



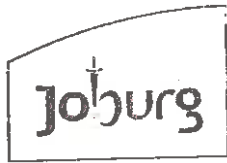
SERVICE DELIVERY AGREEMENT

Entered into between

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

and

**JOHANNESBURG DEVELOPMENT AGENCY SOC Ltd (RF)
("JDA")**



a world class African city



TABLE OF CONTENTS

1. INTERPRETATION AND DEFINITIONS 4

2. SUPREMACY OF THIS AGREEMENT 17

3. APPOINTMENT OF JDA 18

4. CESSION AND ASSIGNMENT..... 18

5. COMMENCEMENT AND DURATION 19

6. SERVICE AREA 19

7. SERVICES AND SERVICE STANDARDS 20

8. PRINCIPAL OBJECTIVE OF SDA AND LINK TO BUDGETING PROCESS 21

9. ANNUAL BUDGETING PROCESS AND BUSINESS PLAN 22

10. THE BUSINESS PLAN..... 24

11. PERFORMANCE OBJECTIVES, COMPLIANCE AND REVIEW 24

12. PERFORMANCE MANAGEMENT 26

13. REPORTING REQUIREMENTS..... 26

14. SUPPLY CHAIN MANAGEMENT POLICY..... 29

15. POWER TO MONITOR PERFORMANCE 30

16. HUMAN RESOURCE AND LABOUR RELATIONS..... 31

17. HUMAN RESOURCE POLICIES 33

18. USER FORUM 33

19. CUSTOMER CHARTER..... 34

20. SOCIO-ECONOMIC DEVELOPMENT PLAN 34

21. SAFETY, HEALTH AND ENVIRONMENTAL POLICIES 35

Handwritten signatures and initials



a world class African city



22. WARRANTIES 36

23. INDEMNITIES..... 37

24. INTELLECTUAL PROPERTY INDEMNITY 41

25. COMPLIANCE WITH IRFA GUIDELINES AND NEGOTIATION PROCEDURE..... 44

26. MEDIATION 45

27. OPERATIONAL DISPUTE RESOLUTION..... 46

28. THE TERMINATION PROCESS..... 47

29. BREACH AND CONSEQUENCES THEREOF..... 47

30. SUBSTITUTION OF MANAGEMENT 51

31. EFFECT OF NOTICE OF CANCELLATION – TERMINATION PROCESS..... 54

32. MUTUAL CO-OPERATION 59

33. CONFIDENTIALITY 59

34. DOMICILIA AND NOTICES 61

35. ENTIRE AGREEMENT 62

36. VARIATION, CANCELLATION OR WAIVER 62

37. SEVERABILITY 62

38. APPLICABLE LAW 63

ANNEXURE A: SERVICES..... 65

ANNEXURE B: SERVICE LEVELS..... 67

[Handwritten signature]

[Handwritten initials]



a world class African city



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 JDA which is a company wholly owned and controlled by the City;
- C. JDA 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 JDA 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 JDA 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 JDA 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:

Handwritten initials and signatures: 'VS' and a signature.

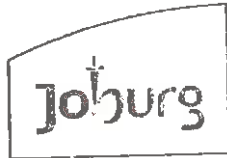


a world class African city



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

A
VSS
K/1



a world class African city



- 1.3.6 “Budget” means a budget that is prepared and submitted to the City by JDA 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;
- 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 JDA 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 JDA, the relevant MMC, JDA 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

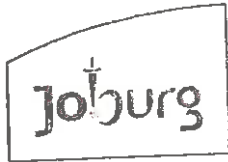


world class African city



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 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;



a world class African city



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 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

Handwritten initials and a signature in the bottom right corner of the page.

(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 JDA in accordance with clause 19 of this Agreement;

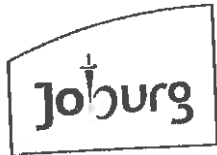
1.3.20 "Demarcation Act" means the Local Government: Municipal Demarcation Act 29 of 1998;

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;

1.3.22 "Effective Date" means 25 February 2014.

1.3.23 "Employees" means all the employees employed by JDA 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 JDA;



a world class African city



- 1.3.25 "ED" means the Executive Director of the City Development Planning Department responsible for oversight of JDA;
- 1.3.26 "Financial Year" means the financial-year of both the City and the JDA being a 12 (twelve) month period commencing on 1 July and ending the following 30 June;
- 1.3.27 "GDS" means the Growth and Development Strategy of the City as formulated from time to time;
- 1.3.28 "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 components of the City's employee performance management system;
- 1.3.29 "GRAP" means Standards of Generally Recognised Accounting Practice as determined by the Accounting Standards Board of South Africa from time to time;
- 1.3.30 "IDP" means the Integrated Development Plan of the City as formulated from time to time;
- 1.3.31 "IRFA" means the Intergovernmental Relations Framework Act No. 13 of 2005 and any regulations or guidelines promulgated thereunder from time to time;



a world class African city



- 1.3.32 "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;
- 1.3.33 "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;
- 1.3.34 "Local Community" means that body of persons comprising:
- 1.3.34.1 the residents of the City;
 - 1.3.34.2 the ratepayers of the City, any civic organizations and non-governmental, private sector or labour organizations or bodies which are involved in local affairs within the City; and
 - 1.3.34.3 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;
- 1.3.35 "Minister" means the Cabinet member responsible for provincial and local government;



a world class African city



- 1.3.36 "MFMA" means the Local Government: Municipal Finance Management Act No. 56 of 2003;
- 1.3.37 "MMC" means a Member of the Mayoral Committee;
- 1.3.38 "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;
- 1.3.39 "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;
- 1.3.40 "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;
- 1.3.41 "Municipal Manager" means the official appointed as such by the City in terms of section 82 of the Structures Act,
- 1.3.42 "Municipal Services" means municipal services as defined in the Systems Act;
- 1.3.43 "Operational Dispute" means a dispute between the Parties to an SDA, or between any such Party and any other municipal entity of

