



DATED THIS 6TH DAY OF JUNE 2011

MEMORANDUM OF UNDERSTANDING

Between

KENYA FOREST SERVICE

- AND -

CLEAN AIR ACTION CORPORATION

ON

COMMUNITY FOREST MANAGEMENT

THIS MEMORANDUM OF UNDERSTANDING (hereinafter referred to as "the MoU") is made this 6th day of June Two Thousand and ~~ten~~ eleven

BETWEEN

I. **KENYA FOREST SERVICE**, a state corporation established under the Forests Act, 2005 and of Post Office Box Number 30513-00100, Nairobi in the Republic of Kenya (hereinafter referred to as 'KFS') and charged with the overall mandate of ensuring sustainable management and conservation of Kenyan forests and forest resources for the socio-economic development of the country.

AND

II. **THE CLEAN AIR ACTION CORPORATION** (hereinafter referred to as 'CAAC'), a company incorporated in Delaware, USA and with headquarters in Tulsa, Oklahoma in the United States of America whose address for the purposes of this MoU is care of TIST Kenya of Post Office Box Number 1508, Nairobi, in the Republic of Kenya;

WHEREAS both parties: -

- a. **Recognize** the importance of empowering small groups of subsistence farmers in Kenya to reverse the devastating effects of deforestation, drought and famine through tree planting and sustainable agriculture.
- b. **Appreciate** the need to conserve the environment and reduce the effect greenhouse gases that has profound effect on environmental degradation and climate change.
- c. **Concur** that Clean Air Action Corporation and its affiliate participants have a role to play in conserving forest resources for ecological benefit to the society and sale of greenhouse gas credits for mitigating the effects of climate change.
- d. **Acknowledge** that the gazetted Forest Ecosystems are resources under statutory management of KFS.

NOW The PARTIES affirm their commitment to protect and conserve the natural forests by way of rehabilitation aimed at restoring and improving its value for climate change mitigation and socio-economic development of the society.

THE PARTIES THEREFORE AGREE AS FOLLOWS:

Article 1

Objective

The objective of this MoU is to provide a framework for the establishment and management of a partnership for capacity building and rehabilitation of gazetted Kenyan forests as may be mutually identified and agreed upon by the parties.

Article 2

Definitions & Interpretations

1. In this MoU, the following expressions and words shall have the meanings set out:

‘Rehabilitation’ includes reforestation, afforestation, natural regeneration and enrichment planting;

“MoU” - Means this Memorandum of Understanding;

“Resources” includes funds, equipments, infrastructure, expertise, forest, trees including seedlings and protection personnel;

‘Implementation Committee’ refers to the Committee established in terms of Article 5 of this MoU.

“Rehabilitation program” refers to a program of forest rehabilitation activities under implementation by the Steering Committee.

2. Words importing the singular include the plural and vice versa and references to Articles or Clauses and Schedules are references to Articles or Clauses and Schedules to this MoU.
3. Reference to any person includes the person’s assigns or transferees or successors in title, whether direct or indirect.
4. The headings in this MoU are for ease of reference only and do not affect the construction of any of the terms and provisions hereof.

Article 3

Commencement and Duration

1. This MoU will enter into force on the date above indicated or upon the signing by the duly authorized representatives of both parties.
2. This MoU will be valid for a period of Ten (10) years and may be renewed on similar or terms to be negotiated by the parties.
3. Parties may at any time enter into a separate agreement to govern specific or all aspects of this MoU.

Article 4

Obligations of the Parties

1. Both parties jointly agree:-
 - (a) To uphold the provisions of the Forests Act, 2005 and the Regulations there under and in particular acknowledge the statutory right and powers of KFS in the management of Kenyan state forests;
 - (b) Subject to this MoU, to take joint responsibility for the overall management of rehabilitation activities at the designated forest areas and project sites as specified in the annexure hereto or as may be agreed upon from time to time;
 - (c) To work together in good faith for the implementation of rehabilitation program by TIST Participants operating under CAAC.
2. The obligations of KFS shall be to:-
 - (a) Spearhead the conservation and protection of the Forest Ecosystem pursuant to the Forests Act, 2005;
 - (b) Provide technical advice necessary for the implementation of the rehabilitation activities in the Forest Ecosystem;
 - (c) Assist in the surveillance of the rehabilitated sites;

- (d) To avail its officers for training by CAAC as may be programmed from time to time
- (e) Allow TIST Participants operating under CAAC to publicize the partnership and rehabilitation activities carried out on-site and off-site including through print and electronic media;
- (f) Allow CAAC, its Agents, Partners and TIST Participants access to the forest areas under supervision of KFS local officers;
- (g) Recognize the partnership through issuance of a certificate to CAAC Partners/TIST Participants at the beginning and another at the conclusion of the program period;
- (h) Allow CAAC to monitor and evaluate the implementation of activities agreed upon at the commencement of the agreement;
- (i) Support and guide the Implementation Committee, CAAC and stakeholders in the implementation of rehabilitation program; and,
- (j) Carry out any other activity or obligation agreed expressly in writing by both parties intended to satisfy the objects of this MoU.

