

REPUBLIC OF KENYA



**MINISTRY OF PETROLEUM AND MINING
STATE DEPARTMENT FOR MINING**

**DRAFT MODEL COMMUNITY DEVELOPMENT
AGREEMENT**

DRAFT MODEL COMMUNITY DEVELOPMENT AGREEMENT

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A. STATEMENT OF AGREEMENT AND ITS AIMS

The Community Development Agreement (herein called the "Agreement"), is made on (date.....) between (name of mineral right holder) whose address is----- (including its successors and assigns, and hereinafter referred to as the "Holder") of the one part, and the (name of Community.....); (hereinafter referred to as the "Community"), and whose respective definition and composition are as stated in Schedule 1 to this Agreement, on the other part.

That in consideration of the mutual promises and conditions contained in this Agreement, the Holder and the Community hereby agree as follows:

1. Commencement, Duration and Procedure for Review of the Agreement

(1) This Agreement commences immediately upon the signing of the agreement by the Holder and the Community and shall be in force until the final surrender of the mining licence or the end of the productive life of the mine.

(2) The review of any part of this Agreement shall be in accordance with Schedule 4 to this Agreement.

2. Mutual Understanding

(1) The Holder shall be committed to sustainable economic and social development of the Community and its environs and at all times promote peace and harmony between itself and the Community.

(2) The Community shall be committed to discussions and consultations with the Holder on issues of mutual interest and at all times promote peace and harmony between itself and the Holder.

(3) The Parties herein hereby agree to abide by the principles of openness and the sharing of information that will enable them understand each other's perspectives on issues of mutual interest.

(4) The Parties hereby further agree to maintain trust, sustain good working relations and resolve challenges arising from environmental concerns, land use, infrastructure and other conflicts through discussions and negotiations.

3. Objectives of the Agreement

The objectives of this Agreement are to:

- a) Ensure the sustainable development of the Community;
- b) Provide the Community with the opportunity to participate in the Holder's decisions and plans that may affect the Community and its environs;
- c) Set out the key principles and directions on how the Holder and the Community will work together for their mutual benefit;
- d) Provide a clear, transparent and explicit statement of the commitments of the Parties herein;
- e) Define the key issues that the Holder and the Community intend to address; and

- f) Provide for a committee for Parties to deliberate on the implementation of the Agreement herein.

4. Nature of the Agreement

4.1 This document sets forth certain policies and programmes that the Holder has adopted regarding community development activities.

4.2 The parties agree, acknowledge and confirm that this agreement is binding in nature and that all disputes or grievances of any kind arising out of or related to this agreement document or the policies described herein, shall be settled through negotiation between the Parties failure to which the conflict shall be resolved in accordance with the Mining Act,2016.

4.3 The Parties' further confirm that this document has been prepared solely to record the mutual understandings reached after extended negotiations.

5. Guiding principles

This agreement shall be guided by the following principles

- a) Transparency and accountability
- b) effectiveness and efficiency
- c) social justice
- d) inclusiveness
- e) equity
- f) equality
- g) Value for money
- h) Non discrimination

B. GOVERNANCE

6. The Community Development Agreement Committee

(1) There shall be a Community Development Agreement Committee that shall have oversight responsibility for implementing this Agreement.

(2) Composition of the Committee

The committee shall comprise the following;

- a) The Governor or a representative appointed by the governor;
- b) The national government representative in charge of administration in the county;

- c) The County Assembly representative of the electoral area within which the community is located;
- d) One representative of women elected by the community;
- e) one representative elected from among the village elders of the community;
- f) two representatives of youth of either gender from the community;
- g) one representative elected by civil society organizations working in the area of extractives in the county;
- h) one representative of marginalized groups, ethnic and other minorities;
- i) one representative of persons with disability from the community;
- j) the member of parliament of the constituency of the community;
- k) three representatives of the holder.

(3) The committee members shall elect the chairperson and secretary from among the members.

7. Functions of the committee

(1) The Committee shall—

- a) provide a platform for the community to debate whether the use of revenues provided by the holder to fund programmes under the Agreement conform to the development priorities of the community;
- b) facilitate continuous engagement and serve as the link between the community and the holder;
- c) settle all disputes that may arise between parties to the Agreement in respect of any matter in connection with or under the Agreement;
- d) settle any other issue, matter, grievance or complaint that is not related to the Agreement that may be made by raised by the holder or the community;
- e) Review existing development priorities by the National and County government and develop an action plan to implement Community Development Agreement priorities; and
- f) monitor and evaluate compliance with the terms of the Agreement.

