

**COMBINED SUMMONS**

**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, JOHANNESBURG**

**CASE NO:** 2025 -125365

In the matter between:

**ORGANISATION UNDOING TAX ABUSE NPC**

**PLAINTIFF**

**(Reg number: 2012/064213/08)**

and



**HELEN MARGARET BOTES**

**FIRST DEFENDANT**

**CITY OF JOBURG PROPERTY COMPANY SOC LTD**

**SECOND DEFENDANT**

**(Reg number: 2000/017147/07)**

**CITY OF JOHANNESBURG METROPOLITAN**

**THIRD DEFENDANT**

**MUNICIPALITY**

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**COMBINED SUMMONS**

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**TO: THE SHERIFF OR HIS/HER DEPUTY**

**HELEN MARGARET BOTES ("Ms Botes"), an adult female with identity number**



Although Ms Botes' full details are unknown, she was an executive director and the

Chief Executive Officer of the second defendant, the City of Joburg Property Company SOC Ltd, from 2009 to 1 September 2024, and remains (or attempts to be) employed by state-owned entities and organs of state.

(hereinafter called "the First Defendant")

and

**CITY OF JOBURG PROPERTY COMPANY SOC LTD ("JPC")**, a state-owned enterprise registered and incorporated as a company under the Companies Act, registration number 2000/017147/07, and its registered address at Ground Floor, Forum 1 Braampark, 33 Hoofd Street, Braamfontein, Johannesburg, Gauteng.



(hereinafter called "the Second Defendant")

and

**CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY ("COJ")**, a municipality as defined in section 1 of the MFMA, represented by the Municipal Manager in legal proceedings, and with place of business at Metropolitan Centre, Block A, 158 Civic Boulevard, Braamfontein, Johannesburg, Gauteng.

(hereinafter called "the Third Defendant")

in that:


**ORGANISATION UNDOING TAX ABUSE NPC ("OUTA")**, a non-profit company registered and incorporated under the Companies Act 71 of 2008 ("*Companies Act*"), with registration number 2012/064213/08, and its principal place of business at Unit 4,

Boskruin Village, at the corner of President Fouché and Hawken Road, Bromhof, Randburg, Gauteng.

(hereinafter called "the Plaintiff"),

hereby institutes action against the Defendants in which action the Plaintiff claim the relief and, on the grounds, set out in the particulars annexed hereto.

**INFORM** the Defendants further that if Defendants dispute the claim and wishes to defend the action, the Defendants shall –

- (i) Within **10 (ten)** days of the service upon the Defendants of this summons,  file with the Registrar of this Court at the High Court Building, corner of Pritchard Street &, Kruis Street, Johannesburg, notice of Defendants intention to defend and serve a copy thereof on the Attorneys of the Plaintiff, which notice shall give an address (not being a post office or poste restante) referred to in Rule 19(3)(b) for the service upon the Defendant of all notices and documents in the action
- (ii) Thereafter and within **20 (twenty)** days after filing and serving notice of intention to defend as aforesaid, file with the Registrar and serve upon the Plaintiff a plea, exception, notice to strike out, with or without a counter-claim.

**INFORM** the Defendants further that if the Defendants fail to file and serve notice as aforesaid, judgement as claimed may be given against the Defendants without further notice to the Defendants, or if having filed and served such notice, the Defendants fail to plea, except, make application to strike out or counter-claim, judgement may be given against the Defendants.

**AND** immediately thereafter serve on the Defendants a copy of this summons and return the same to the Registrar with whatever you have done thereupon.

SIGNED AT PRETORIA ON THIS 29<sup>th</sup> DAY OF JULY 2025.

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**REGISTRAR OF THE HIGH COURT  
JOHANNESBURG**



*Jennings*

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**ANDRI JENNINGS**  
IN TERMS OF ACT 62 OF 1995  
AN ATTORNEY WITH RIGHT OF APPEARANCE

*Jennings*

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**JENNINGS INCORPORATED  
ATTORNEYS FOR PLAINTIFF**

222 SMIT STREET  
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REF: A JENNINGS/OUT038



**COURT ONLINE COVER PAGE**

**IN THE HIGH COURT OF SOUTH AFRICA  
Gauteng Local Division, Johannesburg**

**CASE NO: 2025-125365**

In the matter between:

**ORGANISATION UNDOING TAX ABUSE NPC** Plaintiff / Applicant / Appellant

and

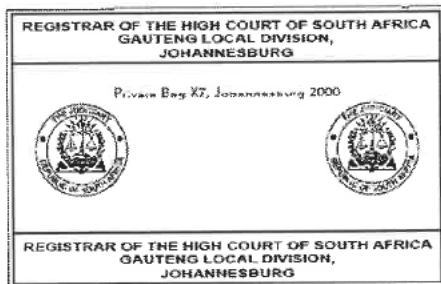
**HELEN MARGARET BOTES ,CITY OF JOHANNESBURG PROPERTY COMPANY SOC LTD,CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY** Defendant / Respondent

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**Combined Summons**

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**NOTE:** This document was filed electronically by the Registrar on 29/7/2025 at 12:25:20 PM South African Standard Time (SAST). The time and date the document was filed by the party is presented on the header of each page of this document.



**ELECTRONICALLY SIGNED BY:**

**Registrar of High Court , Gauteng  
Local Division,Johannesburg**

**COURT ONLINE COVER PAGE**

**IN THE HIGH COURT OF SOUTH AFRICA  
Gauteng Local Division, Johannesburg**

**CASE NO: 2025-125365**

In the matter between:

**ORGANISATION UNDOING TAX ABUSE NPC** Plaintiff / Applicant / Appellant

and

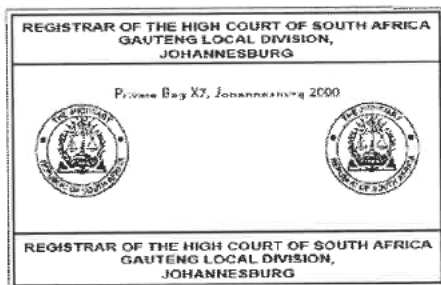
**HELEN MARGARET BOTES ,CITY OF JOHANNESBURG PROPERTY COMPANY SOC LTD,CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY** Defendant / Respondent

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**Combined Summons**

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Local Division,Johannesburg**

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**IN THE HIGH COURT OF SOUTH AFRICA  
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**CASE NO: 2025-125365**

In the matter between:

**ORGANISATION UNDOING TAX ABUSE NPC** Plaintiff / Applicant / Appellant

and

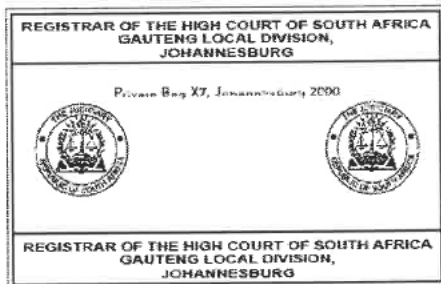
**HELEN MARGARET BOTES ,CITY OF JOHANNESBURG PROPERTY COMPANY SOC LTD,CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY** Defendant / Respondent

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**Particulars of Claim**

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**Registrar of High Court , Gauteng  
Local Division,Johannesburg**

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## PARTICULARS OF CLAIM

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### THE PARTIES

1. The plaintiff is the **ORGANISATION UNDOING TAX ABUSE NPC** ("**OUTA**"), a non-profit company registered and incorporated under the Companies Act 71 of 2008 ("**Companies Act**"), with registration number 2012/064213/08, and its principal place of business at Unit 4, Boskruin Village, at the corner of President Fouché and Hawken Road, Bromhof, Randburg, Gauteng.
 
  
2. The first defendant is **HELEN MARGARET BOTES** ("**Ms Botes**"), an adult female with identity [REDACTED].  
 [REDACTED] Although Ms Botes' full details are unknown, she was an executive director and the Chief Executive Officer of the second defendant, the City of Joburg Property Company SOC Ltd, from 2009 to 1 September 2024, and remains (or attempts to be) employed by state-owned entities and organs of state.
  
3. The second defendant is the **CITY OF JOBURG PROPERTY COMPANY SOC LTD** ("**JPC**"), a state-owned enterprise registered and incorporated as a company under the Companies Act, with registration number 2000/017147/07, and its registered address at Ground Floor, Forum 1 Braampark, 33 Hoofd Street, Braamfontein, Johannesburg, Gauteng. The third defendant, the City of Johannesburg Metropolitan Municipality, wholly owns the second defendant.

3.1 The JPC is a *municipal entity* as defined in section 1 of the Local Government: Municipal Systems Act, 32 of 2000 ("MSA"), read with section 1 of the Local Government: Municipal Finance Management Act, 56 of 2003 ("MFMA").

3.2 The JPC is a mechanism through which the third defendant provides municipal services and manages its property portfolio under a Service Delivery Agreement ("SDA") as stipulated in section 76(b) of the MSA.

3.3 The JPC is thus an organ of state because it exercises public powers or performs a public function under legislation.



3.4 The JPC must at all times be aligned with the third defendant's Constitutional and legislative objectives.

4. The third defendant is the **CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY** ("COJ"), a municipality as defined in section 1 of the MFMA, represented by the Municipal Manager in legal proceedings, and with place of business at Metropolitan Centre, Block A, 158 Civic Boulevard, Braamfontein, Johannesburg, Gauteng.

5. The JPC and COJ are cited as interested parties, and OUTA does not seek any relief against them except if they oppose OUTA's claims against Ms Botes.

**JURISDICTION**

6. The Gauteng Division, Johannesburg (“the Court”), has jurisdiction to hear this matter under section 21(1) of the Superior Courts Act, 10 of 2013, because:

6.1 Ms Botes is resident and employed in the Court’s jurisdiction area;

6.2 the JPC and COJ’s principal places of business are in the Court’s jurisdiction area; and

6.3 the whole cause of action arose within the Court’s jurisdiction area



**NATURE OF PLAINTIFF’S CLAIM**

7. The plaintiff claims under section 162(5) of the Companies Act that the Court declare Ms Botes a delinquent director for the reasons set out under the following two separate headings:

7.1 The Usindiso Fire; and

7.2 Unlawful Procurement of COVID-19-related Services.

**PLAINTIFF’S LEGAL STANDING (LOCUS STANDI)**

8. OUTA derives its legal standing to bring these proceedings from section 157(1)(d) of the Companies Act read with sections 38(c), (d) and (e) of the

Constitution of the Republic of South Africa, Act 108 of 1996 (*"the Constitution"*)

because:

8.1 OUTA has over 36,000 supporters and acts in the public interest by investigating and undoing tax abuse and government corruption.

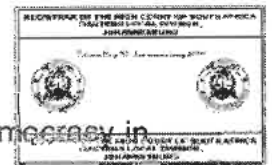
8.2 OUTA's primary objectives under clauses 3.1 and 3.2 of its Memorandum of Incorporation (*"MOI"*) include:

8.2.1 to promote and advocate for human rights and democracy in South Africa through the advancement of the protection of rights, values and principles enshrined in the Constitution; and

8.2.2 to promote taxpayers' rights by legitimately challenging the unlawful squandering, maladministration and/or corrupt use of government funding.

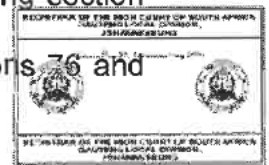
8.3 OUTA has been approved (because its activities benefit the public at large) as a public benefit organisation under section 30(1) of the Income Tax Act, 58 of 1962 (as amended).

8.4 Public finance is a constitutional matter, and Chapter 13 of the Constitution stipulates transparency, accountability, and effective financial management as the principles for managing public finances



across the national, provincial, and local spheres of government (*“the Constitutional principles”*).

- 8.5 The public has a real and substantial interest in whether the JPC, a municipal entity and a state-owned company responsible for holding, managing, and administering public assets and funds under the MFMA, is managed and governed in accordance with the Constitutional principles and other relevant statutory requirements, including section 93H of the MSA, sections 94 and of the MFMA, and sections 76 and 162(5)(c) of the Companies Act.



- 8.6 OUTA's claims are in the public interest and concern, among other things, Ms Botes' failure to comply with and implement the Constitutional principles and other statutory requirements, and her gross abuse of her position as a director of the JPC, including gross negligence, wilful misconduct, breach of trust, and taking personal advantage of information or opportunities in managing and administering the JPC.
- 8.7 Section 38(c) of the Constitution, grants, among others, anyone acting as a member of, or in the interest of, a group or class of persons, and/or anyone acting in the public interest (such as OUTA), the right to approach a competent court (such as the Court), alleging that a right in the Bill of Rights has been infringed or threatened. The court may grant appropriate relief, including a declaration of rights.



- 8.8 Section 157(1)(d) of the Companies Act affords OUTA, acting in the public interest and with the leave of the Court, to bring its claims before the Court.
9. OUTA, acting in the public interest, accordingly seeks under section 157(1)(d) of the Companies Act, read with section 38(c) of the Constitution, the Court's leave to bring these action proceedings against Ms Botes.

### **MS BOTES' POSITION AT THE JPC**



10. Ms Botes served three consecutive five-year terms as the JPC's chief executive officer ("CEO") and an executive director from 2009 to 1 September 2024. She remains listed on the JPC website as its CEO. A copy of the relevant pages found at <https://jhbproperty.co.za/board-of-directors> is attached as annexure "POC1".
11. As the JPC's CEO, Ms Botes was also its designated accounting officer under section 1 read with section 93 of the MFMA.

### **APPLICABLE LEGISLATION AND OTHER LEGAL PRESCRIPTS**

#### **THE CONSTITUTION**

12. Section 9 of the Constitution enshrines the right to equality and ensures that everyone is equal before the law and has the right to equal protection and

benefit of the law. It explicitly prohibits unfair discrimination on various grounds, including race, gender, sex, religion, and others, and allows for measures designed to advance those disadvantaged by unfair discrimination.

