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**G O V E R N M E N T   N O T I C E**

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**DEPARTMENT OF TRANSPORT**

No. R. 1140

13 November 2000

**NATIONAL LAND TRANSPORT TRANSITION ACT, 2000 (ACT NO. 22 OF 2000)****DRAFT REGULATIONS TO BE MADE AND DOCUMENTS TO BE PUBLISHED  
BY THE NATIONAL MINISTER**

Draft regulations and documents set out in the attachments hereto to be published by the National Minister of Transport are hereby published for public comment.

The attachments are the following:

Document 2: Draft *Pro Forma* Founding Agreement for Transport Authorities

Interested parties are invited to submit written comments on these drafts by no later than 22 November 2000 with:

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**DOCUMENT 2: DRAFT PRO FORMA FOUNDING AGREEMENT FOR TRANSPORT  
AUTHORITIES**

**NATIONAL LAND TRANSPORT TRANSITION ACT, 2000 (ACT NO. 22 OF 2000)**

***PRO FORMA* FOUNDING AGREEMENT FOR TRANSPORT AUTHORITIES**

**Notice . . . . . of 2000**

1, ABDULLAH MOHAMED OMAR, Minister of Transport, hereby under section 101(5) of the National Land Transport Transition Act, 2000 (Act No, 22 of 2000) publish the *pro forma* founding agreement in the Schedule.

**SCHEDULE**

**MEMORANDUM OF AGREEMENT**

Entered into by and between

The Government of the Republic of South Africa through its Department of Transport, herein represented by its Minister (hereinafter referred to as 'the Department')

AND

The Provincial Government of the Province of . . . . . through its Department of . . . . . herein represented by the Member of the Executive Council responsible for public transport (hereinafter referred to as "the Provincial Department")

AND

The . . . . . Municipality, herein represented by . . . . .

AND

The . . . . . Municipality, herein represented by . . . . .

- [Notes: 1. *The Act requires the national Minister to be a party to the agreement if the national Government will be providing funding.*
2. *All relevant municipalities, whether Category A, B or C, will have to be party to the founding agreement (i. e. including substructures, if any).*
3. *The provisions of this pro forma agreement must be adapted to accommodate the agreement between the parties.*
4. *Where sections of Chapter 3 of the Act are referred to, the appropriate sections of applicable provincial legislation, if any, will have to be substituted.]*

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## PREAMBLE

Whereas the parties wish to establish a transport authority that will take total responsibility for transport functions in the functional transport area concerned, and be responsible for improved transport service delivery by grouping transport functions into a single, well-managed and focussed institutional structure;

Whereas the ..... municipality has decided to withdraw from its participation in the ..... Metropolitan Transport Area, established in terms of section 3 of the Urban Transport Act, 1977 (Act No. 78 of 1977), and to request the Premier of the Province to **redeclare** the metropolitan transport area to exclude the transport area, or to disestablish it, so as to give effect to this decision; *[If applicable]*

Whereas the MEC has consulted with the Members of the Executive Council of the Province responsible for local government and finance, and those Members have supported and consented to the declaration of the transport area and the establishment of the Transport Authority along the lines provided for in this agreement, and

Whereas the parties have agreed to establish a transport authority for the transport area in terms of Parts 5 and 14 of the Act and wish to record such agreement,

## NOW THEREFORE THE PARTIES HEREBY AGREE AS FOLLOWS:

### 1. Definitions

In this agreement, unless the context clearly indicates otherwise, any word or expression that is used in the Act **has** the meaning assigned to it by the Act, and—

“business plan” means the annual business plan of the Transport Authority prepared in terms of clause 12;

“CEO” means the Chief Executive Officer of the Transport Authority appointed in terms of clause 5:

“MEC” means the Member of the Executive Council of the ..... Province responsible for public transport;

“participating municipalities” means the ..... Municipality and the ..... Municipality;

*[and others if applicable]*

“Province” means the Province of . . . . . as contemplated in section 103 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

“the Act” means the the National Land Transport Transition Act, 2000 (Act No. 22 of 2000);

“(transport area” means the transport area for which the Transport Authority has been established, as described in clause 2.2;

“Transport Authority” means the . . . . . Transport Authority established by clause 2;

“Transport Executive” means the body of employees responsible for the professional, technical and administrative work of the Transport Authority, *as* contemplated in clause 7.

