

ANNEXURE TO ITEM
C 04/04/16

MEMORANDUM OF AGREEMENT

BETWEEN

THE CITY OF CAPE TOWN

AND

LIFESAVING WESTERN CAPE

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Annexure A: List of Lifesaving Clubs

Annexure B: List of Equipment

THE PARTIES

The Parties to this Memorandum of Agreement are:

The **CITY OF CAPE TOWN** (the "City") represented by **MS LOKIWE MTWAZI** in her capacity as the **Executive Director: Community Services**, who is duly authorised to do so.

LIFESAVING WESTERN PROVINCE, an association affiliated and subject to the control of Lifesaving Western Cape and Lifesaving South Africa ("LWP"), represented by **Mr** _____, who is duly authorised to do so.

1. INTERPRETATION AND PRELIMINARY

1.1 In this Agreement:

1.1.1 "**Basic Equipment**" means the equipment referred to in Annexure B of the Agreement;

1.1.2 "**Business Day**" means any day except a Saturday, Sunday or official public holiday in South Africa;

1.1.3 "**Clubs**" means the lifesaving clubs as set out in Annexure A;

1.1.4 "**Grant**" means the funds transferred to LWP for the purpose stated in the Agreement;

1.1.5 "**MFMA**" means the Municipal Finance Management Act No. 56 of 2003;

1.1.6 "**Parties**" means the signatories to this Agreement, and "**Party**" means either of them (as the context indicates);

1.1.7 "**Region**" means the Cape Town Metropolitan Area;

1.1.8 "**Signature Date**" means the date on which this Agreement is signed by the Party signing it last in time;

1.2 Any reference in this Agreement to:

1.2.1 a Party includes that Party's successors and permitted assigns;

- 1.2.2 a Party shall, if such Party is liquidated or sequestrated, be applicable also to and binding upon that Party's liquidator or trustee, as the case may be;
- 1.2.3 the word "*including*" shall be construed liberally as meaning "*including without being limited to*"; and
- 1.2.4 an enactment, is to that enactment as amended from time to time.
- 1.3 If any provision in a definition in this Agreement is a substantive provision conferring rights or imposing duties on any Party, notwithstanding that it is only in this interpretation clause, effect shall be given to it as if it were a substantive provision in the operative part of this Agreement.
- 1.4 When any period is prescribed in this Agreement, that period shall be reckoned exclusively of the first day and inclusively of the last day, unless the last day is not a Business Day, in which case the last day shall be the next succeeding Business Day.
- 1.5 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 that term has not been defined in this interpretation clause.
- 1.6 The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination, or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for such.
- 1.7 The rule of construction that, in the event of ambiguity, a contract shall be interpreted against the party responsible for the drafting or preparation of the contract shall not apply to this Agreement.

2. INTRODUCTION

- 2.1 The City has the responsibility to administer local government matters relating to various sports and recreation services in Cape Town, including *inter alia* the provision of lifesaving services.
- 2.2 LWP comprises of affiliated lifesaving Clubs in the Region. The aim and objectives of LWP include providing lifesaving services, encouraging the formation of lifesaving Clubs within the Region, developing lifesaving within the Region and assisting Clubs with the acquisition of relevant equipment.
- 2.3 The City seeks to provide LWP with a lifesaving development Grant in terms of section 67 of the MFMA to assist both LWP and affiliated Clubs to develop lifesaving within the Region.
- 2.4 The purpose of this Agreement is to formalise the relationship between the Parties and set out the terms and conditions applicable to the payment of the Grant and ancillary matters thereto.

3. COMMENCEMENT DATE & DURATION

- 3.1 The Parties agree that with effect from the Signature date, this Agreement supersedes and replaces any and all other agreements regulating the relationship between the Parties and the provisions of this Agreement shall govern the relationship between the Parties.
- 3.2 The Agreement will remain in force for the period of 3 (three) years.
- 3.3 The Parties agree that the Agreement will be reviewed by the City 3 (three) months before the termination date. The City reserves the right to award further grants to LWP subject to LWP's satisfactory compliance with the terms and conditions of this Agreement.
- 3.4 Notwithstanding anything to the contrary, the provisions of clauses 15,16,17,18,21,23 will survive any termination of this Agreement.

