

REPUBLIC OF SOUTH AFRICA

THE COMPANIES' COMPANIES ACT NO. 71 OF 2008

MEMORANDUM OF INCORPORATION

OF

JOHANNESBURG ROADS AGENCY SOC Ltd (RF)

(Hereinafter referred to as "JRA")

Registration number: 2000/028993/07

This Memorandum of Incorporation was adopted by Special Resolution passed on 4th February 2015 in substitution for the existing Memorandum and Articles Associations of the Company

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**MEMORANDUM OF INCORPORATION
FOR
JOHANNESBURG ROADS AGENCY SOC Ltd (RF)**

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1. DEFINITIONS AND INTERPRETATION

- 1.1. In this MOI, words importing any one gender includes the other gender, the singular includes the plural and vice versa; natural persons include juristic persons and vice versa
- 1.2. Unless inconsistent with the context, the words and expressions set forth below shall bear the following meanings and cognate expressions shall bear corresponding meanings.
- 1.2.1. **“the Board”** means the Board of Directors of JRA appointed in terms of the Companies Act read with this Memorandum of Incorporation;
- 1.2.2. **“Business Day”** means a day other than a Saturday, Sunday or public holiday in the Republic of South Africa;
- 1.2.3. **“the Chairperson”** means the Chairperson of the Board appointed from time to time;
- 1.2.4. **“the Chief Executive Officer or Managing Director”** means the chief executive officer or Managing Director of JRA appointed in terms of clause 6.10 herein below who is also the accounting officer in terms of section 93 of the MFMA;
- 1.2.5. **“City / the “Shareholder”** means the City of Johannesburg Metropolitan Municipality or its successor-in-title from time to time, being the sole shareholder and parent municipality of the Company;
- 1.2.6. **“City Group Policy”** means City Group Policy on the Shareholder Governance of Boards of Directors of Municipal Entities, 2011, as amended from time to time;
- 1.2.7. **“the Company”** means Johannesburg Road Agency SOC Ltd, a State Owned Company incorporated in terms of the Companies’ Act, No 63 of 1973, which has now been replaced by the Companies’ Act 71 of 2008, with registration number 2000/028993/07;
- 1.2.8. **“the Companies Act”** means the Companies’ Act, 71 of 2008, as amended from time to time;

- 1.2.9. **“the Constitution”** means the Constitution of the Republic of South Africa Act, 108 of 1996, as amended from time to time;
- 1.2.10. **“Council”** means the Municipal Council of City as defined in section 1 of the Municipal Structures Act;
- 1.2.11. **“Directors”** mean the Directors of JRA appointed in terms of clause 6.1;
- 1.2.12. **“Effective Date”** means the date of the filing of this MOI with the Companies Intellectual Property Commission;
- 1.2.13. **“External Auditor”** means the Auditor-General as defined in section 1 of the MFMA;
- 1.2.14. **“IDP”** means Integrated Development Plan of the City, as amended from time to time;
- 1.2.15. **“HR Committee”** means Remuneration or Human Resource Committee.
- 1.2.16. **“Incorporator”** means the City of Johannesburg Metropolitan Municipality;
- 1.2.17. **“JRA”** means Johannesburg Road Agency SOC Ltd;
- 1.2.18. **“KPI”** means the Key Performance Indicator, the deliverables, standards or measures used to indicate whether or not key performance area has been met.
- 1.2.19. **“RF”** means “Ring Fenced” the provisions contemplated in section 15(2) and (3) of the Companies Act restricting or prohibiting the amendment of any particular provision of the MOI;
- 1.2.20. **“the Mayor”** means the Executive Mayor of the City of Johannesburg Metropolitan Municipality;
- 1.2.21. **“MD”** means the Managing Director of the Company;
- 1.2.22. **“MFMA”** means the Local Government: Municipal Finance

Management Act, 56 of 2003;

- 1.2.23. **“MMC”** means a Member of the Mayoral Committee as contemplated in section 60 of the Municipal Structures Act;
- 1.2.24. **the MOI”** means the Memorandum of Incorporation of the Company, as contained in this document;
- 1.2.25. **“City Manager”** means a person appointed by the Council in terms of section 82(1)(a) or (b) of Local Government: Municipal Structures Act, 1998;
- 1.2.26. **“Municipal Representative”** means an official of the City designated as a representative of the Council in terms of section 93D of the Municipal Systems Companies Act;
- 1.2.27. **“the Municipal Structures Companies Act”** means the Municipal Structures Act 117 of 1998, as amended;
- 1.2.28. **“MSA”** means the Local Government: Municipal Systems Act 32 of 2000, as amended;
- 1.2.29. **“the Parent Municipality”** refers to the City of Johannesburg, the municipality that established JRA as a municipal entity in terms of the MSA;
- 1.2.30. **“nominee”** means any official nominated by the City from time to time;
- 1.2.31. **“Prescribed Officer”** means any person or an official within JRA who exercises or regularly participates to a material degree in the exercise of general executive control over, and management of the whole or a significant portion of the business and Companies Activities of the Company.
- 1.2.32. **“SDA”** means the Service Delivery Agreement entered into between the City as a Parent Municipality and JRA as a municipal entity, as amended from time to time;
- 1.2.33. **“SDBIP”** means the Service Delivery Budget Implementation Plan of the