## 2, **Establishment of . . . . . Transport Authority**

2.1 A Transport Authority is hereby established for the transport area, to be known **as the** . . . . . Transport Authority.

2.2 The transport area for which the Transport Authority is established shall be the areas of jurisdiction of the participating municipalities as they exist from time to time (in this agreement called “the transport area”).

*[Alternatively: “The transport area for which the Transport Authority is established shall be as follows:” (point-to-point (cadastral) description).]*

2.3 The Transport Authority shall come into existence on . . . . . unless the parties agree in writing to postpone this date as a result of possible delays in passing or implementing relevant legislation, or delays in the local government demarcation and restructuring process, or for any other reason.

## 3. **Functions of Transport Authority**

3.1 The Transport Authority will perform the compulsory functions set out in section 10(13) of the Act, as well as any other compulsory functions that may be assigned to it by provincial legislation.

3.2 In addition to the functions mentioned in clause 3.1, the Transport Authority shall be responsible for the following functions contemplated in section 68 of the Act:

## 3.2.1.....

*[Note: The parties to the agreement will have to decide which of the voluntary functions contemplated in section 68 of the Act, if any, should be undertaken. For convenience, these functions are listed as follows:*

- “(a) promote security in public transport;*
- (b) encourage and promote the optimal use of the available travel modes so as to enhance the effectiveness of the transport system and reduce traveling time and costs;*
- (c) develop, operate and maintain a land transport information system;*
- (d) market and promote and assume responsibility for publicity associated with the pub/it transport system;*
- (e) provide information to users or potential users of public transport;*
- (f) in the case of subsidised services, determine fare structures and fare levels, and concessionary fares for special categories of passengers (which will include elderly or disabled persons, learners or students), and periodically adjust fares in consultation with stakeholders, if the MEC has entrusted the subsidy function to the transport authority;*
- (g) in the case of unsubsidised pub/it transport services, set minimum fares;*
- (h) make payments to public transport operators operating public transport services in terms of subsidised service contracts and concessionary fare agreements to which it is a party, if the MEC has entrusted this function to the authority;*
- (i) institute and conduct investigations into the financial circumstances and operating practices of—*
  - (i) persons who, at the time, are existing or potential operators of public transport services in relation to or in the transport area; or*
  - (ii) the holders of permissions who, at the time, are operating public transport services in relation to or in that area, and, if the holder is a company belonging to a group of companies, also into those circumstances and practices of any other company in that group of companies;*
- (j) introduce or establish, or assist in or encourage, promote and facilitate the introduction or establishment of integrated ticketing systems and determine or prescribe measures for the regulation and control of revenue-sharing among the operators involved in that system;*
- (k) exercise control over service delivery through—*
  - (i) the setting of operational and technical standards, and monitoring compliance therewith; and*
  - (ii) the monitoring of contracts and concessions;*
- (l) develop, implement and monitor a strategy to prevent, minimise or reduce any*

- adverse impacts of the land transport system on the environment;*
- (m) in agreement with relevant participating municipalities—*
- (i) take over functions related to municipal roads;*
  - (ii) apply measures to limit damage to the road system in that part of the transport area.”*

3.3 The Transport Authority may not undertake any functions additional to those set out in clause 3.1 and 3.2, unless this agreement is amended accordingly in accordance with clause 21.

#### 4. Governing **Body**

4.1 The Governing Body of the Transport Authority shall consist of the following elected councillors of **each** participating municipality:

.....

*[Note: If more than one municipality is involved, there will have to be representatives from each council (including substructures, if applicable).]*

4.2 The Governing Body must elect a Chairperson and Deputy Chairperson from among its members. The Chairperson must chair meetings of the Governing Body, and the Deputy Chairperson must do so in the absence of the Chairperson.

