

DRAFT1 (07/06/2022)
TRANSFER PAYMENT AGREEMENT

2022/2023

Entered into by and between the

**WESTERN CAPE GOVERNMENT VIA ITS
DEPARTMENT OF COMMUNITY SAFETY**

(Herein represented by **Adv Yashina Pillay** in her capacity as
Head of the Department of Community Safety, duly authorized thereto)

(Hereinafter referred to as "the Department")

and

**CITY OF CAPE TOWN VIA ITS
SAFETY AND SECURITY DIRECTORATE**

(Herein represented by **Vincent Botto** in his capacity as
Acting Executive Director of the Safety and Security Directorate, duly authorized thereto)

(Hereinafter referred to as "the Beneficiary")

(Collectively referred to as "the Parties")

PREAMBLE

- A. Whereas** the City of Cape Town established the Law Enforcement Advancement Programme;
- B. AND Whereas** the Department has undertaken to support and contribute to the Law Enforcement Advancement Programme by providing funding as set out in the Business Plan attached hereto as Annexure “**A**”;
- C. AND Whereas** the Parties have reached an agreement in terms of which the Department will allocate to the Beneficiary an amount of **R 400 000 000 (Four Hundred Million Rands)** as a contribution towards the expenses of the Law Enforcement Advancement Programme in the Beneficiary's 2022/23 financial year, for the period **1 July 2022 to 30 June 2023**;
- D. AND Whereas** in the case of multi-year funding, funding for subsequent financial years will be subject to the allocations made by the Provincial Executive, departmental budget allocations made by the Provincial Parliament and the departmental performance management processes, together with the conclusion of a further agreement between the Parties in respect of such further funding.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

1.1. In this Agreement unless the context indicates a contrary intention a word or expression which denotes:

1.1.1. any gender shall include the other genders;

1.1.2. a natural person shall include juristic persons and vice versa; and

1.1.3. the singular shall include the plural and vice versa.

1.2. In the event of any inconsistency between the provisions of this Transfer Payment Agreement and the relevant information pertaining to the Parties in the Business Plan, the provisions contained in this Transfer Payment Agreement shall prevail over the relevant information pertaining to the Parties in the Business Plan.

1.3. In this Agreement, the following expressions bear the meanings assigned to them below and cognate expressions bear corresponding meanings:

1.3.1. **“Agreement”** shall mean this Transfer Payment Agreement, together with the Business Plan, and any other annexures hereto, and **“this Agreement”** shall have a corresponding meaning;

1.3.2. **“Beneficiary”** shall mean the City of Cape Town, a Metropolitan Municipality established in terms of the Local Government: Municipality Structures Act, 1998 (Act 117 of 1998), read with the Province of the **Western Cape Provincial Gazette, 5588, dated 22 September 2000** (as amended);

1.3.3. **“Beneficiary’s Primary Bank Account”** shall mean the bank account of the Beneficiary as indicated below:

Bank Name : Nedbank

Branch Name : Nedbank South Africa
Branch code : 198765
Name of Account Holder : City of Cape Town
Account Number : 1158 667 035

- 1.3.4. **“Business Days”** means any day other than a Saturday, Sunday or statutory public holiday proclaimed as such in the Republic of South Africa;
- 1.3.5. **“Commencement Date”** means 01 July 2022;
- 1.3.6. **“Calendar Days”** means any day of the week and includes weekends and statutory public holidays proclaimed as such in the Republic of South Africa; and
- 1.3.7. **“Calendar Month”** means the period of time that begins on the 1st (first) Calendar Day of any given month and shall consist of the number of Calendar Days in such month, ending on the last Calendar Day of the same month;
- 1.3.8. **“Funds”** means R 400 000 000 (Four Hundred Million Rands);
- 1.3.9. **“LEAP”** means the Law Enforcement Advancement Programme;
- 1.3.10. **“Project”** shall mean the appointment, training, equipping, and operationalization of Law Enforcement Officers by the Beneficiary, in order to implement the Law Enforcement Advancement Programme (LEAP), in terms of and in compliance with *Government Notice 1114* of 19 October 2018: Declaration of Peace Officers in terms of section 334 of the Criminal Procedure Act 51 of 1977: Law enforcement officers appointed by a municipality issued in *Government Gazette* No 41982, subject to further amendment.

- 1.4. Words and expressions defined in any clause shall, for the purpose of that clause, bear the meaning of such words and expressions in that clause.

2. DURATION OF AGREEMENT

This Agreement shall commence, notwithstanding the signature date hereof, on the Commencement Date and shall, unless otherwise provided for in this Agreement, terminate once all the agreed-upon deliverables and reporting obligations have been met by the Beneficiary.

