDPWI and is also known as the Office Block of the Old Lusitania Building which comprises of a portion of Lot 21 (Lot 21B) and 23 respectively in Hermanus Harbour.

3. PREAMBLE

- 3.1 The Parties recognise that:
 - 3.1.1 The NDPWI in terms of the Government Immovable Asset Management Act 19 of 2007 (GIAMA) is the custodian of the properties within the Hermanus Harbour
 - 3.1.2 The implementation of the Operation Phakisa: Oceans Economy: Small Harbours Development initiatives will contribute substantially to growing the oceans economy, as well as national economic and social objectives.
 - 3.1.3 Cooperation, support and integration between spheres of government are

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essential in achieving the on-going growth and development of a prosperous South Africa.

- 3.1.4 Integration of government implementation plans and management strategies is essential for the broader common good as well as the economic success of the local, provincial and national economy.
- 3.1.5 Public access to the coastline and its economic potential is entrenched in South African law.
- 3.1.6 Hermanus Harbour presents significant potential for further economic growth, social development and local economic development within the Municipality.

4. PURPOSE OF THE AGREEMENT

- 4.1 To reduce to writing the agreement with respect to the use and management of the new MPC building in the Hermanus Harbour.
- 4.2 To establish a working relationship between the Parties as it relates to the goals and implementation of this Agreement.

5. OBLIGATIONS OF THE PARTIES

- 5.1 The obligation of the Municipality is as follows:
 - 5.1.1 The management and running the operations of the MPC in conjunction with the Hermanus Harbour Master for local beneficiation, SMME development and local economic development;
 - 5.1.2 The placement of tenants and rotation thereof in the MPC in consultation with the Hermanus Harbour Master and NDPWI;
 - 5.1.3 The upkeep and maintenance of the MPC for the duration of the agreement;
 - 5.1.4 The provision of security services for the MPC;
 - 5.1.5 To adhere to the Broad Based Black Economy Empowerment Policy in the allocation of space to SMMEs to ensure access to Previously Disadvantaged Individuals, Women, Youth and Person with disabilities;

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- 5.1.6 SMMEs will also be organised into formal structures for which legally binding contracts will be entered into thus ensuring the payment of rental which will go towards the upkeep of the building;
 - 5.1.7 Enter into intergovernmental arrangements with other Government Agencies that support SMME development;
 - 5.1.8 Responsible for all holding costs of the MPC including water and electricity; and
 - 5.1.9 Responsible for own rates and taxes in respect of the Lots i.e. a portion of Lot 21 (Lot 21B) and Lot 23, Hermanus Harbour in lieu of the use of the MPC for local beneficiation and SMME empowerment; and
 - 5.1.10 To provide the DPWI with quarterly reports in terms of job creation, SMME empowerment and revenue generated from the use of the MPC.
- 5.2 The obligation of the Department is as follows:
- 5.2.1 To ensure that the MPC is used for the local beneficiation, SMME development and local economic development within the Hermanus Harbour Precinct and Overstrand Municipality;
 - 5.2.2 To provide the Municipality with access to the MPC for its intended purposes;
 - 5.2.3 To provide oversight of the use of the MPC to ensure it is being utilised effectively and in line with Clause 5.1.

6. OUTCOMES

The Parties commit to achieving the following outcomes from the implementation of this Agreement:

- 6.1 The effective use of the MPC for the sole purpose of local beneficiation, SMME development and local economic development for Previously Disadvantaged Individuals, Women, Youth and Person with disabilities;
- 6.2 The effective management of the MPC in conjunction with the Harbour Master;

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7. DURATION AND TERMINATION OF THE AGREEMENT

- 7.1 This Agreement commences on the last date of signature hereto and remains in force for a period of 3 (three) years, unless extended by agreement by all Parties.
- 7.2 This Agreement may be terminated by either parties by providing 3 (three) months written notice.

8. CESSION

- 8.1 No party may cede, assign, delegate or transfer any of its rights or obligations under the MOA without the prior written consent of other party which the latter may in their sole discretion grant or refuse.

