

## **MEMORANDUM OF UNDERSTANDING**

### **THE CITY OF CAPE TOWN MUNICIPALITY, REPUBLIC OF SOUTH AFRICA**

(Hereinafter referred to as “the City”)

Duly represented by .....in the capacity as ..... and duly authorised thereto

and

### **THE FRIENDS OF SILVERGLADE GREENBELT**

(Hereinafter referred to as “FOSG”)

Duly represented by ..... in his/her capacity as Manager: The FRIENDS OF  
SILVERGLADE GREENBELT and duly authorised thereto

(Hereinafter referred to collectively as “the Parties and individually as the “Party”)

## **1. PREAMBLE**

Silverglade Greenbelt (hereafter referred to as “the Park”) is a community park in Fish Hoek, owned by the City of Cape Town.

Erf 14224 is zoned Open Space 2 and was previously managed by the City of Cape Town’s Parks Department. The Park has is a valuable resource to the community; it is of recreational, social, entertaining, conservation and ecological value. FOSG was established in order to help realise to preserve this area. The main objective of FOSG is to help ensure the public enjoyment, conservation and sound management of the Park.

The City of Cape Town and FOSG wish to enter into a memorandum of understanding to affirm areas of cooperation and promote a cooperative relationship between respective organisations. The City hereby grants consensual use of the Park to FOSG for urban agriculture in accordance with its current zoning of Open Space 2.

## **2. PURPOSE OF THE AGREEMENT**

The Parties declare their intention to establish a cooperative relationship, in accordance with prevailing laws and regulations of the City of Cape Town and the Republic of South Africa, in respect of management and maintenance at Silverglade Greenbelt, Cape Town.

## **3. DEFINITIONS**

The following shall be interpreted as indicated:

- 3.1. AFSA means Arbitration Foundation of South Africa;
- 3.2. E&HM means City's Environmental & Heritage Management Branch (E&HM) and Heritage Western Cape (HWC) in terms of Section 27 of the National Heritage Resources Act (NHRA) of 1999;
- 3.3. "FOSG" means the FRIENDS OF SILVERGLADE GREENBELT, one Party of the Parties;
- 3.4. "MoU" means this memorandum of understanding, this agreement;
- 3.5. "opening hours" means from 08:00 until 18:00;
- 3.6. "the City" means the City of Cape Town in terms of Section 155 of the Constitution of the Republic of South Africa, a municipality established by the City of Cape Town Establishment Notice No. 479 of 22 September 2000, issued in terms of the Local Government: Municipal Structures Act, 1998, one Party of the Parties;
- 3.7. "the Park" means Silverglade Greenbelt, Erf ??? Fish Hoek, a collection of neighbours and interested parties; and
- 3.8. "the Parties" means the City and the FOSG.

## **4. AREAS OF COOPERATION**

4.1. The Parties shall use their best effort to cooperate in the following areas:

- 4.1.1. The cleanliness, maintenance and upgrading of the Park;
- 4.1.2. The protection and preservation of the areas of environmental and heritage value within the Park;

4.1.3. The promotion of the Silverglade Greenbelt through marketing, fund raisers and community projects and involvement.

4.2. The parties shall meet informally whenever the need arises, but formally at least once every six (6) months to attend to matters of the Park.

## **5. COMMITMENT OF THE CITY OF CAPE TOWN**

### **5.1. The City**

- 5.1.1. Will be responsible for the day-to-day cleanliness, management and control within the Park, in line with the City's Park maintenance standards;
- 5.1.2. Will be responsible to propose, plan, coordinate and implement capital and operational projects within the Park, in line with approved budgets and plans;
- 5.1.3. Will recognise FOSG as a community role-player in the management of the Park and will consult with FOSG regarding all projects, plans and budgets related to the Park;
- 5.1.4. Will assist in allocating funds and manpower to be used for the upgrading and development of the Park, subject to their budgetary constraints;
- 5.1.5. Will assist in obtaining goods, services and service providers required for the upgrading and development of the Park;
- 5.1.6. Will assist in liaising with other relevant Departments within the City in order to facilitate the upgrading and development of the Park as well as for the organisation of events to be held at the Park;
- 5.1.7. Will ensure that all activities within the Park are conducted in compliance with relevant legislation, policies, rules and regulations;
- 5.1.8. Will attempt to ensure that a designated City representative(s) attend all relevant FOSG meetings;
- 5.1.9. Authorises FOSG to raise funds and contribute to the improvement and management of the Park, in consultation with and as approved by City Parks , including though funding opportunities arising from the use of facilities at the Park; and
- 5.1.10. Will remain the owner department of the Park and take overall accountability for its functioning and management.

