FINAL DRAFT

AGREEMENT

WITH REFERENCE TO THE

GREATER STELLENBOSCH FORUM AREA

1994-10-31
AGREEMENT WITH REFERENCE TO THE GREATER STELLENBOSCH FORUM AREA

AGREEMENT MADE AND ENTERED INTO BY

AFRICAN CHRISTIAN DEMOCRATIC PARTY

AND

AFRICAN NATIONAL CONGRESS

AND

CLOETESVILLE/IDAS VALLEY MANAGEMENT COMMITTEE

AND

DEMOCRATIC PARTY

AND

EIKESTAD RESIDENTS ASSOCIATION

AND

FREEDOM FRONT

AND

JAMESTOWN ACTION GROUP

AND
JAMESTOWN AREA COMMITTEE
AND
JAMESTOWN CIVIC ASSOCIATION
AND
JOHANNESDAL MANAGEMENT COMMITTEE
AND
JOHANNESDAL RATEPAYERS AND TENNANTS ASSOCIATION
AND
KAYA MANDI TOWN COUNCIL
AND
KYLEMORE MANAGEMENT COMMITTEE
AND
KYLEMORE RATEPAYERS AND RESIDENTS ASSOCIATION
AND
NATIONAL PARTY
AND
PAN AFRICANIST CONGRESS OF AZANIA
AND
1. DEFINITIONS

In this agreement unless the context indicates otherwise:-

"additional local bodies" means the Management Committee of Idas Valley and Cloetesville, the Town Council of Kaya Mandi, the Management Committee of Johannesdal, the Management Committee of Kylemore, the Management Council of Pniel and the corporate entity of the local area of Jamestown;
"Administrator" means the Administrator as defined in the Local Government Transition Act, 1993 (Act No 209 of 1993);

"agreement" means the agreement as herein reflected;

"Town Council" means the elected representatives of Stellenbosch Municipality;

"Council" means Transitional Local Council as constituted in terms of this agreement;

"Councillors" means the members of the Transitional Local Council;

"Forum" means the Negotiating Forum recognised by the Administrator in terms of Section 6 of the Act;

"Group" is a reference to the Statutory and/or Non-Statutory component respectively of the Forum and of the Transitional Local Council depending on the context;

"interim phase" has the meaning as defined in the Act;

"Management-Committee" means the juristic person, the Management-Committee for the area of Idas-Valley and Cloetesville;

"Municipal Ordinance" means the Municipal Ordinance, 1974 (Ordinance 20 of 1974);

"Municipality" means the Municipality of Stellenbosch;

"Non-Statutory Group" means the members of the Transitional Local Council as identified in Annexure "B", including any alternates filling vacancies;

"operative date" means the date on which the Proclamation comes into operation;

"party" means a body or institution referred to in the preamble to this agreement and "parties" means any or all of them, as the context indicates;
"pre-interim" means the pre-interim phase as defined in the Act;

"Proclamation" means the proclamation issued by the Administrator in terms of Section 10 of the Act;

"Rule of Order" means the Standard By-laws relating to Procedure for Maintaining of Order at Meetings, published by Provincial Notice, (PK.411/1988);

"Statutory Group" means the members of the Transitional Local Council identified in Annexure A, including any alternates filling vacancies;

"the Act" means the Local Government Transition Act, 1993 (Act No 209 of 1993);

"Town Clerk" means the Chief Executive Officer/Town Clerk of Stellenbosch Municipality;

"Town Council" means the Town Council of Kaya-Mandi;

2. DISSOLUTION

That with effect from the operative date the Town Council and additional local bodies are hereby dissolved and the terms of office of the members of the Town Council and the members of the additional local bodies are hereby terminated.

3. ESTABLISHMENT OF THE TRANSITIONAL LOCAL COUNCIL

3.1 That with effect from the operative date, a transitional local council under the name of Stellenbosch Transitional Local Council shall be established for the area
of jurisdiction of the Municipality of Stellenbosch into which is incorporated the areas of jurisdiction of the additional local bodies with powers, duties and functions of a Municipality, governed and represented by a Council as contemplated in the Municipal Ordinance and the Act, provided that nothing in this clause precludes the Transitional Local Council from negotiating:

3.1.1 with bodies in Klapmuts and rural areas in Stellenbosch Magisterial District, or where no such bodies exists, with representatives of local authority bodies and/or local organisations who are representative of substantive sectors of the wider community having a vested interest in the political restructuring of Local Government within the said area of jurisdiction, with the aim to extend the area of jurisdiction of the Stellenbosch Transitional Local Council to possibly incorporate the areas of jurisdiction of such bodies, provided that such negotiations and incorporation of the area of jurisdiction be conducted subject to the conditions as stipulated in the Act.

