

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
The Commissioner, duly authorised
thereto)
(Hereinafter referred to as "TCT")



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD



TDA
CAPE TOWN

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

PREAMBLE

- A. The National Land Transport Act, Act 5 of 2009 ("**NLTA**") sets out the statutory responsibilities and confers statutory authority upon both the provincial and local spheres of government in relation to the process of transformation and restructuring of the national land transport system. The NLTA provides inter alia for the assignment of certain key functions including the contracting authority and operating licence functions to local government for the development of integrated public transport networks and systems.
- B. At present the contracting authority vests in the Western Cape Government ("**WCG**") which also performs the operating licence function within the City of Cape Town ("**City**") municipal area.
- C. The assignment of the contracting authority and operating licence functions to the City by the Minister of Transport is imminent and this Memorandum of Understanding ("**MOU**") is aimed at facilitating a smooth transfer and a clear understanding of the roles and responsibilities of the two spheres of government both during and after the assignment of these functions.
- D. The City has approved business plans to inform the assignment of the specified functions. It has also gazetted the Constitution of Transport for Cape Town By-law, No 7208 of 2013, establishing its Transport Authority governance with responsibility to develop an integrated transport system for the citizens of, and visitors to, the City and the broader Metropolitan Region. This process will be informed by the City's Comprehensive Integrated Transport Plan ("**CITP**") inclusive of the Integrated Public Transport Network ("**IPTN**") and the Operating Licence Strategy ("**OLS**").
- E. This MOU sets out the roles and responsibilities of the parties with respect to both the transition period following the assignment of the contracting authority and operating licence functions to the City and the period following such transition period. Once the assignment of these functions becomes effective, the working relationship of the parties will be determined by an Intergovernmental Agreement.

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

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 **"IPTN"** means Integrated Public Transport Network;

1.1.7 **"MRE"** means Municipal Regulatory Entity, being a municipality to which the operating licence function has been assigned;

1.1.8 **"NLTA"** means the National Land Transport Act, Act 5 of 2009;

1.1.9 **"Parties"** means the DTPW and TCT;

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

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

2. **COMMENCEMENT AND DURATION**

This Agreement shall come into effect on the Commencement Date and shall remain in force until such date as determined by agreement between the Parties.

3. **SHARED VISION**

The Parties share a vision of a world class, affordable, integrated, interoperable and intermodal transport system for the benefit of citizens of and visitors to the City and the broader Metropolitan Region. This vision will be based on and ensure the rollout of the City's CIP and IPTN.

4. **OBJECTIVES**

The objectives of this Agreement are:

- 4.1 To facilitate the smooth and seamless transition upon assignment of the contracting authority and operating licence functions to the City.
- 4.2 To clarify the roles and responsibilities of each Party and to promote the requisite degree of cooperation, both during and after the assignment.
- 4.3 To ensure that during the assignment of these functions to the City there shall be no or minimal disruption to services that impact on commuters or operators. Equally there should be minimal disruption to staff.

5. THE ROLES AND RESPONSIBILITIES OF THE PARTIES

During the transition period following the assignment of the contracting authority and operating licence functions:

5.1 The role and responsibilities of the DTPW:

5.1.1 In relation to the contracting authority function:

- 5.1.1.1 The DTPW shall continue to manage the function in the best interest of the State until the handover date of the contracting authority function as agreed between the Parties, and in terms of an Agency Agreement;
- 5.1.1.2 The DTPW will transfer the relevant financial records for the past twelve months and due process methodology which it has employed in contracting with GABS;
- 5.1.1.3 Upon agreement between the Parties, and where relevant with GABS, as to the terms, the DTPW will provide the 'live feed' to the City to enable it to start the process of aligning relevant information;
- 5.1.1.4 The DTPW will provide the City with all documentation and contractual documentation relating to the monitoring contract;
- 5.1.1.5 The DTPW will cooperate with the City in the rollout of its implementation of the assignment.

5.1.2 In in relation to the operating licence function:

- 5.1.2.1 The DTPW will cooperate with the City in the rollout of its transition plan, which will include, but not be limited to, issues related to staffing, assets liabilities, intellectual property and information management, systems data existing contracts and so forth;
- 5.1.2.2 The DTPW will take the lead in and manage in close cooperation with the City the "Section 197 process" set out in section 197 of the Labour Relations Act no 66 of 1995 so as to ensure the smooth transition of staff from the WCG to the CCT;
- 5.1.2.3 The DTPW will supply the City with background and history to assist in the development of standard operating procedures;
- 5.1.2.4 The DTWP will provide all information, guidance and support to enable an effective implementation of the transition plan.

5.2 The role and responsibilities of the City and TCT:

5.2.1 In in relation to both the contracting authority and operating licence functions:

- 5.2.1.1 TCT shall cooperate with the WCG in the rollout of the its transition plan, where it impacts upon the WCG;
- 5.2.1.2 TCT will develop, in consultation with the WCG, standard operating procedures to guide the performance of the operating licence function;

- 5.2.1.3 The City will furnish the DTPW with all relevant documentation relating to the process of application and approval of the assignment of the relevant functions;
- 5.2.1.4 The City will ensure continual communication with the DTPW in relation to the transition process as it transpires;
- 5.2.1.5 TCT shall establish the systems for the administration of the assigned functions;
- 5.2.1.6 TCT shall establish and manage working teams for technical, legal and financial streams;
- 5.2.1.7 TCT shall give effect to a change-management process necessitated by the assignment of the functions;
- 5.2.1.8 TCT shall facilitate the cession of relevant contracts and alignment to its Supply Chain Management Policy of service providers to TCT in order for the functions to continue unhindered.

