

**RIGHT OF USE OF THE DEPOT AND DEPOT EQUIPMENT AGREEMENT IN
TERMS OF REGULATION 45 OF THE MFMA: MUNICIPAL ASSET TRANSFER
REGULATIONS, 2008**

FOR

**THE SUPPLY OF QUALITY ROAD-BASED SUBSIDISED BRT REA VAYA PHASE
1A PUBLIC TRANSPORT SERVICES FOR THE CITY OF JOHANNESBURG IN
TERMS OF SECTION 42 OF THE NATIONAL LAND TRANSPORT ACT 5 OF 2009**

CONCLUDED BETWEEN:

THE CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY

AND

LITSAMAISO (PTY) LTD (THE OPERATOR)

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1. DEFINITIONS

This Right of Use Agreement constitutes an extension of, and an annexure to, the agreement entered into in terms of section 42 of the National Land Transport Act, 5 of 2009 (NLTA) between the City of Johannesburg Metropolitan Municipality (the City) and the Operator, hereinafter referred to as ‘principal agreement’, and is concluded pursuant to clause 25 of such principal agreement. Therefore, unless otherwise expressly stated herein, all terms and definitions used in this Right of Use Agreement shall bear the meaning ascribed to them in the principal agreement, and accordingly need not be restated herein.

2. PURPOSE OF THIS AGREEMENT

2.1 The City has taken the necessary steps in accordance with section 42 of the NLTA to procure the supply of Quality Road-Based Subsidised BRT Rea Vaya Phase 1A Public Transport Services through a public tender process, and the Operator was recommended as preferred bidder.

2.2 Given that the City shall enter into the principal agreement (upon which this agreement is an annexure to) with the Operator, and pursuant to clause 25 of such principal agreement, the City shall grant the right of use of its depots and equipment described in this agreement to the Operator in terms of Regulation 45 of the Municipal Asset Transfer Regulations, 2008 (promulgated in terms of the Municipal Finance Management Act 56 of 2003).

2.3 Therefore, the purpose of this agreement is to make provisions for the use of the City’s Depots and its equipment by the Operator, which constitute the municipal capital assets.

3. SUSPENSIVE CONDITION

3.1 This agreement is subject to the fulfilment of the following suspensive conditions:

3.1.1 conclusion and signing of the principal agreement;

3.1.2 the City obtaining all the respective authorizations and approval required for the purpose of entering into this agreement pursuant to the MFMA and Municipal Asset Transfer Regulations; Municipal Systems Act 32 of 2000; and the City’s Supply Chain

Management Policies.

3.2 City's satisfaction with the Operator's Depot Maintenance Plan.

4. GRANTING OF THE RIGHT OF USE

4.1 The City grants the Operator a right of use of the Depots and Depot Equipment as set out in **Depot-schedule A** attached hereto, on a non-exclusive basis, on the terms and conditions contained herein. For purpose of this agreement, Depot equipment means all equipment on the Depots as identified on the said schedule which shall be used by the Operator on a non-exclusive basis pursuant to the terms and conditions set out in this agreement.

4.2 Should the need arise for the Depots and Depot Equipment to be shared with other BRT bus operating companies, the City shall enter into a Depot and Depot Equipment Sharing Agreement with the Operator and the relevant bus operating company.

4.3 The City warrants that the Depots and the Depot Equipment will be fit for the purpose for which it is to be used by the Operator, namely, to provide a reasonable shelter for the Buses while not in use and to facilitate the cleaning, repair and maintenance of the Buses.