City as formulated from time to time;

1.2.34. **“Securities”** means any shares, notes, bonds, debentures or other instruments, irrespective of their form or title, issued or authorised to be issued by the Company;

1.2.35. **“Shareholders’ Meeting”** means General Meeting of the Company;

1.2.36. **“person”** means any natural person, company or body corporate, a statutory body, a partnership or an association of persons, as the case may be;

1.2.37. **“the Republic”** means the Republic of South Africa.

2. **CONFLICT RESOLUTION**

If the provisions of this MOI are in any way inconsistent with the provisions of any applicable legislative framework, the provisions of the MFMA and the Companies Act shall prevail.

3. **INCORPORATION AND NATURE OF THE COMPANY**

3.1. **Juristic Personality**

3.1.1. JRA is a “ring fenced” pre-existing company as defined in the Companies Act and it has automatically converted into a State Owned Company.

3.1.2. JRA is, accordingly classified as a State Owned Company as contemplated in section 8(2)(a) of the Companies Act.

3.1.3. This MOI replaces and supersedes the Memorandum and Articles of Associations of JRA applicable prior to the filing hereof.

3.1.4. The MOI as contemplated in section 13(1) (a) (i) of the Companies Act shall not apply to the Company.

3.1.5. JRA is incorporated in accordance with and governed by:

- (a) the alterable provisions of the Companies Act that are applicable to State Owned Companies, subject to the limitations, extensions, variations or substitutions set out in this MOI;
- (b) the unalterable provisions of the Companies Act that are applicable to State Owned Companies, save to the extent that this MOI does not impose on JRA a higher standard, greater restriction, longer period of time or similarly more onerous requirement; and
- (c) the provisions of this MOI.

3.2. Purpose and Objects

3.2.1. The main purpose and object of the JDA is to, *inter alia* construct, maintain and manage the infrastructure networks in relations to roads, road reserves, storm water, footways, railway sidings and traffic mobility management on behalf of the City.

3.2.2. In addition to 3.2.1 above, the JDA aims to provide any other municipal services assigned to it by the City in terms of the Service Delivery Agreement (“SDA”) entered into by between the JDA and the City, as amended from time to time.

3.2.3. To achieve its objectives, the JDA was established to promote the common interests of the members of the community falling within the jurisdictional area of the City.

3.3. Limitation of Liabilities

No person shall, subject to the provisions of section 77 of the Companies Act, solely by reason of being a Director of JRA, be liable for any liabilities or obligations of the Company.

3.3. Powers and Capacity of JRA

Unless specifically restricted by this MOI, JRA has all of the legal powers and capacity contemplated in the Companies Act, and no provision contained in this MOI should be interpreted or construed as negating, limiting, or restricting those powers in any way whatsoever.

3.5. Special Conditions

3.5.1. JRA shall ensure that all of its Companies Activities are directed to the furtherance of its sole or principal object as set out in the SDA.

3.5.2. JRA must operate within the powers and functions assigned to it by City in terms of the SDA.

3.5.3. JRA shall not offer any of its Shares or securities to the public and therefore the transferability of the Company's Securities is strictly restricted.

3.5.4. JRA and the City as a parent municipality shall enter into transversal contract to regulate, amongst others, various services affecting JRA.

3.5.5. As set out in section 93K of the MSA, JRA may not establish or participate in the establishment of another company or any other corporate body, including a trust.

3.5.6. JRA is prohibited from having a share or other interest in a company or any other corporate body, a trust, including any business, profession or occupation which is carried on by the Directors.

3.5.7. JRA shall not without the approval of the City:

- (a) conduct or engage in any business outside the jurisdiction of the City or outside the scope of the SDA; and
- (b) enter into any transaction or contact Act other than in the ordinary and normal course of the Business;

- (c) enter into any transaction action which would result in expenditure exceeding the scope of the approved annual business plan or the approved medium-term expenditure budget of the Company;
- (d) enter into compromise with its creditors in terms of section 155 of the Companies Act;
- (e) propose any scheme of arrangement in terms of section 114 of the Companies Act;
- (f) amalgamate or merge with any other entity or company.

