



Ekurhuleni
METROPOLITAN MUNICIPALITY

SERVICE DELIVERY AGREEMENT

ENTERED INTO BETWEEN

**EKURHULENI METROPOLITAN MUNICIPALITY
(EMM)**

AND

**BRAKPAN BUS COMPANY (SOC) LTD
(BBC)**

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PART A – INTRODUCTION

1. PARTIES

Made and entered into by and between:

BRAKPAN BUS COMPANY (SOC) LTD

herein represented by _____

In his/her capacity as _____

duly authorised thereto by virtue of a resolution dated _____

(herein after referred to as "BBC")

AND

THE EKURHULENI METROPOLITAN MUNICIPALITY

herein represented by _____

in his capacity as _____

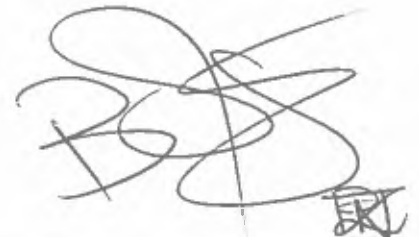
duly authorised thereto by virtue of a resolution dated _____

(herein after referred to as "EMM")

2. PREAMBLE

WHEREAS:

- A. The Ekurhuleni Metropolitan Municipality (EMM) is charged, in terms of the Constitution of the Republic of South Africa, and other applicable legislation 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 EMM has elected to deliver the public bus transportation services through Brakpan Bus Company (SOC) Ltd (BBC) which is a company wholly owned and controlled by the EMM;
- C. The Municipal Systems Act contemplates a Service Delivery Agreement which sets out the framework within which BBC is assigned the task of rendering public bus transportation services on behalf of the EMM, without detracting from the accountability of the EMM;
- D. The last signed Service Delivery Agreement between the parties has been reviewed by both the EMM and BBC and the agreed upon outcome of such review process is the revised agreement as recorded herein as contemplated in section 81(2) of the Municipal Systems Act.
- E. This agreement establishes the terms and conditions which regulate the relationship between EMM and BBC.
- F. 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 between the parties.
- G. Save to the extent specifically provided to the contrary in this SDA, BBC shall at all times act as an independent entity and neither the appointment of BBC 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 or principal



and agent, a joint venture or an agreement of partnership between the parties, nor shall it give rise to a labour broking agreement.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

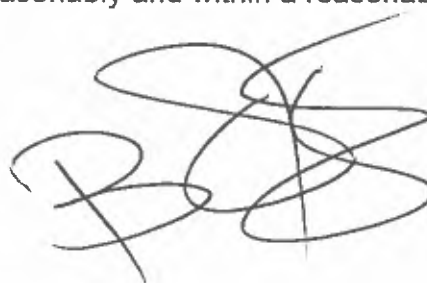
3. INTERPRETATION AND DEFINITIONS

In this agreement and in any annexures hereto:

- 3.1 Clause headings are for convenience only and are not to be used in the interpretation of this agreement;
- 3.2 Unless the context indicates a contrary intention, an expression which denotes any gender includes the other gender, a natural person includes a juristic person and vice versa; the singular includes the plural and vice versa;
- 3.3. Clause headings in this agreement are for the purpose of convenience and shall not be used in the interpretation to modify or amplify the terms of this agreement or any clause hereof;
- 3.4 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any part, 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 the agreement;
- 3.5 When any number of days is prescribed in this agreement, same shall be working days reckoned exclusively of the first day and inclusively of the last day unless if it falls on a Saturday, Sunday and/or any public holiday, in which case the last day shall be the next succeeding day which is a business day;



- 3.6 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 3.7 Expressions defined in this agreement shall bear the same meaning in annexures to this agreement that do not themselves contain their own definitions, save to the extent expressly provided to the contrary in writing;
- 3.8 The expiration or termination of this agreement shall not affect the provisions of this agreement which 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 therefore;
- 3.9 All 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 annexures;
- 3.10 A reference to a Party includes that Party's successors in title and permit the assigns;
- 3.11 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;
- 3.12 The rule of construction that the agreement shall be interpreted against the -party responsible for the drafting or preparation of the agreement shall not apply.
- 3.13 Where consent or approval of a party must be obtained or a party is required to consider or renew a term of this agreement, unless it is specifically provided otherwise, such party will accordingly, act reasonably and within a reasonable period to give effect thereto.

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- 3.14 All policies, bylaws, regulations, protocols of general application of the EMM, which have been officially adopted by it or which may be adopted by it in the future, and communicated by the EMM to BBC in writing, from time to time, shall, unless expressly excluded in this agreement or by the context governing the relationship between the EMM and BBC to the extent that they have a bearing on the provision of the services under this agreement, be deemed to have been incorporated herein by reference, and will be adhered to by the BBC.
- 3.15 The following expressions bear the meaning assigned to them below and cognate expressions bear corresponding meanings:
- 3.15.1 "Accounting Officer" shall have the meaning ascribed to in it Section 93 of the MFMA, meaning the Chief Executive Officer of the municipal entity, appointed in terms of section 93J of the Municipal Systems Act;
- 3.15.2 "Agreement" (or "SDA") means this Service Delivery Agreement including all annexures thereto;
- 3.15.3 "Assets" means all the assets, whether movable or immovable corporeal or incorporeal, of BBC used in connection with or in the provision of the services;
- 3.15.4 "Auditors" means the Auditor-General as defined in the MFMA;
- 3.15.5 "BBC" means Brakpan Bus Company (SOC) Ltd, a private company incorporated in terms of the Companies Act, with registration number: 2000/024331/07;
- 3.15.6 "Board" means the Board of Directors of BBC;

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- 3.15.7 "Budget" means a budget that is prepared submitted to the EMM by BBC and which is finalized 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;
- 3.15.8 "Business Day" means a day other than a Saturday, Sunday or public holiday in the Republic of South Africa;
- 3.15.9 "Business Plan" means the annual Business Plan of BBC as recommended, accepted and approved by the board and the EMM, and amended from time to time as well as; the 3 (three) yearly business plan of BBC that complies with the requirements as contained in the business plan requirements and guidelines;
- 3.15.10 "CCR" means Core Competency Requirements as identified in the Scorecard;
- 3.15.11 "CEO" means the Chief Executive Officer;
- 3.15.12 "Chairperson's Quarterly Meeting" means a meeting convened and attended by the chairperson of the Board of BBC, the relevant MMC, BBC Accounting Officer, representatives from the Group Governance and Line Department/s, which meetings are scheduled by the EMM on a quarterly basis;
- 3.15.13 "CM" means the City Manager;

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- 3.15.14 “Competent Authority” means any department in the national or provincial or local government sphere of government exercising statutory powers in terms of legislation;
- 3.15.15 “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 hand written, printed, visual, electronic, audible or other format or medium, and belonging to, created by, in the possession or under the control of the parties or their predecessors individually;
- 3.15.16 “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;
- 3.15.17 “Customer “ means a person who uses and/or benefits from the public bus transport services provided by BBC in terms of this SDA;
- 3.15.18 “Designated Oversight Structures” means the respective portfolio to which the BBC belongs in the municipal structure charged with municipal entity oversight under the EMM’s revised governance model, namely, the Department of Transport Planning and Provision, Group Governance, the relevant MMC and the Head of Department of the relevant portfolio;
- 3.15.19 “HOD” means the Head of Department of the Ekurhuleni Municipality Transport Department responsible for oversight of BBC.
- 3.15.20 “Effective Date” means date of appointment of BBC, irrespective of the date of signature -hereof;

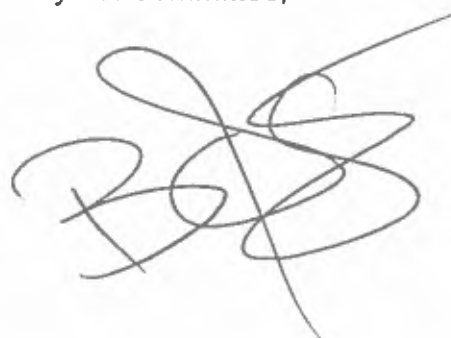
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- 3.15.21 "EMM" means when referred to as:
- 3.15.21.1 an entity; the Ekurhuleni Metropolitan Municipality by notice no. 6766 of 2000 published in the Gauteng Provincial Gazette No. 141 by the MEC responsible for Local Government in Gauteng in terms of section 12(1) of the Structures Act, or its successors-in-title, and includes duly authorized officials of the municipality who have been delegated the necessary powers, functions and duties necessary to give effect to this agreement and decide upon and administer the matters referred to herein; and
 - 3.15.21.2 a geographical entity the area within the municipal boundary of the Ekurhuleni Metropolitan Municipality as determined or re-determined from time to time by the Municipal Demarcation Board acting under the Demarcation Act;
- 3.15.22 "Employees" means all the employees employed by BBC from time to time throughout the period of this agreement;
- 3.15.23 "End User" means a natural or juristic person who uses or benefits directly from the provision of the services by BBC;
- 3.15.24 "Financial Year" means the financial- year of both the EMM and the BBC being a 12 (twelve) month period commencing on 1 July and ending the following 30 June;




- 3.15.25 "Force Majeure" means any circumstances which is beyond the reasonable control of the party giving notice of force majeure ("the affected party"), including, but not limited to, war (whether declared or not), revolution, invasion, insurrection, riot, civil commotion, mob violence, sabotage, blockade, embargo, boycott, the exercise of military or usurped power, fire, explosion, theft, storm, flood, drought, wind, lightning or unusually intense adverse weather condition (where the usual precautions to prevent damage could not prevent it), epidemic, quarantine, accident, breakdown of machinery or facilities, strikes, lockout or labour dispute, acts or restraints of government imposition, or restrictions of or embargos on imports, but specifically excluding any decision made by EMM;
- 3.15.26 "GOLB" means the Gauteng Operating Licensing Board;
- 3.15.27 "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 EMM employee performance management system;
- 3.15.28 "GRAP" means Standards of Generally Recognised Accounting Practice as determined by the Accounting Standards Board of South Africa from time to time;
- 3.15.29 "Information" shall be interpreted in its widest sense and shall include, without limiting its ordinary meaning, data, letters, telefaxes, e-mails, agreements, specifications and strategic plans;

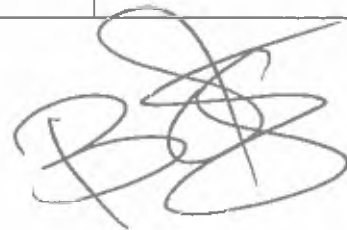
- 3.15.30 “KPA” means the Key Performance Area which is the explicit statement of a performance objective and outcome result that relate to a major functional, operational, technical, financial or behavioural area of the role and accountability of the individual or entity whose performance is being assessed;
- 3.15.31 “KPI” means the Key Performance Indicator which is the deliverables, standards or measures used to indicate whether or not a KPA has been met. These must be in the control of the individual or entity whose performance is being assessed, as well as be objective, observable and capable of being measured;
- 3.15.32 “Local Community” means that body of persons comprising, the residents of the EMM, the ratepayers of the EMM, any civic organizations and non-governmental, private sector or labour organizations or bodies which are involved in local affairs within the EMM; and visitors and other people residing outside the EMM and because of their presence in the EMM, make use of services or facilities provided by the EMM, and includes, more specifically disadvantaged sections of such body of persons;
3. 15.33 “Manage” means in relation to the public bus transport services; plan, operate, maintain, modify and repair-as determined and approved in the business plan and annual budget;
- 3.15.34 “Minister” means the Cabinet member responsible for provincial and local government;
- 3.15.35 “MMC” means a Member of the Mayoral Committee;

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- 3.15.36 "Municipal Manager" means the official appointed as such by the EMM in terms of section 82 of the Municipal Structures Act;
- 3.15.37 "Operational Dispute" means a dispute between the parties to a SDA, or between any such party and any other municipal entity of the EMM which arises out of the provisions of such SDA or anything done, provided or procured pursuant thereto;
- 3.15.38 "Party" and "Parties" means BBC and the EMM and their successors in title, as the context requires;
- 3.15.39 "Performance standards" means the standards to be achieved by BBC in providing the services under this agreement as more fully described in annexure "B" hereto and specified in the SDA's from time to time;
- 3.15.40 "PLC" means the Passenger Liaison Committee
- 3.15.41 "Prescribe" in the context of this agreement means prescribed by the EMM and/or any legal requirements prescribed by way of publication of a regulation in terms of the MFMA;
- 3.15.42 "R & CRM Department" means the EMM's Revenue and Customer Relations Management Department established by the EMM in respect of the municipal entity referred to herein;
- 3.15.43 "Service Delivery Budget Implementation Plan " means, in the context of performance management, the document within which all relevant KPIs and KPAs impacting on the performance assessment of the individual or entity concerned, are captured relative to a particular assessment period;

- 3.-15.44 "Services" means the public bus transportation services provided or to be provided by BBC, its responsibilities, functions and duties towards the EMM, as described in annexure "A" hereto;
- 3.15.45 "Tariffs" means the tariff as prescribed by the Gauteng Licensing Board from time to time;
- 3.15.46 "Transportation Permit" means the transportation Permit to provide bus transport services issued by the GOLB to the EMM and subsequently to BBC and, if appropriate, any subsequent Transport Permit issued by the Gauteng Operating Licensing Board;
- 3.15.47 "User Forum" means the user forum established by the board of directors of BBC, made up of representatives of the participants and stakeholders involved in the Public Transport Services Industry;
- 3.16 There are various acts, regulations and policies, rules, codes and standards which regulate and are applicable to the relationship and duties by and between the parties as set out hereunder and are collectively referred to as "legal requirements"; "relevant legislation" or "regulatory provisions".

Legislation, regulation, policy	Title, year of promulgation	Abbreviation
Acts of Parliament (Legislation)	• Companies Act 71 of 2008	Companies Act
	• Intergovernmental Relations Framework	IRFA




	<p>Act 13 of 2005</p> <ul style="list-style-type: none"> • Municipal Demarcation Act 29 of 1998 • Municipal Finance Management Act 56 of 2003 • Municipal Structures Act 117 of 1998 • Municipal Systems Act 32 of 2000 • Municipal Systems Amendment Act 43 of 2003 • Promotion of Administrative Justice Act 2 of 2000 • The Constitution of the Republic of South Africa Act 108 of 1996 	<p>Demarcation Act</p> <p>MFMA</p> <p>Municipal Structures Act</p> <p>Municipal Systems Act</p> <p>Municipal Systems Amendment Act</p> <p>PAJA</p> <p>the Constitution</p>
White papers	<ul style="list-style-type: none"> • The White Paper on Local Government of 19 March 1998 	

Regulations	<ul style="list-style-type: none"> • Municipal Asset Transfer Regulations, Regulation 878 (published on 22 August 2008 in Government Gazette 31346) • Municipal Budget and Reporting Regulations published under notice 393 of Government Gazette 32141 dated 17 April 2009. • Municipal Performance Regulations for Municipal Managers and Managers Directly Accountable to Municipal Managers, 2006 Regulation 85 published on 1 August 2006 Government Gazette 29089 • Municipal Planning and Performance Management Regulations, 2001 	
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3.17 If any obligation or act is required to be performed on a particular day it shall be performed by 16h00 (local time at the place where the obligation or act is required to be performed) on that day.

4. **COMMENCEMENT AND DURATION OF AGREEMENT**




- 4.1 This agreement operates in retrospect as from date upon which provision of services commenced by the BBC and will endure and continue until such appointment to provide the services are terminated.
- 4.2 The parties reserve themselves the right to negotiate and agree upon further and/or different and/or additional services to be provided, which will affect and cause the scope of services to be amended, either voluntary or as may be required by legislative change, the parties will comply with all legal requirements.
- 4.3 The agreement shall, subject to the provisions contained herein, endure until BBC is disestablished, liquidated or converted into an alternative legal entity in terms of the Municipal Systems Amendment Act.
- 4.4 This agreement shall commence on the Effective Date and shall be reviewed every 5 (five) years in line with the period of the IDP in terms of the provisions set out in this agreement or until terminated by the EMM pursuant to Section 93B(c) or Section 78 of the Municipal Systems Act.
- 4.5 This SDA shall cover the period of the IDP and shall be reviewed in line with the new IDP for the period 2016 to 2021.
- 4.6 Annexure "B" to this SDA shall be reviewed and agreed to annually by both the Board of BBC and the EMM as it forms the basis of the performance review of BBC.

5. AREA OF OPERATION

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- 5.1 BBC shall provide the services within the municipal boundaries of the EMM and over which BBC has been granted a permit to operate public bus transport services;
- 5.2 If the municipal boundaries of the EMM are extended under the Demarcation Act or any other law, and the EMM elects to expand the service area, the procedure shall be as follows:
 - 5.2.1 BBC shall forthwith, following the publication of a redetermination of EMM's 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;
 - 5.2.2 Should BBC be required by the EMM to provide the Services in the extended area, BBC shall engage with the EMM to amend the Budget of BBC in a way which will accommodate the additional services to be provided by BBC 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 BBC's budget within 30 (thirty) days of commencement of negotiations, such dispute shall be referred for dispute resolution as an Operations Dispute.
- 5.3 If the municipal boundaries of the EMM are reduced under the Demarcation Act or any other law, following publication of a redetermination of the EMM's municipal boundaries in the Gauteng Provincial Gazette under the Demarcation Act or any other law:
 - 5.3.1 the service area shall be reduced to coincide with the new boundaries of the EMM; and



5.3.2 BBC shall negotiate with the EMM to amend BBC's budget in accordance with the process contemplated herein.

6. SCOPE OF APPOINTMENT AND STANDARDS OF PERFORMANCE

6.1 The rights, duties and obligations of the parties in terms of this agreement are limited to the provision of public bus transportation services, is described and contemplated in terms of the Municipal Systems Act, more in particular section 86 (E) thereof.