## **6. COMMITMENT of FOSG**

### **6.1. FOSG**

- 6.1.1. Will represent the interests of all regular users of the Park;
- 6.1.2. Will recognise The City as landowner and managing authority of the Park;
- 6.1.3. Support The City in the management of the Park, and contribute to the conservation, improvement, cleanliness and maintenance of the Park, where appropriate and subject to the availability of resources;
- 6.1.4. Will liaise with relevant authorities to promote the preservation of historical, cultural, social and ecological values of the Park;
- 6.1.5. Will be involved in the development and implementation of plans, projects and initiatives relating to the Park;
- 6.1.6. Shall discuss and get approval prior to all enhancements, upgrading and new developments with City Parks before implementation of such;
- 6.1.7. Will, through its relationship with the community, assist the City to raise funds for the improvement and conservation of the Park in accordance with the City's policies and principles;
- 6.1.8. Make funds available at its own discretion for the maintenance, upgrading and development of the Park in consultation and upon agreement with City Parks;
- 6.1.9. Will be responsible for the procurement of all goods and services, using its own procurement processes, if external funding is generated by FOSG for the upgrading and development of the Park;
- 6.1.10. Will ensure that the service providers appointed by FOSG are informed that the City is not liable for any obligations created by any contract entered into between FOSG and such service providers in fulfilment of the friends' commitment in terms of this Agreement;
- 6.1.11. Will not use the City's name, emblem or letterhead without prior consent from The City;
- 6.1.12. Hereby indemnifies the City against injuries, damages or loss incurred by any person, business or organisation as a result of work undertaken by FOSG within the Park;

- 6.1.13. Will adhere to the City's Events By-law in respect of all events organised by FOSG which fall within the ambit of this by-law, including the requirement for public liability insurance, if applicable;
- 6.1.14. Will direct all correspondence, requests, complaints etc. through the designated City representative for the Park; and
- 6.1.15. Will be responsible for FOSG's administration, finances and resources.

## **7. CONDITIONS:**

- 7.1. The construction and erection of any structure(s); permanent or temporary, as well as the modification of existing fences, retaining walls etc., will be subject to approval by the City's Department of Planning and Building Development.
- 7.2. Any signage that the FOSG proposes to erect or display on the site will be subject to adherence to the City's Outdoor Advertising and Signage By-law.
- 7.3. Any advertising, marketing material and signage must bear the City of Cape Town logo and must abide by the Outdoor Advertising and Signage By-law.
- 7.4. All major sub-surface excavations of the site are to be subject to monitoring by E&HM archaeology staff and a procedural plan developed for the management and curation of any identified archaeological material that may be discovered as a result thereof.
- 7.5. FOSG to provide City Parks with an annual Report, providing information, for example, about the Friends' activities in the Park, funds spent on the Park and donations received for the Park.

## **8. MEDIA STATEMENTS**

- 8.1. The parties agree that no statements will be released to the media regarding issues pertaining to the governance of the Park unless agreed to in writing by both the parties. Agreement by the City must be issued by the office of the Mayoral Committee Member: Special Projects, or such other mayoral Committee Member as may be tasked with oversight of the Park. Should either party seek the agreement of the other with regard to an intended media release in the category described, such agreement must be issued timeously and should not be unreasonably withheld.
- 8.2. It shall not be necessary for FOSG to obtain mutual agreement in respect of statements released by it which do not pertain to governance issues and have no bearing on the role of the City as local authority in relation to the Park.

## **9. TERM AND TERMINATION**

- 9.1. This agreement shall come into effect upon signature by both parties and shall continue to be in force and effect until terminated by either party by written notice. The notice period shall not be less than three (3) months and not more than twelve (12) months.
- 9.2. The agreement will be reviewed every 36 months and renewal by mutual decision of the parties.

