FINANCE AGREEMENT

between

THE CITY OF CAPE TOWN

and

VRCID NPC (Voortrekker Road Corridor Improvement District NPC)

(Association incorporated under Schedule 1 of the Companies Act 71 of 2008)

(Registration No.: 1996/004458/08**)**

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1. **Definitions**

1.1 In this Agreement, unless the context otherwise indicates or requires, the following words will have the meaning assigned to each respectively as follows:

1.1.1 **"Additional Rate"** means the additional rate to be paid by owners of rateable property as contemplated in section 22 of the Local Government: Municipal Property Rates Act, No. 6 of 2004 and in the Special Rating Area By-Law;

1.1.2 **"Agreement"** means this Agreement and all annexures hereto and any subsequent amendments or alterations agreed in writing by the Parties;

1.1.3 **"Annexures"** means the Annexures attached to this Agreement;

1.1.4 **"Business Day"** means any calendar day other than a Saturday, Sunday or statutory public holiday in the Republic of South Africa;

1.1.5 **"Business Plan"** means a motivation report, implementation plan and term budget

1.1.6 **"By-Law"** means the City of Cape Town: Special Rating Area By-Law, published in Provincial Notice No. 6651 dated 21 August 2009, or any other By-Law approved by the City and dealing with special rating areas which replaces the 2004 By-Law;

1.1.7 **"CFO"** means the Chief Financial Officer of the City, or his/her nominee;

1.1.8 **"City"** means the City of Cape Town or Council of the City of Cape Town;

1.1.9 **"Executive Officer"** means an executive officer or similar person appointed by the SRA to manage and operate the affairs of the SRA and need not be a director of the SRA;

1.1.10 **"Fruitless and Wasteful Expenditure"** has the meaning assigned to it in section 1 of the Local Government: Municipal Finance Management Act, No. 56 of 2003;

1.1.11 **"Implementation Plan"** means the plan which the SRA must adopt and implement in terms of the By-Law;

1.1.12 **"Parties"** means the City and the SRA and **"Party"** means either one of them, as the context may indicate;

1.1.13 **"Retention Fund"** means the fund created by the City in accordance with clause 7.4 from a percentage of additional rates collected and maintained as a reserve for the benefit of the SRA and the City;

1.1.14 **"Signature Date"** means the date of signature of this Agreement by the last Party signing;

1.1.15 **"SRA"** means the management body of the **VRCID NPC** established in accordance with the provisions of the By-Law, being an association incorporated under schedule 1 of the Companies Act, No. 71 of 2008 (**Registration No.:** 1996/004458/08).

1.2 In this Agreement:

1.2.1 references to a statutory provision include any subordinate legislation made from time to time under that provision and include that provision as modified or re-enacted from time to time;

1.2.2 words importing any particular gender include the other genders (ie the masculine, feminine and neuter genders, as the case may be); the singular includes the plural and *vice versa*; and natural persons include artificial persons and *vice versa*;

1.2.3 any definition, wherever it appears in this Agreement, shall bear the same meaning and apply throughout this Agreement unless otherwise stated or inconsistent with the context in which it appears;

1.2.4 where any number of days is prescribed, those days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which event the last day shall be the next succeeding Business Day;

1.2.5 where the day upon or by which any act is required to be performed is not a Business Day, the Parties shall be deemed to have intended such act to be performed upon or by the next succeeding Business Day;

1.2.6 any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated as having not been written (ie *pro non scripto*) and severed from the balance of this Agreement, without

invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

1.3 The expiration or termination of this Agreement shall not affect such provisions of this Agreement which are expressly provided to operate after any such expiration or termination, or which of necessity, must continue to have effect after such expiration or termination, notwithstanding that the relevant provisions themselves do not provide for this.