6.2 In rendering the public bus transportation services on behalf of EMM, BBC shall, at times comply strictly and in all respects with its duties and obligations as set out in this SDA and shall, at all times -

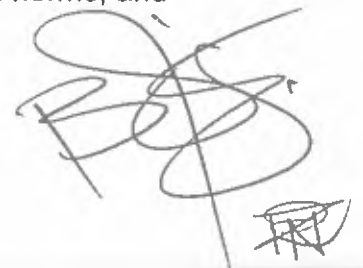
6.2.1 comply strictly and in all respects with conditions of the Transportation Permit or any other Permit under which it operates, whether in substitution of or in conjunction with the Transportation permit;

6.2.2 act in accordance and comply with all applicable legislation and regulations issued there under;

6.2.3 not do anything to prejudice EMM's compliance with its constitutional and statutory obligations with regard to the rendering of services and the management and operation of BBC as a municipal entity;

6.2.4 not do anything which is inconsistent with lawful requirements of the GOLB;

6.2.5 comply with all applicable industry standards and norms; and



- 6.2.6 ensure delivery of the public bus transportation services in the best interest of the community for the duration of this agreement, BBC shall be entitled, subject to prior written consent of EMM having been obtained, and on such conditions as EMM may impose, to render services similar to or in the nature of the services to any person other than EMM, in any other area than the service area, and in any event only to the extent that it would be entitled to do so in terms of the Transportation Permit;
- 6.3 It is recorded that provision of the bus transport services pursuant to this SDA constitute the core business of BBC. BBC shall be entitled, subject to the prior written consent of EMM having been obtained, which consent shall not unreasonably be withheld, undertake any business other than the core business as aforesaid.
- 6.4 In the event of BBC undertaking any business other than provision of bus transport services pursuant to this SDA and subject to the consent of EMM having been obtained as contemplated above BBC shall ensure that-
- 6.4.1 the undertaking of such business does not prejudice BBC's ability to comply with each and every obligation which it may now or in the future have under this SDA;
- 6.4.2 it does not utilize any of the revenues received by it pursuant to this SDA in undertaking such business.
- 6.5 The employees of BBC which are key or instrumental to the rendering of the bus transport services or the proper compliance by BBC with its obligations under this SDA may be utilized in relation to such business; provided that use of such employees shall not prejudice BBC's ability to comply with each and every



obligation which it may now or in the future have under this SDA and such business is to be kept separate and distinct from BBC's core business, as described, in which shall include BBC keeping separate books of account in respect thereof.

- 6.6 As an external functionary of the EMM, the BBC is restricted in its activities to the purpose it has been mandated by the EMM in terms of the scope of services described in this agreement, and in accordance with the Municipal Systems Act. BBC acknowledges that it has no competence to perform any activity which falls outside the functions and powers of the EMM, contemplated in terms of the relevant legislation. To that extent and for purposes of restrictions on activities and non-competence of performance, the EMM will, as the parent of municipal entities, keep BBC informed as to the essence and perimeters of its performance and do all that is reasonably necessary and required to be done to keep it informed of its functions and in particular the required performance, functions and powers of the EMM.
- 6.7 At all times and without restriction, the BBC will have access to the EMM and its departments to enquire and access information with regards any activity and/or competency for purposes of being and remaining compliant in terms of this agreement and the relevant legislation.
- 6.8 A specific function of the BBC will be that of a manager, which includes complete and total management of its affairs as set out in annexure "A" hereto.
- 6.9 The specified details of the BBC's services are contained in the BBC's annual Business Plan attached hereto as part of annexure "B".

7. REMUNERATION



The EMM does not pay nor is it intended that the EMM will pay the BBC for the performance of its functions and duties, described in the scope of functions, save as may be agreed as the exception or to the contrary. Any costs to be recouped by BBC shall be as expressly agreed upon with EMM.

8. SHAREHOLDING AND MEMBERSHIP

- 8.1 The EMM is the sole shareholder of the BBC.
- 8.2 The EMM may, at its sole discretion, cause the municipal entities to issue additional shares or sell of its shares to another organ of the state, or to such other juristic person or entity allowed in terms of the relevant legislation, without the consent or approval of the municipal entities, save as may be restricted in law.
- 8.3 The EMM in exercising its statutory, contractual and other rights and powers it has as the shareholder of this municipal entity shall ensure that it complies with the relevant legislation, in particular the Systems Act and the MFMA and will further ensure that the BBC is managed responsibly and transparently and meets its statutory, contractual and other obligations.
- 8.4 The EMM will further cause and ensure that the board of directors and the head of department fulfil their respective responsibilities and establish and maintain clear channels of communication between itself and the municipal entity. It being recorded that the formal channel of communication is between the Chairperson of the Board of Directors of the BBC and the Executive Mayor of the EMM, which main line of communication may be extended and/or agreed to differently as the EMM may require for practical and/or administrative reasons. The channels of



communication is contained in the EMM Corporate Governance document.

PART B – SPECIFIC COMPLIANCE, POWERS AND FUNCTIONS OF EXECUTIVES

9. GOVERNANCE

- 9.1 BBC shall give effect to the requirements for due governance as prescribed in the MFMA and all other relevant legislation.
- 9.2 BBC is subject to EMM's overall strategic and policy direction.

10. DIRECTORS, BOARD MEETINGS AND EMM REPRESENTATION

- 10.1 The responsibility of directing and managing of the BBC will vest in the board of directors, as is contemplated in law and more specifically as set out in the Municipal Systems Act and the Companies Act. The board may exercise relative autonomy in the execution of their fiduciary duties and operational responsibilities subject to compliance with law and the principles of South African Corporate Governance.
- 10.2 The board of directors will be appointed by the EMM subject to the restrictions pertaining to the appointment of certain persons, described in the relevant legislation. The EMM reserves itself the right to claim the resignation of a member of the board of directors, particularly where such member has failed in his/her duties or has become disqualified.
- 10.3 The board of directors must have the requisite range of expertise to effectively manage and guide the activities of the municipal entity. In this regard the EMM will elect that expertise to serve on the board of directors,



which will consists of at least one third non-executive directors and have a non-executive chairman of the board.

- 10.4 The EMM must, before nominating or appointing a director, establish a process by which applications for nominations or appointments are widely solicited, a list of all applicants and any prescribed particulars concerning applicants is compiled and the municipal council of the EMM will make the appointment(s) or nomination(s) from such list.
- 10.5 The council of the EMM will delegate a councillor or an official of the EMM, or both as the representative(s) of the EMM to:
- 10.5.1 represent the EMM as non-participating observer at board meetings; and
- 10.5.2 attend shareholder meetings and to exercise the EMM's rights and responsibilities as shareholder, together with such other councillors or officials that the EMM may designate as representatives at the shareholders' meeting.
- 10.6 The executive mayor of the EMM may at any time call or convene any meeting of shareholders or a general meeting comprising of the board of directors of the BBC and the representatives or the representatives of the EMM, aforesated, in order for the board of directors to give account for actions taken by it.
- 10.7 It will be the function and duty of the EMM representatives, aforesated, to inform the council of the EMM fully as to the matters of the BBC, inter alia how voting rights are exercised on the board of directors and all relevant actions taken on behalf of the EMM by the representatives and the council of the EMM may determine the appropriate reporting responsibilities of the

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municipal representatives, as is contemplated in terms of the Municipal Systems Act.

10.8 Persons disqualified to serve as directors on the board of directors of the BBC are as described in terms of Part 6 of the Municipal Systems Act as well as the Companies Act and the EMM may remove or recall directors appointed or nominated by the EMM:

10.8.1 if the performance of the director is unsatisfactory;

10.8.2 if the director, whilst holding office is convicted of fraud or theft or any offence involving fraudulent conduct or has failed to comply with or breached any legislation regulating the conduct of directors, including any applicable code of conduct which applies to the EMM and the BBC.

10.9 The meetings of the board of directors of the BBC must be open to the municipal representatives and the representatives have non-participating observer status in such board meetings, aforesaid.

10.10 The board shall at all times preserve it's fiduciary duties in terms of the relevant legislative requirements and in particular but not limiting it to the Companies Act and sections 93 and 94 of the MFMA.

10.11 Generally accepted governance principles, as emanating from the King III Report on Corporate Governance in relation to the composition of boards of directors and the appointment of chairpersons of boards of directors shall be employed.

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10.12 The board and each individual director is required to have a working understanding of the effect of all applicable legislation applicable to BBC and it's business to enable them to discharge their legal duties.

11. CHIEF EXECUTIVE OFFICERS FUNCTIONS AND DUTIES

11.1 The board of directors shall appoint the CEO of the BBC.

11.2 The duties and functions of the CEO of the BBC are contained in annexure "C" hereto.

11.3 Other officials of the BBC:

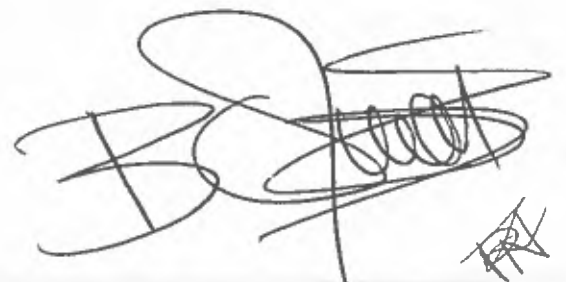
11.3.1 Each official of the BBC exercising a financial management responsibility must take all reasonable steps within that official's area of responsibility to ensure:

11.3.1.1 that the system of financial management and internal control established for the BBC is carried out diligently;

11.3.1.2 that the financial and other resources of the BBC are utilized effectively, efficiently, economically and transparently;

11.3.1.3 that any irregular expenditure, fruitless and wasteful expenditure and other losses are prevented;

11.3.1.4 that all revenue due to the entity is collected;

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- 11.3.1.5 that the provisions of the MFMA to the extent applicable to that official, including any delegations are complied with; and
- 11.3.1.6 that the assets and liabilities of the BBC are managed effectively, and that the assets are safeguarded and maintained to the extent necessary, and an official of the BBC must perform its functions subject to the directives of the CEO.
- 11.3.2 The CEO may delegate to any official of the BBC any powers or duties assigned or delegated to the CEO in terms of the MFMA or any powers or duties reasonably necessary to assist the CEO in complying with a duty, which requires the CEO to take reasonable or appropriate steps to ensure the achievement of the aims of a specific provision and must regularly review delegations issued and, if necessary, amend or withdraw any of those delegations.
- 11.3.3 A delegation, described above, must be in writing and subject to any limitations and conditions the CEO may impose, either to a specific individual or to holder of a specific position and does not divest the CEO of the responsibility concerning the exercise of that delegated power or the performance of the delegated duty.
- 11.3.4 The CEO may confirm, vary or revoke any decision taken by an official in consequence of a delegated power and authority, but no such variation or revocation of a decision

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may detract from any rights that may have accrued as a result of the decision.

- 11.3.5 The CEO, senior managers, chief financial officer and all financial officials of the BBC shall meet the prescribed financial management competency levels.

12. BORROWING POWER

12.1 The BBC may borrow money, but only in accordance with:

- 12.1.1 the BBC's multi-year business plan, as contemplated in section 87(5)(d) of the MFMA and the provisions of Chapter 56 of the MFMA to the extent that those provisions can be applied to a municipal entity.

12.2 In complying with Chapter 6 of the MFMA, a reference in that chapter to a municipality, a municipal council or an accounting officer, must be read as having reference to the BBC, the board of directors of the BBC or the accounting officer of the BBC, respectively.

13. AUTHORISATION TO APPROVE EXPENDITURE AND ACQUIRE ASSETS

Any expenditure or acquisition shall only be valid as far as it is in line with the BBC's approved budget and within the perimeters allowed by the MFMA and in compliance with the BBC supply chain policy. The BBC supply chain policy shall be compliant with the MFMA and supply chain regulations

14. FINANCIAL INABILITY



If the BBC experiences serious persistent financial problems and the board of directors fails to act efficiently, the EMM shall either:

- 14.1 take appropriate steps in terms of its rights and powers over the BBC, including its rights and powers in terms of any relevant function to be performed or other agreement;
- 14.2 impose a financial recovery plan which must meet the same criteria which is set out in section 142 of the MFMA for a municipal financial recovery plan; or
- 14.3 liquidate and disestablish the BBC.

PART C – DUTIES AND OBLIGATIONS OF BBC

15. PRINCIPAL OBJECTIVE OF SDA AND LINK TO BUDGETING PROCESS

- 15.1 The SDA is entered into between the parties with the objective of providing a framework within which detailed service delivery plans can be developed and implemented by BBC in a manner which is consistent with and which will play a part in giving effect to the EMM's strategic planning processes.
- 15.2 The municipal budgeting process is the mechanism by which BBC translates into practice the strategic objectives of the EMM 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 the current objectives set for the EMM) and the cluster scorecard, but also in a manner which is consistent with the availability and prudent and sustainable use of available resources.

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

16. FINANCIAL DUTIES AND OBLIGATIONS

- 16.1 BBC shall report to the EMM on financial and non-financial matters in terms of the MFMA and the Municipal Budget Regulations, Schedule A thereof sections 12 to 14.
- 16.2 The BBC shall follow the prescribed reporting lines in doing so.
- 16.3 The EMM shall exercise oversight in respect of all financial and non-financial performance over the KPA's and KPI's.
- 16.4 BBC shall have the duties and obligations to report regarding it's financial matters in terms of all relevant legal requirements and as summarised in annexure "D" hereto.

17. COMPLIANCE WITH GOLB REQUIREMENTS

It is recorded that the GOLB acts as the sole industry regulator in respect of public bus transportation services. Accordingly, BBC must render public bus transportation services in compliance with the requirements of the GOLB.



18. REPORT PERFORMANCE MEASURES TO CUSTOMERS

- 18.1 BBC shall on an annual basis and within 1 (one) month of submission of its Financial Statement and Annual Report to EMM, prepare a report to customers on an agreed set of Key Performance Indicators. These measures shall capture the key aspects of service delivery as perceived by customers.
- 18.2 BBC shall to an extent possible, procure an audit on its performance achievements in respect of its Key Performance Indicators by an independent auditor or assessor, to test for their reasonableness and accuracy before publication. The independent audit or assessment shall be undertaken by an entity satisfactory to both parties and the costs thereof shall be for the account of BBC. BCC shall ensure that the terms of reference of the independent auditor or assessor prescribes joint reporting to the parties and a clear duty of care to EMM.
- 18.3 The set of Key Performance Indicators to be reported on shall prior to such reporting be agreed between the parties, it being agreed that it shall be the right of EMM to approve the Customer Report before publication thereof. The audited Key Performance Indicators shall be made available to EMM for review on submission of the Audited Financial Statement and Annual Report and shall be made available to customers within 2 (two) months of approval by EMM. The precise method of publication to customers shall be agreed with EMM.
- 18.4 BBC shall be obliged to ensure that the quality of the reported information shall be such information as is perceived to be important to all stakeholders and the method of presentation must be appropriate to reach and serve all customers of BBC, without having any bias in favour of a set

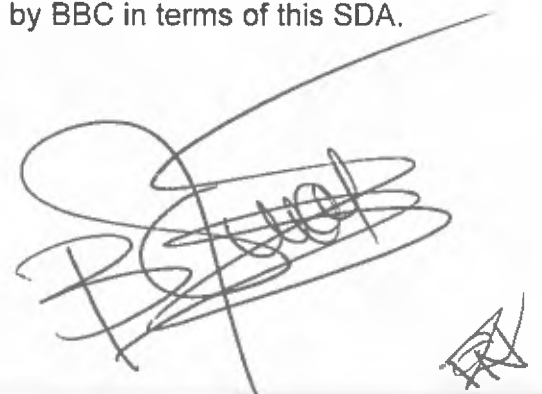
of customers above others. BBC shall keep the reporting of the results clear and simple making them easily understandable by all customers.

19. COMPLIANCE IN RESPECT OF CUSTOMER MANAGEMENT

- 19.1 It shall be the duty of BBC to develop its own Customer Management System and ensure its effective implementation.
- 19.2 BBC hereby records that EMM shall be entitled to develop a Customer Management System (Call Centre) for all its Municipal Entities with a view to ensure that the needs and complaints of EMM's Customers are attended to in a centralized and coordinated manner.
- 19.3 BBC shall be obliged to participate in such Customer Management System, without derogating from the rights of BBC to directly interface with its customers; BBC shall ensure that the customer management systems developed in terms hereof is technologically compatible with the centralized customer management system to be developed by EMM.
- 19.4 The parties shall within 3 (three) months of EMM having developed its Customer Management System and envisaged herein enter into a service level agreement which shall set out the respective rights, roles and responsibilities of the parties in respect of the Call Centre, and any performance measures to be agreed to between the parties.

20. ESTABLISH A USER FORUM

- 20.1 BBC shall establish a User Forum consisting of users or stakeholders having an interest in the Services provided by BBC in terms of this SDA.

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20.2 The User Forum shall have a constitution and shall meet at such times as its constitution shall determine, for purposes of making submissions to BBC regarding the improvement of the services.

20.3 BBC shall at its Board Meetings consider any reasonable submission by the User Form dealing with substantiated complaints regarding the levels of service, the role of the community, the enhancement of facilities or containing any suggestions for the improvement of the services.

21. DEVELOP A CUSTOMER CHARTER

21.1 BBC shall prepare a Customer Charter, which shall incorporate a Customer Relations and Customer Management System, reasonably acceptable to EMM, in respect of its customers, setting out the rights and responsibilities of customers in relation to BBC and the services provided by BBC and generally describing the relationship between BBC and its customers.

21.2 Once the Customer Charter has been approved by EMM, BBC shall in its dealings with its customers generally act in accordance with the provisions of the Customer Charter.

