

SERVICE DELIVERY AGREEMENT

entered into between

THE CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY

(hereinafter referred to as “the CoJ”)

and

PIKITUP JOHANNESBURG (PROPRIETARY) LIMITED

(hereinafter referred to as “Pikitup”)

PART I – PREAMBLE

PREAMBLE

- A. Historically, solid waste collection and disposal in the Greater Johannesburg Metropolitan region has been affected by financial, service delivery and institutional problems which have hampered the effective management of solid waste disposal.
- B. The CoJ is addressing these problems by implementing a transformation plan. The transformation plan is aimed at transforming local government in the Greater Johannesburg Region by providing efficient, effective and sustainable delivery of services so as to ensure financial viability, institutional transformation, sustainable development and improved service delivery.
- C. In the case of solid waste collection and disposal, the transformation plan provides for the Council services ordinarily rendered by the CoJ to be rendered by a CoJ-owned company incorporated in terms of the Companies Act 61 of 1973. The company, Pikitup Johannesburg (Proprietary) Limited, has been established.
- D. The CoJ wishes to conclude a service delivery agreement with Pikitup in order to ensure the provision of the Council services by Pikitup in a manner and form consistent with the constitutional and legislative imperatives imposed on the CoJ. The parties have agreed on the manner in which Pikitup will fulfil these obligations, the terms of which are recorded in this agreement.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

PART II – INTERPRETATION AND DEFINITIONS

1. INTERPRETATION AND DEFINITIONS

In this agreement and in the annexures hereto –

- 1.1. clause headings are for convenience and are not to be used in their interpretation;
- 1.2. unless the context indicates a contrary intention, an expression which denotes –
 - 1.2.1. any gender includes the other gender;

- 1.2.2. a natural person includes a juristic person and vice versa;
- 1.2.3. the singular includes the plural and vice versa;
- 1.3. the following expressions bear the meanings assigned to them below and cognate expressions bear corresponding meanings –
 - 1.3.1. “abattoir waste” means waste generated as a result of commercial slaughtering activities;
 - 1.3.2. “accounting authority of Pikitup” means the authority in Pikitup accountable for the purposes of the municipal finance legislation;
 - 1.3.3. “agency agreement” means the agreement to be concluded between the CoJ and Pikitup in terms of which Pikitup will manage and monitor the closed landfill sites for and on behalf of the CoJ in accordance with the regulatory provisions and the conditions agreed upon by the parties in the agency agreement;
 - 1.3.4. “agreement” means this service delivery agreement including the annexures attached hereto;
 - 1.3.5. “animal carcasses” means any dead animal requiring special disposal methods and excludes infected carcasses;
 - 1.3.6. “the assets” means all the assets, whether corporeal or incorporeal, of Pikitup used in connection with or in the conduct of the Council services comprising, but not limited to plant, movable property and immovable property (including the land fill sites);
 - 1.3.7. “the auditors” means the external, independent auditors appointed from time to time by Pikitup in accordance with the municipal finance legislation;
 - 1.3.8. “bin” means a receptacle of capacity less than 1.5 m³ used for the temporary storage of waste on the premises of the end user of the waste;
 - 1.3.9. “bin liner” means a loose plastic liner or a liner of any other suitable material for use in the interior of a bin;
 - 1.3.10. “building waste” includes all waste produced during the construction, alteration, repair or demolition of any structure, and includes building rubble, earth, vegetation and rock displaced during such construction,

alteration, repair or demolition;

- 1.3.11. “bulky waste” means waste generated on any premises which by virtue of its mass, shape, size and quantity cannot be removed in the routine waste collection service provided by Pikitup;
- 1.3.12. “business plan” means the annual business plan contemplated in clause 33, as approved by the CoJ and amended from time to time;
- 1.3.13. “business waste” means up to 1999 l (one thousand nine hundred and ninety nine litres) of waste, other than hazardous waste, healthcare risk waste, building waste, industrial waste, garden waste, bulky waste and special industrial waste, generated on a weekly basis by an end user on premises utilised for commercial activities;
- 1.3.14. “change in law” means a change, subsequent to the effective date, in any regulatory provision whether effected directly or indirectly, and including any parliamentary or legislative action, or arising from any order or directive of a court of competent jurisdiction or as a direct or indirect result of any lawful administrative action, requirement, directive or condition of any kind whatsoever – whether procedural or substantive – that affects directly or indirectly the provision of the Council services or the construction, operation, use, maintenance, possession, control or ownership of the assets required to provide the Council services, including, but not limited to, the imposition of any new condition, procedure or change required by any organ of state or division or committee of an organ of state or by any agent or employee of an organ of state with respect to the granting, issue or renewal of any permit, licence, authorisation that is required for the provision of the Council services;
- 1.3.15. “closed landfill sites” means the landfill sites identified in the agency agreement which are owned by the CoJ and shall be monitored and maintained by Pikitup for and on behalf of the CoJ;
- 1.3.16. “CMU” means the contract management unit, a department of the CoJ established by the Municipal Council of the CoJ with duties and powers delegated to it by the CoJ and for the purposes of this agreement performing the role of contract monitoring and management on behalf of the CoJ;
- 1.3.17. “the CoJ” means when referred to as –
- (a) an entity, the City of Johannesburg Metropolitan Municipality

established by notice no. 6766 of 2000 published in the Gauteng Provincial Gazette No. 141 by the MEC responsible for Local Government in Gauteng in terms of section 12(1) of the Structures Act, or its successors-in-title, and includes duly authorised officials of the municipality who have been delegated any powers, functions and duties necessary to give effect to this agreement and decide upon and administer the matters referred to herein, and

(b) a geographical entity, the area within the municipal boundary of the City of Johannesburg Metropolitan Municipality as determined or redetermined from time to time by the Municipal Demarcation Board acting under the Demarcation Act;

- 1.3.18. “commercial contract” means a contract for the provision of commercial services to a commercial end user;
- 1.3.19. “commercial end user” means a natural or juristic person who uses or benefits from the provision of commercial services;
- 1.3.20. “commercial services” means either the provision of any service falling outside the scope of the Council services, or the provision of any service outside of the CoJ;
- 1.3.21. “competent authority” means any department in the national or provincial sphere of government exercising statutory powers in terms of local government, finance, environmental or resources legislation;
- 1.3.22. “confidential information” means all confidential data whether of a historical, current or future nature irrespective of whether it is stored, recorded or embodied in a handwritten, printed, visual, electronic, audible or other format or medium, and belonging to, created by, in the possession or under the control of the parties individually. For the purpose of this agreement “information” shall include, without limiting its ordinary meaning, data, codes, letters, telefaxes, telegrams, faxes, agreements, specifications and strategic plans;
- 1.3.23. “container” means a receptacle having a capacity greater than 1.5 m³ for the temporary storage of waste;
- 1.3.24. “CPI” means the weighted average of the consumer price index in respect of all areas and for all items as published by the Central Statistical Services (Statistical Release P0141.1) from the time to time, provided that if –

- (a) such index should cease to be published; or
- (b) the basis of calculation of such index has changed and pursuant to such change one party has notified the other that it is not satisfied therewith; or
- (c) due to a change in circumstances, the index is no longer representative of general inflationary changes in South Africa,

then, in any such circumstances, the parties will use such official information or index as may be available and acceptable to them, or failing such availability and acceptance, an index determined in writing as fair and reasonable by a majority decision of a panel of 3 (three) independent chartered accountants of the Republic of South Africa (who shall act as experts and not as arbitrators) appointed by the president for the time being of the South African Institute of Chartered Accountants, which determination shall be binding upon the parties. Any determination made by the majority of such panel as to the date from which any revised index shall take effect and liability for the cost of determination of the index by the panel shall be binding upon the parties;

- 1.3.25. “the Council business” means the entire portion of the business and undertaking of Pikitup through which it conducts and operates the Council services;
- 1.3.26. “the Council services” means the services listed in Annexure B annexed hereto;
- 1.3.27. “customer charter” means a customer relations and customer management system prepared by Pikitup in accordance with clause 44 of this agreement;
- 1.3.28. “Demarcation Act” means the Local Government: Municipal Demarcation Act 29 of 1998;
- 1.3.29. “direct costs” means those costs directly related to the provision of the Council services and includes, but is not limited to, plant costs, labour costs, consumable costs;

- 1.3.30. “disclose” means the direct or indirect use, dissemination, publication, transference or transmission of confidential information, in any manner or form whatsoever, and “disclosure” has a corresponding meaning;
- 1.3.31. “disposal site” means any facility designed, constructed, licensed and operated for the disposal of waste;
- 1.3.32. “domestic waste” means waste generated on premises used solely for residential purposes and purposes of public worship including halls or other buildings used for religious purposes, but shall not include building waste, garden waste, bulky waste or special domestic waste;
- 1.3.33. “DWAF” means the Department of Water Affairs and Forestry;
- 1.3.34. “the effective date” means 1 January 2001;
- 1.3.35. “the employees” means all the employees employed by Pikitup from time to time throughout the period of this agreement;
- 1.3.36. “end user” means a natural or juristic person who uses or benefits directly from the provision of the Council services provided by Pikitup;
- 1.3.37. “emergency” means any unexpected or sudden occurrence that is causing or has caused serious harm or may cause imminent serious harm to human health or damage to the environment;
- 1.3.38. “financial year” means a 12 (twelve) month period commencing on 1 July and ending the following 30 June;
- 1.3.39. “garden waste” means waste generated as a result of normal domestic gardening activities, including grass cuttings, leaves, plants, flowers and other similar small and light organic matter, but shall not include tree branches with a diameter thicker than 40 mm, building waste or any waste generated as a result of commercial gardening activities;
- 1.3.40. “garden waste handling site” means a site appropriate for the deposition and temporary storage of garden waste;
- 1.3.41. “GIS” means geographical information system;
- 1.3.42. “good engineering practice” means those practices, methods and equipment that are generally observed at the time in reference in prudent engineering practice for waste collection, handling, processing and disposal operations similar in size and function to those undertaken

by Pikitup in order to provide the Council services lawfully with safety, dependability, efficiency and economy in compliance with applicable government codes, if any, establishing engineering standards for similar services;

- 1.3.43. “hazardous waste” means waste containing or contaminated by poison, a corrosive agent, a flammable substance having an open flash-point of less than 90 deg C, an explosive, radioactive material, a chemical or any other substance which may cause detrimental or chronic impacts on human health and the environment as determined by DWAF;
- 1.3.44. “health care risk waste” means all hazardous waste generated at health care facilities such as hospitals, clinics, medical practitioners, dentists and veterinarians;
- 1.3.45. “illegal dumping” or “waste illegally dumped” means waste that has not been placed in an approved receptacle for collection, handling, and/or disposal at a garden waste handling site, a waste transfer station, a waste disposal site or other licensed facility;
- 1.3.46. “industrial waste” means waste generated as a result of manufacturing, maintenance, fabricating and dismantling activities, but shall not include building waste, business waste, special industrial waste, hazardous waste or domestic waste;
- 1.3.47. “the landfill sites” means, at the effective date, the sites situated at Northern Works, Springfield, Marie-Louise, Goudkoppies, Linbro Park and Ennerdale, and any other operating sites which are owned by CoJ and managed by Pikitup for and on behalf of the CoJ in terms of the management agreement;
- 1.3.48. “litter” means small quantities of waste that have not been placed in an approved receptacle for collection, handling, and/or disposal at a garden waste handling site, a waste transfer station, a waste disposal site or other licensed facility;
- 1.3.49. “local community” means that body of persons comprising –
- (a) the residents of the CoJ;
 - (b) the ratepayers of the CoJ;

(c) any civic organizations and non-governmental, private sector or labour organizations or bodies which are involved in local affairs within the CoJ; and

(d) visitors and other people residing outside the CoJ who, because of their presence in the CoJ, make use of services or facilities provided by the CoJ,

and includes, more specifically, the poor and other disadvantaged sections of such body of persons;

1.3.50. "management agreement" means the agreement to be concluded between the CoJ and Pikitup in terms of which Pikitup will manage the landfill sites, incinerator and any waste transfer stations that require permitting by DWAF, for and on behalf of the CoJ in accordance with the regulatory provisions and the conditions agreed upon by the parties in the management agreement;

1.3.51. "material asset means any asset that is essential to the provision of the Council services and without which, in the case of the particular asset, the provision of the Council services would be prejudiced;

1.3.52. "minimum requirements" means the minimum requirements for the handling, classification and disposal of hazardous waste stipulated by DWAF;

1.3.53. "month" means a period of one month according to the Gregorian calendar commencing with the first day of that month;

1.3.54. "municipal finance legislation" means the legislation in operation at the effective date regulating the CoJ's financial management or, on enactment, the Local Government: Municipal Finance Management Act, or the new National Legislation by whatever name regulating municipal finance;

1.3.55. "municipal manager" means the official appointed as such by the CoJ in terms of section 82 of the Structures Act;

1.3.56. "NEMA" means the National Environmental Management Act No 107 of 1998;

1.3.57. "overhead costs" means general expenses or costs which, although essential in the provision of the Council services, are difficult to assign to any one activity which cannot be charged to any specific category of

- Pikitup work. These include, but are not limited to, property rent, insurance, motor-vehicle expenses (relating to non revenue-producing vehicles including motor cars and motor bikes), training costs, telephone costs, protective clothing costs, hand-tool purchases, administrative and managerial salaries, and interest charges;
- 1.3.58. “on-site handling” means the activities associated with the handling, storage and processing of waste at the source of generation before the waste is collected;
- 1.3.59. “party” and “parties” means Pikitup and the CoJ and their successors in title and “third party” means any other person or entity as the context requires;
- 1.3.60. “permit” means the permit issued by DWAF in terms of Regulation 1549 promulgated under the Environment Conservation Act 73 of 1989 for the operation of a disposal site, including any amendments issued thereunder;
- 1.3.61. “Pikitup” means Pikitup Johannesburg (Proprietary) Limited, a private company incorporated in the Republic of South Africa in terms of the Companies Act 61 of 1973 as amended, and established by the Greater Johannesburg Metropolitan Council in terms of and pursuant to the provisions of section 17D of the Promotion of Local Government Affairs Act 91 of 1983, with registration number 2000/029899/07 and duly represented herein by its managing director, who warrants that he is duly authorised to conclude this agreement on Pikitup’s behalf;
- 1.3.62. “plant” means the vehicles, machinery, skips, bins, equipment and any other movable property necessary for the proper performance of the Council services by Pikitup, but excludes any vehicles that are let to Pikitup as part of the Super Fleet agreement;
- 1.3.63. “premises” means an erf or any other portion of land, including any building thereon or any other structure utilised for business, industrial or residential purposes;
- 1.3.64. “Pikitup premises” means the head office and depots and other collection, transfer and disposal sites of Pikitup;
- 1.3.65. “prime rate” means the basic annual rate of interest quoted and levied from time to time by the Standard Bank of Southern Africa Limited, on the unsecured overdrawn current accounts of its most favoured corporate customers in the private sector, as certified by a certificate

- issued by any director or manager of that bank (whose authority or appointment or qualification it shall not be necessary to prove) calculated on the daily balance and capitalised monthly in arrears, such certificate constituting prima facie proof of such rate in the event of a dispute;
- 1.3.66. “public place” has the same meaning as defined in the Local Government Ordinance, 1939;
- 1.3.67. “putrescible waste” means organic waste generated by hotels, restaurants, food shops, hospitals, and canteens that must be collected on a daily basis to prevent the waste from decomposing and presenting a nuisance and health risk;
- 1.3.68. “RCR” means routine round collected waste;
- 1.3.69. “receptacle” means a bin liner, a bin, a skip or other container used to collect waste;
- 1.3.70. “recyclables ” means materials including but not limited to, newspapers, cans, corrugated cardboard, metals, plastics, and glass which have been separated from the waste stream and set aside for purposes of re-use and/or recycling;
- 1.3.71. “recycling” means the process of controlled manual or mechanical separation and removal of recyclables from any portion of a waste stream, for the purpose of reuse with or without reprocessing or remanufacturing into new products or for the purpose of composting;
- 1.3.72. “the regulatory provisions” means collectively the provisions of any law, proclamation, ordinance, Act of Parliament or Provincial legislature, or other enactment having the force of law, any policy directive or notice issued by a competent authority in exercising statutory powers and any administrative action in respect of or relating to the provision of the Council services or relating to the functioning of a municipal entity;
- 1.3.73. “road reserve” means the verge and the roadway of a public road as defined in the Road Traffic Act 29 of 1989;
- 1.3.74. “SBU” means a strategic business unit that Pikitup has created for purposes of organising its operations, such that particular SBU’s will be responsible for providing certain aspects of the Council services within certain geographical areas. Waste tonnages by service as well as the associated costs will be monitored at SBU level by Pikitup.