4.4 . The Depots shall be deemed, at the commencement date of the principal agreement, to be in good order and condition except to the extent that the Operator notifies the City in writing within 15 (fifteen) Business Days after the Operator has taken possession of the Depots and Depot Equipment:

- 4.4.1 of the need for any repairs to or in the Depots and/or the Depot Equipment (as the case may be); or
- 4.4.2 of the fact that any part of the Depots or the Depot Equipment, including any lock, key, door, window, appurtenance, fixture or fitting, is damaged, missing or out of order.
- 4.4.3 for avoidance of doubt and subject to the Operator's obligations as set out in clause 6 of this agreement, the City shall only be obliged, at its own costs, to effect the repairs contemplated in clause 4.4 where the damage or loss is not caused by the negligence of the Operator (including its employees, service providers or any other agents or representatives of the Operator).

5. RIGHT OF USE PERIOD

The City grants the Operator a right of use of the Depots and Depot Equipment with effect from the commencement date of the principal agreement and this agreement until such time as the principal agreement and/or this (Right of Use) agreement is cancelled or terminated ('right of use period')

6. THE OPERATOR'S OBLIGATIONS IN RESPECT OF THE DEPOT AND DEPOT EQUIPMENT

6.1 During the right of use period, the Operator shall at its own expense and without recourse to the City:

6.1.1 with respect to the Depot:

6.1.1.1 maintain the Depots in good order and condition, including the interior and exterior of the Depot and all parts thereof;

6.1.1.2 promptly and properly repair or make good all damage occurring in the Depot Equipment, whatever the cause of such damage (save where such is occasioned by fair wear and tear), and including damage to any part of the interior of the Depot or to any window, door, appurtenance, fixture, fitting, and replace all such items or parts thereof (as well as any keys) which have been broken, lost or destroyed (again regardless of cause);

6.1.2 with respect to the Depot Equipment:

6.1.2.1 maintain the Depot Equipment in good working order, fair wear and tear excepted;

6.1.2.2 promptly and properly repair or make good all damage occurring to the Depot Equipment, whatever the cause of such damage, save where such damage is occasioned by fair wear and tear;

6.1.2.3 maintain insurance to cover replacement of any Depot Equipment damaged or lost due to negligence on the part of the Operator (including its employees, service providers or any other agents or representatives of the Operator);

6.1.3 supply and maintain sufficient safety and hand held fire-fighting equipment as is necessary given the operations on the Depot;

6.1.4 keep the Depot clean, tidy and commercially usable at all times;

6.1.5 not leave refuse or allow it to accumulate in or about the Depot except in the refuse bins or containers designated by law for the type of waste being handled; and the Operator

hereby warrants that it shall deal with all waste and effluent in accordance with the applicable South African environmental laws and by-laws;

- 6.1.6 not use the Depot and or the Depot Equipment or allow any of them to be used, in whole or part, for any purpose other than that of rendering the Operator Services;
- 6.1.7 not bring into the Depot any article which, by reason of its weight or other characteristics, is liable to cause damage to the Depot;
- 6.1.8 refrain from interfering with the electrical or plumbing serving the Depot and the Depot Equipment, except as may be strictly necessary to enable the Operator to carry out its obligations of maintenance and repair in terms of this Agreement, and further provided that any such works are carried out only by persons with the necessary competency and qualifications;
- 6.1.9 provide at the Operator's own expense, all electric, fluorescent and incandescent light bulbs required in the Depot from time to time; and
- 6.1.10 except as contemplated in clause 18 below, not allow for the use of the Depot and/or the Depot Equipment by one or more other bus operating companies.

6.2 Without prejudice to any other legal remedies available to the City, failure by the Operator to comply with the obligations set out in clause 6.1 shall entitle the City to impose penalties on the Operator. Such penalties shall include payment of all costs associated with any damage caused by the Operator to the depot and/or depot equipment as a result of breach of clause 6.1. The City or its Representative shall conduct an inspection and notify the Operator in writing of the nature and extent of the damage, as well as the associated costs, which shall be payable by the Operator within thirty (30) days of receipt of such notice.

6.3 Should the Operator dispute the penalties imposed in terms of clause 6.2, it must declare a dispute within fourteen (14) days of receiving the notice of penalties. The dispute shall be referred to the City's Group Legal Department, which shall, within thirty (30) days, appoint an independent mediator and/or arbitrator to adjudicate the matter.

