

MEMORANDUM OF AGREEMENT

Entered into by and between

THE WESTERN CAPE GOVERNMENT VIA ITS DEPARTMENT OF TRANSPORT AND PUBLIC WORKS

(Herein represented by **Ms Jacqui Gooch** in her capacity as the **Head of Department** of the Department of Transport and Public Works, and duly authorised thereto)

(Hereinafter referred to as "the Department")

and

THE STELLENBOSCH MUNICIPALITY

A Municipality established in terms of section 12 of the Local Government: Municipal Structures Act, Act 117 of 1998

(Herein represented by **Mr Richard Bosman** in his capacity as the **Acting Municipal Manager**, and duly authorised thereto)

(Hereinafter referred to as "the Municipality")

(Collectively hereinafter referred to as "the Parties")



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INTRODUCTION

- A. **WHEREAS** the Department has adopted the Provincial Public Transport Institutional Framework ("PPTIF"), which is the Province's renewed approach to developing sustainable transport systems and improving and transforming public and non-motorised transport in the Western Cape.
- B. **AND WHEREAS** as part of the PPTIF implementation programme, the Western Cape Government has made a commitment to partner with selected priority municipalities to jointly achieve the objectives of the PPTIF and to plan, implement and manage sustainable transport initiatives, including incremental improvements to public and non-motorised transport.
- C. **AND WHEREAS** the Incremental Approach is intended to be implemented over three stages, which are expanded upon in this Agreement.
- D. **AND WHEREAS** the Municipality has been identified as a priority municipality for implementation of the PPTIF.
- E. **AND WHEREAS** the Parties acknowledge that the Municipality may need to conduct an investigation in terms of Section 78 of the Municipal Systems Act, Act 32 of 2000 ("the Systems Act").
- F. **AND WHEREAS** the Parties acknowledge that the Department will assist and provide support to the Municipality in order for it complete the aforementioned Section 78 investigation.
- G. **NOW THEREFORE** the Parties wish to enter into this Agreement in order to ensure a co-ordinated exercise of powers and to regulate their relationship with respect to the planning and implementation of the PPTIF.

THE PARTIES RECORD THEIR AGREEMENT IN WRITING AS FOLLOWS:**1. DEFINITIONS AND INTERPRETATION**

- 1.1 In this Agreement the following expressions bear the meanings assigned to them below and cognate expressions bear corresponding meanings:

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- 1.1.1 **"Agreement"** means this Memorandum of Agreement between the Parties, together with all annexures hereto, whether included in this Agreement at the date of signature or at any later date in terms of this Agreement.
- 1.1.2 **"Business day"** in reference to any time limit prescribed herein shall include Monday, Tuesday, Wednesday, Thursday and Friday, except if any of the aforesaid days is a public holiday in the Republic of South Africa.
- 1.1.3 **"Incremental Approach"** means a step-wise approach to improving public and non-motorised transport as contemplated by the PPTIF;
- 1.1.4 **"Municipal Area"** means the jurisdictional area of the Municipality; and
- 1.1.5 **"Signature Date"** means the date on which the last signing Party signs this Agreement (and any of the related annexures hereto).
- 1.2 Words and expressions defined in any clause shall, for the purpose of that clause, bear the meaning assigned to such words and expressions in that clause.
- 1.3 The headings of the clauses are for the purpose of convenience and reference only and shall not aid in the interpretation of, nor modify the provisions of, the Agreement or any clause thereof.
- 1.4 In this Agreement, unless the context indicates a contrary intention, a word or expression which denotes –
 - 1.4.1 any one sex or gender includes the other sex or gender, as the case may be;
 - 1.4.2 the singular includes the plural and *vice versa*; and
 - 1.4.3 natural persons includes juristic persons and *vice versa*.
- 1.5 When any number of days is prescribed such number shall exclude the first day and include the last day unless the last day falls on a Saturday, Sunday or public holiday in the Republic of South Africa, in which case the last day shall be the next

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succeeding day which is not a Saturday, Sunday or a public holiday in the Republic of South Africa.