4. **RESPONSIBILITIES**

4.1 The Parties undertake the following:

4.2 The City will -

4.2.1 assist LWP and the Clubs with a Grant to develop the sport of life saving within the Region;

4.2.2 engage monthly with LWP to review the performance of the Clubs against their development goals; and

4.2.3 pay the Grant to LWP subject to LWP complying with the relevant requirements set out in the Agreement.

4.3 LWP will -

4.3.1 ensure that Clubs include development programmes in their business plans in compliance with the provisions of clause 6 of the Agreement in order to receive an allocation from the Grant;

4.3.2 ensure that the targeted compliant Club beneficiaries receive the funds;

4.3.3 comply with all reporting, financial management and auditing requirements as stipulated by the City in relation to management of the Grant as set out in clause 5 below;

4.3.4 report to the City Clubs who are not complying with the development programme initiatives set out in their business plans approved by the City. In such instances, the City may then exercise a discretion to request LWP to claim refunds from the Club and to reallocate it to other compliant clubs on a pro-rata basis.

5. **REPORTING AND REVIEW**

5.1 LWP shall maintain appropriate accounting records in compliance with generally accepted accounting practices to record the utilisation of the funding.

- 5.2 LWP will submit monthly reports to the City on the allocation of the Grants to the Clubs.
- 5.3 LWP will submit quarterly statements to the City on how LWP and the Clubs are spending their allocation of the Grant. The statements will track the Clubs' development programmes included in their business plans and performance against targets to enable the City to assess whether Clubs are meeting their agreed development targets.
- 5.4 LWP will provide within 3 (three) months after the end of its financial year, audited financial statements to the City.
- 5.5 LWP will undertake an annual financial audit through the services of an independent auditor.
- 5.6 LWP will submit an annual financial audit report to the City in October 2016.
- 5.7 LWP will submit an annual operating report in October 2016 detailing daily operations, research, education and awareness.
- 5.8 LWP will implement effective, efficient and transparent financial management as well as internal control systems to guard against fraud, theft and financial misconduct.
- 5.9 LWP will comply with all national employment, tax, and accounting legislation and standards.
- 5.10 At the City's written request, LWP shall allow the City or its representative to inspect and copy any document, record, book of account, or bank statement relating to the utilisation of funding.
- 5.11 The City reserves the right to request through LWP access to the audited financial statements of the Clubs who received the Grant allocation.
- 5.12 LWP shall co-operate fully with any financial audit procedure of the City or its representative and shall furnish any document, record, book of account, or bank statement on written request.

6. COMPLIANCE WITH SECTION 67 OF THE MFMA

6.1 LWP warrants and declares:

- 6.1.1 that it is registered with the South African Revenue Services as a non-profit organisation;
- 6.1.2 that it has the capacity to comply fully with the terms and conditions of this Agreement;
- 6.1.3 that it will report monthly to the City on all expenditure incurred against funds transferred to it by the City in the form of a monthly expenditure report;
- 6.1.4 that it will provide its audited annual financial statements to the City upon request;
- 6.1.5 that it implements effective, efficient and transparent financial management and internal control systems to guard against fraud, theft and financial mismanagement;
- 6.1.6 that all funds received or earned by it are utilised in furtherance of its main objectives and purpose and that no portion thereof is paid over as profit earnings to members, directors, owners, shareholders or employees; and
- 6.1.7 that its main objectives and purpose is to:
 - 6.1.7.1 promote lifesaving as a sport in the waters surrounding the Cape Peninsula;
 - 6.1.7.2 provide voluntary lifesaving services at the Clubs;
 - 6.1.7.3 promote public education and awareness and accurate and fair publicity;
 - 6.1.7.4 provide skills development and training for lifesavers;
 - 6.1.7.5 identify the establishment of new surf lifesaving clubs;

6.1.7.6 foster and establish partnerships with other organisations and individuals; and

6.1.7.7 conserve and protect marine resources.

7. DEVELOPMENT PROGRAMME

7.1 The Parties agree that LWP will ensure that Clubs include in the development programmes of their business plans provisions dealing with the following:

7.1.1 recruitment of lifeguards;

7.1.2 training and certification of lifeguards;

7.1.3 maintenance and purchasing of Basic Equipment;

7.1.4 promotion of volunteer services; and

7.1.5 measures to ensure compliance by Clubs with development programs.