3. APPROVED BUDGET AND PAYMENT OF THE FUNDS FOR THE PROJECT

3.1 The Department shall pay an amount of **R 400 000 000 (Four Hundred Million Rand)** (the "Funds"), subject to the terms and conditions contained in this Agreement.

3.2 The Funds will be deposited into the Beneficiary's Primary Bank Account, opened in accordance with section 8 of the Municipal Finance Management Act, 2003 (Act 56 of 2003), and suitably ring-fenced until the Funds can be utilised for purposes of the Project.

3.3 The Department shall pay the Beneficiary the Funds as set out in clauses 3.3.1- 3.3.3 below, which payments will be subject to the terms and conditions contained in this Agreement:

3.3.1 **R 200 000 000 (Two Hundred Million Rand)** within 30 (thirty) Calendar Days from the date of signature of this Agreement;

3.3.2 **R100 000 000 (One Hundred Million Rand)** subject to the receipt of the monthly financial report and cumulative progress reports by **10 February 2023** as contemplated in clauses 5.1 and 5.2, which is satisfactory to the Department and has been approved by the Department; and

3.3.3 **R100 000 000 (One Hundred Million Rand)** subject to the receipt of the monthly financial report and cumulative progress reports by **10**

March 2023 as contemplated in clauses 5.1 and 5.2, which is satisfactory to the Department and has been approved by the Department.

- 3.4 The Funds may only be utilised by the Beneficiary for the purposes of the Project as set out in the Business Plan attached hereto as Annexure “**A**” and the LEAP Monitoring and Assessment Framework Annexure “**B**”.
- 3.5 Nothing in this Agreement shall be construed as a confirmation of the allocation of funding in respect of the Project in subsequent financial years.
- 3.6 In the event that the Beneficiary is unable to utilise the Funds within the Beneficiary's 2022/2023 financial year, the Beneficiary may apply to the Provincial Treasury of the Western Cape Government for approval to utilise the remaining Funds during the Beneficiary's 2022/2023 financial year, subject to such Funds being utilised for their intended purpose, as set out in the Business Plan.

4. OBLIGATIONS OF THE BENEFICIARY

The Beneficiary shall:

- 4.1 ensure that effective, efficient, and transparent financial management and internal control systems are in place and remain in place for the duration of this Agreement;
- 4.2 ensure that its financial statements in respect of any and each financial year during which this Agreement is or remains in force are prepared in accordance with the requirements contained in the Municipal Finance Management Act 56 of 2003, and any regulations of that Act, which may be applicable;
- 4.3 furnish the Department with its most recent audited financial statements, as included in its latest annual report;

- 4.4 furnish the Department with a written assurance in terms of section 38 of the Public Finance Management Act, 1999 (Act 1 of 1999) which is to be attached hereto, marked Annexure “C”;
- 4.5 Utilize the Funds only for the purpose for which they were approved namely the Project, which is detailed in the Business Plan attached as Annexure “A”;
- 4.6 allocate the Funds only in accordance with the Business Plan attached as Annexure “A”, which includes a budget, cash flow projections, targets, outputs, time frames, and reporting periods;
- 4.7 create a separate cost centre within its formal accounting system to enable it to accurately account for the Funds transferred in favour of the Project;
- 4.8 refund to the Department all Funds, together with the interest earned thereon, clearly indication the project reference number, should the Beneficiary fail to commence with the implementation of the Project within 4 (four) Calendar Months after the Funds (or any part thereof) have been paid over to it, within 30 (thirty) Calendar Days from the end of the 4 (four) month period;
- 4.9 pay back any surplus and/or remaining Funds, including available interest thereon, to the Department within 30 (thirty) days after the Beneficiary's 2022/2023 financial year-end, alternatively, where permission has been obtained for the roll-over of the Funds, within 30 (thirty) days after the Beneficiary's 2022/2023 financial year-end, clearly indicating the relevant reference number;
- 4.10 ensure that it maintains complete documentary evidence of all and any payments made from the Funds, including but not limited to expenditure vouchers, indicating the project reference number, which must be retained for audit purposes;
- 4.11 furnish the Department with an income and expenditure statement, prepared by its accountant and certified as correct by a Director, Chief

Executive Officer, or another most senior member of management, which indicates the total allocation and total expenditure in respect of the Project, within two (2) months of completion of the Project;

- 4.12 confirm in writing that the utilisation of the Funds was audited internally or externally;
- 4.13 adhere to the reporting and other requirements as set out in clause 5 below; and
- 4.14 comply with all of its statutory obligations including those reflected in the Firearms Control Act, 2000 and the Criminal Procedure Act, 1977 as well as any other related regulations, declarations, or other statutory instruments.

