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LOCAL AUTHORITY NOTICE

LOCAL AUTHORITY NOTICE 19

The Council of the Blue Crane Route Municipality (a municipality established in terms of Act 117 of 1998) acting pursuant to its powers in terms of section 12 of the Local Government: Municipal System Act 32 of 2000 resolved on 3 July 2007, to adopt the following by-law, which will take effect from date of publication in this gazette:

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BLUE CRANE DEVELOPMENT AGENCY

("BCDA")

BY-LAWS



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BLUE CRANE DEVELOPMENT AGENCY BY-LAWS

WHEREAS the Blue Crane Development Agency ("BCDA") which existed at the date of the coming into operation of these By-Laws, was established by Resolution of the Council of the Blue Crane Route Municipality passed on 29 April 2003 and conducted its business as a Section 21 Company in terms of the Companies Act, 1973.

AND WHEREAS BCDA is accordingly a Municipal Entity as contemplated by Section 31(1) of Local Government: Municipal Systems Amendment Act No. 44 of 2003.

AND WHEREAS Blue Crane Route Municipality's strategic objectives of local, social and economic development for the benefit of the local community will be achieved more efficiently through the use of Blue Crane Development Agency as a separate structure.

AND WHEREAS the Blue Crane Route Municipality is entitled, and has decided, to convert Blue Crane Development Agency into a Service Utility under the sole control of the Blue Crane Route Municipality in accordance with the provisions of Section 31(4)(a) of Local Government: Municipal Systems Amendment Act No. 44 of 2003.

NOW THEREFORE the Council of the Blue Crane Route Municipality adopts these by-laws in compliance with prevailing Local Government Legislation for the conversion of Blue Crane Development Agency (Association Incorporated under Section 21) Registration No: 2003/015482/08 into a Service Utility under the sole control of Blue Crane Route Municipality, and to provide for matters connected therewith:

1. CONVERSION OF BLUE CRANE DEVELOPMENT AGENCY

- 1.1 Blue Crane Development Agency (Association Incorporated under Section 21) Registration No: 2003/015482/08 is hereby converted into a Service Utility under the sole control of Blue Crane Route Municipality.
- 1.2 BCDA shall operate under the name Blue Crane Development Agency.

2. FUNCTIONS OF THE BLUE CRANE DEVELOPMENT AGENCY ("THE AGENCY")

- 2.1 The main functions of the Agency are:

- 2.1.1 To promote social and economic development as contemplated in Section 152(1)(c) of the Constitution;
- 2.1.2 To encourage the involvement of local communities and community organisations in the promotion of social and economic development as contemplated in Section 152(1)(e) of the Constitution.
- 2.1.3 To assist the parent municipality to fulfil its developmental duties as contemplated in Section 153 of the Constitution.
- 2.1.4 To promote the implementation of the integrated development plan of the parent municipality, contemplated in Chapter 5 of the Local Government: Municipal Systems Act No. 32 of 2000, including but not limited to the following components of the integrated development plan:
 - 2.1.4.1 An improvement of the existing level of development in the Municipality.
 - 2.1.4.2 The attainment of the Council's development priorities and objectives including the local, social and economic development aims; and
 - 2.1.4.3 The implementation of the Council's development strategies.
- 2.1.5 To conduct any commercial activities approved by the Council, in the exercise of the powers and functions assigned to the Municipality in terms of the Constitution or National or Provincial Legislation, as contemplated in Section 164 of Local Government, Municipal Finance Management Act No: 56 of 2003; and
- 2.1.6 To assist the parent municipality to achieve the objectives of broad-based black economic empowerment as contemplated in Broad-Based Black Economic Empowerment Act No. 53 of 2003.
- 2.2 In addition to its main objectives set out in Sub-Section 2.1 the Agency may generally, enter into any contract and perform any act, whether within the Municipality or elsewhere, which may be necessary for or incidental or conducive to the attainment of any of the objects of the Agency, or which are calculated directly or

indirectly to enhance the value of the services or functions which the Agency can render towards attaining its main objectives.