Handwritten signatures and initials:
A large circular scribble.
Initials 'NY' and 'SS'.



a world class African city



the City, which arises out of the provisions of such SDA or anything done, provided or procured pursuant thereto;

- 1.3.44 "Party" and "Parties" means JDA and the City and their successors in title, as the context requires;
- 1.3.45 "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 19.1.1;
- 1.3.46 "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;
- 1.3.47 "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;
- 1.3.48 "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 JDA;

[Handwritten signatures and initials]



a world class African city



- 1.3.49 "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;
- 1.3.50 "SDBIP" means the Service Delivery Budget Implementation Plan of the City as formulated from time to time;
- 1.3.51 "Cluster Scorecard" means the cluster scorecard pertaining to the cluster of the City within which JDA 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 JDA from the cluster plan prepared annually as part of the City's five year IDP;
- 1.3.52 "Service Area" means the geographical area in respect of which JDA is appointed (and where applicable, licensed in terms of applicable Regulatory Provisions) to render the Services as more fully described in Annexure "B";
- 1.3.53 "Service Levels" means the levels of service to be achieved by JDA in providing the Services under this Agreement as more fully described in clause 10.6.3 and specified by the City in the SLAs from time to time;
- 1.3.54 "JDA" means Johannesburg Development Agency (SOC) Limited (RF) with Registration No. 2001/005101/07, 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;

- 1.3.55 "JDA Accounting Officer" means the managing director or chief executive officer of JDA, from time to time as defined in section 93 of the MFMA;
- 1.3.56 "Services" means the services provided or to be provided by JDA as described in Annexure "A" hereto;
- 1.3.57 "Structures Act" means the Local Government: Municipal Structures Act 117 of 1998;
- 1.3.58 "Systems Act" means the Local Government: Municipal Systems Act 32 of 2000;
- 1.3.59 "Treasury Policy Manual" means the City's Treasury Policy Manual approved by the City from time to time;
- 1.3.60 "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;
- 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;



a world class African city



- 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;

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.

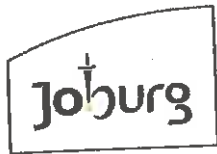
1.14 all policies and protocols of general application of the City which have been officially adopted by it or which may be adopted by it in the future from time to time and communicated by the City to JDA in writing from time to time, shall, unless expressly excluded in this Agreement or by the context governing the relationship between the City and JDA 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 JDA 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.



Handwritten signatures and initials, including a large signature and the initials 'KA' and 'LSS'.



a world class African city



3. APPOINTMENT OF JDA


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.

3.2 Save to the extent specifically provided to the contrary in this SDA, JDA at all times acts as an independent contractor and neither the appointment of JDA 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 JDA may subject to the City's policies appoint 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 JDA of any of its obligations to the City.


N/N
LSS



a world class African 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 JDA and the City as they form the basis for the performance review of JDA.

6. SERVICE AREA

6.1 Subject to clauses 6.2 and 6.3 below, JDA 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;



a world class African city



- 6.2.2 if JDA is required by the City to provide the Services in the extended area, JDA shall negotiate with the City to amend the Budget of JDA in a way which will accommodate the additional activities to be undertaken by JDA 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 JDA'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
- 6.3.2 JDA shall negotiate with the City to amend JDA'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 JDA 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 JDA's annual Business Plan as contemplated in this Agreement.



a world class African city



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.

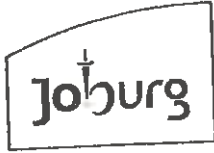
8. PRINCIPAL OBJECTIVE OF SDA AND LINK TO BUDGETING PROCESS

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 JDA 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 JDA 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 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 JDA identifies the key service delivery objectives of JDA together with the resources allocated to the achievement of such objectives.

[Handwritten signature]
NS
AS



a world class African city



- 8.4 It also identifies the KPAs and KPIs which are used in evaluating the extent to which JDA and its management have achieved the service delivery objectives determined for JDA, and enables evaluation of management performance in the context of appropriate remuneration.

9. ANNUAL BUDGETING PROCESS AND BUSINESS PLAN

- 9.1 The Board of JDA shall ensure for each Financial Year of JDA, 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 JDA'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 JDA in each year, the budget needed to achieve the outputs, and such other issues as the City shall request JDA 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.

9.2.3 set key financial and non-financial performance objectives and measurement criteria which shall have been agreed between JDA and the City.



Handwritten initials or signatures in the bottom right corner, including what appears to be 'M' and 'S'.



a world class African 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 JDA.

9.4 Should the City and JDA 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 24.3, the matter shall be resolved as an Operational Dispute.

9.5 The Business Plan shall also:



a world class African city



- 9.5.1 as far as possible be in accordance with a pro forma submitted to JDA 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 JDA 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 JDA 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 JDA by the City must be provided for in the annual budget of the City, and to the extent not so provided, JDA'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 JDA shall incur expenditure only in accordance with its approved Budget, subject to any adjustments effected on the basis contemplated in the MFMA.