3. The obligations of CAAC shall be to:-

- (a) To carry out suitable training programs to KFS and participating communities as may be arranged from time to time.
- (b) Engage and train Quantifiers in carbon data monitoring i.e. data collection, synchronizing, and submission and auditing.
- (c) Facilitate Quantifiers to travel to the designated forest areas to confirm location and growth information on trees and record results of the Small Groups.
- (d) Provide monitoring equipment e.g. palm computers and Global Positioning System (GPS) equipment.
- (e) Maintain database of location and growth of trees in the designated areas.

- (f) To negotiate with KFS on opportunities for benefit sharing between the participating communities and KFS for the planted areas.
- (g) Maintain a roll of CAAC Partner Community/TIST participants enrolled under this MOU and its agents, servants, employees and partners, and shall update the same regularly and furnish the details of the roll to the Service upon request.
- (h) Keep written or electronic records of all program activities conducted in the forest area under this MOU and preserve those records for at least six years from when first written or throughout the duration of this agreement whichever is longer.
- (i) Where CAAC and TIST program participants engage in commercial activities inside the Forests listed in Appendix A, such activities may only be carried out with the written consent of KFS and shall comply with all laws for the time being in force for the regulations of such activities, and any violation of those laws will constitute breach of this agreement.
- (j) Continue to train KFS and program participants in climate change adaptation and mitigation.
- (k) Continue to package and market the carbon credits on behalf of program participants and participating communities in consultation with KFS.
- (l) Ensure that the participating program partners, and especially TIST members adhere to the following conditions:
 - a. TIST Participants should be members of a registered Community Forest Association pursuant to section 46 of the Forests Act 2005.
 - b. Plant and manage indigenous tree species to restore the natural forest and to provide carbon storage as agreed between the parties in the designated sites
 - c. Protect, conserve and manage the forest or part thereof pursuant to this MoU and the provisions of the approved management plan.
 - d. Provide any reports, data or records required by the Parties for information on rehabilitation activities under implementation within this MoU;
 - e. Obtain technical guidance on the implementation of the rehabilitation activities from KFS;

- f. Keep the Service informed of any developments, changes and occurrences within the forest which are critical for the conservation of biodiversity
- g. Assist the Service by reporting illegal activities to help enforce the provisions of the Forests Act 2005 and relevant rules and regulations
- h. carry out any other activity or obligation agreed expressly in writing by both parties intended to satisfy the objects of this MoU
- i. Take such precautions against occurrence of fire and where it occurs to report it to the Service
- j. enter into any agreements with CAAC jointly with KFS to sell emission reductions sequestered through indigenous tree that have been established through TIST members
- k. To consider other benefits which may from time to time be agreed on with the Service, CAAC and TIST members

Article 5

The Implementation Committee

1. There shall be an Implementation Committee formed to oversee the implementation of this MoU which may be centrally placed or locally based at program level. Parties will agree on which option to take.
2. The Implementation Committee membership shall comprise the following:
 - (a) Kenya Forest Service Director or his/her appointed representative;
 - (b) The President of CAAC or his designated representative;
 - (c) A member of the TIST Kenya Leadership Council;
 - (d) A member of each local CFA elected by that CFA on an annual basis.
 - (e) Any other member mutually agreed by both parties
3. The Implementation Committee shall appoint one amongst its membership as chairman and shall have a quorum of three members for decision-making in a properly convened meeting. No quorum shall be attained without representation of KFS.

4. The Implementation Committee shall develop its own terms of reference, procedure for conducting its affairs and the implementation program, documentation of rehabilitation donations, review of implementation activities and dispute resolution amongst stakeholders.

Article 6

Risk and liability

1. CAAC employees, servants and agents and TIST Participants shall take precaution and other necessary measures to protect themselves against risks such as harm from wildlife, fires, rivers, falling trees and other objects associated with management of the forest.
2. The Service shall not be liable for any injury, loss or damage occurring to TIST Participants and CAAC employees, servants, agents, goods or equipment.

Article 7

Amendment, Alteration & Termination

1. No amendments, variations or waiver of this Memorandum shall be effective unless made in writing and duly executed by the parties herein.
2. This MoU may be terminated under the following terms:
 - (a) Upon expiry of the ten year period;
 - (b) By mutual written consent of the parties;
 - (c) If a party is in material breach of its obligations herein and has failed to cure such breach within ninety (90) days of notice from the non-breaching party;
 - (d) If that other party ceases to exist or is deregistered;
 - (e) By operation of law.