- 2.3 The Performance Agreement between the parent municipality and the Agency, referred to in subsection 2.6.1 must be concluded within a reasonable time after the Board has been appointed and thereafter annually between the Board and the Council within 1 (one) month after the beginning of the financial year of the Municipality.
- 2.4 The Performance Agreement must include:-
 - 2.4.1 Performance objectives and targets that must be met, and the time frames within which those performance objectives and targets must be met.
 - 2.4.2 Standards and procedures for evaluating performance and intervals for evaluation; and
 - 2.4.3 A provision for dispute resolution in the case of a dispute between the Board and The Council regarding the Performance Agreement.
- 2.5 The performance objectives and targets referred to in subsection 2.4.1 must be practical, measurable and based on the key performance indicators set out from time to time in the Municipality's integrated development plan.
- 2.6 The Agency must perform its functions in accordance with:-
 - 2.6.1 A Performance Agreement;
 - 2.6.2 These by-laws;
 - 2.6.3 Chapter 8A of Local Government: Municipal Systems Act No. 32 of 2000;
 - 2.6.4 Chapters 10 and 11 of Local Government: Municipal Finance Management Act No. 56 of 2003; and
 - 2.6.5 Any other applicable Legislation.

3. **BOARD OF DIRECTORS**

- 3.1 The Council appoints the Members of the Board of Directors in terms of Section 93E of the Local Government: Municipal Systems Act No. 32 of 2000.
- 3.2 The Agency is managed and controlled by a Board of Directors which shall consist of not less than 5 (five) and not more than 7 (seven) Directors of whom at least one third of Directors in office at any time shall be non-executive Directors.
- 3.3 If at any time the number of Directors holding office falls below 5 (five), the remaining Directors shall manage and control the affairs of the Agency.
- 3.4 The Directors must be persons who have amongst them the requisite range of expertise in at least the following fields to effectively manage and guide the activities of the Agency:
- 3.4.1 Have experience in business or administration; or
- 3.4.2 On account of their training or experience:-
- 3.4.2.1 Are knowledgeable about the promotion of trade, industry, finance, tourism or the economy; or
- 3.4.2.2 Have knowledge of matters pertaining to the establishment of business; or
- 3.4.2.3 Have experience of matters connected with, and of problems experienced by, small, medium and micro enterprises; and
- 3.4.2.4 Comply with any other criteria which the Council may prescribe.
- 3.5 The Chairperson of the Board of Directors of the Agency shall be a non-executive Director.
- 3.6 The duties of the Directors of the Agency are as provided for in Section 93H and the code of conduct as provided for in Section 93L of Local Government: Municipal Systems Amendment Act of 2000.

- 3.7 The Directors of the Agency shall perform the duties with due regard to the provisions of Chapter 4 of Local Government: Municipal Systems Act of 2000 regarding the need for community participation.
- 3.8 The Blue Crane Route Municipality shall determine the upper limits of the salary, allowances and other benefits of the Chief Executive Officer and Senior Managers of the Agency in terms of Section 89 of Local Government: Municipal Finance Management Act No. 56 of 2003.

4. MEETINGS OF THE BOARD OF DIRECTORS OF THE AGENCY

- 4.1 The Board of Directors shall meet at least 4 (four) times during a financial year at such times and places as may be determined by the chairperson.
- 4.2 The chairperson shall preside at all meetings of the Board at which he is present.
- 4.3 At meetings of the Board, the chairperson shall have a deliberative vote, and in addition, in the event of an equality of votes, a casting vote.
- 4.4 The deputy chairperson (if one has been appointed) shall preside at any meeting of the Board from which the chairperson is absent, and shall at any such meeting have all the powers and discharge all the duties of the chairperson.
- 4.5 If both the chairperson and vice-chairperson is absent from a meeting, the Board shall designate one of its members to preside at such meeting.
- 4.6 The Board must conduct its business in an open manner and may close its sittings, or those of its committees, only when it is reasonable to do so having regard to the nature of the business being transacted.

5. ESTABLISHMENT OF COMMITTEES

- 5.1 The Board of Directors may:-

- 5.1.1 Establish one or more committees necessary for the effective and efficient performance of any of its functions or the exercise of any of its powers;
- 5.1.2 Appoint the members of such a committee from among its members; and
- 5.1.3 Dissolve a committee at any time.
- 5.2 The Board of Directors:-
 - 5.2.1 Must determine the functions of a committee;
 - 5.2.2 May delegate duties and powers to it;
 - 5.2.3 Must appoint the chairperson of such committee;
 - 5.2.4 May authorise a committee to co-opt advisory members who are not members of the Board within the limits determined by the Council;
 - 5.2.5 May remove a member of a committee at any time; and
 - 5.2.6 May determine a committee's procedure.