5. REPORTING, MONITORING AND EVALUATION

- 5.1 The Beneficiary must submit written cumulative progress and quarterly financial reports in accordance with the LEAP Business Plan 2022/23 (Annexure “**A**”) and LEAP budget (Annexure “**B**”) on the dates stipulated in clause 3.3. Each written progress report must confirm:
 - 5.1.1 the achieved targets and outputs are measured against the Beneficiary’s Business Plan set out in Annexure “**A**” and the LEAP budget set out in Annexure “**B**” together with any supporting documents substantiating the achieved targets and outputs; and
 - 5.1.2 quarterly financial and expenditure reports by the end of each quarter for the duration of this agreement providing a breakdown of all expenditures and the balance of the Funds, relative to the Project Budget as well as confirmation regarding those items listed in the Project Budget that have been procured.
- 5.2 These cumulative progress and quarterly financial reports must be submitted with any supporting documents as outlined below:

- 5.2.1 first and second quarterly consolidated financial reports for the period **01 July 2022 to 31 September 2022 and 01 October to 31 December 2022** with 10 Calendar Days at the end of the period;
- 5.2.2 first cumulative progress report for the period **01 July 2022 to 31 January 2022**, must be submitted to Department by **10 February 2022** and has been approved by the Department;
- 5.2.3 third quarterly consolidated financial reports for the period ending **30 March 2022** within 10 Calendar Days at the end of the quarter; and
- 5.2.4 fourth quarterly consolidated financial reports for the period ending **30 June 2022** within 10 Calendar Days at the end of the quarter.
- 5.3 The Beneficiary must submit a **final project closure report with annual achievements**, to the relevant programme manager of the Department within **20 (Twenty) Business days after 30 June 2023**.
- 5.4 The Department reserves the right to request additional information pertaining to any matters or issues raised in or relevant matters or issues omitted from any report or Progress Report as furnished.
- 5.5 Pursuant to the reporting obligations envisaged in section 38 (i)(j) of the PFMA and as detailed in this Agreement, the Department reserves its rights to suspend or terminate payments to the Beneficiary.
- 5.6 The Management of the Beneficiary shall be obliged to attend meetings to be held at the reasonable instance and request of the Department to discuss progress or any impediments in respect of the fulfillment of the obligations in terms of this Agreement.
- 5.7 The Beneficiary shall make available to the Department all relevant records, documents, and other evidence pertaining to the performance or obligations in terms of the Agreement, as and when requested by the Department, in order that the Department may conduct outcome and

Impact evaluations after reasonable prior written notice has been given to the Beneficiary.

5.8 The Beneficiary must submit a report by its Director, Chief Executive Officer, or another most senior member of management, as the case may be, pertaining to the Project, and which refers to the following:

5.8.1 the extent to which the Beneficiary achieved its objectives for the financial year concerned;

5.8.2 appropriate performance information regarding the economical, effective, and appropriate utilisation of the Funds; and

5.8.3 an indication of the other Funds, if any, received from the State, as well as any undertaking given by the State.

5.9 To ensure that the Funds are utilised correctly, the Beneficiary shall, upon written notice by the Department, grant authorized officials of the Western Cape Government access to the documentation, books, and financial records of the Beneficiary at all reasonable times, and these officials shall be entitled to inspect the Beneficiary's records at the Beneficiary's premises and to make copies of any required documentation.

5.10 The Department reserves the right to request the Beneficiary to have the financial statements, referred to in clause 4.3 above, audited.

6. GOVERNING LAW AND DISPUTE RESOLUTION

6.1 This Agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa.

6.2 In the event of any dispute arising from this Agreement, the Parties shall make every effort to settle such dispute amicably.

6.3 If the dispute is not capable of being settled amicably between the Parties, such dispute shall be elevated to the Senior Management/Executive or their

duly designated representatives for mediation purposes, within 7 (seven) Business Days of the dispute has arisen.

- 6.4 Should the dispute, despite such referral to the Senior Management or Executive as contemplated in clause 7.3 remain unresolved for a period of 30 (thirty) Calendar Days after being so referred, either Party may declare such dispute a formal intergovernmental dispute by notifying the other Party of such declaration in writing, in which event the Parties will follow the procedure as outlined in the Intergovernmental Relations Framework Act, 2005 (Act 13 of 2005).
- 6.5 Should the dispute still remain unresolved the dispute will be adjudicated by a competent court of law with jurisdiction to hear the matter.

7. NOTICE AND DOMICILIUM

- 7.1 The Parties choose as their respective *domicilium citandi et executandi* for the purposes of legal proceedings and for the purpose of giving or sending any notice provided for or necessary in terms of this Agreement the following addresses:

THE DEPARTMENT

The Head of Department:

Department of Community Safety

35 Wale Street, 4th Floor

Cape Town

8001

THE BENEFICIARY

The Executive Director: Safety & Security

City of Cape Town

5th Floor, Podium, Civic Centre, Hertzog Boulevard

Cape Town

8001

- 7.2 All notices to be given in terms of the Agreement shall be given in writing and be delivered or sent by prepaid registered post to the Party's chosen *domicilium citandi et executandi*.
- 7.3 If delivered by hand, a notice shall be presumed to have been received on the date of delivery, or, if sent by prepaid registered post, be presumed to have been received 7 (seven) Business Days after the date of posting.
- 7.4 Notwithstanding anything to the contrary contained in the Agreement, a written notice or communication actually received by one of the Parties from the other Party shall be adequate written notice of communications to such Party.