21.3 BBC shall only be permitted to charge customers at such tariffs as approved by GOLB and determined from time to time.

22. HUMAN RESOURCE POLICIES

22.1 BBC shall ensure that for the duration of this SDA that its human resource policies and employee monitoring and incentive schemes are contained in a Human Resource Policy and approved by the Board and maintained by

BBC. The Human Resource Policy shall comply with the MFMA, the Municipal Systems Act and the relevant collective agreements.

22.2 Notwithstanding the provisions above, BBC shall ensure that human resource policies and employee monitoring schemes and incentives schemes are aligned to the policies of the EMM in all material respects.

22.3 BBC shall complete a market salary survey every 2 years which must be approved by the Board and act as a guideline for all staff except the CFO and CEO.

23. STAFF COMPETENCY

23.1 BBC shall employ competent staff who will enable it to discharge its rights and obligations under this agreement.

23.2 BBC shall at all times be and remain the employer of employees appointed- by it, remain in control of such employees taking into account all relevant legislation.

23.3 BBC shall permit the Head of Personnel of EMM or any other authorised person to inspect such register and / or such files from time to time.

23.4 EMM may in accordance with applicable Labour legislation, transfer or second any of it's staff members to the BBC, with the concurrence of the staff member concerned.

24. SUPPLY CHAIN MANAGEMENT POLICY

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

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

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

24.1.2 A policy on development and management of small, micro and medium enterprises;

24.1.3 A policy on supplier management; and

24.1.4 Shall include clearly defined annuals targets as set out by the EMM from time to time to be achieved by BBC, and reported upon monthly as part of the quarterly report as prescribed.

24.2 BBC may participate in an e-procurement system developed by the EMM from time to time and may negotiate in good faith a service delivery agreement with the EMM in terms of which the EMM shall provide BBC with centralized procurement services, if required.

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25. COMPATIBILITY OF INFORMATION TECHNOLOGY SYSTEMS

BBC undertakes to ensure that in developing its Information Technology System, it shall ensure that its Information Technology System is reasonably compatible with the information technology system of EMM. To this end BBC shall consult with EMM's IT department to determine specifications and standards, it being understood that BBC shall not be required to install IT Systems which do not support its business processes.

26. RETENTION OF INFORMATION, REPORTING AND INFORMATION MANAGEMENT

- 26.1 BBC shall record and maintain a complete record of its business information, agreements as well as risk registers by the use of appropriate technology.
- 26.2 BBC shall provide reviewed risk amendment plans on an annual basis to the Governance Office by 30 June.
- 26.3 BBC shall provide quarterly reports to EMM reporting on license conditions and Operational information.
- 26.4 BBC shall record and maintain a complete record of its contractual duties and obligations by the use of appropriate technology. Records shall be kept to be submitted to EMM on request.
- 26.5 BBC shall report to the shared audit committee established by the parent Municipality in terms of Section 166(6)(b) of the MFMA.



26.6 There shall be shared cooperation between management of the entity and EMM in relation to audit, risk and assurance services.

27. PERMITS, LICENSES, PERMISSIONS AND APPROVALS

27.1 BBC shall to the best of its ability (unless specifically otherwise provided in this agreement) comply with all regulatory provisions applicable to its duties and obligations in terms of this agreement, including but not limited to applying for the necessary approvals, consents, licenses, or permits, where required. Should BBC encounter any problem herein, EMM undertakes to assist BBC with the said applications.

27.2 BBC guarantees that on the effective date all permits, licenses, exemptions, permissions and approvals that may have been required in terms of regulatory provisions in respect of the provision of waste water services had been obtained in the required manner.

27.3 BBC shall install loggers at the head of works and also at the discharge points, critical flow and quality control sections of the works and which information shall be conveyed through radio, GCM or any other alternative mode of transition that does not impair the quality and accuracy of the data.

PART -D – DUTIES AND OBLIGATIONS OF EMM

28. RECORDAL

BBC hereby records that in order for EMM to interact meaningfully with the municipal entities and at the same time take cognizance of their respective characteristics, it has sanctioned the municipal representatives and the risk management department within its administration, which shall constitute EMM's

capacity to interact with its municipal entities, with functions and powers as set out in the SDA as follows:

29. ROLE OF EMM

29.1 In addition to its role as contracting party to this SDA, the role of EMM in terms of this SDA shall also be that of performance and compliance monitor, to ensure that BBC delivers the services in accordance with its obligations in terms of this SDA to the satisfaction of EMM, as EMM remains constitutionally obliged to ensure effective and efficient delivery of Municipal Services.

29.2 EMM shall be entitled to delegate any of its functions and powers as set out in this SDA and more specifically in this clause, to its shareholder representatives or the risk management department, for purposes of exercising any of its functions.

30. APPROVAL OF ANNUAL BUSINESS PLAN AND REVIEW

30.1 Approval of Annual Business Plan

30.1.1 BBC shall within the timeframes submit its board approved Business Plan for approval by EMM.

30.1.2 The EMM Department of Transport shall within the prescribed timeframes facilitate the approval of the Business Plan by EMM, where after the adopted Business Plan shall be implemented by BBC in accordance with the provisions of this SDA.

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30.1.3 By approving the Business Plan which includes the projected subsidy required to support the said Business Plan, EMM commits to the transfer of the subsidies as proposed in the Business Plan to BBC.

30.2 Review:

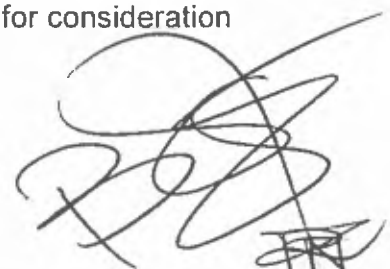
30.2.1 BBC shall before 30 September of a current financial year, submit a reviewed business plan for the ensuing financial year to EMM for approval and shall make written proposals to EMM in respect of such reviewed business plan and motivate it.

30.2.2 EMM shall within 2 (two) months after the submission of the reviewed business plan provide BBC with a written Preliminary Amendment report, which report shall indicate initial amendments, areas for consideration or improvements, in respect of the revised business plan, submitted for approval.

30.2.3 EMM shall, within 2 (two) months, provide BBC with a written Final Approval Report, if no Preliminary Amendment Report was given.

30.2.4 Where EMM gave a Preliminary Amendment Report, BBC must resubmit the business plan for approval within 1 (one) month after such a report was given.

30.2.5 EMM must subsequent to re-submission, within 1 (one) month after such re-submission, provide BBC with a written Approval Report or written Amendment Report, which Report shall indicate amendments, areas for consideration



or improvements, in respect of the business plan as re-submitted.

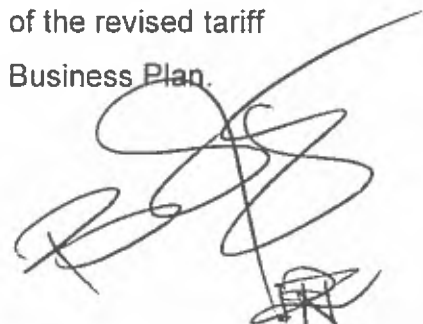
30.2.6 Where EMM then again provides an Amendment Report the dispute resolution mechanisms provided for herein, shall apply.

31. TARIFF DETERMINATION AND REVIEW

- 31.1 BBC shall only be entitled to submit such tariff proposals to the GOLB or duly appointed authority or agency of NDOT as have been approved by the Passenger Liaison Committee (PLC) which tariff proposal shall comply with EMM tariff policy determined from time to time.
- 31.2 Should BBC wish to table any tariff proposal to GOLB or duly appointed authority or agency of NDOT or apply for the approval of any new tariffs, it shall at least 3 (three) months prior to the intended submission of the proposed tariffs (or amendments thereto) to GOLB, submit such proposed recommendations to the PLC.
- 31.3 EMM shall before approving the proposed tariff:
- 31.3.1 consult with BBC which consultation shall take into account all relevant issues impacting BBC especially but without limitation;
 - 31.3.2 operating costs, capital expenditure and the costs of repayment of loans;
 - 31.3.3 BBC financial Key Performance Indicators;



- 31.3.4 Reasonable allowances for improved efficiency, unit costs and key indicators compared to costs and indicators in similar utilities within the South African region, and internationally;
 - 31.3.5 Findings and recommendations (if any) by the independent technical and financial auditors; and
 - 31.3.6 BBC credit rating.
- 31.4 EMM shall in approving the proposed tariffs have regard to the following objectives:
- 31.4.1 The continuing development of BBC as an effective and efficient bus transport Service Company,
 - 31.4.2 That BBC be placed in a position in which it can generate sufficient income to meet its obligations, to finance its operations, and to develop and extend its services in accordance with the Service Delivery Agreement;
 - 31.4.3 The tariff must support the output and targets set for BBC and the financial requirements to achieve the set output and targets.
- 31.5 In the event that the Business Plan be approved prior to EMM setting tariff for the next financial year and such tariff be materially different from the tariff projected in the approved Business Plan, BBC shall be entitled to amend the business plan to accommodate the impact of the revised tariff and EMM shall be obliged to reconsider the amended Business Plan.



32. POWER TO MONITOR PERFORMANCE

- 32.1 EMM shall fulfil its legal obligations of continually monitoring and regulating the performance of BBC under this agreement.
- 32.2 In performing its monitoring functions EMM or its appointed agents shall be entitled to conduct interviews with customers, user satisfaction surveys, performance audits or use such other assessment methods as its may deem fit. Provided that such surveys and performance audits shall be conducted on a statistically sound basis, the results thereof shall be binding on the parties.
- 32.3 BBC shall, to the extent reasonably practicable, at all times maintain a full and accurate set of records of the services provided under this agreement. Notwithstanding the provisions of applicable law (such as the National Archives Act) BBC shall only destroy such records to the extent agreed upon with the relevant GG, GSPCR and GAS.
- 32.4 BBC shall render such reasonable assistance as may be necessary to allow the GG, GSPCR and GAS to exercise their powers in terms hereof.
- 32.5 Duty to provide access to information:
- 32.5.1 In order to exercise their monitoring and oversight roles in terms of this agreement, the EMM and their duly authorized representatives shall have a right of access to all information belonging to BBC.

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32.6 EMM shall in terms of section 81(1)(b) of the Municipal Systems Act and Performance Management Framework subject to the provisions of the agreement and applicable regulatory provisions:

32.6.1 Monitor the compliance of BBC with their approved budget;

32.6.2 Monitor the financial records of BBC;

32.6.3 Monitor the operating procedures on a regular basis;

32.6.4 Monitor the implementation of the business plan;

32.6.5 Monitor the execution of the budget.

32.7. In the event that BBC does not comply or only partially comply with any provision of this agreement, EMM may proceed in accordance with the breach provisions or termination provisions in terms of this agreement, as is appropriate.

33. SETTLING AND REVIEW OF KEY PERFORMANCE INDICATORS

33.1 The Key Performance Indicators shall be subject to review on an annual basis by the parties and such revised Key Performance Indicators shall amongst others form the basis for developing the annual Business Plan in line with the EMM's applicable policies.

33.2 EMM shall by no later than 1st July each year, and after consultation with BBC, determine and advise BBC in writing of the proposed Key Performance Indicators which EMM wishes BBC to achieve in the



following year, and which EMM will use to measure the performance of BBC for the forthcoming year.

33.3 EMM shall in determining the Key Performance Indicators, have regard amongst others to:

33.3.1 the cost of collecting and reporting performance data;

33.3.2 the priorities of customers as established through market surveys or customer consultation forum;

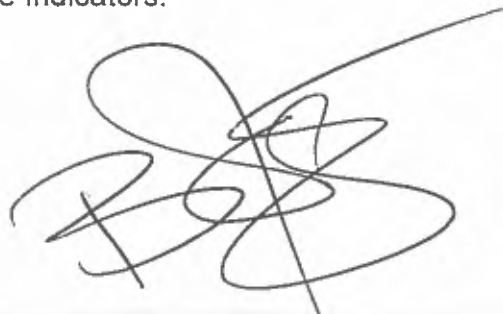
33.3.3 the relevance of the Key Performance Indicators to customers or potential customers of BBC; and

33.3.4 such other information as EMM shall determine as being in the best interest of the community and the customers of BBC.

33.4 BBC shall by 30 October in each year and as part of the Business Planning process revise its Key Performance Indicators taking into account EMM's proposed Key Performance Indicators to EMM for approval.

33.5 The Department of Transport shall, after considering the Key Performance Indicators submitted and the impact thereof on the Business Plan of BBC, make such recommendation to BBC as it deems fit.

33.6 Once agreement has been reached on the Key Performance Indicators, BBC shall prepare its Business Plan for the following year in accordance with the approved Key Performance Indicators.

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34. RIGHT OF ACCESS TO INFORMATION

34.1 EMM shall be entitled to all such information as it may reasonably require in the performance of its functions, from any employee, contractor, sub-contractor, director or employee of BBC, and BBC shall procure that all such persons shall co-operate fully with EMM.

35. CESSION OF CONSIDERATION FOR SERVICES RENDERED

In consideration for the bus transport services rendered in terms of this SDA, the EMM, for the duration of this SDA, hereby cedes its right to recover and collect charges in respect of the bus transport services to BBC.

36. PRINCIPLES OF CO-OPERATION AND INTER-GOVERNMENTAL RELATIONSHIP

36.1 The EMM, as the parent municipality and the BBC as a municipal entity, must ensure and do all that is reasonable and necessary to be done to preserve a good relationship on an effective, transparent, accountable and coherent manner by executing the functions and duties imposed upon the BBC, as is described in this agreement and by law inter alia:

36.1.1 Fostering good relationships between the political sphere of the EMM, the administrative and official level and the staff and board of directors of the BBC and EMM;

36.1.2 Sharing information and attempting to coordinate their actions with one another;

36.1.3 Adhere to agreed procedures; and

36.1.4 The relationship between the EMM and BBC will be that of absolute good faith, which by request of either party will be addressed by the executive mayor or the chairman of the board of directors, if so required by any one of them with regards to any dispute which may arise, in an attempt to resolve such dispute.

37. DETERMINATION OF REMUNERATION OF BOARD MEMBERS AND DIRECTORS

37.1 EMM shall take the skills set required of the Board members into consideration during any review process.

37.2 The determination of remuneration of Board members and directors shall be done in a consultation process between BBC and EMM, providing for a survey of market related remuneration to be done during the process. The board shall determine the remuneration of directors in accordance with the EMM's approved remuneration policy.

PART E – PERFORMANCE

38. PERFORMANCE OBJECTIVES, COMPLIANCE AND REVIEW

Performance objectives, compliance and review shall be a critical element in the relationship between the parties and shall be monitored and reviewed in terms of the relevant legal requirements as more fully describes in annexure "E" hereto.

PART F – MUTUAL CO-OPERATION

39. INTER- GOVERNMENTAL CO-OPERATION



- 39.1 By virtue of the Intergovernmental Relations Framework Act No. 13 of 2005 the parties shall give their mutual co-operation to give effect to the terms hereof.
- 39.2 The coordinating committee shall comprise of officials delegated, from time to time, by the Head of Department of Transport responsible for the services and the Chief Executive Officer of BBC respectively.
- 39.3 The functions of the coordinating committee shall be to, from the effective date-
- 39.3.1 Coordinate, facilitate and mediate the implementation and execution of this agreement;
- 39.3.2 Collate and disseminate information;
- 39.4 The representatives of the coordinating committee undertake to make themselves available to each other and facilitate the communication between parties. They will agree terms of reference between themselves at their first meeting, which shall be called by BBC within 30 (thirty) days of the effective date.
- 39.5 BBC shall be responsible for convening the meetings of the coordinating committee and to provide the secretariat and administrative support for such meetings.
- 39.6 Attendance at the meetings of the coordinating committee is compulsory and EMM and BBC shall ensure that their respective representatives are duly nominated, mandated and designated to attend meetings.

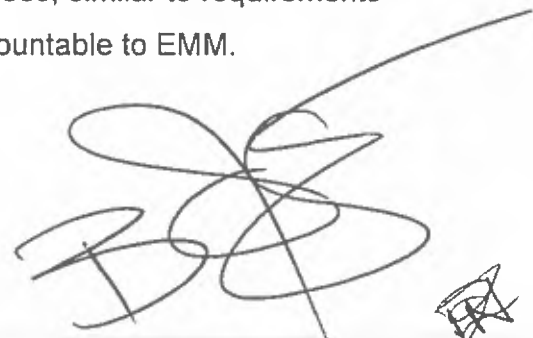


40. SAFETY, HEALTH AND ENVIRONMENTAL POLICY

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

41. COMPANIES ACT

In terms of the Companies Act a municipal entity is a "State Owned Entity" (SOE) and required to comply with the Legislative framework which ensures accountability, transparency and consultative processes, similar to requirements that apply to a municipality in own right. BBC is accountable to EMM.



The parties hereto shall at all times adhere to the provisions of the Companies Act. Where there is contradiction between the Companies Act and MFMA, the MFMA prevails.

42. WARRANTIES

42.1 The EMM warrants in favour of BBC that:

- 42.1.1 This Agreement has been duly authorised and executed by the EMM;
- 42.1.2 The execution of this Agreement does not violate any judgment or order of any court or competent authority or applicable in relation to the EMM or the existing assets of the EMM or the assets;
- 42.1.3 It has the exclusive authority to request the provision of the services in its municipal boundaries and is fully authorised and entitled to enter into this agreement with BBC to do so on its behalf on the basis set out herein;
- 42.1.4 It has the legal capacity and authority to appoint BBC as a service provider in terms of the Municipal Systems Act on the basis set out in this agreement.

42.2 BBC warrants in favour of the EMM that:

- 42.2.1 No steps will have been taken and BBC is not aware of any steps pending or about to be instituted against BBC for its de-registration in terms of the Companies Act,



42.2.2 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 BBC or the Assets of BBC; and

42.2.3 BBC is able, entitled and authorised, as may be necessary, validly and effectively to enter into this agreement and to provide the services as contemplated herein in accordance with the provisions of this agreement.