3.1.2 with similar bodies established outside the Metropolitan Area of the Western Cape with a view to making representation to the Premier of the Western Cape to establish a body that will be known as a service board, sub-regional board or district board to jointly exercise and conduct powers and duties in respect of specific local government functions for certain defined non-metropolitan areas subject to the understanding that such service board, sub-regional council or district board will have the authority to levy and claim regional levies as referred to in Section 12(1)(a) of the Act on Regional Services Councils, 1985 to finance the aforementioned
local authority functions and to make available and utilize the balance of this levy income in respect of overhead service rendering as well as projects for disadvantaged communities within the area of jurisdiction of the said service board, sub-regional council or district board.

3.2 Notwithstanding such incorporation, separate budgets for the current financial year of the additional local bodies shall remain in full force and effect until the end of the 1994/95 Financial Year.

3.3 That the Council, is willing if the Western Cape Regional Services Council so requires to agree to the continued rendering of services on an agency basis on the same conditions and terms as the current agreement by the Regional Services Council to the applicable additional local bodies within the budget parameters of the 1994/95-budget and by the same standards and norms that were in force prior to the incorporation of the effected additional local bodies.

4. LEGAL SUCCESSION

As from the operative date, the Municipality shall, subject to the terms of this agreement, for all purposes be the successor in law of the additional local bodies; and

4.1 the ownership of all movable and immovable property and other assets of the additional local bodies will be transferred to the Municipality;

4.2 all rates, revenue and other monies payable to or recoverable by the additional local bodies, will be payable to and recoverable by the Municipality;
4.3 all other rights and privileges (including rights of nomination and representation) and all liabilities and obligations of any of the additional local bodies shall vest in and devolve upon the Municipality, which may continue to prosecute or defend all legal proceedings instituted by or against any of the additional local bodies excluding any legal actions pertaining to expropriation already started;

4.4 the previous paragraph 4.3 is subject to the general writing off of the debt of the additional local bodies in respect of monies due for services rendered to the disadvantaged communities as provided for in the agreement signed by the previous State President and representatives of political parties at Kempton Park on 20 September 1994.

5. COMPOSITION OF TRANSITIONAL LOCAL COUNCIL

The Council shall, during the pre-interim phase, comprise 28 Councillors of whom 14 shall be the persons identified in Annexure "A" hereto reflecting the nominees of the Statutory Group of the Forum and of whom the remaining 14 persons shall be the persons identified in Annexure "B" reflecting the nominees of the Non-Statutory Group of the Forum, as agreed upon in terms of Section 5 of Schedule 1 of the Act provided that no persons shall assume office as a member of the Council without first entering into the agreement provided for in paragraph 17.1.

6. FILLING OF VACANCIES

In the event any vacancies occurring in the Council occasioned by the death, resignation, termination of office or otherwise of a member of the Council, such vacancy shall
be filled by a person from the additional candidates listed Annexure C in the case of the Statutory Group and Annexure D in the case of the Non-Statutory Group.

7. ADDITIONAL FUNCTIONS OF THE TRANSITIONAL LOCAL COUNCIL

The Council shall:-

7.1 pay particular attention to:-

7.1.1 the drawing up of a single budget for the Municipality for the 1995/96-Financial Year;

7.1.2 the co-ordination, rationalization, improvement and broadened delivery of services at agreed tariffs to eradicate backlogs existing in certain areas of the Municipality;

7.1.3 the preparation for a future democratic municipal election and in particular the compilation of a voters roll;

7.2 at its first meeting elect a Mayor and Deputy Mayor by a simple majority, provided that the said two office bearers shall not be members of the same Group;

7.3 within 14 (FOURTEEN) days of the operative date, at a meeting convened solely for the purpose of allocating members to serve in its Executive and Standing Committees and to serve as Council representatives on the various outside bodies on which the Municipality has representation proceed as follows:-