13. Section 10 of the Constitution enshrines that everyone has inherent dignity and the right to have their dignity respected and protected. This fundamental right ensures that all individuals, regardless of their circumstances or actions, are entitled to be treated with respect and dignity.



14. Section 11 of the Constitution enshrines the right to life, which is fundamental and forms the basis for the meaningful enjoyment of all other rights, including the right to be treated humanely.

15. Section 12 of the Constitution enshrines the right to freedom of expression, which includes the prohibition of torture, treatment, or punishment in a cruel, inhuman, or degrading way and the right to bodily and psychological integrity. It also protects against arbitrary deprivation of freedom and detention without trial.

16. Section 26 of the Constitution stipulates that everyone has the right to have access to adequate housing. This right is progressive, and the state must take reasonable legislative and other measures, within its available resources, to achieve its progressive realisation.

17. Section 217 of the Constitution stipulates that any state organ at the national, provincial, or local level, or any institution specified by national legislation, must procure goods and services through a fair, equitable, transparent, competitive, and cost-effective system.

**GENERAL**

18. During her tenure as CEO and an executive director of the JPC, Ms Botes was subject to and had to comply with the following statutory, regulatory, and other legal stipulations, prescripts, and requirements:



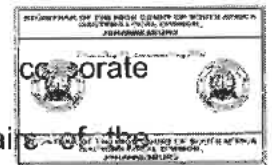
**Local Government: Municipal Systems Act 32 of 2000 (“MSA”)**

19. The MSA's purpose, among other things, is to:
  - 19.1 provide a framework for how municipalities exercise their powers and perform their functions;
  - 19.2 address the provision of services, service delivery agreements, credit control, and debt collection policies, ensuring these are tailored to the needs of all residents, including the poor; and
  - 19.3 enhance transparency and accountability by obliging public bodies to provide necessary information to the public to facilitate the exercise of constitutional rights, such as access to information.

20. Section 76 of the MSA allows a municipality such as the COJ to provide municipal services through an external mechanism, including a municipal entity such as the JPC, by entering into a service delivery agreement with such municipal entity.

21. Under section 93H of the MSA, the board of directors of a municipal entity must:

21.1 provide effective, transparent, accountable and coherent corporate governance and conduct effective oversight of the affairs of the municipal entity;



21.2 ensure that it and the municipal entity comply with all applicable legislation and agreements;

21.3 communicate openly and promptly with the parent municipality of the municipal entity; and

21.4 deal with the parent municipality of the municipal entity in good faith.

**Local Government: Municipal Finance Management Act 56 of 2003 (“MFMA”)**

22. The MFMA's purpose, among other things, is to:

- 22.1 secure sound and sustainable management of the financial affairs of municipalities and other local government institutions, establishing clear treasury norms and standards for improved financial governance and service delivery;
- 22.2 introduce a performance-based system focusing on outputs and outcomes, moving beyond traditional procedural rules to ensure efficient and effective expenditure;
- 22.3 clarify and separate the roles and responsibilities of the council, mayor, and officials, establishing a framework for accountability in financial matters;
- 22.4 provide a comprehensive framework for the management of revenues, expenditures, assets, and liabilities, as well as financial dealings and supply chain management within municipalities;
- 22.5 promote sound financial practices, including regulations and guidelines on cash management, investments, debt, and asset management to foster financial stability and sustainability; and
- 22.6 provide a robust financial framework that would enhance municipalities' capacity to deliver services effectively and efficiently to their communities.



23. Section 94(1) of the MFMA sets out the accounting officer's fiduciary duties and stipulates that the accounting officer of a municipal entity must:

23.1 exercise utmost care to ensure reasonable protection of the assets and records of the entity;

23.2 act with fidelity, honesty, integrity and in the best interest of the entity in managing the financial affairs of the entity;

23.3 disclose to the entity's parent municipality and the entity's board of directors all material facts, including those reasonably discoverable, which in any way may influence the decisions or actions of the parent municipality or the board of directors; and



23.4 seek, within the sphere of influence of that accounting officer, to prevent any prejudice to the financial interests of the parent municipality or the municipal entity.

24. Section 94(2) of the MFMA also stipulates that the accounting officer may not:

24.1 act in a way that is inconsistent with the responsibilities assigned to accounting officers of municipal entities in terms of the MFMA; or

- 24.2 use the position or privileges of, or confidential information obtained as accounting officer, for personal gain or to benefit another person improperly.
25. Section 96(1) of the MFMA stipulates that the municipal entity's accounting officer is responsible for managing its assets (including safeguarding and maintaining them) and liabilities.
26. Under section 96(2) of the MFMA, the accounting officer must, in managing the municipal entity's assets and liabilities, take all reasonable steps to ensure that the municipal entity has and maintains:
- 26.1 a management, accounting and information system that accounts for the proper assets and liabilities of the management systems of the municipal entity; and
- 26.2 a system of internal control of assets and liabilities (including an asset and liabilities register) as may be prescribed.



### **The Companies Act**

27. The Companies Act promotes compliance with the Bill of Rights, encourages entrepreneurship and economic efficiency, fosters transparency and high standards of corporate governance, and supports innovation and investment in South African markets. It also seeks to enhance South Africa's economic

welfare in the global economy by providing a framework for the creation and use of companies.

28. Section 76(2) of the Companies Act deals with the standards of a director's conduct and:

28.1 prohibits a company director from using the position of director, or any information obtained while acting in that capacity, to gain an advantage for the director, or for another person other than the company or a wholly-owned subsidiary of the company, or to knowingly cause harm to the company or a subsidiary of the company; and


28.2 obligates a company director to communicate to the board at the earliest practicable opportunity any information that comes to the director's attention, unless the director is bound by a legal or ethical obligation of confidentiality not to disclose that information, or reasonably believes that the information is immaterial to the company, generally available to the public, or known to the other directors.

29. Under section 76(3) of the Companies Act, a director of a company, when acting in that capacity, must (subject to exceptions not relevant to these proceedings) exercise the powers and perform the functions of a director:

29.1 in good faith and for a proper purpose;

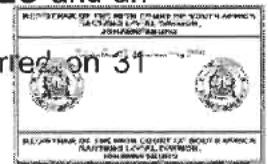




- 29.2 in the best interests of the company; and
- 29.3 with the degree of care, skill and diligence that may reasonably be expected of a person carrying out the same functions in relation to the company as those carried out by that director, and having the general knowledge, skill and experience of that director.
30. Under section 162(5)(c) of the Companies Act, a court must make an order declaring a person to be a delinquent director if the person, while a director:
- 
- 30.1 grossly abused the position of director;
- 30.2 took personal advantage of information or an opportunity, contrary to section 76(2)(a);
- 30.3 intentionally, or by gross negligence, inflicted harm upon the company or a subsidiary of the company, contrary to section 76(2)(a); or
- 30.4 acted in a manner that amounted to gross negligence, wilful misconduct or breach of trust in relation to the performance of the director's functions within, and duties to, the company, or contemplated in section 77(3)(a), (b) or (c) of the Companies Act.

**LEGISLATION, REGULATIONS, ORDINANCES, BYLAWS, AND OTHER SUBORDINATE LEGISLATION APPLICABLE TO THE USE AND SAFETY OF BUILDINGS, AND ANCILLARY MATTERS, AND RELEVANT TO THE USINDISO BUILDING FIRE**

31. The following legislation, regulations, ordinances, bylaws, and other subordinate legislation applied to, among other things, the COJ-owned buildings that the JPC managed during Ms Botes' tenure as the CEO and an executive director of the JPC and the Usindiso building fire occurred on 31 August 2023:



**Legislation applicable to properties situated within the COJ municipal area**

***Building use for a specific purpose:***

32. Section 15 of the City of Johannesburg Land Use Scheme, 2018, states that if the designated use of an approved, constructed, and operational building is to be changed, the new use cannot begin until all requirements of the Land Use Scheme for that purpose are met. This includes submitting an amended building plan and/or Site Development Plan.

33. Section 8(1) to (3) of the COJ Municipal Planning By-Law, 2016, states that:

33.1 An adopted and approved land use scheme:

33.1.1 has the force of law, and all landowners and land users, including the City, a state-owned enterprise, and state organs within the City’s jurisdiction, are bound by the provisions of such a land use scheme;

33.1.2 replaces all existing schemes within the City’s jurisdiction area to which the land use scheme applies, as well as “Annexure F” to the Regulations Relating to Township Establishment and Land Use made in terms of the Black Communities Development Act; and



33.1.3 provides for land use and development rights.

33.2 Land may only be used for the purposes permitted by a land use scheme, or by a town planning scheme or any other applicable town planning legislation, until such scheme or any other applicable town planning legislation is replaced by a land use scheme as contemplated in section 6(1).

33.3 The City must enforce the Land Use Scheme, and any land use deemed contrary to the scheme shall be a criminal offence.

34. Regulation A25(1) of the National Building Regulations and Building Standards Act, 103 of 1977 (as amended) (“the *Building Standards Act*”) states that no person shall use any building or cause or permit any building to be used for a

purpose other than the purpose shown on the approved plans of such building, or for a purpose that results in a change in the class of occupancy as contemplated in these regulations, whether such plans were approved under the Act or any law in force before the commencement of the Act, unless the building is suitable, considering the requirements of these regulations, for such first-mentioned purpose or the changed class of occupancy.

***Fire equipment and emergency escape provisions:***



35. Section 13 of the COJ Emergency Services Bylaws, 2004 (as amended)

that:

35.1 Every owner of a building must ensure that:

35.1.1 the escape door in that building is fitted with hinges that open in the direction of escape, and is equipped with a fail-safe locking device or devices that do not require a key to exit; and

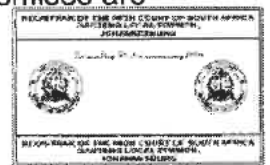
35.1.2 any door in a feeder route is a double swing-type door without any locking mechanism.

35.2 Notwithstanding, if a door in a feeder route must be locked for security reasons, the building owner must provide an alternative means of escape approved by the Chief Fire Officer.

35.3 No person may obstruct or allow the obstruction of any escape route from any premises that may prevent or hinder the escape of any person or animal from the premises in an emergency.

36. Section 16(1) of the COJ Emergency Bylaws states that every owner of a building must ensure that:

36.1 all fire-fighting equipment and service installations on the premises are installed in a condition ready for use in an emergency;



36.2 all portable and mobile fire extinguishers and all hose reels on the premises are serviced and maintained in accordance with SABS 0105 and SABS 1475;

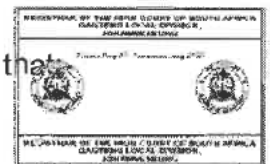
36.3 All fire-fighting equipment and service installations on the premises are maintained in a good working condition by a competent person, inspected and serviced following the manufacturer's specifications, and are inspected by an appropriately registered and competent person at least once every 12 months; and

36.4 A comprehensive service record of all firefighting equipment and service installations on the premises is maintained and furnished to the Chief Fire Officer every 12 months.

37. Section 54(3) of the COJ Water Services Bylaws states that where there is an existing connection pipe for the sole purpose of fire extinguishing services, such connection pipe may only be used for that purpose.

38. Regulation M2 to the Building Standards Act requires stairways to comply with the relevant requirements in Part T – Fire Protection of the Regulations (“Part T”).

39. Part T (under the heading “T1 GENERAL REQUIREMENT”) states that



39.1 Any building shall be so designed, constructed and equipped that in case of fire:

39.1.1 the protection of occupants or users, including persons with disabilities, therein is ensured, and provision is made for the safe evacuation of such occupants or users;

39.1.2 the spread and intensity of such fire within such building and the spread of fire to any other building will be minimised;

39.1.3 sufficient stability will be retained to ensure that such a building will not endanger any other building: Provided that in the case of any multi-storey building, no major failure of the structural system shall occur;

39.1.4 the generation and spread of smoke will be minimized or controlled to the greatest extent reasonably practicable; and

39.1.5 adequate means of access and equipment for detecting, fighting, controlling, and extinguishing such fire are provided.

39.2 The above requirements shall be deemed to be satisfied where the design, construction and equipment of any building complies with SANS 10400-T: Provided that where any local authority is of the opinion that such compliance would not comply with all the above requirements, the local authority shall, in writing, notify the owner of the building of its reasons for its opinion and may require the owner to submit for approval a rational design prepared by an approved competent person.



40. Part T (under the heading "T2 OFFENCES") states that the following conduct constitutes an offence:

40.1 any owner of any building who fails to provide sufficient fire extinguishers to satisfy the requirements of sub-regulation T1(1)(e), or who installs fire extinguishers that do not comply with the relevant South African national standard, or who fails to ensure that such fire extinguishers are installed, maintained and serviced in accordance with SANS 10105; or maintain any other provision made to satisfy the requirements of sub-regulation T1(1)(e); and/or

40.2 any person who causes or permits any escape route to be rendered less effective or to be obstructed in any way which may hinder or prevent the escape of any person from a building in the case of fire or any other Emergency.

***Waste dumping:***

41. Section 74(1) of the COJ Waste Management Bylaws, 2021, states that the owner or occupier of any land or building must take reasonable measures to prevent such land or building from being used for dumping and to clean up all waste dumped on or at the land or building.



***Public health hazards:***

42. Section 5 of the COJ Public Health Bylaws, 2004, states that no person may create a public health hazard anywhere in the municipal area, and every owner or occupier of premises must ensure that a public health hazard does not occur on those premises.
43. Section 6 of the COJ Public Health Bylaws requires the owner or occupier of premises to eliminate health risks or report them. It states that if the owner or occupier is aware of a public health hazard on those premises, they must eliminate the hazard within 24 hours of becoming aware of it. If they cannot comply with this, they should take reasonable steps to reduce the risk to public health and immediately report the hazard in writing to the Council.



