

MEMORANDUM TO THE OFFICE OF THE MEC

FROM THE OFFICE OF THE HEAD OF DEPARTMENT

**SUBJECT: BUS TRANSFORMATION INITIATIVE AND OTHER
SPECIAL PROJECTS, MORATORIUM ON SPECIAL
PROJECTS, WINDING DOWN IN PREPERATION FOR A
HANDOVER**

1. PURPOSE

The purpose of this memorandum is:

- 1.1 To acknowledge that with due regard to the Office of the MEC's letter, it is agreed that the proposals therein are in the best interests of the Department, and that, accordingly, the policy shift of the transformation of the bus commuter transport service to a public run service is put on hold;
- 1.2 To respect the MEC's proposal that no new projects be introduced; and
- 1.3 To briefly revisit the rationale underlying the necessity to continue with operational matters brought about by legislative and policy requirements.

2. CONTEXT

- 2.1 The Office of the HOD heeds the instruction to postpone the process of the transformation of the bus commuter transport service to a public run service, and has accordingly stopped all processes in this regard.
- 2.2 As stated in the MEC's letter, and contemplated by the Office of the HOD, it would not be wise to encumber an incoming Executive Authority with a project which could be deemed to be a shift in policy.

- 2.3 The Office of the HOD is also sensitive to the imminent electoral process, and any public misperception which may be taken advantage of by opponents.
- 2.4 It will, however, continue with operational matters necessitated by Legislation and Policy. Indeed, as aptly stated by the Office of the MEC in its letter, the Department cannot cease working, and is duty bound to work towards achieving its objectives.
- 2.5 The incoming Executive Authority will bear the responsibility to make the decision whether to follow and implement the transformation of the bus commuter transport service to a public run service, and they will have at their disposal the requisite information and expertise to ably make an informed decision based on the groundwork done by the Department.
- 2.6 They will also inherit, by virtue of the work currently being done by the Department, the active platform upon which existing bus contracts are in the process of being standardised in terms of Legislative and Policy requirement, that is, within existing National Department of Transport (“the DOT”) policy. To temporarily halt this process at this juncture would result in further litigation between operators and the Department, as well as inordinate delays in the incoming Executive Authority complying with legislation. The commuters of Gauteng, and indeed the Department, would be severely prejudiced by these circumstances. It is thus the Department’s duty to ensure the smooth transition between the current leadership and the next Executive Authority by the continuity of works, as stated by the Office of the MEC in its letter. The MEC’s stance herein is understood and appreciated.
- 2.7 With due regard to the said letter, it is agreed that the proposals therein are in the best interests of the Department, and that, accordingly, the policy shift of transformation of the bus commuter transport service to a public run service, is put on hold.
- 2.8 The MEC’s intended strategy of engaging the National Minister in due course, armed with the requisite reports, is well considered. It must be borne mind that the current process of the standardisation of kilometre based contracts which are required to be concluded with operators, will

be of a minimum three year duration (keeping in line with the envisaged duration of the Public Transport Operations Grant as contained in the 2009 Division of Revenue Bill which will come into operation on 1 April 2009). This will give the Department the requisite time frame to acquire the support and assistance of the National Government in regard to policy changes. During this minimum three year period, the re-negotiated kilometre based services will, with careful management, fall within the proposed budget, and commuters will benefit from the Department's foresight.

- 2.9 In light hereof, the Department's noble intervention, can indeed be lobbied as its proposal for the next term of Government, and the MEC's undertaking to canvass for its adoption as a catalyst for the Public Transport Transformation Agenda, is welcomed.
- 2.10 With regard to the MEC's statement to cease the introduction of any new projects, this opportunity is taken to bring to the MEC's attention the outcome of a meeting held on 3 March 2009 with the HOD of the Department Mr Sibusiso Buthelezi, the Premier of the Province Mr Paul Mashatile, the Chief Director of the Department of Sports, Recreation Arts and Culture Mr Ivor Hoff, and Mr Ray Whelan of MATCH (FIFA) on the transport question of spectators for 2010. At this meeting it was acknowledged that there are particular transport related challenges in regard to service delivery for the 2010 World Cup. It was therefore agreed that the Gauteng Provincial Government has to step in and provide effective bus services for the spectators in Gauteng. There is a need for at least five hundred busses to service the event and hence the urgent need to update existing Business Models to plan for this necessity. All relevant information will be forwarded to the MEC's office.
- 2.11 The Office of the HOD shares the MEC's belief that it has indeed made major strides in improving the quality of lives of the people of Gauteng by virtue of the projects cited. It is the HOD's opinion that every day we make strides forward worthy of celebration.
- 2.12 It is also only correct that we acknowledge our short comings. However, over and above acknowledging our failures, the Office of the HOD believes we should follow through on our successes, both completed,