10. PERFORMANCE OBJECTIVES, COMPLIANCE AND REVIEW


- 10.1 Taking into account the City's key service delivery imperatives and the resources available for achieving those objectives, JDA's Business Plan shall set out the key annual financial and non-financial performance objectives of JDA.



a world class African city



- 10.2 Pursuant to determination of the key annual performance objectives for the year to which the relevant Business Plan relates, JDA shall, by agreement with the City also establish the relevant KPAs and KPIs for JDA in respect of such period, for inclusion in JDA's Business Plan.
- 10.3 KPIs shall be designed to indicate to the Parties, End Users and the general public, the measure of success achieved by JDA in the provision of the Services.
- 10.4 The service objectives agreed to from time to time between JDA and the City represent a critical measure of service delivery, and as a substantive obligation pursuant to this SDA, JDA 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.
- 10.5 In this regard JDA 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.
- 10.6 JDA shall report on its performance:
- 10.6.1 annually, as part of annual reporting process, against the agreed KPAs and KPIs in terms of clause 12.3;
- 10.6.2 six months after commencement of the financial year; and


NIV
LSS



a world class African city



- 10.6.3 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 JDA in terms of clause 12.2.

11. PERFORMANCE MANAGEMENT

- 11.1 The Board is ultimately responsible for the performance management of JDA and all employees of JDA (including the Accounting Officer) in the context of JDA'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 JDA in discharging its obligations under this Agreement.
- 11.2 External to JDA, the City Group Performance Management Framework regulates performance planning and implementation co-ordination between JDA and the City by means of the applicable Cluster Scorecard.
- 11.3 JDA 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.

12. REPORTING REQUIREMENTS

- 12.1 JDA shall adhere to the requirements of the Municipal Budget and Reporting Regulations.

[Handwritten signature]
405



a world class African city



12.2 Quarterly Reports

12.2.1 Within 7 (seven) days of the end of each quarter, preparation and submission to Group Governance department of a quarterly performance report for JDA as at the end of each quarter, reflecting:

12.2.1.1 its financial performance in rendering the Services;

12.2.1.2 its achievement of the performance objectives referred to in clause 10, including any Service Levels which have been incorporated into any performance objective on the basis contemplated in clause 10.6.3:

12.2.1.3 any special circumstances and factors that should be taken into account in analysing its performance; and

12.2.1.4 any measures to be taken by JDA to improve its performance.

12.2.2 JDA 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.

12.2.3 JDA Accounting Officer shall provide quarterly financial statements reflecting JDA's actual income and expenditure together with financial notes explaining any variances and the reasons for variances and its achievement or otherwise of the



a world class African city



agreed outputs, which report shall include such information as is necessary to enable the City to accurately assess the extent to which JDA has achieved the agreed outputs.

12.3 *Annual Reports and Annual Financial Statements*

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

12.3.1.1 fairly present the state of affairs of JDA 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;

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

12.3.1.3 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.



a world class African city



12.4 The Accounting Officer for JDA 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.

13. SUPPLY CHAIN MANAGEMENT POLICY

13.1 JDA 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.

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

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

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

13.2.3 a policy on supplier management; and

13.2.4 shall include clearly defined annual targets as set out by the City from time to time to be achieved by JDA, and reported upon monthly as part of the quarterly report prescribed in terms of clause 12.2 above.

[Handwritten signatures and initials]

19. SOCIO-ECONOMIC DEVELOPMENT PLAN

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

19.1.1 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);

19.1.2 include proposals regarding appropriate Service Levels for the poor and disadvantaged sections of the Local Community unable to afford the Services; and

19.1.3 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.

20. SAFETY, HEALTH AND ENVIRONMENTAL POLICIES

20.1 JDA 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.



a world class African city



20.2 Since the City and JOSHCO are jointly liable through the City's insurance arrangements for claims arising from pollution of soil, water and air, human health or the environment in general caused by JOSHCO, its employees or contractors in the rendering of the Services, JOSHCO shall ensure that it acts in a reasonable manner to ensure that such losses are mitigated.

20.3 JDA 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.

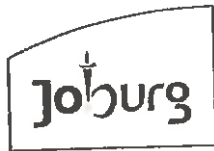
20.4 JDA shall be obliged to acknowledge receipt of and respond in writing to any statutory notices served on it by the City in this context, and give reasons when it is not possible to comply, as well as submitting action plans and time-frames for bringing about compliance where appropriate.

21. WARRANTIES

21.1 The City warrants in favour of JDA that:

21.1.1 this Agreement has been duly authorised and executed by the City;

21.1.2 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;



a world class African city



- 21.1.3 it has the exclusive authority to provide the Services in the Service Area and is fully authorised and entitled to contract with JDA to do so on its behalf on the basis set out in this Agreement;
- 21.1.4 it has the legal capacity and authority to appoint JDA as a services provider in terms of the Systems Act on the basis set out in this Agreement.
- 21.2 JDA warrants in favour of the City that:
- 21.2.1 no steps will have been taken and JDA is not aware of any steps pending or threatened against JDA for its de-registration in terms of the Companies Act;
- 21.2.2 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 JDA or the Assets of JDA; and
- 21.2.3 JDA 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.
- 21.3 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.
- 21.4 No warranties or representations which are not set forth in this Agreement shall be binding on either Party.



a world class African city



21.5 The provisions of this clause 21 shall survive the termination of this Agreement.

22. INDEMNITIES

22.1 JDA shall:

22.1.1 at its own expense and with effect from the Effective Date, take all reasonable precautions for the protection of life and property or in any way connected with the whole or any part of the asset;

22.1.2 comply with the City's insurance policies requirements in respect of premiums, insurance claims and/or resultant recoveries 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;

22.1.3 report all serious accidents involving it to the City's office of the Executive Director: Group Risk & Assurance Department within 24 (twenty four) hours of becoming aware of their occurrence;

22.1.4 subject to the other provisions of this Agreement, be obliged to comply and assist with requests for documentation in support of any insurable claim instituted against the City arising from or attributable to JDA 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;

22.1.5 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 JDA and shall seek the assistance of the Office of the Executive Director: GRAS.

22.1.6 JDA 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 JDA, or any other subcontractor or any person for whom JDA may be liable in law in respect of the supply or failure to provide the Services, that may arise after the Effective Date.