**Adequate water supply:**

44. Under section 38 of the COJ Public Health Bylaws, the owner of premises must provide residents with an adequate and readily available potable water supply at all times.

**Overcrowding:**

45. Table 2 (forming part of Regulation A21 under the heading "Population") read with Table 1 (forming part of Regulation A20 under the heading "Classification of Designation of Occupancies") under the Building Standards Act limits the occupancy of premises used as a dormitory to only one person per 5m<sup>2</sup> or, in the case of a domestic dwelling, two persons per bedroom.
46. Part C (under the heading "C1 Rooms and Buildings") of the regulations to the Building Standards Act deals with the dimensions of rooms and buildings to prevent overcrowding conditions and states that any room or space shall have dimensions that will ensure that such room or space is fit for the purpose for which it is intended. The floor area of any dwelling unit shall not be less than necessary to provide one habitable room and a separate room containing toilet facilities. These requirements shall be deemed satisfied where the area and plan dimensions of any room or space, the room heights and, in the case of any dwelling house, the floor area comply with SANS 10400-C.



**LEGISLATION, REGULATIONS, AND LEGAL PRINCIPLES APPLICABLE TO THE UNLAWFUL PROCUREMENT OF COVID-19-RELATED SERVICES**

**The Constitution**

47. Section 217(1) of the Constitution states that when an organ of state in the national, provincial or local sphere of government, or any institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.



**Consumer and Customer Protection and National Disaster Management Regulations and Directions (Government notice No. 350 Government Gazette No 43166 issued by the Department of Trade and Industry on 19 March 2020) (“the Disaster Management Regulations”)**

48. Regulation 3(2) of the Regulations issued in terms of section 27(2) of the Disaster Management Act, 57 of 2022, and pursuant to the COVID-19 national disaster that was declared on 15 March 2020 states that the purpose of the Regulations is to protect consumers and customers from unconscionable, unfair, unreasonable, unjust or improper commercial practices during the national disaster.

49. Regulation 4.2 then deals with the excessive pricing of goods and services contemplated in Annexure A to the regulations. It states it is a relevant and

critical factor for determining whether the price is excessive or unfair and indicates *prima facie* that the price is excessive or unfair if, in terms of section 8(3)(f) of the Competition Act during any period of a national disaster, a material price increase of a good or service contemplated in Annexure A which:

49.1 does not correspond to or is not equivalent to the increase in the cost of providing that good or service; or

49.2 increases the net margin or mark-up on that good or service above the average margin or mark-up for that good or service in the three months before 1 March 2020.



50. The goods and services referred to in Annexure A to the Regulations relate to basic food and consumer items, emergency products and services, medical and hygiene supplies, and emergency clean-up products and services.

### **Municipal Supply Chain Management Regulations (“MSCMR”)**

51. The MSCMR issued under the MFMA, guide procurement at the local government level:

51.1 Regulation 2(1)(b) requires municipalities and municipal entities to implement a supply chain management that is “fair, equitable, transparent, competitive and cost-effective.”

- 51.2 Regulation 22(1) provides guidelines on information to be included in a public advertisement of a tender.
- 51.3 Regulation 23(a) requires the supply chain management policy to stipulate that bids should be opened in public.
- 51.4 The rest of this provision sets requirements for making the names of the bidders, and if practical the prices of the bids, publicly available.
- 51.5 Regulation 36 (1) states that such a policy "may allow the accounting officer" to "dispense with the official procurement processes established by the policy" in some instances, including "an emergency".



### MFMA Circulars

52. After introducing the eTender Publication Portal in 2016, the National Treasury published a MFMA Circular No 83, which sets out the requirements for the publication of procurement information by municipalities and municipal entities on the portal. This circular provides detailed guidelines regarding the advertisement of tenders and the publication of awards, cancellations, deviations, and contract extensions on the portal. It states that all bids over the threshold value of R200 000 advertised on the eTender Publication Portal must include the bid documents, which includes the specifications or Terms of Reference and any other relevant documents.

53. After the declaration of the national state of disaster due to the COVID-19 pandemic on 15 March 2020, the National Treasury has issued several MFMA circulars to guide emergency procurement, such as MFMA Circular No 102, which replaced MFMA Circular 101, which in turn replaced MFMA Circular 100.

54. MFMA Circular No. 102 required municipalities and municipal entities to put additional procurement and expenditure measures in place to monitor interventions taken to combat the spread of COVID-19. In particular, they had to undertake to:



54.1 establish an internal system for financial control, risk management, and reporting to account for the funds used for the COVID-19 disaster;

54.2 ensure that officials committing any expenditure are duly authorised or properly delegated;

54.3 avail internal audit functions to conduct audit checks to pick up and prevent irregularities proactively; and

54.4 monitor expenditure regularly and generate frequent expenditure reports (at least weekly), including monitoring any risks that may arise.

55. These measures are mainly aimed at controlling and monitoring COVID-19 expenditure internally.

## A. THE USINDISO BUILDING FIRE

### The owner of the Usindiso building

56. Since 1954, the COJ has been the registered owner of the Usindiso building (which was an office block and never zoned for residential purposes), situated at Erf 1210, corner of Delters and Albert Street, Marshallstown, Johannesburg, within its municipal area. A copy of the deed search evidencing such ownership is attached as annexure "POC2."



57. Accordingly, the COJ bylaws apply to the Usindiso building.

### The service delivery agreement

58. In February 2015, at Johannesburg, and under section 76(b)(i) of the MSA, the COJ and the JPC (both represented by authorised representatives) entered into a written SDA (annexure "POC3") under which the JPC would render property management and development services in respect of the COJ-owned properties, including the Usindiso building.

59. At all relevant times, the SDA governed the relationship between the COJ and JPC and mandated the JPC to manage and/or develop the COJ-owned properties (including the Usindiso building) on behalf of the COJ.

60. This included maintaining, protecting, developing, selling, or leasing buildings, entering into lease agreements, collecting rentals, and managing tenants to ensure an adequate financial return for the COJ.
61. As the CEO and executive director of the JPC, Ms Botes was responsible for overseeing the management of COJ-owned properties, ensuring compliance with applicable laws, including applicable COJ bylaws and regulations, and complying with all fiduciary duties imposed by law on a person in her position.



**Date and time of the Usindiso fire**

62. On 31 August 2023 at around 01:30, a fire erupted at the Usindiso Building, which killed at least 76 people and injured several more (*“Usindiso fire”*).
63. As set out below, the Usindiso fire and deaths could have been prevented and no harm inflicted upon the JPC if Ms Botes had not acted with gross negligence, wilful misconduct, and breach of trust in her performance of her functions as a director within, and duties to, the JPC, or as contemplated in section 76(3)(a), (b), or (c) of the Companies Act.

**The actions and incidents relating to the Usindiso building before 31 August 2023**

64. From approximately 2003 until 2016, the Usindiso Ministries, a non-governmental organisation which offered shelter and other services to abused

women, children and teenage girls, rented and occupied the Usindiso under a written lease agreement to which OUTA is not privy.

65. The JPC's lease of the Usindiso building to Usindiso Ministries and its occupation to offer shelter was always unlawful because it was never zoned or for residential purposes.

66. The lease agreement between Usindiso Ministries and the JPC expired on 31 May 2013.



67. Since then, there has been no lease agreement between the JPC and Usindiso Ministries, but Usindiso Ministries unlawfully continued to occupy the Usindiso building.

68. Insofar as it may be alleged that after the expiry of the lease agreement it was tacitly relocated or that under section 5(5) of the Rental Housing Act 50 of 1990 the JPC and Usindiso Ministries entered into a periodic lease on the same terms and conditions as the expired lease agreement:

68.1 The Usindiso building's occupation was unlawful because it was never zoned for residential purposes.

68.2 Usindiso Ministries only made three payments for its occupation of the Usindiso building: two in January 2015 and the last on 1 September 2016.



68.3 After 1 September 2016, while Ms Botes was responsible for managing the Usindiso building:

68.3.1 the JPC did not exercise control over the building and its occupants as required by law;

68.3.2 the JPC neither collected any rental from Usindiso Ministries nor any occupant of the Usindiso building nor instituted any legal proceedings to recover arrears of rentals or damages for holding over;



68.3.3 illegal occupiers hijacked the Usindiso building by occupying, taking control, and restricting access to it;

68.3.4 the Usindiso Ministries stopped providing shelter and services to the abused women, children, and teenage girls who occupied the Usindiso building by virtue of the expired lease agreement;

68.3.5 the JPC did not lodge any legal proceedings to evict Usindiso Ministries or any occupant;

68.3.6 neither the COJ nor the JPC provided alternative accommodation to the occupants of the Usindiso building, as required by law.

68.4 From at least October 2016 until the Usindiso building fire on 31 August 2023, there was no lease agreement between the JPC and the illegal occupants of the Usindiso building, and the JPC did not collect any rental from them.

69. In December 2018, after assessing the situation at the Usindiso building, the Social Benefits Unit of the Department of Social Development assessed the residents occupying it illegally. They prepared a report that recommended, among other things, that the JPC close the Usindiso building and assist qualifying individuals in finding temporary emergency accommodation. A copy of the report's is attached as annexure **"POC4"**.



70. The JPC failed to shut down the Usindiso building as recommended in this report or to assist qualifying individuals with temporary emergency accommodation.

71. It follows that:

71.1 since at least October 2016, the Usindiso building has been illegally occupied;

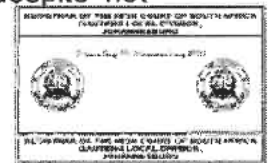
71.2 since at least 2019, the JPC has abandoned the Usindiso building; and

71.3 since at least 2019, the JPC has not repaired and/or maintained the Usindiso building.

**Conditions at the Usindiso building at the time of the fire**

72. At the time when the fire broke out on 31 August 2023:

72.1 the Usindiso building was used for residential purposes despite not being zoned for that purpose;



72.2 the Usindiso building was occupied illegally;

72.3 the Usindiso building was vandalized and in a state of disrepair;

72.4 the JPC had abandoned the Usindiso building and failed to manage, maintain, and protect it.

72.5 the structural integrity of the building was compromised through the removal and recycling of steel reinforcements such as columns, pillars and slabs;

72.6 the passageways, escape routes and stairwells were blocked in contravention of section 13 of the COJ Emergency Services Bylaws, and residents could not use the emergency exits as intended;

72.7 the emergency evacuation routes and emergency exit doors were obstructed because:

72.7.1 steel gates, steel mesh, and burglar doors were installed in the passageways, which impeded emergency evacuation routes;  
and

72.7.2 emergency exit doors were welded shut.

72.8 Some stairwells and toilets were converted into rooms for housing;



72.9 bathrooms without windows or ventilation were converted into living quarters and spaza shops;

72.10 the building was partitioned with highly flammable materials;

72.11 there were no firefighting installations in the building, and no comprehensive service record of firefighting equipment and service installations at the premises was kept as required by section 16(1) of the COJ Emergency Bylaws;

72.12 firefighting connections were used as a source of water for domestic use in contravention of section 54(3) of the COJ Water Services Bylaws;

72.13 the COJ failed to provide the residents of the Usindiso building with an adequate and readily available water supply at all times, in contravention of section 38 of the COJ Public Health Bylaws.

72.14 the Usindiso building was used as a dumping site for waste, which exacerbated the fire;

72.15 the Usindiso building was overcrowded;

72.16 there were shacks erected inside the building;



72.17 the Usindiso building had illegal electricity connections and live, uncovered electrical wires;

72.18 serious public health risks existed at the Usindiso building, which were neither eliminated nor reported in contravention of section 6 of the COJ Public Health Bylaws;

72.19 crime was rife at the Usindiso building;

72.20 children as young as 15 years were abused and trafficked as prostitutes;  
and

72.21 there was no security at the building.

## Gross negligence

73. Although at the time of the fire, Ms Botes, as the CEO and executive director, controlled and managed the JPC and was obliged to fulfil her obligations and fiduciary duties to it:

73.1 the JPC failed to comply with its mandate to maintain, protect, develop, sell, or lease buildings, enter into lease agreements, collect rentals, and manage tenants to ensure an adequate financial return for the



73.2 the JPC failed to comply with and adhere to the applicable statutory, regulatory, municipal, and other stipulations in respect of the Usindiso building;

73.3 the JPC permitted the Usindiso building to be "hijacked" by illegal occupants;

73.4 the JPC lost control over the building and/or its residents; and

73.5 the JPC failed to take any steps or institute legal proceedings to evict the illegal occupants or to claim the return of the property it was mandated to manage, control, and protect, namely the Usindiso building.

74. Ms Botes completely disregarded complying with the applicable legislation and the JPC's mandate under the SDA. In particular, Ms Botes:

74.1 knew, alternatively ought to have known, that how the JPC, of which she was the CEO and an executive director, executed its mandate in respect of the Usindiso building was unlawful and in breach of the SDA;

74.2 failed to promote the best interests of the JPC;

74.3 knew about the hazardous conditions and the lack of municipal services at the Usindiso building since at least 2019;



74.4 failed to address the zoning violations;

74.5 failed to ensure compliance with the applicable municipal bylaws;

74.6 contributed to the state of disrepair and unsafe conditions at the Usindiso building through her inaction and the inaction of the JPC under her leadership;

74.7 failed to procure the return of possession, management, and control of the Usindiso building to the JPC after it had been hijacked; and

74.8 failed to implement the Social Benefits Unit of the Department of Social Development recommendations that the JPC close the Usindiso building and assist qualifying individuals in finding temporary emergency accommodation.

75. Ms Botes' disregard of the applicable legislation and allowing the Usindiso building to be illegally occupied, fall into disrepair, and become a health and safety hazard constitutes wilful or gross negligent conduct, which contributed to a fire erupting and killing at least 76 people in the Usindiso building. Ms Botes:

75.1 departed from the standard of the reasonable director to such an extent that it can be categorised as extreme;



75.2 failed to give proper consideration to the consequences of such departure; and

75.3 demonstrated a total failure to take the requisite degree of care expected from a director in her position.