7.3.1 the Mayor, separately dealing with the nominations for each Committee, shall call for volunteers from each Group to serve on that
Committee, subject to the provisions of paragraph 10.1.2 and in the event that the number of volunteers:

7.3.1.1 does not exceed the number of vacancies, shall declare the volunteers to be members of that Committee and continue with the next order of business returning to any Committee still having vacancies after having dealt with all the Committees when he or she shall by lot allocate Councillors who are not yet members of a Standing Committee to any remaining vacancies on such Committees;

7.3.1.2 exceeds the number of vacancies, shall proceed to determine the members of such Committee by a secret ballot in which all Councillors will vote for the number of vacancies in each Group. Such vote by all Councillors jointly and the resultant filling of vacancies shall take place per Group in accordance with Section 40 of the Rule of Order;

7.3.2 the Mayor will then call for nominees for the various representatives on outside bodies and should the number of nominees exceed the respective vacancies, proceed with a ballot mutatis mutandis as stipulated in paragraph 7.3.1.2;

7.4 re-elect members to the Standing and Executive Committees at its first ordinary meeting following an election held in terms of the Act or at its first ordinary meeting in the month of September in the year in which such election is not held, provided that the procedure set out in paragraph 7.3.1 above shall apply mutatis mutandis to such re-election.
8. **MAYOR OF THE COUNCIL**

The Mayor of the Council shall exercise and perform all the powers, functions and duties ascribed to a Mayor in the Municipal Ordinance.

9. **DEPUTY MAYOR OF THE COUNCIL**

The Deputy Mayor of the Council shall support the Mayor of the Council in all his/her duties and deputise for him/her in his/her absence.

10. **STANDING COMMITTEES**

The Council:-

10.1 shall operate a multi-committee system of 3 (THREE) Standing Committees to be named:-

- the Corporate Services Committee
- the Planning and Engineering Services Committee
- the Community Services Committee,

on the following basis:-

10.1.1 the Standing Committees must consist of 10 (TEN) members, which vacancies must be filled *in accordance with paragraph 7.3.1:*
10.1.2 all Committees of the Council, including any occasional as well as the Executive Committee, shall comprise an equal number of members from each Group;

10.1.3 the Mayor and Deputy Mayor of the Council are *ex officio* members of all Standing Committees, but not of the Executive Committee, and shall not be deemed as permanent members of the Standing Committee in terms of paragraph 10.1.1;

10.1.4 a quorum of all Committees, including any occasional as well as the Executive Committee, shall comprise 50% of the members. The Mayor and Deputy Mayor attending a meeting *ex officio* shall be included for the purpose of determining a quorum;

10.1.5 each Committee shall elect its own Chairperson/Deputy Chairperson at its first meeting, provided that the two office bearers shall not be members of the same Group;

10.1.6 no Chairperson of any Committee, including the Executive Committee of the Council, shall have a casting vote;

10.1.7 the Council must assign each Councillor to at least 1 (ONE) of the Standing Committees;

10.1.8 should votes be equally divided in a Standing Committee when dealing with a delegated matter, the Chairman of such Committee shall refer the matter under consideration to the Executive Committee which shall deal with the matter as fully and as *effectively* as
could the applicable Standing Committee, provided that the matter be referred with a recommendation to the Council.

11. EXECUTIVE COMMITTEE

In addition to the Standing Committees as stipulated in paragraph 10, there shall be an Executive Committee comprising 6 (SIX) members which shall operate on the following basis -

11.1 the Chairpersons of the 3 (THREE) Standing Committees plus 3 (THREE) additional members shall, subject to the stipulations of paragraphs 7.3.1 and 10.1.2, be appointed by Council as members of the Executive Committee;

11.2 The Chairperson and Deputy Chairperson of the Executive Committee are appointed by Council by means of a common majority provided that the two office bearers shall not be from the same Group;

11.3 it shall not be a Committee of first reference except when circumstances of exigency dictate, with the consent of the Chairperson and Deputy Chairperson of the relevant Standing Committee and notwithstanding the provisions of paragraph 11.2, it may as a Committee of first reference, deal with the matter as fully and effectively as could the applicable Standing Committee;

11.4 all matters referred to the Council by a Standing Committee or other Committees of the Council, shall first be submitted to the Executive Committee for a decision on the formulation of a recommendation subject to the provisions of paragraph 11.3;
11.5 no matter shall be considered by the Council unless and until it has been referred to the Executive Committee for recommendation.