2. **Recordal**

2.1 On 28 March 2012 the City passed resolution C16/03/12 approving the establishment of the SRA with effect from 1 July 2012. The SRA now wishes to enter into this Agreement with the City, in accordance with the provisions of the By-Law, so that it is able to receive the additional rate from the City in order to fulfil its objects as set out in the Business Plan approved by the City.

2.2 The Parties agree that their actions in terms of this Agreement arise from the provisions of the By-Law and that this Agreement does not detract from any rights or remedies afforded to the Parties in terms thereof. The Parties set out in this Agreement the manner in which the City will pay, in 12 (twelve) equal instalments, less the retention, the approved budget to the SRA as well as the financial responsibilities of the Parties.

3. **Duration of the Agreement**

This Agreement shall commence on the Signature Date and will terminate on the dissolution or winding up of the SRA.

4. **Relationship between the SRA and the City**

4.1 The Parties specifically record that the SRA shall at all times be an independent company and shall have no authority to act as an agent of the City or bind the City in any way except as otherwise expressly recorded in this Agreement.

4.2 The Parties agree that the relationship between the Parties shall be governed by the terms of this Agreement and nothing contained herein shall be deemed to constitute a partnership, joint venture or the like between them.

4.3 Notwithstanding the provisions of clause 4.2, the Parties shall act toward each other with the utmost good faith and undertake to do or to procure the doing of

such things and to perform or procure the performance of all acts necessary for or incidental to the implementation of this Agreement.

5. **Financial Framework**

5.1 Financial governance

5.1.1 The SRA agrees to open and maintain at least one bank account, register for VAT and provide the City with its VAT registration number, and a copy of its VAT 103 certificate.

5.1.2 The SRA will pay all income received into a bank account in the name of the SRA.

5.1.3 The Executive Officer of the SRA, who is accountable to its board of directors, will administer the bank account(s).

5.1.4 The City shall make the payments directly to the SRA. The SRA's bank account details are:

Name of Bank:	**ABSA**
Branch Number:	**632005**
Bank Account Number:	**4079623702**

5.2 Financial year

The financial year of the SRA will be the same as that of the City, being 1 July to 30 June.

5.3 Audit

Audited financial statements approved by the board of directors in respect of the SRA's previous financial year must be submitted to the City by 31 August of each financial year.

5.4 Responsibilities of the Executive Officer

5.4.1 For purposes of this Agreement the powers or duties delegated to the Executive Officer may be sub-delegated to an official of the SRA.

5.4.2 The Parties acknowledge and accept that the Executive Officer of the SRA is responsible for the financial management of the SRA. This responsibility

includes implementing and monitoring the SRA's annual budget and ensuring –

5.4.2.1 that resources are used effectively,

5.4.2.2 full and proper financial records are kept, including the monthly reconciliation of all revenue received and accounts to be paid;

5.4.2.3 the development and maintenance of appropriate expenditure management systems;

5.4.2.4 that a monthly income and expenditure progress report is submitted to the City by the 15th of the following month;

5.4.2.5 that audited financial statements, approved by the board of directors, are submitted to the City by 31 August annually;

5.4.2.6 that a tax clearance certificate is submitted to the City annually;

5.4.2.7 that a reviewed property database is submitted to the City by 31 December annually;

5.4.2.8 that appropriate control systems are maintained;

5.4.2.9 that unauthorised, irregular or Fruitless and Wasteful Expenditure is prevented;

5.4.2.10 that disciplinary or other legal proceedings are instituted when required;

5.4.2.11 that the Annual General Meeting be advertised as per section 8.2.7(e) of the Special Rating Area Policy; and

5.4.2.12 that within two months after the Annual General Meeting was held, the Executive Officer will report to the local Sub Council the SRA's annual financial statements and annual report.

5.5 Financial matters to be reported to the City

5.5.1 The Executive Officer, in acting in the best interests of the SRA, must report in writing to the board of directors and the City any serious or persistent financial problems experienced by the SRA.