6.4 The City shall be obliged to replace any Depot Equipment when such Depot Equipment reaches the end of its life cycle. The City shall provide to the Operator a list of the Depot Equipment setting out the determined period for replacement of such Depot Equipment. Notwithstanding the foregoing, the Operator may also, in consultation with the City, replace any Depot Equipment which may hinder the operations of the services.

7. MAINTENANCE IN RESPECT OF THE DEPOT AND DEPOT EQUIPMENT

7.1 The Operator shall, during the currency of this Right of Use agreement, carry out the following preventative and routine maintenance at the Depot, of which costs shall be factored into the Fee per Kilometre with respect to the following:

- 7.1.1 fire systems,
- 7.1.2 the fire detection alarms as per SANSI 0139, FDIA;
- 7.1.3 the fire protection systems (fire extinguishers and fire hydrants etc.);
- 7.1.4 in relation to the building and infrastructure,:
 - 7.1.4.1 undertake routine maintenance of all equipment and related fixtures;
 - 7.1.4.2 provide emergency maintenance services responding to failure;
 - 7.1.4.3 plumbing, undertake routine and scheduled plumbing maintenance and undertake emergency plumbing maintenance and repair responding to failure; and
 - 7.1.4.4 electronic equipment, provide a service to routinely repair electrical equipment and related fittings and provide emergency or unplanned services to repair electric equipment and related fittings responding to failure.
- 7.1.5 in relation to electrical/gas installation and wiring, provide:
 - 7.1.5.1 routine maintenance and repair services for all electrical and gas installations; and
 - 7.1.5.2 emergency maintenance and repair services for all electrical and gas installations responding to failure
- 7.1.6 in relation to roller shutters and glass doors, provide:
 - 7.1.6.1 routine maintenance and repair services for all roller shutter and glass doors; and
 - 7.1.6.2 emergency maintenance and repair services to roller shutter and glass doors, responding to failure;
- 7.1.7 signage services, provide and maintain signage;
- 7.1.8 landscaping and planting, provide landscaping services and maintenance thereof.

7.2 The City shall during the currency of this Agreement at its own expense, subject to the provisions of clause 7.5, carry out the following preventative and routine maintenance at the Depot with respect to the following:

- 7.2.1 the building and infrastructure, including lifts and related equipment, as well as undertaking routine maintenance for internal and external fabric, fittings and fixtures;
- 7.2.2 heating, ventilation and air conditioning (HVAC) services, provide routine and emergency maintenance and repair services to the HVAC systems; and
- 7.2.3 civil, road works and related equipment, provide routine and emergency maintenance services to civil/roadworks, responding to failure.

7.3 The City shall be entitled at any time to conduct site audits and inspections in respect of the fire systems referred to in clause 7.1.1 and the building and infrastructure referred to in clause 7.1.4 and provide recommendations for remedial work to be undertaken, and provide the Operator with the City's recommendations. The Operator shall provide the City's personnel or any service providers appointed by the City to undertake the site audits and inspections, with full access to the depot at any time.

7.4 The City shall afford the Operator an opportunity to consider the proposed remedial work to be undertaken and give its inputs to the City. The Parties hereby agree that there is no legal obligation on the City to accept the inputs made by the Operator, it being agreed that the City retains the power and authority to determine the remedial work to be undertaken.