- 1.3.75. “senior management of Pikitup” means the managing director, the directors (or their alternates) and general managers of Pikitup;
- 1.3.76. “service area” means the geographical area in respect of which Pikitup is appointed to render the Council services as more fully described in clause 10 below;
- 1.3.77. “service fee” means the monthly fee payable by the CoJ to Pikitup for the performance of the Council services;
- 1.3.78. “service levels” means the levels of service to be achieved by Pikitup in providing the Council services under this agreement as more fully described in clause 18;
- 1.3.79. “skip” means a large open steel waste receptacle used for the storage of dry domestic, business or industrial waste;
- 1.3.80. “slugs” (compacted waste) means bundles of domestic or business waste compacted in the ratio of between 3:1 and 6:1, and enclosed in a wrapper not greater than 85l and 35kg total mass;
- 1.3.81. “special domestic waste” means waste discarded from premises used for residential purposes which cannot by virtue of its mass, shape or size be stored in a bin;
- 1.3.82. “special industrial waste” means waste consisting of a liquid, sludge or solid substance, resulting from a manufacturing process, industrial treatment or the pre-treatment for disposal purposes of any industrial or mining liquid waste, which in terms of the CoJ’s Drainage By-laws may not be discharged into a drain or sewer;
- 1.3.83. “Structures Act” means the Local Government: Municipal Structures Act 117 of 1998;
- 1.3.84. “Super Fleet contract” means the contract entered into between the CoJ and the companies within the Super Group dated 9 October 2000 in terms of which the Super Group of companies leases to Pikitup the vehicles required for the performance of the Council services, maintains the vehicles and provides a range of other related services;
- 1.3.85. “Systems Act” means the Local Government: Municipal Systems Act 32 of 2000;

- 1.3.86. “tons” or “tonnage” means mass of waste material in metric tons, as measured and recorded at weighbridges located at the various landfill sites operated by Pikitup;
- 1.3.87. “transitional period” in respect of each commercial contract means the period from the effective date to the date of cession and assignment of that contract;
- 1.3.88. “treasury policy and control manual” means the CoJ’s treasury policy and control manual for treasury and physical risk management, approved by the CoJ in January 2000 and as amended from time to time;
- 1.3.89. “user forum” means the end user forum established by the board of directors of Pikitup, made up of representatives of the local community;
- 1.3.90. “VAT” means value added tax in terms of the Value Added Tax Act 89 of 1991, as amended
- 1.3.91. “waste” is an undesirable or superfluous item, by-product, emission, or residue of any process or activity, which has been discarded, accumulated or stored for the purposes of discarding. This definition excludes industrial wastewater, sewage, radioactive substances, mining, metallurgical and power generation waste and recyclables;
- 1.3.92. “waste transfer station” means a facility used for transferring waste from collection vehicles and loading it into/onto long-haul vehicles or trains; and
- 1.3.93. “year” means a period of 12 (twelve) consecutive months;
- 1.4 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of this agreement;
- 1.5 when any number of days is prescribed in this agreement, they shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;
- 1.6 where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;

- 1.7 expressions defined in this agreement shall bear the same meanings in schedules and appendices or annexures to this agreement which do not themselves contain their own definitions;
- 1.8 all schedules, appendices and annexures to this agreement shall be deemed to have been expressly incorporated into and form an integral part of this agreement and as such each reference herein to this agreement shall be deemed to include a reference to all such schedules, appendices and annexures;
- 1.9 where any term is defined within the context of any particular clause in this agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this agreement, notwithstanding that that term has not been defined in this interpretation and definitions clause;
- 1.10 a reference to a party includes that party's successors in title and permitted assigns;
- 1.11 any reference to an enactment is to that enactment, as amended, as of the date of signature thereof, and as amended or re-enacted from time to time;
- 1.12 the expiration or termination of this agreement shall not affect such of the provisions of this agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this: Provided that if either it be expressly so provided without agreement as to the termination of such a continuation or if there be no provision allowing for a continuation, a provision that continues to operate by virtue of this clause shall cease to do so after a reasonable time;
- 1.13 the rule of construction that the contract shall be interpreted against the party responsible for the drafting or preparation of the agreement shall not apply.

PART III: TERMS OF APPOINTMENT

2. APPOINTMENT

- 2.1. In accordance with the resolution attached hereto as Annexure A, the CoJ hereby appoints Pikitup, which hereby accepts the appointment, to provide the Council services within the service area in accordance with the terms of this agreement.

- 2.2. Notwithstanding the date of signature of this agreement, all rights and obligations arising from this agreement shall be deemed to have come into operation on the effective date.
- 2.3. Neither the appointment of Pikitup in clause 2.1 nor anything in this agreement shall give rise to or be construed as giving rise to an employer–employee relationship between the parties nor that of principal and agent, nor shall it give rise to a joint venture nor an agreement of partnership between the parties, nor shall it give rise to a labour broking agreement.
- 2.4. Notwithstanding anything to the contrary contained herein, the parties acknowledge that neither of the parties has any authority whatsoever to represent or to bind the other in any capacity whatsoever. In particular, but without limiting the generality of the foregoing, neither of the parties shall be entitled to conclude any contracts or sign any documents on behalf of the other party, or in any other way bind the other party to the performance, variation, release or discharge of any obligation.
- 2.5. Neither of the parties shall acquire any rights, title or interest of any kind in any brand name or trademark of the other party or any of the other’s subsidiaries. All the parties hereby acknowledge such rights, title or interest to be the sole and exclusive property of the other or such subsidiary as the case may be (“the owning party”). If called upon to do so by the owning party, the party or parties called upon shall sign a user agreement in respect of any such brand name or trademark.

3. SUPREMACY OF THIS AGREEMENT

In the event that any provision of any other agreement entered into between the CoJ and Pikitup or any term in the business plan and pertaining to the subject–matter of this agreement conflicts with the provisions of this agreement, the provisions of this agreement shall prevail unless the other agreement or business plan specifically states that it is the intention of the parties to amend the terms of this agreement.

4. CESSION AND ASSIGNMENT OF APPOINTMENT

- 4.1. Pikitup acknowledges that the appointment conferred upon it in terms of clause 2.1, may not be ceded or assigned whether temporarily or otherwise without the prior written consent of the CoJ.
- 4.2. Pikitup may however, in its sole discretion, appoint consultants, contractors and suppliers to undertake any portion of its obligations in terms of this agreement, which appointment shall be at its own cost.

4.3. Neither party shall be entitled to cede its rights or assign its obligations under this agreement without the prior written consent of the other party.

5. COMMENCEMENT

This agreement shall commence on the effective date.

6. THE COUNCIL SERVICES

6.1. Pikitup shall, in return for the payment of the service fee, render the Council services, from the effective date in accordance with the provisions of this agreement.

6.2. The Council services shall, subject to clause 8.2, be provided on an exclusive basis.

7. AMENDING THE SCOPE OF COUNCIL SERVICES

Amendments by the CoJ to the scope of the Council services shall be made in accordance with the following procedure:

7.1. either party may propose to the other party in writing that the scope of the Council services should be amended and shall describe the nature of the proposed amendment;

7.2. the proposal shall be accompanied by reasons explaining the need for the amendment;

7.3. the other party may request an amplification of the reasons provided in accordance with clause 7.2;

7.4. the parties shall consult in good faith regarding the nature, scope and implementation of the amendment; and

7.5. after consulting with Pikitup, the CoJ shall:

7.5.1. elect whether or not to amend the scope of the Council services;

7.5.2. determine the extent of the amendment;

7.5.3. determine the implementation date for the provision of the amended Council services; and

7.5.4. effect the necessary changes to Annexure B;

7.6. if the CoJ elects to amend the scope of the Council services, the service fee shall be amended by the application by Pikitup of the service fee formulae in Annexure C. If the parties fail to agree on the application of the service fee formulae by Pikitup, the matter shall be referred for resolution in terms of clause 57, as constituting a technical matter.

8. EXCLUSIVITY

8.1. Pikitup shall be entitled to and shall provide the Council services in the service area to the exclusion of other service providers.

8.2. Notwithstanding the provisions of clause 8.1, in circumstances where Pikitup has failed or is unable, for any reason whatsoever, to render and perform the Council services, or any material part thereof, in accordance with the provisions of this agreement, and an emergency arises as a direct or indirect result of Pikitup's failure or inability to render and perform the Council services or any part thereof, the CoJ shall be entitled, for the duration of Pikitup's failure or inability, to render and perform those Council services or part thereof that Pikitup has failed or is unable to render or perform, or to hire one or more other service providers to render and perform the Council services or part of the Council services that Pikitup has failed or is unable to render or perform.

8.3. Further the CoJ shall be entitled to suspend the service fee payable to Pikitup which is related to the Council Services or part thereof that Pikitup has failed or is unable to render or perform.

8.4. In the event that subsequent to the occurrence of the events set out in clause 8.2 above Pikitup demonstrates to the reasonable satisfaction of the CoJ that it is able to render and perform the Council services or part of the Council services that it had previously failed or been unable to render and perform, Pikitup shall again be entitled to and shall provide the Council services in the service area to the exclusion of other service providers, provided that if the CoJ had hired other service providers in terms of clause 8.2, the CoJ shall be entitled to give reasonable notice of termination to such service providers prior to the recommencement of the provision of the relevant Council services by Pikitup.

8.5. If the CoJ exercises its rights under clause 8.2, then in addition to any other rights the CoJ has in terms of this agreement, Pikitup agrees that where the CoJ is required to spend more money in providing the Council services or part thereof than it would have in terms of this agreement, Pikitup shall pay to the CoJ the difference between the service fee payable in terms of this agreement and the monies expended by the Council in terms of clause 8.2, together with any reasonable administrative costs incurred by the CoJ in rendering and performing those Council services or part thereof that Pikitup has failed or is unable to render or perform.

- 8.6. Except where acting in terms of clause 8.2 above, the CoJ undertakes not to enter into any contractual relationships with any other service provider for the provision of the Council services within the service area.

9. COMMERCIAL SERVICES

- 9.1. Pikitup may provide commercial services to third parties provided that, before doing so, it has obtained the authorisation of the CoJ.
- 9.2. Authorisation in terms of clause 9.1 shall be granted by the CoJ unless it is reasonably satisfied that the provision of commercial services by Pikitup will prejudice the interests of the local community. In determining the interest of the local community, the CoJ shall have regard to factors including, but not limited to, the capacity of Pikitup adequately to render the Council services if authorization in terms of clause 9.1 is granted.
- 9.3. Any authorisation granted by the CoJ in terms of this clause shall specify the scope of the authorisation, and new authorisations will be required for any commercial work falling outside of the scope of any current authorisation.
- 9.4. In the event of Pikitup being authorised by the CoJ to undertake commercial services, and Pikitup undertaking such services, Pikitup shall ensure that –
- 9.4.1. the undertaking of such commercial services does not prejudice Pikitup's ability to comply with each and every obligation which it may now or in the future have under this agreement;
 - 9.4.2. it does not utilize any of the revenues received by it pursuant to this agreement in undertaking such commercial services;
 - 9.4.3. such commercial services are kept separate and distinct from the Council services, which shall include Pikitup keeping separate books of account in respect of commercial services and Council services.
- 9.5. Notwithstanding the provisions of clause 9.4 above, Pikitup shall be entitled to phase in its compliance with the provisions of clauses 9.4.2 and 9.4.3 over a period of 2 (two) years from the effective date.
- 9.6. If the CoJ, having granted authorisation to Pikitup in terms of clause 9.1, is of the opinion that the granting of such authorisation has become detrimental to the interest of the local community as envisaged in clause 9.2 in so far as Pikitup has breached the provisions of clause 9.4.1, it shall have the right to cancel or amend the authorisation upon such terms and subject to such conditions as the CoJ may in its sole discretion determine, having regard to the interest of the local community

including commercial end users.

- 9.7. The scope of Pikitup's current authority to provide commercial services is reflected in the CoJ resolution annexed hereto as Annexure F.

10. SERVICE AREA

- 10.1. Subject to clauses 10.3 and 10.4 below, Pikitup shall provide the Council services within the service area.

- 10.2. At the effective date, the service area coincides with the municipal boundaries of the CoJ.

- 10.3. If the municipal boundaries of the CoJ are extended under the Demarcation Act or any other law, and the CoJ elects to expand the service area, the procedure shall be as follows:

10.3.1. the CoJ shall forthwith, following the publication of a redetermination of its municipal boundaries in the Gauteng Provincial Gazette under the Demarcation Act or any other law, indicate whether it requires Pikitup to provide Council services within the extended area;

10.3.2. if Pikitup is required by the CoJ to provide the Council services in the extended area, Pikitup shall amend the service fee by application of the relevant formulae set out in Annexure C. If the parties fail to agree on the application of the formulae by Pikitup, either party may refer the matter for resolution in terms of clause 57, as constituting a technical matter.

- 10.4. If the municipal boundaries of the CoJ are reduced under the Demarcation Act or any other law, then following the publication of a redetermination of the CoJ's municipal boundaries in the Gauteng Provincial Gazette under the Demarcation Act or any other law:

10.4.1. the service area shall be reduced to coincide with the new boundaries of the CoJ; and

10.4.2. Pikitup shall amend the service fee in accordance with the provisions of clause 10.3.2, provided that for so long as the CoJ has agreed to a moratorium on the retrenchment of the employees of Pikitup with any relevant union at the Bargaining Council, the CoJ shall be required to re-employ all employees of Pikitup which, in the reasonable opinion of the CoJ, will have to be made redundant as a result of the amendment of the service area and service fee beginning from the effective date.

PART IV – SERVICE FEE

11. PAYMENT OF THE SERVICE FEE

- 11.1. As consideration for the provision of the Council services, the CoJ shall pay Pikitup a monthly service fee in accordance with clause 13 below.
- 11.2. The service fee relates to the Council services only, and does not constitute a consideration or payment in relation to any of the following –
 - 11.2.1. the management and agency agreements;
 - 11.2.2. the provision of commercial services;
 - 11.2.3. loan funding; or
 - 11.2.4. bulk service contributions.

12. DETERMINATION OF THE SERVICE FEE

- 12.1. The monthly service fee shall be determined for the following financial year in accordance with the following procedure:
 - 12.1.1. the CoJ shall specify service levels for the following financial year;
 - 12.1.2. Pikitup shall apply the service fee formulae in accordance with Annexure C on the basis of the service levels specified by the CoJ in terms of clause 12.1.1;
 - 12.1.3. The aggregate of the monthly sub-service fees for each of the Council services calculated in accordance with clause 12.1.2 shall be the monthly service fee for the financial year following determination; and
 - 12.1.4. If the CoJ disagrees with the application by Pikitup of the service fee formulae in clause 12.1.2, it may refer the matter for resolution in terms of clause 57, as constituting a technical matter.
- 12.2. Until, and unless, a new service fee has been agreed by the parties, or determined by an expert in terms of clause 12.1.4, Pikitup shall continue to invoice the CoJ the

current service fee in any month and Council shall pay such service fee pending the outcome of the dispute in regard to service fees. Once the new service fee has been determined, that service fee will be deemed to have applied from the beginning of the financial year, such that in the event that the new service fee is less than the current service fee, Pikitup shall issue the CoJ with a credit against the payment of the next invoice due and payable by the CoJ; and in the event that the new service fee is more than the current service fee, the CoJ shall make payment of the accrued amount with the payment of the next invoice due and payable by the CoJ.

- 12.3. In order to allow for the determination of the service fee, Pikitup shall:
- 12.3.1. Maintain a database (“the planning database”) recording and tracking the receptacles by type, number and approximate location used at each SBU throughout the service area. All new receptacles placed should be numbered, to facilitate better record-keeping in future;
 - 12.3.2. ensure that the waste management plan referred to in item 2 of Annexure D is updated annually, and where there has been any amendments to the service levels, changes in the service area or amendment to the Council services that such amendments or changes are recorded in the waste management plan within two months of the date of such amendment or change;
 - 12.3.3. undertake receptacle audits, including bins and other receptacles, by area, to confirm that services billed (per the planning database) match services actually provided, within an acceptable tolerance of 5% (five per cent);
 - 12.3.4. maintain a record of tonnages actually collected and disposed of based on landfill weigh bridge records including tonnages of waste in respect of illegal dumping; and
 - 12.3.5. such other information required to confirm direct costs and overhead costs.
- 12.4. The CoJ will be entitled to undertake “spot-checks” to confirm the accuracy of any data retained or required to be retained in the planning database.
- 12.5. Notwithstanding the provisions of clause 12.3 above, Pikitup shall be entitled to phase in its compliance with the provisions of clause 12.3 over a period of two years from the effective date.
- 12.6. Subject to clause 9.4.2, Pikitup shall be entitled to retain any efficiency benefits,

that is, savings, arising in any year from its capacity to provide the Council services at a cost lower than determined for that year.