3.5.8. JRA shall not without the approval of the City:

- (a) permit any of its assets to become subject to any form of security or lien or hypothecation;
- (b) alienate or dispose any of its assets; and
- (c) become liable, whether as surety, co-principal debtor, guarantor or indemnifier for the liabilities of any third party.

3.5.9. JRA shall not, directly or indirectly, distribute any of its funds or assets to any person other than in the furtherance of its objectives.

3.5.10. JRA must not directly or indirectly, pay any portion of its income or transfer any of its assets, regardless of how the income or asset was derived, to any person who is a Director, or an employee of the Company, except as:

- (a) provided in the City Group Policy or any remuneration policy determined by the Shareholder from time to time or in terms of the SDA;
- (b) reasonable remuneration for goods delivered or services rendered to or at the direction of the Company; or
- (c) payment of, or reimbursement for, expenses incurred to

advance a stated object of JRA; or

- (d) payment of or reimbursement incurred in the performance of their duties, including all travelling, hotel and other expenses in attendance of the meetings or incurred to advance a stated object of the Company;
- (e) payment of an amount due and payable by JRA in terms of a *bona fide* agreement between JRA and that person or another; or
- (f) payment in respect of any rights of that person, to the extent that such rights are administered by JRA in order to advance a stated object of the Company; or
- (g) in respect of any legal obligation binding on the Company; or
- (h) in respect of the legal expenses in relation to any matter concerning the Company.

3.5.11. Subject to the approval of the City, JRA is restricted to invest its funds:

- (a) with a financial institution as defined in section 1 of the Financial Institutions Protection of Funds Act No. 28 of 2001; or
- (b) in securities listed on a stock exchange as defined in section 1 of the Stock Exchanges Control Act No. 1 of 1985.

3.6. Remuneration and Payments by JRA

3.6.1. The remuneration of the executive, non-executive directors and members of the Independent Audit Committee as well as senior managers shall be determined in terms of the City Group Policy on Shareholder Governance, as amended from time to time.

3.6.2. The authority to JRA to pay remuneration to its Directors as set out in Section 66(9) is accordingly limited by this MOI.

3.7. Funding

A substantial part of the Company's funding shall be derived from the City as a Shareholder.

3.8. Dissolution of JRA

Upon dissolution of JRA or its winding-up after paying its debts, the net assets of JRA shall be distributed or transferred back to the City or to any municipal entity owned by the City as determined by City before its dissolution.

3.9. Amendment of the Memorandum of Incorporation

3.9.1. Save for correcting errors substantiated as such from objective evidence or which are self-evident errors (including, but without limitation *ejusdem generis*, spelling, punctuation, reference, grammar or similar defects) in this MOI, which the Board is empowered to do, all other amendments or alterations of the MOI shall be effected in the following manner:

- (a) in compliance with a Court's order, which amendment must be effected by the resolution of the Board as set out in section 16 (4) of the Companies Act;
- (b) by the City, in consultation with the Board.

3.9.2. Save as specifically provided for in 3.9.1 above, this MOI cannot be amended without the approval of the City.

3.9.3. JRA must publish a notice of any alteration made to this MOI in accordance with the provisions of section 17(1) of the Companies Act by delivering a copy of such alteration to the City as the Shareholder.

3.10. Making of the Company's Rules

- 3.10.1. The authority of the Board to make rules for JRA, as contemplated in section 15 (3) to 15 (5) of the Companies Act is restricted to the extent that it requires approval of the City.
- 3.10.2. The Board must publish any rules made in terms of section 15(3) to 15(5) of the Companies Act by delivering a copy of those rules to City as the Shareholder.
- 3.10.3. JRA must publish any notice of the Rules, made in terms of section 17(1) of the Companies Act, by delivering a copy of those rules to the City.

4. CAPITALISATION AND SECURITIES

4.1. Share Capital and Variation of Rights

- 4.1.1. JRA is authorised to issue 1000 (one thousand) Ordinary Shares of the same class, each of which ranks *pari passu* in respect of all rights and entitles the holder to:
- (a) exercise ownership and control over the Company;
 - (b) vote on any matter to be decided by a vote of the shareholder of the Company;
 - (c) participate in any distribution of profit;
 - (d) share in the distribution of the company's residual value upon its dissolution; and
 - (e) access the Company's information.
- 4.1.2. The Board of Directors shall not have powers to:
- (a) increase or decrease the number of authorised Shares of any class of the Company's Shares; or
 - (b) consolidate and reduce the number of the Company's issued

and authorized Shares of any class;

- (c) subdivide its Shares of any class by increasing the number of its issued and authorised Shares of that class without an increase of its capital;
- (d) reclassify any classified Shares that have been authorised but not issued; or
- (e) classify any unclassified Shares that have been authorised but not issued; or
- (f) determine any preference, rights, limitations or other terms of any Shares; or

And such powers shall only be capable of being exercised by the City as the sole Shareholder.