(2) For the purpose of achieving the aims of this Agreement, the Committee may establish sub-committees as provided in the CDA agreement to ensure the implementation of the provisions of this Agreement.

8. Terms of Office of Members of the Committee

(1) Every member of the Committee whose membership is by virtue of his or her occupation of a political position shall continue to be a member of the Committee until

he or she ceases to occupy such position and the person who next occupies the position shall automatically replace him.

(2) Every other member of the Committee shall serve for a period of three years, and the term may be renewed once.

(3) A member of the Committee may resign in writing addressed to the Chairperson.

9. Remuneration

Members of the Committee shall not be entitled to a salary but shall be entitled to such allowances as may be recommended by the CDA guidelines.

10. Meetings and Decisions of the Committee

(1) The Committee shall meet at such time and place as the Chairperson may determine for the dispatch of its business but shall meet at least twice in a year.

(2) The chair shall preside at each committee but in his/her absence the vice chair shall preside. In absence of the two members present at the meeting shall elect a chairperson for that meeting.

3) The quorum at a meeting of shall be two-thirds majority of the members.

(4) The Committee shall determine its own procedures for every meeting.

5) A special meeting of the committee may be convened at the written request of at least one-half of the members of the committees submitted to the chairperson with a statement of the matters to be discussed in such a special meeting. The chairperson shall upon the receipt of such a request convene a special meeting of the committee within ten days of the receipt of the request specifying in the notice to members the agenda, time and place for the meeting.

5) The Committee may invite any person(s) or representative(s) of any organization/body to attend its meeting save that such person(s) or representative(s) shall not have any voting rights at such meeting.

C. SOCIAL ECONOMIC PROGRAMMES TO BE REGULATED BY THE AGREEMENT

11. Community Development Agreement programmes

(1) The Parties shall agree on the programmes to be included in the agreement which may include;

- a) educational scholarship, apprenticeship, technical training and employment opportunities for the people of the community;
- b) employment for members from the communities;

- c) financial or other forms of support for infrastructural
- d) development and maintenance including education, health, roads, water and power;
- e) assistance with the setting up of and support to small-scale and micro enterprises;
- f) special programmes that benefit women, youth and persons with disabilities;
- g) agricultural product marketing;
- h) protection of the environment and natural resources;
- i) support for cultural heritage and sports;
- j) protection of ecological systems;

(2) In identifying projects and programmes for implementation, the Committee shall be guided by the community through consultative process and documented in an action plan.

(3) The Parties shall further agree on the roles and responsibilities of each Party in executing the agreement.

12. Consultations between the Parties

(1) Parties agree that they will undertake consultations throughout the implementation of this agreement in accordance with the following schedule:

No	Date	Purpose of the meeting	Medium
1.	1 st April, 2019	Project prioritization for 2018/19 FY	Meeting, Baraza
2.			
3.			
4.			

(2). The Committee shall provide sufficient notice to all stakeholders in a media accessible to the applicable community before it conducts a consultation exercise.

D. CDA PROGRAMME IMPLEMENTATIONS

13. Financial Disbursement and Management

(1) The mineral right holder shall set aside at least 1% of the gross revenue from sale of mineral for the implementation of the CDA program

(2) The committee shall procure service providers for the priority projects as agreed in accordance with the relevant laws

(3) The committee shall monitor and evaluate progress on the implementation of the projects as per the agreed schedule No.....

(4) The mineral right holder shall make payment to the service providers upon recommendation by the CDA Committee based on contract terms.

(5) The mineral right holder shall submit annual report to the Cabinet Secretary in the prescribed format in form CD1 detailing the status of the project implemented under the CDA.

(6) Breach of condition in relation to the terms of the Agreement shall be as per provisions of the as per section 207 of Mining Act ,2016.

14. Conflict Resolution Management

(1) The holder and the Community agree that where any issue of potential conflict is identified or where any conflict arises between them they shall exercise patience and tolerance and resolve the issue through dialogue and negotiation so as to maintain good working relations.

(2) Where necessary the holder shall in consultation with the committee assist in capacity building by providing training for people who will participate in the different aspects of conflict identification, management and resolution.

(3) The holder and the Community agree to recognize and support the grievance/complaint management mechanism.

E. HOLDER-COMMUNITY PARTICIPATION AND TRANSPARENCY MANAGEMENT

The Holder and the Community agree:

(a) To relate to each other in such a way as to build and improve confidence and trust in each other through effective management of all issues including:

- I. Information/communication management;
- II. Environmental/social participatory monitoring management;
- III. Land access and compensation management; and
- IV. Environmental/social closure and reclamation management.