5.5.2 The board of directors must promptly report in writing to the City any irregular or Fruitless and Wasteful Expenditure. The board of directors must also report any irregular expenditure or other loss resulting from real or suspected criminal conduct.

5.5.3 The Executive Officer must report to the City any interference by a councillor outside of that councillor's assigned duties, relating to the financial affairs of the SRA or the responsibilities of the board of directors.

6. Determining the Additional Rate

The additional rate will be determined by the City on an annual basis, taking into account the property database, property value adjustments and the annual budget submitted to the City.

6.1 Property database

6.1.1 In order for the SRA to fulfil its objectives, the City will provide the SRA with a database of properties within the SRA area as contained in Council records by mid-October as well as a list of all properties that qualify to be exempted from paying an additional rate as per section 6.1 of the Special Rating Areas Policy.

6.1.2 The City will endeavour to update and maintain its database and will provide the SRA with the most recent database from Council records. However, the City does not guarantee that the database referred to in clause 6.1.1 is up to date and it is the responsibility of the SRA to ensure that all properties within the SRA area are on the database.

6.2 Property value adjustments

6.2.1 The SRA acknowledges that property valuations within the SRA could change due to a supplementary valuation, technical adjustments, Valuation Court rulings or other corrective action that occurs within a particular financial year.

6.2.2 Should the valuation base decrease materially as a result of clause 6.1.1, the City will inform the SRA accordingly. If the additional rates then billed are not sufficient to meet the SRA obligations in terms of the Business Plan, the SRA will be obliged to make adjustments to its Business Plan in

order to accommodate the reduced income. Any such adjustments must be approved by the CFO.

6.3 Annual budget and Implementation plan to be submitted to the City

6.3.1 The SRA board of directors will submit a detailed annual budget and implementation plan for each financial year to the City by 31 January in order for the final budget to be tabled at the same time as that of the City's budget to Council, being by 31 March, in accordance with the City's budget process as set out in the Local Government: Municipal Finance Management Act, No. 56 of 2003.

6.3.2 The annual budget must –

6.3.2.1.1 differentiate between the properties listed, as either residential or non-residential, for the purpose of calculating a differential additional rate; and

6.3.2.1.2 allow for a provision for bad debts as set out in clause 7.4.

6.3.3 The SRA will endeavour to ensure that the annual budget does not deviate materially from the budget as contained in the SRA Business Plan. In the event that the proposed budget does materially deviate from the Business Plan, the City may request that an application in terms of Chapter 3 of the By-Law is required for an amendment to the Implementation Plan.

6.3.4 The City will consider the proposed budget and make recommendations to the board of directors by the end of February, and the board of directors will submit to the City an amended budget by 15 March. This amended budget will be utilised by the City when it determines the proposed additional rate for the forthcoming financial year.

7. **Payment of Additional Rate**

7.1 Pursuant to the resolution referred to in clause 6 and the provisions of the By-Law, the City will levy the additional rate, which must be approved annually by the City, and which will be expressed in Rands.

7.2 The additional rate due in terms of clause 7.1 shall be a debt due to the Council and collected in the same manner as other property rates imposed by the Council.

7.3 The City shall pay to the SRA, on a monthly basis, one twelfth of the SRA budget as approved by Council for that financial year on or about the 25th day of each month less the retention as set out in clause 7.4.

7.4 The City will create a Retention Fund and keep an amount equal to 3% (three percent) of the budgeted amount due to the SRA. The Retention Fund will cover any shortfall which may be suffered by the City as a result of non-payment or short-payment of the additional rate by property owners. The City retains the power to adjust this amount in the event that the SRA experiences financial problems as reported in terms of clause 5.5.1.

7.5 Notwithstanding clauses 7.3 and 7.4, the City will be entitled to withhold any payment due to the SRA in the event of the SRA failing to submit, or submitting late, its monthly financial reports, annual financial statements, annual tax clearance certificate or annual budget. Any steps taken by the City in terms of this sub-clause are without prejudice to its rights in terms of clause 4.3.