4.1.3. The authorisation and classification of Shares, the numbers of authorised Shares of each class, and the preferences, rights, limitations and other terms associated with each class of Shares as set out in this MOI may be changed only by an amendment of this MOI.

4.2. Issue of Securities

4.2.1. Any issue of Shares, securities convertible into Shares, or rights exercisable for Shares in transaction Action, or a series of integrated transaction shall in accordance with the provisions of section 41(3) require the approval of the City.

4.2.2. the City may at any time authorise the Directors to issue Shares of the Company.

4.3. Register and Form of Security

4.3.1. The Securities of JRA must be issued in certificated form.

4.3.2. JRA shall establish and maintain a Securities Register in accordance

with the provisions of the Companies Act.

4.3.3. The Securities Register shall include in its entry the information required by section 51(5) of the Companies Act.

4.3.5. The certificate evidencing any certificated Securities of JRA must comply with the requirements set out in section 51(1) of the Companies Act.

4.3.6. If a certificate is defaced, lost or destroyed, it may be replaced with a duplicate certificate endorsed "Duplicate Certificate" on payment of such reasonable fee, if any and on such terms as the Board may determine.

4.4. Debt Instruments

4.4.1. Subject to the prior approval of the City the Board may authorise JRA to issue secured or unsecured Debt Instruments as set out in section 43(2) of the Companies Act.

4.4.2. The authority of the Board to authorise JRA to issue secured or unsecured Debts instruments, as set out in section 43(2) of the Companies Act is accordingly limited by this MOI.

4.4.3. No special privileges associated with the Debt Instruments as contemplated in section 43(3) of Companies may be granted to the holder and therefore the authority of the Board in this regard is limited by this MOI.

5. THE SHAREHOLDER

5.1. Shareholding

5.1.1. JRA shall have 1 (one) Shareholder being the City of Johannesburg Metropolitan Municipality, whose shares shall not be transferable.

5.1.2. The issued share capital of JRA shall be 1000 (one thousand) Ordinary Shares, which Shares have been allotted to the City.

5.1.3. the City may, if deemed necessary, by a written notice to the Board

increase the number of shareholders of JRA.

5.2. Termination of the Shareholding

5.2.1. the City shall cease to be a shareholder:

- (a) upon winding-up of the Company;
- (b) upon dissolution of the Company.

5.2.2. the City has power in its absolute discretion, to dissolve JRA without giving any reason, including, if:

- (a) JRA has direct conflict of interest to the City;
- (b) it is detrimental to the interests of the City that JRA should continue to exist as a municipal entity.
- (c) its mandate as contained in the SDA is no longer needed.

5.3. Shareholders' rights to Information

5.3.1. The City through the duly authorised official from the City Group Governance Department or MMC has the rights to access the Company's information as set out in section 26 (1) of the Companies Act.

5.3.2. The City has further rights to inspect and copy the following records of the company:

- (a) A copy of the MOI.
- (b) Copies of the minutes and resolutions of all Meetings of JRA.
- (c) A record of the particulars of the Company's Directors as set out in section 24 (5) of the Companies Act.
- (d) Copies of all reports presented at any Meeting of the Company.
- (e) Notice and minutes of all members' meetings, including the

resolutions thereof.

- (f) Copies of any written communications sent by JRA to its employees or Directors.

5.3.3. In addition to the above, JRA shall maintain a security's register, which the City has a right to access and copy.

5.4. Ratification of ultra vires Companies Acts

Any ratification of an Companies Act performed by the Director contrary to this MOI, as set out in section 20(2) and 20(6) of the Companies Act is subject to the approval by the City.

6. DIRECTORS AND OFFICERS

6.1. Composition and Appointment of the Board of Directors

6.1.1. The Board shall comprise of a minimum number of three (3) Directors and no alternate directors.

6.1.2. The Directors shall be appointed in accordance with the City Group Policy or any other policy determined by the Shareholder from time to time.