and in formation, to empower an incoming Executive Authority to deliver on the promises made to the people of Gauteng Province, bearing in mind the MEC's words at all times, that we should not seek to impose on them a policy which they may not support.

- 2.13 This memorandum has been drafted with the above ethos in mind, distinguishing between what needs to be achieved only through the incoming Executive Authority in terms of a new shift in policy, and what is imperative to be done now, in terms of Legislative and Policy requirements.
- 2.14 The factual content which follows in this memorandum is clear, that in terms of policy and legislative imperatives, and considerations, the DPTRW is mandated to terminate the current unsustainable contractual regime and to negotiate new contracts which are in line with the available funding as per the Division of Revenue Act ("DORA") allocation.
- 2.15 It is in this positive, co-operative, spirit that the MEC's words have been heeded, and the HOD has written.

RATIONALE FOR INTERVENTION

3. FINANCIAL

- 3.1 The Department of Public Transport, Roads and Works ("the DPTRW") currently manages 6 Interim Contracts and 26 Tendered contracts, all being subsidised from monies received from the National Department of Transport ("the DOT"). The average monthly payments for the said contracts range from between R100 million and R155 million per month.
- 3.2 All of the aforesaid claims and similar claims received from these operators are settled by the DPTRW from the funds received from the DOT. On an annual basis the DPTRW concludes a Subsidy Agreement with the DOT in terms of which the DOT commits itself to transfer funds to the Department to meet the subsidy obligations emanating from the aforementioned contracts. The DPTRW does not within its own budget allocate funds to settle subsidy claims received.

- 3.3 What would practically happen is that the DPTRW would ring fence the funds transferred from the DOT and use same to settle bus operators' monthly claims received. In cases whereby the funds have not been transferred as yet, the DPTRW would occasionally utilise funds from the DPTRW's vote to settle the operator's claims in anticipation of the funds to be received from the DOT as stipulated above.

4. SHORTFALL IN THE SUBSIDIES

- 4.1 As indicated previously, the DOT transfers funds to the DPTRW for subsidy payments. The amounts that they transfer are based on the transfers made in the preceding financial year together with the anticipated increases based on escalation.
- 4.2 However, as far back as the 2005/2006 and 2006/2007 financial years, the funds that the DOT has been transferring to the DPTRW have not been sufficient to settle all the claims received from the bus operators. This led to a situation where, on an annual basis, when the DOT transfers money to the DPTRW as envisaged above, a portion of the said funds would be utilised to pay the shortfall rolled over from the previous financial years.
- 4.3 The DPTRW has on numerous occasions engaged in protracted negotiations with the DOT on the matter which ultimately culminated in the DOT accepting their liability towards the DPTRW and signing an Acknowledgement of Debt ("AOD") in their favour in an amount of R418 910 379.
- 4.4 This amount is made up of the R240 762 706 that was owing as at January 2008 accruing from the previous years, and the amount of R178 147 673 being the amount of subsidy claims for December 2007, January, February and March 2008, which claims were brought forward for settlement in the 2008/2009 financial year.
- 4.5 For the 2008/2009 financial year, the DOT has transferred a total of R1.4 billion broken down as follows:

2008/09 the DOT transfers to the DPTRW

MONTH	AMOUNT
April	R 391,877,000.00
May	R 204,000,000.00
July	R 260,500,000.00
October	R 316,000,000.00
November	R 230,131,000.00
TOTAL 2008/09	R 1,402,508,000.00

4.6 However these amounts did not take into account the fact that the DOT was already indebted to the DPTRW in an amount of R418 910 379 referred to in the AOD. Thus only an amount of R983 597 621 was available to settle all the claims received by the DPTRW.