42.3 No warranties or representations which are not set forth in this agreement shall be binding on either party.

43. INDEMNITIES

43.1 BBC shall:

43.1.1 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 assets;

43.1.2 comply with all 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 damage to any person or property occurring after the Effective Date but prior to the termination of this agreement;

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- 43.1.3 report all serious accidents involving it to the EMM's office of the Executive Director: Group Risk & Assurance Department within 24 (twenty four) hours of becoming aware of their occurrence;
- 43.1.4 Subject to the other provisions of this agreement, be obliged or comply and assist with any request for documentation in support of any insurable claim instituted against the EMM arising from or attributed to BBC 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 EMM or any of its agents employees, subcontractors, consultants, or representatives or other third -parties for whom the EMM is liable in law or under this agreement;
- 43.1.5 as from the Effective Date, be responsible to the EMM, the local community and third parties for all risks and obligations pertaining to or arising out of the provisions 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 BBC.
- 43.1.6 BBC 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 EMM in respect of any acts or omissions of BBC, or any other subcontractor or any person for whom BBC may be liable in law in respect of the supply



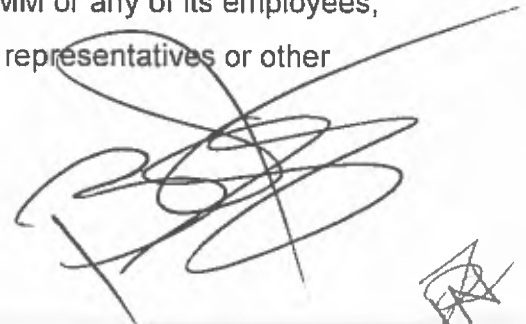
or failure to provide the -services, that may arise after the Effective Date.

43.1.7 The EMM shall forthwith notify BBC 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.

43.1.8 In particular, but without limitation, BBC hereby holds the EMM 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 BBC 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 BBC or as a result of or arising from any industrial action or related conduct embarked upon by any employee.

43.2 The EMM shall:

43.2.1 Hold BBC harmless against all losses, claims, demands, proceedings, damages, costs, charges and expense, 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 EMM or any of its employees, sub-contractors, consultants, agents or representatives or other



third parties for whom the EMM is liable in law or under this agreement, whether prior to or after the Effective Date.

43.2.2 The EMM will be obliged to intervene and shall assume responsibility in respect of any such claim arising; and hold BBC harmless against all losses, claims, demands, proceedings, damages, costs, charges and expenses, including reasonable legal expenses, of whatsoever nature arising from or attributable to the EMM 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 EMM or any of its agents, employees, sub-contractors, consultants, or representatives or other third parties for whom the EMM is liable in law or under this agreement and the EMM will be obliged to intervene in any such claim arising in respect of any condition existing prior to the Effective Date which contributes towards a claim, demand, proceeding or damages against BBC, hold BBC harmless against such claims, demands, proceedings or damages such assurance shall not apply in the event of BBC, despite reasonable opportunity to do so, having failed to rectify such condition.

43.3 Each of the -parties assure 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 herein.

43.4 No breach by a party of any warranty referred to herein and no claim against a party under any assurance entitle a claimant to make a claim in



respect of both such breach of warranty and such assurance where such breach occurred of the same cause of action.

PART G – DISPUTES, BREACH AND TERMINATION

44. DISPUTE RESOLUTION

Any dispute or between the parties shall be dealt with as follows:

- 44.1 Disputes of a financial nature shall be dealt with in terms of section 44 of the Municipal Finance Management Act;
- 44.2 Non-financial disputes shall be dealt with in terms if Chapter 4 of the Intergovernmental Relations Framework Act No. 13 of 2005; and
- 44.3 Disputes concerning performance of functions or the exercise of powers shall be referred to the MEC for Local Government, taking cognisance of the procedure prescribed in section 86 of the Municipal Structures Act.
- 44.4 Neither party will be restrained or restricted from bringing an application for urgent relief or claim an interdict against the other party in the appropriate court of law in the appropriate circumstances.

45. FAILURE TO REACH AGREEMENT



Where it is specified in this agreement that certain matters are to be agreed between the parties, failure to reach agreement in respect of such matter will not affect the validity and enforceability of the whole or any part of this agreement.

46. COMPLIANCE WITH IRFA GUIDELINES AND NEGOTIATIONS PROCEDURE

- 46.1 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 of performing their functions in terms of this agreement, and where such disputes do arise, by giving effect to the constitutional requirement that organs of the 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.
- 46.2 Should a deadlock or dispute of whatever nature arise in connection with this agreement or any rights or obligations of the parties there under, the party claiming the dispute must inform the other party in writing within 21 (twenty one) 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 EMM’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 upon 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.

- 46.3 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.

47. NEGOTIATION

The parties shall first attempt to resolve the dispute through negotiation. The Chief Executive Officer of BBC and the City Manager of EMM shall deal with any dispute between the parties. The said representatives shall endeavour to settle the matter amicably through a process of negotiation. Failing the settlement of the dispute between the parties by negotiation within a period of 7 (seven) working days, any of the parties may submit the dispute to mediation.

48. MEDIATION

- 48.1 Mediation shall be non-binding on the parties and shall be conducted by a facilitator appointed for this purpose in accordance with the EMM's Operational Dispute Resolution Protocol, as determined by the EMM from time to time.
- 48.2 The parties shall act in good faith and shall respond to all reasonable directions and requests of the facilitator in an attempt to resolve the matter in dispute.



48.3 Any such negotiated agreement shall be binding on the parties unless either party disputes the opinion of the mediator in writing to the other party within 5 (five) working days after having been furnished with the opinion, in which event the dispute shall remain unresolved.

48.4 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.

49. OPERATIONAL DISPUTE RESOLUTION

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

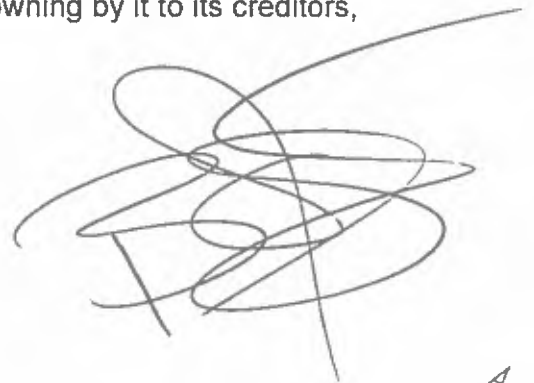
49.2 Where both parties to the Operational Dispute accept the adjudicator's recommendation, upon such written acceptance the adjudicator's recommendation shall become final and binding upon them.

50. BREACH

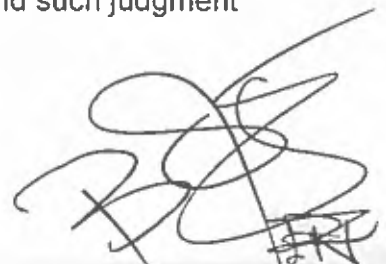
Should either party breach any material provision of this agreement and remain in breach for 14 (fourteen) days after written notice to that party, requiring that party to rectify that breach, the aggrieved party shall be entitled (without derogating from any of its other rights or remedies under this agreement or at law), at its option:

50.1 to claim immediate specific performance of any of the defaulting party's obligations under this agreement whether or not such obligation is then due; or

- 50.2 to cancel this agreement, in which case written notice of the cancellation shall be given to the defaulting party and the cancellation shall take effect on the giving of the notice, provided that no party shall be entitled to cancel this agreement unless the breach is a material breach of a material term, and the remedy of specific performance or damages would not adequately prevent the aggrieved party from being prejudiced;
- 50.3 and in either event, the aggrieved party shall be entitled to claim any damages it has suffered including costs on the attorney and own client scale.
- 50.4 An event of default by BBC shall occur if:
- 50.4.1 BBC 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 EMM of written notice requiring BBC to remedy such breach; or
 - 50.4.2 BBC 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;
 - 50.4.3 BBC is unable to or ceases for any reason whatsoever to provide the services in the ordinary and regular manner; or
 - 50.4.4 BBC compromises or attempts to compromise or defer payment of any indebtedness owing by it to its creditors, generally; or

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- 50.4.5 Any assets of BBC are attached under writ of execution and BBC 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
- 50.4.6 BBC 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 assets structure, except in the normal course of its business; or
- 50.4.7 BBC 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
- 50.4.8 BBC 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
- 50.4.9 Any order of court (whether provisional or final), unless pursuant to a reorganisation reconstruction or amalgamation approved in writing by the EMM, is granted for the winding up of BBC (whether voluntarily or compulsorily); or
- 50.4.10 Any judgment of any court or arbitration award against BBC remains unsatisfied for a period of 30 (thirty) business days after BBC has become aware, or should reasonably have become aware, that it has been granted and such judgment

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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, BBC fails to immediately make payment thereof; or

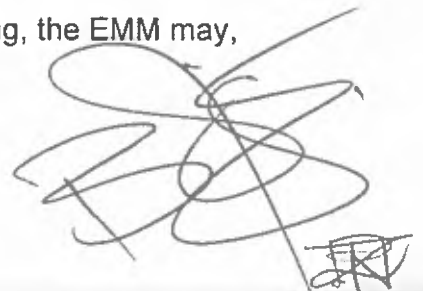
- 50.4.11 A judicial manager, receiver or similar officer is appointed in respect of BBC or in respect of all or any material part of its assets; or
- 50.4.12 Any regulatory authority which has jurisdiction over BBC and the services provided by it, withdraws or cancels any license or authorisation in terms of which BBC is entitled to render the services, save to the extent that the withdrawal or cancellation is not caused by the negligence or failure of BBC to comply with any conditions set out therein; or
- 50.4.13 GOLB revokes, withdraws or cancels the public bus transportation services permit or any other permit in terms of which BBC is entitled to render the public bus transportation services;
- 50.4.14 Following an annual performance review, the performance of BBC has, measured against the performance objectives and measurement standards contemplated herein been unsatisfactory whether or not the EMM elects to liquidate and disestablish BBC pursuant to Section 93B(c)(i) of the Systems Act; and
- 50.4.15 The Board of BBC has failed to act effectively in relation to serious or persistent financial problems experienced by BBC, whether or not the EMM elects to impose a financial



recovery plan, liquidate and disestablish BBC as contemplated in Section 93B(c)(ii) of the Systems Act and section 109 of the MFMA.

- 50.4.16 Should either party breach any material provision of this agreement and remain in breach for 30 (thirty) days after written notice to that party requiring the party to rectify that breach, the aggrieved party shall be entitled (without derogating from any of its other rights or remedies under this agreement or at law), at its option:
- 50.4.17 To claim immediate specific performance of any of the defaulting party's obligations under this agreement , whether or not such obligation is then due, or
- 50.4.18 To cancel this agreement, in which case written notice of the cancellation shall be given to the defaulting party and the cancellation shall take effect on the giving of the notice, provided that no party shall be entitled to cancel this agreement unless the breach is a material breach of a material term, and the remedy of specific performance or damages would not adequately prevent the aggrieved party from being prejudiced.
- 50.4.19 The aggrieved party shall be entitled to claim any damages it has suffered including costs on the attorney and own client scale.

- 50.5 Upon the occurrence of an event of default by BBC as contemplated above, or at any time thereafter whilst it is continuing, the EMM may,



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

- 50.5.1 claim specific performance (without cancelling this agreement and without prejudice to its right to claim damages); or
- 50.5.2 cancel this agreement (without prejudice to its right to claim damages); or
- 50.5.3 without cancelling this agreement, exercise the management substitution rights referred to herein without prejudice to the right of the EMM 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 EMM), of remedying the event of default originally giving rise to the EMM exercising its rights pursuant to this agreement.
- 50.5.4 EMM itself may arrange for the continued provision of the public bus transportation services to the community, and be enabled to exercise its rights in terms hereof.
- 50.5.5 BBC hereby undertakes to grant EMM and its representatives or appointed management unfettered access to all its systems, property, assets and the like and shall further grant EMM such assistance and sign such documentation as EMM may require to enable it to exercise such rights.

50.6 An event of default by the EMM shall occur if:

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- 50.6.1 the EMM 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 BBC of written notice requiring it to remedy such breach; and/or
- 50.6.2 the EMM fails to pay any amount due by it in terms of this agreement on the due date for payment thereof and the EMM persists in such failure to pay for a period of 14 (fourteen) business days after delivery by BBC to the EMM of written notice requiring it to pay such amounts.

50.7 Upon the occurrence of an event of default by the EMM or at any time thereafter whilst it is continuing and provided that if the breach is capable of being remedied and EMM has been given 14 (fourteen) business days written notice to remedy such breach, BBC may, without prejudice to any other rights it may have in terms of this agreement or at law, by written notice to the EMM, claim specific performance or claim damages. In no event shall BBC have the right to cancel this agreement as a result of events of default set out herein .

51. TERMINATION PROCESS

- 51.1 The termination of this agreement is initiated by notice of cancellation given by the EMM in circumstances where it is entitled to give such notice in terms of this agreement. Notwithstanding the giving of notice of cancellation, this agreement shall only terminate following implementation of the transitional provisions as to be agreed upon.
- 51.2 EMM shall ensure continuity of the provision of the services if the BBC is placed under judicial management, becomes insolvent, is liquidated or for any reason unable to perform or continue performing its functions in terms

hereof and shall, where applicable take over the performance of functions, including all assets, when the SDA expires or is terminated.

52. SUBSTITUTION OF MANAGEMENT

52.1 It is recorded that:

52.1.1 The provision of the services by BBC represents the long-term policy of the EMM and a reversal of this policy may interrupt the provision of the services;

52.2.2 Under the extreme circumstances that would justify termination of this agreement, the EMM may consider requiring the substitution of all or a portion of the management of BBC as an appropriate alternative to termination of this agreement if at any time, and objectively considered, it is apparent that BBC is unable to continue to provide the services under this SDA due to the actions or omissions of the management (or portion/s thereof) of BBC whom the EMM wished 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 EMM is able to show that a crisis or emergency situation exists or is imminent, the EMM shall give BBC at least 60 (sixty) days' notice in writing before invoking the provisions of this clause.

52.2 The parties have accordingly agreed that the EMM shall have the right to require the Board of BBC to substitute the management of BBC in order to preserve this agreement in accordance with the provisions of this clause.

52.3 Should any event of default as contemplated in herein occur, the EMM may, instead of exercising its rights to cancel this agreement, call upon



the Board of BBC to make one or more substitutions of management in terms hereof without having to give any notice.

- 52.4 The EMM shall exercise its right in terms hereof by delivering a substitution notice in writing to the chairperson of the Board of BBC, 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, or may be of limited duration, or permanent.
- 52.5 Should the Board of BBC intimate directly or indirectly that it is not prepared to or is unable to implement the management changes required by the EMM, the EMM may forthwith exercise any right that has accrued to it to cancel this agreement.
- 52.6 The right to require substitution of management in terms of this clause is a right that may be exercised by the EMM as a contracting party with BBC and BBC shall be responsible for (and indemnifies the EMM against) any employment law consequences that may ensue within the management structure of BBC if it transpires that, objectively considered, the intervention of the EMM in terms of this clause was justified in the circumstances. If it subsequently transpires that such intervention by the EMM was objectively not justified in terms of the provisions of this clause or in bad faith, the EMM shall not be entitled to the aforesaid indemnification and BBC shall be entitled to recover from the EMM any damages suffered by it arising out of such employment law consequences.
- 52.7 BBC shall ensure that all things required to implement the substitution notice are done and shall ensure that any member of management of BBC substituted in terms of the foregoing shall comply with the terms of the

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substitution notice referred to herein and will, if required to, assist in the process of substitution on the basis set out in the substitution notice.

52.8 Any person appointed in substitution of BBC's Accounting Officer in terms of this clause must be appointed by the Board of BBC but the EMM may by agreement with the Board of BBC, second any of its employees to undertake management roles within BBC pursuant to the substitution provisions of this clause, on a temporary basis until such time as the board of BBC is in a position to make a permanent substitute appointment.

52.9 In the absence of agreement to the contrary, any management substitution effected in terms of this clause on a permanent basis must have been confirmed by the Board or BBC within 12 (twelve) months of delivery of the relevant substitution notice referred herein, BBC shall within such period have entered into a formal agreement of employment with the relevant substituted employee/s, failing which the EMM may elect to proceed with cancellation of this agreement.

53. CONSEQUENCES OF NOTICE OF CANCELLATION

The parties acknowledge that it is the duty of the EMM to ensure as far as it is reasonably possible, uninterrupted delivery of the -services in the best interest of the local community. The parties have accordingly agreed as follows:

53.1 Once notice of cancellation has been given in terms of this agreement, 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;



53.2 The transitional process shall be agreed upon on date of termination and be finalized within a reasonable period.

53.3 Assignment of Authorizations

53.3.1 BBC shall subject to compliance with applicable legislation and the consent of the relevant licensing authority assign all Permits and authorizations held by it on the date of termination of this SDA to EMM.

53.3.2 If EMM wishes to arrange for the continued provision of the public bus transportation services whether in terms hereof and pending assignment of the Permits and authorities, BBC shall be deemed to have appointed EMM to render the public bus transportation services with effect from the date of termination on this SDA.

53.4 Effects on Assets

53.4.1 EMM shall be placed in possession of the assets with effect from the termination date of this SDA.

53.4.2 BBC shall attend to the formalities required to transfer the assets to EMM as soon as reasonably possible after the termination date.

53.4.3 Such assets as may be transferred to EMM by mere delivery, shall be deemed to have been delivered on the termination date.