12. PORTFOLIOS

12.1 The Council’s activities shall be divided into the following portfolios:

12.1.1 General Administration and Emergency Services;
12.1.2 Finance and Constitutional Development;
12.1.3 Tourism and Technopark;
12.1.4 Personnel Services;
12.1.5 Fire and Traffic Services;
12.1.6 Forestry, Parks and Recreation;
12.1.7 Health Services;
12.1.8 Housing;
12.1.9 Engineering Services; and
12.1.10 Planning and Development.

12.2 A Chairperson and Deputy Chairperson shall be appointed by Council by means of a common majority for each portfolio from each Group subject to the provisions of paragraph 7.3.1 read with paragraph 10.1.2.
12.3 The Standing Committees of Council shall effectively deal with the following portfolios:

12.3.1 Corporate Services Committee - portfolios as per paragraphs 12.1.1 to 12.1.4.

12.3.2 Community Services Committee - portfolios as per paragraphs 12.1.5 to 12.1.8.

12.3.3 Planning and Engineering Services - portfolios stipulated as per paragraphs 12.1.9 and 12.1.10.

12.4 The Chairperson of each portfolio shall, in consultation with the Chairperson of the relevant Standing Committee submit his/her items during meetings of the applicable Standing Committee as stipulated in paragraph 10.

12.5 The Deputy Chairperson will substitute the Chairperson in his/her portfolio in the event of his/her absence.

12.6 In the absence of both the Chairperson and Deputy Chairperson, the Chairperson or Acting Chairperson of the applicable Standing Committee will submit the items.

12.7 The Portfolio Chairperson shall, in preparation for the meeting of the Standing Committee, where necessary, meet and liaise with the applicable Departmental Head.
DECISION-MAKING PROCESS

The Council, Standing Committees and Executive Committee make decisions on the basis of concensus. Should concensus not be reached, decisions are made as follows:-

13.1 in the following matters a two-thirds majority of the full membership of Council shall be required:

13.1.1 any resolution pertaining to the budget, including and in no way limiting the generality of this statement, the fixing of property rates, levies, tariffs and service charges;

13.1.2 changes to the Rules of Order, Organisational Structures and Delegations of Authority as they apply/exist in respect of the jurisdiction of the Municipality of Stellenbosch immediately prior to the operative date and as amended by this agreement;

13.2 resolutions by Council pertaining to town planning shall be taken by a majority of its full membership, which shall not restrict its power to delegate any matter additional to those already delegated to a Standing Committee. Any resolution of a Standing Committee pertaining to town planning shall be taken by a majority of the full membership of such Committee in cases where they have been or may be delegated to such Committee;

13.3 in all other matters Council takes decisions by means of an ordinary or special decision as set out and required by the Municipal Ordinance and/or Rule of Order;

13.4 in all other cases the Standing Committee shall take decisions by a majority of votes of those members in attendance;
13.5 should the Executive Committee fail to reach consensus on any matter, the Committee must take a decision based on a two thirds majority of all the members of the Committee. Should the Committee, however, not attain the required majority, the matter will be referred to full Council for a final decision.

14. COUNCILLOR ALLOWANCES

The Mayor and Deputy Mayor of the Council and Councillors of Council shall initially receive the same allowances as were received by the Mayor, Deputy Mayor and Councillors of the Municipality respectively, immediately prior to the operative date.

15. EMPLOYEES

15.1 Employees of the additional local bodies, shall at the operative date, be transferred to the Municipality and shall take up employment with the Municipality on the same terms and conditions as those under which they presently serve, unless the employees consent to the contrary and subject to the stipulations of paragraphs 15.2 and 15.3 of this agreement.

15.2 As from the operative date, the employees referred to in Clause 15.1 hereof shall individually:

15.2.1 be credited with all the vacational and sick leave for which sufficient proof can be submitted, standing to his/her credit with his/her previous employer;
15.2.2 in respect of pensionable service performed in the service of his/her previous employer, be deemed to have performed that pensionable service in the service of the Council;

15.2.3 in respect of any allegations of misconduct outstanding against him or her on the day prior to the operative date, be dealt with in terms of the conditions applicable to him or her whilst in the service of his/her previous employer, unless he/she consents to the contrary.