## **10. SETTLEMENT OF DISPUTES**

- 10.1. The parties must seek to resolve any dispute concerning the implementation of this Cooperation Agreement through dialogue and discussions in good faith.
- 10.2. Should any dispute, disagreement or claim arise between the Parties (referred hereinafter as “the dispute”) concerning this agreement, the Parties shall first endeavour to resolve the dispute by negotiation which shall be conducted by a representative(s) of each Party.
- 10.3. Should such dispute not be resolved within one month of the dispute being declared, or such within such extended period as may be agreed by the Parties, it shall be resolved by mediation in accordance with the rules of the Arbitration Foundation of South Africa (AFSA) by a mediator appointed by AFSA.
- 10.4. Should the dispute not be resolved by mediation within one month of the referral of the dispute to AFSA, or within such extended period as may be agreed by the parties, it shall be resolved by arbitration in accordance with the rules of AFSA by an arbitrator appointed by AFSA.
- 10.5. Unless otherwise agreed in writing by all the Parties, any such negotiation, mediation or arbitration shall be held in Cape Town.
- 10.6. Notwithstanding the provisions of the clauses above, any party may seek urgent relief from a competent court.

## **11. NOTICES AND DOMICILIUM**

The Parties chose 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 exercising of any option) the following addresses:

The City  
Johann Herholdt  
xxx  
Tel: xxx  
Email: xxx

FRIENDS OF SILVERGLADE GREENBELT (FOSG)  
Manager: FOSG - Andre Blom  
Cell: xxx  
Email: xxx

Any notice or communication required or permitted to be given in terms of this agreement shall be valid and effective only if in writing, but shall be considered competent if given by email.

Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Party shall be an adequate written notice of communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*

## **12. 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 must not be withheld unnecessarily. 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.

### 13. WAIVER

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 shall not constitute a waiver by such Party to require strict and punctual compliance with each and every provision of this agreement or stop such Party to exercise its rights in terms of this agreement.

### 14. CONFIDENTIALITY

All information and data generated through this partnership is to be handled with care and not to be distributed without prior agreement by both Parties.

### 15. COSTS

Each part shall bear its own legal costs of and incidental to the drafting negotiation and finalisation and collation of this agreement.

SIGNED AT.....ON THIS.....DAY OF.....

AS WITNESS

For and on behalf of:

1. ....

City of Cape Town

2. ....

.....

..... being duly authorised thereto

SIGNED AT.....ON THIS.....DAY OF.....

1. ....

FOSG

2. ....

.....

being duly authorised thereto



## **Annexure A**

### **Problem Statements**

In 2017 and 2018 the Silverglade Neighbourhood Watch reported several burglaries and attempted burglaries in houses nearby. Two assaults were reported by Fish Hoek High School scholars in the greenbelt.

The high increase in pedestrians using the greenbelt and canal as a "toilet" facility on almost a daily basis created a very unhygienic and unsafe area for residents and other users of the greenbelt. Kids no longer played in the greenbelt as they not only felt unsafe, but parents were concerned that the kids could contract various diseases from the human faeces allowed to rot away. Adding to this is the totally unacceptable volume of dog faeces that was not being picked up by the dog owners walking their dogs.

The greenbelt was never intended for heavy pedestrian traffic, which with the drought, had caused erosion to just sand. When the wind blows, the sand causes soiling of the residents' washing. The sandblasting effect can remove clothes from the washing line.

The City has stopped watering and has been reducing maintenance of the greenbelt with only cutting the grass / weeds sporadically.

The Western Leopard Toad has been seen in the area since 1990. With increased pedestrian traffic over the years, the sighting of this toad had diminished. However, within three (3) weeks of closing the Gate #3, three (3) toads were seen again in greenbelt neighbours' yards.

