

MEMORANDUM OF UNDERSTANDING

Entered into by and between

The Western Cape Government via its
Department of Transport & Public Works
(Herein represented by TJ Gooch in
her capacity as Head of Department,
duly authorised thereto)
(Hereinafter referred to as "DTPW")

and

The City of Cape Town via its Transport
for Cape Town (Herein represented by
Melissa Whitehead in her capacity as
The Commissioner, duly authorised thereto)
(Hereinafter referred to as "TCT")

and

Golden Arrow Bus Services (Pty) Limited
(A Private company duly incorporated
in terms of the laws of South Africa,
with registration number 1992/001234/07,
herein represented by Nic Cronje in
his capacity as Chief Executive Officer,
duly authorized thereto)
(Herein after referred to as "GABS")



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD



TDA
CAPE TOWN

*The City of Cape Town's Transport
and Urban Development Authority*

INTRODUCTION

- A. The forthcoming assignment of the contracting authority function to the City of Cape Town in relation to contracting services utilizing the Public Transport Operations Grant (PTOG) funding creates a new set of circumstances bringing about a change in the rights, roles, relationships and responsibilities of the Parties to this MOU which in turn leads to the need for this memorandum of understanding.
- B. Upon the assignment of the contracting authority, the City of Cape Town through Transport for Cape Town and the Commissioner of Transport will assume the roles and responsibilities set out in detail in the recently promulgated Constitution of Transport for Cape Town By-Law 2013, No 7208.
- C. The Western Cape Government ("**WCG**") has a key role of oversight in that it has been a custodian for this function over many years and has substantial insight into its workings and once the assignment is made, the WCG will continue to exercise an oversight role.
- D. The Golden Arrow Bus Services (Pty) Ltd being the largest bus operator in the scheduled services environment in the City of Cape Town and having been integral to the provision of public transport to the residents of Cape Town is a significant role player.
- E. The Parties recognise the significant contributions and historical roles played by each of them in Transport for the City of Cape and this will form the basis for their co-operation.

NOW THEREFORE the parties agree to co-operate with each other and hereby record the terms and conditions of the MOU as follows:

Handwritten signatures and initials in black ink, located at the bottom right of the page. There are several distinct marks, including what appears to be a large stylized signature and some smaller initials.

1. INTERPRETATION

In this MOU:-

- 1.1 Unless the context clearly indicates a contrary intention, an expression which denotes one gender includes the other gender and neuter as applicable, a natural person includes a juristic person and vice versa, the singular includes the plural and vice versa and the following expressions bear the meanings assigned to them below and cognate expressions bear corresponding meanings:

- 1.1.1 **"MOU"** means this Memorandum of Understanding together with all annexures hereto;
- 1.1.2 **"City"** means the City of Cape Town;
- 1.1.3 **"CITP"** means Comprehensive Integrated Transport Plan;
- 1.1.4 **"Commencement Date"** means the date of last signature;
- 1.1.5 **"DTPW"** means the Department of Transport and Public Works in the WCG;
- 1.1.6 **"GABS"** means the Golden Arrow Bus Services (Pty) Ltd a private company incorporated in terms of the laws of South Africa, with registration number 1992/001234/07;
- 1.1.7 **"IPTN"** means Integrated Public Transport Network;
- 1.1.8 **"NDot"** means the National Department of Transport;
- 1.1.9 **"NLTA"** means the National Land Transport Act, Act 5 of 2009;

1.1.10 **"Parties"** means the DTPW, TCT and GABS;

1.1.11 **"TCT"** means Transport for Cape Town, the City's Transport Authority;

1.1.12 **"WCG"** means the Western Cape Government.

2. BACKGROUND

2.1 On 17 March 1997 the NDoT contracted with GABS as a scheduled bus operator, to provide bus transport services for commuters on scheduled routes in the City of Cape Town.

2.2 On 10 May 2007 the NDoT ceded and delegated the authority to contract with GABS to the WCG.

2.3 This contract has operated as an interim contract in terms of Section 46 of the NLTA.

2.4 The NLTA further and amongst other provides for the assignment of functions including the contracting authority function by the National Minister of Transport to the most appropriate sphere of government, that is either to a province or municipality in term of section 11 (1) (IV) read with section 11(2) thereof.