4.7 Given that the average monthly subsidy claim from all the bus operators stands at R136 million, this will translate to over R1.6 billion per annum against a subsidy allocation from the DOT of R1.4 billion for the 2008/09 financial year. For the 2008/09 financial year there is going to be a shortfall of over R200 million excluding unsettled amounts accumulated over the previous financial years.

4.8 At the end of the 2008/09 financial year, the DPTRW will be owing the bus operators over R653 million. The table below summarises the amount outstanding:

Total 2008/09 subsidy from the DOT	R 1,402,508,000.00
Estimated Annual Subsidy Claims ¹	R 1,637,474,682.00
Projected Deficit for 2008/09²	R -234,966,682.00
Accumulated Deficit from previous years with the DOT's acknowledgement (07/08)	R -418,910,379.00
ESTIMATED/PROJECTED DEFICIT TO BE CARRIED OVER TO 09/10 BUDGET	R -653,877,061.00

¹ Based on average subsidy claims of R136 million per month translating to R1.6 billion annually.

² Assuming that the bus subsidies will continue until the end of the 2008/09 financial year.

- 4.9 The deficit will continue as the DOT is not providing adequate subsidies to the DPTRW and this will expose the DPTRW to further litigation from bus operators. Even though, the DOT has acknowledged the R418 million for the previous financial years, it has indicated that it does not have sufficient funds from National Treasury; hence the deficit will continue on an annual basis.
- 4.10 The culmination of this inevitable conundrum was the much publicised court action by the Southern African Bus Operators Association (“SABOA”) et al, against the Department, which attention has done the Department substantial damage, both financially and in integrity.
- 4.11 The SABOA argument is based on the interpretation (correctly) that the National Land Transport Transition Act (“NLTTA”) makes it the DPTRW’s responsibility to ensure that the funding is given to the bus operators.
- 4.12 This negates any defence raised by ourselves that the DPTRW is merely a conduit through which the DOT’s responsibility is facilitated.
- 4.13 Logically therefore, the responsibility of providing the requisite funding, in the absence of it being supplied timeously, or at all, from the DOT, would obligate the DPTRW to obtain this funding out of the Departmental Revenue Fund. This is clearly an untenable situation.

5. FINANCIAL WAY FORWARD

- 5.1 Given that the deficit position/underfunding is likely to continue in the foreseeable future, the DPTRW is likely to continue facing various litigious claims from the various bus operators due to non-payment.
- 5.2 It is very clear that the issue of the underfunding of the bus subsidy is not working and has created an unsustainable model. In light of the above, that GPG should tentatively explore the possibility of running its own bus operations³. The DPTRW will in this case get a direct allocation for running the bus service from Treasury as opposed to a subsidy. This

³ Subject to a favourable legal opinion.

budgetary allocation would be used to finance the acquisition of buses (most likely through an operating lease) and cover operational costs⁴.

- 5.3 By running the bus service, the primary goal for government would be to provide a safe, reliable and cost effective service to the people. Bus operators' profits are emanating from the subsidies and if government is to take over, it becomes cheaper from the fiscus point of view.

Are there Legislative barriers to the operation of a bus service by either Province or a Provincial Entity?

- 5.4 It is clear that the NLTTA, as an overarching legislative framework, is not predisposed to a particular form, or model, of public transport service. It does, however, envisage a model of contracting with bus service operators.
- 5.5 Even if it can be argued that the Act leans towards a subsidised service, it does not preclude a parastatal service.
- 5.6 A fair statement to make at this point would be that it appears, until now, that a subsidised service is the preferred model, but not however to the exclusion of a parastatal model.
- 5.7 Our opinion herein is further buttressed by an analysis of the applicable provincial legislation, the Gauteng Transport Framework Revision Act 2002 ("GTFRA") which is discussed in paragraphs hereunder.
- 5.8 The GTFRA is a competent concurrent provincial piece of legislation as envisaged in the Constitution Part A of Schedule 4 which covers much the same legislative intent as contained in the NLTTA
- 5.9 It seeks, inter alia, to provide a framework for integrated planning and the provision of a transport system in the Gauteng Province, and should be read in conjunction with, and subject to, the NLTTA.
- 5.10 Chapter 1 of the GTFRA, under the definitions, states, inter alia:

⁴ Cost implications will be dealt with it in due course.