12.7. Notwithstanding the manner in which the service fee is determined in terms of the provisions of clauses 12.1 to 12.6, the total service fee for the period 1 January 2001 to 30 June 2001 shall be an amount of R 219 000 000 (two hundred and nineteen million rands) which includes a sum equal to any tariffs payable by end users for the Council services or any part thereof, and all amounts received by the Council in respect of the commercial contracts; and the total service fee for the period 1 July 2001 to 30 June 2002 shall be an amount of R482 372 000 (four hundred and eighty two million, three hundred and seventy two thousand rands), excluding VAT. The payment by the Council of the VAT portion shall be in accordance with clause 13 below.

12.8. The service fee for the period 1 July 2001 to 30 June 2002 may be varied by agreement between the parties.

13. INVOICING AND PAYMENT

13.1. Pikitup shall provide the CoJ with a VAT invoice on or before the 7th day of each and every month, indicating :

13.1.1. the service fee for which the CoJ is liable in the current month;

13.1.2. escalation (if any), as calculated in accordance with the following formula:

$$\text{escalation (month n)} = \text{monthly service fee} \times \frac{\text{CPI (month n - 2)}}{\text{CPI ("base" month)}}$$

where "month n" is the month to which the invoice relates, "month n-2" is the month two months prior to the month to which the invoice relates, and the "base" month is the month two months prior to the first month of the financial year in question, for example, for the financial year 1 July 2002 to 30 June 2003, the base month shall be May 2002.

13.2. The CoJ shall pay to Pikitup the amount indicated in the invoice described in clause 13.1 above which payment shall be effected by the CoJ on or before the 24th day of each and every month upon presentation by Pikitup of a VAT invoice.

13.3. The CoJ shall effect the payment referred to in clause 13.2 above, in cash and without any set-off, withholding, or deduction of any kind.

13.4. Should the CoJ fail to pay any service fees in terms of clause 13.2 on the due date for payment thereof, then in such event, without prejudice to any other rights or remedies which Pikitup may have in terms of this agreement, the outstanding amount of any service fees, excluding VAT, stamp duty and legal costs, shall bear interest at a rate equal to the prime rate from the due date referred to in clause 13.2 until the date of payment in full thereof.

14. REGISTRATION AS VAT VENDOR

14.1. Pikitup shall be registered as a VAT vendor in terms of the Value Added Tax Act 89 of 1991 and shall, in respect of all services provided to it for the purposes of rendering the Council services in terms of this agreement, act in its own name and treat the supply as a supply to itself for the purposes of VAT.

14.2. The CoJ shall pay to Pikitup such VAT as may be properly chargeable by Pikitup in connection with the supply of the Council services. Pikitup shall issue a tax invoice in respect thereof immediately upon receipt of payment.

15. NEW DEVELOPMENTS: CONTRIBUTION FOR BULK SERVICES

15.1. It is recorded that Pikitup may, in respect of new developments, including the establishment of any township; the amendment of any town planning scheme; and any property development which may affect the Council services to be rendered by Pikitup, (collectively, "new developments") be required to outlay capital expenditure for the provision or upgrading of the Council services in respect of such developments.

15.2. The parties shall, by not later than 1 January 2002, agree terms on which any bulk service contributions recovered by the CoJ in respect of any new developments will be allocated to Pikitup.

15.3. To the extent that the CoJ is legally entitled to levies and recovers bulk service contributions in respect of any new development within the service area, it shall forthwith on receipt thereof pass on the whole of the waste management bulk services contribution to Pikitup.

15.4. Pikitup shall, at the request of the CoJ, provide reasonable technical assistance to the CoJ in making any representations to any tribunal in respect of any application relating to new developments.

15.5. The CoJ shall, in framing any policies with regard to bulk service contributions or in determining the extent or imposition of bulk service contributions, consult with Pikitup.

16. CHANGE IN LAW

- 16.1. If at any time or times during the currency of this agreement there is a change in law which subjects Pikitup or the CoJ to any increased costs or reduced revenue, Pikitup shall apply the relevant formulas set out in Annexure C to arrive at an amended service fee.
- 16.2. If the CoJ disagrees with the application by Pikitup of the formula or with any variable used in any formula in terms of clause 16.1, the dispute must be referred by the CoJ to an expert for determination in terms of clause 57.
- 16.3. Upon agreement between the parties, or determination by an expert, the change in the service fee shall become immediately applicable with prospective effect, and, for the remaining portion of the current year, shall be paid by CoJ monthly in advance in accordance with clause 13 above.

17. ASSISTANCE WITH TARIFF DETERMINATION

Notwithstanding the fact that the service fee is determined in accordance with clause 12 and is not related to tariff levels, Pikitup shall, at the request of the CoJ, make recommendations with regard to tariff levels which end users should pay the CoJ for the provision of the Council services.

PART V: STANDARDS AND CONDITIONS OF SERVICE

18. SERVICE STANDARDS AND SERVICE LEVELS

18.1. Pikitup shall provide the Council services:

- 18.1.1. at the service standards set out in Annexure D;
- 18.1.2. at the service levels set out in Annexure E;
- 18.1.3. in accordance with good engineering practice; and
- 18.1.4. in compliance with all directives, time schedules and budgets agreed with the CoJ.

18.2. It is recorded that service standards and service levels may vary within the service

area as a result of differences in the physical and infrastructural attributes of each area, provided that Pikitup shall:

- 18.2.1. comply with the regulatory provisions in the delivery of the Council services;
 - 18.2.2. comply with the socio-economic development plan prepared in terms of clause 45; and
 - 18.2.3. seek the approval of the CoJ in accordance with clause 18.4 if it requires service levels to be lowered.
- 18.3. Pikitup may not, without the express authorisation of the CoJ in writing, restrict or discontinue the provision of the Council services, except for a limited period of time in order to undertake maintenance including extraordinary maintenance, subject to advance notification to the affected end users.
- 18.4. Any amendment to the service standards or service levels shall be reduced to writing and signed by both parties, and the amendment shall be incorporated into Annexure D or Annexure E of this agreement, respectively.

19. DUTY TO COMPLY WITH REGULATORY PROVISIONS

Pikitup shall, in fulfilling its obligations in terms of this agreement, comply with the regulatory provisions.

20. ACCESS TO PROPERTY

- 20.1. Pikitup's employees, representatives, agents, servants and contractors shall at all reasonable times have access to property or premises owned or occupied by the CoJ (including rights of way or other servitudes registered in favour of the CoJ) as may be required to effectively provide the Council services under this agreement; provided that Pikitup shall ensure that this right is exercised with due regard for, and a minimum interference with, the operations of or beneficial occupation by the CoJ.
- 20.2. The CoJ shall procure that Pikitup is granted similar rights of access to property or premises owned or occupied by any other municipal entity owned by the CoJ.
- 20.3. Access granted under this clause to Pikitup shall be granted by the CoJ free of charge.

21. PREMISES

Pikitup shall at all times provide and maintain the Pikitup premises in a state suitable for the proper performance and administration of the Council services provided that during the period 1 January 2001 to 30 June 2002, the maintenance of the Pikitup premises shall be subject to the budget allocation agreed with the CoJ.

22. END USER REPORT

22.1. Pikitup shall at least once a year, and within 1 (one) month of submission of its annual report in terms of clause 36 below, prepare an end user report regarding the provision of the Council services.

22.2. If required by the CoJ, the end user report shall be reviewed, as constituting a technical matter, by an expert appointed in accordance with the provisions of clause 57.2, which expert shall not have the further powers set out in clauses 57.3 and 57.4. The expert shall test the reasonableness and accuracy of the end user report and comment thereon to the executive mayor and the executive committee or their delegate within one (1) month of the submission of the report to them by Pikitup.

22.3. Prior to finalisation and publication of the end user report, Pikitup shall consider the comments of the expert appointed in terms of clause 22.2 and the comments of the CoJ.

22.4. Pikitup shall, after consultation with the CoJ, determine the method of publication of the end user report, which method shall:

22.4.1. include a statement to accompany the invoice sent by the CoJ to end users; and

22.4.2. be designed to provide a clear and understandable assessment of Pikitup's provision of the Council services to the local community.

22.5. Notwithstanding the provisions of clause 22.1 above, Pikitup shall not be required to publish an end user report within 2 (two) years of the effective date.

23. END USER RELATIONSHIP MANAGEMENT (CALL CENTRES)

23.1. Pikitup shall, within 2 (two) years of the effective date, develop its own end user management system and ensure its effective implementation.

23.2. Notwithstanding clause 23.1, the CoJ may develop a centralised end user management system (call centres) for all the municipal entities in order to ensure that the needs and complaints of the local community are dealt with in a centralised and co-ordinated manner. At the request of the CoJ, Pikitup shall participate in any

such end user management system by integrating its own systems developed in terms of clause 23.1 with any such centralised end user management system.

24. ENVIRONMENTAL AND HUMAN HEALTH

In addition to rendering the Council services in compliance with the regulatory provisions, Pikitup shall render the Council services and operate its assets and plant in such a manner as is least harmful to the environment and human health and shall, at its own cost, prevent, at least to the extent required by the regulatory provisions, any pollution to the environment or risk to human health. Pikitup indemnifies and holds the CoJ harmless against any claims that may be brought against the CoJ in connection with pollution of soil, waste and air, human health or the environment in general caused by Pikitup in the provision of the Council services from the effective date of this agreement.

25. FORCE MAJEURE

25.1. Subject to the provisions of this clause 25, neither party shall be responsible to the other for its failure to perform or any delay in performing any obligation under this agreement in the event and to the extent that such failure or delay is caused by force majeure.

25.2. For the purposes of this agreement, force majeure shall mean any circumstance which is beyond the reasonable control of the party giving notice of force majeure ("the affected party"), including, but not limited to, war (whether declared or not), revolution, invasion, insurrection, riot, civil commotion, mob violence, sabotage, blockade, embargo, boycott, the exercise of military or usurped power, fire, explosion, theft, storm, flood, drought, wind, lightning or other unusually intense adverse weather condition (where the usual precautions to prevent damage could not prevent it), epidemic, quarantine, accident, breakdown of machinery or facilities, strikes, lockout or labour dispute, acts or restraints of government imposition, or restrictions of or embargoes on imports or exports.

25.3. Notwithstanding the provisions of 25.1:

25.3.1. a labour dispute, strike or lockout which could be resolved by the affected party acceding to the demands made of it shall not constitute force majeure; and

25.3.2. inability to meet payment because of a lack of funds shall in no circumstances be treated as an event of force majeure.

25.4. The affected party shall give notice thereof to the other immediately upon the occurrence of an event of force majeure.

- 25.5. If the event of force majeure is of such a nature that it will not result in impossibility of performance of the obligation in question but will delay the performance thereof, the affected party shall be entitled to such extension of time in which to perform that obligation as may be reasonable in the circumstances, taking into account the interests of both parties; provided that if such force majeure situation persists for a period in excess of 30 (thirty) days the other party shall be entitled to terminate this agreement upon notice to the affected party but shall not be entitled to recover any damages which it may suffer as a result of such premature termination.

PART VI: ASSETS AND RISK MANAGEMENT

26. MAINTENANCE AND AVAILABILITY OF THE ASSETS

- 26.1. It is recorded that this agreement has been entered into on the understanding that the assets or Council business will revert to the CoJ on termination as set out in clause 63. Accordingly Pikitup undertakes to maintain and preserve the assets in their condition on the effective date, fair wear and tear excepted.
- 26.2. Pikitup undertakes not to sell, pledge, dispose, hypothecate or in any other manner alienate a material asset, without the written consent of the CoJ, which consent shall not be unreasonably withheld.
- 26.3. Notwithstanding the provisions of clause 26.2 above, the CoJ shall be deemed to have consented to the sale, disposal, hypothecation or other alienation if it does not object to the sale, pledge, disposal, hypothecation or other alienation within (10) ten days of a notice by Pikitup requesting consent in terms of clause 26.2 above.
- 26.4. The CoJ undertakes to grant Pikitup access to all the immovable properties registered in its name, and to procure that such access is granted by third parties holding or using the CoJ's immovable properties. Such access shall be granted –
- 26.4.1. in furtherance of the aims and objects of this agreement;
 - 26.4.2. to enable Pikitup to deliver the Council services in terms hereof; and
 - 26.4.3. at no cost to Pikitup.

27. DUTY TO MAINTAIN PLANT

- 27.1. Pikitup shall at all times be responsible for providing all plant necessary for the proper performance of the Council services provided that during the period 1 January 2001 to 30 June 2002, the above responsibility shall be subject to the budget allocation agreed with the CoJ.
- 27.2. All plant employed by Pikitup in the performance of the Council services at any time must either be owned by Pikitup or hired by Pikitup pursuant to a contract of hire, which contract must contain a clause permitting Pikitup to assign the benefit of the contract to the CoJ.
- 27.3. Pikitup shall at all times be fully responsible for the payment of all licensing fees, taxes and insurances required in connection with or arising out of the possession or use of all plant employed in the performance of the Council services.
- 27.4. Pikitup is required at all times to keep all plant employed in the performance of the Council services maintained and in good and serviceable repair and in such condition as is commensurate with the proper performance by Pikitup of its obligations under this agreement, and maintain the plant in compliance with the regulatory provisions.
- 27.5. All plant employed by Pikitup shall be of types suitable for its intended purpose and shall be fitted with all guards and safety devices originally fitted by the manufacturer.
- 27.6. Within 12 (twelve) months of the effective date Pikitup shall upon the written request of the CoJ provide the CoJ with a complete list of all plant which list shall describe the make, type, unique identifying marks and condition of the plant, as appropriate. This list must be amended on an annual basis.
- 27.7. Pikitup shall at all times permit the CoJ access to all plant employed by Pikitup. The CoJ shall be entitled to serve upon Pikitup a notice in writing requiring Pikitup to put any item of plant into such condition as is required by clauses 27.3 and 27.4 above, and upon receipt of such a notice Pikitup is required to cause all works to be carried out to comply with the notice. In the event of Pikitup failing to carry out such works, the CoJ shall be at liberty to have such works carried out by such persons as they may choose and Pikitup shall pay to the CoJ such sum as the CoJ shall certify to have been the cost of executing such work.
- 27.8. Pikitup shall maintain records, and on the written request of the CoJ shall provide the CoJ with copies of all service, inspection and safety records of all plant employed by Pikitup. Such records shall include copies of all formal certificates required under the National Road Traffic 93 of 1996 and any similar applicable legislation.

27.9. Pikitup shall cause all plant to bear the corporate colours, words, devices and logo of Pikitup.

28. SUPER FLEET AGREEMENT

28.1. It is recorded that at the effective date, certain vehicles required for the provision of the Council services are being let to the CoJ by the Super Group of companies for use by Pikitup, and are being maintained by the Super Group of companies in terms of the Super Fleet agreement.

28.2. The CoJ undertakes to discharge its payment and other obligations in terms of the Super Fleet agreement and to ensure that if the Super Fleet agreement is cancelled by the Super Group of companies, Pikitup shall be provided with alternative vehicles required to provide the Council services at the Council's cost.

28.3. The obligations imposed on Pikitup in respect of plant in clause 27 do not apply to any vehicles covered by the Super Fleet agreement, save that Pikitup shall at all times operate these vehicles in a proper, skilful and reasonable manner and in accordance with the regulatory provisions.

29. RISK MANAGEMENT

29.1. Insurance of the Assets

It shall be the responsibility of Pikitup to arrange for the assets to be comprehensively insured within 30 (thirty) days from the date of signing this agreement, and to similarly comprehensively insure any asset 30 (thirty) days from the date of delivery or transfer by the CoJ to Pikitup of the asset.

29.2. Public Liability Insurance

29.2.1. Pikitup shall obtain public liability insurance against delictual, contractual and all other claims which may be brought against Pikitup or the CoJ arising from or in connection with this agreement.

29.2.2. The public liability insurer and the terms of the insurance policy referred to in 29.2.1 above shall be subject to approval by the CoJ.

29.2.3. Upon obtaining of the insurance required in 29.2.1 and upon each renewal date of the relevant policy, Pikitup shall provide the CoJ with a certificate from its insurers or brokers confirming that Pikitup's insurance policies comply with clause 29.2.1 and Pikitup shall provide to the CoJ on request copies of all insurance policies, cover notes, premiums, receipts and other documents necessary to establish compliance with clause

29.2.1.

29.2.4. The CoJ shall be entitled to notify Pikitup in writing that, in its opinion, the insurance policy obtained by Pikitup is insufficient for the purposes of clause 29.2.1 and requiring Pikitup to obtain adequate insurance for this purpose. Upon receipt of such notice, Pikitup shall obtain such insurance as the CoJ requires and in default thereof the CoJ may itself obtain such insurance whereupon Pikitup shall pay to the CoJ the sum certified by the CoJ as being the cost to the CoJ of obtaining such insurance.

