



SERVICE DELIVERY AGREEMENT

Entered into between

**THE CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY
("the City")**

and

**CITY OF JOBURG PROPERTY COMPANY SOC Ltd (RF)
("JPC")**

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WHEREAS:

- A. the City is in terms of the Constitution of the Republic of South Africa and other applicable legislation charged with the responsibility of ensuring the sustainable provision of municipal services within its area of jurisdiction;
- B. with a view to deriving maximum benefit from the principles of performance-based contracting, the City has elected to deliver the Services through JPC which is a company wholly owned and controlled by the City;
- C. JPC functions as an external mechanism for delivery of municipal services as contemplated in Section 76(b) of the Systems Act;
- D. the City has entered into a Service Delivery Agreement with JPC as contemplated in Section 81(2) of the Systems Act;
- E. the Systems Act contemplates a Service Delivery Agreement which sets out the framework within which JPC is assigned the task of rendering the Services on behalf of the City, without detracting from the accountability of the City under its constitutional mandate;
- F. the existing Service Delivery Agreement has been reviewed by both the City and JPC to comply with the City long term strategy, and the agreed outcome of such review process is the revised agreement as recorded herein;

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION AND DEFINITIONS

In this Agreement and in any annexures and schedules hereto:

- 1.1 clause headings are for convenience only and are not to be used in interpretation of this Agreement;



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1.2 unless the context indicates a contrary intention, an expression which denotes

1.2.1 any gender includes the other gender.

1.2.2 a natural person includes a juristic person and vice versa;

1.2.3 the singular includes the plural and vice versa;

1.3 the following expressions bear the meanings assigned to them below and cognate expressions bear corresponding meanings:-

1.3.1 "Accounting Officer" shall have the meaning ascribed to it in Section 93 of the MFMA, meaning the chief executive officer of the municipal entity appointed in terms of section 93J of the Systems Act;

1.3.2 "SDA" means this Service Delivery Agreement including all annexures and schedules attached hereto;

1.3.3 "Assets" means all the Assets, whether corporeal or incorporeal, of JPC used in connection with or in the provision of the Services comprising, but not limited to plant, movable and immovable property and incorporeal rights.

1.3.4 "Auditors" means the Auditor-General as defined in the MFMA;

1.3.5 "Board" means the Board of Directors of JPC;

1.3.6 "Budget" means a budget that is prepared and submitted to the City by JPC and which is finalised and approved in accordance with the requirements of section 87 of the MFMA and otherwise in accordance with the provisions of the Municipal Budget and Reporting Regulations;

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1.3.7 “Business Day” means a day other than a Saturday, Sunday or public holiday in the Republic of South Africa;

1.3.8 “Business Plan” means the annual business plan of JPC contemplated in clauses 9 and 10, as approved by the City and amended from time to time;

1.3.9 “CCRs” means Core Competency Requirements as identified in the Scorecard;

1.3.10 “Chairperson’s Quarterly Meeting” means a meeting convened and attended by the chairperson of the Board of JPC or his nominee, the relevant MMC, JPC Accounting Officer, representatives from the Group Governance and Line Department/s, which meetings are scheduled by the City on a quarterly basis;

1.3.11 “CM” means the City Manager;

1.3.12 “the City” means when referred to as:

1.3.12.1 an entity, the City of Johannesburg Metropolitan Municipality established by notice no. 6766 of 2000 published in the Gauteng Provincial Gazette No. 141 by the MEC responsible for Local Government in Gauteng in terms of section 12(1) of the Structures Act, or its successors-in-title, and includes duly authorised officials of the municipality who have been delegated any powers, functions and duties necessary to give effect to this Agreement and decide upon and administer the matters referred to herein; and

1.3.12.2 a geographical entity, the area within the municipal boundary of the City of Johannesburg Metropolitan



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Municipality as determined or redetermined from time to time by the Municipal Demarcation Board acting under the Demarcation Act;

- 1.3.13 "City Group Performance Management Framework" means the Group Performance Management Framework for the City of Johannesburg as approved by the Mayoral Committee on 20 August 2009 as amended from time to time;
- 1.3.14 "City Supply Chain Management Policy" means the Supply Chain Management Policy of the City of Johannesburg adopted in terms of Section 111 of the MFMA;
- 1.3.15 "Competent Authority" means any department in the national or provincial or local government sphere of government exercising statutory powers in terms of legislation;
- 1.3.16 "Companies Act" means the Companies Act 71 of 2008, as amended or replaced from time to time;
- 1.3.17 "Confidential Information" means all confidential data whether of a historical, current or future nature irrespective of whether it is stored, recorded or embodied in a handwritten, printed, visual, electronic, audible or other format or medium, and belonging to, created by, in the possession or under the control of the Parties individually. For the purpose of this Agreement "information" shall include, without limiting its ordinary meaning, data, codes, letters, telefaxes, telegrams, faxes, agreements, specifications and strategic plans;
- 1.3.18 "CPI" means the weighted average of the consumer price index in respect of all areas and for all items as published by the Central

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Statistical Services (Statistical Release P0141.1) from time to time, provided that if:

- 1.3.18.1 such index should cease to be published, or
 - 1.3.18.2 the basis of calculation of such index has changed and pursuant to such change one Party has notified the other that it is not satisfied therewith; or
 - 1.3.18.3 due to a change in circumstances, the index is no longer representative of general inflationary changes in South Africa, then, in any such circumstances, the Parties will use such official information or index as may be available and acceptable to them, or failing such availability and acceptance, an index determined in writing as fair and reasonable by a majority decision of a panel of 3 (three) independent chartered accountants of the Republic of South Africa (who shall act as experts and not as arbitrators) appointed by the president for the time being of the South African Institute of Chartered Accountants, which determination shall be binding upon the Parties. Any determination made by the majority of such panel as to the date from which any revised index shall take effect and liability for the cost of determination of the index by the panel shall be binding upon the Parties;
- 1.3.19 "Customer Charter" means a customer relations and customer management system prepared by JPC in accordance with clause 19 of this Agreement;



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- 1.3.20 “Demarcation Act” means the Local Government: Municipal Demarcation Act 29 of 1998;
- 1.3.21 “Designated Oversight Structures” means the departments/units/structures charged with decentralised municipal entity oversight under the City’s revised governance model, namely, the relevant line departments, Group Governance and the relevant MMCs, the relevant section 79 committee
- 1.3.22 “Effective Date” means 25 February 2014.
- 1.3.23 “Employees” means all the employees employed by JPC from time to time throughout the period of this Agreement;
- 1.3.24 “End User” means a natural or juristic person who uses or benefits directly from the provision of the Services provided by JPC;
- 1.3.25 “ED” means the Executive Director of the City Department of Economic Development responsible for oversight of JPC;
- 1.3.26 “DED” means Department of Economic Development;
- 1.3.27 “Financial Year” means the financial-year of both the City and JPC being a 12 (twelve) month period commencing on 1 July and ending the following 30 June;
- 1.3.28 “GDS” means the Growth and Development Strategy of the City as formulated from time to time;
- 1.3.29 “GPAC” means the Group Performance Audit Committee, the structure established pursuant to the Local Government: Municipal Planning and Performance Management Regulations, 2001 for ensuring the objective review and verification of the various

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components of the City's employee performance management system;

- 1.3.30 "GRAP" means Standards of Generally Recognised Accounting Practice as determined by the Accounting Standards Board of South Africa from time to time;
- 1.3.31 "IDP" means the Integrated Development Plan of the City as formulated from time to time;
- 1.3.32 "IRFA" means the Intergovernmental Relations Framework Act No. 13 of 2005 and any regulations or guidelines promulgated thereunder from time to time;
- 1.3.33 "KPA" means the Key Performance Area which is the explicit statement of a performance objective and outcome results that relate to a major functional, operational, technical, financial or behavioural area of the role and accountability of the individual or entity whose performance is being assessed;
- 1.3.34 "KPI" means the Key Performance Indicator and means the deliverables, standards or measures used to indicate whether or not an SPO or KPA has been met. These must be within the control of the individual or entity whose performance is being assessed, as well as being objective, observable and capable of being measured;
- 1.3.35 "Local Community" means that body of persons comprising:
- 1.3.35.1 the residents of the City;
 - 1.3.35.2 the ratepayers of the City, any civic organizations and non-governmental, private sector or labour organizations



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or bodies which are involved in local affairs within the City; and

- 1.3.35.3 visitors and other people residing outside the City who, because of their presence in the City, make use of services or facilities provided by the City, and includes, more specifically, the poor and other disadvantaged sections of such body of persons;
- 1.3.36 “Minister” means the Cabinet member responsible for provincial and local government;
- 1.3.37 “MFMA” means the Local Government: Municipal Finance Management Act No. 56 of 2003;
- 1.3.38 “MMC” means a Member of the Mayoral Committee;
- 1.3.39 “Municipal Asset Transfer Regulations” means the Local Government Municipal Finance Management Act, 2003, Municipal Asset Transfer Regulations published under Notice R878 in Government Gazette No. 31346 dated 22 August 2008;
- 1.3.40 “Municipal Budget and Reporting Regulations” means the Local Government Municipal Finance Management Act, 2003, Municipal Budget and Reporting Regulations published under Notice 393 in Government Gazette No. 32141 dated 17 April 2009;
- 1.3.41 “Municipal Legislation” means all the legislation (including regulations framed thereunder) in operation at the Effective Date which regulates the conduct of the City’s affairs and of its municipal entities, including, without limitation, the MFMA, Systems Act and Structures Act and any new or replacement legislation (including regulations) which subsequently comes into force;

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- 1.3.42 “Municipal Manager” means the official appointed as such by the City in terms of section 82 of the Structures Act,
- 1.3.43 “Municipal Services” means municipal services as defined in the Systems Act;
- 1.3.44 “Operational Dispute” means a dispute between the Parties to an SDA, or between any such Party and any other municipal entity of the City, which arises out of the provisions of such SDA or anything done, provided or procured pursuant thereto;
- 1.3.45 “Party” and “Parties” means JPC and the City and their successors in title, as the context requires;
- 1.3.46 “R & CRM Department” means the City’s Revenue and Customer Relations Management Department established by the City in respect of the municipal entities referred to in clause **Error! Reference source not found.**;
- 1.3.47 “Regulatory Provisions” means collectively the provisions of any law, proclamation, ordinance, Act of Parliament or Provincial legislature, or other enactment having the force of law, any policy directive or notice issued by a Competent Authority in exercising statutory powers and any administrative action in respect of or relating to the provision of the Services or relating to the functioning of a municipal entity;
- 1.3.48 “Section 57 Employee” means the municipal manager of a municipality or a person who is appointed by the said municipality and who is directly accountable to the municipal manager as contemplated in section 57(1) of the Systems Act;



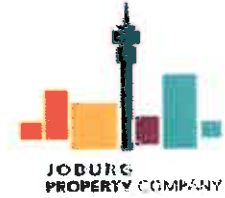
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- 1.3.49 "Section 79 Oversight Committee" means a committee convened pursuant to section 79 of the Structures Act for the purpose of considering and making recommendations to the Council in relation to, *inter alia*, certain legislative issues and matters arising out of such committee's oversight role over the activities of the EISD and also arising out of the consideration of quarterly reports from the EISD, the relevant MMC and JPC;
- 1.3.50 "Scorecard" means, in the context of performance management, the document within which all relevant KPIs, KPAs and SPOs impacting on the performance assessment of the individual or entity concerned, are captured relative to a particular assessment period;
- 1.3.51 "SDBIP" means the Service Delivery Budget Implementation Plan of the City as formulated from time to time;
- 1.3.52 "Cluster Scorecard" means the cluster scorecard pertaining to the cluster of the City within which JPC engages with the relevant core department/s of the City in provision of the Services. The cluster Scorecard is developed jointly between the cluster and JPC from the cluster plan prepared annually as part of the City's five year IDP;
- 1.3.53 "Service Area" means the geographical area in respect of which JPC is appointed (and where applicable, licensed in terms of applicable Regulatory Provisions) to render the Services as more fully described in Annexure "B";
- 1.3.54 "Service Levels" means the levels of service to be achieved by JPC in providing the Services under this Agreement as more fully described in clause 11.5.3 and specified by the City in the SLAs from time to time;



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- 1.3.55 "JPC" means City of Joburg Property Company SOC Ltd (RF) with Registration No. 2000/029899/07, a municipal entity incorporated and registered in the Republic of South Africa in terms of the Companies Act 61 of 1973, which has now been repealed by the Companies Act 71 of 2008, with its registered office at 1st Floor , no 33 Hoofd Street Forum II, Braam Park, Braamfotein, Johannesburg;
- 1.3.56 "JPC Accounting Officer" means the managing director or chief executive officer of JPC, from time to time as defined in section 93 of the MFMA;
- 1.3.57 "Services" means the services provided or to be provided by JPC as described in Annexure "A" hereto;
- 1.3.58 "Structures Act" means the Local Government: Municipal Structures Act 117 of 1998;
- 1.3.59 "Systems Act" means the Local Government: Municipal Systems Act 32 of 2000;
- 1.3.60 "Treasury Policy Manual" means the City's Treasury Policy Manual approved by the City from time to time;
- 1.3.61 "User Forum" means the end-user forum established by the Board of JPC and made up of representatives of the Local Community;
- 1.3.62 "VAT" means value added tax in terms of the Value Added Tax Act 89 of 1991, as amended.
- 1.4 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of this Agreement;



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- 1.5 when any number of days is prescribed in this Agreement, they shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;
- 1.6 where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 1.7 expressions defined in this Agreement shall bear the same meanings in schedules and/or annexures to this Agreement save to the extent expressly provided to the contrary in writing;
- 1.8 all schedules and annexures to this Agreement shall be deemed to have been expressly incorporated into and form an integral part of this Agreement and as such each reference herein to this Agreement shall be deemed to include a reference to all such schedules, appendices and annexures;
- 1.9 where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation and definitions clause;
- 1.10 a reference to a Party includes that Party's successors in title and permitted assigns;
- 1.11 any reference to an enactment is to that enactment, as amended, as of the date of signature hereof, and as amended or re-enacted from time to time thereafter;



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- 1.12 the expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;
- 1.13 the rule of construction that the contract shall be interpreted against the Party responsible for the drafting or preparation of the agreement shall not apply.
- 1.14 all policies and protocols of general application of the City which have been officially adopted by it or which may be adopted by it in the future from time to time and communicated by the City to JPC in writing from time to time, shall, unless expressly excluded in this Agreement or by the context governing the relationship between the City and JPC to the extent that they have a bearing on the provision of the Services under this Agreement, be deemed to have been incorporated by reference.