2. COMMENCEMENT, DURATION AND TERMINATION OF THE AGREEMENT

- 2.1 This Agreement shall come into effect on the Signature Date and shall continue for 24 (twenty four) months or until this Agreement is terminated by either one of the Parties, subject to clause 2.2 below.
- 2.2 Either Party may terminate this Agreement by giving written notice to the other Party.
- 2.3 After the initial 24 (twenty four) month period, set out in clause 2.1 above, the Parties may extend the Agreement on a month to month basis provided that both Parties agree to such an extension.
- 2.4 In executing the Agreement between the Parties, the Parties should be mindful of the Incremental Approach adopted in the PPTIF, which includes the following stages:
- 2.4.1 Stage 1 includes the following:
- Develop a sustainable transport plan;
 - Strong focus on non-motorised transport;
 - Basic public transport infrastructure improvements;
 - Improve public transport facilities management;
 - Improved regulation, enforcement and training of existing public transport operators, and
 - Strengthened industry engagement.
- 2.4.2 Stage 2 includes the following:
- Continuation of Stage 1 initiatives;
 - Provision of business advisory and fleet renewal support to operators;
 - Introduction of small subsidised service contracts with existing operators for the provision of higher quality public transport services;
 - Introduction of selected commercial public transport service contracts;

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- Introduction of low-cost Intelligent Ticketing System (ITS) and Automated Fare Collection (AFC) systems; and
- Development of basic bus stop infrastructure.

2.4.3 Stage 3 includes the following:

- Continuation of Stage 1 and 2 initiatives;
- Progressive expansion of subsidised public transport in a context-appropriate and financially sustainable manner, including the development of a hybrid-type system.
- Development of infrastructure required to support these services.
- Development of Advanced Public Transport Management System (APTMS) and Integrated Fare Management (IFM).

3. ROLES AND RESPONSIBILITIES OF THE PARTIES

3.1 The Department shall be responsible for the following:

- 3.1.1 Undertaking all necessary planning required for the PPTIF after consultation with the Municipality;
- 3.1.2 Carrying out all the data collection work that will be required for the PPTIF in the Municipal Area;
- 3.1.3 Developing the particular Incremental Approach for the Municipality, which will be prepared after consultation with the Municipality;
- 3.1.4 Assisting the Municipality to create the necessary budgets from the Municipality's own revenue and grants for the implementation and management of the PPTIF in the Municipal area;
- 3.1.5 Identifying and sourcing additional sources of funding for the PPTIF, including donor funding;
- 3.1.6 Procuring all necessary and appropriate service providers for the planning and scoping phases of the PPTIF in the Municipality's Area; and

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3.1.7 Supporting the Municipality to complete an investigation in terms of Section 78 of the Systems Act, if required, including the feasibility study and service delivery agreements.

3.2 The Municipality shall be responsible for the following:

3.2.1 Supporting all necessary planning for the PPTIF and providing input to these plans through the PPTIF Planning Committee;

3.2.2 The Municipality shall assist and cooperate with the Department to create a budget, from its own revenue or grants, for the implementation and management of the PPTIF in the Municipal Area. This includes:

3.2.2.1 Supporting the Department's assessment of the Municipality's operating and capital budget and relevant conditional grant income; and

3.2.2.2 Supporting the Department's efforts to source additional funding for the PPTIF, including donor funding.

3.2.3 Conduct an investigation required in terms of Section 78 of the Systems Act in order to review and decide on the appropriate mechanism to provide public transport and related services in the Municipal Area, which assessment and review will be done with the support and assistance of the Department.

3.3 Both Parties shall be responsible for the following:

3.3.1 Establishing the PPTIF Planning Committee, as detailed in clause 5 below;

3.3.2 Appointing the appropriate and designated officials to the PPTIF Planning Committee;

3.3.3 Upon conclusion of the Section 78 investigation, the Parties may consider to refer the report on of that investigation to the Negotiating Committee ("the Negotiating Committee"), which will consider the need for the conclusion of

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any further agreements and/or recommendations to be considered by the Parties thereafter;

- 3.3.4 Appointing the appropriate and designated officials to the Negotiating Committee;
- 3.3.5 Ensuring that the members of the Negotiating Committee participate as set out and detailed in Clause 4 below;
- 3.3.6 Discuss and agree to identifying and designing the appropriate priority interventions for non-motorised transport and public transport infrastructure required in the Municipal Area; and
- 3.3.7 Within the initial 24 (twenty four) month period after the signature of this Agreement and subject to the availability of funding, agree to an implementation plan for any priority interventions, as per clause 3.3.6.