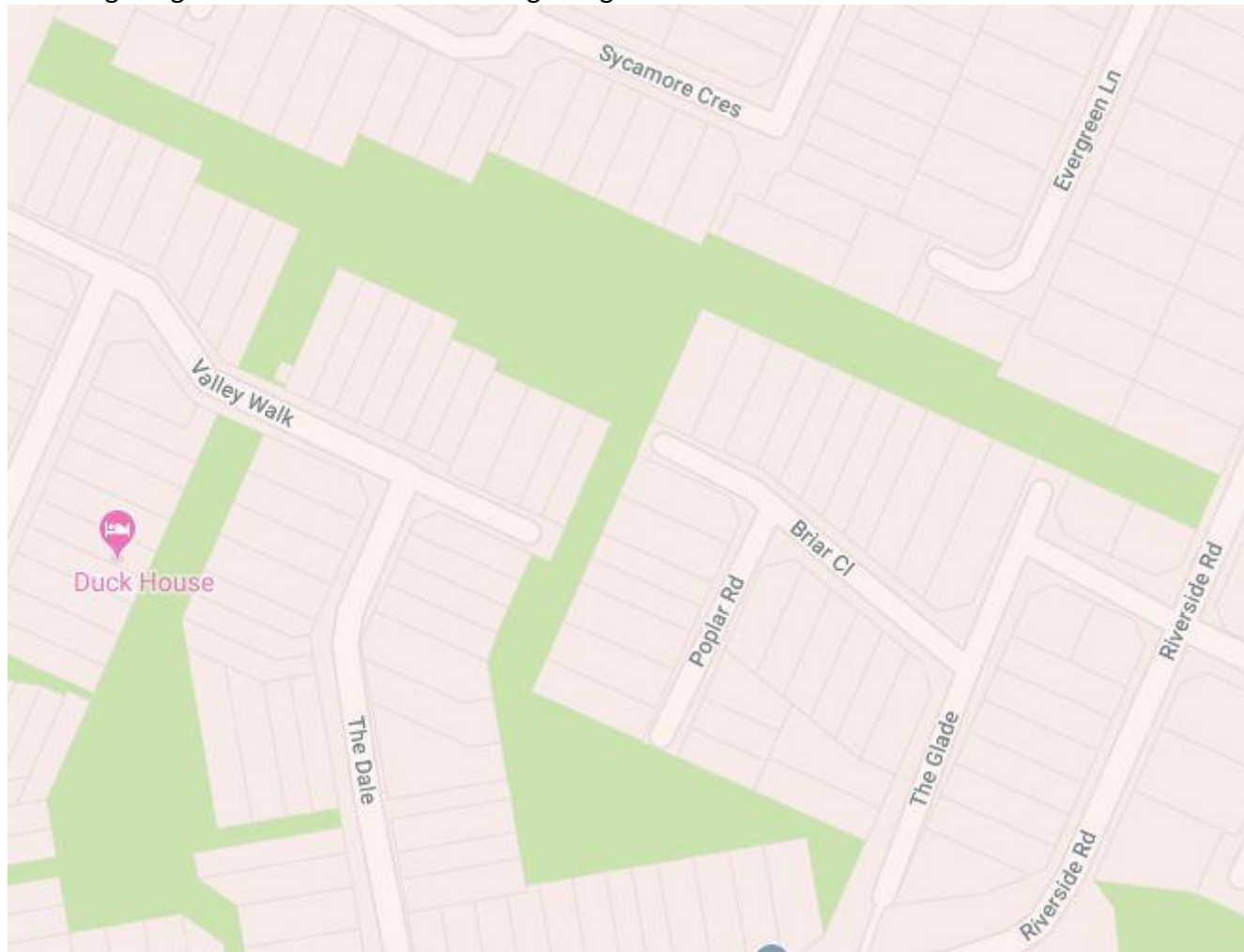
The City of Cape Town was consulted about the erection of walls and gates.

When just walls and gates are erected, some people will climb over the top.

### **Description of Current State**

The City had built a lane along Riverside Road from Nelson Road to The Glade many years ago to accommodate pedestrian traffic with a separate bicycle lane also being built. Due to the higher visibility (neighbours' front windows and vehicle traffic), these lanes are safer.

The image in green below shows the Silverglade greenbelt area.