30. ASSET MANAGEMENT PLAN

30.1. Pikitup shall every 5 (five) years, commencing 30 September 2001, prepare an asset management plan for submission to the CoJ.

30.2. The asset management plan shall conform to a format prescribed by the CoJ, after consultation with Pikitup, and in the absence of such a prescription by the CoJ, shall conform to a format appropriate for conveying the information set out in clause 30.3.

30.3. The asset management plan shall include the following:

30.3.1. a description of the assets in appropriate categories;

30.3.2. an assessment of the replacement value of the assets; and

30.3.3. an assessment of the condition of the assets.

30.4. The method to be used by Pikitup in preparing the asset management plan shall be determined by Pikitup in consultation with the CoJ, and shall involve the adoption of a sampling methodology.

30.5. If required by the CoJ, the asset management plan shall be reviewed by an expert appointed in accordance with the provisions of clause 57.2, which expert shall not have the further powers set out in clauses 57.3 and 57.4. The expert shall test the reasonableness and accuracy of the asset management plan and comment thereon to the executive mayor and the executive committee or their delegate.

30.6. The interval for preparation of the asset management plan may be adjusted from time to time as agreed by the parties.

PART VII: FINANCIAL AND REPORTING PROVISIONS

31. BUDGETARY PROCESS AND SETTING OF TREASURY POLICY

Pikitup shall participate in the CoJ's annual strategic planning process and, in particular, participate and provide input in respect of the CoJ's –

- 31.1. financial plan;
- 31.2. medium term budget framework;
- 31.3. annual budget; and
- 31.4. such other matters as may affect Pikitup or the performance by it of the Council services under this agreement.

32. FINANCIAL RISK MANAGEMENT

- 32.1. It is recorded that the CoJ has a statutory obligation under the municipal finance legislation to ensure the financial sustainability of Pikitup as a municipal entity, including an obligation to report on its financial viability to the Auditor General.
- 32.2. It is further recorded that to enable the CoJ to discharge its statutory obligation referred to in clause 32.1 above, the CoJ has established an Assets and Liabilities Committee (“ALCO”) which makes financial risk management decisions with the participation of all the municipal entities under the CoJ's ownership control.
- 32.3. Pikitup accordingly undertakes to:
 - 32.3.1. co-operate and comply with determinations of the ALCO;
 - 32.3.2. co-operate on treasury matters, including participating in its capacity as a member of the ALCO in the CoJ's annual strategic process, and shall ensure that its representative has the necessary delegated authorities to act for and on behalf of Pikitup in decision making; and
 - 32.3.3. comply at all times with the requirements of the CoJ's treasury policy and control manual, in particular as far as it relates to:
 - 32.3.3.1. asset and liability management;

32.3.3.2. financial risk management; and

32.3.3.3. physical risk management.

33. BUSINESS PLAN IN RESPECT OF COUNCIL SERVICES

33.1. Pikitup shall on an annual basis prepare and submit to the CoJ a business plan in respect of the provision of Council services.

33.2. The business plan shall:

33.2.1. be approved by the board of directors of Pikitup;

33.2.2. be submitted to the CoJ on or before a date determined by the CoJ from time to time; and

33.2.3. be in accordance with a pro forma submitted to Pikitup from time to time by the CoJ.

33.3. Subject to the pro forma referred to in clause 33.2.3, the business plan shall contain at least the following information:

33.3.1. Pikitup's budget for the next financial year;

33.3.2. Service levels to be achieved by Pikitup in the next financial year, which at the effective date, shall be those contained in the business plan and annexed hereto as Annexure E;

33.3.3. Any potential liabilities, including particulars of any proposed borrowing of money for the next financial year; and

33.3.4. Such other matters related to the provision of Council services as the parties may agree should be included within the business plan.

34. APPROVAL AND AMENDMENT OF THE BUSINESS PLAN

34.1. The CoJ shall within 1 (one) month of the date of submission specified in terms of clause 33.2.2:

34.1.1. Accept the business plan;

34.1.2. Propose amendments to the business plan; or

- 34.1.3. Request a further 15 (fifteen) days to consider the business plan, failing which the CoJ shall be deemed to have accepted the business plan.
- 34.2. If the CoJ advises Pikitup of any proposed amendments to the business plan in terms of clause 34.1.2 Pikitup may:
- 34.2.1. amend the business plan and re-submit an amended business plan to the CoJ within 1 (one) month of the decision of the CoJ in terms of clause 34.1.2, in which event the CoJ shall either approve the business plan or apply the provisions of clause 34.2.3; or
 - 34.2.2. dispute the reasonableness or otherwise of any amendments proposed by the CoJ, which dispute shall be dealt with in accordance with clause 34.2.3.
 - 34.2.3. If the CoJ is unable to approve the business plan in terms either of clauses 34.1 or 34.2, the procedure shall be as follows:
 - 34.2.3.1. The parties shall as soon as possible but within 1 (one) month and 15 (fifteen) days of the decision of the CoJ in terms of clause 34.1.2 submit the dispute to negotiation in terms of clause 55, save that the matter shall be resolved as set out in clause 34.2.3.2 if not resolved within 14 (fourteen) days after the commencement of the negotiations;
 - 34.2.3.2. If the dispute is not resolved by negotiation between the parties, the chairperson of the board of directors of Pikitup or the responsible member of the CMU shall have the right to have an expert appointed in accordance with the provisions of clause 57.2, which expert shall not have the further powers set out in clauses 57.3 and 57.4. The expert shall provide a report to the executive mayor and the executive committee regarding the dispute referred to him, and the parties shall use their best endeavours to procure that the report of the expert is rendered within 7 (seven) days after the dispute has been referred to him. The executive mayor, or his delegate, shall, having considered the report of the expert, make a decision which shall be final and binding on Pikitup; and
 - 34.2.3.3. The existing budgetary provisions will endure until a new budget has been finalized in terms of clause 34.1, or approved by the CoJ or decided by the executive mayor in terms of clause 34.2.3.2.

35. DUTY TO PREPARE QUARTERLY REPORTS

35.1. The accounting authority of Pikitup shall, within 30 (thirty) days of the end of each quarter, prepare and submit to the CoJ a quarterly performance report for Pikitup as at the end of each quarter, reflecting:

35.1.1. Its financial performance in rendering the Council services;

35.1.2. Its achievement of agreed service levels;

35.1.3. any special circumstances and factors that should be taken into account in analysing its performance; and

35.1.4. any measures to be taken by Pikitup to improve its performance.

35.2. The accounting authority of Pikitup shall provide the CoJ with such additional information regarding its operations, related to the provision of Council services as the CoJ may reasonably require.

36. DUTY TO PREPARE ANNUAL REPORTS

36.1. The accounting authority of Pikitup shall in accordance with the provisions of the municipal finance legislation:

36.1.1. prepare financial statements for each financial year; and

36.1.2. submit such statements to the auditors for auditing, the CoJ and the auditor general.

36.2. In addition to any requirement imposed on the accounting authority of Pikitup in terms of the municipal finance legislation, he shall in preparing financial statements also reflect:

36.2.1. a comparison with financial performance in the previous financial year;

36.2.2. the achievement of agreed service levels;

36.2.3. any special circumstances and factors that should be taken into account in analysing Pikitup's performance;

36.2.4. any measures that will be taken by Pikitup to improve its performance; and

36.2.5. a statement of litigation and other risks, including environmental risks, insurance gaps or claims disputes, and changes in legislation that pose risks to Pikitup.

36.3. In addition to the preparation of financial statements, the board of directors of Pikitup shall approve a statement reflecting:

36.3.1. the capital required for the provision of the Council services in the next financial year;

36.3.2. how the capital will be raised; and

36.3.3. if capital cannot be raised a recommendation designed, so far as possible, to ensure the provision of the Council services.

36.4. In relation to labour relations, the board of directors of Pikitup shall approve a report reflecting for each financial year:

36.4.1. the number and nature of disputes with unions;

36.4.2. the number and nature of agreements with unions;

36.4.3. the remuneration packages of senior personnel and succession planning;

36.4.4. the status of employee benefit funds and other employee-related liabilities;

36.4.5. planned wage increase;

36.4.6. parity plan; and

36.4.7. any employee expansion or retrenchment plans.

36.5. In relation to affirmative procurement, the board of directors of Pikitup shall approve a report indicating the extent of Pikitup's achievement of the defined annual targets set out in its affirmative procurement policy prescribed in clause 38.2.

37. SWEEPING ACCOUNTS

37.1. It is recorded that the CoJ has established several companies, including Pikitup, in which it has retained ownership and control, which companies will from time to time either have excess funds or will require funds, both on a short term basis. All

these companies have agreed to allow the CoJ access to their bank accounts used for the handling of funds made available by the CoJ for the undertaking of municipal services in terms of their respective service delivery agreements.

- 37.2. This arrangement will enable the CoJ to transfer funds from such accounts in surplus to accounts in deficit, on a daily basis, and to make provision for funds as required by such companies for the discharge of liabilities from time to time, so as generally to minimise the interest payable by each of the companies on short term loans on overdraft from such companies' bankers.
- 37.3. Pikitup hereby agrees, for the purposes referred to above, to the CoJ's having access to its operating bank account, and withdrawing therefrom on a daily basis any surplus funds therein.
- 37.4. The CoJ shall keep full records of the amounts withdrawn by it from, and deposited in, Pikitup's operating bank account from time to time, and shall on demand;
- 37.4.1. within twenty four (24) hours provide Pikitup with a full record of all transactions;
- 37.4.2. within 7 (seven) days of the end of the month provide Pikitup with a full account of all withdrawals and deposits made in terms hereof during such month.
- 37.5. Insofar as Pikitup may require the deposit into its said account of funds for the satisfaction of its liabilities:
- 37.5.1. Pikitup shall not less than twenty four (24) hours prior to such amount being required, advise the CoJ of the amount required;
- 37.5.2. the CoJ shall within twenty four (24) hours of such request,
- 37.5.2.1. deposit into Pikitup's operating account such amount as is standing to the credit of Pikitup in the accounts of the CoJ, arising from the CoJ's exercise of its rights under 37.2 above up to the amount so required by Pikitup in terms of 37.5 above.
- 37.5.2.2. insofar as the amount so standing to the credit of Pikitup is insufficient for such purposes, pay to Pikitup such further amount as it in its discretion may determine, may be allocated to Pikitup for such purpose.
- 37.6. Any amount standing to the credit of Pikitup in the books of the CoJ shall bear

interest at the CoJ's average cost of borrowing or lending for a given month, payable monthly in arrears by not later than the 7th day of the following month.

- 37.7. Pikitup shall pay interest to the CoJ at the CoJ's average cost of borrowing or lending for a given month, payable monthly in arrears, not later than the 7th day of the following month on any further amounts allocated to Pikitup in terms of clause 37.5.2.1 above.
- 37.8. The provisions of this clause shall continue for a period of 1 (one) year from the effective date, and shall be automatically renewed from year to year thereafter, unless either party not less than 1 (one) month prior to the end of the initial or any renewed period gives notice to the other in writing that the provisions of this clause shall not be renewed.
- 37.9. In the event of the CoJ failing at any time to comply with any of the provisions of 37.5.2 above, Pikitup shall be entitled, without further notice to the CoJ, and without prejudice to any other rights it may have, either in terms hereof or at law, to cancel the provisions of this clause, and to advise its bankers that the CoJ's rights to withdraw moneys from its bank account is forthwith terminated. The remainder of this agreement shall be unaffected by the termination of the provisions of this clause.

38. PROCUREMENT POLICY

- 38.1. Pikitup shall within 2 (two) years of the effective date develop and implement an affirmative procurement policy in accordance with national government policy and procurement legislation, including the Preferential Procurement Policy Framework Act 5 of 2000.
- 38.2. Pikitup's affirmative procurement policy shall include, but shall not be limited to, the following issues:
- 38.2.1. a policy on black economic empowerment;
 - 38.2.2. a policy on small micro and medium enterprise development;
 - 38.2.3. a policy on the empowerment of the disabled; and
- shall include clearly defined annual targets to be achieved by Pikitup, and reported upon as part of the annual report prescribed in terms of clause 36.5 above.
- 38.3. Pikitup may participate in an e-procurement system to be developed by the CoJ and shall within 6 (six) months of the implementation by the CoJ of such a system, negotiate in good faith a service-level agreement with the CoJ in terms of which the

CoJ shall provide Pikitup with centralised procurement services.

PART VIII: SUPERVISION OF PIKITUP BY THE CMU

39. DELEGATION OF POWERS TO THE CMU

It is recorded that the CMU has been established by the CoJ to fulfil a contract monitoring and management function on behalf of the CoJ, and shall in addition to any further delegations by the CoJ from time to time, and subject to the future withdrawing of any delegations by the CoJ, have the powers and functions recorded in this agreement.

40. POWER TO MONITOR PERFORMANCE

40.1. The CoJ shall, through the CMU, be entitled to and have the power continually to monitor the performance of Pikitup, make recommendations in regard thereto and to report to the CoJ and Pikitup thereon.

40.2. In performing its monitoring in terms of 40.1, the CMU shall be entitled to conduct interviews with end users, conduct user satisfaction surveys, performance audits or use such other monitoring methods as the CMU may deem fit.

40.3. Pikitup shall, to the extent reasonably practicable, at all times maintain a full and accurate set of records of the Council services and commercial services performed under this agreement for such periods as shall be determined by the CMU.

40.4. Pikitup shall render such reasonable assistance as may be necessary to allow the CMU to exercise its powers in terms of this clause 40.

41. OBLIGATION IN RESPECT OF HUMAN RESOURCE AND LABOUR RELATIONS

41.1. Pikitup recognizes the CoJ's vision of being a "best practice" employer and confirms its commitment to achieving the same ideal.

41.2. In furtherance of clause 41.1 above, Pikitup undertakes to:

41.2.1. endeavour to adopt and implement, as far as possible, as its minimum standard those standards contained in the collective agreement concluded between the CoJ and its recognised unions ("the collective agreement") to the extent that it is in the best interest of Pikitup to do

so;

41.2.2. acknowledge the provisions of the collective agreement as the minimum threshold of standards, terms and conditions of employment, except where otherwise agreed between Pikitup and its recognized unions. Pikitup and its recognized unions may negotiate mutual interest issues more favourable than those contained in the collective agreements;

41.2.3. meaningfully participate, together with the CoJ's other municipal entities, in the Human Resources Committee established by the CoJ, for the purposes of amongst others of:

41.2.3.1. effectively communicating and sharing relevant information;

41.2.3.2. continuous and on-going learning in respect of human resources and labour relations issues;

41.2.3.3. coordinating human resource and labour relations activities;

41.2.3.4. aligning labour relations strategies;

41.2.3.5. developing and sharing best practices;

41.2.3.6. preventing disputes initiated by the unions in various forums;

41.2.3.7. fostering harmonious labour relations with the Johannesburg Division of the South African Local Government Bargaining Council ("SALGBC");

41.2.3.8. striving for consensus on issues raised at the Johannesburg Division and National Level of the SALGBC.

41.3. Notwithstanding anything contained herein, Pikitup may, with the consent of the CoJ, which consent shall not be unreasonably withheld, depart from any of the provisions of clauses 41.1 and 41.2, to ensure flexibility and independence of Pikitup.

42. APPROVAL OF HUMAN RESOURCE POLICIES

42.1. Pikitup shall on or before 1 January 2002 prepare and submit to the CMU for approval:

42.1.1. a human resource policy; and

42.1.2. an employee incentive proposal, in terms of which employees of Pikitup shall be financially rewarded to the extent to which Pikitup achieves or exceeds the financial performance levels set out in this agreement and the business plan.

42.2. The approval process to be applied by the CMU in respect of clause 42.1 shall be as set out in clause 34 above save that the parties may agree different time periods for preparation and approval.

43. USER FORUM

43.1. Pikitup shall within 2 (two) years from the effective date establish a user forum consisting of end users.

43.2. The user forum shall have a constitution and shall meet at least three times per annum for purposes of making submissions to Pikitup regarding the improvement of the Council services.

43.3. Pikitup shall at the meetings of its board of directors consider any reasonable submission by the user forum dealing with complaints by end users regarding service levels, the role of the local community, the enhancement of facilities or suggestions for the improvement of the Council services.

44. APPROVAL AND REVIEW OF CUSTOMER CHARTER

44.1. Pikitup shall within 2 (two) years from the effective date prepare and submit to the CMU a customer charter for approval which, in compliance with industry standards and norms and the regulatory provisions, shall:

44.1.1. incorporate a customer relations and customer management system; and

44.1.2. set out the rights and responsibilities of end users in relation to the provision of the Council services and generally describe the relationship between Pikitup and end users.