- 5.10.1 *“Public transport operator” means a person or legal entity carrying on the business of operating a public transport service as defined in the National Land Transport Transition Act 2000.”*
- 5.11 This definition clearly does not preclude the Province operating a public transport system.
- 5.12 The National Land Transport Bill (“NLT Bill”) was drafted with the intention of repealing the NLTTA.
- 5.13 The NLT Bill is thus to provide for the final transformation and restructuring of the national land transport system.
- 5.14 The NLT Bill neither contains a provision that expressly prohibits or enables a provincial government from operating a bus service.
- 5.15 It is our submission, that from a very in depth reading of both the NLTTA and the GTFRA, that there are no express legislative barriers to the Province operating a public bus transport service.
- 5.16 Indeed, we believe it goes further than this, in that it is clearly stated in both pieces of legislation that duties are imposed on the Minister and MEC’s to ensure an efficient use of public funds to create a public transportation system which is efficient, readily available, safe and, technologically and economically, sustainable. These clearly enunciated requirements place a duty on public officials to seek out the most suitable model of public transportation system. This argument is further buttressed by sections 195(1)(b) and 215(1) of the Constitution, and sections 38 and 39(2)(a) of the Public Finance Management Act 1 of 1999 (“PFMA”), which place strict obligations on effective and efficient financial management of national resources.
- 5.17 The reference to the above acts and relevant conclusions must be viewed as supporting argument that a parastatal is not only **not precluded** from supplying a public bus transportation service, but indeed **may be required to**, in terms of its executive duty, to have such a service instated in terms of the circumstances of the current showdown between the existing model of operation and that intended by the Province which, in its opinion, will more efficiently use the funds allocated

to provide the public with a more accessible, economically sustainable and safer service.

- 5.18 The decision mentioned above, will however be the responsibility of an incoming Executive Authority to address.
- 5.19 However, we are currently duty bound, both Legislatively and in Policy, to address the issues stated in paragraphs below:

6. CURRENT LEGISLATIVE COMPLIANCE AND POLICY REQUIREMENTS

- 6.1 Existing and imminent legislative compliance imposes upon the DPTRW the duty to put into action various processes.
- 6.2 The 2009 Division of Revenue Bill (“DOR Bill”), which becomes the Division of Revenue Act for 2009 (“DORA”) on 1 April 2009, makes provision for a Schedule 4 allocation headed “Public Transport Operations Grant”. It is National Treasury’s intention to create a more effective efficient system of managing the public transport services by the introduction of this direct allocation.
- 6.3 In terms of this Schedule 4 allocation, the terms and conditions herein, clearly stipulate that it is the DPTRW’s responsibility to:
- 6.3.1 *“... renegotiate all interim contracts in order to replace these with per km based negotiated tenders ...”*
- 6.4 The framework governing the access to this grant goes further to state the following as directives:
- 6.4.1 *“conversion of existing and interim commuter bus services and interim commuter bus services subsidies with negotiated contracts that are per kilometre based that are supportive of intermodal efficiencies in public transport”*
- 6.4.2 *“subsidies for services contracts entered into will have to be approved by the Public Transport Integration Committee compromising of the three spheres of government to ensure alignment with Integrated Rapid Public Transport Networks (IRPTN).”*

- 6.5 The Bill further arguments need for urgent transformation by setting out its purpose as follows:
- 6.5.1 *“to further the process of transformation and restructuring the national land transport system initiated by the Transition Act;*
 - 6.5.2 *to give effect to national policy;*
 - 6.5.3 *to prescribe national principles, requirements, guidelines, frameworks and national norms and standards that must be applied uniformly in the provinces; and*
 - 6.5.4 *to consolidate land transport functions.”*
- 6.6 Chapter 5 of the NLTB deals with the requirement that existing subsidised contracts need to be formalised and brought into the anticipated framework of the larger transport network.
- 6.7 However, as is common knowledge, the NLTTA is the currently active piece of legislation. The NLTTA itself clearly supports and undergirds the needs for immediate action in the context of the current crisis, as is evidenced in paragraphs below:

Vision of the NLTTA

- 6.8 In Chapter 2 of the NLTTA, under “Matters of National Concern”, it is stated that:

“4. (1) (a) Public transport services –

- (i) are aimed at providing affordable transport to the public;*
- (ii) are so designed as to achieve –*
 - (aa) integration of modes;*
 - (bb) **cost efficiency and service quality;***
 - (cc) **the optimal allocation and utilization of available resources.”***

It goes further to state:

- “4. (1)(f) scarce resources available for the provision of land transport must be used optimally.*
- (g) investment in infrastructure and operations **must promote economic, financial, technical and environmental sustainability.***

- (h) **effectiveness and efficiency** must be promoted in the provision and operation of land transport services and administering land transport matters.”