22.1.7 The City shall forthwith notify JDA 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.

22.1.8 In particular, but without limitation, JDA hereby holds the City harmless against all losses, claims, demands, proceedings, damages,



costs, charges and expenses, including reasonable legal expenses, of whatsoever nature arising from any act or omission of JDA 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 JDA or as a result of or arising from any industrial action or related conduct embarked upon by any employee.

22.2 The City shall:

22.2.1 hold JDA harmless against all losses, claims, demands, proceedings, damages, costs, charges and expenses, including reasonable legal expenses, of whatsoever nature arising out of this Agreement or at law, 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.

22.2.2 the City will be obliged to intervene and shall assume responsibility in respect of any such claim arising;

22.2.3 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 JDA, hold JDA harmless against such claims, demands, proceedings or damages including reasonable attorney's fees to the extent of such contribution, provided that such assurance shall not apply in the event of JDA, despite reasonable opportunity to do so, having failed to rectify such condition.



a world class African city



22.3 Each of the Parties assures the other that it shall not hold the other liable against any claims, demands, proceedings, damages and expenses, including reasonable attorney's fees, which may arise due to a breach by any Party of the warranties contained in clause 19 hereof.

22.4 No breach by a party of any warranty referred to in clause 21 and no claim against a party under any assurance shall entitle a claimant to make a claim in respect of both such breach of warranty and such assurance where such breach or claim arises out of the same cause of action.

23. INTELLECTUAL PROPERTY INDEMNITY

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

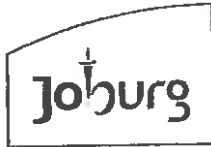
23.1.1 authorises and licenses or (where applicable), will endeavour to procure that the relevant third party intellectual property owner will have authorised and licensed and will continue to so authorise and license JDA to use and to continue to use or apply as from the Effective Date, any and all 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;

23.1.2 indemnifies JDA and undertakes to keep JDA 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 JDA as from the Effective Date in respect of any intellectual property rights of third Parties;

- 23.1.3 JDA 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 JDA after the Effective Date in breach (or alleged breach) of any intellectual property rights of third Parties, but specifically excluding the intellectual property rights.
- 23.2 The indemnities shall extend to all costs and expenses (including reasonable legal expenses on a full indemnity basis) incurred by the Party who has been indemnified ("the Indemnified Party") by the other Party ("Indemnitor").
- 23.3 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.
- 23.4 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.



a world class African city



- 23.5 If any claim by a third party based on infringement of its intellectual property rights as aforesaid prevents JDA from fully conducting its business or any part thereof, JDA 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.
- 23.6 To the extent that it is not possible or practical for JDA 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 23.5, and should JDA 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 JDA to continue to fulfil its obligations under this Agreement. Should the Parties fail to reach agreement as to the amendments to be effected to this Agreement within 6 (six) months of receipt of the notification from JDA, the matter shall be resolved as an Operational Dispute.
- 23.7 Any replacement or modification envisaged in clause 23.5 will be carried out as soon as possible so as to minimize any interruption in JDA's business operations.



a world class African city

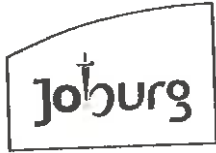


24. COMPLIANCE WITH IRFA GUIDELINES AND NEGOTIATION PROCEDURE

24.1 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.

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

24.3 If the Parties are unable to resolve the deadlock or dispute in question within 15 (fifteen) Business Days after the commencement of the



a world class African city



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.

25. MEDIATION

- 25.1 Mediation shall be non-binding on the Parties and shall be conducted by a facilitator appointed for this purpose in accordance with the City's Operational Dispute Resolution Protocol, as determined by the City from time to time.
- 25.2 The Parties shall act in good faith and shall respond to all reasonable directions and requests of the facilitator in attempting to resolve the matters in dispute.
- 25.3 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.

26. OPERATIONAL DISPUTE RESOLUTION

- 26.1 All the City's disputes and/or matters referred for resolution by the DSM shall be dealt with in accordance with the City's Operational Dispute Resolution Protocol, as determined by the City from time to time.
- 26.2 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.



a world class African city



27. 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 28.2.2, 28.2.3 or 28. Notwithstanding the giving of notice of cancellation, this Agreement shall only terminate following implementation of the transitional provisions contemplated in clause 28.

28. BREACH AND CONSEQUENCES THEREOF

28.1 An event of default by JDA shall occur if:

28.1.1 JDA 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 JDA to remedy such breach; or

28.1.2 JDA 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;

28.1.3 JDA is unable or ceases for any reason whatsoever to provide the Services in the ordinary and regular manner; or

28.1.4 JDA compromises or attempts to compromise or defer payment of any indebtedness owing by it to its creditors, generally; or

28.1.5 any assets of JDA are attached under writ of execution and JDA fails within 15 (fifteen) Business Days after becoming aware, or after it



a world class African city



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

- 28.1.6 JDA is removed from the Register of Companies or placed under judicial management; or
- 28.1.7 JDA 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
- 28.1.8 JDA 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
- 28.1.9 JDA 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
- 28.1.10 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 JDA (whether voluntarily or compulsorily); or
- 28.1.11 any judgment of any court or arbitration award against JDA remains unsatisfied for a period of 30 (thirty) Business Days after JDA 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, JDA fails to immediately make payment thereof; or

28.1.12 a judicial manager, receiver or similar officer is appointed in respect of JDA or in respect of all or any material part of its assets; or

28.1.13 any regulatory authority which has jurisdiction over JDA and the Services provided by it, withdraws or cancels any license or authorisation in terms of which JDA is entitled to render the Services, save to the extent that the withdrawal or cancellation is not caused by the negligence or failure of JDA to comply with any conditions set out therein; or

28.1.14 following an annual performance review, the performance of JDA has, measured against the performance objectives and measurement standards contemplated in clauses 10 and 10.6.3 of this Agreement, been unsatisfactory whether or not the City elects to liquidate and disestablish JDA pursuant to Section 93B(c)(i) of the Systems Act; and

28.1.15 the Board of JDA has failed to act effectively in relation to serious or persistent financial problems experienced by JDA, whether or not the City elects to impose a financial recovery plan, liquidate and disestablish JDA as contemplated in Section 93B(c)(ii) of the Systems Act and section 109 of the MFMA.

