



**MEMORANDUM OF AGREEMENT
CONCLUDED BY AND BETWEEN**

**THE SOUTH AFRICAN HERITAGE
RESOURCES AGENCY**

(Herein referred to as "SAHRA")

Represented herein by Dumisani Sibayi in his duly authorised capacity as the Acting
Chief Executive Officer of SAHRA

AND

HERITAGE WESTERN CAPE

(Herein referred to as "HWC")

Represented herein by Andrew Hall in his duly authorised capacity as the Chief
Executive Officer of HWC

PREAMBLE

WHEREAS section 8 of the National Heritage Resources Act 25 of 1999 ("NHRA") sets out the responsibilities and competence of heritage resources authorities by formalizing a three-tier system for heritage resource management, in which national level functions are the responsibility of the South African Heritage Resources Agency, provincial level functions are the responsibility of provincial heritage resources authorities and local level functions are the responsibility of local authorities if they have been deemed to be competent;

AND WHEREAS in terms of section 8 (2) of the NHRA, SAHRA is responsible for the identification and management of Grade I heritage resources and heritage resources in accordance with applicable provisions of the NHRA and for the co-ordination and monitoring of the management of the national estate in the Republic of South Africa;

AND WHEREAS in terms of section 8 (3) of the NHRA, Heritage Western Cape is responsible for the identification and management of Grade II heritage resources and heritage resources which are deemed to be a provincial competence in the Western Cape in terms of the NHRA;

AND WHEREAS in terms of section 8 (4) of the NHRA, a local authority is responsible for the identification and management of Grade III heritage resources and heritage resources which are deemed to fall within their competence in terms of the NHRA;

AND WHEREAS the NHRA provides for a permit application process that governs the management of heritage resources and such permits are issued by the responsible heritage resources authority and section 8(5) of the NHRA provides that where any such application is made for a permit or other authorisation to perform any action in terms of the NHRA or provincial heritage legislation, a formal protection by a heritage resources authority at a higher level takes precedence over any formal or general protection at a local level, without prejudice to any incentives offered at any level;

AND WHEREAS both Parties have agreed to cooperate and co-ordinate their efforts in the management of Grade I heritage resources, and are desirous of delineating their respective functions and responsibilities in doing so;

AND THEREFORE, the Parties wish to implement the provisions of this Agreement in accordance with the provisions of applicable law, particularly the legislation which governs the

SAH DBS

SAH

Parties' powers and functions; namely the National Heritage Resources Act and relevant provincial heritage resources legislation.

WHEREAS THE PARTIES AGREE AS FOLLOWS:

1. THE PARTIES

1.1. The party of the one part is the South African Heritage Resources Agency, referred to as "SAHRA". SAHRA is established in terms of the National Heritage Resources Act No. 25 of 1999 and has as its object the co-ordination of the identification and management of the national estate. Its functions are, inter alia, to establish national principles, standards and policy for the identification, recording and management of the national estate;

1.2. The party of the other part is Heritage Western Cape, referred to as "HWC". HWC is established in terms of section 23 of the National Heritage Resources Act No. 25 of 1999, in terms of Provincial Notice 336 of 23 October 2002 published in the Provincial Gazette of the Province of the Western Cape by the Provincial Minister of Cultural Affairs and Sport in the Western Cape. Heritage Western Cape is responsible for the management of the relevant heritage resources within the Western Cape province.

2. INTERPRETATION AND DEFINITIONS

2.1. Headings to the clauses of this Agreement are for the purposes of convenience and reference only, and shall not be used in the interpretation of the terms of this Agreement.

2.2. Words importing:

2.2.1. any one gender include the other gender/s;

2.2.2. the singular includes the plural and vice versa; and

2.2.3. natural persons include juristic entities and vice versa.

2.3. Nothing in this Agreement shall be interpreted or construed in a manner that conflicts with the Act or any legislation of the Republic of South Africa.

2.4. Where a term is not expressly defined in this Agreement, such term shall bear the meaning as defined in the Act.

2.5. The legislation referred to in this Agreement is the National Heritage Resources Act, 1999, or sections thereof, unless otherwise indicated.