44.2. The approval process to be applied by the CMU in respect of clause 44.1 shall be as set out in clause 34 above save that the parties may agree different time periods for preparation and approval.

44.3. Once the customer charter has been approved by the CMU, Pikitup shall in its dealings with end users act in accordance with the customer charter.

45. APPROVAL AND REVIEW OF SOCIO-ECONOMIC DEVELOPMENT PLAN

- 45.1. Pikitup shall within 2 (two) years from the effective date prepare and submit to the CMU for approval a broad socio-economic development plan which shall:
- 45.1.1. be prepared by Pikitup after consultation with and having due regard to the needs of the local community and views of the user forum;
 - 45.1.2. include proposals regarding appropriate service levels for the poor and disadvantaged sections of the local community unable to afford formal domestic waste collection and disposal services; and
 - 45.1.3. endeavour to achieve an appropriate standard over time in the provision of the Council services throughout the service area and in the interests of the local community as a whole.
- 45.2. The approval process to be applied by the CMU in respect of clause 45.1 shall be as set out in clause 34 above save that the parties may agree different time periods for preparation and approval.

46. RIGHT OF ACCESS TO INFORMATION

- 46.1. In order to exercise its monitoring role in terms of this agreement, the CMU and its duly authorised representatives shall have a right of access to information belonging to Pikitup.
- 46.2. The right of access to information in clause 46.1 embraces the right by the CMU, on reasonable notice, to have access to the Pikitup premises and assets in order to inspect and make copies of all of Pikitup's books, reports, records, contracts, data, databases, procedures, event logs, transaction logs, correspondence, information electronically stored and documents relating to the provision of the Council services and its compliance or otherwise with the service levels and the terms of this agreement.
- 46.3. The CMU shall be entitled to all such information as may reasonably be required in the performance of its functions from any employee, contractor, sub-contractor, director or employee of Pikitup, and Pikitup shall ensure, to the extent possible, that all such persons shall co-operate fully with the CMU.

PART IX: TRANSITIONAL PROVISIONS

47. MANAGEMENT OF COMMERCIAL CONTRACTS

- 47.1. It is recorded that at the effective date the CoJ has not yet ceded and assigned to Pikitup all the commercial contracts. It is the intention of the parties that, subject to the consent of commercial end users, the cession and assignment of commercial contracts should be undertaken in terms of a separate agreement.
- 47.2. During the transitional period, the CoJ shall provide to Pikitup the services described in clause 48 in respect of each commercial contract, and Pikitup hereby appoints the CoJ as its agent for this purpose, on the terms and conditions set out in this clause 47.
- 47.3. Pikitup shall be entitled at any time to terminate the CoJ's appointment in respect of all or any commercial contract and perform or procure the performance of such services itself by giving the CoJ 30 (thirty) days written notice of such termination.

48. REVENUE MANAGEMENT SERVICES

- 48.1. The revenue management services to be provided by the CoJ to Pikitup in respect of commercial contracts shall be:
- 48.1.1. cash collection;
 - 48.1.2. credit control;
 - 48.1.3. invoicing;
 - 48.1.4. billing enquiries; and
 - 48.1.5. records and administration support
- as further described in this clause 48.
- 48.2. The CoJ shall, until such time as the CoJ has ceded and assigned the commercial contracts to Pikitup:
- 48.2.1. in Pikitup's name, render accurate monthly accounts to the commercial end users on a regular basis in accordance with normal and ordinary business practice and in accordance with the information provided to it

by Pikitup;

- 48.2.2. manage account queries promptly and efficiently;
- 48.2.3. receive and accurately allocate all payments made on account of such invoices;
- 48.2.4. account to Pikitup for all such receipts monthly in arrears on or before the 15th day of the month and simultaneously pay to Pikitup the amounts so received on its behalf, without any deductions;
- 48.2.5. provide Pikitup with:
 - 48.2.5.1. daily debtors summary reports;
 - 48.2.5.2. monthly debtors summary reports;
 - 48.2.5.3. periodic customer satisfaction reports;
 - 48.2.5.4. monthly cash collection reports;
 - 48.2.5.5. lists of commercial contracts that have been terminated or have expired; and
 - 48.2.5.6. such other exception reports as may be reasonably required by Pikitup from time to time.

48.3. The CoJ shall not, without the prior written consent of Pikitup:

- 48.3.1. agree to compromise any amount due to the CoJ in respect of a commercial contract;
- 48.3.2. give any extension of time or other indulgence to any of the commercial end users;
- 48.3.3. institute legal proceedings against any of the commercial end users.

48.4. Pikitup shall provide the CoJ with such assistance as may be necessary to enable the CoJ to perform its obligations effectively under this clause 48.

49. REVENUE MANAGEMENT FEES

The revenue management services described in clause 48, shall be rendered by the CoJ for

a period of 2 (two) years from the effective date. Until such time as all the commercial contracts have been ceded and assigned to Pikitup, the CoJ shall be obliged to continue to provide the revenue management services to Pikitup in respect of the unassigned commercial contracts.

50. VAT ON REVENUE MANAGEMENT SERVICES

The CoJ shall, in discharging its obligations pursuant to the provisions of clause 48, ensure that the provisions of the VAT Act pertaining to the issuing of tax invoices, credit notes, debit notes and VAT accounting in general are complied with.

51. ACCESS TO SHARED SERVICES

51.1. It is recorded that, at the time of this agreement, Pikitup is making use of those administrative and management services of the CoJ, set out below:- (“the shared services”)

51.1.1. IT services including Venus financial systems and a creditors system;

51.1.2. the operation and maintenance of a call centre;

51.1.3. payroll administration;

51.1.4. insurance and debtors management;

51.1.5. management of creditors; and

51.1.6. treasury services.

51.2. The parties agree that the CoJ shall continue to render the shared services on Pikitup’s behalf, in accordance with good business practice, for the period commencing on the effective date and terminating on 1 January 2002, both days inclusive; provided that Pikitup shall at any time be entitled to terminate the rendering of the shared services or any of them, by giving the CoJ two months written notice to such effect.

51.3. The shared services shall be rendered by the CoJ free of charge.

51.4. Pikitup shall provide the CoJ with such assistance as may be necessary to enable the CoJ to perform the shared services effectively which shall, in respect of the payroll services described in clause 51.5, include the timeous provision of the following information:

- 51.4.1. intended date of payment, including payment of a 13th cheque (if applicable); and
- 51.4.2. details of any amendments to the existing conditions applicable to housing subsidies and locomotion payments.

51.5. Payroll

- 51.5.1. Payroll functions in respect of the shared services shall continue to be centrally performed by the CoJ. The payroll services to be rendered in this regard include services relating to:
 - 51.5.1.1. processing and delivery of payslips;
 - 51.5.1.2. electronic transfer of salaries and benefit payment processing;
 - 51.5.1.3. annual and monthly statutory returns (PAYE, UIF, RSC and SDL);
 - 51.5.1.4. issuing of IRP5's and IT3A's;
 - 51.5.1.5. uploading and down loading of third party payment tapes;
 - 51.5.1.6. interface with the Venus system; and
 - 51.5.1.7. maintaining systems, business processes and access control (systems security).
- 51.5.2. The CoJ shall provide Pikitup with:
 - 51.5.2.1. periodic salary schedules;
 - 51.5.2.2. sundry payroll reports;
 - 51.5.2.3. annual IRP5 reconciliations;
 - 51.5.2.4. periodic benefits reports in a standardised format; and
 - 51.5.2.5. monthly and annual payroll costs.

51.6. Insurance

51.6.1. Insurance and risk management in respect of the shared services shall continue to be centrally performed by the CoJ. The services to be provided by the CoJ in this regard include:

51.6.1.1. premium administration;

51.6.1.2. workmen's compensation;

51.6.1.3. risk management advice (control and prevention of losses);

51.6.1.4. logistical support, including training on re-insurance and claims procedures; and

51.6.1.5. damage assessment and claims processing.

51.6.2. The CoJ shall provide Pikitup with the following information:

51.6.2.1. annual premium and excess fees per asset category;

51.6.2.2. annual assets replacement cost; and

51.6.2.3. annual service cost, excluding premiums.

51.7. Treasury

51.7.1. The centralised treasury functions to be performed by the CoJ include –

51.7.1.1. consolidation and evaluation of cash forecasts;

51.7.1.2. monitoring actual cash movements;

51.7.1.3. facilitation and administration of the opening and closing of bank accounts;

51.7.1.4. negotiation of loans and project finance agreements on Pikitup's behalf, to the extent that Pikitup requires this service;

51.7.1.5. establishment of procedures to control banking and bank accounts structures;

- 51.7.1.6. effective and efficient control of cash to meet Pikitup's overall goals and financing needs;
 - 51.7.1.7. definition of a format for cash balances and cash flow forecasts reporting; and
 - 51.7.1.8. definition and monitoring of key performance indicators for cash flow management.
- 51.7.2. The CoJ shall provide Pikitup with the following information –
- 51.7.2.1. monthly cash flow to budget reports;
 - 51.7.2.2. investments and loans reports;
 - 51.7.2.3. daily cash and bank transaction reports; and
 - 51.7.2.4. regular reports on variances from projections.

PART X: WARRANTIES AND INDEMNITIES

52. WARRANTIES

52.1. Pikitup hereby represents and warrants to the CoJ that:

- 52.1.1. This agreement has been duly authorized and executed by it and constitutes a legal, valid and binding set of obligations on it; and
- 52.1.2. the execution and performance of this agreement does not constitute a violation of any statute, judgement, order, decree or regulation or rule of any court, competent authority or arbitrator of competent jurisdiction applicable or relating to it, its assets or its business, or its memorandum, articles of association or any other documents or any binding obligation, contract or agreement to which it is a party or by which it or its assets are bound.

52.2. The CoJ hereby represents and warrants to Pikitup that:

- 52.2.1. it has full power and authority to enter into, legally bind itself by, and

perform its obligations under this agreement;

- 52.2.2. this agreement has been duly authorised and executed by the CoJ;
- 52.2.3. the execution of this agreement does not violate any judgement or order of any court, competent authority or arbitrator of competent jurisdiction applicable in relation to the CoJ or the existing assets of the CoJ;
- 52.2.4. it has the exclusive authority to provide the Council services in the service area and is fully authorised and entitled to authorise Pikitup to do so on its behalf on the basis set out in this agreement;
- 52.2.5. it has the legal capacity and authority to appoint Pikitup as a services provider in terms of the Systems Act on the basis set out in this agreement.

52.3. It is expressly agreed between the parties that each warranty and each representation given by both of them in this agreement are material to this agreement and have induced them to conclude this agreement.

52.4. No warranties or representations which are not set forth in this agreement shall be binding on either party.

52.5. The provisions of this clause 52 shall survive the termination of this agreement.

53. INDEMNITIES

53.1. Pikitup shall:

- 53.1.1. at its own expense and with effect from the effective date, take all reasonable precautions for the protection of life and property on and about or in any way connected with the whole or any part of the assets and shall and hereby does indemnify and hold the CoJ harmless against all losses, claims, demands, proceedings, damages, costs, charges and expenses (including reasonable legal expenses on a full indemnity basis) of whatsoever nature arising out of this agreement or at law in respect of injury to or death of any person or loss of or damage to any person or property accruing after the effective date but prior to the termination of this agreement unless such injury, death, loss or damage was caused by any act or omission of the CoJ or any of its employees, subcontractors, consultants, agents or representatives or other third parties for whom the CoJ is liable in law or under this agreement. Pikitup shall report all serious accidents to the CoJ within 24 (twenty four) hours of becoming aware of their occurrence;

- 53.1.2. subject to the other provisions of this agreement, be obliged to intervene in any claim arising and to indemnify and hold the CoJ harmless from any claim, damage, loss, cost, expense (including reasonable legal expenses on a full indemnity basis) arising from or attributable to Pikitup in respect of the provision of the Council services or the operation and maintenance of the assets unless such injury, death, loss or damage was caused by any act or omission of the CoJ or any of its agents employees, subcontractors, consultants, or representatives or other third parties for whom the CoJ is liable in law or under this agreement; and
- 53.1.3. subject to the other provisions of this agreement and as from the effective date, be responsible to the CoJ and third parties for all risks and obligations, pertaining to the provision of the Council services in accordance with this agreement, and shall be responsible for the payment of any damages, claims or losses due to any act or omission of Pikitup and shall indemnify and hold the CoJ harmless for all losses, damages, penalties, legal fees and costs (including reasonable expert's fees) due to a breach of this undertaking. Pikitup will be obliged to intervene and shall assume responsibility in respect of any legal proceedings (including arbitration) of any nature whatsoever, and whether brought within the Republic of South Africa or elsewhere that is instituted against the CoJ in respect of any acts or omissions of Pikitup, or any other subcontractor or any person for whom it may be liable in law in respect of the supply or failure to provide the Council services that may occur as from the effective date. The CoJ shall forthwith notify Pikitup in writing of any claim made against it in this regard or of any such claim that comes to its knowledge; and shall
- 53.1.4. subject to the other provisions of this agreement and as from the effective date, comply with all labour legislation, and shall and hereby does indemnify and hold the CoJ harmless against all losses, claims, demands, proceedings, damages, costs, charges and expenses (including reasonable legal expenses on a full indemnity basis) of whatsoever nature arising from any act or omission of Pikitup in relation to payments for all income or other taxes, national insurance contributions or levies of any kind relating to or arising out of the employment of any person by Pikitup or as a result of or arising from any industrial action or related conduct embarked upon by any employee.

53.2. The CoJ shall:

- 53.2.1. indemnify and hold Pikitup harmless against all losses, claims, demands, proceedings, damages, costs, charges and expenses (including

reasonable legal expenses on a full indemnity basis) of whatsoever nature arising out of this agreement or at law in respect of any injury to or death of any person or loss of or damage to any person or property where such injury, death, loss or damage was caused by any act or omission of the CoJ or any of its employees, sub-contractors, consultants, agents or representatives or other third parties for whom the CoJ is liable in law or under this agreement, whether prior to or after the effective date and the CoJ will be obliged to intervene and shall assume responsibility in respect of any such claim arising;

- 53.2.2. indemnify and hold Pikitup harmless against all losses, claims, demands, proceedings, damages, costs, charges and expenses (including the reasonable legal expenses on a full indemnity basis) of whatsoever nature arising from or attributable to the CoJ whether prior to or after the effective date in discharging any of its rights or obligations under this agreement where such injury, death, loss or damage was caused by any act or omission of the CoJ or any of its agents, employees, sub-contractors, consultants, or representatives or other third parties for whom the CoJ is liable in law or under this agreement and the CoJ will be obliged to intervene in any such claim arising; and
- 53.2.3. all liabilities, losses, harm, and damage suffered, incurred or borne by Pikitup or its employees, agents or representatives, as a result of or arising from any industrial action or related conduct embarked upon by the employees arising from the implementation of the transformation plan for a period of 12 (twelve) months from the effective date.

54. INTELLECTUAL PROPERTY INDEMNITY

54.1. The CoJ hereby -

- 54.1.1. authorises and licenses or (where applicable), will endeavour to ensure that the relevant third party intellectual property owner will have authorised and licensed and will continue to so authorise and license Pikitup to use and to continue to use or apply as from the effective date, for the provision of the Council services, any and all intellectual property rights of third parties used or applied by the CoJ in respect of the provision of the Council services or the operation and maintenance of the assets as at the effective date; and
- 54.1.2. indemnifies Pikitup and undertakes to keep Pikitup fully and effectively indemnified against all claims, demands, costs, expenses and liabilities of whatsoever nature arising out of or in connection with the provision of the Council services or the operation and maintenance of the assets by Pikitup as from the effective date in respect of any intellectual

property rights of third parties referred to in clause 54.1.1.