76. In conducting herself in such a manner, Ms Botes:

76.1 Infringed upon the constitutional rights of the occupants of the Usindiso building, in particular:

76.1.1 their right to have their dignity respected and protected;

76.1.2 their right to be treated humanely;



76.1.3 their right to access to adequate housing;

76.1.4 their right against arbitrary deprivation of freedom; and

76.1.5 for those who lost their lives in the Usindiso fire, their right to life.

76.2 Contravened the provisions of section 94(1) of the MFMA in that she, in her capacity as accounting officer of the JPC, failed to exercise utmost care to ensure reasonable protection of the assets and records of the COJ, which the JPC was mandated to manage, control, and protect under the SDA.



76.3 Intentionally, or by gross negligence, inflicted harm upon the JPC as contemplated by section 162(5)(c)(iii) of the Companies Act, amplified by the harm that was caused to the residents of the Usindiso building.

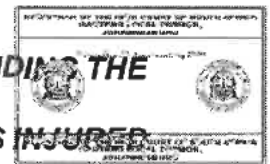
76.4 Acted in a manner that amounted to gross negligence, wilful misconduct or breach of trust in relation to the performance of a director's functions within, and duties to, the company as contemplated in section 165(5)(c)(iv)(aa) of the Companies Act.

77. In the premises, this Honourable Court must make an order declaring Ms Botes a delinquent director under section 162(5) of the Companies Act.

## The Khampepe Commission of Inquiry

78. After the fire, a Commission of Inquiry was established on 13 September 2023 by Proclamation in Provincial Gazette No 324 in terms of section 2(1) of the Provincial Commissions Act, 10 of 1997, read with section 127(2)(e) of the Constitution. The Commission of inquiry is described in the proclamation, terms of reference, and regulations, (attached as “**POC5**”), as follows:

**“COMMISSION OF INQUIRY INTO CIRCUMSTANCES SURROUNDING THE DEATH OF AT LEAST 77 PEOPLE AND DOZENS MORE OTHERS INJURED AND HOMELESS AT THE USINDISO BUILDING, SITUATED AT THE CORNER OF ALBERT AND DELVERS STREETS, MARSHALLTOWN, JOHANNESBURG CENTRAL BUSINESS DISTRICT (REGION F).”**



79. The Honourable Justice Sisi Khampepe headed the Commission of Inquiry into the fire at the Usindiso Building with a dual mandate:

79.1 to inquire into the circumstances surrounding the fire at the Usindiso building and to make findings as to who must shoulder the liability or responsibility for the state of affairs, deaths and injuries, as well as what lessons drawn from those circumstances, taking into account the investigations by the South African Police Services (“SAPS”) and other relevant authorities; and

- 79.2 to make recommendations insofar as the appropriate steps must be taken and by whom, and any other matter the Commission considers necessary or appropriate to address arising in relation to the terms of reference.
80. During its inquiry in the latter part of 2023 and the early part of 2024, the Khampepe Commission of Inquiry (*"the Commission"*) heard evidence from fifty-nine (59) witnesses, including four (4) expert witnesses, and the statements of a further two hundred and eighty-one (281) witnesses were admitted into the record.
81. Following the inquiry into the fire at the Usindiso building, the Commission delivered a report into its findings on 30 April 2024, attached as annexure **"POC6."**
82. The following factual findings were made by the Commission as quoted from paragraphs 35 to 49 (at pp. 11 to 13) of the report:



- "35. *The building was never zoned for residential purposes.*
36. *At the time of the fire, the Usindiso building had a high prevalence of crime.*
37. *The Usindiso building was abandoned by the COJ and the Johannesburg Property Company (SOC) Limited ("JPC") at least since*

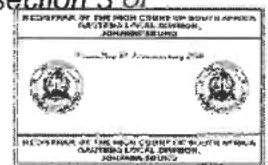
2019. The building was vandalized by the removal and sale for cash of the steel reinforcement material supporting the columns, pillars and slabs. The COJ and JPC never attended to repairs and maintenance of the building. The Usindiso building showed signs of disrepair and danger to life and property. It became liable to be demolished within the meaning of section 12(1)(b) of the Building Regulations and Building Standards Act, 1977.

38. The absence of doors swinging in the direction of escapes due to being welded together, and the blocking of passageways, escape routes, and stairwells is evidence of contraventions of sections 13(1)(a), (2)(a), (3) and (4) of the Emergency Services By-laws.
39. The vandalization of the building by removing all firefighting installations and equipment to retrieve steel to sell to recyclers for cash and usage for domestic water supply is evidence of the contravention of section 16(1)(a) of the Emergency Services By-laws.
40. The failure of the Chief Fire Officer to issue a notice designating the Usindiso building as requiring an emergency evacuation plan is evidence of the contravention of section 17 of the Emergency Services By-laws.
41. The response time of 11 minutes, alternatively 19 minutes by the Emergency Management Services of the COJ to the fire at Usindiso



*building, a category A building, is evidence of the infringement of SANS 10090 issued in terms of the Fire Brigade Act 99 of 1987, which prescribes a response time of not more than 8 minutes for a category A building.*

42. *The use of firefighting connections to source water for domestic use due to the disconnection of potable water supply is evidence of the contravention of the Water By-laws and section 1 read with section 3 of the Water Services Act, 108 of 1997.*



43. *The accumulation of waste on and around the building and the COJ/s failure to remove the waste, keep the building free from waste, and prevent the building from being used as a dumping site is proof of contravention of sections 27(1); 70(1) and (2); 73(2); 74(1) of the Waste Management Services By-laws.*
44. *The evidence referred to in paragraphs 36 to 43 above is evidence of the COJ's failure to implement and a contravention of the provisions of section 7 of the Problem Properties By-laws.*
45. *The accumulation of waste, the presence of unhygienic and unsanitary conditions, the existence of overcrowding, and the occupation of the building without a sufficient supply of potable water, coupled with the COJ's failure to prevent, eliminate, and remove such public health hazards and nuisances is evidence of the contravention sections 5(2);*

6; 7(2); and 38; of the Public Health By-laws. The evidence on overcrowding also shows a clear breach of the National Building Regulations, GN R2378 in GG 12780 of 12 October 1990.

46. The continued presence of illegal connections of electricity despite the disconnection effected by the COJ is evidence of the contravention of section 15(2) of the Electricity By-laws.

47. X admitted to having caused the fire when, after strangulating a victim, he sought to conceal the murder by setting his victim's body on fire which then triggered the conflagration that ensued.



48. The consequences of the fire would have been mitigated had the City complied with its legal obligations as owner and municipality.

49. Law enforcement at the Usindiso building was virtually absent, and there was no political accountability taken by the officials of the City for the condition of the building both at the time and in the aftermath of the fire."

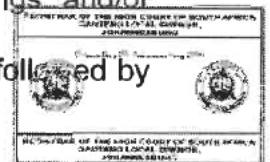
83. The Commission further made the following recommendation in respect of Ms Botes paragraph 53 (at p 14) of its report:

"53. The Board of Directors of the JPC must consider taking appropriate action against Ms Botes, the Chief Executive Officer of the JPC for the

*total disregard of managing the Usindiso building despite knowledge of the disastrous state since at least 2019.”*

84. The factual findings by the Commission quoted above were made from un rebutted evidence.

85. Neither Ms Botes nor the JPC disputed the factual findings of the Commission nor took the Commission on review or appeal for any findings and/or recommendations made by it, or any part of the process that was followed by the Commission in reaching its conclusions.



86. It flows from the undisputed findings by the Commission as well as the recommendation as quoted above that Ms Botes, in her capacity as director and CEO of the JPC:

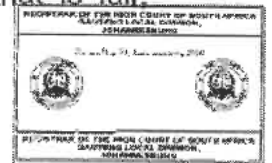
86.1 intentionally, or by gross negligence, inflicted harm upon the JPC as contemplated by section 162(5)(c)(iii) of the Companies Act, and further inflicted harm upon the COJ as well as the residents of the Usindiso building that were affected by the fire; and

86.2 acted in a manner that amounted to gross negligence, wilful misconduct or breach of trust in relation to the performance of the director's functions within, and duties to, the JPC as contemplated in section 162(5)(c)(iv)(aa) of the Companies Act.

87. In the premises, this Honourable Court must make an order declaring Ms Botes a delinquent director in terms of section 162(5) of the Companies Act.

**B. UNLAWFUL PROCUREMENT OF COVID-19-RELATED SERVICES**

88. The JPC is an organ of state and thus subject to section 217 of the Constitution, which governs public procurement and mandates that when organs of state contract for goods or services, they must do so in a manner that is fair, equitable, transparent, competitive, and cost-effective.



89. As the JPC's CEO and accounting officer, Ms Botes, was responsible for managing and controlling its procurement, which included the duty to ensure that goods and services were procured in accordance with the said constitutional prescripts.

90. During the Covid-19 lockdown from April to July 2020 in Johannesburg, the JPC, under the control of Ms Botes, who acted as the JPC's CEO and accounting officer, purportedly procured deep cleaning and sanitising services for the JPC (*"the purported services"*).

91. However, the JPC's process for procuring the deep cleaning and sanitising services was, to Ms Botes's knowledge, fundamentally flawed because it did not comply with the constitutional and other legal requirements relating to procurement by organs of state and amounted to wilful misconduct, as can be seen from the following:



91.1 the JPC never advertised the request for quotation (“RFQ”) to render the purported services, but directly contacted service providers (“*the purported tenderers*”) to submit a quotation;

91.2 the tender process did not comply with or materially comply with the requirements of the Disaster Management Regulations, MSCMR, or MFMA Circulars Nos. 83 and 102;



91.3 although the RFQ was to render the purported services, it required the purported tenderers to be experienced in the construction industry;

91.4 the JPC appointed the following purported tenderers (collectively referred to as “*the purported service providers*”) to render the purported services:

91.4.1 KM Mashigo Trading CC with registration number 2007/182612/23;

91.4.2 Omphile Turnkey Solutions (Pty) Ltd with registration number 2014/173960/07;

91.4.3 Mizana Trading (Pty) Ltd with registration number 2012/177151/07; and

91.4.4 Triple SL Tech CC with registration number 2007/022481/23

OUTA was not privy to any contract between the JPC and the purported service providers to render the purported services, and cannot append a copy thereof to these particulars of claim.

91.5 When the JPC appointed the purported service providers to provide the purported services, none had any experience delivering them:



91.6 the JPC appointed the purported service providers to render the purported services at excessive, unfair, and uncompetitive prices, which were not cost-effective;

91.7 the JPC paid the purported service providers more than R18 million for the purported services, which they either failed to deliver or could not provide.

92. Ms Botes, in her capacity as CEO and accounting officer of the JPC and the person overseeing procurement:

92.1 appointed the purported service providers without them having had the necessary experience;

92.2 allowed for the JPC to directly contact service providers and appoint them without advertising an RFQ, alternatively failing to comply with the prescripts of emergency procurement;

92.3 allowed tenders to be awarded at excessive prices;

92.4 paid the purported service providers for purported services which they did not deliver or could not provide;

92.5 failed to follow an open and transparent tender process as the MFMA Circular Nos required. 83 102, and Disaster Management Regulations.



93. In awarding the tenders to the service providers in this manner, Ms Botes:

93.1 acted in contravention of section 217(1) of the Constitution in that the procurement of the purported service providers:

93.1.1 lacked the requisite fairness;

93.1.2 was not equitable;

93.1.3 lacked transparency;

93.1.4 was not competitive; and

93.1.5 was not cost-effective.

93.2 Acted in contravention of Regulation 4.2 of the Disaster Management Regulations in that the price negotiated and/or accepted by Ms Botes as the person responsible for ensuring a lawful procurement process:

93.1.1 far exceeded any normal increase in the cost of providing such sanitation and cleaning services; and

93.1.2 far exceeded the average margin or mark-up for such services in the three months before 1 March 2020.



94. Ms Botes further failed to comply with sections 76(2)(ii) and (3) of the Companies Act in that:

94.1 she used her position as the CEO and person overseeing procurement at the JPC to knowingly cause harm to the JPC;

94.2 she failed to exercise the powers and functions of a director:

94.2.1 in good faith and for a proper purpose;

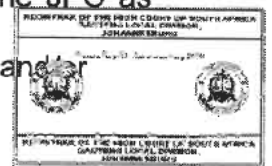
94.2.2 in the best interest of the company; and

94.2.3 with the degree of care, skill and diligence that may be reasonably expected of a person-

- (i) carrying out the same functions in relation to the company as those carried out by her; and
- (ii) having her general knowledge, skill and experience.

95. Through her conduct as referred to in paragraphs 91 to 94 above, Ms Botes:

95.1 intentionally, or by gross negligence, inflicted harm upon the JPC as contemplated by section 162(5)(c)(iii) of the Companies Act; and



95.2 acted in a manner that amounted to gross negligence, wilful misconduct or breach of trust in relation to the performance of a director's functions within, and duties to, the company as contemplated in section 165(5)(c)(iv)(aa) of the Companies Act.

96. In the premises, the Court must make an order declaring Ms Botes a delinquent director in terms of section 162(5) of the Companies Act.