4.3 Decisions of the Governing Body shall be taken on the basis of one vote per member, with the person presiding at the meeting having a casting vote in addition to his or her deliberative (normal) vote.

4.4 The quorum for meetings of the Governing Body shall be 50% of its members, of whom at least ..... shall be from ..... and ..... from .....

4.5 (a) The Governing Body may establish committees, either as standing committees or for particular tasks and periods.

(b) Committees may consist of members of the Governing Body or one or more of its members and other persons. Committees must be chaired by a member of the Governing Body.

(c) The functions of such committees are to manage, address or advise the Governing Body on particular issues as assigned to the committee by the Governing Body and

to report on their findings to the Governing Body for further action.

(d) The working of such committees shall be by consensus, and a quorum shall be 50% of the members appointed, Committees may determine procedure to be followed in undertaking their functions, unless the Governing Body has determined such procedure.

(e) Committee members shall hold office at the pleasure of the Governing Body.

4.6 Subject to sections 68,69 and 73 of the Act, the Governing Body may, in writing, delegate to the CEO or to any member of the Transport Executive, one or more of the following powers or duties:

(a) To appoint and dismiss staff;

(b) to purchase assets or supplies to a maximum value not exceeding R . . . . . per purchase;

(c) . . . . .

## 5. Chief Executive Officer

5.1 The Governing Body must appoint a Chief Executive Officer (CEO) for the Transport Authority, who shall be employed on a full time basis on terms and conditions, and at remuneration, to be determined by the Governing Body.

5.2 The functions of the Chief Executive Officer ~~are—~~

(a) to advance the purpose and objects of the Transport Authority as specified in this agreement and in applicable legislation;

(b) to manage and direct the Transport Executive in terms of the applicable business plan;

(c) to carry out other detailed duties and responsibilities set out in Appendix A on behalf of the Transport Authority;

(d) to carry out the lawful instructions of the Governing Body.

5.3 The Governing Body must conclude an agreement with the CEO, which must be revised for each financial year, and which provides, among other things, for key performance indicators to measure the success of the CEO in achieving the goals, objectives and targets set by the Governing Body for the year in question.



**6. Head office and *domicilium***

6.1 The head office of the Transport Authority shall be situated at.....

6.2 The head office shall also serve as the place where—

- (a) the Governing Body meets;
- (b) all correspondence, documents, notices and court process may be delivered or sent to or served on the Transport Authority (*domicilium citandi et executandi*);
- (c) the offices of the Transport Executive are situated.

**7. Transport Executive**

7.1 The CEO must establish a Transport Executive, comprising of professional, technical and administrative personnel, who are employees of the Transport Authority and who are responsible for the performance of its professional, technical and administrative duties.

7.2 Staff members of the Transport Executive will be employed by the Transport Authority on terms and conditions applicable to municipalities, unless the Governing Body determines otherwise. In this regard, *unless* the Governing Body determines otherwise, the manner of and procedures for the appointment of staff shall be determined in accordance with the provisions of the Local Government: Municipal Systems Act, 2000 (Act No. . . . . of 2000).

*[Alternatively: The Transport Department of one or more of the participating municipalities may act as the Transport Executive. If this route is followed, the agreement will have to be amended accordingly.]*

7.3 The functions of the Transport Executive shall be to carry out the functions of the Transport Authority as specified in applicable legislation, this agreement and a separate operating agreement to be concluded between the Governing Body and the CEO.

7.4 The Transport Authority must establish and follow employment practices which are fair and equitable.

**8. Transfer of staff from participating municipalities**

8.1 Employees of participating municipalities may, with their consent and by agreement between the Transport Authority and such municipalities, be transferred to the service of the Transport Authority on a permanent basis.