2. SUPREMACY OF THIS AGREEMENT

Save as may be expressly agreed and recorded to the contrary, if any provision of any other agreement entered into between the City and JPC or any provision of the Business Plan and pertaining to the subject-matter of this Agreement, conflicts with the provisions of this Agreement, the provisions of this Agreement shall prevail.

3. APPOINTMENT OF JPC

- 3.1 Notwithstanding the date of signature of this Agreement, all rights and obligations arising from this Agreement shall be deemed to have come into operation on the Effective Date, from which date the provisions of this Agreement shall be deemed to have replaced the provisions of the previous SDA.



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- 3.2 Save to the extent specifically provided to the contrary in this SDA, JPC at all times acts as an independent contractor and neither the appointment of JPC nor anything in this Agreement shall give rise to or be construed as giving rise to an employer-employee relationship between the Parties, a relationship of principal and agent, a joint venture or an agreement of partnership between the Parties, nor shall it give rise to a labour broking agreement.

4. CESSION AND ASSIGNMENT

- 4.1 Neither Party shall be entitled to cede its rights or assign its obligations under this Agreement without the prior written consent of the other Party.
- 4.2 JPC may subject to the City's policies appoints consultants, contractors and suppliers to undertake any portion of its obligations in terms of this Agreement, which appointment shall be at its own cost and not relieve JPC of any of its obligations to the City.

5. COMMENCEMENT AND DURATION

- 5.1 This Agreement shall commence on the Effective Date and shall be reviewed every 5 (five) years in line with the period of the Integrated Development Plan (IDP) in terms of the provisions set out in this Agreement or until terminated by the City pursuant to Section 93B(c) of the Systems Act.
- 5.2 This SDA shall cover the period of the IDP from 2011 to 2016 and upon expiry of this period, it shall be reviewed in line with the new IDP for the period 2016 to 2021.
- 5.3 Annexures A and B to this SDA shall be reviewed and agreed to annually by both the Board of JPC and the City as they form the basis for the performance review of JPC.

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6. SERVICE AREA

- 6.1 Subject to clauses 6.2 and 6.3 below, JPC shall provide the Services within the Service Area as stipulated in Annexure "A".
- 6.2 If the municipal boundaries of the City are extended under the Demarcation Act or any other law, and the City elects to expand the Service Area, the procedure shall be as follows:
- 6.2.1 the City shall forthwith, following the publication of a redetermination of its municipal boundaries in the Gauteng Provincial Gazette under the Demarcation Act or any other law, indicate whether it shall cover the area accordingly to provide the Services within the extended area;
- 6.2.2 if JPC is required by the City to provide the Services in the extended area, JPC shall negotiate with the City to amend the Budget of JPC in a way which will accommodate the additional activities to be undertaken by JPC in the extended area, using the procedures specified in the Municipal Budget and Reporting Regulations. If the Parties fail to agree on the requisite changes required to JPC's Budget within [30 (thirty) days] of commencement of negotiations, such dispute shall be referred for dispute resolution as an Operational Dispute.
- 6.3 If the municipal boundaries of the City are reduced under the Demarcation Act or any other law, then following the publication of a redetermination of the City's municipal boundaries in the Gauteng Provincial Gazette under the Demarcation Act or any other law:
- 6.3.1 the Service Area shall be reduced to coincide with the new boundaries of the City; and



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- 6.3.2 JPC shall negotiate with the City to amend JPC's Budget mutatis mutandis in accordance with the process contemplated in clause 9.

7. SERVICES AND SERVICE STANDARDS

- 7.1 The Services provided or to be provided by JPC from the Effective Date in accordance with the provisions of this Agreement, are those described in Annexure "A".
- 7.2 The Services are described in general terms in Annexure "A" but will on an annual basis be specified in more detail in the SDBIP and JPC's annual Business Plan as contemplated in this Agreement.
- 7.3 The scope of the Services may be changed by agreement between the Parties pursuant to the business planning and budgeting process as referred to in this Agreement.
- 7.4 The Service standards are attached hereto as Annexure B and shall be reviewed annually prior to the commencement of each financial year in line with the budget approval process.

8. PRINCIPAL OBJECTIVE OF SDA AND LINK TO BUDGETING PROCESS

- 8.1 The SDA is entered into between the Parties with the principal objective of providing a framework within which detailed service delivery plans can be developed and implemented by JPC in a manner which is consistent with and which will play a part in giving effect to the City's strategic planning processes.
- 8.2 The municipal budgeting process is the mechanism by which JPC translates into practice the strategic objectives of the City in a manner which is not only consistent with the GDS (in respect of long term strategic objectives), the IDP (in respect of medium term strategic objectives) the



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SDBIP (which outlines current objectives set for the City) and the Cluster Scorecard, but also in a manner which is consistent with the availability and prudent and sustainable use of available resources.

- 8.3 As an outcome of the budgeting process, the Business Plan of JPC identifies the key service delivery objectives of JPC together with the resources allocated to the achievement of such objectives. It also identifies the KPAs and KPIs which are used in evaluating the extent to which JPC and its management have achieved the service delivery objectives determined for JPC, and enables evaluation of management performance in the context of appropriate remuneration.

9. ANNUAL BUDGETING PROCESS AND BUSINESS PLAN

- 9.1 The Board of JPC shall ensure for each Financial Year of JPC, that a budget is prepared and submitted to the City and finalised in accordance with the requirements of Section 87 of the MFMA and the Municipal Budget and Reporting Regulations.

- 9.2 JPC's Budget shall include a multi-year Business Plan which shall, inter alia:

9.2.1 serve the purpose of providing a vehicle through which the obligations of the Parties with regard to service delivery can be articulated and agreed upon on an annual basis.

9.2.2 To achieve this purpose each Business Plan must define the outputs to be achieved by JPC in each year, the budget needed to achieve the outputs, and such other issues as the City shall request JPC to incorporate in the Business Plan, including a range of other critical issues and supporting information describing the business and the strategies to be adopted to ensure delivery on the agreed outputs.



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- 9.2.3 set key financial and non-financial performance objectives and measurement criteria which shall have been agreed between JPC and the City.
- 9.3 The budget shall:
- 9.3.1 be within any limits determined by the City, including any limits on tariffs, revenue, expenditure and borrowing;
 - 9.3.2 be consistent with the City's budget and IDP;
 - 9.3.3 be consistent with this SDA;
 - 9.3.4 reflect actual and potential liabilities and commitments, including particulars of any proposed borrowing of money during the period to which the plan relates;
 - 9.3.5 comply with the Municipal Budget and Reporting Guidelines; and
 - 9.3.6 otherwise comply with the requirements of Section 17(1) and (2) of the MFMA to the extent that such requirements can reasonably be applied to JPC.
- 9.4 Should the City and JPC fail to agree any of the foregoing matters, either Party may declare a dispute by giving written notice thereof to the other Party, whereupon the dispute resolution provisions shall immediately come into operation and, if the matter is not resolved within the 15 (fifteen) day period contemplated in clause 25.3, the matter shall be resolved as an Operational Dispute.
- 9.5 The Business Plan shall also:

- 9.5.1 as far as possible be in accordance with a pro forma submitted to JPC from time to time by the City at commencement of the annual budgeting process and shall in detail set out the outcomes to be achieved by JPC in the following year, commencing 1st July. In addition, each Business Plan shall include indicative inputs and outputs and financial models for the subsequent 3 (three) years;
- 9.5.2 be approved by the Board of JPC after it has been finally negotiated and settled as per the provisions of section 87 of MFMA; and
- 9.5.3 be submitted to the City in terms of the provisions of the MFMA including any regulations framed hereunder or on or before a date determined by the City from time to time, provided that such date is not later than the date contemplated under the MFMA.
- 9.6 Any projected allocation to JPC by the City must be provided for in the annual budget of the City, and to the extent not so provided, JPC's Budget and where applicable, the Business Plan, must be adjusted in accordance with the provisions of section 87(6) of the MFMA.
- 9.7 JPC shall incur expenditure only in accordance with its approved Budget, subject to any adjustments effected on the basis contemplated in the MFMA.

10. THE BUSINESS PLAN

JPC shall develop an annual Business Plan and Budget which shall be approved within the time limits provided for in terms of section 87 of the MFMA as read with the Municipal Budget and Reporting regulations.



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11. PERFORMANCE OBJECTIVES, COMPLIANCE AND REVIEW

- 11.1 Taking into account the City's key service delivery imperatives and the resources available for achieving those objectives, JPC's Business Plan shall set out the key annual financial and non-financial performance objectives of JPC.
- 11.2 Pursuant to determination of the key annual performance objectives for the year to which the relevant Business Plan relates, JPC shall, by agreement with the City also establish the relevant KPAs and KPIs for JPC in respect of such period, for inclusion in JPC's Business Plan.
- 11.3 KPIs shall be designed to indicate to the Parties, End Users and the general public, the measure of success achieved by JPC in the provision of the Services.
- 11.4 The service objectives agreed to from time to time between JPC and the City represent a critical measure of service delivery, and as a substantive obligation pursuant to this SDA JPC undertakes at all times to perform the Services in a professional manner which is in compliance with the KPA and KPIs established pursuant to the Business Plan, as agreed to annually and where applicable, amended as provided for in terms of this Agreement or by Municipal Legislation. In this regard JPC shall at all times exercise proper skill, care and diligence and comply with all directives, time schedules and budgets as agreed with the City pursuant to the Business Plan.
- 11.5 JPC shall report on its performance:
- 11.5.1 annually, as part of annual reporting process, against the agreed KPAs and KPIs in terms of clause 13.3;
- 11.5.2 six months after commencement of the financial year; and

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- 11.5.3 quarterly report on its activities during the quarter under review to the Designated Oversight Structures prior to the relevant Chairperson's Quarterly Meeting, and the meetings of the Mayoral Committee and Section 79 Oversight Committee tasked to oversee the activities of JPC in terms of clause 13.2.

12. PERFORMANCE MANAGEMENT

- 12.1 The Board is ultimately responsible for the performance management of JPC and all employees of JPC (including the Accounting Officer) in the context of JPC's performance Scorecard, and shall develop and implement such internal performance management tools and protocols as are deemed to be in the best interests of JPC in discharging its obligations under this Agreement.
- 12.2 External to JPC, the City Group Performance Management Framework regulates performance planning and implementation co-ordination between JPC and the City by means of the applicable Cluster Scorecard.
- 12.3 JPC shall in response to the PIPs, contribute to the Cluster scorecard and the performance thereof shall be reviewed by the Cluster on an annual basis.

13. REPORTING REQUIREMENTS

- 13.1 JPC shall adhere to the requirements of the Municipal Budget and Reporting Regulations.
- 13.2 **Quarterly Reports**
- 13.2.1 Within 7 (seven) days of the end of each quarter, preparation and submission to Group Governance department of a quarterly

performance report for JPC as at the end of each quarter, reflecting:

- 13.2.1.1 its financial performance in rendering the Services;
 - 13.2.1.2 its achievement of the performance objectives referred to in clause 11, including any Service Levels which have been incorporated into any performance objective on the basis contemplated in clause 11.5.3:
 - 13.2.1.3 any special circumstances and factors that should be taken into account in analysing its performance; and
 - 13.2.1.4 any measures to be taken by JPC to improve its performance.
- 13.2.2 JPC Accounting Officer shall provide the City with such additional information regarding its operations, related to the provision of the Services as the City may reasonably require.
- 13.2.3 JPC Accounting Officer shall provide quarterly financial statements reflecting JPC's actual income and expenditure together with financial notes explaining any variances and the reasons for variances and its achievement or otherwise of the agreed outputs, which report shall include such information as is necessary to enable the City to accurately assess the extent to which JPC has achieved the agreed outputs.