4. THE NEGOTIATING COMMITTEE

- 4.1 Following the findings of the Section 78 investigation, the Parties may need to establish the Negotiating Committee in order to negotiate further agreements between the Parties, which will provide for, *inter alia*, the institutional and financial arrangements between the Parties, and set out and allocate the roles and responsibilities of the Parties.
- 4.2 The Negotiating Committee will be authorised to negotiate, but not to conclude, the terms and conditions of such further agreements between the Parties.
- 4.3 The Parties shall appoint the following designated officials to the Negotiating Committee:

From the Municipality:

- 4.3.1 The Municipal Manager and/or his/her nominated representative;
- 4.3.2 The Director of the Department responsible for public and non-motorised transport and/or his/her nominated representative;

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- 4.3.3 The Director of the Department responsible for Finance and/or his/her nominated representative;
- 4.3.4 The Director of the Department responsible for Spatial Planning and/or his/her nominated representative;
- 4.3.5 The Director of the Department responsible for Legal Services and/or Corporate Services and/or his/her nominated representative;
- 4.3.6 The Director of the Department responsible for Safety and Security and/or Law Enforcement and/or his/her nominated representative;

From the Department:

- 4.3.7 The Chief Director of Transport Operations and/or his/her nominated representative;
 - 4.3.8 The Director responsible for Land Transport Integration and Oversight and/or his/her nominated representative; and
 - 4.3.9 Deputy Director responsible for Cape Winelands and Central Karoo and/or his/her nominated representative.
- 4.4 Additionally, the Parties agree that a facilitator, which may be one or more individuals from the technical team, shall be appointed to the Negotiating Committee to facilitate all meetings of the committee, and that this appointment shall be made by the Department.
- 4.5 The designated officials in the Negotiating Committee will at its first meeting agree to a meeting schedule for the committee and shall participate in all negotiations and discussions in the spirit of cooperative governance and do so in good faith.
- 4.6 The Terms of Reference and meeting schedule shall be decided upon at the first meeting of the Negotiating Committee.

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5. THE PPTIF PLANNING COMMITTEE

5.1 The Parties will establish the PPTIF Planning Committee in order for the Municipality to be kept informed and provide input to the planning process referred to in clause 3.1.1; 3.1.2 and 3.1.3 above.

5.2 The Parties shall appoint the following designated officials to the PPTIF Planning Committee:

From the Municipality:

5.2.1 The Director of and/or the official from the Department responsible for public transport and/or his/her nominated representative;

5.2.2 The Director of and/or the official from the Department responsible for Spatial Planning and/or his/her nominated representative;

5.2.3 The Director of the Department responsible for Safety and Security and/or Law Enforcement and/or his/her nominated representative;

From the Department:

5.2.4 The Chief Director of Transport Operations and/or his/her nominated representative;

5.2.5 The Director responsible for Land Transport Integration and Oversight and/or his/her nominated representative; and

5.2.6 Deputy Director responsible for Cape Winelands and Central Karoo and/or his/her nominated representative.

5.3 The PPTIF Planning Committee shall meet quarterly.

5.4 The designated officials in the PPTIF Planning Committee will at its first meeting agree to a schedule of the quarterly meetings for the committee and shall participate in all discussions in the spirit of cooperative governance and do so in good faith.

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6. CO-OPERATIVE GOVERNANCE

6.1 The Parties will adhere to the principles of co-operative governance as reflected in sections 40 and 41 of Chapter 3 of the Constitution and sections 4 and 5 of the Intergovernmental Relations Framework Act, Act 13 of 2005, ("the IGRF Act").

6.2 The Parties will agree to:

6.2.1 Co-operate with one another in mutual trust and good faith by:

6.2.1.1 fostering friendly relations;

6.2.1.2 assisting and supporting one another;

6.2.1.3 informing one another of and consulting with one another on matters of common interest related to the Project;

6.2.1.4 adhering to agreed procedures and principles;

6.2.1.5 conducting actions and process in terms of the IGRF Act;

6.2.1.6 diligently fulfilling all their undertakings and obligations as set out in this Agreement to ensure that the required outcomes are met;

6.2.1.7 respecting each other's roles, responsibilities and obligations and not acting in a manner that encroaches or impinges on the institutional integrity of the other Party; and

6.2.1.8 always acting in the best interests of each other when any decisions are to be made or when any action is to be taken.

7. DISPUTE RESOLUTION

7.1 This Agreement shall be governed by and constructed in accordance with the laws of the Republic of South Africa. The Parties have a duty to avoid disputes, and the Parties must make every reasonable effort –

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- (a) to avoid a dispute when exercising their statutory powers; or
- (b) to settle a dispute without resorting to judicial proceedings.

- 7.2 In the event of a dispute arising from this Agreement, the Parties shall make every effort to settle such dispute amicably. If the dispute is not capable of being settled between the Parties amicably, such dispute shall be elevated to the Senior Management / Executive or their duly assigned representatives for mediation purposes.
- 7.3 Should the dispute not be resolved through mediation within 30 days of being referred by either Party to mediation, either Party may declare such dispute a formal intergovernmental dispute by notifying the other Party of such declaration in writing, as intended and provided for in section 41 of the IGRF Act, in which event the Parties will follow the procedure as outlined in section 42 of the IGRF Act.