9. LIMITATIONS AND LIABILITIES

- 9.1 The NDPWI may only be held liable for damages, loss or injuries suffered or incurred by third parties provided that such damages, loss or injuries flows from structural defects of the immovable property due to the negligence of the NDPWI, officials or its authorised agents. For all other claims, damages, loss and injuries suffered by third parties (including but not limited to duty of care claims) as a result of access, use, permission to enter and remain in the property etc., granted either expressly, impliedly or in writing by the Municipality, the municipality shall be held liable and herewith indemnifies NDPWI as the custodian.

10. VARIATIONS TO THE AGREEMENT

- 10.1 Variations to this Agreement may only be made by consultation and agreement between the Parties. No amendment or variation of this Agreement shall be of any force or effect unless reduced to writing and signed by both Parties

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11. CO-OPERATION AND GOOD FAITH

11.1 The parties undertake at all times to provide each other every possible assistance and to extend to each other the maximum possible co-operation for purposes of attaining the objectives of this Memorandum. The parties shall at all-times consult with each other in the utmost good faith and the affairs between them shall be administered and promoted with the highest degree of integrity.

12. FORCE MAJEURE

12.1 If any Party is prevented or restricted directly or indirectly from carrying out all or any of its obligations under this Agreement, by any cause beyond the reasonable control of that Party, the Party so affected must, to the extent so prevented, be relieved of its obligations hereunder during the period of such events and is not liable for any delay or failure in the performance of any obligations hereunder or loss or damage either general, special or consequential which the other Party may suffer due to or resulting from such delay or failure, provided always that written notice of the occurrence constituting force majeure shall be given within 24 (twenty four) hours by the affected Party.

13. DISPUTE RESOLUTION

13.1 This Agreement shall be governed by and constructed in accordance with the laws of the Republic of South Africa. The Parties have a duty to avoid disputes, and the Parties must make every reasonable effort:

13.1.1 to avoid a dispute when exercising their statutory powers; or

13.1.2 to settle a dispute without resorting to judicial proceedings.

13.2 In the event of a dispute arising from this Agreement, the Parties shall make every effort to settle such dispute amicably.

13.3 If the dispute is not capable of being settled between the Parties amicably, such dispute shall be elevated to the Senior Management / Executive or their duly assigned representatives for mediation purposes.

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13.4 Should the dispute – despite such mediation – remain unresolved for a period of 30 (thirty) days after being referred, either party may declare such dispute a formal intergovernmental dispute by notifying the other party of such declaration in writing, in which event the Parties will follow the procedure as outlined in Section 42 of the Intergovernmental Relations Framework Act, 2005 (Act 13 of 2005).

13.5 The decision of the Arbitrator is final and binding.

14. NO WAIVER

14.1 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 does not constitute a waiver by such Party to require strict and punctual compliance with each and every provision of this Agreement.

15. WHOLE AGREEMENT

15.1 This document embodies the whole Agreement between the Parties. No party shall have any right or remedy arising from any undertaking, warranty or representation not included in this Agreement.

16. DOMICILIUM

16.1 The Parties choose as their domicilium et executandi the following addresses:

16.1.1 The NDPWI:

CGO Building,
256 Madiba Street,
Pretoria, 0001

16.1.2 The Overstrand Municipality:

Overstrand Civic Centre,
Magnolia Street,
Hermanus, 7200

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SIGNED at _____ on this the _____ day of _____ 2022 in the presence of the undersigned witnesses.

AS WITNESSES:

1. _____ For and on behalf of the **NDPWI**

2. _____


Name:

Capacity:

Who warrants his/her authority hereto

SIGNED at _____ on this the _____ day of _____ 2022 in the presence of the undersigned witnesses.

AS WITNESSES:

1.  _____ For and on behalf of the **Overstrand Municipality**

2. _____

Name:

Capacity:

Who warrants his/her authority hereto

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