13.3 ***Annual Reports and Annual Financial Statements***



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13.3.1 JPC Accounting Officer shall ensure the preparation and submission of the Annual Financial Statements within two months of JPC financial year end (in accordance with the provisions of Municipal Legislation, the Companies Act and GRAP) to the City and the Auditors which:

13.3.1.1 fairly present the state of affairs of JPC for the period in question, its performance against its budget, its management of revenue, expenditure, assets and liabilities, its business activities, its financial results and its financial position as at the end of the financial year;

13.3.1.2 comply with all disclosure requirements of Municipal Legislation from time to time;

13.3.1.3 comply with the disclosure guidelines as recommended by the King Report III on Corporate Governance as updated from time to time, disclosing both financial and non-financial issues.

13.4 The Accounting Officer for JPC shall prepare for each financial year, an annual report in accordance with the requirements of the MFMA and submit the annual report to the Group Governance in August of each year.

14. SUPPLY CHAIN MANAGEMENT POLICY

14.1 JPC shall at all times ensure that its Supply Chain Management Policy is consistent with the MFMA, relevant regulations from time to time and aligned to the City Supply Chain Management Policy.



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14.2 JPC's Supply Chain Management Policy shall include, without limitation, amongst others, the following policies:

14.2.1 a policy on broad-based black economic empowerment (which includes the empowerment of youth, women, the disabled and ex-combatants);

14.2.2 a policy on development and management of small, micro and medium enterprises;

14.2.3 a policy on supplier management; and

14.2.4 shall include clearly defined annual targets as set out by the City from time to time to be achieved by JPC, and reported upon monthly as part of the quarterly report prescribed in terms of clause 13.2 above.

14.3 JPC may participate in an e-procurement system developed by the City from time to time and may negotiate in good faith a service-level agreement with the City in terms of which the City shall provide JPC with centralised procurement services, if required.

15. POWER TO MONITOR PERFORMANCE

15.1 The City shall, through the GG, GSPCR and GAS, fulfil its legal obligations of continually monitoring and regulating the performance of JPC under this Agreement.

15.2 In performing its monitoring in terms of clause 15.1, the GG, GSPCR and GAS shall be entitled to conduct interviews with End Users, conduct user satisfaction surveys, performance audits or use such other monitoring methods as the GG, GSPCR and GAS may deem fit.



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15.3 JPC shall, to the extent reasonably practicable, at all times maintain a full and accurate set of records of the Services performed under this Agreement. Notwithstanding the provisions of applicable law (such as the National Archives Act) JPC shall only destroy such records to the extent agreed with the relevant GG, GSPCR and GAS.

15.4 JPC shall render such reasonable assistance as may be necessary to allow the GG, GSPCR and GAS to exercise their powers in terms of this clause 15.

15.5 Duty to provide access to information

15.5.1 In order to exercise their monitoring and oversight roles in terms of this Agreement, the GG, GSPCR and GAS of the City and their duly authorised representatives shall have a right of access to all information belonging to JPC.

16. HUMAN RESOURCE AND LABOUR RELATIONS

16.1 JPC recognizes the City's vision of being a "best practice" employer and confirms its commitment to achieving the same ideal.

16.2 Further, JPC undertakes to:-

16.2.1 endeavour to adopt and implement, as far as possible, as its minimum standard those standards contained in the collective agreement concluded between the City and its recognised unions ("the Collective Agreement") to the extent that it is in the best interest of JPC and consistent with its obligations under this Agreement to do so or as otherwise agreed with the City;

16.2.2 acknowledge the provisions of the Collective Agreement as the minimum threshold of standards, terms and conditions of

employment, except where otherwise agreed between JPC and its recognized unions. JPC and its recognized unions may negotiate mutual interest issues at a more favourable level in favour of employees than those contained in the Collective Agreements;

16.2.3 meaningfully participate, together with the City's other municipal owned entities, in a group human resources or labour relations committee established by the City from time to time, for the purposes of, amongst others:

16.2.3.1 effectively communicating and sharing relevant information;

16.2.3.2 continuous and on-going learning in respect of human resources and labour relations issues;

16.2.3.3 coordinating human resource and labour relations activities;

16.2.3.4 aligning labour relations strategies;

16.2.3.5 developing and sharing best practices;

16.2.3.6 preventing disputes initiated by the unions in various forums;

16.2.3.7 fostering harmonious labour relations with the Johannesburg division of the South African Local Government Bargaining Council ("SALGBC");

16.2.3.8 striving for consensus on issues raised at the Johannesburg Division and National Level of the SALGBC.



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16.3 Notwithstanding anything contained herein, JPC may, with the consent of the City, which consent shall not be unreasonably withheld, depart from any of the provisions of clauses 17.1 and 17.2. so as to ensure flexibility and independence of JPC.

17. HUMAN RESOURCE POLICIES

17.1 JPC shall ensure that for the duration of this SDA that its human resource policies and employee monitoring and incentive schemes are approved by the Board and maintained by JPC.

17.2 Notwithstanding the provisions of clause 17.1 above, JPC shall ensure that human resource policies and employee monitoring schemes and incentive schemes are aligned to the policies of the City in all material respects.

17.3 JPC shall at all times during the duration of this SDA, develop and maintain a register of all employees employed by it and shall keep, in a separate file for each employee, full details of that employee's employment contract; conditions of employment; emoluments; benefits; employment history; and such other information as may be necessary to determine the rights and functions of such employee within JPC, and shall permit the Director: Human Resources of the City or any other authorised person to inspect such register and/or such files from time to time.

18. USER FORUM

18.1 JPC shall establish a User Forum consisting of End Users and stakeholders in the sector within which JPC operates.

18.2 The User Forum shall have a constitution which makes provision for meetings of the forum and shall meet at least three times per annum for



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purposes of making submissions to JPC regarding the improvement of the Services.

- 18.3 JPC shall at the meetings of its Board consider any reasonable submission by the User Forum dealing with complaints by End Users regarding service levels, the role of the Local Community, the enhancement of facilities or suggestions for the improvement of the Services.

19. CUSTOMER CHARTER

- 19.1 JPC shall prepare and submit to the City a Customer Charter for approval which, in compliance with industry standards and norms and any applicable Regulatory Provisions, shall:

19.1.1 if it incorporates a customer relations and customer management system shall (where applicable), function in a manner aligned with and complementary to the City's R & CRM Department; and

19.1.2 set out the rights and responsibilities of End Users in relation to the provision of the Services and generally describe the relationship between JPC and End Users.

- 19.2 Once the Customer Charter has been approved by the City, JPC shall in its dealings with End Users act in accordance with the Customer Charter.

20. SOCIO-ECONOMIC DEVELOPMENT PLAN

- 20.1 JPC shall in each Business Plan submitted for approval, prepare and submit to the City for approval, a socio-economic development plan which shall:



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- 20.1.1 be prepared after consultation with and having due regard to the needs of the Local Community in the Service Area and views of the User Forum (where applicable);
- 20.1.2 include proposals regarding appropriate Service Levels for the poor and disadvantaged sections of the Local Community unable to afford the Services; and
- 20.1.3 endeavour to achieve an appropriate standard over time in the provision of the Services throughout the Service Area and in the interests of the Local Community as a whole.

21. SAFETY, HEALTH AND ENVIRONMENTAL POLICIES

- 21.1 JPC shall render the Services in compliance with all applicable legislation (including, without limitation), all environmental and health and safety legislation, and in such a manner as is least harmful to the environment and human health, and shall, at its own cost, prevent, at least to the extent required by law, any pollution to the environment or risk to human health.
- 21.2 JPC indemnifies and holds the City harmless against any claims that may be brought against the City in connection with pollution of soil, water and air, human health or the environment in general caused by JPC, its employees or contractors in the rendering of the Services.
- 21.3 JPC shall comply with the provisions and requirements of all statutory notices that are served on it by the City and its various departments, especially the law enforcement agencies of the City and any other competent authority.
- 21.4 JPC shall be obliged to acknowledge receipt of and respond in writing to any statutory notices served on it by the City in this context, and give



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reasons when it is not possible to comply, as well as submitting action plans and time-frames for bringing about compliance where appropriate.

22. WARRANTIES

22.1 The City warrants in favour of JPC that:

- 22.1.1 this Agreement has been duly authorised and executed by the City;
- 22.1.2 the execution of this Agreement does not violate any judgement or order of any court, Competent Authority or arbitrator of competent jurisdiction applicable in relation to the City or the existing assets of the City or the Assets;
- 22.1.3 it has the exclusive authority to provide the Services in the Service Area and is fully authorised and entitled to contract with JPC to do so on its behalf on the basis set out in this Agreement;
- 22.1.4 it has the legal capacity and authority to appoint JPC as a services provider in terms of the Systems Act on the basis set out in this Agreement.

22.2 JPC warrants in favour of the City that:

- 22.2.1 no steps will have been taken and JPC is not aware of any steps pending or threatened against JPC for its de-registration in terms of the Companies Act;
- 22.2.2 the execution of this Agreement does not violate any judgment or order of any court, Competent Authority or arbitrator of competent jurisdiction in relation to JPC or the Assets of JPC; and



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22.2.3 JPC is able, entitled and authorised, as may be necessary, validly and effectively to enter into this Agreement and to supply the Services as contemplated herein in accordance with the provisions of this Agreement.

22.3 It is expressly agreed between the Parties that each warranty given by them in this Agreement is material to this Agreement and has induced them to conclude this Agreement.

22.4 No warranties or representations which are not set forth in this Agreement shall be binding on either Party.

22.5 The provisions of this clause 24 shall survive the termination of this Agreement.

23. INDEMNITIES

23.1 JPC shall:

23.1.1 at its own expense and with effect from the Effective Date, take all reasonable precautions for the protection of life and property about or in any way connected with the whole or any part of the Assets and shall and does hereby indemnify and hold the City harmless (and agrees to keep it so indemnified and held harmless) against all losses, claims, demands, proceedings, damages, costs, charges and expenses (including reasonable legal expenses on a full indemnity basis) of whatsoever nature, arising out of this Agreement or at law in respect of injury to or death of any person or loss of or damage to any person or property occurring after the Effective Date but prior to the termination of this Agreement, unless such injury, death, loss or damage was caused by any act or omission of the City or any of its employees, subcontractors, consultants, agents or representatives or other third parties for whom the City is liable in

law or under this Agreement. JPC shall report all serious accidents involving it to the City within 24 (twenty four) hours of becoming aware of their occurrence;

23.1.2 subject to the other provisions of this Agreement, be obliged to intervene in any claim instituted against the City and to indemnify and hold the City harmless from any claim, damage, loss, cost, expense (including reasonable legal expenses on a full indemnity basis) arising from or attributable to JPC in respect of the provision of the Services or the operation and maintenance of the Assets unless such injury, death, loss or damage was caused by any act or omission of the City or any of its agents employees, subcontractors, consultants, or representatives or other third Parties for whom the City is liable in law or under this Agreement; and

23.1.3 as from the Effective Date, be responsible to the City, the Local Community and third Parties for all risks and obligations pertaining to or arising out of the provision of the Services in accordance with this Agreement, and shall be responsible for the payment of any damages, claims or losses due to any act or omission of JPC and shall indemnify and hold the City harmless for all losses, damages, penalties, legal fees and costs (including reasonable legal expenses on a full indemnity basis) which may arise in the above regard. JPC will be obliged to intervene and shall assume responsibility in respect of any legal proceedings (including arbitration) of any nature whatsoever, and whether brought within the Republic of South Africa or elsewhere that is instituted against the City in respect of any acts or omissions of JPC, or any other subcontractor or any person for whom JPC may be liable in law in respect of the supply or failure to provide the Services, that may arise after the Effective Date.

23.1.4 The City shall forthwith notify JPC in writing of any claim made against it in this regard or of any such claim that comes to its

knowledge; and shall subject to the other provisions of this Agreement and as from the Effective Date, comply with any law, regulation or other applicable provisions issued by any competent authority having jurisdiction over the Services to be provided under this Agreement.

23.1.5 In particular, but without limitation, JPC hereby indemnifies and holds the City harmless against all losses, claims, demands, proceedings, damages, costs, charges and expenses (including reasonable legal expenses on a full indemnity basis) of whatsoever nature arising from any act or omission of JPC in relation to payments for all income or other taxes, national insurance contributions or levies of any kind relating to or arising out of the employment of any person by JPC or as a result of or arising from any industrial action or related conduct embarked upon by any employee.

23.2 The City shall:

23.2.1 indemnify and hold JPC harmless against all losses, claims, demands, proceedings, damages, costs, charges and expenses (including reasonable legal expenses on a full indemnity basis) of whatsoever nature arising out of this Agreement or at law in respect of any injury to or death of any person or loss of or damage to any person or property where such injury, death, loss or damage was caused by any act or omission of the City or any of its employees, sub-contractors, consultants, agents or representatives or other third Parties for whom the City is liable in law or under this Agreement, whether prior to or after the Effective Date and the City will be obliged to intervene and shall assume responsibility in respect of any such claim arising;



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- 23.2.2 indemnify and hold JPC harmless against all losses, claims, demands, proceedings, damages, costs, charges and expenses (including reasonable legal expenses on a full indemnity basis) of whatsoever nature arising from or attributable to the City whether prior to or after the Effective Date in discharging any of its rights or obligations under this Agreement where such injury, death, loss or damage was caused by any act or omission of the City or any of its agents, employees, sub-contractors, consultants, or representatives or other third parties for whom the City is liable in law or under this Agreement and the City will be obliged to intervene in any such claim arising;
- 23.2.3 in respect of any condition existing prior to the Effective Date of the Sale of Business Agreement which contributes towards a claim, demand, proceeding or damages against JPC, indemnify and hold JPC harmless against such claims, demands, proceedings or damages (including reasonable attorneys fees on a full indemnity basis) to the extent of such contribution, provided that such indemnity shall not apply in the event of JPC, despite reasonable opportunity to do so, having failed to rectify such condition.
- 23.3 Each of the Parties indemnifies the other of them against any claims, demands, proceedings, damages and expenses (including reasonable attorneys fees on a full indemnity basis), which may arise due to a breach by any Party of the warranties contained in clause 22 hereof.
- 23.4 No breach by a party ("Warrantor") of any warranty referred to in clause 22 and no claim against a party ("Indemnifier") under any indemnity under clause 23 shall entitle a claimant to make a claim against the Warrantor/ Indemnifier in respect of both such breach of warranty and such indemnity where such breach or claim arises out of the same cause of action.