6. CHIEF EXECUTIVE OFFICER AND MANAGERS DIRECTLY ACCOUNTABLE TO THE CHIEF EXECUTIVE OFFICER

- 6.1 The Board of Directors must appoint a Chief Executive Officer ("CEO") of the Agency in terms of Section 93J of the Municipal Systems Act.
- 6.2 Such appointment and that of Senior Management of the Agency directly accountable to the CEO shall be made from a short list of candidates approved by the Council and submitted to the Board of Directors for a decision.
- 6.3 The CEO as the head of administration of the Agency is subject to the policy directions of the Board of Directors and is responsible and accountable to the Board of Directors for:-

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- 6.3.1 The formation and development of an economical, effective, efficient and accountable administrative unit:-
- 6.3.1.1 Equipped to carry out the task of implementing the functions of the Agency;
- 6.3.1.2 Responsive to the needs of the local community to participate in the affairs of the Agency;
- 6.3.2 The management of the affairs of the Agency in accordance with the Performance Agreement, these by-laws and other legislation applicable to the Agency:
- 6.3.3 The implementation of the Agency's development plans, and policies of the Agency and monitoring of progress with implementation thereof;
- 6.3.4 The appointment of staff, other than the senior managers directly accountable to the CEO, and subject to the Employment Equity Act No. 55 of 1998;
- 6.3.5 The management, effective utilisation and training of staff;
- 6.3.6 The maintenance of discipline of staff;
- 6.3.7 The promotion of sound labour relations and compliance by the Agency with applicable labour legislation;
- 6.3.8 Advising the Board of Directors of the Agency;
- 6.3.9 Managing communications between the staff of the Agency and the Board of Directors;
- 6.3.10 Carrying out the decisions of the Board of Directors;
- 6.3.11 The administration and implementation of these by-laws and other legislation applicable to the functions of the Agency.
- 6.3.12 The exercise of any powers and the performance of any duties delegated by the Board of Directors, to the CEO;

- 6.3.13 Facilitating participation by the local community in the affairs of the Agency;
 - 6.3.14 Developing and maintaining a system whereby community satisfaction with the work of the Agency is assessed;
 - 6.3.15 The implementation of National and Provincial Legislation applicable to the functions of the Agency; and
 - 6.3.16 The performance of any other function that may be assigned to the CEO by the Board of Directors.
- 6.4 As the Accounting Officer of the Agency, the CEO is in terms of Part 3 of Chapter 10 of the Municipal Finance Act accountable to the Board of Directors of the proper financial management of the Agency.
- 6.5 If the CEO is for any reason unable to perform his or her duties, the Board of Directors may designate a person in its service to act as CEO until the CEO is able to resume his or her functions.
- 6.6 Section 57 of Local Government: Municipal Systems Act No. 32 of 2000, read with the necessary amendments thereto, are applicable to the CEO and the Managers directly accountable to the CEO, provided that any reference in Section 57 to:
- 6.6.1 "Municipal Manager" shall be construed as referring to the CEO;
 - 6.6.2 "Municipality" shall be construed as referring to the Agency; and
 - 6.6.3 "Mayor or Executive Mayor" shall be construed as referring to the Chairperson of the Board of Directors.

7. STAFF OF AGENCY

- 7.1 Work incidental to the performance of the functions of the Agency is performed by the CEO assisted by:-
 - 7.1.1 Senior Managers directly accountable to the CEO;

- 7.1.2 Persons appointed by the CEO in terms of Section 6.3.4; and
- 7.1.3 Employees of the Municipality transferred or seconded to the service of the Agency in terms of any law regulating such transfer or secondment.
- 7.2 The CEO, within a policy framework determined by the Board of Directors and subject to applicable legislation, must:-
- 7.2.1 Approve a staff establishment for the Agency;
- 7.2.2 Provide a job description for each post on the staff establishment;
- 7.2.3 Attach to each post the remuneration and other conditions of service within the upper limits referred to in Section 89 of Local Government: Municipal Finance Management Act No. 56 of 2003; and
- 7.2.4 Establish a process or mechanism to regularly evaluate the staff establishment and the remuneration and conditions of service.
- 7.3 Subsection 7.2.3 and 7.2.4 do not apply to remuneration and conditions of service regulated by employment contracts referred to in Section 6.6 of these by-laws.