28.2 Upon the occurrence of an event of default by JDA as contemplated above, or at any time thereafter whilst it is continuing, the City may,



a world class African city



without prejudice to any other rights it may have in terms of this Agreement or at law, by written notice to JDA:

28.2.1 claim specific performance (without cancelling this Agreement and without prejudice to its right to claim damages); or

28.2.2 cancel this Agreement (without prejudice to its right to claim damages); or

28.2.3 without cancelling this Agreement, exercise the management substitution rights referred to in clause 25, without prejudice to the 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 28.2.3.

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

28.3.1 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 JDA of written notice requiring it to remedy such breach; and/or

28.3.2 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 JDA to the City of written notice requiring it to pay such amounts.



a world class African city



28.4 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 JDA has been given 21 (twenty one) Business Days written notice to cure such breach, JDA 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 JDA have the right to cancel this Agreement as a result of events of default set out in clause 28.3 above.

29. SUBSTITUTION OF MANAGEMENT

29.1 It is recorded that:

29.1.1 the provision of the Services by JDA represents the long-term policy of the City and a reversal of this policy may interrupt the provision of the Services;

29.1.2 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 JDA as an appropriate alternative to termination of this Agreement if at any time, and objectively considered, it is apparent that JDA is unable to continue performing its functions under this SDA due to the actions or omissions of the management (or portion/s thereof) of JDA 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 JDA at least 60 (sixty) days' notice in writing before invoking the provisions of this clause.



a world class African city



- 29.1.3 The Parties have accordingly agreed that the City shall have the right to require the Board of JDA to substitute the management of JDA in order to preserve this Agreement in accordance with the provisions of this clause.
- 29.2 Should any event of default contemplated in clause 28.1 occur, the City may, instead of exercising its right to cancel this Agreement, call upon the Board of JDA to make one or more substitutions of management in terms of this clause 25 without having to give any notice.
- 29.3 The City shall exercise its right in terms of clause 29.2 by delivering a substitution notice in writing to the chairperson of the Board of JDA, which substitution notice will specify the terms and conditions of the substitution/s required, including an implementation date, and may require the substitution of senior management in its entirety or specify individuals for substitution, and may be of limited duration, or permanent.
- 29.4 Should the Board of JDA 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 28.1.
- 29.5 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 JDA and JDA shall be responsible for (and indemnifies the City against) any employment law consequences that may ensue within the management structure of JDA 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

Handwritten initials/signatures: "NAN" and "KS"



a world class African city



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 JDA shall be entitled to recover from the City any damages suffered by it arising out of such employment law consequences.

29.6 JDA shall ensure that all things required to implement the substitution notice are done and shall ensure that any member of management of JDA substituted in terms of the foregoing shall comply with the terms of the substitution notice referred to in clause 29.2, and will, if required to, assist in the process of substitution on the basis set out in the substitution notice.

29.7 Any person appointed in substitution for JDA Accounting Officer in terms of this clause 29 must be appointed by the Board of JDA but the City may by agreement with the Board of JDA, and subject to clause 29.8, second any of its employees to undertake management roles within JDA pursuant to the substitution provisions of this clause 29, on a temporary basis until such time as the board of JDA is in a position to make a permanent substitute appointment.

29.8 In the absence of agreement to the contrary, any management substitution effected in terms of clause 29.2 on a permanent basis must have been confirmed by the Board of JDA within 12 (twelve) months of delivery of the relevant substitution notice referred to in clause 29.3, and JDA 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.



a world class African city



30. 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:

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

30.1.1 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;

30.1.2 JDA shall continue to provide the Services in terms of this Agreement pending the date referred to in clause 30.1.4;

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

30.1.4 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:

30.1.4.1 the City having received delivery of the Assets, alternatively, JDA Going Concern pursuant to the City having elected to exercise the option referred to in clause 30.1.3; or



30.1.4.2 an alternative JDA appointed by the City having received delivery of the Assets, alternatively, JDA Going Concern as the nominee of the City pursuant to clause 30.1.3; and

30.1.4.3 compliance with the requirements of clause 30.2; and

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

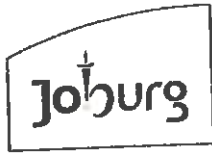
30.2 In the event of the City electing to purchase the Assets:

30.2.1 JDA 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 JDA designated by the City (in either instance "the Buyer"), and the Buyer shall be deemed to have accepted such offer;

30.2.2 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;

30.2.3 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

Handwritten signatures and initials: "N" and "VSS SA"



a world class African city



the City in the books of account of JDA, 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;

30.2.4 if the Assets are purchased by a third party JDA nominated by the City, the purchase price shall be discharged by whatever mechanism is agreed between JDA and the third Party JDA with the approval of the City, and the purchase price shall be utilised by JDA towards settling the loan account in favour of the City in the books of account of JDA;

30.2.5 against payment of the purchase price of the Assets determined in terms of clause 30.2.2, JDA 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;

30.2.6 JDA 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

30.2.7 JDA 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 JDA, 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.