(b) To review actions taken to resolve disputes, grievances or complaints and make affirmative acknowledgements for good actions and peaceful settlements

15. Information/Communication Management

(1) the Holder and Community agree that proper management of information and communication is the logical way to:

- a) Know the concerns of each other;
- b) Understand each other's views;
- c) Maintain transparency;
- d) Find objective solution to problems; and
- e) Resolve conflicts peacefully.

(2) The Holder and the Community agree to recognize and support the Committee established by the Holder, and its principles and activities.

(3) The Holder and the Community agree to manage information and communication according to the plans outlined in Annex 2 to this Agreement.

16. Environmental/Social Participatory Monitoring Management

(1) The Holder and Community agree that the Community shall participate in the Holder's environmental/social impact monitoring programmes.

(2) The identification and development of monitoring programmes and the participatory roles of the Holder and the Community shall be as specified in Annex 1 to this Agreement (guideline...).

17. Land Access and Compensation Management

(1) The Holder and the Community agree to observe the laws of Kenya regarding access to land and compensation.

(2) In addition to the laws of Kenya regarding access to land and compensation, the Holder and the Community agree to use plans outlined in Annex 3 to this Agreement to manage access to land in the Community.

18. Environmental/Social Closure and Reclamation Management

(1) The Holder and the Community agree that the Community shall participate in the Holder's environmental/social closure and reclamation programmes.

(2) The identification and development of closure and reclamation programmes shall be as specified in Annex 4 to this Agreement.

19. Local Employment Agreement.

a) In pursuance of the aims of this Agreement, there shall be a Local Employment Agreement executed between the Parties herein to regulate the employment of unskilled and skilled labour from the Community by the Holder as per the provisions of the Mining Act, 2016 and the Regulations on Employment .

F. SCHEDULES

Schedule 1 Definition and Composition of the community Mine

(1) Definition: The community Mine Local Community refers to Community as defined under the Mining Act, 2016 and may include :

(a) Community towns that is physically located on the Mining Licence within the current operational area of the community Mine Project or within the Mining Licence area under active exploration.

(b) Community/traditional areas that have a significant amount of its traditional land covered by the Mining Licence within the current operational area of the community Mine Project or within the area of the Mining Licence under active exploration.

(2) Composition: For the time being, the community Mine Local Community is made up of the followingSubcounty and the main community towns and their settlements and environs therein, namely;

(a) The community areas covered by this Agreement are:

(3) Review of Composition: Subject to Subsection (1) herein, the composition of the community Mine Local Community shall be reviewed when necessary to include community towns based on updated maps provided annually by the Holder as per Schedule 5 of this Agreement.

(4) "Parties" - refers to bothlimited and the community Mine Local Community.

Schedule 2 Procedures for Electing Representatives of Bodies - NGOs, Youth and Women's Consultative Groups

(1) Members of a body electing a representative to the Committee shall first make nominations in writing to the Presiding Officer of the from which the representative is to be elected.

(2) The Presiding Officer shall conduct the election.

(3) Election shall be by secret ballot and the ballot box shall be transparent.

(4) At the end of the voting the candidate who receives the highest number of votes shall be declared the elected representative to the Committee.

(5) The name of the elected candidate shall be submitted by the Presiding Officer to the who shall present the name to the Committee.

Schedule 3 Complaints Management and Resolution Procedure

(1) The Holder and Community agree that where any complaint relating to the implementation of this Agreement arises the complaint shall be resolved through dialogue and negotiation in an atmosphere of patience and tolerance.

(2) In pursuance of Subsection (1) herein therefore, the following procedures shall be used to resolve a complaint relating to the implementation of this Agreement:

(a) A community town having a complaint shall lodge the complaint with the chairman of the Complaints Resolution Committee through

(b) Where the Holder has a complaint, the Holder shall lodge the complaint with the chairman of the Complaint Resolution Committee through of the Holder.

(3) Subsequent to Subsection (2) herein, the chairman of the Complaints Resolution Committee shall within ten (10) days upon the receipt of a complaint, appoint members of the Committee to constitute the Complaints Resolution Committee in accordance with Section 14 (2) (b) of this agreement.

(4) Subsequent to Subsection (3) herein, the chairman shall convene a meeting(s) of the committee to which complaint's representative as per subsection (2) shall be invited in writing and resolve the complaint within thirty (30) days upon the receipt thereof.

