

MEMORANDUM OF AGREEMENT

Modernisation Study of
the Northern Corridor
(herein referred to as the MSNC)



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD



TDA
CAPE TOWN

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



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PASSENGER RAIL AGENCY
OF SOUTH AFRICA

MEMORANDUM OF AGREEMENT

Modernisation Study of the Northern Corridor (herein referred to as the MSNC)

Made and entered into between:

The City Of Cape Town

Herein represented by Melissa Whitehead in her capacity as Commissioner:
Transport for Cape Town for City of Cape Town and duly authorised to do so,
(hereinafter referred to as "the CITY")

and

Passenger Rail Agency of South Africa

Herein represented by _____
in his/her capacity as Group Chief Executive Officer, and duly authorised to do so,
(hereinafter referred to as "PRASA")

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1. Definitions

In this Agreement, the following words and phrases have the meanings given to them below:

- 1.1 "Agreement" means this written Agreement, together with any Annexures thereto.
- 1.2 "City" or "City of Cape Town" means the Cape Town Metropolitan Municipality, v read with the Province of the Western Cape: Provincial Gazette 5588 dated 22 September 2000.
- 1.3 "MSNC" means Modernisation Study of the Northern Corridor.
- 1.4 "PRASA" means Passenger Rail Agency of South Africa established in terms of Section 23 of the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989).
- 1.5 The "Northern Corridor" means the transport corridor between Cape Town and Bellville including the railway line and Voortrekker Rd.
- 1.6 "Parties" means jointly the City (as defined in clause 1.2) and PRASA (as defined by clause 1.4).
- 1.7 The "Project" means the Modernisation Study of the Northern Corridor.
- 1.8 "PSC" means Project Steering Committee.
- 1.9 "TCT" means Transport for Cape Town, the City's Transport Authority

2. Preamble

The Parties recognise that:

- 2.1 The City and PRASA have a strong mutual interest in understanding the investment required to modernise the Northern Corridor to a standard that will act as an informant and catalyst for the regeneration and densification of the corridor in an integrated, interoperable and inter-modal manner;
- 2.2 The project is aligned with the City's Integrated Development Plan and its Economic Growth and Social Development Strategies;
- 2.3 PRASA is embarking on a Modernisation Program for priority corridors which will extend to the Northern (Cape Town – Bellville) rail corridor;
- 2.4 PRASA, having previously conducted a similar study for the Metro South East Corridor, has the capacity and is prepared to utilise the experience thus gained to oversee a study on the Northern Corridor.

3. Purpose of the Agreement

The purpose of this document is to record details of the agreement between the parties as reflected in the preamble, including:

- 3.1 The broad scope of the study to be undertaken.
- 3.2 The appointment of a professional service provider to conduct the study.
- 3.3 The establishment, membership and roles of a Project Steering Committee.
- 3.4 The financial responsibilities and arrangements for the undertaking of the study.

4. Broad Scope of the Study

- 4.1 The broad scope of the study is to develop a Modernisation Plan for the Northern Corridor to give effect to a joint initiative by the Passenger Rail Agency of South Africa (PRASA) and the City of Cape Town (CCT) and which would include:
 - 4.1.1 An integrated multi-disciplined (spatial / transport) development plan for the corridor which integrates the various policy / planning / strategy informants of the City and PRASA while particularly focusing on the objective of Transit Oriented Development.
 - 4.1.2 A high-level Integrated Operations Plan including modal capacities and service level descriptions taking into account the aforementioned as well as current projected land-use and transport model forecasts.
 - 4.1.3 A concept design and investment plan for infrastructure required to support the various modes.
 - 4.1.4 An implementation programme of rail and road-based projects (including detail project descriptions) as informed by the Integrated Operations Plan.
 - 4.1.5 Preliminary and detail design as well as program/project management expertise towards implementation (this phase by further and specific agreement only).
- 4.2 A detailed Scope of Works (SoW) will be jointly developed by the parties. It will build on a similar study which was previously undertaken by PRASA (for the Metro South East Corridor), expanding the latter to take into account the broader extent of the new study as indicated above, as well as to incorporate further insights gained and lessons learnt from the previous study.
- 4.3 The detailed SoW will be structured to align with the provision of clause 5.3 and will be agreed to by the PSC.

5. Appointment of a Professional Service Provider and Phasing of the Study

- 5.1 PRASA will appoint a professional service provider in terms of its supply chain management (SCM) rules and processes to conduct the above study to meet the requirements of a detailed SoW which is approved by the PSC or otherwise agreed to in writing between the parties.
- 5.2 The tender for and contract with a service provider will be structured to ensure that the expenditure on the services will not exceed R10 million over City's 2 financial years (2016/17 and 2017/18) as well as not exceeding R5 million in the first year (2016/17). The work in 2017/18 will only proceed subject to confirmation by the City of an available budget provision of R 5 million for 2017/18.
- 5.3 Any funds over and above the aforementioned will be subject to City's internal approval processes and approval by the PSC.
- 5.4 The deliverables produced by the service provider in terms of this agreement will be the joint ownership of the City and PRASA.