6.1.3. The Board must consist of at least a third of the non-executive directors and have a non-executive Chairperson.

6.1.4. The Board of Directors shall comprise of the following:

- (a) a Chairperson, who shall be non-executive appointed in terms of the City Group Policy;
- (b) the Chief Executive Officer ("CEO") or Managing Director ("MD") of JRA;
- (c) all Directors appointed by the City or in terms of the City Group Policy from time to time;

(d) any executive director (s) appointed by the City from time to time;

(e) a duly authorised official of the City and at least one (1) representative from the Group Governance Department;

6.1.5. Any other appointment of a member of the Board or Audit Committee shall be done in accordance with the City Group Policy.

6.1.6. The City shall appoint a person as an executive director (s) of JRA as a consequence of that person holding some other office, title, designation or similar status in the Company.

6.1.7. The Board must have the requisite range of expertise to effectively manage and guide the Companies Activities of JRA.

6.2. Rotation of Directors

6.2.1. A term of office of each Director shall be determined by the City Group Policy or any policy determined by the City from time to time.

6.2.2. Rotation of the Board's members, including sub-committees members shall be determined by the City Policy or any other policy determined by the City from time to time.

6.3. Removal of Directors

6.3.1. The City shall have sole and absolute discretion to remove or recall one or more Directors of JRA without giving reason thereof.

6.3.2. In the case of the Executive Director appointed in terms of clause or the CEO appointed in terms of clause 6.1.4 (d) above, such Director shall be removed when such director's contract of employment expires or otherwise terminated by the Board of Directors.

6.3.3. The Board may in consultation with the City remove a director whom it has determined is ineligible, disqualified, incapacitated, negligent or

guilty of dereliction of duty.

6.3.4. The Director concerned must be given notice of the meeting and be afforded reasonable opportunity to make representation on the matter before a vote is taken by the members.

6.3.5. The City may remove one or more directors of JRA in the following circumstances:

- (a) non-attendance of the Board's meetings for at least 3 (three) consecutive meetings;
- (b) if the performance of the director is unsatisfactory.
- (c) if a director, either through illness or for any other reason, is unable to perform the functions of office effectively.
- (d) If a director is convicted of fraud or theft nor any offence relating to fraudulent conduct.
- (e) If a person is disqualified to be a director as contemplated in section 93F of the MSA, if he or she:
 - i. holds office as a councillor of any municipality;
 - ii. is a member of the National Assembly or a provincial legislature;
 - iii. is a permanent delegate to the National Council of Provinces;
 - iv. was convicted of any offence and sentenced to imprisonment without option of a fine, and a period of five years since completion of the sentence has not lapsed;
 - v. has been declared by a court to be of unsound mind; or
 - vi. is an unrehabilitated insolvent.
- (f) misconduct or breach of trust by the Director.

- (g) for a breach of fiduciary duty.
- (h) as a consequence of the Director.
 - i. Companies Acting without the necessary authority;
 - ii. acquiescing to JRA carrying on business recklessly;
 - iii. being present or participating in a decision or failing to vote against certain specified decisions which contravene the Companies Act;
 - iv. being party to any Companies Act or omission intended to defraud JRA; and
 - v. signing or authorizing the publication of any false or misleading financial statements.

6.3.6. The Chairperson and Deputy-Chairperson shall cease to be officers of JRA if they cease to be Directors.

6.4. Authority and Duties of the Board of Directors

- 6.4.1. The authority of the Board to manage and direct the business and affairs of the Company, as set out in section 66(1) of the Companies Act is governed by this MOI.
- 6.4.2. Subject to accountability and effective oversight by the City, the Board has power to direct and control the business of the Company.
- 6.4.3. The Board has authority to make decisions to determine the future of JRA and protect its assets and reputation.
- 6.4.4. The Board must provide leadership and retain full and effective control over the direction and performance of JRA.
- 6.4.5. The Board must provide transparent, accountable and coherent corporate governance.
- 6.4.6. The Board must communicate openly and promptly with the City and ensure that JRA complies with all applicable legislation and

agreements.

- 6.4.7. The Board is accountable to the City and therefore it must deal with the City in good faith.
- 6.4.8. Subject to the approval of the City, the Board has the power to appoint Company Secretary.
- 6.4.9. A Director must disclose to the Board and to the City, any direct or indirect personal or business interest that the Director or his or her spouse or partner may have in any matter before the Board and must withdraw from the proceedings of the Board when the matter is considered.
- 6.4.10. A Director must at all times Companies Act in accordance with the Code of Conduct for directors referred to in section 93L of the MSA;
- 6.4.11. The Board may from time to time by resolution delegate any power that the Board has to the Executive Directors, CEO, MD or any Prescribed Officer, provided that such powers so delegated may be similarly withdrawn.
- 6.4.12. As set out in the SDA, the Board shall ensure that in each Financial Year, a budget of JRA is prepared in accordance with the provisions of section 87 of the MFMA and submit same to the City.

