

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE MINISTER FOR TREASURY AND RESOURCES AND
THE STATES OF JERSEY DEVELOPMENT COMPANY LIMITED**

1. Background

- 1.1 The States of Jersey by their Act dated 12th December 1995 approved the establishment of Waterfront Enterprise Board Limited. Their Act dated 14th September 2005 approved the extension of the Company's original tenure. Their Act of 13 October 2010 agreed that the role and remit of the Company should be extended to allow it to undertake, from time to time, the regeneration of redundant States of Jersey assets mainly within designated Regeneration Zones and where appropriate to act as the preferred developer for Jersey Property Holdings' projects either via joint ventures with third party developers or directly. This Act further approved the revised Memorandum and Articles of Association of The States of Jersey Development Company Limited as set out in Appendix 2 of the report of the Council of Ministers dated 7th June 2010 and authorised the Greffier of the States for and on behalf of the States of Jersey to pass, together with the Treasurer of the States, one or more special resolutions of the Company in respect of the change of name and to adopt such Memorandum and Articles of Association.
- 1.2 The issued share capital of SoJDC is held for and on behalf of the States of Jersey by nominees of the Minister for Treasury and Resources (the "**Minister**").
- 1.3 The purpose of this Memorandum of Understanding ('**MoU**') is to ensure the appropriate conduct of SoJDC and to put in place an accountability framework appropriate to SoJDC as a business.
- 1.4 This MoU aims to foster a sound working relationship between the Minister and SoJDC based on a mutual understanding of expectations for the sharing of information, regular dialogue on key issues as they emerge and develop, and most importantly, the operation of a "no surprises" policy such that the Minister, in exercising his responsibilities as holder of securities in SoJDC on behalf of the States of Jersey, is kept fully informed as to key business decisions which have the potential to impact on the States of Jersey's ("SoJ") interests as owner.

2. Objectives

- 2.1 In its business operations SoJDC aims to:
- Develop detailed development proposals for specific projects of regeneration of property and infrastructure mainly within Regeneration Zones for consideration by the Regeneration Steering Group;
 - Provide forward funding for preparing the detailed development proposals;
 - Procure the services of appropriate design and development consultants;
 - Manage and develop detailed designs for specific sites;
 - Submit detailed planning applications to the Minister for Planning and Environment;
 - Procure and manage project implementation of development plans within and outwith Regeneration Zones agreed by the Regeneration Steering Group either directly or via a joint venture with a third party developer;
 - Provide quarterly progress reports to the Regeneration Steering Group with regard to agreed Development Plans;

- Procure and manage project implementation as agreed by the Minister either directly or via a joint venture with a third party developer;
- Provide quarterly progress reports to the Minister in respect of development taking place.

3. Definitions and Interpretation

3.1 In this MoU the following defined terms are used:

“**Board**” means the Board of Directors of SoJDC; “**BP**” means Business Plan;

“**Material**” means any action where the Minister should be made aware under the ‘no surprises’ policy;

“**T&R Dept.**” means the Treasury and Resources Department.

4. Sensitive information

4.1 Nothing in this MoU shall be construed as requiring the inclusion in any BP, annual report, financial statements, or half-yearly report (referred to below) of any information where the making available of the information would be likely to unreasonably prejudice the commercial position of SoJDC or that of the person who supplied or who is the subject of the information.

5. Duration

5.1 This MoU applies from *[insert date]* until it is agreed between the parties that it is no longer valid. This MoU may be modified from time to time by agreement between the parties. While this MoU applies, nothing in it requires the directors of the Board to do, or not do, anything which is inconsistent with their fiduciary duties as directors and if by complying with this MoU the Directors become liable under any action they are fully indemnified by SoJ.

6. SoJDC’s Business

6.1 SoJDC will:

- carry on business in a manner consistent with its BP; and
- conduct its business in accordance with any decisions or requirements of the Minister, as shareholder of the company provided such decisions do not contravene the Directors’ Service Agreement or compliance with Article 74(1) of the Companies (Jersey) Law 1991 (as amended) which states:

“A director, in exercising his powers and discharging his duties, shall –

(a) act honestly and in good faith with a view to the best interests of the company; and

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.”

7. Directors

- 7.1 The non-executive directors of SoJDC will be appointed by the States Assembly with the exception of the Minister's Appointee.
- 7.2 The directors shall be appointed in accordance with the Companies (Jersey) Law 1991 and SoJDC's Articles of Association.
- 7.3 All decisions relating to the operation of SoJDC shall be made by or pursuant to the authority of the Board, in accordance with its BP.
- 7.4 The Board shall be accountable to the Minister.

8. Business Plan

- 8.1 The Board shall cause to be prepared annually (in consultation with relevant parties) a business plan and report which shall be sent to the Minister at such time as may be reasonably required setting out the objectives, policies and programmes of the Company and reporting on progress.

9. Budget

- 9.1 The Directors shall submit to the Minister in each year by such date as may be appointed by the Minister a budget of the Company's estimated capital expenditure and receipts and of revenue expenditure and income for the next financial year of the Company.