8. FEES AND FINANCIAL ARRANGEMENTS

8.1 The City will pay the Grant to LWP on the following terms:

8.1.1 The Grant will be split on the following basis:

8.1.1.1 80% (eighty percent) of the Grant will be allocated to the Clubs; and

8.1.1.2 20% (twenty percent) of the Grant will be allocated to LWP.

8.2 The Grant amount for the 2016/2017 financial year shall be R850 000 (eight hundred and fifty thousand rand).

8.3 The Parties agree that for the 2016/2017 financial year, the full amount of the Grant will be paid to LWP who will then pay the agreed allocations to the respective Clubs in accordance with Annexure A to the Agreement after the City has approved their respective business plans.

9. **EQUIPMENT**

9.1 In furtherance of their objectives, both the City and individual Clubs will purchase equipment related to life saving services. Equipment purchased by the City for the purpose of fulfilling its responsibilities will be registered on the City's asset register.

9.2 From time to time, where required, Clubs will be allowed to use the equipment owned by the City and life guards employed by the City will be entitled to use equipment owned by the Clubs.

10. **MEETINGS**

The Parties agree to meet every second month unless urgent engagement is required in which instance the relevant representatives of the City and LWP will co-ordinate meetings at mutually agreed times.

11. **SETTLEMENT OF DISPUTES**

11.1 Should any dispute or claim arise between the Parties concerning this Agreement, the Parties shall endeavour to resolve the dispute by negotiation within 7 (seven) days of the dispute arising, which negotiation shall be conducted by the chairperson of LWP and the Director: Sports, Recreation and Amenities for the City.

11.2 Should the Parties mentioned in clause 11.1 be unable to resolve the dispute, then the Parties may agree in writing to have such dispute submitted to and decided by arbitration in accordance and subject to the provisions of the Arbitration Act 42 of 1965.

11.3 Unless otherwise agreed in writing by all the Parties, any such negotiation, mediation or arbitration shall be held in Cape Town.

11.4 Notwithstanding the provisions of the clauses above, any party may seek urgent relief from a competent Court.

12. NOTICES AND DOMICILIUM

12.1 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 exercise of any option), the following addresses:

12.1.1 **THE CITY:** as the Telephone
Number +27 (021) , Email Address: @capetown.gov.za;
and

12.1.2 **LWP** as the Telephone Number +27 (021) XXXXXX,
Email Address: @capetown.gov.za.

12.2 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing to the Parties' designated addresses, which communication includes tracked electronic transmissions.

12.3 The Parties shall be entitled, from time to time by written notice to the other, to vary their *domicilium* to any other address within the Republic of South Africa.

13. 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 unreasonably withheld. 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.

14. ENFORCEMENT AND WAIVER

14.1 A failure to enforce or to require the performance of any of the provisions of this Agreement at any time, shall not be construed to be a waiver of such provision and shall not affect either the validity of this Agreement, or any part hereof, or the right of any Party to enforce the provisions of this Agreement.

14.2 No waiver of any of the terms and conditions of this Agreement will be binding for any purpose, unless reduced to writing and signed by the Party giving it, and any such waiver will be effective only in the specific instance and for the purpose given.

15. CONFIDENTIALITY

15.1 The Parties recognise that by nature of the relationship between them, they may have occasion to review and receive proprietary or confidential information or material of each other.

15.2 The Parties agree to maintain secret and confidential any such confidential information disclosed by the other that was not previously known to a party or to the general public, or that was not in the public domain prior to such disclosure.

15.3 Upon request the Parties agree to promptly return to each other any written material and other forms of material reproduction which contain confidential information obtained from or through a party, including all memoranda, copies or notes made by a party or disclosed or transmitted to a party by the other party which constitute confidential information.

15.4 The Parties agree that they shall protect any confidential information that may be disclosed pursuant to the provisions of this Agreement, using the same standard of care that each Party applies to safeguard its own proprietary, secret or confidential information and that the information shall be stored and handled in such a way as to prevent any unauthorised disclosure.

16. MARKETING AND INTELLECTUAL PROPERTY

16.1 The City's emblem and logo shall not be used by LWP without the City's prior consent. All marketing and publicity will be discussed and agreed to by the Parties.

16.2 The Parties hereby agree that ownership of all title, copyright, industrial, and intellectual property rights in any content of any kind, will remain vested in the

owner thereof, unless specifically otherwise agreed in writing between the Parties.