7.5 The City shall, at the cost of the Operator, appoint a service provider who will be responsible for the maintenance required due to any fault on the part of the Operator (including its employees, service providers or any other agents of the Operator), whether through negligence or intentional acts by the Operator (including its employees, service providers or any other agents of the Operator), and without derogating from the provisions of this clause 7.5 and for avoidance of doubt, the Operator shall be responsible for:

- 7.5.1 the cost of replacing any lost or stolen fire detection alarms and the fire protection systems (fire extinguishers and fire hydrants etc.);
- 7.5.2 plumbing;
- 7.5.3 electrical and gas equipment and related fittings;
- 7.5.4 electrical installation and wiring;
- 7.5.5 roller shutters and glass doors;
- 7.5.6 Signage;
- 7.5.7 wash and dry bays and related equipment;

7.5.8 civil, road works and related equipment; and

7.5.9 damage other than due to fair wear and tear.

7.6 The Operator shall be responsible for the cost of handyman and locksmith services, where the services are required as a result of negligence on the part of the Operator and its agents and representatives.

7.7 The City shall on the 10th (tenth) calendar day (or the first Business Day thereafter if the tenth calendar day is not a Business Day) of each calendar month during the currency of this Agreement, calculate the costs attributable to the Operator as contemplated in clause 7.5 during the relevant monthly calculation period.

7.8 The City shall provide the Operator with the amount due and payable by them. Should a dispute arise in respect of the liability of the Operator as contemplated in clause 7.5, then such dispute shall be dealt with *mutatis mutandis* in accordance with 6.2 and 6.3 of this Agreement.

7.9 The City shall be entitled to set-off the costs due to it from the Operator against the Service Fee payable to the Operator.

8. LIABILITY FOR ELECTRICITY, WATER AND RATES AND TAXES

8.1 The Operator shall, from the commencement date, be liable for costs of all electricity and water consumed by it and accordingly the Operator shall enter into water and electricity supply agreements with the relevant authorities.

8.2 The Operator shall timeously pay the cost of all electricity and water consumed at or on the Depot.

9. CITY INSURANCE OBLIGATIONS IN RESPECT OF THE DEPOT

The City shall be obliged to insure the Depot, inclusive of third party insurance (equivalent to the replacement value) against such risks, on such terms, for such amounts, and at such premiums as are for the time being in respect of similar assets in similar locations for the duration of this Agreement. The Operator shall be responsible for the total excess amount

should it be found that the Operator (including its employees, service providers or any other agents of The Operator) is responsible for any damage to the Depot and which total excess amount shall be recovered from The Operator by the insurance service provider of the City.

10. LIABILITY FOR INCREASED PREMIUMS ON DEPOT INSURANCE

10.1 The Operator recognises that the City may have insured the Depot and Depot Equipment, save for acts of negligence on the part of the Operator (including its employees, service providers or any other agents of the Operator), against such risks, on such terms, for such amounts, and at such premiums as are for the time being usual in respect of similar buildings and assets in similar locations.

10.2 The Operator shall not do any such acts that shall increase any of the risks against which Depot (or any part thereof) and/or the Depot Equipment is insured for the time being.

10.3 To the extent that:

10.3.1 such insurance is rendered void or voidable or the premiums of such insurance are or become liable to be, increased, and without prejudice to any other right of action or remedy which the City may have arising out of a breach of the afore going provision, the City may recover from the Operator on demand the full amount of any increase in insurance premiums in respect of the Depot attributable to such breach; and/or

10.3.2 any insurance claim by the City is repudiated due to a breach by the Operator of its obligations as set out in clause 10.2, the City may recover from the Operator on demand the full amount of the loss suffered by the City where it is attributable to action by the Operator which resulted in the insurers repudiating any claim by the City.

11. ALTERATIONS, ADDITIONS AND IMPROVEMENTS

11.1 The Operator shall not, without the prior written consent of the City, make any alterations or additions to the Depot and or the Depot Equipment, including electrical, data, and plumbing installations, which consent shall not be unreasonably withheld.

11.2 If the Operator does alter or add to the Depot and/or the Depot Equipment in any way,

in breach of clause 11.1, the Operator shall, if so required in writing by the City, at its own cost, restore the Depot and or the Depot Equipment (as the case may be) to the same condition as it was prior to such alteration or addition having been made. This clause shall not be construed as excluding any other or further remedy which the City may have in consequence of a breach by the Operator of clause 11.1.