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53.4.4 All assets taken over by the EMM from BBC shall be taken over by EMM in the condition such as they stand as at the termination date, voetstoots.

53.5 Issues not covered

In the event of any issues arising at the termination date which have not been covered by these transfer provisions such issues shall be determined by agreement between the parties. In the event of the parties being unable to agree, EMM's auditor shall act as a mediator between the parties and shall attempt to promote agreement between the parties. The provisions relating to mediation shall be as agreed between the parties or as determined by the mediator. In the event of such mediator failing to promote agreement between the parties, the dispute resolution provisions contained herein shall mutatis mutandis apply.

54. AUTOMATIC TERMINATION

The agreement will automatically terminate if BBC and EMM agree thereto in writing unless BBC is disestablished, liquidated or converted into a service utility in terms of section 31(4)(a) of the Municipal Systems Amendment Act as the case may be.

PART H – MISCELLANEOUS

55. GOOD FAITH

The parties shall in their dealing with each other display the utmost good faith and undertake to do all such things, perform all necessary acts and procure the

taking of all necessary steps and sign all such documents that may be necessary or incidental or conducive to give effect to the intention and terms and conditions of the agreement.

56. MUTUAL CO-OPERATION

The parties may consult from 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 EMM shall further timeously provide BBC with such information as it may reasonably require to enable it to comply with any of BBC's obligations in terms of this agreement.

57. PREVENTION OF CORRUPTION

The parties undertake to identify and take all reasonable steps to prevent the parties, their employees, their sub-contractors, their agents or anybody under its control from involvement in any corrupt activities as contemplated in the Prevention and Combating of Corrupt Activities Act No. 12 of 2004; or showing undue favour to any person in relation to an agreement.

58. CONFIDENTIALITY

58.1 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:

58.1.1 the provisions of this agreement;

58.1.2 the negotiations relating to this agreement;

58.1.3 the subject matter of this agreement; and/or

58.1.4 the other party.

58.2 A party may disclose information which would otherwise be confidential if and to the extent that it may be:

58.2.1 required by law;

58.2.2 required to vest the full benefit of this agreement in either party;

58.2.3 disclosed to the professional advisers, auditors and bankers of each party;

58.2.4 the information has come into the public domain through no fault of that party;

58.2.5 the other a 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.

59. COUNTERPARTS

This agreement, together with its annexures, may be executed in several counterparts, each of which shall together constitute one and the same document.

60. SEVERABILITY



This agreement and the provisions herein contained shall be indivisible, save that should it transpire that any part thereof is invalid or unenforceable, such invalid or unenforceable parts shall be severed so that remaining parts which are valid and enforceable shall remain valid and shall not also be tainted by such invalidity or unenforceability.

61. 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 EMM and BBC 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.

62. CESSION AND ASSIGNMENT

62.1 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.

62.2 BBC may subject to the EMM'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 BBC of any of its obligations to the EMM.

63. AGREEMENT BINDING ON SUCCESSORS IN TITLE

This agreement shall be binding on any successors in title of any of the parties hereto.

64. NON-VARIATION AND WAIVER

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64.1 No latitude or extension of time or other indulgence which may be given or allowed by either party to the other in respect of any payment or obligation or performance due in terms of this agreement, shall in any way or circumstance be an implied consent by any party or operate as a waiver or a novation or otherwise effect any of such party's rights in terms of or arising out of this agreement or stop such party from enforcing at any time and without notice strict and punctual compliance with each and every provision or term hereof.

64.2 If this agreement states that an annexure(s) is:

64.2.1 To be attached at a later date, then such attachment will be made within a reasonable period, considering the reason and/or circumstance for the attachment not having been made in the first place; and/or

64.2.2 Not attached, without it being stated that the attachment will be done at a later stage the non-attachment does not render this agreement ipso facto void or unenforceable for being incomplete or inadequate, unless the contrary is shown.

64.2.3 No amendment or consensual cancellation of this agreement or any provision or term hereof or any agreement or other document issued or executed pursuant to or in terms of this agreement and no settlement of any disputes arising under this agreement and no extension of time, waiver or relaxation or suspension of or agreement not to enforce or to suspend or postpone the enforcement of any of the provisions or terms of this agreement or of any agreement or



other document issued pursuant to or in terms of this agreement shall be binding unless recorded in a written document signed by the parties. Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.

65. APPLICABLE LAW

This agreement shall be governed by and construed and interpreted in accordance with the laws 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.

66. DOMICILIA AND NOTICES

66.1 All notices to be given in connection with the agreement shall be in writing and shall be delivered by hand or sent by prepaid registered post:

EMM at:

EMM City Manager:

EGSC Building

2nd Floor

Cnr Cross and Roses Streets

Germiston; 1400

Fax:

E-mail:

Marked for the attention of: The City Manager



BBC at:
Brakpan Bus Company
Transportation House
Corner Lemmer and Denne Road
Brakpan; 1540
Fax: (011) 292 – 7031
Marked for the attention of: _____

66.2 A notice shall be deemed to have been received:

66.2.1 14 (fourteen) days after posting, if posted by registered post to the party's address in terms hereof;

66.2.2 on delivery, if delivered by hand to a responsible person during normal business hours at the -party's physical address in terms – hereof;

66.2.3 on despatch, if sent to the party's then telefax number or e-mail address and such transmission is independently confirmed.

THUS DONE AND SIGNED AT _____ ON THIS THE _____ DAY OF _____ 20 _____

As witnesses:

1. _____

2. _____

HOD TRANSPORT

Who warrants that he is duly authorised for and on behalf of

**EKURHULENI METROPOLITAN
MUNICIPALITY**
(herein referred to as "EMM")

THUS DONE AND SIGNED AT _____ ON THIS THE _____
DAY OF _____ 20 ____

As witnesses:

1. _____

2. _____

MMC TRANSPORT

Who warrants that he is duly
authorised for and on behalf of
**EKURHULENI METROPOLITAN
MUNICIPALITY**
(herein referred to as "EMM")

THUS DONE AND SIGNED AT _____ ON THIS THE _____
DAY OF _____ 20 ____

As witnesses:

1. _____

2. _____

BBC MANAGING DIRECTOR

Who warrants that he is duly
authorised for and on behalf of



BRAKPAN BUS COMPANY (SOC)
LTD
(herein referred to as "BBC")

THUS DONE AND SIGNED AT BRAKPAN ON THIS THE 25th
DAY OF MAY 20 16

As witnesses:

1. 

2. 



CHAIRMAN OF THE BOARD
Who warrants that he is duly
authorised for and on behalf of
BRAKPAN BUS COMPANY (SOC)
LTD
(herein referred to as "BBC")

ANNEXURE A

COPE AND FUNCTIONS OF BBC

1. All services rendered by the BBC shall be in accordance with the following principles:
 - 1.1. Economically in terms of the allocated budget;
 - 1.2. Efficiently in terms of quality and time;
 - 1.3. Effectively in terms of functionality.

2. The BBC shall further:
 - 2.1. render an administrative function in terms of staff, systems and processes employed and owned by the BBC;
 - 2.2. all accounting and matters of a financial nature, which include collections, payment of debtors and managing of costs and expenditure;
 - 2.3. provide and enter into relevant agreements, including but not limited to sub-contractor agreements for fleet service and maintenance;
 - 2.4. compiling and causing the compliance with security and security measures to be taken;
 - 2.5. such ancillary and related actions, roles, functions and services which the BBC may or is in future required to perform on behalf of the EMM as provider of public bus transportation for and on behalf of the EMM;



ANNEXURE B

**PERFORMANCE STANDARDS, KPA's AND KPI's, ANNUAL BUSINESS PLAN
WITH SDBIP**

1. BBC shall comply with its SDBIP which details its Service Delivery and Budget Implementation Plan, against which its performance will be measured as to achievement of KPA's and KPI's.
2. The BBC's Annual Business Plan is attached hereto marked "BB" and contains the SDBIP in section 5 thereof.

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ANNEXURE C

DUTIES AND FUNCTIONS OF THE CEO OF THE BBC

The duties and functions of the CEO of the BBC:

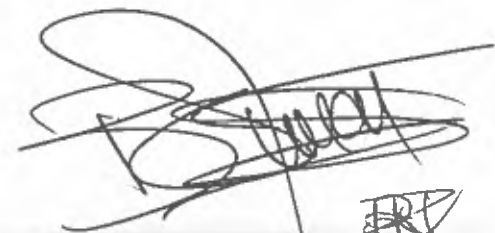
1. exercise the utmost care to ensure reasonable protection of the assets of EMM and BBC and records of the BBC;
2. act with fidelity, honestly, integrity and in the best interest of the BBC in managing the affairs of the BBC;
3. disclose to the EMM and the board of directors all material facts, including those reasonably discoverable, which in any way may influence the decisions or actions of the EMM or the board of directors; and
4. keep within the sphere of influence of the CEO, to prevent any prejudice to the financial interest of the EMM or BBC and the CEO may not
 - 4.1 act in a way that is inconsistent with the responsibilities assigned to the CEO in terms of the MFMA; or
 - 4.2 use the position of privilege of, or confidential information obtained as accounting officer, for personal gain or to improperly benefit another person.
5. The CEO is responsible for managing the financial administration of the BBC and must for this purpose take all responsible steps to ensure:

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- 5.1 that the resources of the BBC are used effectively, efficiently, economically and transparently,
- 5.2 that full and proper records of the financial affairs of the entity are kept;
- 5.3 that the entity has and maintains effective, efficient and transparent systems of:
 - 5.3.1 financial and risk management and internal control; and
 - 5.3.2 internal audit complying with and operating in accordance with any prescribed norms and standards;
 - 5.3.3 that irregular and fruitless and wasteful expenditure and losses are prevented;
 - 5.3.4 that the expenditure is in accordance with the operational policies of the BBC; and that disciplinary or, when appropriate, criminal procedures are instituted against any official of the entity who has allegedly committed an act of financial misconduct or an offence in terms of the MFMA or any other criminal offence.
- 5.4 The CEO is responsible for the management of:
 - 5.4.1 the assets of the EMM and BBC used in provision of the services, including the safeguarding and maintenance of those assets and the liabilities of the BBC and must, for the purpose , take all reasonable steps to ensure that the BBC maintains:

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- 5.4.1.1 a management accounting and information system that accounts for proper asset and liability management systems; and
- 5.4.1.2 a system of internal control of assets and liabilities, including an asset and liabilities register as may be prescribed by the EMM or in terms of any regulation proclaimed under the MFMA.
- 5.5 The BBC shall open and maintain at least one bank account in the name of the BBC and all monies received must be paid into that account or accounts, which must be done promptly and in accordance with any requirement prescribed by the EMM or published as a regulation in terms of the MFMA. In this regard:
- 5.5.1 monies may be withdrawn from the account(s) only in accordance with the requirements prescribed and the CEO must administer all the entities' bank account(s) and must enforce any requirements that may be applicable, as required by the EMM and in terms of general acceptable accountable practices or prescribed in terms of any regulation published in terms of the MFMA;
- 5.5.2 the BBC may not open any off-shore bank accounts or have a bank account or other depositing related or investment agreement otherwise than with an institution registered as a bank in terms of the Banks Act, 94 of 1990; or
- 5.5.3 otherwise than in the name of the BBC; nor
- 5.5.4 without the consent of the board of directors.



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- 5.6 The CEO must take all reasonable steps to ensure:
- 5.6.1 that the BBC has and implements effective revenue collection systems to give effect to its budget;
 - 5.6.2 that all revenue due to the BBC is collected;
 - 5.6.3 that all funds collected by the BBC on behalf of the EMM are:
 - 5.6.3.1 transferred to the EMM strictly and in accordance with this Service Delivery Agreement; and
 - 5.6.3.2 not used for the purposes of the BBC.

If applicable;

- 5.6.4 that the BBC has effective revenue collection systems, consistent with those of the EMM;
- 5.6.5 that the revenue due to the BBC is calculated on a monthly basis;
- 5.6.6 that accounts for service charges are prepared on a monthly basis, or less often as may be prescribed where monthly accounts are uneconomical;
- 5.6.7 that all money received is promptly deposited into the bank account (s) of the BBC;



- 5.6.8 that the BBC has and maintains a management accounting and information system which:
- 5.6.8.1 recognises revenue when it is earned;
 - 5.6.8.2 accounts for debtors;
 - 5.6.8.3 accounts for receipts of revenue;
- 5.6.9 that the BBC has and maintains a system of internal control in respect of debtors, as may be required by the board of directors, the EMM and/or in terms of any regulation published under the MFMA;
- 5.6.10 that all revenue received by the municipal entity, including revenue received by any collection agent on its behalf, is reconciled at least on a weekly basis.
- 5.7 The CEO must immediately inform the EMM of any payments due by an organ of state to the BBC in respect of service charges, if such payments are regularly in arrears for periods of more than 30 (thirty) days.
- 5.8 For the purpose of appointing a collection agent, the board of directors must verify and approve such appointment with the concurrence of the EMM, subject to the approval of the EMM.
- 5.9 The CEO must further take all responsible steps to ensure that:
- 5.9.1 all revenue received by the BBC, including revenue received



by any collection agency on its behalf, is reconciled on a monthly or more regular basis as the EMM and/or the board of directors may require; and

5.9.2 all accounts of equity are reconciled each month.

5.10 The CEO is responsible for the management of expenditure of the BBC and must take all reasonable steps to ensure:

5.10.1 that the BBC has and maintains an effective system of expenditure control, including procedures for the approval, authorization or withdrawal and payment of funds;

5.10.2 that all money owing by the BBC is paid over within 30 (thirty) days of receipt of the relevant invoice or statement, unless prescribed otherwise for certain categories of expenditure;

5.10.3 that the BBC has and maintains a management, accounting and information system which:

5.10.3.1 recognises expenditure when it is incurred;

5.10.3.2 accounts for creditors of the BBC; and

5.10.3.3 accounts for payment made by the BBC;

5.10.4 that the BBC has and maintains a system of internal control in respect of creditors and payments;

5.10.5 that the payments of the BBC are made.



- 5.10.5.1 directly to person to whom it is due, unless agreed otherwise or only for reasons as may be prescribed; and
- 5.10.5.2 either electronically or way of non-transferable cheques, provided that cash payments and payments by way of cash cheques may be for exceptional reasons only and only up to a prescribed limit;
- 5.10.6 that the BBC complies with its tax, duty, pensions, medical aid and audit fees and other statutory commitments;
- 5.10.7 that the BBC's available working capital is managed effectively and economically in terms of any prescribed cash management and investment framework; and
- 5.10.8 that the BBC has and implements a supply chain management policy in accordance with section 111 of the MFMA , in a way that is fair, equitable, transparent and cost effective.
- 5.11 The CEO is responsible for implementing the BBC's budget, including taking effective and appropriate steps to ensure that:
 - 5.11.1 the spending of funds is in accordance with the budget;
 - 5.11.2 revenue and expenditure are properly monitored;



5.11.3 spending is reduced as necessary when revenue is anticipated to be less than projected in the budget.

5.12 Reportable matters of the BBC:

5.12.1 A report, in writing must be prepared by the CEO and presented to the board of directors at its next meeting and to the accounting officer of the EMM regarding any financial problems of the BBC, which includes any impending or actual:

5.12.1.1 under collection of revenue due;

5.12.1.2 shortfalls in budgeted revenue;

5.12.1.3 overspending of the BBC's budget;

5.12.1.4 delay in the BBC's payment to any creditor; or

5.12.1.5 overdraft in any bank account of the BBC for a period exceeding 21 (twenty one) days, as well as any steps taken to rectify the above-mentioned financial problems, which must be tabled in a report to the municipal council of the EMM at the EMM's next meeting.

5.12.2 On recovery of any irregular or any fruitless and wasteful expenditure, the board of directors must promptly report in writing to the Mayor and Municipal Manager of the EMM and the Auditor General:



- 5.12.2.1 particulars of the expenditure and any steps that have been taken to recover the expenditure and to prevent a recurrence of such expenditure. The board of directors must promptly report to the South Africa Police Services irregular expenditure that may constitute a criminal offense and any losses suffered which resulted from suspected criminal conduct.
- 5.12.3 It is the duty of the CEO to promptly report to the speaker of the EMM interference by a councillor outside of that councillor's assigned duties in the financial affairs of the BBC or the responsibilities of the board of directors.
- 5.12.4 The CEO is generally, except where otherwise provided in the MFMA responsible for the submission of all reports, returns, notices and other information to the EMM as, may be required in terms of the MFMA and submit to the accounting officer of the EMM, the National Treasury, the provincial treasury of the Department of Local Government in Gauteng and the Audit or General such information, return, documents, explanations and motivations as may be prescribed and/or required in terms of the MFMA and if the CEO is unable to comply with any of the responsibilities imposed upon him in terms of the MFMA, he must promptly report the inability, together with reasons therefore to the EMM.