Powers and Duties of the Minister

6.9 In terms of Part 3 of the NLTTA:

“5. (5) the Minister must

- (b) **facilitate the increased utilization** of public transport;
- (c) strive to ensure that the money available for land transport matters is applied in an **efficient, economic**, equitable and transparent manner;
- (d) **assist provincial departments** that lack the necessary staff or resources, in meeting their responsibilities and performing their functions and duties **with regard to land transport**.
- (i) so promote public transport that –
- (i) **it is effective** in satisfying user needs;
- (ii) it operates **efficiently** as regards the use of resources;
- (iii) the **services** operated are of an **acceptable standard and readily accessible** and are operated in conjunction with effective infrastructure provided at reasonable cost.”

6.10 From the above, we may ascertain that the Minister is to oversee and ensure that the policy of government in respect of public transport is effected.

Functions of the MEC's

“9.(1) Every MEC must –

- (b) strive to ensure that the **money** available for land transport matters is applied in an **efficient, economic**, equitable and transparent manner;”

6.11 Section 195(1)(b) of the Constitution also makes provision for the promotion of the ‘[e]fficient, economic and effective use of [government] resources’, and section 215(1) provides that ‘[national, provincial and

municipal budgets and budgetary processes must promote the effective financial management of the economy, debt and the public sector'. The essence of these constitutional provisions and principles is that effect must be given to the attainment of value for money. In principle, an organ of state should procure goods or services from an outside entity, as opposed to providing the goods or services in-house, only if doing so would lead to cost-savings.

- 6.12 Section 38 of the PFMA deals with the general responsibilities of accounting officers and *inter alia* provides that the accounting officer:
- 6.12.1 Must ensure that the department has and maintains effective, efficient and transparent *systems* of financial and risk management and internal control;
 - 6.12.2 Is responsible for the effective, efficient, economical and transparent use of the resources of the department;
 - 6.12.3 Must take effective and appropriate steps to prevent fruitless and wasteful expenditure; and
 - 6.12.4 Must take effective and appropriate steps to manage available working capital efficiently and economically.
- 6.13 Moreover, section 39(2)(a) of the PFMA unequivocally and emphatically provides that '[a]n accounting officer must take effective and appropriate steps to prevent any overspending of the vote of the department or the main division within the vote'.
- 6.14 From what has been discussed thus far, it is clear that, at both a national and provincial level, the resources allocated for the provision of a public transport system are to be utilized in the most efficient manner with emphasis on providing a service that is of an acceptable standard (bearing in mind issues of safety) and is readily available. This statement should be viewed as having sub parts to it, in that inherent in the statement, and referred to in the NLTTA (and quoted above), is the requirement that such a public transport service is to be economically and technically sustainable, and environmentally friendly.
- 6.15 It is common cause, and public knowledge, that our current public bus transportation system in particular, falls humiliatingly short of this

legislative yardstick. The unacceptable level of service delivery by the current bus operators highlighted by their poor track record of safety, efficiency, availability and sustainability, cuts directly across the mandate of the Department which is to implement the National Policy as described in the opening paragraphs of this discussion of the NLTTA.

- 6.16 To summarise: There are clear current legislative requirements that finances relating to the operation of bus services be utilised in the most efficient manner. Furthermore, the DOR Bill in essence creates obligations for the DPTRW to renegotiate the existing contracts in order to align them with the DOT standards and guidelines.
- 6.17 This legislative and policy stance is underlined by the MEC's statement on the Premier's 2007 opening address to the Provincial Legislature on 19 February 2007, wherein it was stated that the current bus service transformation would be accelerated by, inter alia, phasing out all interim contracts and changing the subsidy formula to favour frequency so as to encourage bus service operators to do more passenger trips and contribute to the mobility of more people.