12. EXCLUSION OF LIABILITY FOR LOSS OR DAMAGE TO PROPERTY

12.1 The Operator shall have no claim against the City (save for acts of gross negligence) for any loss or damage suffered by the Operator by reason directly or indirectly of:

12.1.1 any failure or suspension of, or any interruption in, the supply of water, electricity, air-conditioning, heating, or any other amenity or service to the Depot, whatever the cause;

12.1.2 any breakdown of, or interruption or delay in the operation of, any Depot Equipment including (but without limiting the generality of the foregoing) any geyser, boiler burglar alarm or security installation or system, regardless of cause;

12.1.3 any interruption of, or interference with, the enjoyment or beneficial occupation of the Depot or use of the Depot Equipment caused by any building operations or other works to or in the Depot or on the Depot Equipment, whether by the City or by anybody else;
or

12.1.4 any other event or circumstance beyond the City's reasonable control occurring, or failing to occur, upon, in, or about the Depot, or in respect of the Depot Equipment, whether or not the City could otherwise have been held liable for such occurrence or failure; and

12.1.5 the Operator indemnifies the City and holds it harmless against any and all liability to any employee or agent of the Operator, its guests and other invitees, and all other persons who may occupy or be entitled to occupy the Depot or any parts thereof through or under the Operator, in consequence of any such matter as is referred to in this clause.

12.1.6 The City shall not, however, be excused from specific performance of any of the City's obligations under this agreement, whether express or implied, and particularly (but not only) the City's obligations to afford the Operator occupation and enjoyment of the Depot and/or use of the Depot Equipment (as the case may be) as contemplated by this Agreement.

13. THE CITY'S RIGHT OF ENTRY AND CARRYING OUT OF WORKS

13.1 The City may at all reasonable times, without thereby giving rise to any claim or right of action on the part of the Operator or any other occupier of the Depot at the instance of the Operator, in which case the Operator hereby indemnifies the City against any claim from such other occupier:

13.1.1 enter the Depot in order to inspect it, to carry out any necessary repairs, replacements or other works, or to perform any other lawful function in the *bona fide* interests of the City; or

13.1.2 carry out on the Depot Equipment or the Depot (or any part thereof) any necessary repairs, replacements or other works, provided that the City shall ensure that insights is exercised with due regard for, and a minimum of interference with, the enjoyment of the Depot and the Depot Equipment by the Operator.

14. SPECIAL REMEDY FOR BREACH

14.1 Should the Operator be in breach of any of the terms or conditions of this agreement as set out in this agreement in any way that will constitute a material breach, and should the Operator fail to remedy such material breach:

14.1.1 within 14 (fourteen) Business Days after receiving a written demand that it be remedied, or such longer period as may reasonably be required in the circumstances and agreed upon in writing by the Parties; and/or

14.1.2 pursuant to the insurance of the Operator repudiating such claim to pay out proceeds required for the Depot to be rebuilt as a result of the negligent acts of the Operator (including its employees, service providers or any other agents or representatives of the Operator); and/or

14.1.3 pursuant to the City having exercised its rights in terms of this agreement, the City shall be entitled, without prejudice to any alternative or additional right of action or remedy available to the City under the circumstances, to cancel this Agreement.

14.2 Clause 14.1 shall not be construed as excluding the ordinary lawful consequences of a breach of the right of use contemplated in this agreement by either Party, save any such consequences as are expressly excluded by any of the other provisions of this agreement and in particular any right of cancellation of this Agreement on the ground of a Material Breach.

15. DAMAGE TO OR DESTRUCTION OF DEPOT

15.1 If, due to the gross negligence of the Operator, the Depot is destroyed or so damaged that it can no longer be beneficially occupied, and the insurance proceeds (if any) are not sufficient to rebuild the Depot, such shall constitute a Material Breach entitling the City to cancel this Agreement and claim any damages it suffers from the Operator.