**8.2 The transfer** of employees will be subject to the terms and conditions as *contemplated* in subclause 8.1 and further the following conditions:

- (a) **The salaries** or wages, and the allowances (if any) to be paid to employees and service benefits due to them by the Transport Authority, may not be less than those payable or due to them by the participating municipality immediately before the transfer.
- (b) The employees' respective periods of pensionable service with the participating municipality will be regarded and treated as pensionable service for the purposes of any pension fund or scheme of which they may become members after transfer. If, upon the transfer of those employees' benefits from the municipal pension fund to the first mentioned pension fund or scheme, there is an actuarial deficit in the first mentioned pension fund in respect of those employees' pensions, the deficit must be made up by the Transport Authority or the municipality, or both, as provided **for** in that agreement.
- (c) The **leave** which had been accumulated by each of those employees while in **the** service of the participating municipality, will be regarded and treated as if it were leave accumulated by such an employee in the service of the Transport Authority, except where the employee has requested the participating municipality in writing to be paid the cash value of the accumulated leave, in which case the municipality must make that payment. Liability for the cost of either arrangement will be as stipulated in that agreement.

8.3 (a) A participating municipality, at the request of the Transport Authority, may place any person in the service of the municipality at the disposal of the Transport Authority, to render a service with the Transport Authority for a period the municipality considers fit. However, the municipality may do so only with that person's consent.

- (b) For as long as that person renders a service to the Transport Authority, it must compensate the municipality for the remuneration and allowances paid by the municipality to that person, and for any other moneys spent by the municipality on that person's other service benefits and any other costs to the municipality arising from placing that person at the Transport Authority's disposal.

## **9. Performance management**

9.1 The CEO must regularly monitor and assess the progress of the Transport Authority and

performance towards achieving its objectives, as set out in applicable legislation, this agreement, the business plan and its transport plans, ~~and~~ must comply in this regard with Chapter 6 of the Local Government: Municipal Systems Act, 2000 (the provisions of which will apply with the necessary changes).

9.2 The participating municipalities may require the Transport Authority to submit to independent reviews for its output quality or cost effectiveness at any time, or periodically. In deciding to do so, the municipalities must have regard to—

- (a) the potential for the benefits of the review to exceed its costs, and
- (b) the audits and statements by the auditors of the Transport Authority.

9.3 The participating municipalities may direct the terms of reference for and the persons responsible to conduct the reviews, and how the expenses of the reviews will be covered. Copies of such reviews must be supplied to the participating municipalities and the Transport Authority.

## **10. Finances of Transport Authority**

10.1 The Transport Authority must conduct its financial affairs in accordance with sections 13 and 72 of the Act and must use all funds received by it strictly in accordance with section 14 of the Act.

10.2 If at any time the CEO becomes aware that the Transport Authority—

- (a) may incur an operating deficit at the close of that financial year; or
- (b) has a cash flow deficit,

the CEO must call a meeting of the Governing Body immediately to discuss the matter, and must inform the Minister, the MEC and all of the participating municipalities immediately.

10.3 The Governing Body must inform the participating municipalities of the methods it intends to employ to fund such a deficit and supply them with a statement of why the funds estimated in the relevant budget are not adequate.

10.4 If the participating municipalities are not satisfied with any financial explanations or information provided by the Transport Authority, they may request written clarification within a stated time. The Transport Authority must respond to such a request within ten days. If a participating municipality is not satisfied as to a particular item, it may direct the

Governing Body to employ auditors to review the financial information and the Transport Authority's response, and to report thereon to such municipalities.

## **11. Budget and related matters**

11.1 The CEO must ensure that a draft budget for the next financial year is prepared and submitted to the Governing Body by not later than . . . . . days before the end of the current financial year.

11.2 The budget must set out and explain at least—

- (a) the cost of the proposed operations, projects, activities and other objectives of the Transport Authority for the next financial year and the manner in which it is proposed to finance them;
- (b) a statement of the Transport Authority's estimated income and expenditure for the next financial year;
- (c) any other information or particulars required by the Actor by the Minister, the MEC or the Governing Body.

11.3 Once changes required by the Governing Body, if any, have been incorporated, the budget must be finalised and approved by the Governing Body by not later than three months before the end of the relevant financial year. The budget must be submitted to the councils of the participating municipalities for approval by the date determined by the MEC under section 72(2)(a) of the Act.