Handwritten initials: MN and LSS



a world class African city



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

30.3.1 JDA shall on receipt of the written notice exercising the City's option, be deemed to have offered to sell JDA Going Concern to the City or a JDA 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;

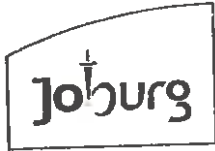
30.3.2 The purchase price of JDA Going Concern shall be the net asset value of the business, as determined by the Auditors of JDA, together with VAT at the applicable rate (it being recorded that such transactions are currently zero-rated);

30.3.3 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 30.2.2;

30.3.4 If JDA Going Concern is purchased by the City, the purchase price of JDA Going Concern shall be discharged by set-off against any loan account in favour of the City in the books of account of JDA, 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;

30.3.5 If JDA Going Concern is purchased by a third party JDA nominated by the City, the purchase price shall be discharged by whatever mechanism is agreed between JDA and the third Party JDA with the approval of the City, and the purchase price shall be utilised by JDA

Handwritten signatures and initials:
N/A
KSS A



a world class African city



towards settling the loan account in favour of the City in the books of account of JDA;

30.3.6 against discharge of the purchase price of JDA Going Concern, JDA shall deliver JDA Going Concern to the Buyer;

30.3.7 JDA 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

30.3.8 contracts of employment shall be transferred from JDA to the Buyer in accordance with section 197 of the Labour Relations Act 66 of 1995.

30.4 On the sale either of the Assets or JDA Going Concern, JDA 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.

30.5 In respect of employees whose contracts of employment are to be transferred to the Buyer:

30.5.1 JDA 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 JDA prior to the date of transfer and shall indemnify and hold the City and the Buyer harmless in respect of all such obligations;



30.5.2 JDA 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;

30.5.3 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;

30.5.4 any obligation on JDA 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 JDA harmless in respect of all such claims, costs and expenses.

31. 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 JDA with such information as it may reasonably require to enable it to comply with any of JDA's obligations in terms of this Agreement.



a world class African city



32. CONFIDENTIALITY

32.1 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:

- 32.1.1 the provisions of this Agreement;
- 32.1.2 the negotiations relating to this Agreement;
- 32.1.3 the subject matter of this Agreement; and/or
- 32.1.4 the other Party.

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

- 32.2.1 required by law;
- 32.2.2 required to vest the full benefit of this Agreement in either Party;
- 32.2.3 disclosed to the professional advisers, auditors and bankers of each Party;
- 32.2.4 the information has come into the public domain through no fault of that Party;



32.2.5 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.

33. DOMICILIA AND NOTICES

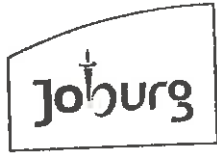
33.1 All notices to be given in connection with this Agreement shall be in writing and shall be delivered by hand, transmitted by facsimile or sent by prepaid registered post:

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

JDA at:
Chief Executive Officer
Johannesburg Development Agency (SOC) Ltd
(RF)
The Bus Factory
3 President Street
Newtown
Johannesburg
telefax no: 011 688 7863
marked for the attention of: The Chief
Executive Officer

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

33.2 A notice shall be deemed to have been received.



a world class African city



- 33.2.1 14 (fourteen) days after posting, if posted by registered post to the Party's address in terms of clause 33.1;
- 33.2.2 on delivery, if delivered to a responsible person during normal business hours at the Party's physical address in terms of clause 33.1;
- 33.2.3 on despatch, if sent to the Party's then telefax number and such transmission is independently confirmed.
- 33.3 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.

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

35. 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.

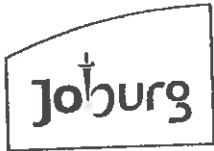


36. SEVERABILITY

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.

37. 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.



a world class African city



THIS DONE AND SIGNED AT JOHANNESBURG ON THIS THEof OCTOBER 2014

As Witnesses:

- 1. [Signature]
- 2. Arifah Hamid

[Signature]
G. DUMAS
ACTING CITY MANAGER
CITY MANAGER

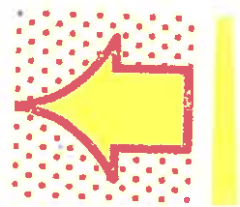
who warrants that he is duly authorised
 For and on behalf of
CITY OF JOHANNESBURG
METROPOLITAN MUNICIPALITY
 (Herein referred to as "the City")

THIS DONE AND SIGNED AT JOHANNESBURG ON THIS THE of OCTOBER 2014

As Witnesses:

- 1. [Signature]
- 2. Arifah Hamid

[Signature]
CHAIRPERSON OF THE BOARD
 who warrants that he or she is duly
 authorised
 For and on behalf of
JOHANNESBURG DEVELOPMENT
AGENCY SOC Ltd (RF)
 (Herein referred to as "JDA")



ANNEXURE A: SERVICES

The Services provided by the JDA are to:

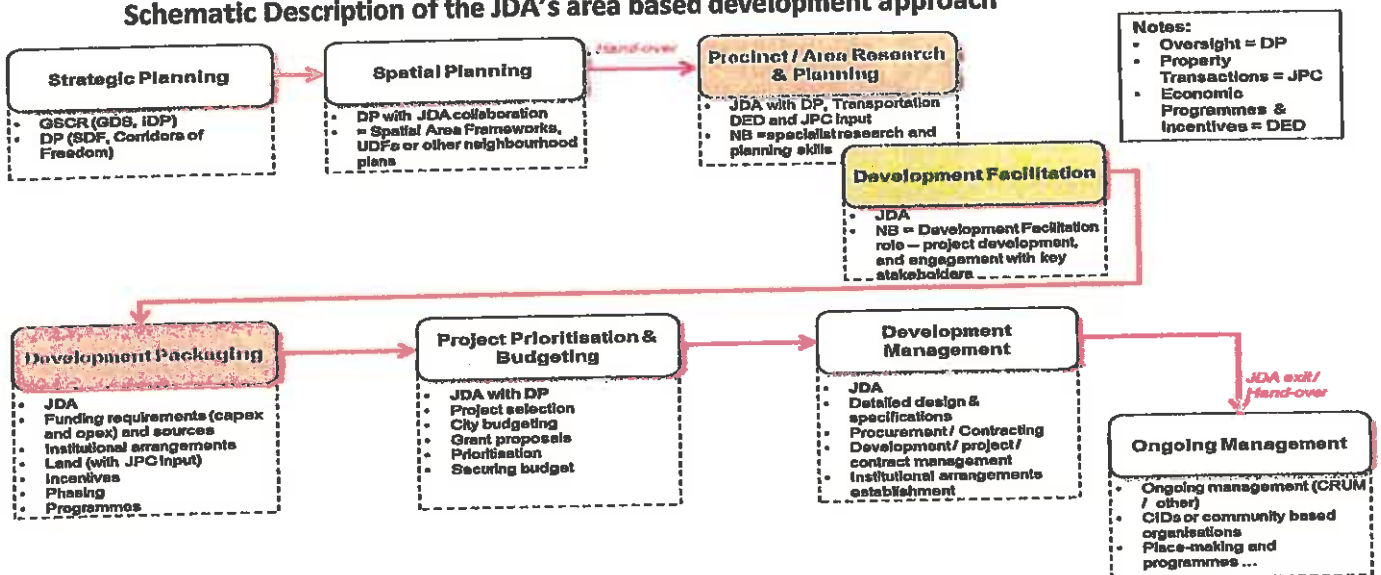
- Restructure the city by developing defined, strategic geographic areas around the city (Area-based Development) and the movement corridors that link them through the implementation of capital projects by the public sector.
- Promote economic growth by creating efficient and competitive business environments that cluster industries and functions in these areas through facilitation of both public and private sector investments.
- Turn around declining investment trends in these areas by upgrading public space, generating shared visions for future development, and encouraging urban management partnerships with the private sector and the affected communities.
- Develop local economic potential in marginalised areas to promote access to jobs and markets through partnerships between communities, the public and the private sector.
- Encourage sustainable energy consumption and land-use in the city by developing strategic transit nodes and corridors.
- Promote economic empowerment through the structuring and procurement of JDA developments.
- Support productive development facilitation (partnerships and co-operation between all stakeholders in these areas).

The JDA approach in the provision shall be undertaken through a series of stages which shall include the following:

1. Strategic Planning of capital and non-capital projects aimed at the spatial and economic transformation of the City;
2. Research and Precinct planning in accordance with the City's Spatial Development Plans and Priorities;

3. Development facilitation to ensure buy-in by all stakeholders (communities and the private sector investors etc.);
4. Packaging of developments for public sector and private sector investments;
5. Implementation of public sector developments;
6. Hand-over of completed private sector developments to user departments and entities for further and ongoing management.

Schematic Description of the JDA's area based development approach

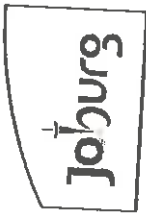


All area based developments of the JDA shall be undertaken with in accordance with the following principles:

1. Economically in terms of the allocated budget;
2. Efficiently in terms of quality and time;
3. Effectively in terms of functionality

In order to deliver the Services, the JDA shall be granted the access to City's land subject to applicable City policy and the authority to purchase capital assets, including land and other real rights, only in so far as such is required for the JDA to achieve the implementation of City's capital project.





a world class African city



ANNEXURE B: SERVICE LEVELS
JOHANNESBURG DEVELOPMENT AGENCY SOC Ltd (RF)

In relation to the PIPs

PRIORITY	JOHANNESBURG DEVELOPMENT AGENCY RESPONSE			DELIVERABLES
	THE CITY'S TARGET	2014/15 Key Performance Measures	2015/16 Key Performance Measures	
1. Financial Sustainability and Resilience	Reduction to 36.3% of operating costs	Reduction to 37.7% of operating costs	Reduction to 36.3% of operating costs	Clean Audit report The JDA will charge 5% management fee on all non-BRT capital
	5.1% of operating expenditure on planned and routine maintenance 70% Improvement in the efficiency and performance	Total of 4.8% of the operating expenditure spent on repairs and maintenance 30% Improvement in the efficiency and performance	Total of 5.1% of the operating expenditure spent on repairs and maintenance 70% Improvement in the efficiency and performance	

Handwritten initials and marks:
 NW
 655
 [Signature]

		<p>projects implemented for the City and 4% on BRT projects.</p>	<p>projects implemented for the City and 4% on BRT projects.</p>	<p>projects implemented for the City and 5% on BRT projects.</p> <p>JDA will conclude 1 profit sharing agreement with the Private Sector partner (Management of the Karzene ITSC)</p>	
<p>2. Agriculture and Food Security</p>	<p>Reduce food insecurity by 50% by end of 2016</p> <p>Aim to ensure that 100% of identified households are assisted through one of the Initiatives (e.g Food Bank)</p>	<p>The JDA supports rooftop food gardens in the inner city as part of its CSI programme.</p>	<p>The JDA will develop a community vegetable garden in Empire-Perth Corridor</p>	<p>JDA will develop 2 community vegetable gardens in the Louis Botha Corridor</p>	
<p>3. Sustainable Human Settlements</p>	<p>45 000 passengers per day</p>	<p>30 000 passengers per day</p>			