ANNEXURE D**FINANCIAL ADMINISTRATION**

BBC shall have the following reporting duties and obligations regarding financial matters:

1. BBC shall establish effective mechanisms to ensure that funds and resources are;
 - 1.1 Properly safeguarded,
 - 1.2 Used economically, efficiently, appropriately and with due propriety,
 - 1.3 Used in accordance with the applicable statutory and other governing regulations
2. The board of BBC shall ensure effective financial control at all times.
3. **ANNUAL BUDGETING PROCESS AND BUSINESS PLAN**
 - 3.1 The Board of BBC shall ensure for each Financial Year of BBC, that a budget is prepared and submitted to the EMM and finalized in accordance with the requirements of Section 87 of the MFMA and the Municipal Budget and Reporting Regulations.
 - 3.2 BBC's budget shall include a multi-year Business Plan which shall, inter alia:



- 3.2.1 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.
 - 3.2.2 To achieve this purpose each Business Plan must define the outputs to be achieved by BBC in each year, the budget needed to achieve the outputs, and such other issues as the EMM shall request BBC 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.
 - 3.2.3 Set key financial and non-financial performance objectives and measurement criteria which shall have been agreed upon between BBC and the EMM.
- 3.3 The budget shall:
- 3.3.1 Be within any limits determined by the EMM, including any limits on tariffs, revenue, expenditure and borrowing;
 - 3.3.2 Be consistent with the EMM's budget and IDP;
 - 3.3.3 Be consistent with this SDA;
 - 3.3.4 Reflect actual and potential liabilities and commitments, including particulars of any proposed borrowing of money during the period to which the plan relates;
 - 3.3.5 Comply with the Municipal Budget and Reporting Guidelines; and



- 3.3.6 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 BBC.
- 3.4 Should the EMM and BBC fail to agree on any of the foregoing matters, either party may declare a dispute by giving notice thereof to the other party, whereupon the dispute resolution provisions shall immediately come into operation and, if the matter is not resolved within a 15 (fifteen) day period, matter shall be resolved as an Operational Dispute.
- 3.5 The Business Plan shall also:
- 3.5.1 As far as possible be in accordance with a pro forma submitted to BBC from time to time by the EMM at commencement of the annual budgeting process and shall in detail set out the outcomes to be achieved by BBC in the following year, commencing 1st July yearly. In addition, each Business Plan shall include indicative inputs and outputs and financial models for the subsequent 3 (three) years;
- 3.5.2 Be approved by the Board of BBC after it has been finally negotiated and settled as per the provisions of section 87 of MFMA; and
- 3.5.3 Be submitted to the EMM in terms of the provisions of the MFMA including any regulations framed thereunder or on or before a date determined by the EMM from time to time, provided that such date is not later than the date contemplated under the MFMA.



- 3.5.4 Any projected allocation to BBC by the EMM must be provided for in the annual budget of the EMM, and to the extent not so provided, BBC's Budget and where applicable, the Business Plan, must be adjusted in accordance with the provisions of section 87(6) of the MFMA.
- 3.5.5 BBC shall incur expenditure only in accordance with its approved budget, subject to any adjustments effected on the basis contemplated in the MFMA.

4. FINANCIAL RISK MANAGEMENT

- 4.1 The parties hereby record that EMM has a statutory obligation to ensure financial sustainability of the municipal entities responsible for the provision of municipal services such as BBC, and to this end, EMM has a statutory obligation to report on the financial viability and sustainability thereof to the relevant authorities.
- 4.2 The parties further record that to enable the EMM to exercise its statutory obligations, EMM has constituted a committee where physical and financial risk management decisions are taken, with the participation of all municipal entities.

5. INSURANCE OF ASSETS

- 5.1 BBC shall at all times ensure that the assets of EMM and BBC used in the provision of the services are comprehensively insured (cover for assets as well as public liability insurance) covering both EMM and BBC against any claims instituted by any third party.
- 5.2 EMM shall be entitled to request proof of insurance by BBC from time to time.

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6. FINANCIAL REPORTING REQUIREMENTS

6.1 BBC shall adhere to the requirements of the Municipal Budget and Reporting Regulations.

6.2 Quarterly Reports

6.2.1 Within 7 (seven) days of the end of each quarter, prepare and submit to Group Governance department of a quarterly performance report for BBC as at the end of each quarter, reflecting:

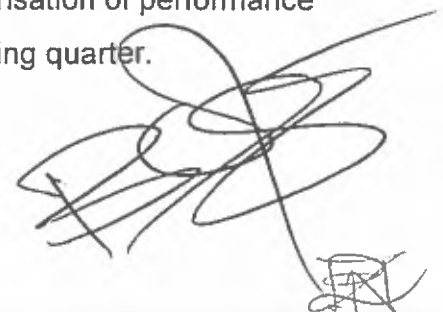
6.2.1.1 Its financial performances in performing the functions;

6.2.1.2 Its achievement of the performance objectives referred to herein, including any service levels which have been incorporated into any performance objective on the basis contemplated herein;

6.2.1.3 Any special circumstances and factors that should be taken into account in analyzing its performance; and

6.2.1.4 Any measures to be taken by BBC to improve its performance.

6.2.1.5 Development and prioritisation of performance targets set for the following quarter.



- 6.2.2 BBC's CFO shall provide the EMM with such additional information regarding its operations, related to the performance of the functions as the EMM may reasonably require.
- 6.2.3 BBC's CFO shall provide quarterly financial statements reflecting BBC's actual income and expenditure together with financial notes explaining any variances and the reason for variances and its achievement or otherwise of the agreed outputs, which report shall include such information as is necessary to enable the EMM to accurately assess the extent to which BBC has achieved the agreed outputs.

6.3 Annual Reports and Annual Financial Statements

- 6.3.1 BBC's CFO shall ensure the preparation and submission of the Annual Financial Statements within 2 (two) months of BBC's financial year end (in accordance with the provisions of Municipal Legislation, the Companies Act and GRAP) to the EMM and the Auditors which:
- 6.3.1.1 Fairly present the state of affairs of BBC 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;
- 6.3.1.2 Comply with all disclosure requirements of Municipal Legislation from time to time;

- 6.3.1.3 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.
- 6.3.1.4 The Accounting Officer for BBC 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 Committee in August of each year.

6.4 Audited Financial Statements:

- 6.4.1 BBC shall comply with all the stipulations and regulations as contained in the MFMA and the regulations thereto, pertaining to its Audited Financial Statements.

6.5 Bank Account:

- 6.5.1 BBC shall open, manage and control a bank account in its own name. BBC shall in terms of Chapter 3 of the MFMA be the owner of the account and have the exclusive authority to independently and exclusively operate, manage and have signing powers to the account.
- 6.5.2 BBC shall be entitled to operate and manage the bank account



in its discretion but in accordance with the MFMA and BBC's budget, the service delivery and budget implementation plan and business plan approved by EMM.

- 6.6 BBC shall be obliged to justify its budget for any ensuing financial year and in justifying such shall report on the previous year's budget and final expenditure and in particular explain any deviation from such budget.

7. OBLIGATIONS IN RESPECT OF ASSET MANAGEMENT

BBC shall under no circumstances be entitled to dispose of or encumber or grant any security rights in respect of any of the assets unless done in compliance with the MFMA and BBC's Procurement Policy. Where EMM is the owner of an asset the said assets will be listed in the Asset Register of EMM.

8. ASSET CONDITION SURVEY

BBC shall, upon request by EMM and subject to such conditions as the parties may agree upon carry out an asset condition survey and submit the outcomes thereof to EMM.

9. ASSET MANAGEMENT PLAN

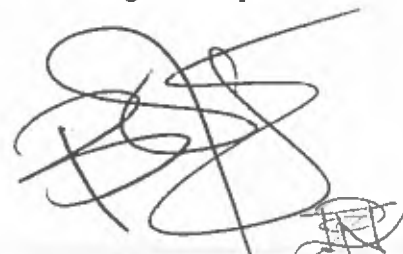
- 9.1 BBC shall every 5 (five) years, prepare an Asset Management Plan in the form to be determined by EMM in consultation with BBC, for submission to EMM, which plan shall be based on the results of the Asset Condition Survey carried out as set out above, and the Asset Management Plan shall form part of the annual business plan. The interval for the preparation of the Asset Management Plan may be adjusted from time to time by agreement between the parties.



- 9.2 EMM may require BBC to obtain an independent assessment of the reasonableness and accuracy of the information provided in the Asset Management Plan. The independent assessment shall be undertaken by an entity satisfactory to both parties.

10. MAINTAIN ASSETS IN GOOD CONDITION

- 10.1 BBC shall at all times and for the duration of this SDA be responsible for providing and maintaining all such vehicles and machinery (hereinafter referred to as "the Assets") as are necessary for the proper provision of the services and keep the Assets in good order, condition and repair and in proper and efficient working order, fair wear and tear expected.
- 10.2 All assets employed by BBC in the provision of the services at any time must either be owned or controlled by BBC pursuant to a agreement of hire, which agreement must contain a clause permitting BBC to assign the benefit of the agreement to EMM.
- 10.3 BBC shall at all times be responsible for the payment of all taxes required in connection with or arising out of the possession or use of all assets employed by it in the provision of the services.
- 10.4 All assets employed by BBC shall be of types suitable for the intended purpose and shall be fitted with all guards and safety devices as originally installed / required by the particular manufacturers.
- 10.5 EMM shall be entitled to serve upon BBC a notice in writing requiring BBC to put any item or assets into such condition as is required as stated above and upon receipt of such a notice, BBC shall cause all works to be carried out to comply with the notice in the event of BBC failing to carry



out such works, EMM shall be at liberty to have such works carried out by such persons as it may choose and BBC shall reimburse EMM such sum as EMM shall certify to have been the costs of executing such works.

- 10.6 BBC shall at all times be responsible for the payment of all taxes required in connection with or arising out of the possession or use of all assets employed by it in the performance of the services.

11. KEEP AND MAINTAIN AN ASSET REGISTER

- 11.1 BBC shall provide the EMM with a complete list of assets of BBC acquired and/or required in providing the services, which list must detail the assets with unique identifying descriptions and such other features as is applicable to each asset. The said list shall be regularly updated by BBC to keep EMM informed of the constituent items of BBC's assets and particularise which are BBC's assets and which are those of the EMM.
- 11.2 BBC shall at all reasonable times permit EMM access to all assets of BBC as well as those of the EMM under BBC's control.
- 11.3 BBC shall provide the EMM with a complete list of assets in the possession of BBC in undertaking the services, which list must detail the make, type, unique identifying marks and such other features as is applicable to the assets used in undertaking the services. The said list shall be regularly updated by BBC to keep EMM informed of the constituent items of BBC's Assets and particularise which are BBC's assets and which are those of the EMM.
- 11.4 BBC shall at all reasonable times permit EMM access to all assets employed BBC.

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- 11.5 BBC shall under no circumstances be entitled to dispose of or encumber or grant any security rights to any portion of the bus transport services unless done in compliance with the MFMA and BBC's Procurement Policy. EMM shall remain, where it is the owner of certain assets, the owner thereof at all times and the said assets will be listed in the Asset Register of EMM.
- 11.6 The Operating Lease Agreement and Maintenance Agreement for Bus Fleet, as updated from time to time shall regulate the parties' relationship in those regards.

12. SOCIO – ECONOMIC DEVELOPMENT PLAN

- 12.1 BBC shall in each Business Plan submitted for approval, prepare and submit to the EMM for approval, a socio-economic development plan which shall:

- 12.1.1 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);
- 12.1.2 include proposals regarding appropriate Service Levels for the poor and disadvantaged sections of the Local Community unable to afford the Services; and
- 12.1.3 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.

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ANNEXURE E:**1. PERFORMANCE OBJECTIVES, COMPLIANCE AND REVIEW**

- 1.1 Taking into account the EMM's key service delivery imperatives and the resources available for achieving those objectives, BBC's Business Plan shall set out the key annual financial and non-financial performance objectives of BBC.
- 1.2 Pursuant to determination of the key annual performance objectives for the year to which the relevant Business Plan relates, BBC shall, by agreement with the EMM also establish the relevant KPAs and KPIs for BBC in respect of such period, for inclusion in BBC's Business Plan.
- 1.3 KPIs shall be designed to indicate to the parties. the measure of success achieved by BBC in the provision of the services.
- 1.4 The performance objectives agreed to from time to time between BBC and the EMM represent a critical measure of performance, and as a substantive obligation pursuant to this SDA, BBC undertakes at all times to provide 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.
- 1.5 In this regard BBC shall at all times exercise proper skill, care and diligence and comply with all directives, time schedules and budgets as agreed with the EMM pursuant to the Business Plan.
- 1.6 BBC shall report on its performance:



- 1.6.1 Annually, as part of annual reporting process, against the agreed KPAs and KPIs;
- 1.6.2 6 (Six) months after commencement of the financial year; and
- 1.6.3 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 BBC in terms hereof.

2. PERFORMANCE MANAGEMENT

- 2.1 The Board is ultimately responsible for the performance management of BBC and all employees of BBC (including the Accounting Officer) in the context of BBC's performance scorecard, and shall develop and implement such internal performance management tools and protocols as are deemed to be in the best interest of BBC in discharging its obligations under this agreement.
- 2.2 External to BBC, the EMM Performance Management Framework regulates performance planning and implementation co-ordination between BBC and the EMM by means of the applicable cluster scorecard.
- 2.3 BBC 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.



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BRAKPAN BUS COMPANY (SOC)Ltd

ENTITIES SDBIP 2015-16

Draft for Mayoral Committee

BRAKPAN BUS COMPANY (SoC) Ltd

Sign Off

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SECTION 1: INTRODUCTION AND OVERVIEW

1.1 OVERVIEW

In or during 2000, the then Brakpan Town Council took a decision to establish Brakpan Bus Company (Pty) Ltd in order to comply with the requirements of the now repealed National Land Transport Transition Act 22 of 2000 and to place itself, from a transport perspective, in a strategic position to tender for future Government bus contracts. This decision would enable the newly formed entity to participate in the new passenger transport dispensation which was brought about by the Act. The Act was promulgated in December 2000 and it allowed for municipalities and parastatal operators to either tender or apply for negotiated contracts once they restructure their services into stand-alone ring fenced businesses and their business was conducted separately from any other business.

It is on this strength that, Brakpan Town Council established Brakpan Bus Company. This led to the transfer of permanent Brakpan Town Council's employees who were in the transport department to other departments, sections and units within the Town Council itself. Other employees were subsequently employed by the newly formed Brakpan Bus Company on a month to month contractual basis. However, during August 2007 a settlement agreement was entered into in terms of which all employees that were in the employment of Brakpan Bus Company prior to the 1st July 2007 were regarded as permanent employees with effect from the 1st July 2007.

Although Brakpan Bus Company (BBC) is registered as a company under the Companies Act, it is a municipality owned entity (SoC), 100% owned by Ekurhuleni Metropolitan Municipality under the Department of Transport Planning and Provision. The Entities strategic objective in conjunction with that of the Department is aimed at subscribing to EMM's Growth and Development Strategy for 2055 which has a focus on Urban Reform, Economic Development, Environmental wellbeing and Social Cohesion.

SECTION 2: CORE BUSINESS AND KEY OUTCOMES

2.1 STRATEGIC ANALYSIS

2.1.1 MACRO ANALYSIS

The need for transport, especially public transport has always been an integral part of the daily lives of the South African commuters, for it provides people with mobility and access to employment, community resources, medical care, and recreational opportunities across the country. It benefits those who choose to ride, as well as those who have no other choice. Over 90% of public assistance recipients do not own a car and must rely on public transportation. Public transit provides a basic mobility service to these commuters and to all others without access to a car and also for senior citizens, people with disabilities and children.

The incorporation of public transportation options and considerations into broader economic and land use planning can also help a community expand business opportunities, reduce sprawl, and create a sense of community through transit oriented development. Areas with good public transit system are economically thriving communities and offer location advantages to business and individuals choosing to work or live in them. And in times of emergency, public transport is critical to safe and efficient evacuation, providing the resiliency South African needs in its emergency

From an urban mobility perspective, public transport is far more efficient than personal motor vehicles in terms of road space it uses and the energy it consumes. For example, a bus carrying 50 passengers uses only 2.8 times more road space than a car carrying 1 or 2 people. And the same bus consumes only about 3 times as much fuel as a car. Public transport is thus important for improving sustainable mobility in urban areas, and it's considered the right approach to encourage low carbon growth in cities.

KEY ELEMENTS OF A SUSTAINABLE PUBLIC TRANSPORT SYSTEM

A good public transport system must be easy and convenient to use, fast, safe, clean and affordable. A key feature is that it can integrate multiple technologies, such as metro rail, light rail, Bus Rapid Transit and basic bus services. A common ticket or fare card serves all the systems, making it easy for

passengers to transfer from one mode to the other. Passenger information systems enable user to know when the next service is due and to understand the routes easily, and high frequency of service reduces the hassles of a long wait for the next bus or train.

BARRIERS TO SUSTAINABLE PUBLIC TRANSPORT SYSTEM

An important barrier is the historical industry structure. In South Africa, for example, there is a bus system, which is owned and operated by a large number of operators. Having a large number of operators allows for low cost services, but the quality is poor due to severe competition. This includes dangerous driving practises, pollution and a tendency to have too much service on profitable routes and virtually no service on non-profitable routes. Meanwhile, single publicly owned entities may offer high quality of service.

Another barrier is the financial sustainability of mass transit system, especially metro rail. These cost a lot to build as well as to operate, and so the operating costs are not recovered through fares. It is essential to look at additional revenue sources, beyond fares to sustain such system

THE CURRENT TRANSPORT REQUIREMENTS AND TRENDS IN TRAVELLING

The National Household Travel Survey (2013) indicated that barriers to mobility in the last ten years have been reduced, yet several challenges still remain ahead. Over time, households living in rural areas had better access to public transport and had reduced travel times when compared to 2003. On the other hand, however, urban and metropolitan households inclined to wait longer for transport than had been the case in 2003, and their journeys to work and school also took somewhat more time. Most learners, who attend pre-school, school, ABET and literacy classes walked all the way to reach educational institutions. Those attending higher educational institutions tended to use taxis more than any other mode of travel. As far as workers were concerned, nearly four million of the 15.3 million workers drove all the way to work using private transport, whilst 3.7 million used taxis. A further 3 million walked all the way, and approximately 1 million made use of buses as their main mode of transport. One could argue that the bus is still the least preferred mode of transport even though this has been increasing across all provinces.

It has also been found that urban transport is complex and requires an appreciation at leadership levels of its multiple dimensions. Mere building of facilities is not enough and a more comprehensive approach is needed. It is on this vein that Urban Transport Planning programme seeks to develop capacity among senior policy makers and planners in cities, provincial governments as well as national, so that a more holistic view of transport planning within a city can be adopted.