2.5 The assignment of the contracting authority function by the National Minister of Transport to the City of Cape Town is imminent.

2.6 This assignment of the contracting authority function will give the City under the auspices of TCT the authority to manage all scheduled service road-based contracts in an integrated manner, including negotiating, tendering, concluding, managing and monitoring of such contracts, within the parameters of the NLTA and the Constitution of Transport for Cape Town Bylaw, No 7208 of 2013.

- 2.7 The City through TCT will undertake the contracting authority as detailed above within the bounds of its CIP and IPTN.
- 2.8 In terms of its CIP, submitted for approval to the DTPW for the period 2013 – 2018, the City of Cape Town has through the TCT committed to bring about transformation to all aspects of its transport network and operations for the benefit of its citizens, businesses and visitors.
- 2.9 The City of Cape Town through the TCT will lead this transformation and will work in consultation with the WCG through the DTPW which will provide advice, guidance and support. A separate MOU dealing with these aspects will be concluded between the WCG and the City of Cape Town
- 2.10 Integral to this transformation is the delivery of an integrated intermodal and interoperable transport and related network for Cape Town which is affordable and cost competitive

3. COMMENCEMENT AND DURATION

- 3.1 This MOU shall come into effect on the Commencement Date and shall remain in force until a Negotiated Contract is concluded between the City of Cape Town and GABS in terms of the provisions of the NLTA.
- 3.2 The Parties specifically record that this MOU shall serve as a guideline for the continued co-operation between the Parties, beyond the expiration of this Agreement.

4. OBJECTIVES

The objectives of this MOU are:

- 4.1 To promote the transformation of the fragmented status quo in respect of the provision of public transport in the City characterised by different spheres of government managing different transport services, to a system which is integrated, interoperable and intermodal and managed by a single sphere of government, namely the City.

- 4.2 To ensure that service delivery is not impacted on by having a smooth and seamless transition process to achieve the assignment of the contracting authority function.
- 4.3 To build confidence in the prospect of a functional working relationship between the Parties and to reduce uncertainty in relation to how the assigned function will manifest.
- 4.4 To promote outcomes which lay the basis for an adequately resourced and expanding service which continually improves delivery of both the quality and quantity of public transport service delivery to meet growing demand across the City.
- 4.5 To support the incremental development of an integrated public transport system characterized by:
- 4.5.1 Unified branding;
 - 4.5.2 The progressive, managed, roll-out of an integrated ticketing and fare management system;
 - 4.5.3 An integrated timetable and scheduling system linked to the IPTN;
 - 4.5.4 The provision of appropriate infrastructure consistent with unified branding and standards across the different services and facilities, in accordance with a rollout plan, subject to availability of funds;
 - 4.5.5 Industry transition in relation to affected operators addressed where appropriate in trunk services;
 - 4.5.6 Appropriate operator-related performance based mechanisms;

- 4.5.7 An exploration of flexibility in approach which would enable buses and kilometers contracted in the Negotiated Contract, and displaced by the introduction of new trunk services, to be redeployed, either to augment existing services or to develop new services;
- 4.5.8 TCT negotiating a contract with GABS in terms of the NLTA, 2009 to provide scheduled bus services to the extent of the existing Public Transport Operations Grant funded services as a baseline. In this regard, the parties accept that if the NDoT and or National Treasury impose restrictions on the City's authority to so contract, it is understood by the parties that such negotiation will have to be conducted within the framework of such restrictions;
- 4.5.9 The parties committing to work together to improve the efficiencies of services contracted and to growing them in response to increased passenger demand;
- 4.6 TCT to consult with GABS on suitable bus specifications in order to determine the most cost effective and sustainable standards by taking into account, but not exclusive of:
- 4.6.1 Long term sustainability of vehicles;
- 4.6.2 Appropriate mechanisms to facilitate continued fleet recapitalization and to commence the progressive rollout of the concluded standards;
- 4.6.3 Motor vehicle loads;
- 4.6.4 Engine locations;
- 4.6.5 Universal accessibility.