(5) Where the Complaints Resolution Committee considers that the complaint does not directly relate to the implementation of this Agreement, it shall refer the complaint to other existing formal complaints and grievances resolution authorities or bodies and advise the complainant thereof.

(6) The chairman of the Complaints Resolution Committee shall report the complaint and the outcome thereof at the next meeting of the Committee.

(7) Where the Complaints Resolution Committee is unable to resolve the complaint it shall refer the complaint to the Standing Committee of Committee which shall consider and resolve the complaint at its next meeting or at an emergency meeting convened for that purpose.

(8) Where the Standing Committee is unable to resolve the complaint, it shall refer the complaint to the Committee which shall consider and resolve the complaint at its next

meeting or at an emergency meeting convened for that purpose and the decision of the Committee on the matter shall be final.

Schedule 4 Procedures for the Review/Amendment of the Agreement

(1) Any person proposing the review or Amendment of any part of this Agreement shall present the proposed review/amendment with reasons therefore through and endorsed by a member of the Committee to the chairman of the Standing Committee of Committee at least two months before the annual joint meeting of the Board and Committee at which the annual report of the Board shall be discussed.

(2) The Standing Committee of Committee shall receive and consider proposals for review/amendment and make recommendations to Committee at the annual joint meeting of the Board and Committee.

(3) The proposals and recommendations for review/amendment of the Agreement shall be discussed by members of the Board and the Committee and the decision to review/amend any part of the agreement shall be by consensus or by majority of votes cast except that only members of the Committee shall have the right to vote.

(4) Where there is equality of votes the Moderator or the person presiding as the chairman shall have a casting vote.

(5) No review/amendment shall be valid unless at least two-thirds of the members of the Committee are present at the annual joint meeting of the Board and Committee.

The parties agree that neither of them shall without the fullest consultation with the other and its prior written consent amend any of the provisions of this Agreement.

Schedule 5. Provision of Updated Map of Mining Licence

(1) The Holder shall produce updated map of its mining licence at least annually to the Committee and the Board; the map shall show in particular:

(a) The area belonging to each community town;

(b) The area occupied by all mining activities;

(c) The area where the Holder intends to work in the following year;

(d) The area where access is free; and

(e) The area where access is restrictive.

(2) The Community shall assist the Holder to map out the area of each community town and its settlements and environs.

Schedule 6. Rules, Regulations and Bye-Laws

(1) Every member of the Committee shall be committed to the implementation of this Agreement and any Rules, Regulations and Bye-Laws made thereunder.

(2) Any member of the Committee who knowingly, directly or indirectly, obstructs or causes the obstruction of the implementation of this Agreement shall be cautioned.

G. ANNEXES

Annex 1 Environmental/Social Participatory Monitoring Management Plan

(1) Notwithstanding the obligatory environmental/social impact monitoring programmes contained in the Environmental Impact Statement and Environmental Management Plan of the Holder, the Holder and the Community agree to work together to identify and develop programmes to monitor any aspect of environmental/social impact.

(2) Consequent to Subsection (1) therefore, the Holder shall develop a plan inclusive of standard forms to be completed by the Holder and Community in respect of any monitoring programmes. The plan and standard forms shall be designed to capture the following:

(a) Identification of specific environmental/social parameter(s) that need(s) to be monitored as for example water quality at specific locations downstream or blast vibration at a particular location;

(b) Identification of stakeholders in the programme i.e. the people who will participate in the programme;

(c) Expectation of the processes and outcome of the programme as for example why and how the monitoring should be carried out and how the outcome should be stated;

(d) Indicators of the environmental/social parameters to be measured;

(e) Mode of reporting the monitoring results to the Community and all external stakeholders; and

(f) the timeframe for monitoring the programme and reporting of the results.

(3) The Holder shall assist in capacity building by providing training for people who will participate in the monitoring programme so that they can understand the processes and be able to draw objective conclusions.

(4) The Community shall select at least three community citizens to participate in any monitoring programme and the selected citizens shall fully participate in the monitoring programme.

Annex 2 Information and Communication Management Plan

(1) Pursuant to Section (8) of this Agreement, the Committee shall after every meeting prepare a summary of issues discussed and decisions taken for dissemination in the Community.

(2) The Committee shall organize radio, television and newspaper announcements and give a summary of issues discussed, decisions taken and progress on the implementation of this Agreement for the benefit of the Community.