8. NO CESSION/TRANSFER

No rights or obligations which any Party may have in terms of this Agreement shall be capable of cession or transfer without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

9. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Parties as to the subject matter hereof and no agreement, representations or warranties between the Parties other than those set out herein are binding on the Parties.

10. BREACH

Subject to clauses 6 and 7 above, should a Party breach any or all of the terms and conditions of this Agreement, and remain in such breach 10 (ten) Business days after receipt of a written notice calling upon it to remedy such breach, then the Party who served such notice shall be entitled, in addition to any remedy which it may have in law, to cancel this Agreement, or to remedy the breach itself.

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11. NOTICES AND DOMICILIA

11.1 The Parties choose as their *domiciled citandi et executandi* their respective addresses as set out in Clause 11.2 for all purposes arising out of or in connection with this Agreement at which addresses all processes and notices arising out of or in connection with this Agreement, its breach or termination, may validly be served upon or delivered to the Parties.

11.2 For purpose of this Agreement the Parties respective addresses shall be:

The Department:

The Head of Department
Western Cape Government: Department of Transport and Public Works
9 Dorp Street
Cape Town

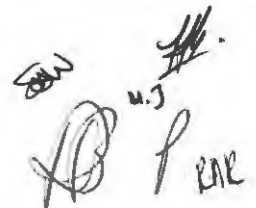
The Municipality:

The Municipal Manager
Town House Complex
Plein Street
Stellenbosch

11.3 Each of the Parties shall be entitled; from time to time by written notice to the other to vary its *domicillium* to any other address within the Western Cape Department of the Republic of South Africa is not a Post Office Box or *Poste Restante*.

11.3.1 if delivered by hand, be deemed to have been duly received by the addressee on the date of delivery; or

11.3.2 if forwarded by pre-paid registered post, be deemed to have been received by the addressee 4 (four) business days after the date of postage.

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- 11.4 Notwithstanding anything to the contrary contained in this Agreement, a written notice or communication actually received by one of the Parties from the other Party shall be adequate written notice of communication to such Party.

12. WARRANTY OF AUTHORITY

Each Party warrants to each of the other Parties that it has the power, authority and legal right to sign and perform this Agreement and that this Agreement has been duly authorised by necessary actions of its officials or structures, if required, and binding obligations on it in accordance with the terms of this Agreement.

13. GENERAL TERMS AND CONDITIONS

13.1 *Interpretation of the Agreement*

The law of the Republic of South Africa shall govern the interpretation of the Agreement. If any change in the law renders any material provision of the Agreement illegal or void, either Party may terminate the Agreement immediately.

13.2 *Variation*

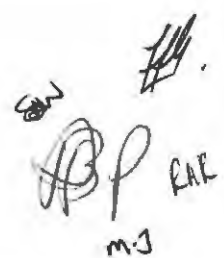
No amendment, alteration, addition or suspension of any provision of the Agreement shall be of any force, unless reduced to writing and signed by both Parties.

13.3 *Waiver*

No waiver of any right in terms of the Agreement shall be binding for any purpose unless expressed in writing and signed by the Party concerned and such waiver shall be effective only in the specific instance and for the purpose given. No failure or delay on the part of either Party in exercising any right precludes any other or further exercise thereof or the exercise of any other right.

13.4 *Cession and Invalid Provisions*

A Party may not cede any right or obligation in terms of the Agreement to another person without the other Party's written consent.



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14. SEVERABILITY

If any provision of the Agreement is or becomes invalid or unenforceable, such provision shall be divisible and be regarded as *pro non scripto* and the remainder of the Agreement shall be regarded as valid and binding unless materially affected.

15. RELATIONSHIP

15.1 This Agreement does not create an employment relationship, partnership, joint venture or agency between the Parties and neither Party shall be liable for the debts of the other Party, howsoever incurred.

15.2 The Municipality has no authority or right to bind the Department to any third party and it shall be liable for any act purporting to so bind the Department.

SIGNED AT CAPE TOWN ON THIS 21 DAY OF JULY 2016




THE DEPARTMENT

(Herein represented by **Ms Jacqui Gooch** in her capacity as **Head of Department**, duly authorised hereto)

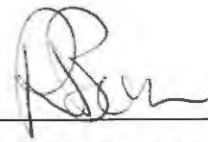
AS WITNESSES:

1.  _____

2. Saw-Othier _____

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SIGNED AT Stellenbosch ON THIS 8th DAY OF JULY 2016



THE MUNICIPALITY

(Herein represented by **Mr Richard Bosman** in his capacity as **Acting Municipal Manager**, duly authorised hereto)

AS WITNESSES

1. 

2. 



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