10. Annual Report

- 10.1 Within 6 months after the end of each financial year of SoJDC, the Board shall deliver to the Minister:

- a report of the operations of SoJDC during that financial year, including disclosures in accordance with the Combined Code;
- audited consolidated financial statements for that financial year, prepared in accordance with UK Generally Accepted Accounting Practice or International Accounting Standards;
- the auditor's report on those financial statements; and
- a comparison of the figures contained within the Operational Budget with actual results achieved by the business for the relevant financial year.

- 10.2 In addition, the Board will deliver to the Minister, such reporting required on an annual basis and ad hoc basis for the purpose of preparing the financial statements of the States of Jersey and information required to assist with the financial planning of the States.

11. Half-Yearly Reports

- 11.1 Within 2 months after the end of the first half of each financial year of SoJDC, the Board shall deliver to the Minister:

- a report of the operations of SoJDC during that half year; and
- a comparison of the figures contained within the Operational Budget with actual results achieved by the business in the period.

12. Corporate Governance

12.1 Unless in direct conflict with other provisions of this MoU or its Memorandum and Articles of Association, SoJDC and its Board will adhere to Principles of Good Governance. In particular, SoJDC will implement and maintain a sound system of internal controls to safeguard its shareholder's investment and its assets.

12.2 SoJDC will not engage anywhere in any political activity or provide funds in connection with the carrying on by any third party of any political activity.

13. Important Management Decisions

13.1 In the spirit of open dialogue and a “no surprises” policy, it is expected that SoJDC will, unless specifically contemplated in the BP, seek the consent of the Minister (on the clear understanding that such approval will not be unreasonably withheld or delayed) before it:

- makes any material change to its BP;
- makes any material change in the nature of its business as carried on or commence any new business by purchasing material interests or acquiring other businesses or assets not being ancillary or incidental to such business;
- sells, transfers, leases, or in any way disposes of all or a material part of its business or assets;
- creates any material mortgage or security interest, other than any arising by operation of law or prior agreed limits over any of SoJDC's assets;
- gives any material guarantee, indemnity or security in respect of the obligations of any person other than in the ordinary course of trading;
- borrows any material sum or factor or discount any material book debts, except in respect of the leasing of plant or equipment in the ordinary course of trading and except as permitted under the terms of any working capital and capital expenditure facilities which may be made available by the States of Jersey to SoJDC;
- enters into any material contract or alters, in a material way, the commercial terms of any material trading arrangements in either case outside the ordinary course of trading;
- undertakes in any financial year any single item or series of items of capital expenditure (including finance leases but excluding operating leases as respectively defined in SSAP 21) involving an aggregate liability during that financial year materially in excess of the sums provided for capital expenditure in its Operational Budget; and/or amounting to a material sum in aggregate;
- changes the financial year end of SoJDC; or
- Commences any litigation, arbitration or administrative proceedings, or claim outside the ordinary course of its business which might by itself or together with any such other proceedings or claim have a material adverse effect on the financial condition of the SoJDC.

14. Provision of Information and Consultation

14.1 To facilitate an open flow of information between the Minister and SoJDC of such matters as may be the legitimate concern of the States of Jersey as owner, SoJDC will:

- as soon as practicable after litigation, arbitration or proceedings are instituted or, to its knowledge threatened, provide written details to the Minister of any such proceedings or claim which might reasonably be expected by itself or together with any such other such proceedings or claim to have a material adverse effect on the financial condition of SoJDC; and
 - When consulting the Minister under this MoU provide the Minister, in good time in advance, with sufficient information properly to assess the issue in question.
- 14.2 Except as stated below the Board shall supply to the Minister such information relating to the affairs of SoJDC as the Minister may reasonably request from time to time.
- 14.3 SoJDC will give the Minister access to information to assist the Minister properly and effectively to respond, within the necessary timescale, to requests for information for Ministerial questions and other information required for the Minister to fulfil his responsibilities on behalf of the States or according to the Law. Where such response leads to a request for a direct response or the provision of information directly from SoJDC, SoJDC will provide the response or information in an expeditious manner.
- 14.4 For the avoidance of doubt in no circumstances shall the Board be obliged by this MoU to supply to the Minister any information on an individual employee (other than directors), or customer of SoJDC, or any other person, if the information supplied would enable the identification of the person concerned.
- 14.5 If considered necessary, the Minister may seek such information or commission an independent review of SoJDC which may cover, but shall not necessarily be restricted to, the effectiveness and efficiency of service delivery by SoJDC, and the effectiveness of operation of internal control systems. SoJDC shall comply with the reasonable requests for information pursuant to such a review being commissioned.
- 14.6 When the Minister is consulted or his consent is required, he will respond decisively to any reasonable request by SoJDC for the Minister's view or consent within 10 working days of SoJDC's request having been received.
- 14.7 In carrying out his responsibilities under the Law and in acting in accordance with this MoU, the Minister undertakes to provide such information to SoJDC as required enabling it to take account of the views of the Minister in a timely and appropriate manner.
- 15. Ongoing communications and accountability**
- 15.1 For the purposes of ensuring open communications between the Minister and SoJDC, the following meetings will, at a minimum, take place during each calendar year:
- 15.2 The Chairman, the Managing Director and Finance Director of SoJDC and the Minister will meet on a quarterly basis to discuss matters generally covered by this MoU, with a record of matters discussed at such meetings being made;
- 15.3 The Chairman of SoJDC will attend, with senior management, a meeting with the Minister in January each year for the purposes of an 'investor briefing' whereby items submitted under sections 8.1 and 9.1 above will be discussed; and
- 15.4 Following the formal annual general meeting of the shareholders each year, the Board of SoJDC will meet the Minister to consider performance in the previous calendar year.
- 15.5 In relation to discussing the reports submitted by SoJDC or matters concerning those items covered in section 14.6 above, senior management of SoJDC will make themselves available, as required, to present matters or answer queries from the Minister.