8. ENTIRE AGREEMENT

- 8.1 This Agreement constitutes the entire agreement between the Parties and no amendment, alteration, addition or variation of any right, term or condition of this Agreement will be of any force or effect unless reduced to writing and signed by the Parties to this Agreement.
- 8.2 The Parties agree that there are no conditions, variations or representations, whether oral or written and whether expressed or implied or otherwise, other than those contained in the Agreement.
- 8.3 This Agreement replaces any other previous verbal or written agreements entered into between the Parties.

SIGNED AT

ON THIS

DAY OF

2022

THE DEPARTMENT

(Signed by **Adv Yashina Pillay**, on behalf of the Department, in her capacity as **Head of Department**, duly authorized thereto)

AS WITNESSES:

Signature

Name in capital letters

SIGNED AT

ON THIS

DAY OF

2022

THE BENEFICIARY

(Signed by **Vincent Botto**, on behalf of the Beneficiary, in his capacity as **Acting Executive Director: Safety & Security**, duly authorized thereto)

AS WITNESSES:

Signature

Name in capital letters

ANNEXURE: LEAP 2022/2023 BUSINESS PLAN & TPA BUDGET

TPA ANNEXURE B: LEAP BUDGET FY 2022/2023

No	Budget Item	Line Item Description as per Business Plan	TOTAL BUDGET (BP PG 00)	BUDGET WCG ALLOCATION (TPA 22/23)	BUDGET PER BUSINESS PLAN - COCT allocation	DOCS TOTAL BUDGET FY 2023	CITY TOTAL BUDGET FY 2023
1	Operational LLEO & Area Based Staff	Opex: Salaries LLEOs	322,466,896.00	322,466,896.00	R0.00	322,466,896.00	0.00
		Overtime: LLEOs				0.00	0.00
		Ops Support: Operations				0.00	0.00
2	Command & Control & Corporate HR	Salaries : Command & Control	156,007,744.00	30,525,091.00	R125,482,653.00	0.00	117,149,794.42
		Overtime: Permanent Staff				30,525,091.00	0.00
		Salaries: COCT				0.00	0.00
		Salaries : EPWP				0.00	8,332,858.58
		Salaries: HR ramp - Clerks				0.00	0.00
		Salaries: HR ramp up - Admin (S&T)				0.00	0.00
3	Training department	Salaries: Training College	12,756,780.10	12,756,780.10	R0.00	0.00	0.00
		Opex : Training: LLEO's & Refresher				12,274,867.00	0.00
		Opex : Training : Refreshments				481,913.10	0.00
4	Uniform & Equipment Cost	Opex : Uniforms + Clothing	12,339,960.90	12,339,960.90	R0.00	10,093,947.30	0.00
		Capex: Firearms				0.00	0.00
		Opex : Stationery & Printing				1,124,463.90	0.00

		Opex : Material & Consumables				1,121,549.70	0.00
5	Vehicles & Transport Costs	Capex: Vehicles Purchases	15,811,252.00	15,811,252.00	R0.00	0.00	0.00
		Opex : Vehicles (Fuel & Insurance)				15,811,252.00	0.00
6	NST Facilities & Furniture	Opex:Faci lities	6,100,020.00	6,100,020.00	R0.00	6,100,020.00	0.00
		Capex: Refurbish ment of Facilities				0.00	0.00
		Opex Repairs & Maintenan ce				0.00	0.00
		Capex: Furniture				0.00	0.00
7	IT, Data Sharin g & Radio	Capex: IT	0.00	0.00	R0.00	0.00	0.00
		Epic Devices				0.00	0.00
		Capex: Radios				0.00	0.00
TOTAL			525,482,653.00	400,000,000.00	125,482,653.00	400,000,000.00	125,482,653.00

525,482,653.00	400,000,000.00	125,482,653.00
Approved BP & TPA Budget	WCG Allocation 22/23	CoCT Allocation 22/23

0.00

CCT contribution to LEAP

	2019/20	2020/21	2021/22	2022/23	TOTAL
Total LEAP cost	169 799 902	557 726 256	496 279 975	525 482 653	1 749 288 786
WCG funding commitment	130 000 000	417 000 000	350 000 000	400 000 000	1 297 000 000
CCT contribution	39 799 902	140 726 256	146 279 975	125 482 653	452 288 786