The National Land Transport (Act No. 22 of 2000) initiated the process of transforming and restructuring the national land transport system. In 2009, the National Land Transport Act (No 5 of 2009) was promulgated to further build on the provisions of the initial Act of 2000. The vision of the Department of Transport in their Public Transport Strategy (2000) was to phase in a lasting legacy of integrated Rapid Transport Service Network in metropolitan cities, smaller cities and districts that will ensure sustainable, equitable and uncongested mobility in liveable cities and districts. According to this strategy, metropolitan cities aimed to achieve a significant shift of work trips from cars to public transport networks by 2020.

Since 2003, South Africans have become more mobile and more dependent on transport over time. The percentage of the population using taxis and buses for transport has increased and taxis remain the dominant public transport mode used across all provinces as earlier alluded.

Trains are primarily used for work and education related travel in Western Cape and Gauteng. There has been a reduction in transfers between different modes of public transport, signifying that the transportation system may be becoming more efficient. However, challenges that will continue to need the attention of urban and transport planners include the increased travel times of especially metropolitan commuters, the cost of transport, the availability of buses, the poor conditions of the roads and in some provinces such as Gauteng and Mpumalanga, the reckless driving by taxi drivers. The unavailability of public transport at specific times of the day or night is a problem in most areas, but were more specifically identified in Free State, KwaZulu Natal and Limpopo. (National Household Travel Survey, 2013)

Public transport in South Africa is now at a very critical stage. Key cities are currently developing momentum and marshalling resources to implement new and potentially very successful public transport initiatives. But although South African metropolitan governments are large institutions the risks are significant in relation to their scale. It is of utmost important that this momentum is supported by national government in terms of financial resources and the creation of an

environment that fully recognizes the leading role of the cities in the provision of city public transport.

EVOLUTION OF TRANSPORT POLICY

A comprehensive review of national transport policy was undertaken by the South African Department of Transport in 1995, which culminated in the publication of the White Paper on National Transport Policy in 1996. The main public transport policy principles contained in the White Paper are summarised as follows: a) public transport services must be affordable to the public and responsive to customer needs. b) they must be designed to integrate different modes of transport, c) to be cost efficient, d) to achieve service quality, e) to use available resources optimally, f) to use the most cost-effective modes (bearing in mind customer needs), g) to be safe and to do the least possible harm to environment. The following were regarded as key principles in order to improve public transport:

- Subsidies must be aimed to assist marginalized users and those with poor access to social and economic activity.
- An effective land transport system must be achieved through integrated planning, provision and regulation of services and infrastructure, with diligent, effective law enforcement.
- Law enforcement must be promoted as vital to managing and regulating land transport, and the efforts of all involved must be co-ordinated to prevent duplication.
- Public transport must be given higher priority than private transport, and all spheres of government must promote public transport.
- The needs of special categories of passengers (such as learners, tourist and people with disabilities) must be met as far as possible by the system provided for mainstream transport.

The policy principles were included in the National Land Transport Transition Act (NLTTA) published in 2000 and became statutory planning obligations for all municipalities in the preparation of an Integrated Transport Plan as a sub-component of the Integrated Development Plan (IDP) which is a requirement in terms of the Municipal Systems Act, also published in 2000.

The NLTTA requires municipalities to prepare the following sequences of plans leading to the ITP as a sub-component of the comprehensive IDP.

- Current Public Transport Record (CPTR)
- Operating Licences Strategy (OLS)
- Rationalisation Plan (RP)
- Public Transport Plan (PTP)
- Integrated Transport Plan (ITP)

NATIONAL VISION FOR PUBLIC TRANSPORT AND CURRENT POLICY IMPERATIVES

The moving South Africa Action Agenda provides the National Department of Transport's 20 year strategic framework for the transport sector in South Africa and is based on the draft report Towards a Transport Strategy for 2020 and the White Paper on National Transport Policy of 1996. The MSA Action Agenda focuses on the following transport issue: urban passenger transport, rural passenger transport, tourist and long-distance customers, special needs customers and freight transport. The goal for urban passenger transport is to put public transport first. It is envisioned that by 2020 a public transport network having as much citywide coverage as possible will enable all urban transport customers to fully participate in the various activities of city life. The goal to provide affordable, safe, secure, fast and frequent public transport services must be realized.

It can be argued that poor public transport service stems mainly from a dispersed pattern of land use. A core public transport system operation along a dandified corridor where public transport is the priority mode aimed for. Through densification, high volume and high frequency public transport services can be achieved, thereby meeting the customer needs of reduced trip duration and waiting times. Mainstream public transport operations must meet the needs of all customer groups (previously disadvantaged, disables, scholars, etc.) and the possibility of differentiated customer services can ultimately be realized. An improved public transport system and restrained private car use is aimed to entice selective customers from private cars over to public transport. An effective public transport system will attract sufficient ridership levels to ensure that fares are affordable and that the operations are sustainable.

The vision for transport in South Africa by the year 2020 can briefly be summarized as follows: "It will meet the needs of freight and passenger customers for accessible, affordable, safe, frequent, high quality, reliable, efficient and seamless transport operations and infrastructure. It will do so in a constantly upgrading, innovative, flexible and economically and environmentally sustainable manner. In so doing, transport will support and enable government strategies, particularly those for growth, development, redistribution, employment creation and social integration, both in South Africa and in the Southern African region." The general pattern emerging through the MSA Action Agenda points to a transport system that is customer based hence customer needs are the foundation of the action agenda, sustainable with low system costs and provides room for service levels to be continually upgraded and expanded in the future.

The Transport Department also has an impact on most of the National outcomes, some directly and some indirectly, in particular the ones outlined below:

NUMBER	OUTCOME	DIRECT/INDIRECT IMPACT
OUTCOME 2	A long and healthy life for all South Africans – The reduction of travel times and provision of bicycle and pedestrian lanes will contribute towards improving the lives of our citizens.	DIRECT
OUTCOME 3	All people of South Africa must feel safe and free – The introduction of the Integrated Transport System and the provision of quality public transport infrastructure is responding to this outcome.	DIRECT
OUTCOME 4	Decent employment through inclusive growth – Increased provision of Public Transport	DIRECT

	through the extension of our buses services will improve access to job opportunities.	
OUTCOME 6	An efficient, competitive and responsive infrastructure network – The provision of quality public transport infrastructure will increase Ekurhuleni’s competitiveness as an investor’s city of choice.	INDIRECT
OUTCOME 10	Protect and enhance our environmental assets and natural resources: The introduction of the IRPTN is also aimed at reducing our carbon footprint.	DIRECT

South African cities have now begun to announce strategies for more effective linkages between land use and transport planning, in an attempt to change the entrenched settlement patterns, slow down urban sprawl and the uncontrolled spread of low density developments on the fringes of cities. Based on South Africa’s existing infrastructure plans, the National Development Plan suggests that the following investments should be prioritized;

- The upgrading of informal settlements,
- Public transport infrastructure and systems, including the renewal of the commuter rail fleet, supported by station and facilities upgrades to enhance links with road based services,
- The development of the Durban – Gauteng freight corridor, including the development of a new dug out port on the site of the old Durban Airport

The National Development Plan (NDP) proposes three complementary strategies, namely,

- Increasing urban population density, while improving the liveability of cities by providing parks and other open spaces, and ensuring safety,
- Providing more reliable and affordable public transport services with better coordination across municipalities and between different modes,
- Moving jobs and investment towards dense townships that are on the margins of cities.

FUNDING REQUIREMENTS IN ENHANCING PUBLIC TRANSPORT

The role of cities in planning public transport in their areas has been defined since 1996 in the white paper, where it was proposed that this function should be devolved to the lowest component level of authority. In this instance, to the municipalities, provision for this devolution has been written in a number of documents, however, municipalities are reluctant to take that responsibility, because of funding. Budgets for transportation are small and the operation phase is a challenge, when not only do the operating costs have to be met but the debt or loan if any has to be covered. It is usually difficult to balance cost recovery with affordability. Public transport is often the only mode of transport available to the poor, so fares have to be low, but low fares mean costs are not recovered.

STATE OF TRANSPORT IN EKURHULENI AND THE ENABLING ENVIRONMENT

Ekurhuleni is more dependent on private transport than public transport, with a 60/40 percentage split. Of the 40%, a total of 73% can be attributed to taxis, 19,3% to rail and only 7% to buses. This modal share is growing every year. The primary challenge is the rising freeway congestion and poor coordination between modes, the time taken to travel to work and to places of study, placing a burden on the economy, exacerbating the situation for poor household and generating high carbon emissions (2006/2011 Ekurhuleni ITP in GDS, 2025)

The policy response to this is to adopt a supply side approach by building more freeways and road capacity which becomes congested and allowing the public transport modes of taxis, bus and rail to compete with each other to the collective detriment of them all. Critical investments in connecting infrastructure such as integrated passenger fares and intermodal public transport interchanges are not made, resulting in a disjointed, inefficient and unappealing public transport service (GDS, 2055, P54)

In responding to the transport demands within Ekurhuleni, BBC together with EMM and other government stakeholders are also in the process of planning major spatial developments that would

direct the future developments of the city, impacting on the spatial distribution of land use, population and employment. This is based on the background that, public transport needs to form the backbone of the urban structure. Therefore, the following strategic developments have been a focus:

- R21/PWV15 Corridor;
- Aerotropolis Around The Or Tambo International Airport;
- Transnet Freight Hubs And Tambo Springs And Sentra Rand;
- Transit Oriented Development At Major Train Stations;
- The East West Mining Belt
- Northern And Southern Infill Areas; And
- The Nine Historical CBD's. (Road Masterplan, 2013,P9)

THE IMPORTANCE OF THE INFRASTRUCTURE

Roads are a fundamental and an integral element in the transport infrastructure system, to ensure accessibility to the whole of the transport network and to promote the movement of people and goods. Roads play the primary role in meeting transport demands in South Africa since a large proportion of bulk freight transport and passenger movement takes place by road. All spheres of government need to play an active role and take responsibility to plan, permit, design, construct, operate, manage, and maintain an adequate road network in area of jurisdiction to ensure sustainable growth. Roads are critical to the efficient circulation of freight and passenger transport in urban areas. Expansion of urban road networks should not be a reaction to congestion or an effort to satisfy car demand, but rather to accommodate new urban growth and to provide dedicated road space for public transport and even freight. Road space needs to be better managed. (Road Master Plan, 2013, p.1)

2.1.2 HUMAN RESOURCE ANALYSIS

Brakpan Bus Company was established in the year 2000. The company comprises of the following divisions, namely, Finance, Operations, and Human Resource. As at January 2015, the Company has 84 permanent posts of which about 85% are in the Operations Division, with the 15% remaining constituting of office support staff and management positions, namely, the Managing Director, Finance Manager, Operations Manager and the Human Resources Manager.

Of the 84 posts, 78 are permanent, 06 are temporal posts on a month to month contract. The majority of posts that are permanent can be referred to or regarded as inception or establishment phase posts and are therefore not aligned to the strategic needs and demands of the Company. As a result, the current staffing is not nearly adequate for the Company to execute its mandate optimally.

Undoubtedly, there is still a need to increase capacity in all strategic positions, as the Company is failing in other critical areas because of lack of capacity, for example, the Fleet Manager post, whereby the maintenance of buses and the turnaround time from the workshop is a challenge. The latter situation makes it difficult for the Company to operate smart, efficiently and optimally and instead places limitations on its ability to perform to its desired level.

2.1.3 DESCRIPTION OF ENTITIES CORE BUSINESS

The core business of Brakpan Bus Company is embodied in its vision of providing public transport which is affordable, accessible, efficient, intergrated and safe to the commuters of Brakpan, Springs, Nuffield, Tsakane, Sunward Park, Dalview, and Dalpark, including the surrounding areas.

The Company seeks to align its vision to the National Department of Transport one, which is: Transport is the heartbeat of South Africa's growth and social development, there is an inherent mandate to redress the apartheid legacy. The transport mandate includes the provision of an integrated, economically and environmentally sustainable, high quality, affordable, safe, reliable and efficient public transport that is accessible to all its citizens irrespective of their social standing.

The Company's core function is entrenched in a number of legislations, namely;

- The National Land Transport Act (NLTA) 5, of 2009, wherein the routes operated and the mode used are authorized by the Act;
- The Batho Pele principles, which expects us to put the customer first, in this instance putting commuters first;
- The National Road Traffic Act No. 93 of 1996, which regulates the number of commuters transported, which also includes issuing of road worthy certificates;
- Administration Adjudication of Road Traffic Offences Act No. 46 of 1998, which administers none compliance with traffic regulations.

The key stakeholders are the Ekurhuleni Community at large, the Commuters, and the Businesses

that are operating in Ekurhuleni. It is to be noted that for us to be successful in achieving our mandate as a Company, we are related and working closely with the Shareholder through the Department of Transport Planning and Provision. There are other Departments without whom certain things cannot be achieved, for example, the finance department, with whom on annual basis we consolidate our financial statements and annual reports for presentation to the Auditor General.

On the table below is an attempt to articulate the most critical inter-dependencies.

Inter-dependency Matrix

DEPARTMENT	INTER-DEPENDENCY
Transport Planning and Provision	Representative of the Shareholder; Inter related in provision of integrated transport to commuters in the whole metro.
EMPD	Law Enforcement
Finance Department and Internal Audit	Consolidated Financial Statement to Auditor General, and to assist attain clean audit metro wide
Roads and Storm-water	Road Infrastructure
Risk Department	Risk identification and mitigating
City Planning	Transit Oriented Planning and Urban Restructuring

2.1.4 SWOT ANALYSIS:

Brakpan Bus Company cannot be isolated from The Department of Transport Planning and Provision both has a very huge mandate to deliver separately and collectively, they both mirror the efficiency of the Metro to deliver Bus Public Transport. Therefore the companies' existence cannot be separated from the Metro's ability to transform the lives of its communities and commuters, as that cannot be achieved without a responsive transport infrastructure and public transport system.

Table1: SWOT Analysis

STRENGTHS	WEAKNESSES
<ul style="list-style-type: none"> • A fleet of 40 buses are available to operate contracted trips, including special hire trips, these are new buses • All bus drivers are qualified in driving heavy duty motor vehicles • Ticketing kiosks at all bus stations are accessible • Very low cost for depot leasing from 	<ul style="list-style-type: none"> • Weak internal controls especially with regards to the collection of cash from commuters and the controls at the diesel refuelling station • Low staff morale and or despondency • Improper driving habits resulting in over usage of diesel, which is the main cost driver

<p>EMM</p> <ul style="list-style-type: none"> • 50% of income is the Government subsidy and is paid up front, which is guaranteed and 50% is generated from commuters upfront. • Board of Directors very participative at strategic level and cooperative 	<ul style="list-style-type: none"> • The conversion system used to calculate subsidies from DoRT lead to the loss of R 7 million to the Company • The organization is under resourced at strategic positions (e.g. Audit and Risk Manager, Operations Superintendent) • Poor information management system, no ICT master plan in place. • Un-integrated Bus Services between Brakpan, Boksburg and Germiston. • Limited Fleet, no stand by buses in case of emergency and contractual obligation.
OPPORTUNITIES	THREATS
<ul style="list-style-type: none"> • EMM's strategy as articulated on the IDP, RDS and GDS 2025 documents mention public transport systems (specifically municipal buses) as part of its strategy. • EMM plans to make OR Tambo an Aerotropolis town that provides an opportunity to extend the Company's routes. • Plans to implement the BRT system within Ekurhuleni provides an opportunity to the company to participate on the feeder routes. • The Integrated Rapid Transport Network (IRPTN) which is underway will assist the company to extend their routes. • The planned CONSOL plant in Nigel provides an opportunity to extend services to CONSOL employees. • The National Land Transport Act No 5 of 2009, the National Road Traffic Act, and other legislations provide the legal mandate for the company to execute its duties. 	<ul style="list-style-type: none"> • Urban Migration (The relocation of people from townships to closer to their places of work) • Increasing rate of unemployment • The Global Economic crisis and its ripple effect on the availability of budgets from all spheres of government. • The increasing traffic congestion. • Stakeholder expectations on the different priorities. • Aging road infrastructure and Public Transport infrastructure. • Unstable transport industry and the different views on the IRPTN system. • Increase in fuel prices. • The reduction in the Public Transport Operations Grant (PTOG) for the bus subsidies.

SECTION 3: ANALYSIS OF 2015/2016 PERFORMANCE

3.1 REFLECTION OF THE PREVIOUS FINANCIAL YEAR:

The past year has been an extremely difficult year due to the deteriorating economic conditions being experienced. This has had a particularly severe effect on the unemployed and the historically disadvantaged community. The service provided by Brakpan Bus Company (BBC) has therefore been particularly relevant as they are aimed at that section of the community which has been hardest affected. In addition, the cost pressures were particularly adverse as a result of the weakening of the rand which impacted adversely on the cost of diesel, which is a major cost driver.

The company has gone through a number of Achilles hills namely, the under payment of the Government subsidy and the number of labour unrest that the company has experienced. For a certain period of time, the company operated with a fleet that is less by 8 buses and that affected its credibility to the commuters and was hit by penalties from DoRT, for not operating as stipulated in the contract.

Another major challenge is the rate of pilfering by the drivers, which has affected the rate of cash collection by the company.