8. DELEGATIONS OF POWERS AND DUTIES BY CHIEF EXECUTIVE OFFICER

- 8.1 In addition to the finance related powers and duties which the CEO as Accounting Officer may delegate to an official of the Agency in terms of Section 106 of Local Government: Finance Management Act No. 56 of 2003, the CEO may also delegate to an official of the Agency:-
- 8.1.1 Any of the powers and duties assigned or delegated to the CEO in terms of these by-laws and other applicable legislation.
- 8.1.2 Any powers or duties reasonably necessary to assist the CEO in complying with a duty which requires that reasonable or appropriate steps be taken to ensure the achievement of the

aims of a specific provision of these by-laws and other applicable legislation.

- 8.2 The CEO must regularly review delegations issued in terms of subsection 8.1 and, if necessary, amend or withdraw any of these delegations.
- 8.3 The provisions of section 162 of Local Government: Municipal Finance Management Act No. 56 of 2003, read with the necessary amendments are applicable to delegations issued in terms of subsection 8.1.

9. **ASSETS**

- 9.1 The Municipal Manager may transfer or provide such infrastructure, goods, services, supplies, equipment or other assets of the Municipality to the Agency as may be necessary for the proper functioning of the Agency.
- 9.2 The acquisition of infrastructure, goods, services, supplies, equipment or other assets by the Agency is the responsibility of the CEO in terms of a supply chain management policy referred to in Chapter 11 of Local Government: Municipal Finance Management Act No. 56 of 2003.

10. **FINANCIAL GOVERNANCE**

- 10.1 The financial governance of the Agency shall be in accordance with the provisions of Chapters 10 and 11 of Local Government: Municipal Finance Management Act No. 56 of 2003.
- 10.2 In addition to the information, returns, document, explanations and motivations as may be prescribed in terms of Section 104 of Local Government: Municipal Finance Management Act No. 56 of 2003, the Municipal manager may require the CEO to provide further information, returns, documents, explanations and motivations as may be required by the parent municipality.

11. **DEFINITIONS**

For the purposes of these by-laws, any word or expression to which a meaning has been assigned in Local Government: Municipal Systems Act No. 32 of 2000 or Local Government: Municipal Finance

Management Act No. 56 of 2003, shall bear the same meaning in these by-laws and unless the context indicates otherwise:-

- 11.1 "Agency" means the Blue Crane Development Agency, also known as BCDA, established in terms of these by-laws.
- 11.2 "Chief Executive Officer" means the Chief Executive officer of the Agency referred to in section 6 of these by-laws.
- 11.3 "Council" means the Council of the Blue Crane Route Municipality.
- 11.4 "Constitution" means the Constitution of the Republic of South Africa, Act 108 of 1996.
- 11.5 "Effective Date" means the day on which these by-laws take effect as determined by the Council in terms of section 12.2 hereunder.
- 11.6 "Municipal Finance Act" means the Local Government: Municipal Finance Management Act No. 56 of 2003, as amended.
- 11.7 "Municipal Manager" means the person appointed by the Council as the Municipal Manager of the Blue Crane Route Municipality in terms of section 82 of the Local Government: Municipal Structures Act, 1998 [Act 117 of 1998], and includes any person:
 - 11.7.1 Acting in such position; and
 - 11.7.2 To whom the Municipal Manager has delegated a power, function or duty; acting within a policy framework determined by the council and subject to applicable legislation.
- 11.8 "Municipal Systems Act" means the Local Government: Municipal Systems Act No. 32 of 2000, as amended.
- 11.9 "Parent Municipality" means the Blue Crane Route Municipality.
- 11.10 "Performance Agreement" means the Performance Agreement between the Agency and the Council contemplated in sub section 2.6.1 of these by-laws.

12. SHORT TITLE AND COMMENCEMENT

- 12.1 These by-laws are called the Blue Crane Development Agency by-laws.
- 12.2 These by-laws shall take effect upon the date of publication thereof in accordance with Section 13 of Local Government: Municipal Systems Act No. 32 of 2000.
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