**The Special Investigating Unit (“SIU”) Report**

97. On 10 December 2021 and following an investigation into the procurement of, or contracting for goods, works and services, including the construction, refurbishment, leasing, occupation and use of immovable property, during, or in respect of the National State of Disaster, as declared by Government Notice No 313 of 15 March 2020, the SIU rendered a final report to the President in

terms of section 4(1)(f) of the Special Investigations Units and Special Tribunals Act, 74 of 1996 wherein it *inter alia*:

97.1 made a disciplinary referral for financial misconduct on 3 March 2021 against Ms Botes in her capacity as CEO of the JPC as envisaged in section 172(2) of the MFMA;

97.2 made a criminal referral on 3 March 2021 against Ms Botes, in her capacity as CEO of the JPC, for contravening section 105(1) read with section 173(3) of the MFMA; and



97.3 found that the appointment of the service providers for the period April to July 2020 was irregular and invalid for lack of compliance *inter alia* with section 217 of the Constitution, section 112(1) of the MFMA, as read with the Treasury Regulations and the relevant instructions issued by National Treasury.

The front, relevant, and last pages from the SIU report is attached as annexure “POC7”.

98. Ms Botes neither reviewed the SIU report nor did she challenge their findings in any recognised forum.

99. It flows from the findings by the SIU and the referrals made that Ms Botes:

99.1 intentionally, or by gross negligence, inflicted harm upon the JPC as contemplated by section 162(5)(c)(iii) of the Companies Act; and/or

99.2 acted in a manner that amounted to gross negligence, wilful misconduct or breach of trust in relation to the performance of the director's functions within, and duties to, the JPC as contemplated in section 162(5)(c)(iv)(aa) of the Companies Act.

100. In the premises the Court must make an order declaring Ms Botes a delinquent director in terms of section 162(5) of the Companies Act.

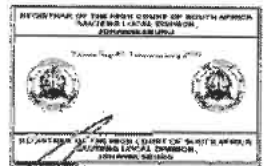


**WHEREFORE** the plaintiff prays in the following terms:

1. That leave be granted in terms of section 157(1)(d) of the Companies Act to bring this action.
2. That Helen Margaret Botes be declared a delinquent director in terms of section 165(5) of the Companies Act.
3. That all defendants who oppose the relief herein, jointly and severally, the one paying the others to be absolved, pay the costs of suit on an attorney and client scale, including costs of two counsel.

- 4. That any costs incurred by Ms Botes in the course of these proceedings, but which were in fact paid by the second or third defendants or any public entity on behalf of Ms Botes, be repaid to that defendant or entity by Ms Botes in her personal capacity.
  
- 5. Further and/or alternative relief.

SIGNED AT PRETORIA ON THIS 29<sup>TH</sup> DAY OF JULY 2025.



*[Handwritten signature]*  
 \_\_\_\_\_  
**DB DU PREEZ SC**

*[Handwritten signature]*  
 \_\_\_\_\_  
**S MENTZ**

**COUNSEL FOR PLAINTIFF**

*[Handwritten signature]*  
 \_\_\_\_\_  
**JENNINGS INCORPORATED**  
**ATTORNEYS FOR PLAINTIFF**

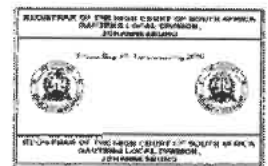
222 SMIT STREET  
 21<sup>ST</sup> FLOOR  
 BRAAM FONTEIN  
 JOHANNESBURG  
 TEL: 012 110 4442  
 EMAIL: [andri@jinc.co.za](mailto:andri@jinc.co.za) ; [delia@jinc.co.za](mailto:delia@jinc.co.za)  
 REF: A JENNINGS/OUT038



TO: THE REGISTRAR OF THE ABOVE HONOURABLE COURT  
JOHANNESBURG

AND TO: **HELEN MARGARET BOTES**  
**FIRST DEFENDANT**  
35A STURDEE AVENUE  
ROSEBANK  
JOHANNESBURG  
GAUTENG

AND TO: **THE CITY OF JOHNBURG PROPERTY COMPANY SOC**  
**SECOND DEFENDANT**  
GROUND FLOOR  
FORUM 1 BRAAMPARK  
33 HOOFD STREET  
BRAAMFONTEIN  
JOHANNESBURG  
GAUTENG



AND TO: **THE CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY**  
**THIRD DEFENDANT**  
C/O THE MUNICIPAL MANAGER  
METROPOLITAN CENTRE, BLOCK A  
158 CIVIC BOULEVARD  
BRAAMFONTEIN  
JOHANNESBURG  
GAUTENG

**COURT ONLINE COVER PAGE**

**IN THE HIGH COURT OF SOUTH AFRICA  
Gauteng Local Division, Johannesburg**

**CASE NO: 2025-125365**

In the matter between:

**ORGANISATION UNDOING TAX ABUSE NPC** Plaintiff / Applicant / Appellant

and

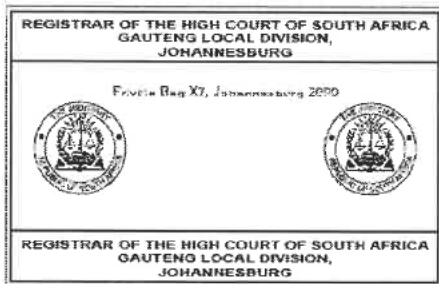
**HELEN MARGARET BOTES ,CITY OF JOHANNESBURG PROPERTY COMPANY SOC LTD,CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY** Defendant / Respondent

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**Annexure 01**

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**Registrar of High Court , Gauteng  
Local Division,Johannesburg**



# Board of Directors

Trusted leadership. Strategic oversight. Purposeful governance.

Our Board of Directors represents a diverse group of professionals dedicated to guiding our organisation toward meaningful growth and long-term success.



**Ms. Helen Botes**  
Chief Executive Officer

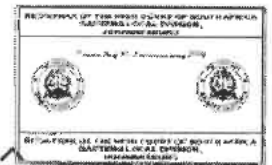
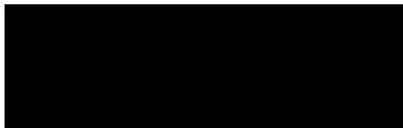


Non-Executive Directors

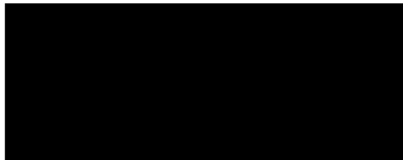
# NON-EXECUTIVE DIRECTORS

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## Remuneration, Human Resources & Transformation Committee



## Transaction & Service Delivery Committee



### REPORT FRAUD

PHONE: 0900 002 587

FAX: 0800 007 783

SMS: 32840 - charged at R1.50

WEBSITE: [www.tip-ofis.com](http://www.tip-ofis.com)

### DEPARTMENTS

Asset Management

Property Development

Property Management

Outdoor Advertising

Facilities Management

Legal Services

Client Servicing Unit

### QUICK LINKS

[Corporate Overview](#)

[Performance Reports](#)

[Programmes](#)

[Procurement](#)

[Media](#)

[PAIA Manuals](#)

[Contact Us](#)

### FOLLOW US

[Facebook](#)

[X](#)

[Instagram](#)

### HEAD OFFICE

3rd Floor (Street Level), Room 1

Block P11, 53 Hoofd Street  
Braamfontein 2017  
Johannesburg

**COURT ONLINE COVER PAGE**

**IN THE HIGH COURT OF SOUTH AFRICA  
Gauteng Local Division, Johannesburg**

**CASE NO: 2025-125365**

In the matter between:

**ORGANISATION UNDOING TAX ABUSE NPC** Plaintiff / Applicant / Appellant

and

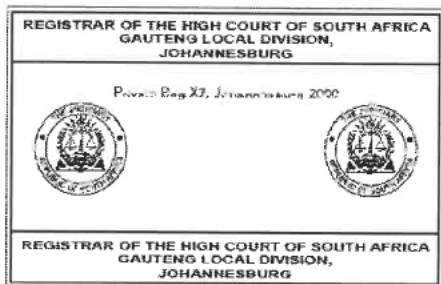
**HELEN MARGARET BOTES ,CITY OF JOHANNESBURG PROPERTY COMPANY SOC LTD,CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY** Defendant / Respondent

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**Annexure 02**

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**Registrar of High Court , Gauteng  
Local Division,Johannesburg**



**ERF 1210, MARSHALLS TOWN, P:0  
(JOHANNESBURG)**  
Deeds Office Property Erf

"POG"  
2 Waterford Mews, 2011/11/05 16:27:36 PM  
Tel: +27 87 330 7177 • Fax: +27 87 330 7177  
Website: <http://www.seidm.gov.za>

**SEARCH INFORMATION**

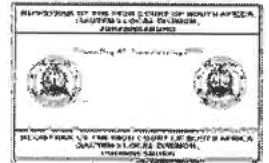
**Summary**

|                    |  |
|--------------------|--|
| Search Type        | DEEDS OFFICE PROPERTY ERF                    |
| Search Description | ERF 1210, MARSHALLS TOWN, P:0 (JOHANNESBURG) |
| Reference          | OUT038                                       |
| Date               | 16/05/2025                                   |

**ERF INFORMATION**

**Summary**

|                       |                       |
|-----------------------|-----------------------|
| Deeds Office          | JOHANNESBURG          |
| Property Type         | ERF                   |
| Township              | MARSHALLS TOWN        |
| Erf Number            | 1210                  |
| Portion Number        | 0                     |
| Remainder             | NO                    |
| Previous Description  | -                     |
| Registration Division | IR                    |
| Municipality          | CITY OF JOHANNESBURG  |
| Province              | GAUTENG               |
| Diagram Deed          | T4166/926             |
| Size                  | 248 0000 SQM          |
| LPI Code              | TOIR04220000121000000 |
| Street Address        | -                     |



**OWNER SUMMARY**

| Owner Name           | ID / Reg. Number | Purchase Price | Purchase Date |
|----------------------|------------------|----------------|---------------|
| CITY OF JOHANNESBURG | -                | CCT            | -             |

**OWNER INFORMATION**

**Owner 1 of 1**

|                         |                      |
|-------------------------|----------------------|
| Owner Name              | CITY OF JOHANNESBURG |
| ID / Reg. Number        | -                    |
| Owner Type              | COMPANY              |
| Title Deed              | T3047/1954           |
| Purchase Date           | -                    |
| Registration Date       | 09/04/1954           |
| Purchase Price          | CCT                  |
| Multiple Owners         | NO                   |
| Multiple Properties     | -                    |
| Share                   | -                    |
| Microfilm Reference No. | 20220827 13:58:48    |

**ENDORSEMENT(S)**

| Document Number | Microfilm Reference Number | Institution    | Value |
|-----------------|----------------------------|----------------|-------|
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| K285/1993RM     | 00000102 00:00:00          |                | RO.00 |
| K4327/1996RM    | 1999 030 1 :06:64          |                | RO.00 |
| K567/1999RM     | 1999 030 1 :07:30          | GENCOR LTD     | RO.00 |
| FORMERLY-683    |                            |                | RO.00 |
| FROM-683-695    |                            |                | RO.00 |

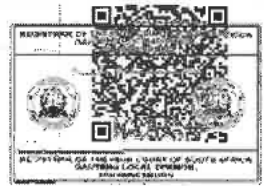
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**HISTORY INFORMATION**

| Document Number           | Microfilm Reference Number | Owner | Value |
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**REPORT INFORMATION**

|                     |                           |
|---------------------|---------------------------|
| Date of Information | 16/05/2025 13:48          |
| Print Date          | 16/05/2025 13:48          |
| [REDACTED]          |                           |
| [REDACTED]          |                           |
| Report Type         | DEEDS OFFICE PROPERTY ERF |



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**COURT ONLINE COVER PAGE**

**IN THE HIGH COURT OF SOUTH AFRICA  
Gauteng Local Division, Johannesburg**

**CASE NO: 2025-125365**

In the matter between:

**ORGANISATION UNDOING TAX ABUSE NPC** Plaintiff / Applicant / Appellant

and

**HELEN MARGARET BOTES ,CITY OF JOHANNESBURG PROPERTY COMPANY SOC LTD,CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY** Defendant / Respondent

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**Annexure 03**

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**ELECTRONICALLY SIGNED BY:**

**Registrar of High Court , Gauteng  
Local Division,Johannesburg**



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## SERVICE DELIVERY AGREEMENT

Entered into between

**THE CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY**  
("the City")



and

**CITY OF JOBURG PROPERTY COMPANY SOC Ltd (RF)**  
("JPC")

*[Handwritten signatures and initials]*  
A  
D  
K  
M  
J  
W



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JOBURG  
PROPERTY COMPANY

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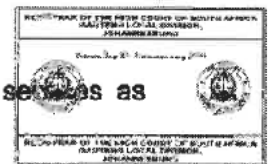
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JOBURG PROPERTY COMPANY

**WHEREAS:**

- A. the City is in terms of the Constitution of the Republic of South Africa and other applicable legislation charged with the responsibility of ensuring the sustainable provision of municipal services within its area of jurisdiction;
- B. with a view to deriving maximum benefit from the principles of performance-based contracting, the City has elected to deliver the Services through JPC which is a company wholly owned and controlled by the City;
- C. JPC functions as an external mechanism for delivery of municipal services as contemplated in Section 76(b) of the Systems Act;
- D. the City has entered into a Service Delivery Agreement with JPC as contemplated in Section 81(2) of the Systems Act;
- E. the Systems Act contemplates a Service Delivery Agreement which sets out the framework within which JPC is assigned the task of rendering the Services on behalf of the City, without detracting from the accountability of the City under its constitutional mandate;
- F. the existing Service Delivery Agreement has been reviewed by both the City and JPC to comply with the City long term strategy, and the agreed outcome of such review process is the revised agreement as recorded herein;



**NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:**

**1. INTERPRETATION AND DEFINITIONS**

In this Agreement and in any annexures and schedules hereto:

- 1.1 clause headings are for convenience only and are not to be used in interpretation of this Agreement;

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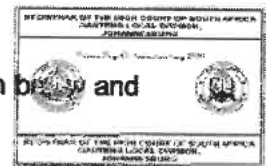
1.2 unless the context indicates a contrary intention, an expression which denotes

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 by and cognate expressions bear corresponding meanings:-



1.3.1 "Accounting Officer" shall have the meaning ascribed to it in Section 93 of the MFMA, meaning the chief executive officer of the municipal entity appointed in terms of section 93J of the Systems Act;

1.3.2 "SDA" means this Service Delivery Agreement including all annexures and schedules attached hereto;

1.3.3 "Assets" means all the Assets, whether corporeal or incorporeal, of JPC used in connection with or in the provision of the Services comprising, but not limited to plant, movable and immovable property and incorporeal rights.