<p>100% operationalisation</p>	<p>Detailed design of infrastructure 25% complete and detailed operations design commenced</p>	<p>Construction of the BRT Infrastructure in Phase 1c and NMT in Alexandra</p>	<p>Construction of the BRT Infrastructure in Phase 1c and NMT in Alexandra</p>
<p>Completion of 2013/18 ITP (Integrated Network and 10 year fundable plan)</p>	<p>Finalisation of long term integrated network in respect of public transport, NMT and freight.</p>	<p>Implement Transit Oriented Developments supported by catalytic infrastructure and built environment in Jabulani, Nancefield, Randburg</p>	<p>Reduction in income inequality measured through a decrease in the Gini Coefficient for Johannesburg as a whole over 10 years.</p>
<p>Reduction in income inequality measured through a decrease in the Gini Coefficient for Johannesburg as a whole over 10 years.</p>	<p>Implementation of a phase of catalytic public investments in infrastructure and the built environment in at least 5 transit oriented nodes (Westgate, Park Station, Randburg, Nancefield and Orlando East)</p>	<p>Increased value of private investment in property development in the transit nodes.</p>	<p>Reduction in income inequality measured through a decrease in the Gini Coefficient for Johannesburg as a whole over 10 years.</p>
<p>Development planning</p>	<p>Development planning</p>	<p>Development planning</p>	<p>Development planning</p>



	<p>Reduction in income inequality measured through a decrease in the Gini Coefficient for Johannesburg as a whole over 10 years.</p>	<p>and project preparation for at least 2 more transit precincts (Jabulani and Alexandra)</p> <p>Implementation of catalytic infrastructure and built environment projects to develop transit nodes and address local neighbourhood needs in the inner city, including Transnet Land / Metro Park, Commuter Links / Art gallery Rea Vaya station precinct, African food and culture hub, Public Places Challenge and Hillbrow Tower precinct plans.</p> <p>Implementation of a phase of catalytic</p>	<p>Ratio between public and private investment in properties and the built environment in the inner city.</p> <p>Increasing rental values for office space and decreasing vacancy rates.</p> <p>Number of new affordable residential units in the inner city.</p> <p>Increased economic activity observed in priority development areas.</p>		
--	--	---	--	--	--

Handwritten signature

Handwritten signature

Handwritten mark

	<p>Reduction in income inequality measured through a decrease in the Gini Coefficient for Johannesburg as a whole over 10 years.</p>	<p>public investments in infrastructure and the built environment in at least 2 priority precincts. (Kliptown and Diepsloot) Project preparation for at least 1 more priority development precinct (Ivory Park) Implementation of supporting infrastructure, housing and services through capital works project management on behalf of other CoJ departments.</p>	<p>Number of local employment opportunities created through capital works projects. Number of local SMMEs contracted through capital works projects and value of work assigned to SMMEs.</p>	<p>6 Strategic Area Framework (SAF) compiled</p>
		<p>3 SAFs completed 3 SAFs completed for Empire-Perth; Louis Botha; and Turffontein corridors</p>	<p>5 SAFs completed (3+2) 2 SAFs completed for: • Marlboro-Randburg and mining land corridors</p>	<p>6 SAFs completed (5+1) 1 SAF completed for Diepsloot-Randburg corridor</p>

Handwritten signatures and initials

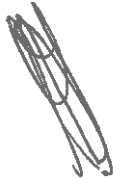
4. SMME and Entrepreneurial Support			Through JDA's supply chain and construction management practices, we will seek to promote enterprise development and broad-based economic empowerment.	Increased number of SMMEs supported through the JDA's Enterprise Development Programme	Increased number of SMMEs supported through the JDA's Enterprise Development Programme															
5. Engaged Active Citizenry		20% Improved level of citizen satisfaction (city wide)																		

[Handwritten signature]

[Handwritten signature]

[Handwritten initials]

	<p>14 area driven strategic partnerships on neighbourhood development and community driven services</p>	<p>The JDA always seeks to engage the public in a meaningful way at every stage of development. This includes doing public participation in the planning stage, consultations with communities and affected parties during design stage, and added value activities involving community members in projects such as the peoples' history, heritage exhibitions and public art projects that tell the story of the neighbourhood.</p>	<p>7 strategic partnerships in place covering public art, Oral History and community heritage exhibitions</p>	<p>14 strategic partnerships in place</p>
<p>6. Resource Sustainability</p>	<p>7 greening initiatives</p>	<p>No initiatives in 2013/14</p>	<p>2 greening initiatives</p>	<p>5 greening initiatives</p>

Handwritten marks and initials:

Handwritten initials JN
Handwritten number 1557
Handwritten mark A

7. Smart City		Where possible, the JDA will seek opportunities to upgrade smart city infrastructure within TOD precincts.	Where possible, the JDA will seek opportunities to upgrade smart city infrastructure within TOD precincts.	Where possible, the JDA will seek opportunities to upgrade smart city infrastructure within TOD precincts.	
8. Investment attraction, retention and expansion		The impact of JDA's developments is measured largely in terms of the extent to which the public investment gears private property investments in the same neighbourhood.	1:1 Public Private Sector ratio	1:5 Public Private Sector ratio	
9. Green economy	Carbon emission and fuel consumption reductions as a	Planning and implementation of first phase of Trunk Route 1C for the Rea Vaya	Planning and implementation of first phase of Trunk Route 1C for the Rea	Planning and implementation of first phase of Trunk	

[Handwritten signature]

[Handwritten signature]

10. Safer cities	result of green transport strategies.	BRT service. Through design of buildings and public spaces, the JDA promotes green building technologies such as solar water heating, efficient lighting and sustainable urban drainage systems.	Vaya BRT service.	Route 1C for the Rea Vaya BRT service.	
Achieve safer cities through design of public environment by including lighting and CCTV cameras where possible	Achieve safer cities through design of public environment by including lighting and CCTV cameras where possible	Achieve safer cities through design of public environment by including lighting and CCTV cameras where possible	Achieve safer cities through design of public environment by including lighting and CCTV cameras where possible	Achieve safer cities through design of public environment by including lighting and CCTV cameras where possible	

Handwritten signature and initials