7. CURRENT SCENARIO AND POLICY

- 7.1 Bus contracts are periodically redesigned to accommodate the changing settlement patterns and to extend services to new areas not served by original designs. New settlement patterns have emerged, as population growth continues unabated. The level of overcrowding in all subsidized bus contracts has reached untold and very dangerous proportions creating unbearable travelling conditions for commuters and workers alike. Passengers are forced to travel on dilapidated, overcrowded buses and drivers are exposed to driving unsafe buses.
- 7.2 As stated herein before it, is common cause, and public knowledge, that our current public bus transportation system in particular, falls short of the required standard.
- 7.3 In line with, and in the spirit of the MEC's statement of 19 February 2007, wherein the establishment and co-ordination of a Strategic Public Transport Network ("SPTN") was announced, research was undertaken by Mncedisi Ndlovu & Sedumedi Attorneys ("MNS") and the Gauteng Transport Management Authority ("GTMA") to, inter alia:

- 7.3.1 establish spatial transformation in the form of a Strategic Public transport Master Plan;
 - 7.3.2 reshape Gauteng Province into a functional Public transport urban space; and
 - 7.3.3 identify and develop key public transport nodes.
- 7.4 The improvement in routes, frequency and hours of services according to the SPTN framework prepared by MNS and GTMA will be used as a base for the preparation of the public transport service to be delivered.
- 7.5 The business model based on the outcome and recommendations of the above framework were forwarded to the office of the MEC on 9 February 2009 wherein are discussed the various pragmatic improvements to be implemented which are imperative to the success of the SPTN.
- 7.6 It is absolutely clear from all the Departments investigations, and particularly the work done by MNS and GTMA, that any commuter transport system going forward has to adopt new Norms and Standards as recommended by the SPTN which materially affect, inter alia:
- 7.6.1 Service frequency;
 - 7.6.2 Hours of operation;
 - 7.6.3 Vehicle specification;
 - 7.6.4 Fare collection and ticketing technologies;
 - 7.6.5 Intelligent transport systems;
 - 7.6.6 Bus stations and stops;
 - 7.6.7 Interchange facilities;
 - 7.6.8 Depots;
 - 7.6.9 Accessibility to people with reduced mobility;
 - 7.6.10 Safety standards;
 - 7.6.11 Security standards;

- 7.6.12 Operations standards;
- 7.6.13 Modal integration;
- 7.6.14 Service integration; and
- 7.6.15 Branding and marketing integration.

8. IN SUMMARY

8.1 The challenges can be formulated in the following terms:

- 8.1.1 The subsidy funds received from the DOT are insufficient to meet the contractual obligations with the service providers;
- 8.1.2 The unpredictability of the amount and date of receipt of the funding from the DOT has made budgeting and cash-flow management difficult;
- 8.1.3 The current service delivery does not meet value for money requirements in terms of the PFMA, resulting in an inefficient and ineffective service by bus operators which is to the detriment of the end-user commuters. Specific challenges in this regard relate to the following:
 - 8.1.3.1 Frequency of services;
 - 8.1.3.2 Routes where the service is delivered;
 - 8.1.3.3 Hours of service;
 - 8.1.3.4 Allocation of busses that need capacity requirements;
 - 8.1.3.5 Standards of busses including the safety aspects thereof;
 - 8.1.3.6 Standards and safety of bus terminals;
 - 8.1.3.7 Exclusion of certain market sectors such as SMMEs, Taxi operators, etc; and

- 8.1.3.8 The DPTRW's inability to fulfil its mandate in terms of the provision of an integrated Public Transport system in the current environment.
- 8.2 This unsustainable crisis is the basis for drastically restructuring the subsidised bus transport system in the country. Therefore in order to define service quality in public transport, norms and standards have been generated to ensure compliance management and monitoring. The purpose of these norms and standards is to:
- “Provide an integrated, well-managed, viable and sustainable transport infrastructure meeting national and regional goals into the 21st century, in order to establish a coherent base to promote accessibility and the safe, reliable, effective and efficient movement of people, goods and service⁵.”*
- 8.3 It is therefore critical to note that two key points have to be addressed immediately to comply with the issues raised herein:
- 8.3.1 **all current contracts have to be re-negotiated on a kilometre based format; and**
- 8.3.2 **these re-negotiated contracts have to be based on the new Norms and Standards and comply to SPTN recommendations.**
- 8.4 In this regard, there is annexed hereto and marked Annexure “A1” and “A2” the generic termination letters in respect of interim and current tendered contracts which shall be sent to the relevant operators in due course.
- 8.5 Contained therein is a brief summation of the rationale for the Department's approach, as well as an invitation for the relevant operator to engage with the Department in an envisaged facilitated negotiation process to arrive at the envisaged kilometre based outcome, included therein adherence to the proposed Norms and Standards.