7.6 The City will provide the SRA with a financial report, by the 15th of the following month, indicating all payments made to the SRA, the balance of the accumulated Retention Fund, balance of the accumulated arrears and the payment status per property.

7.7 Any additional rate surplus or deficit collected by the City, in accordance with the approved SRA budget, will be offset against the Retention Fund. Seventy-five percent (75%) of the amount by which the Retention Fund exceeds the accumulated arrears at the end of the financial year, will be paid by the City to the SRA by 30 September of the following financial year, and must be treated as additional income as set out in section 12(6) of the By-Law.

7.8 The City will monitor the Retention Fund and the payment status on a monthly basis in terms of clauses 7.4 and 7.6 and, if relevant and after consultation with the SRA board of directors, adjust the percentage retained as necessary.

7.9 Despite the contents of clause 7.2, the SRA shall assist the City to pursue such members who are in default in paying the additional rate with the aim of reducing the arrears and improving the SRA's available financial resources.

8. **Warranties and Undertakings by the SRA**

The SRA warrants and undertakes that:

8.1 each official exercising financial management responsibilities will act with honesty and in the best interests of the SRA and disclose to the City all available facts that may influence the decisions of the City and the board of directors;

8.2 it is fully organised, equipped, staffed, qualified and able to render the financial services; and

8.3 it shall observe all applicable laws, ordinances, rules and regulations and service standards in relation to improving and upgrading the special rating area.

9. **Domicilium and Notices**

9.1 The parties choose *domicilium citandi et executandi* for all purposes of the giving of any notice, the payment of any sum, the serving of any process and for any other purpose arising from this Agreement as follows:

9.1.1	the City of Cape Town	c/o the City Manager City of Cape Town 5th Floor Podium Block Civic Centre 12 Hertzog Boulevard Cape Town 8001
9.1.2	VRCID NPC,	c/o The COO Old Mutual Building Cnr Durban & Voortrekker Rd Bellville 7535

9.2 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing.

9.3 Any notice given in terms of this Agreement shall be in writing and shall:

9.3.1 if delivered by hand be deemed to have been duly received by the addressee on the date of delivery; and

9.3.2 if transmitted by facsimile be deemed to have been received by the addressee 1 (one) Business Day after despatch.

9.4 Notwithstanding anything to the contrary contained in this Agreement, a written notice or communication actually received by one of the Parties from another

including by way of e-mail addressed to the persons referred to in 9.3 shall be adequate written notice or communication to such Party.

10. **No Variation**

No variation of, or addition or agreed cancellation to this Agreement shall be of any force or effect unless it is reduced to writing and signed by or on behalf of both the parties.

11. **Whole Agreement**

The Agreement contains the whole agreement between the parties and neither party shall be bound by any warranty, condition, undertaking or obligation, oral or written, express or implied, other than those contained herein.

12. **Indulgences and Leniencies**

No indulgence, leniency or extension of time which a party (the "grantor") may grant or show to another, will in any way prejudice the grantor or preclude the grantor from exercising any of its rights in the future.

13. **Prohibition of Cession and Assignment**

The SRA shall not be entitled to cede or assign any of its rights, or delegate any of its obligations hereunder without the prior written consent of the City first being obtained.

14. **Breach and Termination**

Should the SRA:

14.1 commit any act of insolvency as defined in the Insolvency Act, No. 24 of 1936; or

14.2 be wound up, whether provisionally or finally and whether compulsorily or voluntarily or be placed under judicial management; or

14.3 enter into any arrangement or compromise with the general body of its creditors; or

14.4 be the subject of any resolution passed for its winding up or dissolution; or

14.5 have a judgment given against it in any court of law which, if appealable, is not appealed against within the period allowed for the lodging of such an appeal or, if not subject to an appeal, remains unsatisfied for a period of 10 (ten) days; or

14.6 breach any of the terms and conditions of this agreement, and fail to remedy such breach within a period of 7 (seven) Business Days after receipt of written notice by the City requiring it to do so,

then the City shall be entitled forthwith to cancel this Agreement by notice in writing to the SRA, which entitlement is without prejudice to any other rights of the City in terms of this Agreement or the By-Law, including its right to claim damages.