- 16.3 The Parties further agree that all communications including media releases, advertisements, advertising campaigns, promotions by either Party to third parties in terms of this Agreement shall be subject to prior approval by the City in terms of its policy and delegation.
- 16.4 The Parties agree that no statements will be released to the media regarding issues pertaining to the management and allocation of the lifeguards unless agreed to in writing by both Parties. Only the office of the Mayoral Committee Member: Community Services or such other mayoral committee members as may be tasked with oversight of lifeguards may approve the media statements on behalf of the City. Only the Chairperson of LWP may approve the media statements on behalf of LWP.
- 16.5 All enquiries or requests for comment from the media received by members of the City, LWP or the Clubs must be referred to the office of the Mayoral Committee Member: Community Services and the Chairman of the LWP to enable them to issue a joint statement.

17. LIMITATION OF LIABILITY AND INDEMNITY

- 17.1 Without detracting from, and in addition to, any of the other indemnities in this Agreement, LWP shall be solely liable for and hereby indemnify and holds harmless the City against all claims, charges, damages, costs, actions, liability, demands and/or proceedings and expense in connection with or arising from, out of, or in connection with this Agreement.
- 17.2 LWP agrees to indemnify and hold harmless the City against any and all liability, loss, threatened loss or expense suffered by the LWP, its members, employees, contractors, volunteers or operators arising from, out of, or in connection with this Agreement.
- 17.3 LWP specifically and expressly agree and indemnify the City against any action, which may be instituted or lodged by any third party against LWP, its members, employees, contractors, volunteers, operators and/or the City for any loss suffered by any third party as a direct result of any negligent act or

omission committed by the LWP and/or its members, employees, contractors, volunteers or operators in the course of this Agreement.

- 17.4 Indemnity under this Agreement shall commence on the date of Signature.
- 17.5 The Parties agree to notify each other in writing, within 48 (forty eight) hours from the date of the indemnity becoming enforceable of any claim made against the Party and the obligation indemnified against.
- 17.6 The City will not be liable to LWP for any indirect or consequential loss or damage, including but not limited to, loss of profit, revenue, anticipated savings, business transactions or goodwill or other contracts whether arising from negligence or breach of contract.

18. INJURY OR DAMAGE TO PERSON OR PROPERTY

- 18.1 LWP shall indemnify and keep indemnified the City against all losses and against all claims for injury or damage to any person or property whatsoever which may arise out of or in consequence of LWP providing lifesaving services and shall also indemnify the City against all identified claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.
- 18.2 No Party will not be liable for any direct damages, losses or expenses incurred by the other party pursuant to the performance by either Party of its obligations in terms of this Agreement.

19. FORCE MAJEURE

- 19.1 If either 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.

- 19.2 The Parties agree that, should force majeure last more than 6 (six) weeks, the Party who has not invoked force majeure to excuse non-performance of its obligations may terminate this Agreement by giving 10 (ten) days written notice to the other Party.

20. **BREACH AND TERMINATION**

- 20.1 In the event that the Parties fail to fulfill their obligations in terms hereof or commit a breach of any of their obligations or fail to provide any documents, matter and information, as herein before referred to or contemplated, or fail to make payment of any amounts they have agreed and undertaken to pay, and subsequently fail to fulfill such obligations or remedy such breach within 14 (fourteen) days of receipt of a written notice requiring it to do so, then the Party giving such notice shall be entitled:

- 20.1.1 forthwith to cancel this Agreement and to claim such damages as it may sustain; or
- 20.1.2 compel specific performance by the defaulting Party to fulfil its obligations in terms hereof.

- 20.2 Any termination pursuant to the provisions of clause 20.1 shall be without prejudice to any claim a Party may have in respect of any prior breach of the terms and conditions of this Agreement by the other Party.

- 20.3 The aggrieved Party's remedies in terms of this clause are without prejudice to any other remedies to which the aggrieved Party may be entitled in law.