⁵ National Transportation Policy 2002.

- 8.6 The content of this letter makes it clear to operators that the Department's actions herein are legislatively driven, and facilitative in nature.
- 8.7 It is understood that the outcome of a kilometre based contract is non-negotiable in terms of the mandate of legislation, but that the degree of adherence to the proposed Norms and Standards will be dependant on the outcome of the negotiations. A practical understanding of the implications of the operator's economic ability, and that of the Department, to raise their standards to those envisaged, will determine the outcome of this point.
- 8.8 In response to the issue raised regarding financial commitments to service providers and consultants linked to this project, there is annexed hereto marked Annexure "B" , the relevant Record of Decision, the contents of which clearly outline the expertise and roles played by the requisite parties. Very careful consideration has been placed in the selection and engagement of these parties, and it is the Office of the HOD's belief that the success of the vision contained in our Policy is dependent on their input.
- 8.9 Furthermore, there is annexed hereto marked Annexure "C" a detailed status of the industry report answering the query raised in paragraph five of the Office of the MEC's letter under reply.
- 8.10 It is thus in the spirit of continuity, and obligation to duty, that the Office of the HOD moves along the process outlined above which will indeed assist the incoming Executive Authority to achieve legislative and policy compliance. This process does not shift policy in any manner, and is merely the implementation of it. The Department's works thus far are the solid platform upon which the incoming Executive Authority may build.

9. CONCLUSION

9.1 It being understood and agreed that the proposals in the Office of the MEC's letter are in the best interests of the Department and that, accordingly, the policy shift of transformation of the bus commuter transport service to a public run service is put on hold, further that the moratorium on new projects be respected (subject to the exception mentioned in this memorandum), and that preparations commence for a handover to the incoming Executive Authority.

10. CONSTITUTIONAL AND LEGAL IMPLICATIONS

10.1 All constitutional and legal implications have been discussed within the memorandum.

11. POLICY IMPLICATIONS

11.1 As outlined in the memorandum, there is to be no policy shift in the National Transport Policy. However, as discussed therein, due to specific legislative and policy requirements, certain operational requirements will have to be adhered to immediately:

11.1.1 the re-negotiation of all current contracts into a kilometer based format; and

11.1.2 the basing of these newly re-negotiated contracts on new Norms and Standards and comply to SPTN recommendations.

11.2 These operational requirements are not a change in policy.

12. FINANCIAL IMPLICATIONS

12.1 It will be necessary to continue paying the subsidies that are currently due until such time as the current notice period for termination of the existing contracts expires, then it will be necessary to pay the subsidies

due to the operators in terms of the new re-negotiated outcomes as discussed herein.

- 12.2 In respect of service providers, it is noted that requisite procurement procedure has been adhered to. This issue is more comprehensively dealt with in Annexure "B".

13. COMMUNICATIONS IMPLICATION

- 13.1 In compliance with the spirit of co-operative governance, all relevant stakeholders have been engaged on a regular basis. This includes, inter alia:

13.1.1 DG DOT;

13.1.2 DG National Treasury;

13.1.3 DG Gauteng Provincial Treasury;

13.1.4 MEC DPTRW;

13.1.5 HOD Gauteng Treasury; and

13.1.6 all municipal managers in the Gauteng Province.

- 13.2 Furthermore, at the recent COTO meeting held on 23 February 2009, the DPTRW officials specifically highlighted the fact that the Department was considering and assessing a policy shift.

- 13.3 The DOT confirmed that they did not, in principle, have an objection to same, provided that all necessary documentation relating to the viability of this initiative is submitted.

14. RECOMMENDATIONS

- 14.1 To note that the Office of the MEC's proposals are respected and accepted.
- 14.2 To note that the Office of the HOD will exercise continuity and fulfil its duty-bound obligations to the extent that same is in congruence with the content and spirit of this memorandum.

Yours faithfully,

SIBUSISO BUTHELEZI

Head of Department, Department of Public Transport, Roads and Works

Date: