

MEMORUNDUM OF UNDERSTANDING

BETWEEN

MUNICIPAL COUNCIL OF MBABANE

&

**MBABANE CITY RATEPAYERS AND
DEVELOPERS ASSOCIATION**

1. BACKGROUND

- 1.1. The Municipal Council of Mbabane (hereinafter referred to as MCM or Council) is established in terms of the urban Government Act of 1968 to manage the Municipality of Mbabane.
- 1.2. The council through its elected members and through its management has a duty in terms of the establishing legislation to manage the affairs of the city to the best to their ability.
- 1.3. The Mbabane Rate payers and developers Association (hereinafter referred to as the Association) is an Association of Ratepayers of the City of Mbabane and is registered as an organization in terms of the laws of the country.
- 1.4. The Council identified the Association as a key Stakeholder in the municipality with whom it wishes to engage of a continuous basis and maintain good relation.
- 1.5. The Association recognizes that Council has a duty to comply with legislation in the execution of its duties in providing services to the community of Mbabane.
- 1.6. The Association believes that the best interest of its members and the city would be best served by a policy of constructive consultations and good relations with the Council in matters that directly affect their members.
- 1.7. The two parties have the interest of ensuring that this Memorandum of Understanding (herein after referred to as MOU) furthers the aims and objectives of their respective missions.
 - 1.7.1. The mission of the Council is to *stimulate economic growth and provide all stakeholders with quality services and good governance.*
 - 1.7.2. The mission of the Association is *to provide its members with a credible high profile and recognizable umbrella organization committed to encouraging dialogue between the Association and the City Council of Mbabane and other relevant authorities.*
- 1.8. Therefore, the two parties hereby agree to establish this MOU on the terms and conditions set herein.

2. PURPOSE

The purpose of this Memorandum of Understanding is to establish a framework between the Council and the association for cooperation on of consultative matters and to promote good relations between the parties to the benefit of the City of Mbabane.

3. AREAS OF CONSULTATION AND COOPERATION

- 3.1. In determining the areas of consultation the parties to this MOU hereby acknowledging the ultimate legal responsibility of the Council to carryout its obligations unhindered.
- 3.2. The Council agrees to involve the Association in :
 - 3.2.1. Developing strategies to educate the residents and ratepayers of their rights and obligations in the development of the City.
 - 3.2.2. Development of the Council's strategic plan, Annual operating plan, sources or revenue documents, welfare programs, community safety programs.
 - 3.2.3. Development of the City's infrastructure, recreational facilities, projects and the general upkeep of the City.
 - 3.2.4. Amendment of laws that govern the Council's operations including, but not limited to the Urban Government Act, Rating Act, Town Planning Act and bye-law.
 - 3.2.5. Other matters that may be identified and agreed to in writing by the parties.
- 3.3. The Association will endeavor to assist Council, using established channels, to improve service delivery to the membership.
- 3.4. The Association will encourage its membership to honour its obligations to the Council.

4. COOPERATION

- 4.1. The parties agree to encourage dialogue between the parties with a view of ensuring good cooperation and consultation in all matters of mutual interest.
- 4.2. Association agrees to cooperatively work towards the furtherance of Council obligations as an institution duly entrusted by the laws of the country to administer the City of Mbabane.
- 4.3. The parties recognize that as much as the Association represents the interests of its membership, the Council remains legally and directly responsible for the interest of all the people who have a stake in the running and administration of the City of Mbabane.
- 4.4. The parties agree to ensure that in whatsoever dealing, each party WILL endeavour to protect the dignity and good name of the other party both in the media and any other forum and to discourage character assassination.
- 4.5. The Association will assist Council in lobbying for legislation and national policies that will promote the development of the City and the quality of life for the Residents.
- 4.6. The Association shall represent the interest of the membership stated in Article 8 of the Constitution of the Association and the Council undertakes to respect and observe the constitutional responsibilities of the Association.

5. APPLICATION AND REPRESENTATION

- 5.1. The effect of this MOU shall only be to the membership of the Association who fully meet Article 8 of the constitution of the Association.
- 5.2. Parties to this MOU shall be represented by those who are legitimately in office at that particular time (that is elected Councillors and Officials according to laws of the Country and elected full members of the Association according to the constitution of the Association).

6. IMPLEMENTATION

- 6.1. The parties to this MOU shall be mutually liable for ensuring that the responsibilities stated herein are implemented.
- 6.2. Where one party fails to meet its obligations as stated or envisaged by this MOU, the other party shall, in writing, encourage the defaulting party to honour its obligation forthwith by a written notice and stipulate time frame within which the default shall be corrected. Failure by the defaulting party to adhere to the request within a reasonable time may be considered a breach of this MOU.
- 6.3. Nothing from this MOU shall obligate any party to perform any act which may be unlawful or is not sustainable

7. FINANCIAL ARRANGEMENT

- 7.1 This MOU is neither a fiscal nor funds obligation document. Any activities involving reimbursement or contribution of funds between the parties of this MOU will be handled in accordance with applicable laws, regulations and procedures.
- 7.2 Unless otherwise agreed and specifically recorded, each party shall remain responsible for financing any activity that directly or incidentally ensues from the dictates of this MOU. No party shall financially obligate the other party unless such financial obligation has been mutually agreed to and is on record.
- 7.3 This MOU does not obligate the parties to expend appropriations on any particular project or purpose or to enter into any agreements, contracts, or other obligations, even if funds are available.