WJ PDS

WJ

2.6. The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:

- 2.6.1. "**Act**" shall mean the National Heritage Resources Act 25 of 1999, amendments thereto and regulations promulgated in terms thereof;
- 2.6.2. "**Agreement**" means this Agreement and includes all written appendices, and any amendments to this Agreement;
- 2.6.3. "**Commencement Date**" means the date of signing of this Agreement by the last Party hereto;
- 2.6.4. "**Cultural Significance**" means aesthetic, architectural, historical, scientific, social, spiritual, linguistic or technological value or significance, as defined in the NHRA;
- 2.6.5. "**Grade I Heritage Resources**" shall mean heritage resources with qualities so exceptional that they are of special national significance, as contemplated in the Act;
- 2.6.6. "**Grade II Heritage Resources**" shall mean heritage resources which, although forming part of the national estate, can be considered to have special qualities which make them significant within the context of a province or a region, as contemplated in the Act;
- 2.6.7. "**Grade III Heritage Resources**" shall mean other heritage resources worthy of protection and shall not include Grade I and Grade II heritage resources, as contemplated in the Act;
- 2.6.8. "**Heritage Resource**" has the meaning ascribed to it in the Act namely any place or object of cultural significance as further defined in section 3 of the Act;
- 2.6.9. "**Heritage Resources Authority**" shall mean SAHRA as defined in section 1.1 hereof or, insofar as the Act is applicable in or in respect of a province, HWC;
- 2.6.10. "**Provincial Heritage Resources Authority**" shall mean HWC as defined in section 1.2 hereof;
- 2.6.11. "**Parties**" shall mean both SAHRA and HWC;
- 2.6.12. "**National Estate**" means the national estate as defined in the Act.

Handwritten initials/signature

Handwritten initials/signature

3. GENERAL RESPONSIBILITIES OF SAHRA

3.1. Within fourteen (14) days of the Commencement Date, SAHRA will provide to HWC:

3.1.1. A list of all Grade I Heritage Resources graded such by SAHRA as at the Commencement Date;

3.1.2. A map of each of the Heritage Resources identified on the list, failing which with a clear unambiguous description of the boundaries of such Heritage Resource.

3.2. Within fourteen (14) days of a decision taken by SAHRA to grade any Heritage Resource not appearing on the list contemplated in the preceding sub-paragraph, as a Grade I Heritage Resource, SAHRA shall inform HWC in writing of such decision and shall provide HWC with a map of each of each such new Grade I Heritage Resources identified, failing which with a clear unambiguous description of the boundaries of such Heritage Resource.

3.3. Within fourteen (14) days of a decision taken by SAHRA to grant provisional protection to a Heritage Resource under Section 29, SAHRA shall, in writing, inform HWC of such decision and shall provide HWC with a map of each of the Heritage Resources so protected, failing which with a clear unambiguous description of the boundaries of such Heritage Resource.

3.4. SAHRA is responsible for the processing and administration of permit applications under section 35 of the Act in all instances where the said section 35 application concerns a Grade I Heritage Resource or an area within such Heritage Resource.

3.5. SAHRA is responsible for the processing and administration of permit applications under section 36 of the Act in all instances. For the sake of clarity, the parties record that section 36 functions include the identification of the graves of victims of conflict.

4. GENERAL RESPONSIBILITIES OF HWC

In all areas in respect of which HWC has been assessed as having competency as contemplated by the Act, it shall have the following responsibilities:

4.1. Within fourteen (14) days of the Commencement Date HWC will provide a list of all Grade II Heritage Resources graded by it as such as at the Commencement Date.

4.2. Within fourteen (14) days of a decision taken by HWC to grade a Heritage Resource, not appearing on the list contemplated in the preceding paragraph, as Grade II, HWC shall inform SAHRA in writing of such decision.

- 4.3. HWC will notify SAHRA or cause SAHRA to be notified of any applications received that are made to it for section 27, 34 and 38 applications that fall within any Grade I Heritage Resource identified to HWC by SAHRA as contemplated in section 3 of this agreement before HWC considers such application.
- 4.4. HWC will notify SAHRA or cause SAHRA to be notified of any other impact assessment process under other legislation in terms of which the comment of a heritage resources authority is required and that fall within any Grade 1 Heritage Resources identified to HWC by SAHRA as contemplated in section 3 of this agreement, before HWC formulates its comments, having ensured that SAHRA had been given 31 days to formulate its comments. The comments of both SAHRA and HWC shall be forwarded to the applicant and to the deciding/ consenting authority.
- 4.5. HWC will inform all applicants that sections 35 concerning Grade I Heritage Resources identified by SAHRA as such as contemplated in clause 3 of this Agreement, fall within the jurisdiction of SAHRA and that such applications are to be submitted to SAHRA.
- 4.6. HWC will be responsible for applications under section 27, 34 or 38 concerning Heritage Resources that are situated within the areas of a Grade I Heritage Resource. In such cases SAHRA will be the commenting authority, i.e. HWC must furnish SAHRA or cause SAHRA to be served with a copy of the application before HWC considers such application and SAHRA will furnish its comments on the application within 30 days of receipt, failing which HWC will proceed to consider the applications in questions without comments from SAHRA. The comments provided by SAHRA must be considered by HWC in making its decisions. In the event that SAHRA did not comment within 30 days, HWC shall furnish its decision to SAHRA.
- 4.7. Should HWC resolve to make a decision that differs from the comments made by SAHRA in respect of an application made under section 27, 34 or 38 concerning a Heritage Resource as contemplated in the preceding sub-paragraph, HWC will convene a meeting as soon as possible, but not more than two weeks following such resolution. At such meeting the Parties will discuss the issues pertaining to the site and the application itself and endeavour to reach agreement on the way forward. The same shall apply in cases where HWC has made a decision in the absence of SAHRA's comments.
- 4.8. Should the parties be unable to resolve their differences, HWC will afford SAHRA, two weeks from the date of the last meeting held to issue a s29(4) Notice.