After the transition period following the assignment of the contracting authority and operating licence functions

5.3 The role and responsibilities of the DTPW:

- 5.3.1 The DTPW will continue to provide advice and guidance on an as needs basis to TCT in its ongoing management of the assigned functions;
- 5.3.2 The DTPW will provide through the Provincial Land Transport Framework a set of performance measures that can be used as guiding parameters by the TCT as they relate to oversight and coordination;

- 5.3.3 The DTPW will work with the TCT to build working parameters and a strong relationship between the Provincial Regulatory Entity (PRE) and the Municipal Regulatory Entity (MRE);
- 5.3.4 The DTPW will develop a strategic information monitoring mechanism that the City can feed into;
- 5.4 The role and responsibilities of the City and TCT:
 - 5.4.1 TCT shall perform the contracting authority function and run the operating licence function in an integrated, performance-driven and investment-oriented manner;
 - 5.4.2 TCT shall manage all information in relation to the functions and the related information management system;
 - 5.4.3 TCT furnish the DTPW with appropriate information to enable it to fulfil its oversight function;
 - 5.4.4 TCT shall work with the DTPW to build working parameters and a strong relationship between the PRE and the MRE;
 - 5.4.5 In general, TCT will consult with the DTPW to draw on its experience and expertise in the performance of the contracting authority and operating licence functions.

6. TIMEFRAMES

- 6.1 The Parties shall endeavour to achieve an effective transition of the contracting authority function by 1 July 2014, subject to the assignment timelines and of the operating licence function by 1 July 2015, subject to the assignment timelines.

- 6.2 The Parties record that their roles and responsibilities after the transition, as set out in clauses 5.3 and 5.4, are not time-bound and will continue on an ongoing basis.

7. RULES OF ENGAGEMENT

The parties shall:

- 7.1 Deal with each other transparently, openly, constructively and in good faith;
- 7.2 Provide sufficient information to one another to enhance the understanding of the issues under consideration and enable participation as contemplated in this Agreement;
- 7.3 Document and timeously distribute minutes of all sessions 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;
- 7.4 Adopt a solution-oriented approach to their engagement on issues before them, seeking as far as possible to identify and promote their common interests;
- 7.5 Deal with their differences in a dialogue-driven problem-solving manner;
- 7.6 Where the Parties determine that it may assist them to achieve their common objectives, appoint an independent third party to facilitate their engagements.

8. DISPUTE RESOLUTION

- 8.1 The Parties shall engage in the various forums and working groups (as set out in clause 8.2 hereunder) in which both are represented, to resolve any differences or disputes arising between them during the duration of this Agreement, at all times reverting to their specific mandates and adhering to the rules of engagement as set out in clause 7 above.
- 8.2 The forums referred to in clause 8.1 above include, but is not limited to the Land Transport Advisory Board (LTAB) and the Intermodal Planning Committee (IPC) and any working groups that may be established under them.
- 8.3 The Parties commit to resolving differences at the point where they arise. In cases where this proves not to be possible, the matter may be referred to the Member of the Executive Council ("MEC"): Transport and the TCT Mayoral Committee Member.
- 8.4 In the event that a dispute remains unresolved for a period of 30 days after referral to the MEC and Mayoral Committee Member, it shall be referred to the Intergovernmental Committee (IGC) chaired by the Premier of the Western Cape Government and the Executive Mayor of the City of Cape Town.

9. NOTICE AND DOMICILIUM

- 9.1 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 Agreement, 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

- 9.2 All notices to be given in terms of this Agreement shall be given in writing and be delivered or sent by prepaid registered post to the Party's chosen *domicilium citandi et executandi*.
- 9.3 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.
- 9.4 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.
- 9.5 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.

10. CONFIDENTIALITY

- 10.1 The Parties hereby undertake not to make any public statement or issue press releases relating to or affecting the Parties to this Agreement without the prior written consent of the other Parties.

10.2 The Parties undertake to treat all information furnished by each other or any third party in the execution of this Agreement, 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 Agreement unless compelled by law to disclose such information.

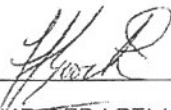
10.3 The provisions of this clause are severable from the rest of the provisions of this Agreement and shall survive its termination and continue to be of full force.

11. ENTIRE AGREEMENT

11.1 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.

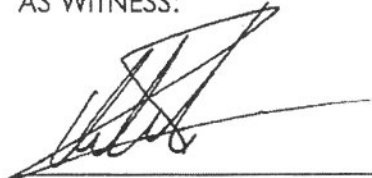
11.2 The Parties agree that there are no conditions, variations or representations, whether oral or written and whether expressed or implied or otherwise, other than those contained in this Agreement.

Signed atCAPE TOWN..... on this ...5... day ofMAY..... 2014.

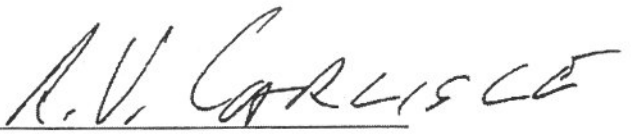


FOR THE DEPARTMENT OF
TRANSPORT & PUBLIC WORKS
(Herein represented by **TJ Gooch** in
her capacity as Head of
Department, duly authorised
thereto)

AS WITNESS:



Signature



Minister Transport & Public Works
Robin Carlisle

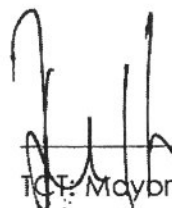
Signed atCAPE TOWN..... on this 5th day ofMAY..... 2014.



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