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24. INTELLECTUAL PROPERTY INDEMNITY

24.1 In respect of any Assets acquired by JPC under the Sale of Business Agreement from the City, the City hereby:

24.1.1 authorises and licenses or (where applicable), will endeavour to procure that the relevant third party intellectual property owner will have authorised and licensed and will continue to so authorise and license JPC to use and to continue to use or apply as from the Effective Date, any and all intellectual property rights of third Parties used or applied by the City in respect of the provision of the Services or the operation and maintenance of the Assets on the same basis as those rights were used or applied as at the effective date of the Sale of Business Agreement;

24.1.2 indemnifies JPC and undertakes to keep JPC fully and effectively indemnified against all claims, demands, costs, expenses and liabilities of whatsoever nature arising out of or in connection with the provision of the Services or the operation and maintenance of the Assets by JPC as from the Effective Date in respect of any intellectual property rights of third Parties;

24.1.3 JPC hereby indemnifies the City and undertakes to keep the City fully and effectively indemnified against all claims, demands, costs, expenses and liabilities of whatsoever nature arising out of or in connection with the provision of the Services or the operation and maintenance of the Assets by JPC after the Effective Date in breach (or alleged breach) of any intellectual property rights of third Parties, but specifically excluding the intellectual property rights.

24.2 The indemnities shall extend to all costs and expenses (including reasonable legal expenses on a full indemnity basis) incurred by the Party

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who has been indemnified ("the indemnified Party") by the other Party ("Indemnitor").

- 24.3 The indemnified Party shall give to the Indemnitor reasonable notice in writing of any claim being made or action threatened or brought against it and shall permit the Indemnitor (at the Indemnitor's expense) to conduct any litigation which may ensue and all negotiations for a settlement of any claim, giving the Indemnitor all reasonable assistance (at the Indemnitor's expense) and the indemnified Party agrees not to make any admission which might be prejudicial thereto.
- 24.4 The conduct by the indemnitor of any such litigation or negotiations shall be conditional upon its taking over such conduct within a reasonable time after being notified of the claim in question.
- 24.5 If any claim by a third party based on infringement of its intellectual property rights as aforesaid prevents JPC from fully conducting its business or any part thereof, JPC shall forthwith, to the extent possible, replace or modify its intellectual property so that the use of such intellectual property becomes non-infringing or, where possible, obtain a licence to use the relevant intellectual property, and shall compensate the City for the amount of any direct losses or damages sustained or expenses incurred by the City during such replacement or modification.
- 24.6 To the extent that it is not possible or practical for JPC to replace or modify any asset, whether corporeal or incorporeal, or any operation, constituting or involved in the use of intellectual property or to obtain a licence as envisaged in clause 24.5, and should JPC notify the City that, without such replacement or modification, it will not be in a position to fulfil its obligations under this Agreement, the Parties shall negotiate with one another in good faith with a view to amending the provisions of this Agreement to the extent necessary so as to enable JPC to continue to fulfil its obligations under this Agreement. Should the Parties fail to reach

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agreement as to the amendments to be effected to this Agreement within 6 (six) months of receipt of the notification from JPC, the matter shall be resolved as an Operational Dispute.

24.7 Any replacement or modification envisaged in clause 24.5 will be carried out as soon as possible so as to minimize any interruption in JPC's business operations.

25. COMPLIANCE WITH IRFA GUIDELINES AND NEGOTIATION PROCEDURE

25.1 It is recorded that the Parties are both "municipal organs of state" for the purposes of the IRFA. In conducting their affairs, the Parties must seek to achieve the objectives of IRFA by seeking to prevent intergovernmental disputes from arising when exercising their powers or performing their functions in terms of this Agreement, and where such disputes do arise, by giving effect to the constitutional requirement that organs of state must make every reasonable effort to settle the dispute by means of the mechanisms and procedures provided for that purpose, and must exhaust all other remedies before they approach a court to resolve the dispute.

25.2 Should a deadlock or dispute of whatever nature arise in connection with this Agreement or any rights or obligations of the Parties thereunder, the Party claiming the dispute must inform the other Party in writing within 21 days of the date the dispute is said to have arisen, of the nature of the dispute, and that a dispute has been declared ("Dispute Notice"). A copy of the said Dispute Notice shall simultaneously be served on the City's Disputes Settlement Manager ("DSM"). Within 20 (twenty) Business Days of receipt of the Dispute Notice, the Parties shall meet to attempt to resolve the dispute by informal negotiations in good faith. Such meeting ("Negotiation Meeting") shall take place on 7 (seven) days written notice from either Party, at a venue mutually agreed between them and failing such agreement within 24 (twenty four) hours, at the official premises of the Party giving the Dispute Notice. The Parties shall use their best



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endeavours to settle the dispute and negotiations shall be conducted in good faith.

- 25.3 If the Parties are unable to resolve the deadlock or dispute in question within 15 (fifteen) Business Days after the commencement of the Negotiation Meeting or any date to which such Negotiation Meeting has been adjourned (which shall not be more than 30 (thirty) Business Days after the date of the initial Negotiation Meeting), then the deadlock or dispute shall be referred by the DSM on application by either Party, for resolution by mediation.

26. MEDIATION

- 26.1 Mediation shall be non-binding on the Parties and shall be conducted by a facilitator appointed for this purpose by the Parties or, if they are not able to agree on a facilitator within 3 (three) Business Days, appointed by the DSM from the panel of recognised facilitators maintained by the DSM.
- 26.2 The mediation will be conducted according to the directions of the facilitator and the Parties shall act in good faith and will respond to all reasonable directions and requests of the facilitator in attempting to resolve the matters in dispute.
- 26.3 The mediation process shall be deemed to have commenced upon written acceptance of the facilitator of his or her appointment. In the event that the mediation has not resolved the dispute within 30 (thirty) Business Days of its commencement (or such extended period as the facilitator may approve in writing) it shall be referred by the DSM on the written request of either Party, for determination in terms of the City's Operational Dispute Resolution Protocol.
- 26.4 Each Party shall bear its own costs save that the costs of the mediator will be shared equally by the Parties and paid on demand.



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27. OPERATIONAL DISPUTE RESOLUTION

- 27.1 Matters referred for resolution by the DSM shall be dealt with in accordance with the City's Operational Dispute Resolution Protocol.
- 27.2 Where both Parties to the Operational Dispute accept the Adjudicator's Recommendation, upon such written acceptance the Adjudicator's Recommendation shall become final and binding upon them.
- 27.3 If a Party to the Operational Dispute does not accept the Adjudicator's Recommendation and has indicated in writing its non-acceptance of same, then:
- 27.3.1 (if the dispute is a dispute of a financial nature) the dispute shall thereupon be referred by the DSM to the National Treasury in terms of the provisions of Section 44 of the MFMA, within 15 (fifteen) Business Days of the DSM receiving written notice from the Adjudicator seized with the matter that the Party concerned has elected not to accept the Adjudicator's Recommendation as contained in the relevant Dispute Resolution Report; or
- 27.3.2 any other type of dispute, a Party who is aggrieved by the non-acceptance of the Adjudicator's Recommendation by the other Party, shall thereupon (through the DSM) be obliged to declare a formal intergovernmental dispute between the Parties in relation to the subject matter of the former Operational Dispute, on the basis contemplated in the IRFA, and to pursue such dispute to finality in accordance with the regulations and guidelines promulgated under the IRFA.

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28. THE TERMINATION PROCESS

The termination of this Agreement is initiated by notice of cancellation given by the City in circumstances where it is entitled to give such notice in terms of this Agreement pursuant to clauses 29.2.2, 29.2.3 or 32. Notwithstanding the giving of notice of cancellation, this Agreement shall only terminate following implementation of the transitional provisions contemplated in clause 34.

29. BREACH AND CONSEQUENCES THEREOF

29.1 An event of default by JPC shall occur if:

- 29.1.1 JPC breaches any of its obligations in terms of this Agreement and persists with such breach for a period of 14 (fourteen) Business Days after delivery by the City of written notice requiring JPC to remedy such breach; or
- 29.1.2 JPC commits an act which is or would (if committed by a natural person) be an act of insolvency as defined in the Insolvency Act No. 24 of 1936 (as amended) or an act defined in terms of the Companies Act;
- 29.1.3 JPC is unable or ceases for any reason whatsoever to provide the Services in the ordinary and regular manner; or
- 29.1.4 JPC compromises or attempts to compromise or defer payment of any indebtedness owing by it to its creditors, generally; or
- 29.1.5 any assets of JPC are attached under writ of execution and JPC fails within 15 (fifteen) Business Days after becoming aware, or after it should reasonably have become aware, of such attachment, to take the necessary steps to have such attachment set aside and thereafter to successfully pursue such steps with due diligence; or

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- 29.1.6 JPC is removed from the Register of Companies or placed under judicial management; or
- 29.1.7 JPC sells, transfers, exchanges or otherwise disposes of, in any one transaction or a series of related transactions, a material portion of its business or undertaking or changes its asset structure, except in the normal course of its business; or
- 29.1.8 JPC sells, transfers, exchanges or otherwise disposes of, in any one transaction or a series of related transactions more than 5% (five percent) of its Assets other than in accordance with the Municipal Asset Transfer Regulations; or
- 29.1.9 JPC allows any bond, lien, charge or encumbrance on any of its assets other than in accordance with its Business Plan and/or the Municipal Asset Transfer Regulations; or
- 29.1.10 any order of court (whether provisional or final), unless pursuant to a reorganisation, reconstruction or amalgamation approved in writing by the City, is granted for the winding up of JPC (whether voluntarily or compulsorily); or
- 29.1.11 any judgment of any court or arbitration award against JPC remains unsatisfied for a period of 30 (thirty) Business Days after JPC has become aware, or should reasonably have become aware, that it has been granted and such judgment or arbitration award is not the subject of an application for rescission or review or is not appealed against and, in the event of such application, review or appeal being unsuccessful, JPC fails to immediately make payment thereof; or
- 29.1.12 a judicial manager, receiver or similar officer is appointed in respect of JPC or in respect of all or any material part of its assets; or



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- 29.1.13 any regulatory authority which has jurisdiction over JPC and the Services provided by it, withdraws or cancels any license or authorisation in terms of which JPC is entitled to render the Services, save to the extent that the withdrawal or cancellation is not caused by the negligence or failure of JPC to comply with any conditions set out therein; or
- 29.1.14 following an annual performance review, the performance of JPC has, measured against the performance objectives and measurement standards contemplated in clauses 11 and 11.5.3 of this Agreement, been unsatisfactory whether or not the City elects to liquidate and disestablish JPC pursuant to Section 93B(c)(i) of the Systems Act; and
- 29.1.15 the Board of JPC has failed to act effectively in relation to serious or persistent financial problems experienced by JPC, whether or not the City elects to impose a financial recovery plan, liquidate and disestablish JPC as contemplated in Section 93B(c)(ii) of the Systems Act and section 109 of the MFMA.
- 29.2 Upon the occurrence of an event of default by JPC as contemplated above, or at any time thereafter whilst it is continuing, the City may, without prejudice to any other rights it may have in terms of this Agreement or at law, by written notice to JPC:
- 29.2.1 claim specific performance (without cancelling this Agreement and without prejudice to its right to claim damages); or
- 29.2.2 cancel this Agreement (without prejudice to its right to claim damages); or
- 29.2.3 without cancelling this Agreement, exercise the management substitution rights referred to in clause 30, without prejudice to the

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right of the City to elect to cancel this Agreement if the exercise of the said management substitution right does not have the effect (in the sole discretion of the City), of remedying the event of default originally giving rise to the City exercising its rights pursuant to this clause 29.2.3.

29.3 An event of default by the City shall occur if:

29.3.1 the City breaches any of its obligations in terms of this Agreement and persists with such breach for a period of 14 (fourteen) Business Days after delivery by JPC of written notice requiring it to remedy such breach; and/or

29.3.2 the City fails to pay any amount due by it in terms of this Agreement on the due date for payment thereof and the City persists in such failure to pay for a period of 14 (fourteen) Business Days after delivery by JPC to the City of written notice requiring it to pay such amounts.

29.4 Upon the occurrence of an event of default by the City or at any time thereafter whilst it is continuing and provided that if the breach is capable of being remedied JPC has been given 21 (twenty one) Business Days written notice to cure such breach, JPC may, without prejudice to any other rights it may have in terms of this Agreement or at law, by written notice to the City, claim specific performance or claim damages. In no event shall JPC have the right to cancel this Agreement as a result of events of default set out in clause 29.3 above.