11.4 Where a supplementary budget is proposed in terms of section 72(2)(a) of the Act, the procedure set out in clause 10.2 must be followed, with the necessary changes, and the necessary steps must be taken immediately to enable the supplementary budget to be implemented.

11.5 Where a reserve fund is established in terms of section 72(2)(c) of the Act, the money in the fund must be invested with a financial institution approved by the Governing Body at the highest possible interest rate, subject to a risk assessment of all available institutions, on the following terms and conditions: .....  
..... *[To be completed.]*

11.6 The Transport Authority may not raise any loan except in accordance with a written resolution of the Governing Body supported by a majority of all the members of the Governing Body.

## **12. Business plan**

- 12.1 Every year, not later than . days before the end of the current financial year, the CEO must cause to be prepared a business plan for the Transport Authority and submit it to the Governing Body for approval with the annual budget. The business plan must be submitted to the councils of the participating municipalities for approval, together with the budget,
- 12.2 The business plan must set out and explain the Transport Authority's proposed operations, projects, activities and other objectives for the next financial year, as well as—
- (a) the planned performance indicators applicable to such operations, projects, activities and other objectives;
  - (b) any other information or particulars required by the Act by the Minister, the MEC or the Governing Body.
- 12.3 The format and structure of the business plan will be as set out in Appendix . . . .
- 12.4 Before finalizing its business plan, the Transport Authority must publish a notice in at least one newspaper circulating in the transport area, stating that the draft business plan is available for inspection at times and at a place mentioned in the notice, and allow interested persons a reasonable opportunity to submit comments or recommendations in relation thereto. The Transport Authority must consider any such comments or recommendations received before finalizing the business plan.

*[Note: Alternatively, or in addition, provision could be made for the holding of one or more public meetings to discuss the business plan and proposed priorities and projects.]*

- 12.5 The Transport Authority must keep the participating municipalities informed of all significant changes affecting its functions. Without derogating from the generality of this provision, 'significant' in financial terms shall mean five percent or one million rand.
- 12.6 The Transport Authority must supply the participating municipalities with information, advice and assistance related to its functions, as such municipalities may require from time to time. Requests in this regard must be complied with within ten days.

## **13. Annual report**

- 13.1 Within three months after the end of each financial year, the Transport Authority must submit a report to the participating municipalities concerning the business, operations,

projects, finances, transactions and activities of the Transport Authority during the financial year. The report must also deal with the financial position of the Authority at the end of that year.

13.2 The annual report must include at least—

- (a) the audited financial statements of the Transport Authority for the financial year covered by the report;
- (b) the auditor's report for that year;
- (c) a synopsis outlining, in broad terms, the Transport Authority's business, operations, projects and activities during the year with the necessary background information, explanations or reasons for matters dealt with in the report and—
  - (i) setting out the extent to which the Authority has succeeded in achieving or advancing its various detailed objectives as set out in its business plan and transport plans for that financial year;
  - (ii) containing all relevant information about the Transport Authority's performance with a view to determining how far the Authority has succeeded in applying its resources efficiently, effectively and economically during the year, as well as a comparison between the planned performance indicators for that financial year as set out in that year's business and transport plans, and the actual performance indicators as at the end of that year; and
  - (iii) specifying the amounts of money received by the Transport Authority from the participating municipalities and the manner in which it was made available to it, and, if any amount was made available by such a municipality for any particular purpose, also the purpose in question; and
  - (iv) specifying any liability incurred or commitment undertaken by the participating municipalities (if any) for the Transport Authority's benefit.

14. **Procurement**

- 14.1 The Transport Authority must award contracts for goods and services in accordance with a system which is fair, equitable, transparent, competitive and cost-effective, with due regard to sections 9 and 217(1) and (2) of the Constitution. In this regard the applicable provisions of the Local Government: Municipal Systems Act, 2000, shall apply, with the necessary changes.
- 14.2 The participating municipalities may give directions to the Transport Authority regarding competitive pricing procedures, after consultation with the Governing Body, subject to clause 14.1.