6.5. Directors and Board Committee Meetings

- 6.5.1. The authority of the Board to consider a matter other than at a meeting, as set out in section 74 of the Companies Act is not limited or restricted by this MOI.
- 6.5.2. The meetings of the Board and Board Committees must be open to the official of the City and a representative from the City Group Governance Department from time to time.
- 6.5.3. The right of the Board to requisition a meeting of the Board, as set out in section 73(1) of the Companies Act may be exercised by at least 2 (two) Directors.

6.5.4. The MOI does not limit or restrict the authority of the Board to:

- (a) conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 73(3) of the Companies Act;
- (b) determine the manner and form of providing notice of its meetings, as set out in section 73(4) of the Companies Act;
- (c) proceed with a meeting despite a failure or defect in giving notice of the meeting, as set out in section 7(5) of the Companies Act; or
- (d) consider a matter other than at a meeting.

6.5.5. Each Director has one (1) vote on a matter before the Board and a majority of the votes cast on a resolution is sufficient to approve that resolution.

6.5.6. In the event of equal votes, the Chairperson shall be entitled to a second or casting vote.

6.5.7. JRA must keep minutes of the meetings of the Board, and any of its committees.

6.5.8. The Chairman of the Board may call the Board Meeting at any time as he or she deemed necessary.

6.6. Proceedings at Board Meetings

6.6.1. The Chairperson of the Board shall preside as Chairperson at every Board Meeting.

6.6.2. The appointment of the Chairperson and their term of office shall be determined by the Shareholder from time to time.

- 6.6.3. If the Chairperson of the Board is not present at a meeting or unable to chair the meeting for whatever reason given at the meeting, the directors present at the meeting shall elect (by simple majority) any member of the Board to preside in the meeting.
- 6.6.4. The quorum for a Board Meeting to begin or for a matter to be considered is at least 50% +1 (fifty plus one percent) of the Directors.
- 6.6.5. Each Director has one (1) vote on a matter before the Board and a majority of the votes cast on a resolution is sufficient to approve that resolution.
- 6.6.6. At any Board Meeting, members of the Board shall be entitled to vote by show of hands or by secret ballot.
- 6.6.7. In the event of equal votes, the Chairperson shall be entitled to a second or casting vote.
- 6.6.8. JRA must keep minutes of the meetings of the Board, and any of its committees.
- 6.6.9. The minutes shall include, amongst others, the following:
- (a) any declaration given by notice or made by a director, as required by section 75 of the Companies Act; and
 - (b) every resolution adopted by the Board
- 6.6.10. Resolutions adopted by the Board:
- (a) must be dated and sequentially numbered; and
 - (b) are effective as of the date of the resolution, unless the resolution states otherwise.
- 6.6.11. Any minutes of a meeting, or a resolution, signed by the Chairperson of the meeting, or by the chairperson of the next meeting of the Board, is evidence of the proceedings of that meeting, or adoption of that resolution, as the case may be.

6.7. Indemnification of Directors

- 6.7.1. The authority of the Board to advance expenses to a director or indemnify a director in respect of the defence of legal proceedings, as set out in section 78(3) of the Companies Act is not limited or restricted by this MOI.
- 6.7.2. The authority of the Board to indemnify a Director in respect of liability as set out in section 78(5) of the Companies Act is not limited or restricted by this MOI.
- 6.7.3. The authority of the Board to purchase insurance to protect the Company, or a Director as set out in section 78(6) of the Companies Act is not limited or restricted by this MOI.

6.8. Accountability and Reporting

- 6.8.1. In each financial year, JRA must prepare annual financial statements ("AFS"), which fairly represent the Company's state of affairs in accordance with section 122 of the MFMA.
- 6.8.2. JRA must for each financial year prepare an annual report for the City to provide record of Companies Activities and performance of the Company.
- 6.8.3. The Company's key performance indicators shall be set out in its Business Plan and KPIs agreed to annually between the City and JRA as required by section 87 of the MFMA.
- 6.8.4. The City shall establish a performance management system in line with the priorities, objectives, indicators and targets contained in its IDP.
- 6.8.5. JRA shall on a quarterly basis submit progress report and/or any other reports required by the City with sufficient information to enable the City to assess its performance towards attaining the set service delivery objectives.

6.8.6. In compliance with the MFMA, the Board is required in each financial year to submit a proposed budget for JRA to the City by not later than 150 days before the start of the Company's financial year.

6.9. Prescribed Officers

The authority of Board to appoint any officer it considers necessary to better achieve the objects of JRA is not limited or restricted by this MOI.