3. In the event of termination other than by mutual consent or upon expiry of the full term, any resources mobilized for the rehabilitation program including funds and equipments shall be retained for rehabilitation activities under supervision of the Implementation Committee or transferred to the Forest Management and Conservation Fund established under section 18 of the Forests Act 2005.

Article 8

Dispute Resolution

1. In the event of any dispute, question, or disagreement arising from or relating to this MoU, the parties hereto shall use their best efforts to settle the dispute, question, or disagreement. To this end, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.
2. If the parties will not have reached an agreement within sixty (60) days from the date the conflict is formally raised, the matter shall be referred to the Chief Executive Officers of respective parties for resolution and if there is no agreement then the matter will be handled as follows:
3. The parties agree to seek amicable non-binding settlement by mediation in accordance with the Nairobi Dispute Resolution Centre (DRC) Mediation Rules. No party may commence any court proceedings or arbitration in relation to the matter giving rise to the dispute until the parties have attempted to settle by mediation and that mediation has terminated.
4. If the dispute has not been settled by mediation within ninety (90) days from when the mediation was instituted, then, upon notice by any of the aggrieved parties to the others, all disputes, questions, or differences shall be finally settled by arbitration.
5. Where the parties submit a dispute for arbitration all parties to the dispute shall jointly agree on the appointment of an arbitrator. In the event that an independent arbitrator is not agreed to by all parties within thirty (30) days, the

Chairman of the Kenya Chapter of the Chartered Institute of Arbitrators shall be requested by any party in writing to appoint an arbitrator.

6. The costs of arbitration shall be borne equally by parties to the dispute.
7. The arbitration shall take place in Nairobi and the arbitration shall be conducted in English and/or Swahili as required.
8. The provisions of the Arbitration Act (Act No 4 of 1995) shall apply to any arbitral proceedings conducted under this MoU.
9. The decision of the arbitrator shall be final and binding upon the parties to the fullest extent permissible by law.

Article 9

Proper law and jurisdiction

1. This agreement shall be governed by Kenyan Law in every particular including formation and interpretation and shall be deemed to have been made in Kenya.
2. Nothing in or relating to this Memorandum shall be deemed to be a waiver of any of the Forest Rules and Regulations.

Article 10

Notices

Any notice required to be given hereunder shall be sufficiently served on either Party if forwarded to them by registered post or certified mail to their last known postal address in Kenya or delivered to their last known place of business or place of abode or as the case may be. A notice given by post shall be deemed to have been served five (5) days after the date of posting.

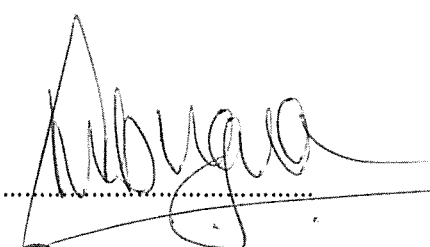
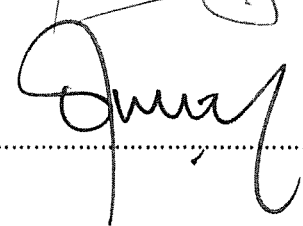
Article 11

Invalidity

If any provision of this MoU or the application thereof to any person or circumstances shall be held invalid or unenforceable to any extent, the parties shall negotiate in good faith and attempt to agree on an amendment to this MoU that will provide the parties with substantially the same rights and obligations, to the greatest extent possible, as the original MoU in valid, binding and enforceable form. In the event of any provisions of this MoU being or becoming legally ineffective or invalid, the validity or effect of the remaining provisions of this MoU shall not be affected.

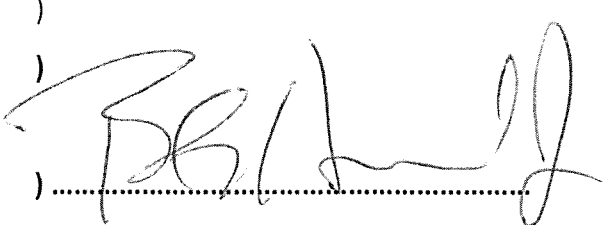
IN WITNESS WHEREOF the parties have caused this **MEMORANDUM OF UNDERSTANDING** to be duly executed on the day and year first herein above appearing.

Signed by the Director)
KENYA FOREST SERVICE)


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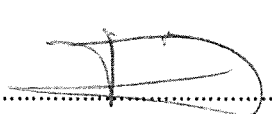
In the presence of: -)
)
)
Corporation Secretary)

Signed & Stamped By)
Clean Air Action Corporation)


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President)

In the presence of)
TIST MEMBER)


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DOROTHY NAITORE

Annexes

Annex1: Project Location

Annex 2: Specific cooperation agreement for the TIST/KFS/Clean Air Action Cooperation.