15. **Costs**

Each party shall bear its own costs in the negotiation, drafting, conclusion and implementation of this Agreement.

SIGNED on behalf of the City of Cape Town at CAPE TOWN on _____ day of _____ in the presence of the undersigned witnesses:

For: **The City of Cape Town**

_____
Chief Financial Officer:
City of Cape Town, duly authorised

AS WITNESSES:

1. _____

2. _____

SIGNED on behalf of **VRCID NPC** at Paarl on this 4 day of October in the presence of the undersigned witnesses:

For: **VRCID NPC** (Association incorporated under Schedule 1 of the Companies Act 71 of 2008)

_____
Director, duly authorised

AS WITNESSES:

1. _____

2. _____

Annexure

Action as per Financial Agreement

SRA			CITY OF CAPE TOWN		
July					
Date	**Action**	**Clause ref**	**Date**	**Action**	**Clause ref**
01	Start of financial year	5.2	01	New SRA rate	5.2
15	Income and expenditure progress report	5.4.2.4	15	Previous month financial detail	7.6
			25	Monthly SRA payment	7.3
August					
15	Income and expenditure progress report	5.4.2.4	15	Previous month financial detail	7.6
31	Audited financial statements	5.3 & 5.4.2.5	25	Monthly SRA payment	7.3
September					
15	Income and expenditure progress report	5.4.2.4	15	Previous month financial detail	7.6
			25	Monthly SRA payment	7.3
			30	Review Retention Fund status for arrears and excess SRA rate collected	7.7
October					
15	Income and expenditure progress report	5.4.2.4	15	Previous month financial detail	7.6
			15	Provide a database to the SRA of properties within the SRA	6.1.1
			25	Monthly SRA payment	7.3
November					
15	Income and expenditure progress report	5.4.2.4	15	Previous month financial detail	7.6
			25	Monthly SRA payment	7.3
December					
15	Income and expenditure progress report	5.4.2.4	15	Previous month financial detail	7.6
31	Submit reviewed property data-base	5.4.2.7	25	Monthly SRA payment	7.3
January					
15	Income and expenditure progress report	5.4.2.4	15	Previous month financial detail	7.6
31	Submit proposed budget and implementation plan for following financial year and application to deviate from original Business Plan (if required)	6.3.1			
31	Updated list of SRA members to the City	5.4.2.6	25	Monthly SRA payment	7.3

SRA			CITY OF CAPE TOWN			
			February			
15	Income and expenditure progress report	5.4.2.4		15	Previous month financial detail	7.6
				25	Monthly SRA payment	7.3
				28	Extract updated valuation data	
				28	Comment on the budget if required	6.3.4
			March			
Date	**Action**	**Clause ref**		**Date**	**Action**	**Clause ref**
15	Income and expenditure progress report	5.4.2.4		15	Previous month financial detail	7.6
15	New budget submitted to the City (amended if required)	6.3.4		25	Monthly SRA payment	7.3
				31	First budget report (SRA additional rate and budget) tabled before Council	6.3.1
			April			
15	Income and expenditure progress report	5.4.2.4		15	Previous month financial detail	7.6
				25	Monthly SRA payment	7.3
			May			
15	Income and expenditure progress report	5.4.2.4		15	Previous month financial detail	7.6
				25	Monthly SRA payment	7.3
				31	Second budget report (SRA additional rate and budget) tabled before Council for approval	
			June			
15	Income and expenditure progress report	5.4.2.4		15	Previous month financial detail	7.6
30	End of financial year	5.2		25	Monthly SRA payment	7.3