1.3.4 "Auditors" means the Auditor-General as defined in the MFMA;

1.3.5 "Board" means the Board of Directors of JPC;

1.3.6 "Budget" means a budget that is prepared and submitted to the City by JPC and which is finalised and approved in accordance with the requirements of section 87 of the MFMA and otherwise in accordance with the provisions of the Municipal Budget and Reporting Regulations;

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1.3.7 "Business Day" means a day other than a Saturday, Sunday or public holiday in the Republic of South Africa;

1.3.8 "Business Plan" means the annual business plan of JPC contemplated in clauses 9 and 10, as approved by the City and amended from time to time;

1.3.9 "CCRs" means Core Competency Requirements as identified in the Scorecard;



1.3.10 "Chairperson's Quarterly Meeting" means a meeting convened and attended by the chairperson of the Board of JPC or his nominee, the relevant MMC, JPC Accounting Officer, representatives from the Group Governance and Line Department/s, which meetings are scheduled by the City on a quarterly basis;

1.3.11 "CM" means the City Manager;

1.3.12 "the City" means when referred to as:

1.3.12.1 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

1.3.12.2 a geographical entity, the area within the municipal boundary of the City of Johannesburg Metropolitan

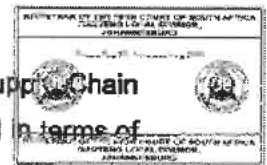
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Municipality as determined or redetermined from time to time by the Municipal Demarcation Board acting under the Demarcation Act;

1.3.13 "City Group Performance Management Framework" means the Group Performance Management Framework for the City of Johannesburg as approved by the Mayoral Committee on 20 August 2009 as amended from time to time;

1.3.14 "City Supply Chain Management Policy" means the Supply Chain Management Policy of the City of Johannesburg adopted in terms of Section 111 of the MFMA;



1.3.15 "Competent Authority" means any department in the national or provincial or local government sphere of government exercising statutory powers in terms of legislation;

1.3.16 "Companies Act" means the Companies Act 71 of 2008, as amended or replaced from time to time;

1.3.17 "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;

1.3.18 "CPI" means the weighted average of the consumer price index in respect of all areas and for all items as published by the Central

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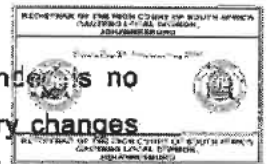




Statistical Services (Statistical Release P0141.1) from time to time, provided that if:

- 1.3.18.1 such index should cease to be published, or
- 1.3.18.2 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

1.3.18.3 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;

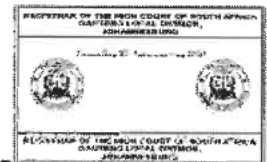


1.3.19 "Customer Charter" means a customer relations and customer management system prepared by JPC in accordance with clause 19 of this Agreement;

*[Handwritten signatures and initials]*



- 1.3.20 "Demarcation Act" means the Local Government: Municipal Demarcation Act 29 of 1998;
- 1.3.21 "Designated Oversight Structures" means the departments/units/structures charged with decentralised municipal entity oversight under the City's revised governance model, namely, the relevant line departments, Group Governance and the relevant MMCs, the relevant section 79 committee
- 1.3.22 "Effective Date" means 25 February 2014.
- 1.3.23 "Employees" means all the employees employed by JPC from time to time throughout the period of this Agreement;
- 1.3.24 "End User" means a natural or juristic person who uses or benefits directly from the provision of the Services provided by JPC;
- 1.3.25 "ED" means the Executive Director of the City Department of Economic Development responsible for oversight of JPC;
- 1.3.26 "DED" means Department of Economic Development;
- 1.3.27 "Financial Year" means the financial-year of both the City and JPC being a 12 (twelve) month period commencing on 1 July and ending the following 30 June;
- 1.3.28 "GDS" means the Growth and Development Strategy of the City as formulated from time to time;
- 1.3.29 "GPAC" means the Group Performance Audit Committee, the structure established pursuant to the Local Government: Municipal Planning and Performance Management Regulations, 2001 for ensuring the objective review and verification of the various



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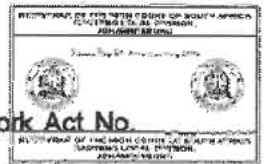


components of the City's employee performance management system;

1.3.30 "GRAP" means Standards of Generally Recognised Accounting Practice as determined by the Accounting Standards Board of South Africa from time to time;

1.3.31 "IDP" means the Integrated Development Plan of the City as formulated from time to time;

1.3.32 "IRFA" means the Intergovernmental Relations Framework Act No. 13 of 2005 and any regulations or guidelines promulgated thereunder from time to time;



1.3.33 "KPA" means the Key Performance Area which is the explicit statement of a performance objective and outcome results that relate to a major functional, operational, technical, financial or behavioural area of the role and accountability of the individual or entity whose performance is being assessed;

1.3.34 "KPI" means the Key Performance Indicator and means the deliverables, standards or measures used to indicate whether or not an SPO or KPA has been met. These must be within the control of the individual or entity whose performance is being assessed, as well as being objective, observable and capable of being measured;

1.3.35 "Local Community" means that body of persons comprising:

1.3.35.1 the residents of the City;

1.3.35.2 the ratepayers of the City, any civic organizations and non-governmental, private sector or labour organizations



or bodies which are involved in local affairs within the City; and

1.3.35.3 visitors and other people residing outside the City who, because of their presence in the City, make use of services or facilities provided by the City, and includes, more specifically, the poor and other disadvantaged sections of such body of persons;

1.3.36 "Minister" means the Cabinet member responsible for provincial and local government;



1.3.37 "MFMA" means the Local Government: Municipal Finance Management Act No. 56 of 2003;

1.3.38 "MMC" means a Member of the Mayoral Committee;

1.3.39 "Municipal Asset Transfer Regulations" means the Local Government Municipal Finance Management Act, 2003, Municipal Asset Transfer Regulations published under Notice R878 in Government Gazette No. 31346 dated 22 August 2008;

1.3.40 "Municipal Budget and Reporting Regulations" means the Local Government Municipal Finance Management Act, 2003, Municipal Budget and Reporting Regulations published under Notice 393 in Government Gazette No. 32141 dated 17 April 2009;

1.3.41 "Municipal Legislation" means all the legislation (including regulations framed thereunder) in operation at the Effective Date which regulates the conduct of the City's affairs and of its municipal entities, including, without limitation, the MFMA, Systems Act and Structures Act and any new or replacement legislation (including regulations) which subsequently comes into force;

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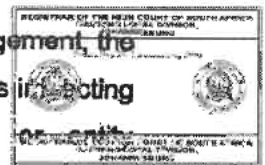
- 1.3.42 "Municipal Manager" means the official appointed as such by the City in terms of section 82 of the Structures Act,
- 1.3.43 "Municipal Services" means municipal services as defined in the Systems Act;
- 1.3.44 "Operational Dispute" means a dispute between the Parties to an SDA, or between any such Party and any other municipal entity of the City, which arises out of the provisions of such SDA or anything done, provided or procured pursuant thereto;
- 1.3.45 "Party" and "Parties" means JPC and the City and their successors in title, as the context requires;
- 1.3.46 "R & CRM Department" means the City's Revenue and Customer Relations Management Department established by the City in respect of the municipal entities referred to in clause Error! Reference source not found.;
- 1.3.47 "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 Services or relating to the functioning of a municipal entity;
- 1.3.48 "Section 57 Employee" means the municipal manager of a municipality or a person who is appointed by the said municipality and who is directly accountable to the municipal manager as contemplated in section 57(1) of the Systems Act;



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- 1.3.49 "Section 79 Oversight Committee" means a committee convened pursuant to section 79 of the Structures Act for the purpose of considering and making recommendations to the Council in relation to, *inter alia*, certain legislative issues and matters arising out of such committee's oversight role over the activities of the EISD and also arising out of the consideration of quarterly reports from the EISD, the relevant MMC and JPC;
- 1.3.50 "Scorecard" means, in the context of performance management, the document within which all relevant KPIs, KPAs and SPOs reflecting on the performance assessment of the individual or entity concerned, are captured relative to a particular assessment period;
- 1.3.51 "SDBIP" means the Service Delivery Budget Implementation Plan of the City as formulated from time to time;
- 1.3.52 "Cluster Scorecard" means the cluster scorecard pertaining to the cluster of the City within which JPC engages with the relevant core department/s of the City in provision of the Services. The cluster Scorecard is developed jointly between the cluster and JPC from the cluster plan prepared annually as part of the City's five year IDP;
- 1.3.53 "Service Area" means the geographical area in respect of which JPC is appointed (and where applicable, licensed in terms of applicable Regulatory Provisions) to render the Services as more fully described in Annexure "B";
- 1.3.54 "Service Levels" means the levels of service to be achieved by JPC in providing the Services under this Agreement as more fully described in clause 11.5.3 and specified by the City in the SLAs from time to time;





- 1.3.55 "JPC" means City of Joburg Property Company SOC Ltd (RF) with Registration No. 2000/029899/07, a municipal entity incorporated and registered in the Republic of South Africa in terms of the Companies Act 61 of 1973, which has now been repealed by the Companies Act 71 of 2008, with its registered office at 1<sup>st</sup> Floor, no 33 Hoofd Street Forum II, Braam Park, Braamfotein, Johannesburg;
- 1.3.56 "JPC Accounting Officer" means the managing director or chief executive officer of JPC, from time to time as defined in section 93 of the MFMA;
- 1.3.57 "Services" means the services provided or to be provided by JPC as described in Annexure "A" hereto;
- 1.3.58 "Structures Act" means the Local Government: Municipal Structures Act 117 of 1998;
- 1.3.59 "Systems Act" means the Local Government: Municipal Systems Act 32 of 2000;
- 1.3.60 "Treasury Policy Manual" means the City's Treasury Policy Manual approved by the City from time to time;
- 1.3.61 "User Forum" means the end-user forum established by the Board of JPC and made up of representatives of the Local Community;
- 1.3.62 "VAT" means value added tax in terms of the Value Added Tax Act 89 of 1991, as amended.
- 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;





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- 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/or annexures to this Agreement save to the extent expressly provided to the contrary in writing;
- 1.8 all schedules 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 hereof, and as amended or re-enacted from time to time thereafter;

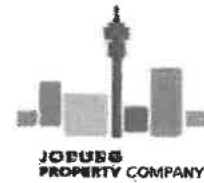


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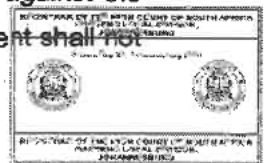


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1.12 the expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;

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.



1.14 all policies and protocols of general application of the City which have been officially adopted by it or which may be adopted by it in the future from time to time and communicated by the City to JPC in writing from time to time, shall, unless expressly excluded in this Agreement or by the context governing the relationship between the City and JPC to the extent that they have a bearing on the provision of the Services under this Agreement, be deemed to have been incorporated by reference.

2. SUPREMACY OF THIS AGREEMENT

Save as may be expressly agreed and recorded to the contrary, if any provision of any other agreement entered into between the City and JPC or any provision of 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.

3. APPOINTMENT OF JPC

3.1 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, from which date the provisions of this Agreement shall be deemed to have replaced the provisions of the previous SDA.

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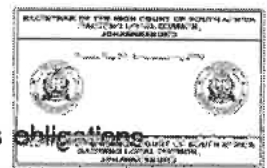


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3.2 Save to the extent specifically provided to the contrary in this SDA, JPC at all times acts as an independent contractor and neither the appointment of JPC nor anything in this Agreement shall give rise to or be construed as giving rise to an employer-employee relationship between the Parties, a relationship of principal and agent, a joint venture or an agreement of partnership between the Parties, nor shall it give rise to a labour broking agreement.

4. **CESSION AND ASSIGNMENT**



4.1 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.

4.2 JPC may subject to the City's policies appoints consultants, contractors and suppliers to undertake any portion of its obligations in terms of this Agreement, which appointment shall be at its own cost and not relieve JPC of any of its obligations to the City.

5. **COMMENCEMENT AND DURATION**

5.1 This Agreement shall commence on the Effective Date and shall be reviewed every 5 (five) years in line with the period of the Integrated Development Plan (IDP) in terms of the provisions set out in this Agreement or until terminated by the City pursuant to Section 93B(c) of the Systems Act.

5.2 This SDA shall cover the period of the IDP from 2011 to 2016 and upon expiry of this period, it shall be reviewed in line with the new IDP for the period 2016 to 2021.

5.3 Annexures A and B to this SDA shall be reviewed and agreed to annually by both the Board of JPC and the City as they form the basis for the performance review of JPC.

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**6. SERVICE AREA**

6.1 Subject to clauses 6.2 and 6.3 below, JPC shall provide the Services within the Service Area as stipulated in Annexure "A".

6.2 If the municipal boundaries of the City are extended under the Demarcation Act or any other law, and the City elects to expand the Service Area, the procedure shall be as follows:

6.2.1 the City 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 shall cover the area accordingly to provide the Services within the extended area;



6.2.2 if JPC is required by the City to provide the Services in the extended area, JPC shall negotiate with the City to amend the Budget of JPC in a way which will accommodate the additional activities to be undertaken by JPC in the extended area, using the procedures specified in the Municipal Budget and Reporting Regulations. If the Parties fail to agree on the requisite changes required to JPC's Budget within [30 (thirty) days] of commencement of negotiations, such dispute shall be referred for dispute resolution as an Operational Dispute.