16. Directors' Remuneration

- 16.1 In accordance with best practice, the annual Remuneration Report of the Remuneration Committee will be specifically voted on by the shareholder at the annual general meeting.
- 16.2 The board of SoJDC will undertake a review and benchmarking of directors remuneration and terms of employment at least every two years.
- 16.3 Any changes to the level of remuneration paid to non-executive directors must be agreed, in advance, by the Minister. Newly appointed non-executive directors will have the terms of their appointment approved, if appropriate, in accordance with normal practice at the annual general meeting subsequent to their appointment.
- 16.4 Information pertaining to any material changes to either the structure or quantum of remuneration paid to directors for their executive responsibilities in the business are to be approved by the Minister in advance of their taking effect.

17. Mitigation of Risk

- 17.1 In order to mitigate risks to the shareholder SoJDC will undertake the following activities:

Planning – for land within a Regeneration Zone before any land transfer takes place between Property Holdings and SoJDC, the Minister for Planning and Environment must have adopted that Regeneration Zone within which the assets are located and approved the Masterplan for that particular Regeneration Zone. For land outwith a Regeneration Zone before any land transfer takes place between Property Holdings and SoJDC, the Minister for Planning and Environment must have approved a Development Brief for that land. This will partly remove the planning risk of the regeneration proposals and, once the assets have been transferred, will enable a detailed planning application to be proposed within the parameters of the adopted Masterplan and/or Development Brief and according to the agreed Development Plan set with the RSG.

Infrastructure Works – no infrastructure works will be procured until detailed planning permission has been received on vacated development sites and detailed financial appraisals support the development of the scheme. Given the importance of the public infrastructure works, SoJDC will commission and procure the provision of the infrastructure in accordance with SoJ capital project procurement and delivery procedures.

Sales – If it is proposed that a specific commercial development is undertaken directly, before committing to construction costs SoJDC will have to secure a sufficient level of legally binding pre-lets to fund the costs of constructing the first phase of a scheme. This will remove part of the risk of a particular commercial development project and will ensure that there will be no financial liabilities relating to a particular commercial development's construction costs to the SoJDC. For residential developments undertaken directly, SoJDC will, where possible, phase the development so as to limit the exposure and mitigate risk.

Pre-development Costs – all detailed design costs and fees will be funded directly by SoJDC out of its resources.

Development – SOJDC will procure development schemes in conjunction with the private sector unless there are specific reasons for direct development. All development proposals will be subject to a transparent open tender process. It is likely that most developments would take place with a single joint venture partner. However, for some large-scale developments it may be that a consortium approach is beneficial.

Resources – SoJDC may use its resources to fund the capital costs of infrastructure works associated with the delivery of a Masterplan or a Development Brief.

Land sales – for projects that require significant upfront infrastructure works, presales may include the sale of part of the land to third party developers. This is to ensure that at any time SoJDC/the SoJ has minimal capital at risk.

Phasing – SoJDC will phase large development schemes if practically feasible to do so.

Design and Specification – SoJDC will ensure that every development proposal is fully designed and fully specified with measured bills of quantity. These documents will be put out to the construction market for tendering the build.

Construction – SoJDC will follow the SoJ guidelines and best practice in the procurement of construction works. All construction works will be open tendered. All tenders must price the bills of quantity provided by SoJDC and must be a fixed price. The appointment will be with a third party main contractor who will undertake the entire construction contract. The fixed contract price must include minimal provisional sum items (limited to up to 15% of the total contract sum). SoJDC will only enter into fixed price, fixed delivery construction contracts with known third party main contractors with good market and financial credibility. During the construction process a Project Manager employed by SoJDC will monitor the construction works. Monthly design team meetings for each construction project will be held between SoJDC, the Project Manager, the Contractor, the Architect, the Engineer and the Quantity Surveyor.

17.2 The list of risk mitigation activities in 17.1 should not be taken to be exhaustive.

18. Insurance

18.1 SoJDC shall take out and maintain in effect insurance policies with a reputable insurer in respect of the business transferred to it and any new business SoJDC undertakes, which it is usual for a business of this nature to have and which the directors of SoJDC consider prudent having taken into account the policy limits, excess/deductibles and retention of risk.

19. Without Prejudice

19.1 This MoU does not prejudice in any way the rights, powers, duties and liabilities that exist in law between the parties and otherwise.

Signed: Date

Signed: Date