15.3 Any dispute which may arise from the operative date between the Municipality and its employees in respect of abovementioned transfers and any subsequent redeployment of employees of the Municipality to give effect to the spirit and letter of this agreement shall be referred to a Dispute Board as contemplated in Annexure "F" to this agreement.

15.4 That the Town Clerk be authorized to integrate the employees mentioned in paragraph 15.1 into one cost effective and efficient organisation within 6 (SIX) months of the operative date.

16. EMPOWERING LEGISLATION, BY-LAWS AND PROCEDURES

Irrespective of the incorporation of the additional local bodies:

16.1 the legislation applicable to the Municipality on the day immediately preceding the operative date shall be applicable to the Municipality to the exclusion of any conflicting legislation which may have previously applied to any of the additional local bodies;
16.2 not withstanding the provisions of paragraph 16.1 the By-laws, property tax and service charges applicable within the respective areas of the additional local bodies, on the day immediately preceding the operative date, shall continue to remain in full force and effect within the area as it was on the day preceding the operative date until repealed, amended, substituted or otherwise dealt with by the Council and Delegations of Authority to Committees and officials applicable on the date immediately preceding the operative date shall remain effective to the exclusion of any equivalent or conflicting provisions of any of the additional local bodies;

16.3 all things legally executed or on the authority of any of the additional local bodies shall be and remain in full force and effect and binding on the Municipality.

17. CODE OF CONDUCT

In addition to being bound by the terms of the mandatory Code of Conduct in the Act -

17.1 every prospective member of the Council shall, before taking office as such, enter into an agreement with the Municipality on the terms and conditions as set out in Annexure "E" hereto;

17.2 every member of Council shall be obliged within 21 (TWENTY ONE) days of assuming office, to submit to the Town Clerk a declaration under oath, or affirmation, as provided for in the Justices of Peace and Commissioners of Oath Act, 1963 (Act No 16 of 1963) fully disclosing all sources and instances from which income is received as well as detail of fixed property possessed within the
area of jurisdiction of the Council with a view to possible conflicting interests. Any subsequent change to the particulars contained in such declaration or affirmation, shall forthwith be conveyed in writing by the member of Council to the Town Clerk.

18. TRAINING

All Councillors shall -

18.1 within 2 (TWO) months of assuming office, or such longer period as the Executive Committee may determine, undergo a structured orientation programme dealing inter alia with the functions and responsibilities of Councillors, budgetary principles and the operation of the Municipal organisation;

18.2 within 1 (ONE) month of the expiry of the period referred to in paragraph 18.1, submit to the Town Treasurer a certificate under the hand of the Town Clerk, certifying that he/she has satisfactorily participated in the said orientation programme, failing which payment of remuneration to such member will be suspended pending receipt by the Town Treasurer, of such a certificate.

In the event of a vacancy arising during the pre-interim phase and the vacancy is filled from the list of additional candidates as stipulated in paragraph 6 or otherwise filled, the stipulation of paragraphs 8.1 en 8.2 shall mutatis mutandis apply to such candidate from the date of filling of the vacancy.
19. **LANGUAGE**

All items and reports submitted to the Council, Executive Committee, Standing Committees and Occasional Committees shall be in the language in which it has been received or initiated. During meetings a member of the Council may speak in the official language of his/her choice.

20. **ATTENDANCE OF OFFICIAL MEETINGS**

For the sake of efficiency and in the public interest it will be expected of members of the Council to attend all meetings of the Council, Standing Committees and Executive Committee punctually in accordance with the following exposition of days and times of meetings:

20.1 **Council Meetings**

12 (TWELVE) meetings per annum being one per month and which, in order to facilitate the administrative programme, will take place on Tuesdays from 15:00 to approximately 19:00;

20.2 **Executive Committee**

24 (TWENTY FOUR) meetings per annum being 2 (TWO) per month, of which the first will be on a Tuesday from 14:00 to approximately 17:00, and the second on the Tuesday of the Council Meeting from 13:30 to 15:00.
20.3 Standing Committees

12 *(Twelve)* meetings per annum per Standing Committee being one (1) per month on Mondays or Tuesdays from 14:00 to approximately 17:00.

20.4 Unscheduled Special/Ad Hoc/Occasional Committee Meetings

Various unscheduled meetings will take place on other days of the month on agreed time, when necessary.