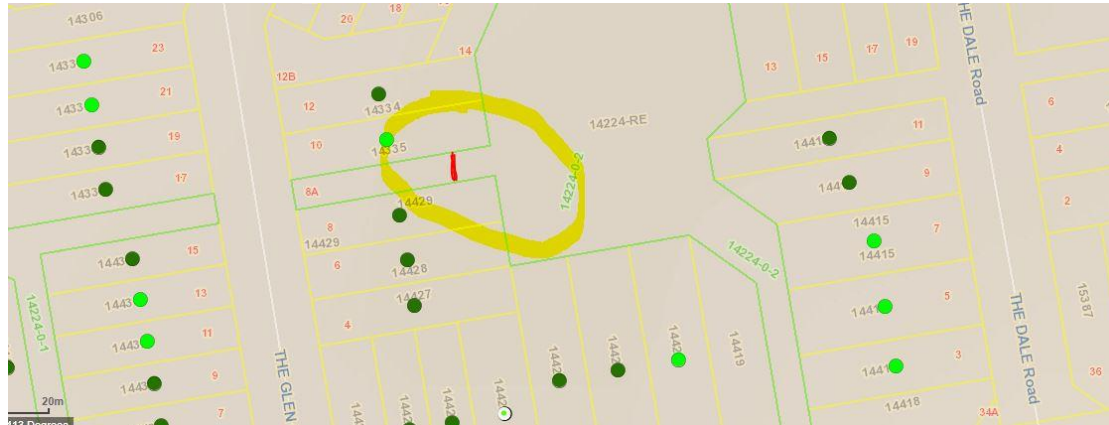


This green belt has four (4) entrances onto Valley Walk, The Dale & The Glen Roads. Walls and gates have been erected by neighbouring residents at the following points:

Gate #1: This image is a closure done by the City some years ago, possibly without any public participation.



Gate #2: There is a gate in Silverglade between The Glen and The Dale on The Glen side. It is between erf nr's 14429 and 14335, between 8 and 10 The Glen. See image below:



Gate #3: The most recent closure is between No 1 The Glade and No 58 Riverside Road, Silverglade and the cost was borne by the residents bordering the greenbelt.



As the gate is locked, it prevents all access to those without appropriate keys. This includes: dog walkers, children, domestic workers, athletes on their way to the Sports Field, etc. The pre-cast wall and unpainted gate are topped by a large roll of razor wire (to stop people climbing over the top of the gate and wall), all of which are unsightly in the opinion of some nearby residents and spoil the intention of having a greenbelt in the first place.

There is a sign that states:

CLOSURE NOTICE: Entry closed due to drought, rehabilitation of the greenbelt and protection of endangered leopard toads.

Keys for residents available at own cost.

Contact: 083 762 2020 / 082 622 8180.



Since Gate #3 entrance was closed, children of nearby residents have been enjoying the safer and cleaner area to play in the greenbelt again.

Currently, this greenbelt does not link up with the greenbelt between The Glade, Riverside, Elm and Valley Walk roads.

### **Consultation Process**

The City had set a precedent of closing off the greenbelt when Gate #1 was erected. The proposed closing and erection of Gate #3 was discussed with City officials. At that stage, the first survey had already been done between all the residents bordering and in the immediate vicinity of the greenbelt in question. The City advised FOSG to do a second survey this time including all the residents West and North from The Glade & Riverside to Sycamore & Chestnut Roads to see if there were any objections.

This image below indicates the area covered by the third public survey before Gate #3 and wall were erected. This was the third public survey done as requested by the City. Of the responses received, all were in favour except one objection from a resident not adjacent to the greenbelt and that objection had been resolved. From the surveys, several proposals were received recommending that all the greenbelt entrances be closed off that border on the sports fields.



Picture of the area covered by public survey for Gate #3



A formal application for Gate #3 had been submitted to the City. After this a few designs and costs were proposed to the immediate residents where after the current design and cost was agreed upon. All the residents / owners that border on the greenbelt agreed to contribute in some manner to the cost. A fourth survey was then completed between the immediate residents and no objections were received. The design includes a pedestrian gate that has a lock fitted. A notice is fitted on both sides that keys to the gate is available at a minimal cost of R25.00. The Fish Hoek High School has also been given a key as they at times use the area as part of their cross country.

Upon receipt that the application has been approved, the City will erect a sign next to this gate.

### **Proposed State**

Solid, pre-cast walls and roll of razor wire are to be removed and replaced with higher, minimum 80% visibly permeable wall and gate.

A final gate will be added to fully enclose the area. All gates will be made more aesthetically appealing by being at least 80% visibly permeable and sufficiently tall to prevent breaching over the top.

FOSG will raise the funds directly to finance the erection of the final gate and on-going maintenance thereafter.

The City will erect their signs as appropriate.

## **Actions**

The following gates will be open between the hours of 08:00 and 18:00. The responsible person (or their delegate) will be:

Andre for gate #3

Kim [kim@distinctiveglobalevents.com](mailto:kim@distinctiveglobalevents.com) for gate #2

[wpsdnel@telkomsa.net](mailto:wpsdnel@telkomsa.net) for gate #1

On the first Saturday following when the grass height is above 8 cm, a work party will be organised by the Manager: FOSG to mow the grass in this greenbelt.

Once a month, a work party will be organised by the Manager: FOSG to police the area for the purpose of collecting and removing any rubbish, etc.