6.10. Managing Director / Chief Executive Officer

6.10.1. The Board shall in consultation with the City procure the appointment of the CEO / MD and who shall be appointed as a full-time employee of JRA and manager of the Company's office.

6.10.2. The CEO / MD shall be appointed for a fixed term contract which shall not be more than five (5) years, subject to renewal by the Board.

6.10.3. The CEO / MD shall be a member of the Board.

6.10.4. The CEO / MD is accountable to the Board for the management of the Company.

6.11. Liabilities of the Directors and Prescribed Officers

6.11.1. JRA may recover loss, damages or costs sustained by JRA from the Director or Prescribed Officer under the following circumstances:

- (a) In terms of the principles of the common law or the provisions of the law of delict relating to the breach of fiduciary duties;
- (b) Where a Director or Prescribed Officer Companies Acted in the name of JRA or signed anything on behalf of JRA while the Director or Prescribed Officer knew that he or she lacked necessary authority;
- (c) The Director or Prescribed Officer is a party to an Companies Act or omission by JRA despite knowing that the Companies Act or omission was calculated to defraud a creditor, employee or the Shareholder;

- (d) The Director signed, consented to or authorised the publication of any financial statements that contained untrue statement or a statement to the effect that a person consented to be a director of the Company, when no such consent had been given, despite knowing that the statement was false, misleading or untrue.

6.12. The Board Committees

6.12.1. The authority of the Board to appoint committees of directors, and to delegate to any such committee any of the authority of the Board, as set out in section 72(1) of the Companies Act or to include in any such committee persons who are not directors, as set out in section 72(2)(a) of the Companies Act is not restricted by this MOI.

6.12.2. The committee appointed by the Board has the full authority of the Board and may consult with and receive advice from any person.

6.12.3. A non-director appointed to a Board Committee will not have any voting rights on any matter to be decided upon by that committee.

6.12.4. At least one (1) representative from the Group Governance Department shall be entitled to attend all Board Committees' Meetings.

6.12.5. Examples of Board Committees include, amongst others, the following:

- (a) Remuneration, Corporate Service and Social Ethics Committee;
- (b) Audit and Finance Committee;
- (c) Risk and IT Committee;
- (d) Information Technology Committee;
- (e) Risk and IT Committee;

7. COMPULSORY PROVISIONS

7.1. Company Secretary

- 7.1.1. JRA is required in terms of the Companies Act to appoint a Company Secretary.
- 7.1.2. Accordingly the Board has authority to appoint a person who has the requisite knowledge of or experience in relevant laws and who is a permanent resident of the Republic to serve as a Company Secretary.
- 7.1.3. A juristic person or partnership may also be appointed as Company Secretary.
- 7.1.4. The first Company Secretary may be appointed by the Board of Directors or the City.
- 7.1.5. A company secretary is accountable to the Board and their duties shall include and not be restricted to, amongst others, the following:
- (a) providing the Directors of JRA with guidance as to their duties, responsibilities and powers.
 - (b) making the Directors aware of any law relevant to or affecting the company.
 - (c) reporting to the Board any failure on the part of JRA or a Director to comply with the Memorandum of Incorporation or rules of JRA or this Companies Act.
 - (d) ensuring that minutes of all shareholders meetings, Board Meetings and the meetings of any committees of the directors, or of the company's audit committee, are properly recorded in accordance with this Companies Act.
 - (e) certifying in the company's annual financial statements whether JRA has filed required returns and notices in terms of this Companies Act, and whether all such returns and notices appear to be true, correct and up to date.

- (f) ensuring that a copy of the annual financial statements is sent to every person who is entitled to it; and
- (g) carrying out the functions of a person designated in terms of section 33 (3).

7.2. Company Auditor

- 7.2.1. JRA shall in accordance with the Companies Act to appoint Internal an Auditor.
- 7.2.2. In accordance with section 92 of the MFMA, the Auditor General shall be an external Auditor of the Company.
- 7.2.3. Any person, including a juristic person or partnership may be appointed as an Auditor if:
 - (a) a person is a registered Auditor;
 - (b) not prohibited from being a Director of a company;
 - (c) not a Director or prescribed officer of the Company;
 - (d) not an employee or consultant of JRA who was or has been engaged for more than one year in the maintenance of any of the Company's financial records or the preparation of any of its financial statements;
 - (e) not a director, officer or employee of a person appointed as Company secretary; and
 - (f) not a person who, alone or with a partner or employees, habitually or regularly performs the duties of accountant or bookkeeper, or performs related secretarial work, for the company.
- 7.2.4. The same individual may not serve as the auditor or designated auditor of a company for more than five consecutive financial years.