**15. Contributions by participating municipalities**

The participating municipalities must contribute funds to the Transport Authority in the following manner/amounts . . . . . *[Contributions could be in proportion to population or vehicle ownership, or on some other agreed basis, and could be indicated in a formula. This clause could also provide for initial contributions necessary to set up the Transport Authority, either in money or in kind, etc.]*

**16. Management in general**

16.1 As a public sector authority committed to deriving maximum value for taxpayers' money, the Transport Authority must apply quality management principles in all aspects of its operations.

16.2 The Transport Authority must work in close partnership with all spheres of government and consult fully with communities and other stakeholders affected by its activities. It must respond promptly to and monitor public inquiries.

16.3 The Transport Authority must strive to meet the social and economic needs of communities in the transport area in carrying out its objectives.

16.4 The Transport Authority must co-operate and liaise with all law enforcement agencies to ensure maximum success in achieving enforcement of applicable laws. These agencies include—

- (a) the South African Police Services;
- (b) provincial and municipal traffic authorities;
- (c) provincial road transport inspectors;
- (d) inspectors appointed by the Cross-Border Road Transport Agency;
- (e) the South African National Roads Agency Limited.

16.5 The Transport Authority must establish structures, such as user forums, for consulting and involving users of the public transport systems in the transport area, and other interested persons, in the activities of the Transport Authority. These structures must also provide a forum for the hearing of complaints regarding service delivery. At least the following structures must be established and be conducted in the following manner”  
..... */70 be completed.]*

## **17. Asset management**

**17.1** The Transport Authority must employ professional practices in managing its assets and in investigation, design and work surveillance thereof. Where necessary, professional expertise must be acquired from external sources, on a competitive basis.

**17.2** The Transport Authority must strive to-

- (a) preserve assets to optimise their economic life;
- (b) manage the environmental impacts in the location and management of fixed assets and the provision of services, including the reduction of noise, emissions, runoff and visual impact.

**17.3** Where the Transport Authority has taken on road functions, it must develop strategies and take steps on a pro-active basis to-

- (a) improve safety on roads and eliminate "black spots";
- (b) reduce or eliminate damage to roads and other infrastructure by the overloading of vehicles;
- (c) reduce road roughness to minimise road user operating costs;
- (d) limit road closures and traffic delays associated with road works and unexpected events;
- (e) manage the flow of traffic to minimise delays;
- (g) reduce the incidence of skid resistance as a factor in road accidents;
- (9) provide effective signage;
- (h) improve the utility of motorist services, including rest areas;
- (i) increase traffic capacity;
- (j) achieve greater reliability and reduce road closures;
- (k) reduce accidents through realignments, upgrading intersections, widening roads and providing passing opportunities;
- (l) reduce environmental impacts of roads;
- (m) provide better road user services such as information signs and systems, service areas and rest areas.

**17,4** The Transport Authority must keep an asset register that accurately and fully reflects the state of the Authority's assets at all times, and update such register annually.

**17.5** The Transport Authority must limit land acquisition and land holdings to essential requirements for its activities.



## **18. Projects and work in progress to be taken over by Transport Authority**

18.1 The Transport Authority will take over the following projects/work in progress from the participating municipalities:

(a) .....

(b) .....

**18.2 The terms and conditions on which** such projects/work in progress will be taken over are set out in Appendix B.

## **19. Dissolution of Transport Authority**

The Transport Authority may not be dissolved except in accordance with sections 10(13) and 71 of the Act.

## **20. Mediation**

20.1 Where a dispute or difference arises between any of the parties in connection with or arising from this agreement, or one of the parties alleges that another is in breach of that party's obligations in terms of this agreement, the parties concerned must make every effort to resolve the matter by negotiation. Where the matter cannot be resolved by negotiation, any party may declare a dispute by notifying all of the other parties in writing.

20.2 Where a party gives notice under clause 20.1, the parties must form a mediation committee (hereafter referred as "MC") within 14 days after receipt of the notice by the relevant party, consisting of—

(a) the Minister; *[To be discussed.]*

(b) the MEC;

(c) one representative from each participating municipality;

(d) the CEO.