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

6.3.1 the Service Area shall be reduced to coincide with the new boundaries of the City; and



6.3.2 JPC shall negotiate with the City to amend JPC's Budget mutatis mutandis in accordance with the process contemplated in clause 9.

**7. SERVICES AND SERVICE STANDARDS**

7.1 The Services provided or to be provided by JPC from the Effective Date in accordance with the provisions of this Agreement, are those described in Annexure "A".

7.2 The Services are described in general terms in Annexure "A" but **shall on an annual basis be specified in more detail in the SDBIP and JPC's annual Business Plan as contemplated in this Agreement.**



7.3 The scope of the Services may be changed by agreement between the Parties pursuant to the business planning and budgeting process as referred to in this Agreement.

7.4 The Service standards are attached hereto as Annexure B and shall be reviewed annually prior to the commencement of each financial year in line with the budget approval process.

**8. PRINCIPAL OBJECTIVE OF SDA AND LINK TO BUDGETING PROCESS**

8.1 The SDA is entered into between the Parties with the principal objective of providing a framework within which detailed service delivery plans can be developed and implemented by JPC in a manner which is consistent with and which will play a part in giving effect to the City's strategic planning processes.

8.2 The municipal budgeting process is the mechanism by which JPC translates into practice the strategic objectives of the City in a manner which is not only consistent with the GDS (in respect of long term strategic objectives), the IDP (in respect of medium term strategic objectives) the

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SDBIP (which outlines current objectives set for the City) and the Cluster Scorecard, but also in a manner which is consistent with the availability and prudent and sustainable use of available resources.

- 8.3 As an outcome of the budgeting process, the Business Plan of JPC identifies the key service delivery objectives of JPC together with the resources allocated to the achievement of such objectives. It also identifies the KPAs and KPIs which are used in evaluating the extent to which JPC and its management have achieved the service delivery objectives determined for JPC, and enables evaluation of management performance in the context of appropriate remuneration.



## 9. ANNUAL BUDGETING PROCESS AND BUSINESS PLAN

- 9.1 The Board of JPC shall ensure for each Financial Year of JPC, that a budget is prepared and submitted to the City and finalised in accordance with the requirements of Section 87 of the MFMA and the Municipal Budget and Reporting Regulations.
- 9.2 JPC's Budget shall include a multi-year Business Plan which shall, inter alia:
- 9.2.1 serve the purpose of providing a vehicle through which the obligations of the Parties with regard to service delivery can be articulated and agreed upon on an annual basis.
- 9.2.2 To achieve this purpose each Business Plan must define the outputs to be achieved by JPC in each year, the budget needed to achieve the outputs, and such other issues as the City shall request JPC to incorporate in the Business Plan, including a range of other critical issues and supporting information describing the business and the strategies to be adopted to ensure delivery on the agreed outputs.

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9.2.3 set key financial and non-financial performance objectives and measurement criteria which shall have been agreed between JPC and the City.

9.3 The budget shall:

9.3.1 be within any limits determined by the City, including any limits on tariffs, revenue, expenditure and borrowing;

9.3.2 be consistent with the City's budget and IDP;

9.3.3 be consistent with this SDA;

9.3.4 reflect actual and potential liabilities and commitments, including particulars of any proposed borrowing of money during the period to which the plan relates;

9.3.5 comply with the Municipal Budget and Reporting Guidelines; and

9.3.6 otherwise comply with the requirements of Section 17(1) and (2) of the MFMA to the extent that such requirements can reasonably be applied to JPC.



9.4 Should the City and JPC fail to agree any of the foregoing matters, either Party may declare a dispute by giving written notice thereof to the other Party, whereupon the dispute resolution provisions shall immediately come into operation and, if the matter is not resolved within the 15 (fifteen) day period contemplated in clause 25.3, the matter shall be resolved as an Operational Dispute.

9.5 The Business Plan shall also:

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9.5.1 as far as possible be in accordance with a pro forma submitted to JPC from time to time by the City at commencement of the annual budgeting process and shall in detail set out the outcomes to be achieved by JPC in the following year, commencing 1<sup>st</sup> July. In addition, each Business Plan shall include indicative inputs and outputs and financial models for the subsequent 3 (three) years;

9.5.2 be approved by the Board of JPC after it has been finally negotiated and settled as per the provisions of section 87 of MFMA; and

9.5.3 be submitted to the City in terms of the provisions of the MFMA including any regulations framed hereunder or on or before a date determined by the City from time to time, provided that such date is not later than the date contemplated under the MFMA.



9.6 Any projected allocation to JPC by the City must be provided for in the annual budget of the City, and to the extent not so provided, JPC's Budget and where applicable, the Business Plan, must be adjusted in accordance with the provisions of section 87(6) of the MFMA.

9.7 JPC shall incur expenditure only in accordance with its approved Budget, subject to any adjustments effected on the basis contemplated in the MFMA.

**10. THE BUSINESS PLAN**

JPC shall develop an annual Business Plan and Budget which shall be approved within the time limits provided for in terms of section 87 of the MFMA as read with the Municipal Budget and Reporting regulations.



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**11. PERFORMANCE OBJECTIVES, COMPLIANCE AND REVIEW**

11.1 Taking into account the City's key service delivery imperatives and the resources available for achieving those objectives, JPC's Business Plan shall set out the key annual financial and non-financial performance objectives of JPC.

11.2 Pursuant to determination of the key annual performance objectives for the year to which the relevant Business Plan relates, JPC shall by agreement with the City also establish the relevant KPAs and KPIs for JPC in respect of such period, for inclusion in JPC's Business Plan



11.3 KPIs shall be designed to indicate to the Parties, End Users and the general public, the measure of success achieved by JPC in the provision of the Services.

11.4 The service objectives agreed to from time to time between JPC and the City represent a critical measure of service delivery, and as a substantive obligation pursuant to this SDA JPC undertakes at all times to perform the Services in a professional manner which is in compliance with the KPA and KPIs established pursuant to the Business Plan, as agreed to annually and where applicable, amended as provided for in terms of this Agreement or by Municipal Legislation. In this regard JPC shall at all times exercise proper skill, care and diligence and comply with all directives, time schedules and budgets as agreed with the City pursuant to the Business Plan.

11.5 JPC shall report on its performance:

11.5.1 annually, as part of annual reporting process, against the agreed KPAs and KPIs in terms of clause 13.3;

11.5.2 six months after commencement of the financial year; and

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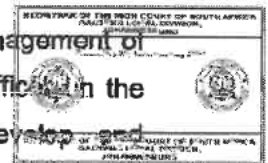




11.5.3 quarterly report on its activities during the quarter under review to the Designated Oversight Structures prior to the relevant Chairperson's Quarterly Meeting, and the meetings of the Mayoral Committee and Section 79 Oversight Committee tasked to oversee the activities of JPC in terms of clause 13.2.

**12. PERFORMANCE MANAGEMENT**

12.1 The Board is ultimately responsible for the performance management of JPC and all employees of JPC (including the Accounting Officer) in the context of JPC's performance Scorecard, and shall develop and implement such internal performance management tools and protocols as are deemed to be in the best interests of JPC in discharging its obligations under this Agreement.



12.2 External to JPC, the City Group Performance Management Framework regulates performance planning and implementation co-ordination between JPC and the City by means of the applicable Cluster Scorecard.

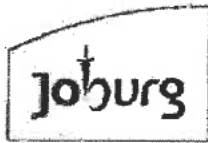
12.3 JPC shall in response to the PIPs, contribute to the Cluster scorecard and the performance thereof shall be reviewed by the Cluster on an annual basis.

**13. REPORTING REQUIREMENTS**

13.1 JPC shall adhere to the requirements of the Municipal Budget and Reporting Regulations.

**13.2 Quarterly Reports**

13.2.1 Within 7 (seven) days of the end of each quarter, preparation and submission to Group Governance department of a quarterly



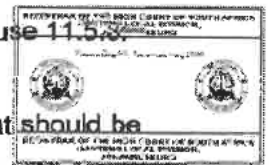
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performance report for JPC as at the end of each quarter, reflecting:

- 13.2.1.1 its financial performance in rendering the Services;
- 13.2.1.2 its achievement of the performance objectives referred to in clause 11, including any Service Levels which have been incorporated into any performance objective on the basis contemplated in clause 11.5.2;
- 13.2.1.3 any special circumstances and factors that should be taken into account in analysing its performance; and
- 13.2.1.4 any measures to be taken by JPC to improve its performance.
- 13.2.2 JPC Accounting Officer shall provide the City with such additional information regarding its operations, related to the provision of the Services as the City may reasonably require.
- 13.2.3 JPC Accounting Officer shall provide quarterly financial statements reflecting JPC's actual income and expenditure together with financial notes explaining any variances and the reasons for variances and its achievement or otherwise of the agreed outputs, which report shall include such information as is necessary to enable the City to accurately assess the extent to which JPC has achieved the agreed outputs.



**13.3 Annual Reports and Annual Financial Statements**

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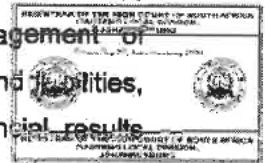


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13.3.1 JPC Accounting Officer shall ensure the preparation and submission of the Annual Financial Statements within two months of JPC financial year end (in accordance with the provisions of Municipal Legislation, the Companies Act and GRAP) to the City and the Auditors which:

13.3.1.1 fairly present the state of affairs of JPC for the period in question, its performance against its budget, its management of revenue, expenditure, assets and liabilities, its business activities, its financial results and its financial position as at the end of the financial year;



13.3.1.2 comply with all disclosure requirements of Municipal Legislation from time to time;

13.3.1.3 comply with the disclosure guidelines as recommended by the King Report III on Corporate Governance as updated from time to time, disclosing both financial and non-financial issues.

13.4 The Accounting Officer for JPC shall prepare for each financial year, an annual report in accordance with the requirements of the MFMA and submit the annual report to the Group Governance in August of each year.

**14. SUPPLY CHAIN MANAGEMENT POLICY**

14.1 JPC shall at all times ensure that its Supply Chain Management Policy is consistent with the MFMA, relevant regulations from time to time and aligned to the City Supply Chain Management Policy.



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14.2 JPC's Supply Chain Management Policy shall include, without limitation, amongst others, the following policies:

14.2.1 a policy on broad-based black economic empowerment (which includes the empowerment of youth, women, the disabled and ex-combatants);

14.2.2 a policy on development and management of small, micro and medium enterprises;

14.2.3 a policy on supplier management; and

14.2.4 shall include clearly defined annual targets as set out by the City from time to time to be achieved by JPC, and reported upon monthly as part of the quarterly report prescribed in terms of clause 13.2 above.



14.3 JPC may participate in an e-procurement system developed by the City from time to time and may negotiate in good faith a service-level agreement with the City in terms of which the City shall provide JPC with centralised procurement services, if required.

**15. POWER TO MONITOR PERFORMANCE**

15.1 The City shall, through the GG, GSPCR and GAS, fulfil its legal obligations of continually monitoring and regulating the performance of JPC under this Agreement.

15.2 In performing its monitoring in terms of clause 15.1, the GG, GSPCR and GAS shall be entitled to conduct interviews with End Users, conduct user satisfaction surveys, performance audits or use such other monitoring methods as the GG, GSPCR and GAS may deem fit.

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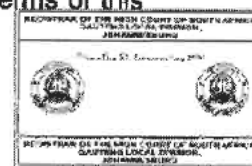


15.3 JPC shall, to the extent reasonably practicable, at all times maintain a full and accurate set of records of the Services performed under this Agreement. Notwithstanding the provisions of applicable law (such as the National Archives Act) JPC shall only destroy such records to the extent agreed with the relevant GG, GSPCR and GAS.

15.4 JPC shall render such reasonable assistance as may be necessary to allow the GG, GSPCR and GAS to exercise their powers in terms of this clause 15.

15.5 Duty to provide access to information

15.5.1 In order to exercise their monitoring and oversight roles in terms of this Agreement, the GG, GSPCR and GAS of the City and their duly authorised representatives shall have a right of access to all information belonging to JPC.



**16. HUMAN RESOURCE AND LABOUR RELATIONS**

16.1 JPC recognizes the City's vision of being a "best practice" employer and confirms its commitment to achieving the same ideal.

16.2 Further, JPC undertakes to:-

16.2.1 endeavour to adopt and implement, as far as possible, as its minimum standard those standards contained in the collective agreement concluded between the City and its recognised unions ("the Collective Agreement") to the extent that it is in the best interest of JPC and consistent with its obligations under this Agreement to do so or as otherwise agreed with the City;

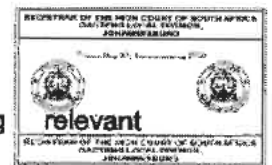
16.2.2 acknowledge the provisions of the Collective Agreement as the minimum threshold of standards, terms and conditions of



employment, except where otherwise agreed between JPC and its recognized unions. JPC and its recognized unions may negotiate mutual interest issues at a more favourable level in favour of employees than those contained in the Collective Agreements;

16.2.3 meaningfully participate, together with the City's other municipal owned entities, in a group human resources or labour relations committee established by the City from time to time, for the purposes of, amongst others:

16.2.3.1 effectively communicating and sharing information;



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

16.2.3.3 coordinating human resource and labour relations activities;

16.2.3.4 aligning labour relations strategies;

16.2.3.5 developing and sharing best practices;

16.2.3.6 preventing disputes initiated by the unions in various forums;

16.2.3.7 fostering harmonious labour relations with the Johannesburg division of the South African Local Government Bargaining Council ("SALGBC");

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

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16.3 Notwithstanding anything contained herein, JPC may, with the consent of the City, which consent shall not be unreasonably withheld, depart from any of the provisions of clauses 17.1 and 17.2. so as to ensure flexibility and independence of JPC.