7.2.5. If an individual has served as the auditor or designated auditor of a company for two or more consecutive financial years and then ceases to be the auditor or designated auditor, the individual may not be appointed again as the auditor or designated auditor of that company until after the expiry of at least two further financial years.

7.2.6. The Auditor's right to JRA shall include amongst others the following:

- (a) the right of access at all times to the accounting records; and
- (b) all books and documents of the company, and is entitled to require from the directors or prescribed officers of JRA any information and explanations necessary for the performance of the auditor's duties.

7.2.7. The Auditor shall be entitled to:

- (a) attend any members' meeting;
- (b) receive all notices of and other communications relating to any general members' meeting; and
- (c) be heard at any members' meeting on any part of the business of the meeting that concerns the auditor's duties or functions.

7.3. Accounts and Audits

7.3.1. The books of accounts shall be kept at the registered office of JRA or at such other place as the Directors may deem fit.

7.3.2. Directors shall have a right of access at all times to the accounting records and all books and documents of the Company.

7.3.3. The Directors shall from time to time in accordance with the Companies Act, cause to be prepared and laid before JRA in a general meeting such Annual Financial Statements as required by the Companies Act.

7.3.4. A copy of the Annual Financial Statement shall not less than twenty

one (21) days before the date of the AGM be sent to every member of JRA before a date appointed for the meeting.

7.4. Audit Committee

7.4.1. As set out in section 166 (5) of the MFMA, the members of an Audit Committee shall be appointed by the Municipal Council of City from time to time.

7.4.2. The Audit committee must comprise of at least three (3) persons who are not in the employ of the City as a shareholder or other municipal entities owned by the City.

7.4.3. The Audit Committee is required to perform the responsibilities assigned to it in terms of Section 165 and 166 of the MFMA.

7.4.4. The members of the Audit Committee should not be contracted continuously for a period exceeding six years. After serving consecutive period of six years, a cooling off period of two years should be provided for, before appointing the same member.

7.4.5. The functions of the Audit Committee as set out in section 165 of the MFMA , shall include, amongst others, the following:

- (a) advise the City, the Board, the MD and the management staff of JRA on matters relating to:
 - i. Internal financial control and internal audit;
 - ii. Risk management;
 - iii. Accounting policies;
 - iv. The adequacy, reliability and accuracy of financial reporting and information;
 - v. Performance management;
 - vi. Effective governance;
 - vii. Compliance with the Companies Act , the annual division of

Revenue Companies Act and any other applicable legislation;

- viii. Performance evaluation; and
- ix. Any other issue referred to it by the municipality or municipal entity.

(b) Good corporate citizenship.

7.4.6. To enhance the functions of the Audit Committee, the following is required:

- (a) The Chairperson of the Audit Committee should be independent.
- (b) The Chairperson of the Board shall not be eligible to be a member of the Audit Committee.

7.5. Social and Ethics Committee

7.5.1. The Board shall appoint a Social and Ethics committee.

7.5.2. The Social and Ethics Committee shall comprise of not less than three (3) Directors and at least one (1) of whom must be a Director not involved in the day-to-day management of the Company.

7.5.3. The functions of the Social and Ethics committee shall include, amongst others, the following:

- (a) Monitoring of the Companies' Activities, having regard to the Statutes and codes of the best practice relating to:
 - i. Employment equity Act, 1998.
 - ii. The Broad-Based Black Economic Empowerment Act, 2003
- (b) Good corporate citizenship, including, *inter alia*, the following:

- i. Promotion of equality;
 - ii. prevention of unfair discrimination;
 - iii. reduction of corruption;
 - iv. contribution to development of the communities; and
 - v. record of sponsorship, donation and charitable giving.
- (c) The environmental, health and public safety;
- (d) Consumer relationship, including Company's advertising and public relations; and
- (e) Labour and employment matters.

7.5.4. The Social and Ethics Committee is entitled to require from any Director or Prescribed Officer any information or explanation necessary for the performance of the committee's functions.

7.6. Remuneration or Human Resource Committee

7.6.1. JRA shall establish a Remuneration Committee or Human Resource Committee ("HR Committee").

7.6.2. The functions of the HR Committee shall include, amongst others, the following:

- (a) making recommendations to the Board on specific remunerations package for each of the executive Directors, which recommendations shall be subject to the City Group Policy.
- (b) making recommendations to the Board as to the fees to be paid to each non-executive Director, which recommendations shall be subject to the City Group Policy.
- (c) evaluating the performance of individuals in achieving key

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results areas and contributing to the success of JRA and the achievement results.

7.6.3. The HR Committee must comprise of independent non-executive directors.