30. SUBSTITUTION OF MANAGEMENT

30.1 It is recorded that:



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- 30.1.1 the provision of the Services by JPC represents the long-term policy of the City and a reversal of this policy may interrupt the provision of the Services;
- 30.1.2 under the extreme circumstances that would justify termination of this Agreement, the City may consider requiring the substitution of all or a portion of the management of JPC as an appropriate alternative to termination of this Agreement if at any time, and objectively considered, it is apparent that JPC is unable to continue performing its functions under this SDA due to the actions or omissions of the management (or portion/s thereof) of JPC whom the City wishes to substitute, and failure to take precipitate action is likely to lead to a service delivery crisis or cause an emergency situation to arise. Except in circumstances where the City is able to show that a crisis or emergency situation exists or is imminent, the City shall give JPC at least 60 (sixty) days notice in writing before invoking the provisions of this clause.
- 30.1.3 The Parties have accordingly agreed that the City shall have the right to require the Board of JPC to substitute the management of JPC in order to preserve this Agreement in accordance with the provisions of this clause.
- 30.2 Should any event of default contemplated in clause 29.1 occur, the City may, instead of exercising its right to cancel this Agreement, call upon the Board of JPC to make one or more substitutions of management in terms of this clause 30 without having to give any notice.
- 30.3 The City shall exercise its right in terms of clause 30.2 by delivering a substitution notice in writing to the chairperson of the Board of JPC, which substitution notice will specify the terms and conditions of the substitution/s required, including an implementation date, and may require

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the substitution of senior management in its entirety or specify individuals for substitution, and may be of limited duration, or permanent.

- 30.4 Should the Board of JPC intimate directly or indirectly that it is not prepared to or is unable to implement the management changes required by the City, the City may forthwith exercise any right that has accrued to it to cancel this Agreement pursuant to clause 29.1.
- 30.5 The right to require substitution of management in terms of this clause 36.5 is a right that may be exercised by the City as a contracting Party with JPC and JPC shall be responsible for (and indemnifies the City against) any employment law consequences that may ensue within the management structure of JPC if it transpires that, objectively considered, the intervention of the City in terms of this clause was justified in the circumstances. If it subsequently transpires that such intervention by the City was objectively not justified in terms of the provisions of this clause or in bad faith, the City shall not be entitled to the aforesaid indemnification and JPC shall be entitled to recover from the City any damages suffered by it arising out of such employment law consequences.
- 30.6 JPC shall ensure that all things required to implement the substitution notice are done and shall ensure that any member of management of JPC substituted in terms of the foregoing shall comply with the terms of the substitution notice referred to in clause 30.2, and will, if required to, assist in the process of substitution on the basis set out in the substitution notice.
- 30.7 Any person appointed in substitution for JPC Accounting Officer in terms of this clause 30 must be appointed by the Board of JPC but the City may by agreement with the Board of JPC, and subject to clause 30.8, second any of its employees to undertake management roles within JPC pursuant to the substitution provisions of this clause 30, on a temporary basis until such time as the board of JPC is in a position to make a permanent substitute appointment.



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30.8 In the absence of agreement to the contrary, any management substitution effected in terms of clause 30.2 on a permanent basis must have been confirmed by the Board of JPC within 12 (twelve) months of delivery of the relevant substitution notice referred to in clause 30.3, and JPC must within such period have entered into a formal contract of employment with the relevant substituted employee/s, failing which the City may elect to proceed with cancellation of this Agreement.

31. EFFECT OF NOTICE OF CANCELLATION – TERMINATION PROCESS

The Parties acknowledge that it is the duty of the City to ensure as far as is reasonably possible uninterrupted delivery of the Services in the best interests of the Local Community. The Parties have accordingly agreed as follows:

31.1 Once notice of cancellation has been given in terms of this Agreement:

31.1.1 this Agreement shall not terminate until the date of termination and the Parties have negotiated a transitional process which shall be designed to achieve termination whilst maintaining uninterrupted delivery of the Services to the Local Community;

31.1.2 JPC shall continue to provide the Services in terms of this Agreement pending the date referred to in clause 31.1.4;

31.1.3 the City shall during such transition period have the option of purchasing from JPC the Assets only or the entire business conducted by JPC as a going concern ("JPC Going Concern") for delivery either to the City or to an alternative JPC nominated by the City, in the City's discretion; and

31.1.4 this Agreement shall terminate on a date or on the occurrence of an event agreed between the Parties, or if no such date or event is agreed between the Parties, upon the earliest of:

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31.1.4.1 the City having received delivery of the Assets, alternatively, JPC Going Concern pursuant to the City having elected to exercise the option referred to in clause 31.1.3; or

31.1.4.2 an alternative JPC appointed by the City having received delivery of the Assets, alternatively, JPC Going Concern as the nominee of the City pursuant to clause 31.1.3; and

31.1.4.3 compliance with the requirements of clause 31.2; and

in, any such event, the City or its nominee JPC has confirmed in writing that it is in a position to commence provision of the Services itself.

31.2 In the event of the City electing to purchase the Assets:

31.2.1 JPC shall on receipt of the written notice exercising the City's option, be deemed to have offered to sell the Assets to the City or a JPC designated by the City (in either instance "the Buyer"), and the Buyer shall be deemed to have accepted such offer;

31.2.2 the purchase price of the Assets (and any accretions thereto) shall be determined by the Auditors. If either Party does not accept the determination of the Auditors, it may refer the matter for determination by an independent firm of auditors having international representation, who shall be appointed by the chairman for the time being of the SA Institute of Chartered Accounts ("SAICA"), and who shall make its determination acting as an expert and not as an arbitrator, and the costs of such determination shall be borne by the party whose challenge is substantially unsuccessful;

31.2.3 if the Assets are purchased by the City, the purchase price of the Assets (and any accretions thereto), together with VAT thereon,

shall be discharged by set-off against any loan account in favour of the City in the books of account of JPC, if such loan account is sufficient to discharge the purchase price, or if insufficient, by set off and by way of a cash or other agreed settlement;

- 31.2.4 if the Assets are purchased by a third party JPC nominated by the City, the purchase price shall be discharged by whatever mechanism is agreed between JPC and the third Party JPC with the approval of the City, and the purchase price shall be utilised by JPC towards settling the loan account in favour of the City in the books of account of JPC;
- 31.2.5 against payment of the purchase price of the Assets determined in terms of clause 31.2.2, JPC shall deliver the Assets (and any accretions thereto) to the Buyer by placing the Buyer in possession thereof and ownership of the Assets (and accretions thereto), and all risk in and benefit to the Assets (and accretions thereto), shall thereupon pass to the Buyer;
- 31.2.6 JPC shall sign all such documents and do all such things as may be necessary or desirable to enable the Assets (and accretions thereto) which are capable of registration to be registered in the name of the Buyer; and
- 31.2.7 JPC shall be required to make arrangements for the transfer of contracts of employment to the Buyer in relation to those employees who, in the reasonable opinion of JPC, are required to ensure the continuity of the supply of the Services, provided that such employees consent to the transfer of their contracts of employment to the Buyer. The Buyer shall be obliged to employ the above-mentioned employees.



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31.3 In the event of the City (or the City's nominee) electing to purchase JPC Going Concern:

- 31.3.1 JPC shall on receipt of the written notice exercising the City's option, be deemed to have offered to sell JPC Going Concern to the City or a JPC designated by the City (in either instance "the Buyer") as a going concern, and the Buyer shall be deemed to have accepted such offer on the terms and conditions specified hereunder;
- 31.3.2 the purchase price of JPC Going Concern shall be the net asset value of the business, as determined by the Auditors of JPC, together with VAT at the applicable rate (it being recorded that such transactions are currently zero-rated);
- 31.3.3 if either of the Parties does not accept the determination of the Auditors it may refer the matter for expert determination mutatis mutandis on the basis contemplated in clause 31.2.2;
- 31.3.4 if JPC Going Concern is purchased by the City, the purchase price of JPC Going Concern shall be discharged by set-off against any loan account in favour of the City in the books of account of JPC, if such loan account is sufficient to discharge the purchase price, or if insufficient, by set off and by way of a cash or other agreed settlement;
- 31.3.5 if JPC Going Concern is purchased by a third party JPC nominated by the City, the purchase price shall be discharged by whatever mechanism is agreed between JPC and the third Party JPC with the approval of the City, and the purchase price shall be utilised by JPC towards settling the loan account in favour of the City in the books of account of JPC;



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- 31.3.6 against discharge of the purchase price of JPC Going Concern, JPC shall deliver JPC Going Concern to the Buyer;
- 31.3.7 JPC shall sign all documents and do all things as may be necessary or desirable to enable the Assets which are capable of registration to be registered in the name of the Buyer; and
- 31.3.8 contracts of employment shall be transferred from JPC to the Buyer in accordance with section 197 of the Labour Relations Act 66 of 1995.
- 31.4 On the sale either of the Assets or JPC Going Concern, JPC shall, subject to compliance with any Regulatory Provisions and the consent of any licensing authority having jurisdiction, assign any permits or authorities held by it on the date of termination of this Agreement to the Buyer, and generally facilitate the implementation of this Agreement and the achievement of its intent and purpose.
- 31.5 In respect of employees whose contracts of employment are to be transferred to the Buyer:
- 31.5.1 JPC shall be responsible for and shall discharge all obligations in respect of all payments and amounts accrued to such employees arising out of their employment with JPC prior to the date of transfer and shall indemnify and hold the City and the Buyer harmless in respect of all such obligations;
- 31.5.2 JPC shall be liable for and indemnify and hold the City and the Buyer harmless in respect of all claims in respect of such employees which claims accrued on or after the Effective Date but prior to the date of transfer or which arose by reason of the transfer;



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31.5.3 any debt or liability arising from or connected to the employment by the Buyer of such employees after the date of transfer will be the exclusive responsibility of the Buyer;

31.5.4 any obligation on JPC to make contributions to any pension, provident, retirement or medical aid or health care funds of which such employees are members at the date of transfer will with effect from the date of transfer become the obligation of the Buyer, and the Buyer shall indemnify and hold the City (if applicable) and JPC harmless in respect of all such claims, costs and expenses.

32. MUTUAL CO-OPERATION

The Parties may consult from time to time with regard to any assistance or advice which either Party may require in connection with any of its obligations in terms of this Agreement. The City shall further timeously provide JPC with such information as it may reasonably require to enable it to comply with any of JPC's obligations in terms of this Agreement.

33. CONFIDENTIALITY

33.1 Each Party shall treat as strictly confidential all information received or obtained as a result of entering into or performing this Agreement which relates to:

33.1.1 the provisions of this Agreement;

33.1.2 the negotiations relating to this Agreement;

33.1.3 the subject matter of this Agreement; and/or

33.1.4 the other Party.



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33.2 A Party may disclose information which would otherwise be confidential if and to the extent:

33.2.1 required by law;

33.2.2 required to vest the full benefit of this Agreement in either Party;

33.2.3 disclosed to the professional advisers, auditors and bankers of each Party;

33.2.4 the information has come into the public domain through no fault of that Party;

33.2.5 the other Party has given prior written approval to the disclosure, such approval not to be unreasonably withheld or delayed;

provided that any information so disclosed shall be disclosed only after notification to the other Party.

34. DOMICILIA AND NOTICES

34.1 All notices to be given in connection with this Agreement shall be in writing and shall be delivered by hand, transmitted by facsimile or sent by prepaid registered post:

The City Manager:
Metropolitan Centre
158 Loveday Street
Braamfontein
Johannesburg
telefax no: 011 403 1012
marked for the attention of: The City
Manager

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JPC at:
Chief Executive Officer
JPC
33 Hoofd Street
Braampark, 1st Floor, Forum II
Braamfontein
Johannesburg
telefax no: [010 219 9000]
marked for the attention of: The Managing
Director/CEO

which physical addresses the Parties select as their domicilium citandi et executandi.

34.2 A notice shall be deemed to have been received.

34.2.1 14 (fourteen) days after posting, if posted by registered post to the Party's address in terms of clause 34.1;

34.2.2 on delivery, if delivered to a responsible person during normal business hours at the Party's physical address in terms of clause 34.1;

34.2.3 on despatch, if sent to the Party's then telefax number and such transmission is independently confirmed.

34.3 Notwithstanding the foregoing a written communication actually received by a Party shall be deemed to have been received by such Party notwithstanding that it was not sent to or delivered at such Party's chosen domicilium.

35. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Parties with regard to the matters dealt with herein. There are no terms, conditions or warranties, express or implied, other than those contained in this Agreement and there have been no prior representations made by the Parties or any



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agent or other person purporting to act for the Parties shall be of any force or effect if not set out herein.

36. VARIATION, CANCELLATION OR WAIVER

No variation of the terms of this Agreement, or consensual cancellation of this Agreement, shall be effective unless reduced to writing and signed by or on behalf of the Parties.

37. SEVERABILITY

If any of the provisions of this Agreement shall be held invalid or unenforceable for any reason, such invalidity or unenforceability shall not affect the validity of the remainder of the provisions of this Agreement which shall remain effective and be interpreted as if any such unenforceable provision/s were not a part of this Agreement, unless the effect of such severance renders the rest of the agreement unworkable.