6. Project Steering Committee

- 6.1 A PSC will be established to oversee the Project from inception (signing of this agreement) to completion.
- 6.2 The responsibilities of the PSC include reaching an agreement on a detailed SoW (see clause 5.1).
- 6.3 The PSC will comprise of members nominated by the respective parties, in their capacity, as standing members.
- 6.4 On an ad-hoc basis, representative/s of the appointed service provider/s will be requested by the PSC to attend PSC meetings, in order to fulfil their obligations in terms of their appointment.
- 6.5 City and PRASA will co-chair the PSC while the City will provide the secretariat function thereof. These arrangements will be confirmed at the first PSC meeting – the latter to be arranged by TCT.
- 6.6 A quorum to proceed with a meeting will be achieved when a representative/s of both parties is/ are in attendance and subject to the City also fulfilling the additional requirements stipulated in cl. 6.7

- 6.7 In order for the City to achieve quorum status, at least one representative from the following directorates/departments is required:
- 6.7.1 Spatial Planning and Urban Design (EESP);
 - 6.7.2 TCT Planning;
 - 6.7.3 Contract Operations, TCT.
- 6.8 Any party may change its authorised nominee/s at any time provided prior notice is given in writing to the chairperson of the next PSC meeting and agreed to by the PSC at that meeting.
- 6.9 The PSC will hold meetings as jointly agreed, and keep record of such meetings and decisions taken. Electronic copies of these records shall be provided to the parties' nominees.
- 6.10 All decisions taken by the PSC shall be by consensus of those present at a meeting. In the case of matters requiring urgent decision or, if for any reason it is impractical to meet, proceedings may be conducted by teleconference, provided that the required quorum participates in the telephonic meeting, or by utilising e-mail, provided that the required quorum responds in writing. In the case of an e-mail request for a decision, such request shall be sent from the office of the Chairperson. A decision reached by consensus of the nominees participating during the course of such proceedings shall be as valid and effectual as if it had been passed at a meeting of the nominees duly called and constituted. Decisions reached by email shall be ratified and minuted at the next meeting.

7. Financial Arrangements

- 7.1 The study will be funded by the City from its Integrated City Development Grant.
- 7.2 The City will pay R5 000 000 to PRASA from the approved 2016/17 City budget within 60 days of signing of this agreement towards the first phase of the project.
- 7.3 The City will pay a further amount not exceeding R5 000 000 in the City's 2017/18 financial year to PRASA in respect of the second phase, subject to that phase having been approved by the PSC and subject to the City receiving 6 (six) copies of the completed study in agreed e-copy or hard copy format.
- 7.4 The above payments will be made to PRASA on formal invoices with due reference to the applicable clauses of this agreement (either clause 7.2 or 7.3 as the case may be).

7.5 The above payments will be paid into the primary bank account of PRASA which is as follows:

Account name: Passenger Rail Agency of South Africa

Account number: 202610241

Bank: Standard Bank

Branch Name: Braamfontein

Branch Code: 004805

Deposit identifier: _____

7.6 Funding provided by City shall only be used for this Project as confirmed in a resolution in compliance with PRASA's SCM processes;

7.7 Interest earned on the investment of project funds may only be utilised to the benefit of the approved Project;

7.8 If the Project does not commence within 6 (six) months after payment of the funds have been effected, all funds, with the interest earned thereon (if any), must be immediately refunded to the City, with reference to this particular project;

7.9 Surplus funds, if arising for whatever reason, including interest thereon (if applicable), must be paid back to the City immediately upon completion of the Project, with reference to this particular project;

8. Duties of the City:

The City will be responsible for the following:

8.1 Co-chair, membership and secretariat of the PSC (subject to clauses 6.2 and 6.3);

8.2 Funding of the project in line with terms and conditions encapsulated herein;

8.3 Joint sign-off of detail scope and deliverables of study;

8.4 Payment of invoices provided by PRASA in terms of this agreement (refer clauses 7.2 and 7.3);

8.5 Receipt of the deliverables.

9. Duties of PRASA:

PRASA will be responsible for the following:

- 9.1 Co-chair and membership of PSC (subject to clauses 6.2 and 6.3);
- 9.2 Joint sign-off of detailed scope and deliverables of study;
- 9.3 Appointment of service provider in line with agreed SoW and PRASA's SCM policy;
- 9.4 Study oversight (management of service provider), including appropriate study progress reporting to PSC;
- 9.5 To provide the City with the completed study (as per clause 7.3);
- 9.6 Submit invoices to City in terms of this agreement (see clauses 7.1 – 7.3)
- 9.7 Repayment to City of funds in terms of clause 7.8 (if applicable)
- 9.8 Repayment to City of surplus funds in terms of clause 7.9 (if applicable).