5. PRINCIPLES UNDERPINNING THE PARTIES' ROLES IN GIVING EFFECT TO THE CCT'S IPTN AND CIP

The following principles underpin the parties' roles:

- 5.1 The creation of a long term sustainable cost-effective transport system for Cape Town;
- 5.2 An emphasis on growth in public transport to meet growing public demand;
- 5.3 Solutions which encourage operators to invest in and participate positively in a transforming transport environment. TCT will apply the same performance criteria to all operators in the new integrated transport system;
- 5.4 The TCT will lead the process of transformation inherent in the CIP and will be supported in this endeavour by the WCG and GABS.

6. NEGOTIATED CONTRACTS

- 6.1 In its capacity as the assigned contracting authority, TCT will negotiate appropriate operational mechanisms to facilitate its reporting and developmental aims.
- 6.2 Contracts negotiated between the TCT and GABS will be for a period determined by the parties in negotiations in accordance with the provisions of the NLTA or a policy directive from the NDoT.
- 6.3 The contract will seek, where appropriate and feasible, to give expression to the principles and objectives contained in this MOU.



7. INTERESTS OF THE PARTIES

- 7.1 The City has an interest to secure the requisite degree of cooperation from the Parties to enable it to meet its responsibilities and commitments under the CITP and NLTA, as it takes up the assignment as Contracting Authority.
- 7.2 The WCG has an interest to secure acceptance by the Parties of its role to guide and advise on, coordinate and oversee various issues during the period of transition once the contracting authority function is assigned to the City.
- 7.3 GABS has an interest to secure participation in the new system which will enable it to maintain and in due course expand its services to commuters.
- 7.4 The Parties commit to deepening their understanding of each other's interests and insofar as they are able, to meet them.

8. COMMITMENTS

- 8.1 The Parties will work within the bounds of the Constitution of South Africa, the NLTA, the Municipal Systems Act, the Public Finance Management Act and the Municipal Finance Management Act.
- 8.2 The Parties will cooperate fully to give effect to the principles and achieve the objectives set out in this MOU.
- 8.3 The Parties recognize that they are ultimately accountable to the citizens of Cape Town to provide a world-class integrated public transport network and service and that in their dealings with one another this will be an overriding consideration.

Handwritten signatures and initials in black ink, located at the bottom right of the page. There are three distinct signatures, with some appearing to be initials or abbreviated names.

9. RULES OF ENGAGEMENT

The parties shall:

- 9.1 Deal with each other transparently, openly, constructively and in good faith;
- 9.2 Provide sufficient information to each other to enhance understanding, and quality engagement on the issues under consideration;
- 9.3 Establish a small joint process committee to plan meetings and to monitor performance and progress;
- 9.4 Document and timeously distribute a minute and where appropriate an action item list identifying the decisions taken at meetings between the parties detailing who bears responsibility for implementation, and within what timeframe;
- 9.5 Adopt a solution-oriented approach to their engagement on issues before them, seeking as far as possible to identify and promote their common interests;
- 9.6 Deal with their differences in a dialogue-driven problem-solving manner invoking the dispute resolution mechanisms contained in this MOU as a matter of last resort;
- 9.7 Where the Parties determine that it may assist them to achieve agreed outcomes, appoint an independent third party to facilitate their engagements.

Handwritten signatures and initials at the bottom right of the page. There are three distinct signatures: a large, stylized one, a smaller one, and another one with the letters 'W' and 'P' visible. Below the signatures are some initials, possibly 'W' and 'P'.

10. DISPUTE RESOLUTION

- 10.1 The overriding consideration in relation to the resolution of disputes between the parties is that it should be expeditious and cost-effective and not unduly delay the development and implementation of an IPTN .
- 10.2 In the event of a dispute arising between two or more parties, it will be referred in the first instance to mediation, and failing settlement, to expedited arbitration.
- 10.3 The Parties will jointly commission a proposal on, and ultimately agree, the elements of their dispute resolution system in relation to:
- 10.3.1 The manner in which dispute resolution will be invoked
 - 10.3.2 the appointment and authority of the mediator and the arbitrator
 - 10.3.3 the development of terms of reference
 - 10.3.4 the procedure to be followed
 - 10.3.5 time frames
 - 10.3.6 costs

11. NOTICE AND DOMICILIUM

- 11.1 The Parties choose as their respective *domicilium citandi et executandi* for the purposes of legal proceedings and for the purpose of giving or sending any notice provided for or necessary in terms of this MOU, the following addresses:

DTPW:

The Head of Department
Department of Transport and Public Works
8th Floor,
9 Dorp Street
Cape Town
8001



TCT:

The Commissioner: Transport for Cape Town
5th Floor Podium Block
12 Hertzog Boulevard
Cape Town
8001

GABS:

The Chief Executive Officer
Golden Arrow Bus Services (Pty) Ltd
103 Bofors Circle
Epping
Industria
8000

- 11.2 All notices to be given in terms of this MOU shall be given in writing and be delivered or sent by prepaid registered post to the Party's chosen *domicilium citandi et executandi*.
- 11.3 If delivered by hand, a notice shall be presumed to have been received on the date of delivery, or, if sent by prepaid registered post, be presumed to have been received seven (7) business days after the date of posting.
- 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.
- 11.5 Any Party hereto shall be entitled to change its *domicilium* from time to time, provided that any new *domicilium* selected by it shall be a street address and any such change shall only be effective upon receipt of notice in writing by the other Party of such change.



12. CONFIDENTIALITY

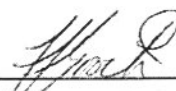
- 12.1 The Parties hereby undertake not to make any public statement or issue press releases relating to or affecting this MOU without the prior written consent of the other Parties.
- 12.2 The Parties undertake to treat all information furnished by each other or any third party in the execution of this MOU, as secure and confidential and not to disclose the same to any unauthorized third party, without that Party's prior written consent. The Parties agree to only use such confidential information for purposes of the performance of their respective statutory functions and duties and/or their obligations in terms of this MOU unless compelled by law to disclose such information.
- 12.3 The provisions of this clause are severable from the rest of the provisions of this MOU and shall survive its termination and continue to be of full force.

13. ENTIRE AGREEMENT

- 13.1 This Agreement constitutes the entire Agreement between the Parties and no amendment, alteration, addition or variation of any right, term, or condition of this Agreement will be of any force or effect unless reduced to writing and signed by the Parties to this Agreement.
- 13.2 The Parties agree that there are no conditions, variations or representations, whether oral or written and whether expressed or implied or otherwise, other than those contained in this Agreement.

Handwritten signatures and initials in black ink, located in the bottom right corner of the page. There are several distinct marks, including what appears to be a large stylized 'X' or signature, and other scribbled initials.

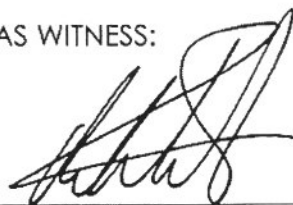
Signed atCAPE TOWN..... on this5th..... day ofMAY..... 2014.



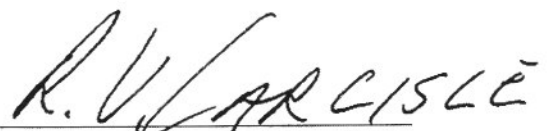
FOR THE DEPARTMENT OF
TRANSPORT & PUBLIC WORKS

(Herein represented by **TJ Gooch** in
her capacity as Head of
Department, duly authorised
thereto)

AS WITNESS:

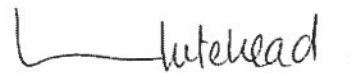


Signature



Minister Transport & Public Works
Robin Carlisle

Signed atCAPE TOWN..... on this5th..... day ofMAY..... 2014.

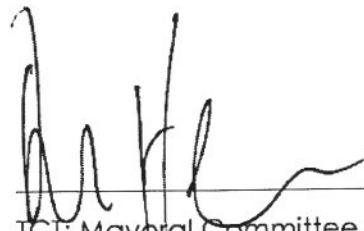


FOR THE CITY OF CAPE TOWN:
Transport for Cape Town (Herein
represented by **Melissa** Whitehead in
her capacity as Commissioner
Transport for Cape Town, duly
authorised thereto)



AS WITNESS:

Signature


TCT: Mayoral Committee Member
Brett Herron

Signed at Exetown on this 5th day of May 2014.



FOR GOLDEN ARROW BUS SERVICES
(PTY) LTD (Herein represented by **Nic Cronje** in his capacity as Chief Executive Officer, duly authorised thereto)

AS WITNESS:

Signature



Chairperson: Golden Arrow Bus Services
Yunus Shaik