- 54.2. Pikitup hereby indemnifies the CoJ and undertakes to keep the CoJ fully and effectively indemnified against all claims, demands, costs, expenses and liabilities of whatsoever nature arising out of or in connection with the provision of the Council services or the operation and maintenance of the assets by Pikitup as from the effective date in respect of any intellectual property rights of third parties, but specifically excluding the intellectual property rights referred to in clause 54.1.1;
- 54.3. The indemnities set out in clauses 54.1 and 54.2 shall extend to all costs and expenses (including reasonable legal expenses on a full indemnity basis) incurred by the party who has been indemnified ("the indemnified party") as a result of any such claims.
- 54.4. The indemnified party shall give to the indemnitor reasonable notice in writing of any claim being made or action threatened or brought against it and shall permit the indemnitor (at the indemnitor's expense) to conduct any litigation which may ensue and all negotiations for a settlement of any claim, giving the indemnitor all reasonable assistance (at the indemnitor's expense) and the indemnified party agrees not to make any admission which might be prejudicial thereto.
- 54.5. The conduct by the indemnitor of any such litigation or negotiations shall be conditional upon its taking over such conduct within a reasonable time after being notified of the claim in question.
- 54.6. If any claim of infringement by a third party of intellectual property rights as aforesaid prevents Pikitup from fully conducting its business or any part thereof, Pikitup shall forthwith, to the extent possible, replace or modify its intellectual property so that the use of such intellectual property becomes non-infringing or, where possible, obtain a licence to use the relevant intellectual property, and shall-
- 54.6.1. compensate the CoJ for the amount of any direct losses or damages sustained or expenses incurred by the CoJ during such replacement or modification in circumstances envisaged in clause 54.2; or
- 54.6.2. be entitled to set-off the amount expended by it in doing so and the amount of any direct losses or damages sustained by it against any amounts due and payable to the CoJ by it (or, if no amount is so due, be entitled to be refunded by the CoJ the amount so expended by it) in any other circumstances.
- 54.7. To the extent that it is not possible or practical for Pikitup to replace or modify any asset, whether corporeal or incorporeal, or any operation, constituting or involved in the use of intellectual property or to obtain a licence as envisaged in 54.6, and

should –

- 54.7.1. Pikitup notify the CoJ that, without such replacement or modification, it will not be in a position to fulfil its obligations under this agreement, this agreement may in respect of an infringement of intellectual property rights referred to in clause 54.2 be terminated in accordance with the provisions of clause 60.1 alternatively this agreement may be terminated in accordance with the provisions of clause 60.2 in respect of an infringement of any other intellectual property rights; or should
- 54.7.2. Pikitup notify the CoJ that it will, notwithstanding such inability or impracticability of replacing or modifying or obtaining a licence, be able to fulfil its obligations under this agreement, this agreement shall not be terminated as provided for in clause 54.7.1, but the parties shall negotiate with one another in good faith with a view to amending the provisions of this agreement to the extent necessary so as to enable Pikitup to continue to fulfil its obligations under this agreement. Should the parties fail to reach agreement as to the amendments to be effected to this agreement within 6 (six) months of receipt of the notification from Pikitup, the CoJ shall be entitled to issue a termination notice and this agreement shall be terminated on the basis set out in clause 63.
- 54.8. Any replacement or modification envisaged in clause 54.6 will be carried out reasonably promptly so as to minimize any interruption in Pikitup's business operations.

PART XI: DISPUTE RESOLUTION

55. NEGOTIATION

- 55.1. Save as otherwise provided in this agreement, should a deadlock or dispute of whatever nature arise in connection with this agreement or termination or cancellation thereof, or the respective rights or obligations of the parties under this agreement, or any documents furnished by the parties pursuant to the provisions of this agreement, or if any approval will have been withheld by any party under circumstances in which it may not be unreasonably withheld, then the parties shall meet as soon as reasonably possible after such deadlock or dispute arises. Such meeting shall take place on 7 (seven) days written notice from either party, at Pikitup's registered office. The parties shall use their best endeavours to settle the dispute and negotiations shall be conducted in good faith.

55.2. If the parties are unable to resolve the deadlock or dispute in question within 14 (fourteen) days after the commencement of the negotiations referred to in 55.1, then the deadlock or dispute shall be referred to arbitration in terms of clause 56, save for a dispute relating to the application of the service fee formula or the value of the assets or the Council business, which shall be determined by an expert appointed in terms of clause 57.

55.3. This clause 55 shall not preclude either party from obtaining interim relief from a court of competent jurisdiction pending the resolution of the deadlock or dispute by the parties.

56. ARBITRATION

A dispute which arises in regard to –

56.1. the interpretation of;

56.2. the carrying into effect of;

56.3. either of the party's rights and obligations arising from;

56.3.1. the termination or purported termination of or arising from the termination of; or

56.3.2. the rectification or proposed rectification of this agreement, or out of or pursuant to this agreement, or on any matter which in terms of this agreement requires agreement by the parties (other than where an interdict is sought or urgent relief may be obtained from a court of competent jurisdiction);

shall be submitted to and decided by arbitration, provided that it has first been negotiated in terms of clause 55, and is not reserved for expert determination in terms of clause 57 or subject to any process or remedy in this agreement that is not compatible with arbitration.

56.4. The arbitration shall be held –

56.4.1. at Johannesburg;

56.4.2. with only the legal and other representatives of the parties to the dispute present thereat;

- 56.4.3. mutatis mutandis in accordance with the provisions of the Supreme Court Act 59 of 1959, the rules made in terms of that Act and the practice of the High Court of South Africa (Witwatersrand Local Division);
 - 56.4.4. otherwise in terms of the Arbitration Act, No. 42 of 1965,
 - 56.4.5. it being the intention that the arbitration shall be held and completed as soon as possible.
- 56.5. The arbitrator shall be, if the matter in dispute is principally –
- 56.5.1. a legal matter, a practising advocate or attorney of Johannesburg of at least 10 (ten) years' standing;
 - 56.5.2. an accounting matter, a practising chartered accountant of Johannesburg of at least 10 (ten) years' standing;
 - 56.5.3. any other matter, any independent person, agreed upon between the parties.
- 56.6. Should the parties to the dispute fail to agree whether the dispute is principally a legal, accounting or other matter, the matter shall be deemed to be a legal matter.
- 56.7. Should the parties fail to agree on an arbitrator within 3 (three) days of a request by either party, the arbitrator shall be appointed at the request of either party to the dispute by the President for the time being of the Law Society of the Northern Provinces (or its successor).
- 56.8. The decision of the arbitrator shall be final and binding on the parties to the dispute and may be made an order of the court at the instance of either of the parties to the dispute.
- 56.9. The decision of the arbitrator shall be recorded in writing.
- 56.10. This clause 56 shall not preclude either party from obtaining interim relief from the High Court of South Africa (Witwatersrand Local Division) pending the resolution of the deadlock or dispute by the parties.
- 56.11. The provisions of this clause:
- 56.11.1. constitute an irrevocable consent by the parties to any proceedings in terms hereof and no party shall be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions;

56.11.2. are severable from the rest of this agreement and shall remain in effect despite the termination of or invalidity for any reason of this agreement.

57. EXPERT DETERMINATION

57.1. Where any dispute arises in regard to the determination of a value, including the service fee or the net asset value of Pikitup, the provisions of this clause 57 shall apply.

57.2. The dispute shall be referred to an expert who shall be, if the matter in dispute is principally:-

57.2.1. A technical matter, a practising engineer with solid waste expertise of at least 10 (ten) year's standing appointed by the President for the time being of the National Institute of Waste Management;

57.2.2. an accounting matter, a practising chartered accountant of Johannesburg of at least 10 (ten) years' standing appointed by the auditors; or

57.2.3. a legal matter, a practising advocate or attorney of Johannesburg of at least 10 (ten) years' standing appointed by the President for the time being of the Law Society of the Northern Provinces (or its successor).

57.3. The expert, who shall not act as an arbitrator, shall have the fullest and freest discretion with regard to the proceedings, save where any clause of this agreement confines the discretion of the expert.

57.4. The determination of the expert shall be final and binding on the parties, save that if any determination is manifestly unjust, and if the court determines what a just and equitable valuation would be, the parties shall be bound by such a modified valuation.

57.5. The expert shall determine the liability for his charges.

57.6. The parties shall use their best endeavours to procure that the decision of the expert is rendered within 7 (seven) days after the dispute has been referred to him.

PART XII: TERMINATION

58. THE TERMINATION PROCESS

The termination of this agreement is initiated by a notice from either party in terms of clauses 59, 60, 61, and 62. The notice shall set in motion a transitional phase, culminating in termination, as described in clause 63.

59. NOTICE OF TERMINATION

The CoJ may terminate this agreement –

59.1. upon 180 (one hundred and eighty) days notice to Pikitup in writing, provided that the CoJ shall not notify Pikitup of an intention to terminate the agreement before 31 December 2006;

59.2. Notwithstanding the provisions of clause 59.1, upon 14 (fourteen) days notice to Pikitup in writing on the occurrence of any one of the following events –

59.2.1. if there is a compulsory acquisition or expropriation by any competent authority of a material part of the assets or other rights necessary for the supply of the Council services;

59.2.2. if any competent authority withdraws, revokes or materially varies any licence, consent or other authority necessary for the provision of the Council services;

59.2.3. a competent court declares that a financial emergency exists as contemplated in the Municipal Finance Management Act, to be enacted, or in the event of an administrator being appointed in consequence of such declaration.

59.2.4. where any judgment has been granted which is not subject to appeal or review, or if it is, where such an appeal or review is not diligently pursued, for the winding up or judicial management of Pikitup, save for any voluntary liquidation for the purposes of reconstruction or amalgamation, which reconstruction or amalgamation has been approved by the CoJ;

59.2.5. if Pikitup adopts a resolution for the voluntary winding up of or judicial management of Pikitup, save for purposes of reconstruction or amalgamation approved by the CoJ;

- 59.2.6. if Pikitup defaults under any agreement for the payment of money, where the creditor obtains judgment against Pikitup in an amount exceeding R 500 000 (five hundred thousand rands);
- 59.2.7. if Pikitup fails in the provision of the Council services to such an extent that there is significant widespread danger to public health, which will be presumed to be the case if Pikitup fails to provide the Council services for a continuous period of 14 (fourteen) days per year;
- 59.2.8. if Pikitup commits an act which would have been an act of insolvency under the Insolvency Act 24 of 1936 had it been committed by a natural person, or if Pikitup is deemed unable to pay its debts in terms of Section 345 of the Companies Act 66 of 1973; or
- 59.2.9. if Pikitup disposes of movable assets owned by it to such an extent that it is unable in the CoJ's reasonable view to continue properly with the provision of the Council services. If the CoJ's view in this clause 59.2.9 is disputed by Pikitup, Pikitup may refer the matter for resolution in terms of clause 57, as constituting a technical matter

60. CANCELLATION

- 60.1. Should any of the following events occur, the CoJ shall, subject to the remaining provisions of this clause 60, be entitled to cancel this agreement on written notice to Pikitup:
 - 60.1.1. Pikitup consistently fails to attain the service levels prescribed in terms of clause 18 in a manner that is inconsistent with an intention or ability to provide the Council services in terms of this agreement;
 - 60.1.2. Pikitup fails to maintain the plant in accordance with the provisions of clause 26; or
 - 60.1.3. Pikitup fails to prepare budgets, quarterly reports or annual reports in terms of clauses 33, 35, or 36 respectively.
- 60.2. Should any of the following events occur, Pikitup shall, subject to the remaining provisions of this clause 60, be entitled to cancel this agreement on written notice to the CoJ:
 - 60.2.1. The CoJ fails to comply with the exclusivity provisions of clause 8; or
 - 60.2.2. The CoJ fails to pay the service fee determined in terms of clause 12 upon invoicing by Pikitup in terms of clause 13.

60.3. Either party wishing to cancel this agreement and claim damages from the defaulting party in respect of any breach set out in clause 60.1 or clause 60.2, shall, before exercising any such right, deliver a written notice to the defaulting party notifying it of the breach giving rise to such right and requesting the defaulting party to remedy the breach in question within a period of 60 (sixty) days (or such longer period stipulated in the notice if the breach in question cannot reasonably be remedied by the defaulting party within a 60 (sixty) day period), and should the defaulting party fail to remedy the breach within such period then the party giving notice may issue a notice of termination in order to bring the provisions of clause 63 into effect, and may, on termination of this agreement in terms of clause 63, claim damages if there be any.

61. TERMINATION DUE TO CHANGE IN SHAREHOLDING

It is recorded that at the effective date Pikitup is a municipal entity under the Systems Act, and this agreement has been drafted in the context of the CoJ's ownership control of Pikitup. If the CoJ sells some of all of Pikitup's equity such that Pikitup is no longer a municipal entity as that term is defined in the Systems Act, the procedure shall be as follows –

- 61.1. the CoJ shall in good faith enter into negotiations with the shareholders of Pikitup regarding the terms and conditions of a new service delivery agreement to be entered into between the CoJ and Pikitup;
- 61.2. for the duration of the above mentioned negotiations, which negotiations may be terminated by either party, Pikitup shall continue to provide the Council services on the terms set out in this agreement; and
- 61.3. if the above negotiations are terminated in terms of clause 61.2, or fail to produce a new service delivery agreement between the CoJ and Pikitup within 3 (three) months from the date of the relevant sale of Pikitup equity, the CoJ shall be deemed to have notified Pikitup of its intention to terminate this agreement and the provisions of clause 63 shall apply.

62. TERMINATION DUE TO FORCE MAJEURE

If the event of a force majeure, as described in clause 25, is of such a nature that it will result in impossibility of performance of the Council services the party receiving notice of the force majeure event may issue a termination notice, provided that on termination of this agreement it shall not be entitled to recover any damages which it may suffer as a result of such premature termination.

63. EFFECT OF NOTICE OF TERMINATION

The parties acknowledge that it is the duty of the CoJ to ensure as far as is reasonably possible uninterrupted delivery of the Council services in the best interests of the local community. The parties have accordingly agreed as follows–

63.1. Upon notice of termination in terms of this agreement –

- 63.1.1. The parties shall negotiate a transitional process which shall be designed to achieve an uninterrupted delivery of the Council services;
- 63.1.2. Pikitup shall continue to provide the Council services in terms of this agreement until the CoJ has appointed an alternative service provider or has itself taken control of the provision of the Council services;
- 63.1.3. The CoJ shall have the option of purchasing from Pikitup the assets or the Council business; and
- 63.1.4. This agreement shall terminate on a date or on an occurrence of an event agreed between the parties, or if no such date or event is agreed between the parties when a new service provider has been appointed by the CoJ or there has been a transfer of assets or the Council business to a buyer in terms of clauses 63.2 or 63.3, whichever is the sooner, provided that if a new service provider is appointed by the CoJ before the transfer of the assets or the Council business to a buyer, any undertakings made by either party to the other in relation to the transition process shall remain binding and such undertaking shall be deemed to be severable from the rest of the agreement and shall remain in force despite the termination of the rest of the agreement.

63.2. In the event of the CoJ electing to purchase the assets –

- 63.2.1. Pikitup shall be deemed to have offered to sell the assets to the CoJ or a service provider designated by the CoJ (in either instance “the buyer”), and the buyer shall be deemed to have accepted such offer;
- 63.2.2. The purchase price of the assets (and any accretions thereto) shall be determined by the auditors. If either party does not accept the determination of the auditors, it may refer the matter for resolution in terms of clause 57, as constituting an accounting matter;
- 63.2.3. If the assets are purchased by the CoJ, the purchase price of the assets (and any accretions thereto), together with VAT thereon, shall be discharged by set-off against any loan account in favour of the CoJ in

the books of account of Pikitup, if such loan account is sufficient to discharge the purchase price, or if insufficient, by set off and by way of a cash settlement.

- 63.2.4. If the assets are purchased by a third party service provider, the purchase price shall be discharged by whatever mechanism is agreed between Pikitup and the third party service provider, and the purchase price shall be utilised by Pikitup towards settling the loan account in favour of the CoJ in the books of account of Pikitup.
- 63.2.5. Against payment of the purchase price of the sale assets determined in terms of clause 63.2.2, Pikitup shall deliver the assets (and any accretions thereto) to the buyer by placing the buyer in possession thereof and ownership of the assets (and accretions thereto), and all risk in and benefit to the assets (and accretions thereto), shall pass to the buyer;
- 63.2.6. Pikitup shall sign all such documents and do all such things as may be necessary or desirable to enable the assets (and accretions thereto) which are capable of registration to be registered in the name of the buyer; and
- 63.2.7. Pikitup shall be required to make arrangements for the transfer of contracts of employment to the buyer in relation to those employees who, in the reasonable opinion of Pikitup, are required to ensure the continuity of the supply of the Council services, provided that such employees consent to the transfer of their contracts of employment to the buyer. The buyer shall be obliged to employ the above-mentioned employees.

63.3. In the event of the CoJ electing to purchase the Council business –

- 63.3.1. Pikitup shall be deemed to have offered to sell the Council business to the CoJ or a service provider designated by the CoJ (in either instance “the buyer”) as a going concern, and the buyer shall be deemed to have accepted such offer;
- 63.3.2. The purchase price of the Council business shall be the net asset value of the business, as determined by the auditors of Pikitup, inclusive of VAT at the rate of zero per cent;
- 63.3.3. If either of the parties does not accept the determination of the auditors it may refer the matter for resolution in terms of clause 57, as constituting an accounting matter.