- 20.4 Notwithstanding anything to the contrary contained herein, the City, without prejudice to any other rights which it may have in law shall be entitled to cancel this Agreement immediately if LWP:

- 20.4.1 fails to make and implement the necessary plans to ensure that all funds obtained through this Agreement are expended for the

intended purposes by the last day of the City of Cape Town's financial year;

- 20.4.2 other than for the purposes of reconciliation or amalgamation, is placed under voluntary or compulsory liquidation or under judicial management or under receivership or under the equivalent of any of the foregoing;
 - 20.4.3 takes steps to deregister itself or is deregistered;
 - 20.4.4 fails to satisfy a final and unappealable judgment against it for a period of 2 (two) months or more after it comes to its notice;
 - 20.4.5 makes any arrangement or composition with its creditors generally or ceases or threatens to cease to carry on business; or
 - 20.4.6 in the reasonable opinion of the City, has deteriorated materially in terms of its financial position.
 - 20.4.7 fails to comply with or satisfy any provision in the MFMA.
- 20.5 Should this Agreement be cancelled in terms of clause 19.2, 20.1 or clause 20.4, then funding already paid to LWP shall immediately be paid to the City with interest *a tempora morae*.
- 20.6 Cancellation or termination of this Agreement will not relieve a party of obligations imposed upon such party by statute or regulation or by this Agreement prior to its termination.

21. IMPLEMENTATION AND GOOD FAITH

The Parties shall at all times during the continuance of this Agreement observe the principles of good faith towards one another in the achievement of the objectives of this Agreement.

22. GENERAL

- 22.1 This document constitutes the entire record of this Agreement between the Parties.

22.2 No Party is bound by any expressed or implied term, representation, warranty, promise or the like not recorded herein.

22.3 In the event that any of the terms of this Agreement are found to be invalid, unlawful or unenforceable, such terms will be severable and the remaining clauses remain of full force and effect. If any invalid term is incapable of amendment to render it valid, the parties agree to negotiate an amendment to remove the invalidity.

23. NATURE OF RELATIONSHIP

23.1 This Agreement does not create an employment relationship, partnership, joint venture, contractor or agency relationship between the Parties and neither Party shall be liable for the debts of the other Party, howsoever incurred. The Grant provided by the City to LWP is solely in relation to LWP developing lifesaving sport at a Club level within the Region in accordance with the terms and conditions set out in the Agreement.

23.2 LWP has no authority or right to bind the City to any third party and it shall be personally liable for any act purporting to so bind the City. Neither shall the City have the authority or right to bind LWP.

SIGNED AT CAPE TOWN ON THIS DAY OF 2016.

As witnesses:

1.

2.

The City (Herein represented by
duly authorised thereto))

SIGNED AT ON THIS DAY OF
2016.

As witnesses:

1.

2.

LWP (Herein represented by duly
authorised thereto)

BIG BAY LIFESAVING CLUB		
Silwerstroomstrand	Melkbosstrand	Big Bay Beach
MILNERTON LIFESAVING CLUB		
Milnerton Beach		
CLIFTON LIFESAVING CLUB		
Clifton Beach		
NO LIFESAVING CLUB		
*Lifeguards sourced from other areas		
Maiden's Cove Beach and Tidal Pool		Camps Bay Beach and Tidal Pool
LLANDUDNO LIFESAVING CLUB		
Llandudno Beach		
NO LIFESAVING CLUB		
*Lifeguards sourced from other areas		
Hout Bay Beach		Kalk Bay Beach
FISH HOEK LIFESAVING CLUB		
Dangers Beach	Clovelly Beach	Fish Hoek Beach
SUNRISE LIFESAVING CLUB		
Muizenberg Main Beach		Sunrise Beach
STRANDFONTEIN LIFESAVING CLUB		
Strandfontein Beach and Tidal Pool		
MNANDI LIFESAVING CLUB		
Mnandi Beach		
MONWABISI LIFESAVING CLUB		
Monwabisi Beach and Tidal Pool		
MACASSAR LIFESAVING CLUB		
Macassar Beach		
STRAND LIFESAVING CLUB		
Strand Beach		Gordon's Bay Beach
KOGEL BAY LIFESAVING CLUB		
Bikini Beach		Kogel Bay Beach

ANNEXURE D

LIFESAVING BASIC EQUIPMENT: per beach
1. Uniform (Tracksuit, T-shirt, Shorts and Bather) per person
2. Torpedo Bouy (One per lifeguard)
3. First Aid Kit (Quantity dependant on size of beach)
4. Malibu Board
5. Rescue Craft + Paddle
6. Spinal Board with Harness and Head blocks
7. Oxygenator 3L with regulator and Mask
8. Whistle (One per lifeguard)
9. 2 pairs flippers
10. 2x Signal Flags
11. 2XBathing Area Flag
12. 2X No Swimming Flag
13. 2x Shark Flag
14. 1x Radio