*[Alternatively, the parties could appoint a single person as mediator. If they cannot agree on a mediator, one could be appointed by a body such as the Association of Law Societies.]*

20.3 The Parties shall commit themselves in every respect to the speedy finalisation and solution of the dispute by the MC.

20.4 Any party may furnish the MC in advance with written documentation and information and

may make the same available to the other parties.

- 20.5 The MC must establish and regulate procedures for the mediation so long as the parties continue to agree to participate in the mediation process.
- 20.6 The parties acknowledge that mediation is a voluntary process that may be terminated at any time by any party on written notice to the others.
- 20.7 The MC must give each party the opportunity to present its case by means of written or oral representations and to submit settlement alternatives, and the MC must aid the parties in reaching a mutually acceptable agreement.
- 20.8 The MC must record the settlement reached by the parties, if any, and request the parties to sign the draft settlement within 3 (three) days after a settlement has been reached and give a copy thereof to each party.
- 20.9 The parties must pay the costs of the MC, if any, in equal shares, unless the MC orders one party to pay a larger share or the full amount.
- 20.10 The signed settlement shall be final and binding on all of the parties
- 20.11 The MC shall not have the power itself to render a binding decision or award in the dispute, nor will it be empowered to force any party to settle the dispute. *[Note: Alternatively, an arbitration procedure could be provided for, where the committee itself decides the matter, e.g. by majority vote. It could then be called an "Arbitration Committee". If this route is followed, the clause will have to be amended accordingly.]*
- 20.12 Any information, documentation and material disclosed or made available to the MC privately or in caucus will remain confidential and will not be disclosed by the MC or any party without the prior consent of the party who made it available.
- 20.13 Mediation will take place on a confidential and "without prejudice" basis. The parties undertake that they will never subpoena any person who is a party to or who is involved in the mediation, for the purpose of giving evidence as to what took place during mediation. The parties and the MC shall ensure that the confidentiality of the mediation process is assured.
- 20.14 If the parties are unable to reach a settlement within sixty (60) days, the MC must certify this in writing and any party may institute proceedings in the appropriate

court for settlement of the dispute, with due regard, where applicable, to the provisions of Chapter 3 of the Constitution.

- 20.15 The parties must, notwithstanding any dispute, difference or settlement procedure, continue to perform their duties and obligations in accordance with the provisions of the agreement.

## **21, Amendment of agreement**

- 21.1** Subject to clause 21.2, no variation of, addition to or consensual cancellation or novation of this agreement, either in its entirety or of any term or condition thereof, shall be of any force and effect unless reduced to writing and signed by the authorised representatives of the parties.

- 21.2** Where the Act or other legislation is amended in a way that affects this agreement, the agreement will be considered as having been amended accordingly: Provided that steps are taken by the Provincial Department to advise the relevant parties of such amendments.

## **22. Indulgences and extensions**

No indulgence or extension of time granted by a party to this agreement to another party, shall constitute a waiver of any of the first party's rights under this agreement, and that first party shall not be precluded as a consequence of having granted such indulgence from exercising any right against the other which may have **arisen** in the past or which may arise in the future.

SIGNED at ..... on .....

MINISTER OF TRANSPORT

Witness 1: .....

Witness 2: ..... ..

SIGNED at ..... on .....

MEC for ..... : PROVINCE OF .....

Witness 1: .....

Witness2: ..... "....."

SIGNED at ..... on ..... 2000.

for ..... MUNICIPALITY

Witness 1 : .....

Witness 2: .....  
[FULL NAME]

SIGNED at ..... on ..... 2000.

for ..... MUNICIPALITY

Witness 1: .....

Witness2: .....  
[FULL NAME]

**APPENDIX A: Detailed duties and responsibilities of Chief Executive Officer (Clause 5.2(c))**

*[To be completed by parties.]*

**APPENDIX B: Terms and conditions on which projects and work in progress will be taken over from participating municipalities (Clause 18.2)**

*[To be completed by parties.]*