(3) The Holder shall produce a bi-annual flyer/bulletin on the Committee's decisions and all matters of interest relating to this Agreement and its implementation and distribute copies of the flyer/bulletin to members of the Committee for distribution to the Community.

(a) The Holder and the Community shall define the modus operandi of the Community Consultative Committees.

(5) The Community representatives on the Committee and the Community Consultative Committees shall disseminate information from the Committee and the Holder to the people in the Community:

- a) At meetings in such places that will be agreed on before the scheduled meeting date;
- b) By sharing print material from the Committee or Holder;
- c) At meetings of associations; and
- d) By making print and audio-visual material available at information centers.
- e) (6) The Community people shall give information to the Committee:
 - (a) Through their representatives on the Committee;
 - (b) Through the committees of the Committee;
 - (c) Through the Holder; and
 - (d) Through suggestion boxes provided by community towns.

Annex 3 Land Access and Compensation Management Plan

(1) As per this Agreement, the Holder and Community agree that the Community has access rights to the mining licence area but that there are some areas which have restricted access for safety and security reasons because of the mining operations.

(2) To avoid accidents and interruption of mining activities, the Holder shall at least annually produce updated map of the mining license showing:

- a) Freely accessible areas permissible for development and cash crop farming;
- b) Freely accessible areas permissible for farming of food crops;
- c) Freely accessible areas but not permissible for development or farming; and
- d) Restricted access areas.

(3) People from the Community may visit freely accessible areas at any time without the consent of the Holder.

(4) Where any person wishes to develop or farm in a freely accessible area the person shall present for consideration and approval by the Holder, a

Proposal detailing out the area of interest and the intended type of development or farm.

(5) Where any person wishes to visit a restricted access area the person shall obtain authorization from the Holder.

(6) The Holder and Community agree that the security officers shall not permit anybody without authorization to visit, develop or farm in restricted access areas.

(7) Where compensation has to be paid for crops, developments, land or anything affected by the committee Mine Project and attendant activities the Holder and the Community agrees that the Holder shall negotiate the value of compensation with the person or group of persons to whom the compensation must be paid in line with the established negotiation process.

Annex 4 Environmental/Social Closures and Reclamation Management Plan

(1) Notwithstanding the obligatory environmental/social closure and reclamation programmes contained in the Environmental Impact Statement and the Environmental Management Plan of the Holder, the Holder and the Community agree to work together to identify and develop programmes for any aspect of environmental/social closure and reclamation.

(2) Consequent to Subsection (1) therefore, the Holder and Community shall develop a plan inclusive of standard forms to be used by the Holder and the Community in respect

of any closure and reclamation programmes. The plan and the standard forms shall be designed to capture the following:

- (a) Identification of stake holders who will become part of a Mine Closure Panel;
 - (b) Identification of specific closure and reclamation projects such as revegetation, transfer of infrastructure or severance of local employees;
 - (c) Definition of closure/reclamation objectives, processes and expected outcomes;
 - (d) Indicators of the programmes to be measured;
 - (e) The mode of reporting progress and results to the Community and all external stakeholders; and
- (l) the timeframe to start any environmental/social closure and reclamation programme.
- (3) The Holder shall assist in capacity the people who will participate in programmes building by providing training for the closure and reclamation
- (4) The Community shall select at least three community citizens to participate in any closure and reclamation programme and the selected citizens shall fully participate in the programme.

G. INTERPRETATION

In this Agreement unless the context otherwise requires and expresses

"Agreement" means committee Community Development Agreement;

Means committee Community Development Agreement Committee;

"Project" means An Approved Sustainable Development Project.

IN WITNESS of which the parties hereto have set their hands this

SIGNED for and on behalf of the Mineral Right Holder

SIGNED for and on behalf of the Community.....

OATH OF PROOF BY A WITNESS BEFORE HIGH COURT REGISTRAR.

I, of make oath and say that on the day of, I was present and saw the within-named parties duly execute the INSTRUMENT now produced to me and that the parties read over the contents of the document to their understanding before appending their respective signatures hereto.

SWORN AT THIS DAY OF 2019

DEPONENT

HIGH COURT REGISTRAR

CERTIFICATE OF PROOF BY THE HIGH COURT REGISTRAR.

On the day of at O'clock in the forenoon or soon thereafter this Instrument was proved before me by the oath of the within-named witness
..... .. of to have been duly executed by the within-named Parties.

GIVEN UNDER MY HAND AND OFFICIAL SEAL

HIGH COURT REGISTRAR,

PREPARED BY

COMMUNITY DEVELOPMENT MEMBERS

MEMBERS

STATUS