10. Duration of the Agreement

This Agreement commences on the last date of signature hereto and remains in force until the end of the Project.

11. Variations of the Agreement

Variations to this Agreement including the financial allocations, may only be made by consultation and agreement between the Parties. No amendment or variation of this Agreement shall be of any force or effect unless reduced to writing and signed by both Parties

12. No Partnership or Agency

It is recorded and confirmed that this agreement does not constitute a partnership agreement between the parties, nor does it establish a relationship of principal and agent between them. All parties undertake to refrain from portraying the agreement or any work, material or publication flowing therefrom as reflecting a partnership or agency arrangement between them. This Agreement defines a collaborative execution of activities. The Parties are not engaged in an agency contract or a juristic partnership of any kind. None of the parties have the authority to create any obligations, express or implied, on behalf of the others.

13. Force Majeure

- 13.1 If any Party is prevented or restricted directly or indirectly from carrying out all or any of its obligations under this Agreement, by any cause beyond the reasonable control of that Party, the Party so affected must, to the extent so prevented, be relieved of its obligations hereunder during the period of such events and is not liable for any delay or failure in the performance of any obligations hereunder or loss or damage either general, special or consequential which the other Party may suffer due to or resulting from such delay or failure, provided always that written notice of the occurrence constituting force majeure shall be given within 24 (twenty four) hours by the affected Party becoming aware thereof.
- 13.2 The Parties agree that, should force majeure last more than 6 (six) weeks, the Party who has not invoked force majeure to excuse non-performance of its obligations may terminate this Agreement by giving 10 (ten) days written notice to the other Parties.

14. Breach

Should any Party (“the defaulting party”) commit a breach of any provision of this Agreement and fail to implement remedial action acceptable to the other Party within 14 (fourteen) days of receiving a written notice from the other Party (“the aggrieved party”) requiring the defaulting Party to do so, the aggrieved Party shall be entitled, in addition to its other remedies in law or in terms of this Agreement, to serve another notice, in writing, to cancel this Agreement, with or without claiming damages and without prejudice to any rights which may have accrued to any of the parties. This second notice shall become effective upon receipt.

15. Dispute Resolution

- 15.1 Should any dispute of whatsoever nature arise between the Parties concerning this Agreement, the Parties shall try to resolve the dispute by negotiation within 10 (ten) Business Days of such dispute arising.
- 15.2 If the dispute has not been resolved by such negotiation, either of the Parties may refer the dispute to arbitration, which proceedings shall be held in Johannesburg in accordance with the Arbitration Foundation of South Africa Rules.
- 15.3 This clause constitutes an irrevocable consent by the Parties to any proceedings in terms hereof, and neither of the Parties shall be entitled to withdraw from the provisions of this clause or claim at any such proceedings that it is not bound by this clause.
- 15.4 This clause is severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason.
- 15.5 This clause shall not preclude either Party from seeking urgent relief in a court of appropriate jurisdiction, where grounds for urgency exist.

16. No Waiver

The failure of any of the Parties to insist upon the strict performance of any provision of this Agreement or to exercise any right, power or remedy consequent upon a breach hereof does not constitute a waiver by such Party to require strict and punctual compliance with each and every provision of this Agreement.

17. Whole Agreement

17.1 This document embodies the whole Agreement between the Parties. No party shall have any right or remedy arising from any undertaking, warranty or representation not included in this Agreement.

17.2 If any of the clauses of this agreement or annexures thereto are found to be invalid or not binding on the parties, such finding will not affect the validity of this agreement and the parties agree to be bound by the other provisions of the agreement.

18. Domicilium

The Parties choose as their domicilium citandi et executandi the following addresses:

18.1 The City of Cape Town:

15th Floor
Cape Town Civic Centre
12 Hertzog Boulevard
Cape Town, 8000

18.2 PRASA:

PRASA House
1040 Burnett Street
Hatfield,
Pretoria, 0083

Signed at Cape Town on this the _____ day of _____ 2016 in the presence of the undersigned witnesses.

Melissa Whitehead

Commissioner: Transport for Cape Town

(For and on behalf of the City of Cape Town)

As Witnesses:

1. _____

2. _____

Signed at _____ on this the _____ day of _____ 2016 in the presence of the undersigned witnesses.

Group Chief Executive Officer

(For and on behalf of the PRASA)

As Witnesses:

1. _____

2. _____