15.2 If the Depot is destroyed or so damaged that it can no longer be beneficially occupied, other than as a result of negligence on the part of the Operator, and the insurance proceeds (if any) are not sufficient to rebuild the Depot then the City shall be obliged, within its discretion, to determine a commercial solution that shall not prejudice the Operator. The Parties hereby agree that the liability of the City in this regard shall be limited to the remaining value of this Agreement, less any costs that the Operator would have been liable for had this Agreement persisted.

15.3 If the Depot is damaged due to the negligence of the City, but can still be beneficially occupied, this Agreement as contemplated herein shall remain in force and the City shall repair the damage without undue delay.

15.4 If the Depot is damaged due to the negligence of the Operator, but can still be beneficially occupied, this Agreement as contemplated herein shall remain in force and the City shall repair the damage, at the expense of the Operator without undue delay.

16. OBLIGATION TO REPAIR ON TERMINATION

16.1 The Operator shall, on the termination or cancellation of the principal Agreement and/or this Agreement, at its own expense and without recourse to the City, forthwith return the Depot and the Depot Equipment, and all such parts thereof (including all keys) to the City

in good order, condition and repair, fair wear and tear excepted.

16.2 Upon receiving a notification of cancellation or termination contemplated in this clause 16, the Operator shall promptly cause the necessary repair or replacement to be effected to the Depot and the Depot Equipment at the Operator's own expense, failing which the City shall have the right to either claim specific performance and/or set-off any repair or replacement costs from any payment due to the Operator, within the City's sole discretion.

16.3 Save for any alteration or addition which is removed from the Depot as required by the City in terms of this agreement, all alterations or additions made to the Depot shall, on termination or cancellation of this Agreement, become the property of the City and may not be removed from the Depot at any time. Subject to any prior written agreement to the contrary between the Parties, the Operator shall not, whatever the circumstances, have any claim against the City for compensation for any alterations or additions to the Depot.

16.4 Should the Operator fail to carry out any of its obligations as set out in clauses 16.1 and 16.2, the City shall be entitled, without prejudice to any of the City's other rights or remedies, to effect the maintenance, repair or replacement to any part of the Depot or the Depot Equipment (as the case may be) and to recover from the Operator on demand, all reasonable amounts incurred by the City in respect thereof

17. CESSION AND SUBLETTING

The Operator shall not be entitled to cede all or any of its rights or delegate all or any of its obligations in terms of this Agreement; sublet the Depot in whole or in part or give up possession and/or control of the Depot or the Depot Equipment to any third party, without the City's prior written consent.

18. CO-SHARING OF DEPOTS, FACILITIES AND EQUIPMENT

18.1 The Operator hereby acknowledges that parts of the Depot and/or the Depot Equipment may be made available by the City to one or more additional Operators from time to time.

18.2 In the event of such further occupancy of portions of the Depot or use of the Depot

Equipment by other bus Operators, the City shall facilitate that an agreement be concluded between the Operator and any other bus operating company for co-sharing of the Depot and Depot Equipment, and liabilities of each party in respect to, amongst others, maintenance, water, electricity and other consumables, including the basis on which the demarcation will be applied, the period that the Depot facilities are to be shared and any other relevant conditions.

SIGNED AT _____ ON THIS THE _____ DAY OF _____ 2025

FOR THE CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY

Name of the official with delegated authority:

WITNESSES:

1. _____ Name: _____
2. _____ Name: _____

SIGNED AT _____ ON THIS THE _____ DAY OF _____ 2025

FOR OPERATOR

Name of the duly authorized persons

WITNESSES:

1. _____ Name: _____
2. _____ Name: _____

DEPOT-SCHEDULE A

NO.	NAME OF THE DEPOT	ADDRESS	DEPOT EQUIPMENT