**17. HUMAN RESOURCE POLICIES**

17.1 JPC shall ensure that for the duration of this SDA that its human resource policies and employee monitoring and incentive schemes are approved by the Board and maintained by JPC.



17.2 Notwithstanding the provisions of clause 17.1 above, JPC shall ensure that human resource policies and employee monitoring schemes and incentive schemes are aligned to the policies of the City in all material respects.

17.3 JPC shall at all times during the duration of this SDA, develop and maintain a register of all employees employed by it and shall keep, in a separate file for each employee, full details of that employee's employment contract; conditions of employment; emoluments; benefits; employment history; and such other information as may be necessary to determine the rights and functions of such employee within JPC, and shall permit the Director: Human Resources of the City or any other authorised person to inspect such register and/or such files from time to time.

**18. USER FORUM**

18.1 JPC shall establish a User Forum consisting of End Users and stakeholders in the sector within which JPC operates.

18.2 The User Forum shall have a constitution which makes provision for meetings of the forum and shall meet at least three times per annum for

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purposes of making submissions to JPC regarding the improvement of the Services.

- 18.3 JPC shall at the meetings of its Board 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 Services.

**19. CUSTOMER CHARTER**



- 19.1 JPC shall prepare and submit to the City a Customer Charter for approval which, in compliance with industry standards and norms and any applicable Regulatory Provisions, shall:

- 19.1.1 if it incorporates a customer relations and customer management system shall (where applicable), function in a manner aligned with and complementary to the City's R & CRM Department; and
- 19.1.2 set out the rights and responsibilities of End Users in relation to the provision of the Services and generally describe the relationship between JPC and End Users.

- 19.2 Once the Customer Charter has been approved by the City, JPC shall in its dealings with End Users act in accordance with the Customer Charter.

**20. SOCIO-ECONOMIC DEVELOPMENT PLAN**

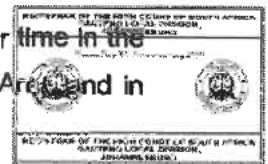
- 20.1 JPC shall in each Business Plan submitted for approval, prepare and submit to the City for approval, a socio-economic development plan which shall:

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- 20.1.1 be prepared after consultation with and having due regard to the needs of the Local Community in the Service Area and views of the User Forum (where applicable);
- 20.1.2 include proposals regarding appropriate Service Levels for the poor and disadvantaged sections of the Local Community unable to afford the Services; and
- 20.1.3 endeavour to achieve an appropriate standard over time in the provision of the Services throughout the Service Area and in the interests of the Local Community as a whole.



**21. SAFETY, HEALTH AND ENVIRONMENTAL POLICIES**

- 21.1 JPC shall render the Services in compliance with all applicable legislation (including, without limitation), all environmental and health and safety legislation, and 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 law, any pollution to the environment or risk to human health.
- 21.2 JPC indemnifies and holds the City harmless against any claims that may be brought against the City in connection with pollution of soil, water and air, human health or the environment in general caused by JPC, its employees or contractors in the rendering of the Services.
- 21.3 JPC shall comply with the provisions and requirements of all statutory notices that are served on it by the City and its various departments, especially the law enforcement agencies of the City and any other competent authority.
- 21.4 JPC shall be obliged to acknowledge receipt of and respond in writing to any statutory notices served on it by the City in this context, and give



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reasons when it is not possible to comply, as well as submitting action plans and time-frames for bringing about compliance where appropriate.

**22. WARRANTIES**

**22.1 The City warrants in favour of JPC that:**

**22.1.1 this Agreement has been duly authorised and executed by the City;**

**22.1.2 the execution of this Agreement does not violate any judgment or order of any court, Competent Authority or arbitrator of competent jurisdiction applicable in relation to the City or the existing assets of the City or the Assets;**



**22.1.3 It has the exclusive authority to provide the Services in the Service Area and is fully authorised and entitled to contract with JPC to do so on its behalf on the basis set out in this Agreement;**

**22.1.4 it has the legal capacity and authority to appoint JPC as a services provider in terms of the Systems Act on the basis set out in this Agreement.**

**22.2 JPC warrants in favour of the City that:**

**22.2.1 no steps will have been taken and JPC is not aware of any steps pending or threatened against JPC for its de-registration in terms of the Companies Act;**

**22.2.2 the execution of this Agreement does not violate any judgment or order of any court, Competent Authority or arbitrator of competent jurisdiction in relation to JPC or the Assets of JPC; and**

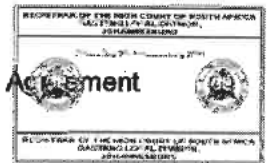
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22.2.3 JPC is able, entitled and authorised, as may be necessary, validly and effectively to enter into this Agreement and to supply the Services as contemplated herein in accordance with the provisions of this Agreement.

22.3 It is expressly agreed between the Parties that each warranty given by them in this Agreement is material to this Agreement and has induced them to conclude this Agreement.

22.4 No warranties or representations which are not set forth in this Agreement shall be binding on either Party.



22.5 The provisions of this clause 24 shall survive the termination of this Agreement.

**23. INDEMNITIES**

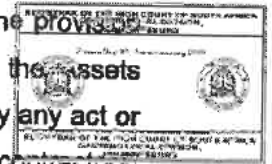
23.1 JPC shall:

23.1.1 at its own expense and with effect from the Effective Date, take all reasonable precautions for the protection of life and property about or in any way connected with the whole or any part of the Assets and shall and does hereby indemnify and hold the City harmless (and agrees to keep it so indemnified and held 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 occurring 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 City or any of its employees, subcontractors, consultants, agents or representatives or other third parties for whom the City is liable in



law or under this Agreement. JPC shall report all serious accidents involving it to the City within 24 (twenty four) hours of becoming aware of their occurrence;

23.1.2 subject to the other provisions of this Agreement, be obliged to intervene in any claim instituted against the City and to indemnify and hold the City harmless from any claim, damage, loss, cost, expense (including reasonable legal expenses on a full indemnity basis) arising from or attributable to JPC in respect of the provision of the 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 City or any of its agents employees, subcontractors, consultants, or representatives or other third Parties for whom the City is liable in law or under this Agreement; and



23.1.3 as from the Effective Date, be responsible to the City, the Local Community and third Parties for all risks and obligations pertaining to or arising out of the provision of the 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 JPC and shall indemnify and hold the City harmless for all losses, damages, penalties, legal fees and costs (including reasonable legal expenses on a full indemnity basis) which may arise in the above regard. JPC 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 City in respect of any acts or omissions of JPC, or any other subcontractor or any person for whom JPC may be liable in law in respect of the supply or failure to provide the Services, that may arise after the Effective Date.

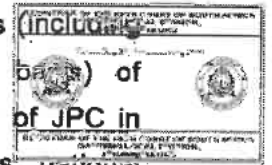
23.1.4 The City shall forthwith notify JPC in writing of any claim made against it in this regard or of any such claim that comes to its

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knowledge; and shall subject to the other provisions of this Agreement and as from the Effective Date, comply with any law, regulation or other applicable provisions issued by any competent authority having jurisdiction over the Services to be provided under this Agreement.

23.1.5 In particular, but without limitation, JPC hereby indemnifies and holds the City 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 JPC 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 JPC or as a result of or arising from any industrial action or related conduct embarked upon by any employee.



23.2 The City shall:

23.2.1 indemnify and hold JPC 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 City or any of its employees, sub-contractors, consultants, agents or representatives or other third Parties for whom the City is liable in law or under this Agreement, whether prior to or after the Effective Date and the City will be obliged to intervene and shall assume responsibility in respect of any such claim arising;

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23.2.2 indemnify and hold JPC 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 or attributable to the City 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 City or any of its agents, employees, sub-contractors, consultants, or representatives or other third parties for whom the City is liable in law or under this Agreement and the City will be obliged to intervene in such claim arising;



23.2.3 in respect of any condition existing prior to the Effective Date of the Sale of Business Agreement which contributes towards a claim, demand, proceeding or damages against JPC, indemnify and hold JPC harmless against such claims, demands, proceedings or damages (including reasonable attorneys fees on a full indemnity basis) to the extent of such contribution, provided that such indemnity shall not apply in the event of JPC, despite reasonable opportunity to do so, having failed to rectify such condition.

23.3 Each of the Parties indemnifies the other of them against any claims, demands, proceedings, damages and expenses (including reasonable attorneys fees on a full indemnity basis), which may arise due to a breach by any Party of the warranties contained in clause 22 hereof.

23.4 No breach by a party ("Warrantor") of any warranty referred to in clause 22 and no claim against a party ("Indemnifier") under any indemnity under clause 23 shall entitle a claimant to make a claim against the Warrantor/ Indemnifier in respect of both such breach of warranty and such indemnity where such breach or claim arises out of the same cause of action.

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**24. INTELLECTUAL PROPERTY INDEMNITY**

24.1 In respect of any Assets acquired by JPC under the Sale of Business Agreement from the City, the City hereby:

24.1.1 authorises and licenses or (where applicable), will endeavour to procure that the relevant third party intellectual property owner will have authorised and licensed and will continue to so authorise and license JPC to use and to continue to use or apply as from the Effective Date, any and all intellectual property rights of third Parties used or applied by the City in respect of the provision of the Services or the operation and maintenance of the Assets on the same basis as those rights were used or applied as at the effective date of the Sale of Business Agreement;



24.1.2 indemnifies JPC and undertakes to keep JPC 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 Services or the operation and maintenance of the Assets by JPC as from the Effective Date in respect of any intellectual property rights of third Parties;

24.1.3 JPC hereby indemnifies the City and undertakes to keep the City 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 Services or the operation and maintenance of the Assets by JPC after the Effective Date in breach (or alleged breach) of any intellectual property rights of third Parties, but specifically excluding the intellectual property rights.

24.2 The indemnities shall extend to all costs and expenses (including reasonable legal expenses on a full indemnity basis) incurred by the Party

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who has been indemnified ("the indemnified Party") by the other Party ("Indemnitor").

24.3 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.



24.4 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.

24.5 If any claim by a third party based on infringement of its intellectual property rights as aforesaid prevents JPC from fully conducting its business or any part thereof, JPC 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 compensate the City for the amount of any direct losses or damages sustained or expenses incurred by the City during such replacement or modification.

24.6 To the extent that it is not possible or practical for JPC 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 clause 24.5, and should JPC notify the City that, without such replacement or modification, it will not be in a position to fulfil its obligations under this Agreement, 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 JPC to continue to fulfil its obligations under this Agreement. Should the Parties fail to reach

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agreement as to the amendments to be effected to this Agreement within 6 (six) months of receipt of the notification from JPC, the matter shall be resolved as an Operational Dispute.

24.7 Any replacement or modification envisaged in clause 24.5 will be carried out as soon as possible so as to minimize any interruption in JPC's business operations.

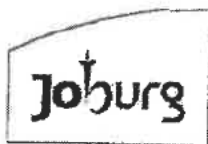
**25. COMPLIANCE WITH IRFA GUIDELINES AND NEGOTIATION PROCEDURE**



25.1 It is recorded that the Parties are both "municipal organs of state" for the purposes of the IRFA. In conducting their affairs, the Parties must seek to achieve the objectives of IRFA by seeking to prevent intergovernmental disputes from arising when exercising their powers or performing their functions in terms of this Agreement; and where such disputes do arise, by giving effect to the constitutional requirement that organs of state must make every reasonable effort to settle the dispute by means of the mechanisms and procedures provided for that purpose, and must exhaust all other remedies before they approach a court to resolve the dispute.

25.2 Should a deadlock or dispute of whatever nature arise in connection with this Agreement or any rights or obligations of the Parties thereunder, the Party claiming the dispute must inform the other Party in writing within 21 days of the date the dispute is said to have arisen, of the nature of the dispute, and that a dispute has been declared ("Dispute Notice"). A copy of the said Dispute Notice shall simultaneously be served on the City's Disputes Settlement Manager ("DSM"). Within 20 (twenty) Business Days of receipt of the Dispute Notice, the Parties shall meet to attempt to resolve the dispute by informal negotiations in good faith. Such meeting ("Negotiation Meeting") shall take place on 7 (seven) days written notice from either Party, at a venue mutually agreed between them and failing such agreement within 24 (twenty four) hours, at the official premises of the Party giving the Dispute Notice. The Parties shall use their best

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endeavours to settle the dispute and negotiations shall be conducted in good faith.

- 25.3 If the Parties are unable to resolve the deadlock or dispute in question within 15 (fifteen) Business Days after the commencement of the Negotiation Meeting or any date to which such Negotiation Meeting has been adjourned (which shall not be more than 30 (thirty) Business Days after the date of the initial Negotiation Meeting), then the deadlock or dispute shall be referred by the DSM on application by either Party, for resolution by mediation.



**26. MEDIATION**

- 26.1 Mediation shall be non-binding on the Parties and shall be conducted by a facilitator appointed for this purpose by the Parties or, if they are not able to agree on a facilitator within 3 (three) Business Days, appointed by the DSM from the panel of recognised facilitators maintained by the DSM.
- 26.2 The mediation will be conducted according to the directions of the facilitator and the Parties shall act in good faith and will respond to all reasonable directions and requests of the facilitator in attempting to resolve the matters in dispute.
- 26.3 The mediation process shall be deemed to have commenced upon written acceptance of the facilitator of his or her appointment. In the event that the mediation has not resolved the dispute within 30 (thirty) Business Days of its commencement (or such extended period as the facilitator may approve in writing) it shall be referred by the DSM on the written request of either Party, for determination in terms of the City's Operational Dispute Resolution Protocol.
- 26.4 Each Party shall bear its own costs save that the costs of the mediator will be shared equally by the Parties and paid on demand.

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