- 63.3.4. If the Council business is purchased by the CoJ, the purchase price of the Council business shall be discharged by set-off against any loan account in favour of the CoJ in the books of account of Pikitup, if such loan account is sufficient to discharge the purchase price, or if insufficient, by set off and by way of a cash settlement.
 - 63.3.5. If the Council business is purchased by a third party service provider, the purchase price shall be discharged by whatever mechanism is agreed between Pikitup and the third party service provider, and the purchase price shall be utilised by Pikitup towards settling the loan account in favour of the CoJ in the books of account of Pikitup;
 - 63.3.6. Against discharge of the purchase price of the Council business, Pikitup shall deliver the Council business to the buyer;
 - 63.3.7. Pikitup shall sign all documents and do all things as may be necessary or desirable to enable the assets which are capable of registration to be registered in the name of the buyer; and
 - 63.3.8. Contracts of employment shall be transferred from Pikitup to the buyer in accordance with section 197 of the Labour Relations Act 66 of 1995.
- 63.4. On the sale either of the assets or the Council business, Pikitup shall, subject to compliance with the regulatory provisions and the consent of the relevant licensing authority, assign any permits or authorities held by it on the date of termination of this agreement to the buyer, and generally facilitate the implementation of this agreement and the achievement of its intent and purpose.
- 63.5. In respect of employees whose contracts of employment are to be transferred to the buyer:
- 63.5.1. Pikitup shall be responsible for and shall discharge all obligations in respect of all payments and amounts accrued to such employees arising out of their employment with Pikitup prior to the date of transfer and shall indemnify and hold the CoJ and the buyer harmless in respect of all such obligations;
 - 63.5.2. Pikitup shall be liable for and indemnify and hold the CoJ and the buyer harmless in respect of all claims in respect of such employees which claims accrued on or after the effective date but prior to the date of transfer or caused by the transfer in accordance with the regulatory provisions;

63.5.3. Any debt or liability arising from or connected to the employment by the buyer of such employees after the date of transfer will be the exclusive responsibility of the buyer;

63.5.4. Any obligation on Pikitup to make contributions to any pension, provident, retirement or medical aid or health care funds of which such employees are members at the date of transfer will with effect from the date of transfer become the obligation of the buyer, and the buyer shall indemnify and hold the CoJ (if applicable) and Pikitup harmless in respect of all such claims, costs and expenses.

63.6. In the event that the notice of termination arises from the provisions of clause 62, the parties shall apply this clause 63, but Pikitup shall be excused from the obligation in clause 63.1.2 to continue providing the Council services in terms of this agreement.

64. SUBSTITUTION OF MANAGEMENT

64.1. It is recorded that:

64.1.1. the provision of the Council services by Pikitup represents the long-term policy of the CoJ and a reversal of this policy may interrupt the provision of the Council services; and

64.1.2. under the extreme circumstances that would justify termination of this agreement, the CoJ may consider the substitution of the management of Pikitup an appropriate alternative to termination of this agreement.

The parties have accordingly agreed that the CoJ shall have the right to substitute the management of Pikitup in order to preserve this agreement in accordance with the provisions of this clause.

64.2. Should any of the events referred to in clauses 59.2.3, 59.2.4, 59.2.6, 59.2.7, 59.2.8, 59.2.9, 60.1.1, 60.1.2, and 60.1.3 occur, the CoJ may, in lieu of exercising a right to terminate this agreement, make a substitution in terms of clause 64.2.

64.3. The CoJ shall exercise its right in terms of clause 64.2 by delivering a substitution notice in writing to the chairperson of the board of directors of Pikitup, which substitution notice will specify the terms and conditions of the substitution, including an implementation date, and may require the substitution of senior management in its entirety or specify individuals for substitution, and may be of limited duration or permanent.

64.4. The right to substitute management:

64.4.1. May only be exercised in relation to a senior manager of Pikitup whose dereliction of duties have contributed, directly or indirectly, to the events justifying termination by the CoJ as set out in clause 64.2;

64.4.2. Is a right that may be exercised by the CoJ as a contracting party rather than a shareholder, and shall not have the effect, in the absence of a resolution of the CoJ as shareholder of Pikitup, of removing any director of Pikitup from office; and

64.4.3. Shall be subject to labour relations legislation and any contract of employment between senior management and Pikitup, and shall not constitute a dismissal of any senior manager.

64.5. Any member of senior management substituted by the CoJ shall comply with the terms of the substitution notice referred to in clause 64.2 and may be required to assist in the process of substitution on terms set out in the substitution notice.

64.6. Pikitup will do all things required to implement the substitution notice.

64.7. Pikitup shall be entitled to call for the review of the CoJ's exercise of its rights in terms of clause 64.2 by a majority decision of a panel of 3 (three) independent experts who shall be appointed in accordance with the provisions of clause 57 and who shall collectively have technical, accounting and legal expertise. Any decision made by the majority of such panel shall take effect from the date of the decision and liability for the cost of calling the expert panel shall be determined by the panel. The calling of the panel by Pikitup in terms of this clause 64.7 shall not in any way affect the substitution of senior management unless and until a majority of the panel decides in favour of Pikitup.

PART XIII: ADDITIONAL AGREEMENTS

65. ADDITIONAL AGREEMENTS

65.1. Within 2 (two) years of the effective date the parties will negotiate the following agreements:

65.1.1. a management agreement in terms of which Pikitup will manage the operational landfill sites, the incinerator and waste transfer stations that

require permitting by DWAF for and on behalf of the CoJ in accordance with the conditions of any permits that may be required from any relevant national regulatory authorities and other conditions agreed upon by the parties in the management agreement. The management contract will endure until such time as Pikitup has obtained the requisite permits, authorisations or permissions for the operational landfill sites, incinerator and waste transfer stations that require permitting by DWAF in its own name, and has formally acquired ownership of the properties on which the landfill sites and waste transfer stations are located, or until such other date stipulated in the management agreement;

- 65.1.2. an agency agreement in terms of which Pikitup will manage the closed landfill sites for and on behalf of the CoJ in accordance with the relevant standards and conditions agreed upon by the parties in the agency agreement; and
- 65.1.3. a property management agreement with the Johannesburg Property Company (Pty) Ltd in terms of which the Johannesburg Property Company (Pty) Ltd shall provide property management services on behalf of Pikitup in respect of property which is owned or under the control of Pikitup.

PART XIV: GENERAL

66. MUTUAL CO-OPERATION

The parties may consult from time to time with regard to any assistance or advice which either party may require in connection with any of its obligations in terms of this agreement. The CoJ shall further timeously provide Pikitup with such information as it may reasonably require to enable it to comply with any of Pikitup's obligations in terms of this agreement.

67. CONFIDENTIALITY

It is recorded that each of the parties may have access to confidential information and trade secrets of the other insofar as such information relates to or is required for the provision of the services contemplated in this agreement. The parties hereby unconditionally undertake in favour of each other that neither of them will, subject to the provisions of any law requiring or permitting access to confidential information, at any time divulge or disclose to any person, or permit it to be divulged or disclosed to any person, or make use in any way whatsoever of any confidential information or trade secrets

relating to the affairs or business or method of carrying on business of the other party without its consent.

68. DOMICILIA AND NOTICES

68.1. All notices to be given in connection with this agreement shall be in writing and shall be delivered by hand, transmitted by facsimile or sent by prepaid registered post:

68.1.1. in the case of the CoJ at: Executive Director: CMU
2nd Floor, Council Chamber Wing
Metropolitan Centre
158 Loveday Street
Braamfontein
Johannesburg
telefax no: (011) 403 1012
marked for the attention of: Executive Director: CMU

68.1.2. in the case of Pikitup at: Managing Director
Pikitup Johannesburg (Pty) Ltd
Building 3, First Floor, Fedsure on Grayston
Corner of Linden Road and Grayston Drive,
Sandton
telefax no: (011) 303 8797
marked for the attention of: the Managing Director;

which physical addresses the parties select as their domicilium citandi et executandi.

68.2. A notice shall be deemed to have been received:

68.2.1. 14 (fourteen) days after posting, if posted by registered post to the party's address in terms of clause 68.1;

68.2.2. on delivery, if delivered to a responsible person during normal business hours at the party's physical address in terms of clause 68.1;

68.2.3. on despatch, if sent to the party's then telefax number and confirmed by registered letter posted no later than the next day.

69. CHANGE OF ADDRESS

Either party may change its address by notice in writing to the other party, such address being effective on receipt by the addressee of such written notice. A notice shall be necessary in respect of a new or changed telefax number.

70. FURTHER ASSURANCES

Each party shall execute all documents promptly and do all things that the other party may from time to time reasonably require of it to effect, perfect or complete the provisions of this agreement.

71. ENTIRE AGREEMENT

This agreement constitutes the entire agreement between the parties with regard to the matters dealt with herein. There are no terms, conditions or warranties, express or implied, other than those contained in this agreement and there have been no prior representations made by the parties or any agent or other person purporting to act for the parties.

72. VARIATION, CANCELLATION OR WAIVER

No variation of the terms of this agreement, or consensual cancellation of this agreement, shall be effective unless reduced to writing and signed by or on behalf of the parties.

73. INDULGENCES

No indulgences which either party may grant to the other shall constitute a waiver by the former of its rights under this agreement; accordingly that party shall not be precluded, as a consequence of it having granted such indulgence, from exercising any of its rights against the other which may have arisen in the past or which may arise in the future.

74. SEVERABILITY

If any of the provisions of this agreement shall be held unenforceable in any pertinent jurisdiction, such event shall not affect the validity of the remainder of the provisions of this agreement which shall remain effective as if any such unenforceable provision were not a part of this agreement, unless the effect of such a severance renders the rest of the agreement unworkable.

75. COUNTERPARTS

This agreement may be concluded by the parties signing separate counterparts, which shall

together constitute the agreement of the parties.

76. APPLICABLE LAW

This agreement shall be governed by and construed and interpreted in accordance with the law of the Republic of South Africa, provided that in the event of a conflict between or inconsistency in the laws applicable in the various provinces of the Republic of South Africa, the law as interpreted and applied in the Gauteng Province shall prevail.

77. COSTS

77.1. The costs of preparing and if necessary of stamping this agreement shall be borne by Pikitup.

77.2. All costs, charges and expenses of every nature whatsoever which may be incurred by either party in enforcing its rights in terms of this agreement, including without limiting the generality of the foregoing, legal costs on the scale as between attorney and own client and collection commission, irrespective of whether any action has been instituted, shall be recoverable from the party against which such rights are successfully enforced.

SIGNED by the parties and witnessed on the following dates and at the following places respectively:

<u>DATE</u>	<u>PLACE</u>	<u>WITNESSES</u>	<u>SIGNATURE</u>
_____	_____	1. _____	For: THE CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY
		2. _____	_____
			who warrants that he is duly authorised hereto

DATE

PLACE

WITNESSES

SIGNATURE

For: PIKITUP JOHANNESBURG
(PROPRIETARY) LIMITED

1. _____

2. _____

who warrants that he is duly
authorised hereto

ANNEXURE A – RESOLUTION OF THE CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY

ANNEXURE B – COUNCIL SERVICES

1. The Council services comprise the following services:
 - 1.1. collection and disposal of domestic waste;
 - 1.2. collection and disposal of business waste;
 - 1.3. collection and disposal of putrescible waste;
 - 1.4. cleansing, that is, street cleaning, lane flushing, and area cleaning;
 - 1.5. management of litter bins;
 - 1.6. collection and disposal of waste illegally dumped; and
 - 1.7. collection and disposal of animal carcasses found in a public place.

ANNEXURE C – CALCULATION OF SERVICE FEES

1 APPLICATION OF FORMULAE

- 1.1 Certain formulae in this Annexure C require the multiplication of monthly waste mass (measured in tons) by disposal rates established by Pikitup based on direct costs and overhead costs (expressed in rands per ton) to determine sub-service fees for the provision of each of the Council services for a period of one calendar month.
- 1.2 For each aspect of the Council services provided by Pikitup and paid on the basis of waste tonnage, Pikitup will be required to aggregate the relevant monthly waste tonnages across all SBUs.
- 1.3 Any other measures required for the application of the formulae will be determined from the CoJ GIS, or from actual measurements made by Pikitup.
- 1.4 Pikitup shall annually advise the CoJ of its disposal rates per ton by category of waste, and such rates shall apply to waste disposed of by other agencies or utilities of the CoJ during that financial year.
- 1.5 If the CoJ disagrees with the determination by Pikitup of tonnages, measures or rates in terms of items 1.1, 1.3, and 1.4 it may refer the matter for resolution in terms of clause 57 of the main agreement, as constituting a technical matter.

2 COLLECTION AND DISPOSAL OF DOMESTIC WASTE

- 2.1 The sub-service fees for the collection and disposal of domestic waste shall be calculated in accordance with the following formulae:
 - 2.1.1 The formal domestic RCR formula shall take the form:

$$\text{Formal domestic RCR sub-service fee} = \text{RCR tons} \times (\text{RCR collection rate per ton} + \text{domestic waste disposal rate per ton}).$$
 - 2.1.2 The informal domestic RCR formula shall take the form:

$$\text{Informal domestic RCR sub-service fee} = \text{RCR tons} \{\text{informal settlements}\} \times (\text{RCR collection rate per ton} \{\text{informal settlements}\} + \text{domestic waste disposal rate per ton}).$$

2.1.3 The informal domestic Container formula shall take the form:

Informal domestic container sub-service fee = tons {containers: informal settlements} x (container collection rate per ton {informal settlements} + domestic waste disposal rate per ton).

3 COLLECTION AND DISPOSAL OF BUSINESS WASTE

The sub-service fee for the collection and disposal of business waste shall be calculated in accordance with the following formula:

Business RCR sub-service fee = RCR tons x (RCR collection rate per ton + business waste disposal rate per ton).

4 COLLECTION AND DISPOSAL OF PUTRESCIBLE WASTE

The sub-service fee for the collection and disposal of putrescible waste shall be calculated in accordance with the following formula:

Putrescible RCR sub-service fee = RCR tons x (RCR collection rate per ton + putrescible waste disposal rate per ton).

5 CLEANSING

5.1 The sub-service fees for cleansing shall be calculated in accordance with the following formulae:

5.1.1 The sub-service fee formula for street cleaning shall take the form:

street cleaning sub-service fee = \sum (kilometres of street/carriageway cleaned 'n' times per month x 'n') x street cleaning rate per kilometre

where \sum denotes the sum of the bracketed expression for all 'n'.

5.1.1.1 The kilometres of street/carriageway cleaned at various cleaning frequencies shall:

5.1.1.1.1 be determined from the CoJ GIS;

5.1.1.1.2 refer to the street/carriageway-length and not the kerb length;

5.1.1.1.3 not be reduced by the width of any intersections; and

5.1.1.1.4 a street shall be considered as having more than one carriageway if it is reflected as such on the CoJ's GIS.

5.1.2 The sub-service fee formula for lane-flushing shall take the form:

Lane-flushing sub-service fee = \sum (kilometres of lane flushed 'n' times per month x 'n') x lane-flushing rate per kilometre

where \sum denotes the sum of the bracketed expression for all 'n'.

5.1.3 The sub-service fee formula for area cleaning shall take the form:

area cleaning sub-service fee = \sum (square metres of area cleaned 'n' times per month x 'n') x area cleaning rate per square metre

where \sum denotes the sum of the bracketed expression for all 'n'.

5.1.3.1 In cases where hawkers trade on street pavements the area cleaning service fee formula shall apply to the pavement area involved, and the resulting area cleaning sub-service fee shall be in addition to the street cleaning sub-service fee in respect of the street concerned.

5.1.3.2 In respect of pedestrian malls, bus- and taxi-ranks, the area-cleaning formula shall apply to the total area cleaned. No street-cleaning fee will apply in such cases.

6 LITTER-BIN MANAGEMENT FEE FORMULA

6.1 The litter-bin management sub-service fee formula shall take the form

Litter-bin management sub-service fee = \sum (number of litter-bins of type 't' in service x rate per bin type 't')

where \sum denotes the sum of the bracketed expression for all 't'.

6.1.1 The litter-bin 'rate per bin' shall include the procurement, placement, fixing, maintenance and replacement of the litter bins.

7 ILLEGAL DUMPING FEE FORMULA

7.1 The illegal dumping sub-service fee formulae shall take the form:

Illegal dumping sub-service fee = tons {illegal dumping cleared} x (basic collection fee per ton {illegal dumping} + applicable disposal rate per ton).

7.2 In cases where access is difficult, or additional plant and equipment is required due to the nature and/or quantity of waste to be cleared, a 'special' collection fee will

apply. In these cases, the illegal dumping sub-service fee formula shall take the form:

Illegal dumping sub-service fee = tons {'special' illegal dumping cleared} x ('special' collection fee per ton {illegal dumping} + applicable disposal rate per ton)

8 COLLECTION AND DISPOSAL OF ANIMAL CARCASSES

The animal carcass fee formula shall take the form:

Carcass collection/disposal sub-service fee = \sum (number of carcasses of type 'a' x rate for collection/disposal of carcass type 'a')

where \sum denotes the sum of the bracketed expression for all 'a', which shall encompass the following categories of carcass: cat or small dog; large dog; sheep, goat or pig; horse, donkey or bull.