38. APPLICABLE LAW

This Agreement shall be governed by and construed and interpreted in accordance with the law of the Republic of South Africa, provided that in the event of a conflict between or inconsistency in the laws applicable in the various provinces of the Republic of South Africa, the law as interpreted and applied in the Gauteng Province shall prevail.

THUS DONE AND SIGNED AT JOHANNESBURG ON THIS THE ~~28~~ JANUARY 2015

As Witnesses:

1.

2.

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G. Dumas
G. Dumas
ACTING CITY MANAGER

CITY MANAGER

who warrants that he is duly authorised
For and on behalf of
**CITY OF JOHANNESBURG
METROPOLITAN MUNICIPALITY**
(Herein referred to as "the City")

FEBRUARY 2015

THIS DONE AND SIGNED AT JOHANNESBURG ON THIS THE ~~JANUARY~~ 2015

As Witnesses:

1. *[Signature]*
2. *[Signature]*

[Signature]

CHIEF EXECUTIVE OFFICER

who warrants that he or she is duly
authorised
For and on behalf of
**CITY OF JOBURG PROPERTY
COMPANY SOC Ltd (RF)**
(Herein referred to as "JPC")

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ANNEXURE A: SERVICES

Housing-related properties have been the service area of the Facilities Management function of the CoJ, now being carried on by the service provider;

Approximately 25% of CoJ properties (and 85% of the book value) are the operating assets of CoJ service delivery departments and municipal entities;

About 9% of CoJ properties, listed as at around 9% of book value, are either vacant or leased out. Approximately 4,000 of these properties constitute a potential commercial CoJ property portfolio, unless leased in furtherance of a CoJ social mandate;

The CoJ assigned to the Service Provider a new broader mandate to be a full-spectrum property services company serving CoJ's departments and municipal owned entities (MoE's). The major services of the Service Provider are property administration, facilities Management (including managing informal trading facilities and taxi rank facilities), Asset Management, Property (Portfolio) Management and Property development, with concomitant responsibilities for other property related matters such as outdoor advertising and cell mast rentals.

Throughout, the JPC strategy is suffused with the central themes of Transformation and self-sustainability. Transformation encapsulates or encompasses transformation of the organisational and governance arrangements between CoJ and the Service provider; transformation of the service provider to be a self-financing and social and economic value-adding entity of the CoJ; and alignment of the service provider activities directly behind the CoJ's spatial and economic transformation policies.

In this regard, service provider becomes a catalyst for programming residential densification and intensification of land-uses using the CoJ properties, as the lever for mobilisation of investment in the primary nodes and corridors of the CoJ. This includes transformation and development of the property industry through enterprise promotion and business development of small Black investors and developers in small-scale densification projects. The service provider is to be geared to take up a recognised and credible position in the market place as a public sector property services company of choice.

As a result, the service provider will be capacitated to:

- respond to changing demands of the CoJ, related socio-political factors as well as changes in mandate;

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- foster simplicity, consistency and standardisation of operations (staffing levels based on full utilisation; enable flexibility in the deployment of people and resources; enable pooling and sharing of specialist skills across function; deliver effective information sharing both horizontally and vertically, design short lines of communication);
- focus on the business elements of the HR strategy requiring more focus on improvement of service to internal clients;
- deepen ownership of end-to-end accountability of processes, which need to be allocated and must include redesign of policies and processes;

The broad principle in the provision of services by JPC is that all services are linked to the Priority Implementation Plan of the City and the results shall have a contribution to the outcomes as set out in the IDP. The City has identified 10 priorities, which are the developmental focal areas that the service delivery of JPC must respond to. The 10 priorities are:

1. Financial Sustainability and Resilience
2. Agriculture and Food Security
3. Sustainable Human Settlements
4. SMME and Entrepreneurial support
5. Engaged Active Citizenry
6. Resource sustainability
7. Smart City
8. Investment attraction, retention and expansion
9. Green economy and
10. Safer cities.

DESCRIPTION OF THE SERVICES

CITY OF JOBURG PROPERTY COMPANY SOC LIMITED – SDA

SERVICES PROVIDED PURSUANT TO THE SERVICE DELIVERY AGREEMENT

1. DEFINITIONS AND INTERPRETATION

1.1 All defined words and expressions contained in the SDA bear the same meaning in the Annexures.



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1.2 Words and expressions referred to are subject to the same rules of interpretation set out in clause 1 of the SDA.

2. THE CORE CAPABILITIES AND COMPETENCIES/SERVICES

The Services to be provided by the Service Provider in terms of the SDA shall, include the following Core Capabilities and Requisite Competencies

- ✓ Property Administration
- ✓ Project Management
- ✓ Asset Register and Asset Register Maintenance
- ✓ Portfolio Planning & Analysis
- ✓ Administration: Buying & Selling, Leasing
- ✓ Servitudes and zoning (Town Planning)
- ✓ Outdoor Advertising (and Cellphone Masts)
- ✓ Facilities Management
- ✓ Facilities Contract Management
- ✓ Mobile Maintenance Rapid Response
- ✓ Building Management
- ✓ Cleaning (Taxi ranks, toilets and public conveniences),
- ✓ Preventative and reactive maintenance (Taxi ranks, toilets and public conveniences),

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- ✓ Repairs (Taxi ranks, toilets and public conveniences, markets)
- ✓ Office and Space Planning
- ✓ Property Development
- ✓ Analysis, Assessment & Design
- ✓ Financing & Funding
- ✓ Development Facilitation & Management
- ✓ Project Management
- ✓ Construction of ablution blocks
- ✓ Coordination of Operations
- ✓ Stakeholder Relations (account managers)
- ✓ Marketing and contracting
- ✓ Client Services
- ✓ Communication
- ✓ Governance, compliance and reporting
- ✓ Integrated Regional Management
- ✓ Research & Information Management
- ✓ Project Monitoring and Evaluation

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✓ Support Capabilities

✓ Human Resources

- Recruitment and selection
- Learning and Development
- Organisational Development
- Payroll
- Labour and/or Industrial Relations
- Employee Wellness
- Benefits and Administration

Finance

- Management Accounting
- Budgeting
- Forecasting and Analysis
- Cost Management
- Supply Chain Management

IT

- System administration

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- Application Support and monitoring
- Database administration
- Systems Integration
- End-user support (Help-desk)

Legal

- Governance, compliance and reporting
- Policy management and coordination
- Contract drafting and Management

2.1 PROPERTY SERVICES

The Service Provider shall be responsible for providing the following services in respect to the Property Portfolio of the CoJ as the sole agent of the CoJ:

2.1.1 Letting

- 2.1.1.1 The letting and hiring of the properties forming part of the CoJ Property Portfolio;
- 2.1.1.2 The preparation and signing of leases and other documentation relating thereto;
- 2.1.1.3 The administration and enforcement of all existing leases concluded between the CoJ and the tenants of the properties in the CoJ Property Portfolio, including

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maintenance and inspection of CoJ properties, registration of applicable leases and matters relating thereto;

2.1.1.4 The negotiation of new leases, which may involve the marketing of vacant CoJ property including sites available for outdoor advertising;

2.1.1.5 The recovery and collection of rentals and other income; and

2.1.1.6 Sending each tenant a statement each month indicating the rent and other service charges due by the tenant.

2.1.2 Development Participation and Management of Properties

2.1.2.1 The designation of CoJ properties within the CoJ Property Portfolio for development and where capital expenditure is required, ensuring that the expenditure falls within the approved budget;

2.1.2.2 Co-ordinating the marketing of properties within the CoJ Property Portfolio in accordance with the CoJ approved policies and procedures which includes advertising, calling for proposals and liaising with the property industry;

2.1.2.3 Drafting development management agreements and other related documentation such as financial structuring arrangements as required for the purpose of developing or selling properties within the CoJ Property Portfolio;

2.1.2.4 Liaising with the CoJ on matters pertaining to the management and development management of the properties in the CoJ Property Portfolio; and

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- 2.1.2.5 Securing tenants including screening for credit-worthiness;
 - 2.1.2.6 Lease contracting and billing and collection of rent and other, utility charges; including managing the accounts and finances of the specific properties, which entail contracting with or performing a contract management function with tenants, contractors and service providers, facilities managers, and insurance companies, where applicable.
 - 2.1.2.7 Oversight of quality and cost of operation, repair and maintenance of building services, and of facilities management. This generally within a budget agreed with the CoJ.
 - 2.1.2.8 Preparing documents and performing all administrative and other actions to develop the designated CoJ properties, including but not limited attending to the all relevant aspects of town planning requirements and processes.
- 2.1.3 Disposal and Acquisition of Properties
- 2.1.3.1 Designating CoJ properties within the CoJ Property Portfolio for sale and where capital expenditure is required ensuring that the expenditure falls within the approved budget;
 - 2.1.3.2 Co-ordination of marketing of CoJ properties designated for sale including advertising proposal calls and other tendering processes and liaising with agents;
 - 2.1.3.3 Acquiring properties in the name of the CoJ and making all required town planning related applications in this regard;

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2.1.3.4 Selling or acquiring any other real property right in the name of the CoJ; and /or acquiring any real property from a third party owner for the CoJ, and concluding lease back arrangements whenever it is necessary and in the best interest of the CoJ and service provider;

2.1.3.5 Managing all matters relating to the transfer and registration of property rights, such as ensuring that contractual obligations have been complied with (including all financial matters) and the appointment of professionals (such as valuers, land surveyors and attorneys) at the cost of the CoJ, unless the Council of the CoJ resolves otherwise to the extent permitted by legislation and regulations to execute the services required for the transfer and registration of such rights.

2.1.4 CoJ Property Portfolio information

2.1.4.1 Retaining all original lease agreements other lease and property documents including suretyship and tenant files in respect of properties in the CoJ Property Portfolio which lease agreements documents and tenant files shall at all times remain the property of the CoJ.

2.1.4.2 Design and maintain the Asset Register a Geographic Information System (GIS) of all relevant immovable property information, which is to be linked to the corporate GIS data of the CoJ, ensuring that the GIS is compatible with the base data of the GIS of the CoJ.

2.1.5 Facilities and Property Maintenance

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- 2.1.5.1 Service provider is the integrated entity and contracting party, with specific reference to the work previously performed by the FMMU and MTC respectively.
- 2.1.5.2 Service provider now carries on management of taxi ranks and informal trading markets in its general facilities repair and maintenance function, with a large complement of general workers, artisans and artisan support staff.
- 2.1.5.3 The function has a particular operational and business model implication for service provider, which impacts on its revenue model and budget and on the human capacity and systems required to be in place.
- 2.1.5.4 The cost efficiency and quality of service must be against an agreed benchmark of costs, pricing and service based on what the service provider client can obtain from private sector competitors providing the same quality of materials and workmanship, or better. The cost-efficiency and service benefit must accrue to the line department, for service provider and for the CoJ overall.
- 2.1.5.5 Maintaining (preventative and corrective) cleaning and repairing those properties in the CoJ Property Portfolio not exempted from this service by CoJ, on cost recovery basis so that they are in a good, secure, clean and tidy condition ;
- 2.1.5.6 Ensuring the continuous supply of all services to the properties in the CoJ Property Portfolio managed by the Service Provider in terms of the SDA, including but not limited to water and sanitation, electricity and security; and



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- 2.1.5.7 The carrying out of periodic regular inspections of the properties in the CoJ Property Portfolio and the completion of a detailed inspection report at the request of the CoJ.

2.1.6 PROTECTION AND ENHANCEMENT OF PROPERTY RIGHTS

2.1.6.1 Servitudes, Encroachments and Access Rights

- 2.1.6.1.1 Attend to all aspects of applications for servitudes, encroachments, or access rights over property forming part of the CoJ Property Portfolio which will include but not be limited to dealing with related correspondence and administrative actions and ensuring that market-related or otherwise appropriate compensation is paid for approved servitudes, encroachments, and access rights in terms of which the land value is enhanced through leveraging on social and economic assets in the social and economic interests of the CoJ.

2.1.7 Promotional Services

Provide a comprehensive range of promotional communication services to position the properties that form part of the CoJ Property Portfolio, to the benefit of the CoJ, including corporate and project communication, the production of promotional strategies, media liaison, and the production of promotional materials.

2.1.8 Strategic Property Planning and Property Advice

- 2.1.8.1 Formulate and submit annually for approval by the CoJ a Strategic Business and Budgetary Plan for the management and/or development of the property by such

date agreed-upon between the CoJ and the Service Provider which plan may be altered from time to time during the year by agreement between the CoJ and the Service Provider, it being agreed that the Strategic Business and Budgetary Plan shall form part of the Property Portfolio Business Plan to be developed by the Service Provider in terms of the SDA; and

- 2.1.8.2 Provide property-related advice to the CoJ, as and when required by the CoJ.

2.2 ASSET MANAGEMENT

- The service provider is responsible for asset management of the CoJ to the extent permitted by the CoJ in the creation of value from the CoJ's commercial property assets. It does this through:
 - Expansion of the balance sheet through strategic acquisitions, developments and capital expenditure projects;
 - Redevelopment and optimising returns on existing assets; and
 - Hands-on management of the property and facilities managers
- The Service Provider shall for the duration of this Agreement, regularly maintain and service the Assets allocated to and acquired by it for each of the Services managed under this Agreement, subject to budget allocations granted to the service provider by the CoJ. The Assets shall be kept in good order,

condition and repair and in proper and efficient working order, fair wear and tear excepted.