8 AUTHORITIES

- 8.1 In carrying out the responsibilities envisaged and stated in this MOU, the parties shall be guided by the establishing and empowering instruments of each party and the authority of these instruments shall supersede every article of this MOU.
- 8.2 In case it is found that an article contained in this MOU is in conflict or incongruent or inconsistent to the authorities cited in Article 8 of this MOU or any subsequent authority of legal stature guiding the establishment and or functionality of the Council and the Association, such article, phrase or declaration shall be considered of no effect and proper corrective measures shall be taken to address the inconsistency.
- 8.3 The Association's establishing authority shall be its current constitution as amended from time to time and or subsequent charter approved as such by the members of the Association in a general meeting.
- 8.4 The Council's establishing and guiding authorities shall be the Urban Government Act 8 of 1969, the Rating Act of 1995 and other subsequent statutes and ordinances that include, but not limited to regulations, bye-laws, Standing Orders inter alia.
- 8.5 Where there is a conflict between the authorities of the parties envisaged by Article 8, whether factual or conjectured, the supreme authority shall be the one established by an Act of Parliament.

9 COMMUNICATION

- 9.1 The parties hereby agree that nothing contained in this MOU will limit the right and obligations of each party to communicate with its stakeholders on matters of mutual interest without having to consult the other party unless such communication is solely a product of this MOU and an agreement had been reached on how such matter would be communicated.
- 9.2 Communication between the parties shall be done through the offices of the Town Clerk in the part of Council and the Secretary General in the part of the Association.
- 9.3 Communication through the media or any other avenue on matters which touches on the Council or the Association shall be done by the legitimate spokespersons of the Council and the Secretary General of the Association.
- 9.4 Nothing that is pending or is for the attention of these parties shall be discussed by the Association with government Ministry or any arm of government unless a deadlock has been declared on a matter by both parties to this MOU.
- 9.5 Both parties agree that any communication between the parties and information distributed to the other party in consultation meetings in confidence shall be treated as confidential.

10 BREACH , DURATION AND TERMINATION

- 10.1 A breach shall be deemed to have occurred where either party fails to adhere to the conditions set herein by either commission or omission thereto.
 - 10.1.1 Where a breach has been committed, the party at fault will be expected to make amend of the breach thereof by either elimination or restoration within a reasonable period set by the aggrieved party.
 - 10.1.2 Failure to take the appropriate remedial action set in 10.1.1 above shall give the aggrieved party the right to either call for an immediate remedial action or to declare the breach an irremediable act that could render the MOU null and void.
 - 10.1.3 Where the breach is disputable the parties shall refer the issue to an arbitrator agreed to by both parties. Failing which, within fourteen days after either party has given notice to the other to confirm the appointment of such arbitrator; the Attorney General of Swaziland shall appoint an arbitrator.
 - 10.1.4 The award of the arbitrator shall be final and binding upon both parties.
 - 10.1.5 The parties shall be equally liable for the costs of the arbitration unless it is agreed otherwise in writing.
 - 10.1.6 Nothing herein shall prevent the parties from agreeing to settle any dispute by agreement without recourse to arbitration.
- 10.2. This MOU shall remain in force for five (5) years from the effective date and it may be terminated by either party by providing written notice and explanation to the other party.
- 10.3. If for any reason whatsoever, any party to this MOU, having duly been mandated by a resolution of Council (in the instance of the Council) or a resolution of the General Assemble (in the instance of the Association) wishes to terminate this MOU, that party shall in writing notify the other party.
- 10.3.1. The termination of this MOU shall not affect the validity or duration of activities or agreements under this MOU which are initiated prior to each termination.

11 AMENDMENTS

- 11.1 This MOU shall be reviewed within three (3) months preceding its expiration.
- 11.2 Where there is consensus between the parties to this MOU of an urgent need to review or generally amend a particular article(s) of this MOU, such review or general amendment shall be effected.
- 11.3 In order for Article 11.2 to take effect, the consensus should be in record having been reached in a formal meeting called specifically for the review or amendment.
- 11.4 Failure by either party, whether by omission or commission, to cause for the review of the MOU according to Article 11.1, shall render the MOU valid for a further period of five (5) years from the end date envisaged in Article 10.2.

12 DOMICILIUM CITADI ET EXECUTADI

The parties choose the following addresses as their domicilium citadi et executadi and as such any document or parcel delivered in these addresses shall constitute proper delivery:

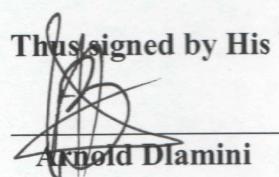
12.1 Municipal Council of Mbabane
Civic Offices
P.O. Box 1
1 Mahlokohla Street
MBABANE
H100

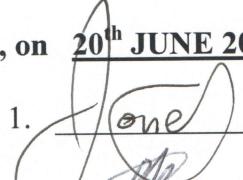
12.2 Mbabane Ratepayers and Developers Association
P. O. Box 4991
MBABANE
H100

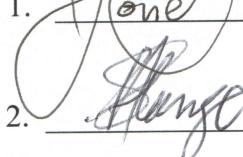
13. EXECUTION

13.1 On behalf of Council

Thus signed by His Worship the Mayor, on 20th JUNE 2013

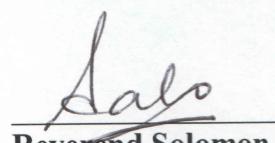

Arnold Dlamini

Witnesses: 1. 

2. 

On behalf of the Association

Thus signed by the President, on 20TH JUNE 2013



Reverend Solomon Nxumalo

Witnesses: 1. 

2. 