ANNEXURE D – SERVICE STANDARDS

PART I – INTRODUCTION

1. INTRODUCTION

This annexure stipulates the detailed technical aspects of the service standards to be attained by Pikitup in providing the Council services in terms of this agreement.

1.1. Objectives of the service standards

The objective of attaining the service standards is to ensure that the Service area of the CoJ is maintained by Pikitup at a level of cleanliness that is environmentally and socially acceptable, and to avoid or minimize the negative impacts normally associated with unmanaged waste and waste in the environment.

1.2. Knowledge and use of service standards

Pikitup must ensure that training is given to relevant employees in:

1.2.1. the content of the service standards; and

1.2.2. procedures for compliance with the requirements of the service standards.

PART 2: OVERALL SERVICE STANDARDS

2. OPERATIONAL PLANNING

2.1. Within 2 (two) years of the date of signature hereof, Pikitup shall develop a waste management plan for the service area. Such plan shall be in accordance with any strategic waste management plan developed and approved by the CoJ. The waste management plan developed by Pikitup shall record on maps having an appropriate scale, all waste collection and cleansing routines in such a way that activities and progress can be identified and monitored by the CoJ by region and depot. Non-routine activities must also be documented, but need not be documented at the same level of detail.

2.2. The waste management plan must be updated by Pikitup on an annual basis and when there has been any amendments to service standards, changes in the service area or amendment to the Council services. All updates are to be recorded by

Pikitup within two months of the changes or new services having been implemented.

- 2.3. All routines should be reviewed at least every 8 (eight) years by Pikitup to ensure maximum efficiency and appropriateness in the light of changes and developments in the provision of the Council services.

3. RECORDING OF COMPLAINTS

Pikitup shall liaise and co-operate with the CoJ in establishing a call centre in terms of clause 23 of the main agreement for receiving and recording complaints.

4. GENERAL DISPOSAL STANDARDS

- 4.1. All waste collected by Pikitup must be disposed of at landfill sites or other licensed facilities permitted by DWAF to handle the particular category of waste.
- 4.2. To ensure compliance with item 4.1, Pikitup must establish an audit system which correlates all waste collected by Pikitup's vehicles and employees to the quantities of waste disposed of at the landfill sites or other licensed facilities permitted by DWAF. This is necessary for the CoJ to confirm with reasonable certainty that all waste has been disposed of in an acceptable manner, or treated by an alternative system, which is environmentally and socially acceptable.
- 4.3. Pikitup shall ensure that employees are properly trained to identify which categories of waste they may handle and for which waste types they should request assistance.

5. STAFF DEVELOPMENT AND TRAINING STANDARDS

- 5.1. In order to comply with these service standards, employees must be properly trained by Pikitup in their appropriate disciplines. In general it is vital to instil an ethic of quality, productivity and excellence throughout the service operations, and to appropriately skill all employees to carry out their tasks efficiently and adequately.
- 5.2. Employees must be equipped by Pikitup with a level of waste management skill appropriate to their level of involvement in providing the Council services.
- 5.3. All field staff should be informed as to what action should be taken in the event of their coming across waste types for which they have not been trained or equipped to handle including:

- 5.3.1. Hazardous wastes (solid and liquid); and

5.3.2. health care risk wastes.

6. GENERAL STANDARDS FOR RECEPTACLES

The following shall apply to the provision of receptacles:

6.1. End user premises

6.1.1. For RCRs Pikitup shall supply, free of charge to each end user, receptacles applicable for the service level provided, that is, 240l wheeled bins without liners or two 85l plastic bin liners. In the event that an end user requires additional receptacles, such end-user shall be required to make additional payments to Pikitup for such receptacles.

6.1.2. Pikitup shall obtain written proof of delivery from each end user for the 240l wheeled bins.

6.2. Public places

6.2.1. Records shall be maintained by Pikitup of all litter bins, in terms of size, type, location and serviceability.

6.2.2. All bins shall comply with the relevant SABS specifications.

6.2.3. In all cases, Pikitup must ensure the provision of the necessary storage facility according to the applicable service level in terms of bins and bags and report and replace when such storage facility is no longer serviceable.

6.2.4. In the event of bins supplied by Pikitup becoming unserviceable due to age or breakage, Pikitup shall notify the end user that a replacement bin will be provided.

6.2.5. Any cost to Pikitup of purchasing the bin and replacing it shall form part of the service fee.

PART 3: WASTE COLLECTION STANDARDS

7. ROUTINE SERVICE (SMALL WASTE < 240l)

- 7.1. Pikitup shall provide a routine small waste collection and disposal service of a capacity of at least 85l per end user collected on a routine/RCR service to each and every end user in formal areas (covering residential/domestic, business and industrial areas).
- 7.2. The levels of service to be provided are contained in Annexure E annexed hereto.
- 7.3. The services which fall under this category are:
 - 7.3.1. RCRs;
 - 7.3.2. more frequent collections including putrescible waste; and
 - 7.3.3. slugs (compacted waste).

8. MINIMUM STANDARDS

The following minimum standards shall apply for all small waste collection services described in clause 7.1 above:

- 8.1. The service shall be provided routinely, that is, generally on the same day of each week and at approximately the same time;
- 8.2. The service shall be carried out with minimal impact on the environment in terms of noise and air pollution and in such a way that there is no visible sign of the collection operation having occurred, particularly regarding spillage of solid or liquid waste;
- 8.3. In the event of a spillage having occurred as a result of the operations of Pikitup, such spillage shall be cleaned up (and absorbed in the case of liquid spillage) immediately by the vehicle crew responsible for the spillage, with special attention being given to the avoidance of residues that could give rise to odours or attract vectors;
- 8.4. All waste placed out for collection shall be removed;
- 8.5. Immediately after emptying, each bin shall be returned to its designated place so as not to cause undue obstruction to pedestrian traffic or to be replaced back on the premises. Under no circumstances must bins be left in the street or any other

position that could cause an obstruction or be a danger or inconvenience to residents, pedestrians or traffic;

- 8.6. If an end user repeatedly (more than three out of four consecutive weeks) places out more waste for collection than the maximum quantity allowed in terms of the applicable service level, Pikitup must provide additional bins; and
- 8.7. In the event of waste being generated by an end user which, due to its nature (size, mass or shape) would qualify as special domestic waste, such waste must be either:
 - 8.7.1. loaded up and removed if its size and nature allows, bearing in mind the technical limitations of the collection equipment; or
 - 8.7.2. if the waste is not suitable for loading, this must be reported at the earliest opportunity for the waste to be treated as special domestic waste, and the end-user advised accordingly.

9. STANDARDS FOR INFORMAL AREAS AND AREAS WITH VEHICLE ACCESS PROBLEMS

- 9.1. Informal areas are indicated in the map annexed hereto as Annexure D1.
- 9.2. As directed by the CoJ, in areas with vehicle access problems such as informal settlements, Pikitup must make special arrangements with the CoJ and the local community, taking cognisance of the National Waste Management Strategy guidelines for working in such informal areas, to move waste generated in the informal settlement to a point or receptacle that is both accessible to the collection vehicle and where the stored waste will not create a nuisance.
- 9.3. Where it is necessary to store waste overnight at or near the point of collection, appropriate bulk containers must be provided by Pikitup for this purpose.
- 9.4. Containers shall be:
 - 9.4.1. checked for retained or accumulated and compacted waste remaining behind (especially in corners) after every emptying;
 - 9.4.2. cleaned at least every three months or more frequently if necessary to prevent disease and nuisances such as odours, flies and vectors;
 - 9.4.3. without drain holes; and
 - 9.4.4. lockable if possible to avoid scavenging but with a smaller opening (± 600 mm diameter) to allow residents to deposit waste.

10. MORE FREQUENT SERVICES (INCLUDING PUTRESCIBLE WASTE)

Pikitup shall provide more frequent small waste collection services on a routine basis should they be required for any specific reason, particularly:

- 10.1. where the waste type is such that it cannot be stored for a whole week (for example, putrescible waste from hotels, restaurants and food shops);
- 10.2. where waste generation exceeds the particular waste storage capacity; and
- 10.3. The standards for the collection of this type of waste should be generally the same as for the collection of domestic waste, that is, the environment after removal should show no sign of waste removal having taken place.

PART 4: GENERAL CLEANSING STANDARDS

11. GENERAL CLEANSING

11.1. Pikitup shall collect and dispose of waste from all designated spaces as listed below:

- 11.1.1. roads, streets, lanes, alleys, including gutters and verges within the road reserve;
- 11.1.2. municipal vacant land (when required at an agreed fee); and
- 11.1.3. kerb inlets (up to and outside of opening but not inside);

11.2. This shall be done by means of:

- 11.2.1. litter picking;
- 11.2.2. sweeping;
- 11.2.3. removal of illegally dumped waste;
- 11.2.4. removal of animal kills and discarded carcasses; and
- 11.2.5. flushing.

12. CLEANSING STANDARDS

12.1. The general requirement for cleaning a particular area is that all litter, glass, paper, plastic, metal, cigarette ends, filth, excrement, dead animals, and any material foreign to that area with its particular surface use, and not placed there for a particular purpose, must be removed, irrespective of the quantity;

12.2. By way of example the following logic would apply:

12.2.1. Paved surfaces

All loose material, excluding loose leaves and silt, down to a size which can fit inside an 8mm diameter sphere and which is obviously out of character with the paving material and surface (type, texture and roughness) should be removed. As a result paved surfaces should generally be swept, but the method of is left up to Pikitup.

12.2.2. Grassed and vegetated surfaces

All loose surface material, excluding loose leaves and silt, standing on the surface and which is obviously out of character with the surface vegetation should be removed. As a result all such surfaces (typically grassed surfaces) to be litter-picked and raked. It must be noted that in doing so the intention is to remove the foreign material and not to allow it to drop through to the ground below.

12.3. By implication, the above includes the removal of all large quantities of waste such as illegally dumped waste which must be removed before final cleaning. It also includes the emptying of all public litter facilities.

12.4. Where a lane is being used as a toilet area, such area shall be flushed, sterilized and deodorized and any excess water must be drained away or removed as part of the cleaning operation. The disinfecting and deodorizing chemicals to be used for flushing shall be approved by the relevant authority responsible for the local water catchment area management.

12.5. Without exception, all waste collected during the above type of cleaning operations must be removed from the cleaned areas and disposed of within 48 (forty eight) hours of the cleaning operation.

12.6. The minimum cleaning standard immediately following a collection shall be such that there are no more than ten (10) items of litter and/or foreign material larger than a normal matchbox, within an area of 1000m², that is, 20 x 50m².

12.7. In areas that are inaccessible due to physical obstructions such as parked vehicles, hawker stalls or other activities, Pikitup shall make every effort to clean these areas. This would include cleaning during off peak periods but always ensuring that the areas are properly cleaned at least once during the 24 (twenty four) hour period on the days of the week on which the particular areas experience heavy traffic and therefore required to be serviced. For areas such as business districts that experience heavy traffic Monday to Saturday, more frequent cleaning cycles must be provided.

13. PREVENTATIVE ACTIONS

In the event of regular illegal dumping occurring in any given area, this should be reported to enforcement officers for them to take preventative action.

ANNEXURE E: SERVICE LEVELS

COUNCIL SERVICE	SERVICE LEVEL	DESCRIPTION
Domestic Waste (formal RCR)	240l wheeled bin (without liner), collected once per week 85 l bin (plus liners); 2 x bin liners collected once per week, or 1 x 85 l bin liner collected twice per week, OR 85 l bags/bin liners (no bins); 2 x bags collected once per week, or 1 x bag collected twice per week.	Collection of domestic waste in storage containers not greater than 240l, using specialised vehicles
Domestic Waste (Informal RCRs)	85 l bags/bin liners (no bins); 2 x bags collected once per week 85 l bags/bin liners (no bins); 1 x bag collected twice per week.	Collection of domestic waste in storage containers not greater than 240l, using specialised vehicles
Domestic Waste (Informal Containers)	Emptied within 24 (twenty four) hours of being filled, and immediately before weekends and public holidays, if there is insufficient capacity for the weekend's waste	Collection of domestic waste in centrally-placed receptacles including skips
Business Waste (240 l bins)	240 l wheeled bin (without liner), collected once per week; or 85l bin (without liner) collected once per week	Collection of business refuse from business premises in storage containers not greater than 240l, using specialised vehicles
Putrescible Waste	240 l wheeled bins (without liners), collected 5 or 6 times per week 85 l bins (without liners), collected 5 or 6 times per week	Collection of putrescible waste from hotels, restaurants, hospitals, and canteens
Slugs	Collection of slugs at least once per	Bundles of domestic and business waste compacted in the ratio of between 3:1 and 6:1, and enclosed in

COUNCIL SERVICE	SERVICE LEVEL	DESCRIPTION
	week on a routine basis	a wrapper not greater than 85l and 35kg total mass
Cleansing	See item 1 below	Cleaning of all litter, waste, from the entire road reserve, including the street, verges, and gutters.
Management of litter bins	Pikitup shall supply and install sufficient litter bins in public places to prevent the litter bins from overflowing between service intervals provided that the CoJ provides the requisite storage areas in public places.	Procurement, placement, fixing, maintenance and replacement of litter bins
Collection and Disposal of Waste Illegally dumped	Collection on request by the CoJ	Collection and disposal of illegally dumped waste in road reserves and vacant land
Collection and disposal of animal kills/discard ed carcasses	Collection on request by the CoJ or local community	Collection and disposal of animal kills or discarded carcasses found in a public place

Note: The distribution of formal and informal areas is indicated on the map annexed to this agreement as Annexure D1.

1. CLEANSING FREQUENCY

1.1. In respect of cleansing, within 2 (two) years of Pikitup taking over the Council services, Pikitup must assess all areas to establish the rate at which areas deteriorate to Level 3 or less of the Photometric Cleaning Standard (see Appendix 1). Areas must then be categorised and cleaned according to the following frequencies:

Rate at which area deteriorates to < 3 (in working days)	Cleansing Frequency	Area Category
< 1 d	Daily and more often	Red
2 d	Every 2 days	Orange
3 d	3 times per week	Yellow
5 d	Weekly	Brown
10 d	2 weekly	Pink
15 d	3 weekly	Purple
20 d	Monthly	Blue
40 d	2 monthly	Green
> 40 d	2 monthly based on inspection or as and when required	White

2. These areas must then be shown on area maps or by using an alternative and appropriate planning and/or display method. Cleaning routines must then be planned accordingly. These routines must be reviewed at least every 8 (eight) years or more frequently by Pikitup in the event of areas changing so as to affect the rate at which they require to be cleaned.

Appendix 1

PHOTOMETRIC CLEANING STANDARD

1. The Photometric Cleaning Standard shall consist of a series of five photographs of the same venue and an area of ±1000m², but showing various levels of cleanliness as follows:

1.1. Level 1

No litter, dirt or foreign matter, that is, clean and free of any man-made, man-used and misplaced material (excluding sand and grit);

1.2. Level 2

In between 1 and 3, and a warning to make preparations to clean;

1.3. Level 3

Not more than 10 items of litter larger than a matchbox visible within an area of $\pm 1000\text{m}^2$, that is, minimum acceptable level;

1.4. Level 4

In between levels 3 and 5 and attention required ("dirty").

1.5. Level 5

Many items of litter and dirt. Needs urgent attention ("very dirty").

ANNEXURE F – AUTHORISATION TO PROVIDE COMMERCIAL SERVICES

Taking account of the fact that at the effective date the CoJ is engaged in the provision of a wide range of commercial services that it wishes to cede and assign to Pikitup, it has been resolved in accordance with the resolution for the “Review and Approval of Service Delivery Agreement and Sale of Business Agreement : Pikitup Johannesburg” annexed hereto as Annexure A that:

1. PIKITUP JOHANNESBURG (PROPRIETARY) LIMITED be authorized under clause 9.1 of the service delivery agreement between the CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY and PIKITUP JOHANNESBURG (PROPRIETARY) LIMITED (“the agreement”) to provide the following commercial services in terms of the agreement:
 - 1.1 Collection of healthcare risk wastes on a routine basis, and treatment or disposal of such waste;
 - 1.2 Treatment or disposal only of healthcare risk waste delivered under contract to the Springfield incinerator;
 - 1.3 Bulk collection services provided to business users for the collection of industrial waste, special industrial waste, garden waste and building waste;
 - 1.4 Collection and disposal of hazardous waste;
 - 1.5 composting;
 - 1.6 Recycling activities;
 - 1.7 Provision of cleaning, waste collection and disposal services in respect of special events;
 - 1.8 Operation of garden waste sites, and
 - 1.9 Operation of the landfill sites, and
 - 1.10 Operation of the incinerator.
- 2 This resolution shall take effect on the effective date.

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