SECTION 4: RISK ANALYSIS

4.1 SUMMARY OF INHERENT RISKS

Risk Reference	Risk	Final Rating
1	Road accidents	25
2	Financial sustainability	25
3	Disruption in bus services (unreliability of services)	20
4	Revenue leakage/loss	20
5	Increase in fuel and oil costs	20
6	Accelerated wear and tear	16

4.2 ASSESSMENT OF IMPACT OF RISKS

CLASSIFICATION OF RISKS

Risk Reference	Risk	Classification			
		Environmental	Process	Information	Financial
1	Road accidents		X		
2	Financial sustainability		X		X
3	Disruption in bus services (unreliability of services)	X	X		X
4	Revenue leakage/loss		X		X
5	Increase in fuel and oil costs	X			X
6	Accelerated wear and tear	X			X

IDENTIFICATION OF RISK AND MITIGATION STRATEGIES

Risk Reference No.	Risk	Root Causes	Impact	Current controls	Additional Planned Mitigation Actions	Departmental Risk owner	Implementation Due Date
1	Road accidents	Un roadworthy busses due to poor/ineffective maintenance Aging busses Driver behaviour/error Driver competence External factors - Road & traffic conditions	Critical	Maintenance plan for busses in place Fleet Replacement Policy in place Driver competence assessments i.r.o the PDP done on an annual basis Refresher training on defensive driving Monthly operational meetings with drivers Monthly meeting with Commuter Liaising Committee Hotline in place to report bad driving Fleet and third party liability insurance cover in place	Review SLA with maintenance contractors to include turnaround times Define in the OHS Policy the medical and competence requirements for bus drivers Develop a Bus Driver Assessment Policy	Operations Manager & MD Risk Management Dept. Human Resources Manager	31 December 2015 30 June 2015 30 June 2015
2	Financial	Pricing not	Critical	Some subsidy received,	Due diligence exercise on	Transport Department	30-Jun-15

	sustainability	market related Pricing based on historical subsidy Insufficient subsidy of the entity Not maximising on the revenue generation capability of bus hire services Some operating routes are not subsidised Service orientated whilst expected to be a profit making entity Restrictive nature of routes contract entered into with the prrovince		though inadequate Indirect subsidy by EMM of leasing of busses and premises at less than market-related prices EMM acts as a guarantor in case of insolvency Cost cutting measures undertaken	the sustainability of the bus service to be concluded		
3	Disruption in bus services (unreliability)	Unstable labour Civil unrest Inoperable	Critical	Court order in place to restrict employees from disrupting service	Continue to constantly consult with unions Maintenance plan in	Human Resources	On-going

	of services)	busses (breakdown) Traffic delays		Engagement with labour unions Passenger crisis communication plans in instances of disruption Maintenance plan in place	place		
4	Revenue leakage/ loss	Fare evasion Fraud & corruption Pilfering Theft & robbery Culture of lack of consequences for wrong-doing	High	Inspections conducted System in place to authenticate genuine coupons Use of outsourced cash collection services Fraud Prevention Policy in place Disciplinary processes instituted when there are transgressions	Conduct a feasibility of a fully-fledged fare-evasion prevention system Improve and intensify the inspection effort Increase coupons-sale points by 5 venues to dissuade use of cash Enhance awareness around the use of the EMM tip-off facility to encourage reporting of fraudulent activities Raise awareness on the fraud prevention policy of the BBC	MD Operations Manager Human Resources Manager	30 Sept 2015
5	Increase in fuel and oil costs	Misappropriation and pilferage Unauthorised trips Inefficiently	High	Analysis done of fuel use against travelled mileage to detect unauthorised mileage; discrepancies cannot be fully	Review SLA with maintenance contractors to include turnaround times Define in the OHS Policy	Operations Manager & MD Risk Management Dept.	30 June 2015

		functioning busses Inefficient driving		investigated though	the medical and competence requirements for bus drivers Develop a Bus Driver Assessment Policy	Human Resources Manager	30 June 2015
6	Accelerated wear and tear	Ineffective/poor maintenance Improper vehicle operation Passenger vandalism Poor condition of the road infrastructure, particularly to the routes operated	High	Maintenance programme Professional driving training programme	Inculcate the culture of efficient driving, through the implementation of awareness programmes around safe and efficient driving. Promote the appreciation of the assets to the commuters, especially scholars, for example, visible disclaimer signs on the buses. Escalate poor road conditions of the affected routes to Roads Department	Marketing Officer, OP's Manager and HR Manager	

SECTION 5: ENTITIES SDBIP

5.1 INTRODUCTION

The GDS 2055 which is Ekurhuleni's long-term plan for service delivery is the basis for informing the Entities SDBIP's targets in conjunction with the Department of Transport Planning and Provision. It is a 20- to 30-year plan that sees to it that services are delivered based on the needs of the EMM residents and taking into account the trends globally, nationally and provincially.

The Entities SDBIP is structured around Sustainable Urban Integration and Effective Cooperate Governance Thematic Areas. The main programme being, EMM Gauteng City Regional Integration, and to Establish Long Term Fiscal Strength. The main objective being to, assist in the Regional accessible public transport network development, and to strengthen tax base and income streams.

The two-year Entities SDBIP cycle will apply to the 2015/2016 and 2016/2017 financial years respectively. This two year Entities SDBIP provides the Shareholder with an ideal reflection and review point for its achievements, prior to proceeding with the next stage of planning. The Entities SDBIP framework has been amended so as to foster closer alignment between the Entities SDBIP and the Department of Planning and Provision SDBIP and the metro-wide IDP/SDBIP.

The Entity will also need to strengthen its efforts in combating the rate of fraud and corruption including pilferage which has been regarded as one of the factors that compromises effective and efficient service delivery, as a result the entity will continue its efforts in addressing fraud and corruption, especially from the bus drivers side.

The table below provides details in terms of the Entities SDBIP 2015/16-2016/17

5.2.1 Micro-wide

Level of Planning	Planning Statements	Indicators	2 Year Target	2015/2016		2015/2016				Definition of Indicator	Data Sources
				2014/15 Target	Annual Target	Q1 Sept	Q2 Dec	Q3 Mar	Q4 June		
NATIONAL OUTCOME: RESPONSIVE, ACCOUNTABLE, EFFECTIVE AND EFFICIENT LOCAL GOVERNMENT SYSTEM											
THEMATIC AREA: EFFECTIVE COOPERATIVE GOVERNANCE											
ULTIMATE OUTCOME: ESTABLISH LONG TERM FISCAL SUSTAINABILITY											
INTERMEDIATE OUTCOME: INCREASE REVENUE THROUGH THE TAX BASE AND INCOME STREAMS											
Direct Outcome	Increases financial sustainability of the bus services	Total revenue generated from core business	354,513,347	325,935,067	328,658,280	R7,451,157	36,445,813	37,507,351	67,451,153	This revenue will be from core business activities it will be generated from leasing containers, sales of bus coupons and smart cards, and also the Government's subsidy	Copy of financial statement

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5.2. Entity's SDBIP

Level of Planning	Planning Statements	Indicators	2 Years Target		2014/2015 Year	2015/2016				Definition of Indicator	Data Sources
			Annual Target	2015/2016		Q1 Sept	Q2 Dec	Q3 Mar	Q4 June		
<p>VISION: PUBLICLY RESPONSIVE AND ACCOUNTABLE, EFFECTIVE AND EFFICIENT LOCAL GOVERNMENT SYSTEM</p> <p>THEMATIC AREA: EFFECTIVE COOPERATIVE GOVERNANCE</p> <p>ULTIMATE OUTCOME: ESTABLISH LONG TERM FISCAL STRENGTH</p> <p>INTERMEDIATE OUTCOME: INCREASE REVENUE THROUGH THE TAX BASE AND INCOME STREAMS</p>											
Direct Outcome	Improved sustainability of the buses from core business activities	Total revenue generated	R23,395,103	R25,955,067	R28,658,260	R7,451,153	R6,448,113	R7,307,551	R7,451,153	This revenue will be from core business activities. It will be generated from cash paying commuters, sales of bus coupons and smart cards, and also the Government subsidy.	Copy of financial statements
		Decrease in incidents of pilferage	70	<50	<60	<60	<60	<60	<60	Pilfering is an act whereby the commuter boards the bus and the driver does not issue the ticket and pockets the fares. When he gets busted, a pilfering case is reported by the inspectors.	Copy of inspectors' reports on pilfering
	Clear and Effective Administration	Audit Opinion from Auditor General	Clean Audit	Clean Audit	Clean Audit	ANNUAL TARGET	ANNUAL TARGET	ANNUAL TARGET	Clean Audit	The compliance and implementation with all legislations, internal controls, including the SCW regulations and also correctly prepared financial statements	Copies of Auditor General's reports
		Number of meetings held with the shareholders	4	4	4	1	1	1	1	The adherence to legislation pertaining to the number of meetings held between the parent municipality and the entity	Copy of the minutes for the meetings held and attendance registers

Level of Planning	Planning Statements	Indicators	2 Years Target	2015/2016		2015/2015				Definition of Indicator	Data Sources	
				2014/15 Target	Annual Target	Q1 Sept	Q2 Dec	Q3 Mar	Q4 June			
NATIONAL OUTCOME: ECONOMIC GROWTH AND IMPROVED QUALITY OF LIFE TO ALL												
THEMATIC AREA: SUSTAINABLE URBAN INTEGRATION												
ULTIMATE OUTCOME: EMM GAUTENG CITY REGIONAL INTEGRATION												
INTERMEDIATE OUTCOME: REGIONAL ACCESSIBLE PUBLIC TRANSPORT NETWORK DEVELOPMENT												
Direct Outcome	Improved delivery of bus services within Ekurhuleni Metropolitan Municipality	% BCC bus service users satisfied with the service provided	80%	70%	80%	ANNUAL TARGET	ANNUAL TARGET	ANNUAL TARGET	80%	The survey of customer satisfaction on the service offered by the company	Copy of the customer satisfaction survey report	
	Improved operating efficiency of the buses	Increase in the number of kilometres operated	2,501,323	1,220,02	1,281,021	320,255	320,203	320,310	320,255	The number of kilometres operated by the company in transporting the customers to various destinations around Ekurhuleni	Copies of the payment certificates issued by the CoRT and/or copies of operations' logs or registers and way bills	
	Safe and Reliable Bus Services	Reduction in the number of accidents involving fatalities reported	<5	<5	<5	<5	<5	<5	<5	<5	The fatalities that happened during the accident	Accident reports compiled, insurance claims including SARS reports
		Decrease in the number of cancelled trips	<500	<500	<500	<500	<500	<500	<500	<500	The cancelled trips or unoperated trips	Copies of reports compiled by the inspectors and the subsidy claim certificate submitted to CoRT

FINANCIAL PERIOD	#REF!	#REF!	F-03	F-02	F-01	F00	F00	F00	F00	F01
	#REF!	#REF!	R'000	R'000	R'000	R'000	R'000	R'000	R'000	R'000
	#REF!	#REF!	2010/11	2011/12	2012/13	RG BUDG	DJ BUDG	AR TO DA	ROJECTE	2015/16
INCOME										
Interest Earned - Current Investment Portfolio	-	-	423	368	95	50	50	30	50	50
Sub-Total: Interest Earned	-	-	423	368	95	50	50	30	50	50
Capital Grants - Other	-	-	-	-	1,500	5,000	5,000	3,750	5,000	5,000
Sub-Total: Capital Grants	-	-	-	-	1,500	5,000	5,000	3,750	5,000	5,000
Other Sundry Income	491	263	19,126	22,293	21,311	25,955	25,955	16,736	25,955	28,658
Sub-Total: Other Income	491	263	19,126	22,293	21,311	25,955	25,955	16,736	25,955	28,658
TOTAL OPERATING INCOME	495	1,664	19,549	22,661	22,906	31,005	31,005	20,516	31,005	33,708
NET OPERATING INCOME	56,029	65,717	19,549	22,661	22,906	31,005	31,005	20,516	31,005	33,708
EXPENDITURE										
Employee Related Costs - Salaries & Wages	21,765	27,343	7,044	8,004	10,145	12,561	12,291	0,191	12,291	13,933
Employee Related Costs - Overtime	756	984	495	718	649	724	724		724	724
Employee Related Costs - Additional Positions	-	-								
Remuneration of Councillors	58,717	62,513	116	667	702	1,417	1,417	656	1,417	1,509
Sub-Total: Remuneration	83,706	94,009	7,655	10,269	11,497	14,702	14,432	8,847	14,432	16,166
Depreciation - Existing Assets	71,433	298	1,841	1,900	1,520	1,881	1,681	1,404	1,681	1,699
Sub-Total: Depreciation	71,433	298	1,841	1,900	1,520	1,881	1,681	1,404	1,681	1,699
Repairs and Maintenance - External Contractors	653	449	1,341	1,305	1,224	504	1,549	120	1,549	1,703
Sub-Total: Repairs and Maintenance	653	449	1,341	1,305	1,224	504	1,549	120	1,549	1,703
Interest Expense - Current External Borrowings	-	-	260	1,017	941	500	441	311	441	360
Sub-Total: Interest Expense	-	-	260	1,017	941	500	441	311	441	360
General Expenses	30,332	23,232	7,889	10,603	10,579	13,140	12,624	8,807	12,624	13,728
TOTAL OPERATING EXPENDITURE	186,133	118,577	19,001	26,786	25,781	30,727	30,727	19,497	30,727	33,656
NET OPERATING EXPENDITURE	249,681	192,847	19,001	26,786	25,781	30,727	30,727	19,497	30,727	33,656
OPERATING SURPLUS/(DEFICIT)	(193,653)	(127,130)	548	(3,625)	(2,055)	278	278	1,019	278	52
NET OPERATING SURPLUS/(DEFICIT)	(193,653)	(127,130)	548	(3,625)	(2,055)	278	278	1,019	278	52

2015/16 - 2017/18 DRAFT MULTI YEAR CAPITAL BUDGET - DETAILED PROJECT LIST

Department	Project Name	Capitalisation Investment Framework Category	Source of Finance 2014/2015	Approved Budget 2014/15I	2014/15 Revised Budget as per CIF Recommendation	Source of Finance 2015/2015	Approved Budget 2015/16 as per 2013/2014 MTRRF approval	2016/17 Revised Budget as per CIF Recommendation	2017/18 Revised Budget as per CIF Recommendation
BBC	IT Equipment	New	In house finance	25 000	25 000	In house finance	15 000	45 000	55 000
BBC	Furniture and other assets	New	In house finance	25 000	155 000	In house finance	35 000	45 000	55 000
BBC	Motor Vehicle	New	In house finance	200 000	200 000	In house finance	250 000	300 000	350 000
BBC Total				250 000	380 000		320 000	390 000	460 000

7. LIST OF POLICIES AND LEGISLATIONS

ITEM	POLICY / LEGISLATION
1	National Land Transport Act (Act No.5 of 2009)
2	National Road Traffic Act (Act No 93 of 1996)
3	Road Traffic Management Corporation Act (Act No.2 of 1999)
4	Administration Adjudication of Road Traffic Offences Act (Act No. 46 of 19198)
5	The Constitution (No 108 of 19196)
6	Cross Boarder Act
7	White Paper on National Transport Policy (1996)
8	Gauteng Provincial Land Transport Framework
9	Strategy – Moving South Africa – the Action Agenda
10	Strategy – National Public Transport Strategy (2007)

8. KEY AUDIT MATTERS AND PROGRESS

- **Status of fixed asset register:**

There were no finding issues on the Entities asset register

- **Year-end qualifications specific to your department and progress in resolving; and**
- **Year-end disclaimers specific to your department and progress in resolving.**

Auditor General's (AG) audit opinion for 2013/2014, which indicates 16 findings and the company, has since worked on them in avoidance of repeat findings.

AUDITOR GENERAL REPORT ON FINANCIAL PERFORMANCE 2013/14	
Status of audit report	Clean Audit with findings not affecting audit report

Finding	REMEDIAL ACTION TAKEN
Overtime worked exceeds limit prescribed	Overtime is now paid according to the prescripts of the Main Collective Agreement of the Bargaining Council.
Use of consultants	Policy has been drafted and submitted to the Board of Directors for consideration.
Statutory discrepancies	<p>The application for changes was lodge with CIPC, however the request was not approved, and waiting for a confirmation letter from EMM that stipulates EMM owns 100% shares of Brakpan Bus Company (Pty) SOC.</p> <p>Confirmation letter was received from EMM, and forwarded to CIPC to proceed with the changes.</p>
Expired operating lease agreement	New lease agreement is still in the process of being concluded and signed by EMM. A note will be included in the AFS describing progress regarding same.
Misstatements of the performance against predetermined objectives	Appropriate reporting is maintained.
No evidence of an approved Performance Information Reporting and Management policy	EMM has developed a policy for Reporting of Performance Information which incorporates all its entities. Draft Policy was discussed at the Planning and M& E Forum Meeting.
Budget not allocated to Key Performance Areas	The process for linking SDBIP with Budget is still not yet implemented. The entity currently confirmed that they could not link their KPIs with budget because only internal resources are utilized. The finding will be resolved when EMM start with the process of alignment of Budget and SDBIP, and assistance then sought for the Entity as to how best can budget be linked to indicators.
No evidence of approval of the budget by the board of directors and the measurable performance objectives included in the SDBIP	The Board Minutes of Meeting dated: 30th January 2015, Venue: Brakpan Civic Centre is evidence that minutes are correctly captured. The approval of the Mid-year report, Adjusted and Multiyear Budget, and Adjusted SDBIP were minuted.
Key Performance Indicator not clearly defined	During the Mid-Year Adjustment 2014/2015 the Key Performance Indicator - Original: Total Revenue Generated has been amended to: Total Revenue Generated from core business activities.
Capital budget exceeded	The total CAPEX was exceeded by 6% percent, which is still within the minimum threshold as stipulated in the SCM Regulation, which allows 15% variation.
Employees earning less than the minimum wage	Alignments of salaries according to minimum wage/ entry level of the Main Collective Agreement of the Bargaining Council have been implemented.
PAYE deduction on travel allowances incorrectly calculated	Calculation on deduction of PAYE has been reviewed in accordance to annual tax update. 1
Employment contract not obtained	The said employee contract was included in the file.