2.2.1 ASSET REGISTER

- 2.2.1.1 The Service Provider shall subject to clause 2.2.1.2 below establish, maintain and continually update the Property register for all the properties in the CoJ Property Portfolio, capturing all relevant information including property description, size, zoning and municipal value. In addition to the electronic data base, all data pertaining to the CoJ Property Portfolio shall also be archived in a filing system in hard copy.
- 2.2.1.2 The CoJ hereby records that the Service Provider is reliant on information within the possession and control of the CoJ in order to efficiently carry out its mandate as envisaged in clause 2.2.1.1 above. The CoJ undertakes to provide the Service Provider with such information as may be required from time to time by the Service Provider, and undertakes to ensure that the information provided is relevant and accurate.
- 2.2.1.3 Preparation of Asset Management property plans per each property, building including all trader's markets and taxi ranks under the auspices of the service provider;
- 2.2.1.4 Those properties in the CoJ Property Portfolio, which are Municipal Entities properties shall be categorised as such and relevant information pertaining to Municipal Entities properties shall be captured in a separate register.



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2.3 FINANCIAL, ACCOUNTING AND SECRETARIAL SERVICES

The services to be provided by the Service Provider in terms of this clause 2.3 shall entail:

2.3.1 attending to the general administration of the affairs of the CoJ insofar as it relates to the properties in the CoJ Property Portfolio;

2.3.2 rendering of detailed monthly income statements and such other management accounts/reports as are required by the CoJ in respect of the CoJ Property Portfolio;

2.3.3 preparation of a detailed estimate of anticipated annual income and expenditure and the monthly comparison and analysis of the actual figures compared with the estimate;

2.3.4 maintenance of full and comprehensive records in accordance with Standards of Generally Recognised Accounting Practice ("GRAP");

2.3.5 depositing of all rentals and other moneys received by the Service Provider in respect to the Property Portfolio, which amounts shall be deposited into an interest-bearing account specified by the CoJ. All interest shall accrue for the benefit of the CoJ save unless specifically agreed otherwise to the contrary in respect of any particular tenant;

2.3.6 making payments and the rendering of statements to the CoJ of all rentals and other moneys received on dates to be agreed between the parties by the final date of the initial period with a final reconciliation to be rendered monthly on a date to be agreed between the parties;



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2.3.7 providing the CoJ with a comprehensive quarterly report on the properties in the CoJ Property Portfolio; and

2.3.8 attending to such further financial management, secretarial and reporting functions for the CoJ as may further be agreed between the CoJ and the Service Provider.

2.4 TRANSPORTATION

2.4.1 The Services to be provided are the provision of Facilities Management Services for Informal Trading Markets and public transportation facilities including taxi ranks but excluding the Rea Vaya Bus Rapid Transit System.

3. CONDITIONS SUBJECT TO WHICH SERVICES PROVIDED

3.1 In rendering its Services on behalf of the CoJ, the Service Provider shall, at all times comply strictly with its duties and obligations as set out in this Agreement.

3.2 The Services shall be provided:

3.2.1 in accordance with the Business Plan and the Service Provider's Memorandum of Association;

3.2.2 within the Service Area;

3.2.3 in accordance with the terms and conditions as set out in the SDA; and

3.2.4 in compliance with each and every obligation which the Service Provider may now or in future have with regard to the Services.

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4. BUSINESS OTHER THAN THE SERVICES

4.1.1 It is recorded that the provision of the Services pursuant to the SDA and clause Error! Reference source not found. above constitutes the core business of the Service Provider.

4.1.2 Section 86D(2)(b) of the MSA restricts the Service Provider from performing any activity which falls outside the powers and functions of the CoJ as contemplated in Section 8 of the MSA i.e. those powers and functions conferred under the Constitution and those which are reasonably necessary for or incidental to, the effective performance of the Parent Municipality's functions and exercise of its powers. Subject to this clause 4.1.2, the Service Provider shall not undertake any business which falls outside the powers and functions of the CoJ.

4.1.3 The Services are required under Municipal Legislation to be provided in a manner that is, inter alia, financially sustainable.

4.1.4 The Service Provider may accordingly, in addition to the Services, perform services ("Incidental Activities") which do not constitute the core business of the Service Provider provided that they are incidental to the provision of the Services and reasonably necessary for the effective performance of the Services by the Service Provider – including maintenance of effective economies of scale in the operations of the Service Provider which assist it to drive down the cost of the Service Provider's inputs, enhance the Service Provider's ability to deliver the Services at the most competitive price and generally enable the Service Provider to utilise its resources in a financially sustainable manner.

4.1.5 In providing any Incidental Activities, the Service Provider shall:

- 4.1.5.1 ensure that the provision of such activities does not prejudice the Service Provider's ability to comply with each and every obligation which it may now or in the future have under the SDA;**
- 4.1.5.2 ensure that it does not utilise any funding received by it from the CoJ pursuant to the SDA for the provision of any Incidental Activities;**
- 4.1.5.3 ensure that the use of its assets in the carrying on of such business shall not prejudice the Service Provider's ability to comply with each and every obligation which it may now or in the future have under the SDA;**
- 4.1.5.4 ensure that use of any its employees shall not prejudice the Service Provider's ability to comply with each and every obligation which it may now or in the future have under the SDA;**
- 4.1.5.5 ensure compliance with all applicable legislation in the provision of the Services and incidental services; and**
- 4.1.5.6 include all projected income and expenditure from the Incidental Activities in its Annual Business Plan and account for all revenues generated and expenditure incurred in the same way as for revenues generated through provision of the Services by the Service Provider.**

5. AMENDING THE SCOPE OF THE SERVICES

Amendments by the CoJ to the scope of the Services shall be made in accordance with the following procedure:



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- 5.1 either Party may propose to the other Party in writing that the scope of the Services should be amended and shall describe the nature of the proposed amendment;
- 5.2 the proposal shall be accompanied by reasons explaining the need for the amendment in the Business Plan and Budget to be developed in terms of Clause 12 of the SDA;
- 5.3 the other Party may request an amplification of the reasons provided in accordance with clause 5.2;
- 5.4 the Parties shall consult in good faith regarding the nature, scope and implementation of the amendment; and
- 5.5 after consulting with the Service Provider, the CoJ shall:
 - 5.5.1 elect whether or not to amend the scope of the Services,
 - 5.5.2 determine the extent of the amendment;
 - 5.5.3 determine the implementation date for the provision of the amended Services; and
 - 5.5.4 effect the necessary changes to clause 2.1 hereof.
- 5.6 If the CoJ elects to amend the scope of the Services, the business plan and budget will be amended to provide for the amendment in the scope of services in accordance with clause 12 of the SDA.
- 5.7 **EXCLUDED SERVICES**

The following services are specifically excluded from the mandate of the Service Provider, namely:



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- 5.7.1 facilities management services to be carried on by other MEs as determined by the CoJ in consultation with other relevant MEs; and
- 5.7.2 any services related to the Property Portfolio which the CoJ determines from time to time should not be managed (or cease to be managed) by the Service Provider on the CoJ's behalf.

6. THE SERVICE PROVIDER'S AUTHORITY

6.1 The authority of the Service Provider (which shall be exercised in accordance with general policy and strategy determined from time to time by the CoJ and communicated to the Service Provider) shall be generally to represent the CoJ as the CoJ's Agent in respect of the Property Portfolio and to render fully functional Facilities, Property and Asset and Development Participation and/or Management services as well as to do everything in the name of and for the account of the CoJ which the Service Provider considers necessary in the performance by the Service Provider of the Services and generally in the administration of the Property Portfolio, subject to the Constitution of the Republic of South Africa, 1996 and all other applicable legislation (including, without limitation, Municipal Legislation) and to the Memorandum of Incorporation (MOI) Memorandum and Articles of Association of the Service Provider. The authority shall include where applicable and where appropriate the power to:

- 6.1.1 let the properties in the Property Portfolio for such rentals and on such terms and conditions as the Service Provider deems fit;



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- 6.1.2 enter into or terminate any other contract which it considers necessary for or incidental to the performance of the Property Services;
- 6.1.3 exercise in such manner as it deems fit all the rights of the CoJ under any contracts to which the CoJ is party from time to time and which are administered by the Service Provider pursuant to the SDA, including but without being limited to all leases;
- 6.1.4 establish bank accounts in the name of the CoJ in respect of the Property Portfolio and administer such accounts in accordance with the instructions issued by the CoJ;
- 6.1.5 purchase, expropriate, donate and accept donation, lease or otherwise acquire any movable or immovable assets in the name of the CoJ which arise in the ordinary course of business in connection with the Property Portfolio;
- 6.1.6 institute or defend any legal proceedings in the name of the CoJ which arise in the ordinary course of business in connection with the CoJ in accordance with any CoJ directive. In this regard instruct attorneys and counsel and take legal advice on any matter arising in connection with the Property Portfolio;
- 6.1.7 sign any contract or other documents on behalf of the CoJ in any form which it deems fit and which may be required to give effect to any matter which falls within the scope of its authority;
- 6.1.8 pay on behalf of the CoJ all costs and expenses incurred in respect of the Property Portfolio which are necessarily incidental to the performance of the Services. The Service Provider shall be entitled to withdraw from the bank accounts, the amounts necessary to enable the Service Provider to pay the aforesaid

expenses (determined in accordance with the approved Budget allocation by the CoJ of the Service Provider).

6.1.9 To the extent that there are no sufficient funds in the bank accounts to cover such expenditure, the Service Provider shall be entitled to raise overdrafts subject to any borrowing restrictions imposed by its Memorandum of Incorporation articles of association to finance any such operating expenditure which is contemplated in the CoJ budget allocation Service Provider's Budget at the relevant time;

6.1.9.1 To charge the CoJ and its entities the following fees for the services the service provider is to render in terms of this SDA and SLAs:-

6.1.9.1.1 Asset Under Management Fee;

6.1.9.1.2 A Facilities Management Fee;

6.1.9.1.3 Restructured Development Management Fee;

6.1.9.1.4 Development Participation Fee and/or Development Management Fee;

6.1.9.1.5 Annuity Fee and Profit contribution

6.1.10 an annual budget allocation to Service Provider for all Property Administration work.

6.1.11 earn income for Value Add Property Development Services

6.1.11.1 in the following way:

- 6.1.11.1.1 The difference between the zoned land, with approvals, and raw land or land that has been proclaimed but does not have the required development rights and approvals;
- 6.1.11.1.2 The raw land value is reserved for the owner, the CoJ.
- 6.1.12 If service provider alienates the land, where applicable, before zoning to a private developer service provider is permitted to charge it a fee for the service of facilitating the zoning, approvals and service provision.
- 6.1.13 The pricing of this service must be negotiated based on property value before and after development rights have been issued;
- 6.1.14 Service provider shall zone and transfer the land to the land owner in agreed parcels over time, at property values determined at the time of sale, to earn the appreciated value of the development rights over time.
- 6.1.15 To retain FM revenue collected and 20% of the Portfolio revenue collected on behalf of the CoJ to fund service provider capex and for Repair and Maintenance of the immovable property portfolio;
- 6.1.16 To own property, corporeal and incorporeal and to develop the Service provider property portfolio and earn rental revenue therefrom;
- 6.1.17 To lease and mortgage its own property to raise finance, in its own disrection, where necessary;



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- 6.1.18 To exclusively manage Cell masts and/or Outdoor Advertising for the CoJ;
- 6.1.19 To exclusively source office space for the CoJ, CoJ Departments and CoJ entities
- 6.1.20 To retain cell masts and outdoor advertising revenues within the portfolio of the service provider;
- 6.1.21 subject to the provisions of the SDA enter into development contracts from time to time; and
- 6.1.22 Develop Property Portfolio Business Plan subject to CoJ's Integrated Development Plan, taking into account CoJ's planning objectives, and be in consultation with CoJ's Corporate Planning Unit.
- 6.1.23 Operational planning and management to provide the services.
- 6.1.24 Social and economic development directly related to the provision of services.
- 6.1.25 Client management.
- 6.1.26 Manage JPC's financial management, investment and borrowing.
- 6.1.27 Capital expenditure regarding the portfolio account (subordinate to CoJ policies), to:
- 6.1.28 recommend to CoJ the required capital for development of properties in the CoJ portfolio;

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- 6.1.29 draft and approve tender and contracting policies for development of CoJ properties;
- 6.1.30 tender contract and project manage the expenditure of capital funds for CoJ property portfolio;
- 6.1.31 draft and approve policies regarding appointment of professionals;
- 6.1.32 appoint professionals for development of CoJ property portfolio;
- 6.1.33 authorise payment for quality and value of work performed.

PROPERTY TRANSACTIONS, to:

- (1) recommend to CoJ to approve sale of properties valued at less than R10 000 000;
- (2) recommend to CoJ properties for sale above R10 000 000, reserve price and process for disposal?;
- (3) negotiate and finalise sale of properties approved for sale including signing of all documents (in terms of the general and /or Special Power of Attorney);
- (4) grant servitudes in accordance with planning approval;
- (5) make applications for rezoning of CoJ property and for any other town planning purposes;
- (6) represent CoJ in the deeds registry office (in terms of the general or special Power of Attorney).