JA DBS

4.9. In the event that SAHRA does not provisionally proclaim the property HWC shall proceed to deal with the matter under the section 27, 34 or 38.

4.10. In the event that SAHRA does provisionally protect the site/area HWC, shall inform the applicant that SAHRA is the decision-making authority and the applicant shall be obliged to apply to under section 29.

5. TERMINATION

5.1. Should either Party breach any term and condition of this Agreement and fail to remedy such breach, (in writing by the aggrieved Party), within 30 (thirty) days of being notified in writing of the said breach, the aggrieved Party shall have the right to resort to the Dispute Resolution mechanism provided for in this Agreement.

5.2. Either Party shall be entitled to terminate this Agreement on 3 months' notice to the other Party on good cause.

5.3. The option of termination would be without prejudice to any alternative or additional right of action or remedy available to the aggrieved Party.

6. NOTICES AND DOMICILIA

6.1. The Parties choose as their *domicilium citandi et executandi* the following respective addresses for all purposes arising out of or in connection with this Agreement at which addresses all processes, notices and communications arising out of or in connection with this MOA, may validly be served upon or delivered to the Parties:

SAHRA: **111 Harrington Street**
Cape Town
8001

HWC: **3rd Floor**
Protea Insurance Building
Greenmarket Square
Cape Town

6.2. Any notice given in terms of this MOA shall be in writing and shall be delivered to the

DB

MR

addressee.

7. WARRANTIES

Neither SAHRA nor HWC, nor anyone on their behalf shall be regarded as having given any warranties, or made any representations; guarantees or undertakings giving rise to this Agreement.

8. DISPUTE RESOLUTION

- 8.1. In the event of a dispute arising between the Parties relating to any matter pertaining to this Agreement or the interpretation thereof, the following process will be followed by the Parties:
- 8.2. The Party raising the dispute must deliver to the other Party a notice within 14 days of the dispute arising, notifying the other Party of the nature of the dispute, with sufficient particularity so as to enable the other Party to meaningfully response thereto;
- 8.3. Within 14 days of receipt of the notice the CEO of SAHRA, or any acting CEO at that time, and the CEO of HWC or any acting CEO at that time, will meet to discuss the dispute, with a view to resolving the dispute/s in question, the idea being that the dispute should be resolved as speedily as reasonably practicable, and with as little formality as possible;
- 8.4. In the event of the above process, contemplated in the preceding sub-paragraph, failing to lead to an amicable resolution of the dispute, such disagreement or dispute shall be finally resolved by arbitration. An arbitrator will be appointed by agreement between the Parties within 14 days of the dispute being declared unresolved by the Parties' COE's/Acting CEO's, failing which, the Chairperson of the Cape Bar Council shall appoint the arbitrator, at the request of the Parties or any one of them;
- 8.5. The decision of such arbitrator shall be final and binding on both parties hereto, and the award or awards interim or final of such arbitrator may be made an order or orders of any competent Court in South Africa on the application of either party;
- 8.6. The parties consent to the jurisdiction of the Western Cape High Court;
- 8.7. Nothing herein shall prevent either Party from applying for interdictory relief to the High Court.

AA DBS

M

9. VALIDITY AND SEVERABILITY

If any provision or term of this Agreement found or held to be invalid or unenforceable, the validity and enforceability of all the other provisions of this Agreement will not necessarily be affected thereby and the impugned term will be severed from the remaining terms.

10. GENERAL

10.1. This Agreement does not constitute either of the Parties an agent or legal representative of the other for any purposes whatsoever and neither of the Parties shall be entitled to act on behalf of, or to represent the other unless duly authorised thereto in writing.

10.2. No alteration, variation or cancellation of this Agreement or any of the terms hereof will be of any force or effect, unless reduced to writing and signed by each of the Parties.

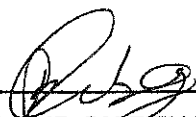
10.3. Each Party will bear its own costs in relation to the preparation of this Agreement.

11. WAIVER AND RELAXATION

11.1. No indulgence on the part of either Party in respect of any of its rights in terms of this agreement or the obligation of the other Party will constitute a waiver of rights.

11.2. No indulgence, leniency or extension of a right, which either of the Parties may have in terms of this Agreement, and which either Party ("the grantor") may grant or show to the other Party, shall in any way prejudice the grantor, or preclude the grantor from exercising any of the rights that it has derived from this Agreement, or be construed as a waiver by the grantor of that right.

SIGNED AT CAPE TOWN ON THIS DAY OF 25 SEPTEMBER 2012



FOR AND ON BEHALF OF SAHRA
(she/he being duly authorised)





SIGNED AT Cape Town ON THIS DAY OF 28th August 2012

C. B. Hall

FOR AND ON BEHALF OF HWC
(she/he being duly authorised)

Halley

RM