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PORTFOLIO OPERATIONS, to:

- (1) draft portfolio strategy for submission to CoJ in the form of annual business plan;
- (2) draft and approve lease policies and procedures;
- (3) recommend to CoJ bad debts write-off in consultation with CFO or his/her nominee;
- (4) take necessary legal action or defend legal action on behalf of CoJ regarding disposals, leases and acquisitions in respect of agreements service provider concluded on behalf of the CoJ;
- (7) approve appointment of and manage service providers servicing CoJ properties in the service provider portfolio;

- 6.1.34 Surface right permits to protect CoJ's interests.
- 6.1.35 Extension of time to erect a building by not more than 1 year.
- 6.1.36 Cancellation of servitude.
- 6.1.37 Cancellation of sale of property.
- 6.1.38 Cancellation of Notarial Tie Agreement subject to consent by CoJ Planning
- 6.1.39 Cancellation of encroachment agreement.
- 6.1.40 Apply for issue of Certificates of Registered or Consolidated Title of CoJ property.



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- 6.1.41 Grant consent to transfer ownership and to remove restrictive conditions of title in consultation with CoJ's relevant Departments and entities;
- 6.1.42 Institute or defend any proceedings in the South African Courts and appropriate fora arising out of breach of sale agreement or lease agreement or recovery of damages to property or any other matter relating to the mandate of the service provider;
- 6.1.43 Give notice of termination of tenancy or other right of occupation of any land or premises hired by or from CoJ;
- 6.1.44 Grant permission to cede leases or sub-let, to the extent legislation and regulation may or may not permit;
- 6.1.45 Give prior written consent for lessees to make additions or alterations of property leased from CoJ and for installation of telephones;
- 6.1.46 Cancel Use agreements;
- 6.1.47 Attend to all aspects relating to mineral rights where CoJ is an interested party;
- 6.1.48 Acquire properties on behalf of CoJ and its entities and transfer properties into the name of CoJ and/or its entities;
- 6.1.49 Temporarily close a Public Place and let or grant the use temporarily of such closed Public Place.
- 6.1.50 enter into agreements with any of the Municipal Entities of the CoJ to provide services in respect of their properties pursuant to the CoJ resolutions where required;



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6.2 The authority set out in this Annexure A shall be subject at all times to the Service Provider exercising such powers in accordance with applicable legislation and the policy guidelines of the CoJ and subject to the Service Provider not exceeding its approved Budget.

7. EXCLUSIVITY

Save to the extent specifically provided herein the appointment of the Service Provider is not an exclusive one.

8. LOGO

Notwithstanding anything to the contrary contained in this Agreement, the Parties hereby record that the Service Provider shall be obliged to include the "Joburg" logo of the CoJ, or any logo as approved from time to time by the CoJ, on any and all its marketing material and statutory reports and corporate communications.

9. GRANTING OF APPROVALS IN RESPECT OF PROPERTY TRANSACTIONS

9.1 It is recorded that the Service Provider is dependent on certain decisions being taken by the CoJ before the Service Provider can efficiently undertake its mandate in terms of the SDA. The CoJ hereby undertakes to render all reasonable support to the Service Provider in its mandate and shall ensure that all matters referred to it for approval are handled in an expeditious manner, including the following matters:

- access to information required by the Service Provider in its performance of all the services provided in terms of the SDA;
- delegated levels of authority;



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- ensuring that there is no duplication within the CoJ of the mandate granted to the Service Provider and without derogating from the generality of the above, shall ensure that no department of the CoJ possesses a mandate to negotiate and conclude agreements in respect of Property Transactions, including Outdoor Advertising as well as Cell Masts and carry out facilities, Asset and Development and/or management functions, which fall under the mandate of the Service Provider; and
- relevant transactions and functions that cannot be delegated to the Service Provider remain within the CoJ.

9.2 THE CoJ AS COLLECTION AGENT

- It is recorded that with respect to some properties falling within the Property Portfolio that the Service Provider is responsible for managing, the CoJ continues to receive rentals from the respective tenants.
- The CoJ hereby undertakes that for as long as it received rentals, the CoJ shall within 30 (thirty) days of such receipt:
 - deposit all funds received into the Property Portfolio Account; and
 - provide the Service Provider with a detailed statement setting out the details of the tenants and the amounts received in respect-of each tenant.
- The Parties shall within a reasonable time from the Effective Date develop a mechanism in terms of which the Service Provider shall directly receive payment from the respective tenants and in the event that it not be practical for the Service Provider to directly receive payment, then develop a mechanism in terms of which the CoJ shall



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timeously inform the Service Provider of any rentals collected from the respective tenants.

9.3 RIGHT OF ACCESS TO INFORMATION

- Each Party shall have right of access to information belonging to the other Party, including the right of reasonable access to all books of account, records, offices and immovable property allocated to a Party, and to enable either Party to exercise its rights in terms of this Agreement. Either Party shall permit the other Party and such Party's duly authorised representatives, on reasonable notice, to inspect and make copies of its books, reports, records, contracts, data, procedures, event logs, transaction logs, correspondence, documents and the like relating to the provision of the Services and to enable the CoJ to satisfy itself of compliance by the Service Provider with the terms of the SDA. For the purposes aforesaid the Service Provider shall, in addition, provide the CoJ with such additional information as the CoJ may require.
- The CoJ shall be entitled to all such information as may reasonably be required in the performance of its functions from any employee, contractor, sub-contractor, director or employee of the Service Provider, and the Service Provider shall procure that all such persons shall co-operate fully with the CoJ.

9.4 REMUNERATION

The principle on which all businesses operate is that there must be a reasonably direct relationship between effort and reward. To achieve this, service provider shall charge the rates that are in line with benchmark rates or market averages, which have a definite relationship to the effort exerted.



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The Parties hereby record that with effect from the Effective Date the percentages of income and/or service fee that the Service Provider shall be entitled to claim from the CoJ/entities and Developers as remuneration for the Services to be provided by the Service Provider, including any disbursements or any other amounts of whatsoever nature (not limited eiusdem generis) incurred by it, shall be agreed between the parties on an annual basis during the course of completion of the annual budgeting process and approval by the CoJ of the Service Provider's Business Plan. The Service Provider shall be entitled to earn income in the form of fees for transactions it administers for CoJ. The remuneration for Services rendered by the Service Provider shall be structured as follows:

The remuneration shall be structured as follows:

- ❖ Commission of 10% for sale of properties;
- ❖ Commission of 10% for acquisition of properties;
- ❖ Commission of 10% for managing the capital budget;
- ❖ Commission of 25% for collection of revenue from leasees, being lease rentals, utility payments, rates, etc. including rentals for Cell masts and for Outdoor Advertising spaces;
- ❖ Development and/or Management Fee: between 1.5% and 3% of the total investment into or the market value of the CoJ Land or JPC land transactions carried on by the service provider.
- ❖ Development; an annuity Rental income and /or a profit contribution to service provider with regards to developments in terms of which the CoJ holds the Land.
- ❖ 30% of the (thirty percentum) of rental amounts collected by the Service Provider on behalf of CoJ: Outdoor Advertising and Cell Masts:



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9.5 COLLECTION COMMISSION

A collection commission calculated as 25% (twenty five per centum) of the income collected from the CoJ portfolio will be payable by the CoJ to the Service Provider. For the purposes of this clause, gross income shall exclude the following:

- Value Added Tax;
- development-related income which goes towards calculating the agency commission and/or project and capital management fees;
- the proceeds from sales of the CoJ properties; but shall include monies received or recovered by the CoJ in respect of items disbursed by it as expenses excluding VAT.

9.6 AGENCY COMMISSION

- In respect of the negotiation of leases or the disposal or development of any property comprising part of the CoJ Portfolio, the following services and commission leviable thereon shall be payable by CoJ to the Service Provider.
 - Sale of land or property deemed not to be required for basic municipal and public sector service provision, now or in future;
 - Purchase of land or buildings required by CoJ for public service or own use of Service Provider;
 - Managing the capital budget for the capital investment programme;
 - Administration of leases and general contract management;

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- The Service Provider shall be entitled to deduct all costs related to the disposal of the relevant property from the sale proceeds and the balance shall be paid over to the CoJ;
- In the event of any other agent being involved within the conclusion of the aforementioned transactions, the commission payable by the CoJ in the aggregate shall not exceed the commission payable to the Service Provider.
- In the case of any dispute between the parties as to the amount payable the dispute shall be resolved as an Operational Dispute in terms of clause 30 of the SDA.

9.7 SERVICE FEE

- A sum in an amount to be agreed pursuant to approval by the CoJ of the annual Business Plan of the Service Provider which is neither payable on an agency or commission basis but is related to the Services rendered by the service provider including operating and capital expenditure associated therewith, to be determined in accordance with arms-length, market related principles.

9.8 TOWARDS FINANCIAL SUSTAINABILITY

- The revenue model of the Service Provider must be such that:
 - revenue sources correspond to service responsibilities;
 - fees correspond, competitively to services provided;
 - Service Provider shall become financially sustainable irrespective of the allocated capital budget; The CoJ shall make an annual budget allocation to



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the Service Provider for administration of regulatory or municipal planning functions;

✓ These functions are:

- All legal administration of town planning procedures and land transaction;
- Oversight and inspection of the portfolio of assets;
- Organising protection, maintenance or cleaning of the assets
- Administration, upgrading and maintenance of the City's property register.

Value Add Property Development Services

9.9 PROJECT PARTICIPATION AND CAPITAL MANAGEMENT FEES

- A fee calculated at 10% (ten per centum), exclusive of VAT of that portion of the CoJ's capital investment programme in respect of which responsibility for co-ordination and implementation of particular projects has been allocated to the Service Provider.
- In the event that the Service Provider enters into agreements with the Municipal Entities in terms of which Services are rendered by the Service Provider in respect of Municipal Entities' properties, the Service Provider shall be entitled to charge fees to be paid by the Municipal Entities' to the Service Provider as remuneration for the provision of those services, the amount of which is to be agreed between 'the Service Provider and the Municipal Entities in question and is to be disclosed by the Service Provider to the CoJ.



9.10 ACQUISITION OF PROPERTY

In respect of properties acquired by the Service Provider on behalf of the CoJ, a fee of 10% (ten per centum) exclusive of VAT, calculated on the gross purchase price (exclusive of VAT or Transfer Duty) of the property acquired will be payable by the CoJ to the Service Provider.

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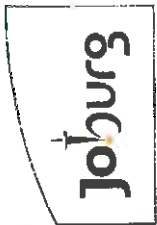
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JOBURG
PROPERTY COMPANY

Revenue Stream	Current	Now up to 2021/22	Thereafter
Fee for management of property portfolio	10% of capital allocation	10% of capital allocation 0,2% of total AUM	0,2% of total AUM plus 2,5% of sub-set of AUM
Fees for rental of advertising space	25%	30%	30%
Fees for rental of cell mast space	25%	25%	100%
Fees for acquisition of properties	10%	10%	10%
Fees for sale of properties	10%	10%	10%
Fees for property administration	25%	25%	10%
Fees for rental administration	25% - old JPC 100% - FMMU	25% of rental 100% for FMMU	10% of rental for all rental revenue
FM – transport, taxi ranks, markets, municipal buildings	Subsidised	Management fee (cost-recovery)	Management fee (cost-recovery)
Development facilitation fee	1.5%	1.5% - 3% negotiable subject to project	1.5% - 3% negotiable subject to project
Property completion fee	25%	25%	0%
Property development fee (participation)	0%	0%	5 - 13% subject to role, effort and project value

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Portfolio table 2:

Revenue Stream	Current	Now up to 2021/22	Thereafter
Capex allocation	90%	90%	100%
Rental	75%	75%	90%
Land sales	5%	90%	90%
Rental of advertising space	0%	70%	70%
Subsidy reinstated (ex MTC)	R nil	R 25 m to R 50 m	R nil
Expenses	Current	Now up to 2021/22	Thereafter
AUM fees paid to JPC	0%	0,2% of total AUM	0,2% of total AUM plus 2,5% of sub-set of AUM
Normal commissions to JPC	10% for capex, sales, acquisitions 25% rental collection	10% for capex, sales, acquisitions 25% rental collection	0% for capex, 10% for sales, acquisitions & rental collection



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ANNEXURE B: SERVICE LEVELS

In relation to the PIPs

Priority	2015/16 Key Performance Measures and Deliverables	2014/15 Key Performance Measures and Deliverables	2013/14 Key Performance Measures and Deliverables
Financial Sustainability and Resilience	% Increase in monetary value of revenue realized from alternative sources (Year on Year)	% Increase in monetary value of revenue realized from alternative sources (Year on Year)	% Increase in monetary value of revenue realized from alternative sources (Year on Year)
	% capex spend (Infrastructure expenditure)	% capex spend (Infrastructure expenditure)	% capex spend (Infrastructure expenditure)
	% reduction in staff costs	% reduction in staff costs	% reduction in staff costs
	Clean Audit	Clean Audit	Clean Audit
Agriculture and Food Security			
Sustainable Human Settlements			
SMME and Entrepreneurial Support			
Engaged Active Citizenry			
Resource Sustainability	Waste management: 25% reduction to landfill	Waste management: 20% reduction to landfill	Waste management: 15% reduction to landfill
Smart City			
Investment attraction, retention and			

Ⓟ

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