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The Honourable Minister, Dr. Zweli Mkhize,

RE: DEMAND FOR THE PREPARATION, APPROVAL, IMPLEMENTATION AND MONITORING OF A FINANCIAL RESCUE PLAN FOR THE FOLLOWING LOCAL MUNICIPALITIES:

**GOVAN MBEKI LOCAL MUNICIPALITY
MOGALE CITY LOCAL MUNICIPALITY
DITSOBOTLA LOCAL MUNICIPALITY
RUSTENBURG LOCAL MUNICIPALITY**

**EMFULENI LOCAL MUNICIPALITY
MERA FONG LOCAL MUNICIPALITY
MADIBENG LOCAL MUNICIPALITY**

**OUR REF: LG/COGTA05/001
YOU REF: UNKNOWN**

1. The Organisation Undoing Tax Abuse (OUTA) is a proudly South African non-profit civil action organisation, comprising of and supported by people who are passionate about improving the prosperity of our nation. OUTA was established to challenge the abuse of authority, in particular the abuse of taxpayers' money.
2. The OUTA Local Government Initiative is an organised initiative to establish an apolitical civil rights platform on a local level within the jurisdiction of specific local municipalities with the sole purpose of ensuring the efficient and prosperous functioning of municipalities, free from the abuse of authority and governed with the efficient use of tax revenue.

ORGANISATION UNDOING TAX ABUSE (OUTA)

Co Reg: 2012/064213/08 NPO #: 124381NPO

DIRECTORS: Wayne Duvenage, Leopold Pauwen, Benjamin Theron, Stefanie Fick

NON-EXECUTIVE DIRECTORS: Phumlani M Majozi, Ms Ferrial Adam, Ms Wyna Modisapodi, Ms Simi Pillay Van Graan

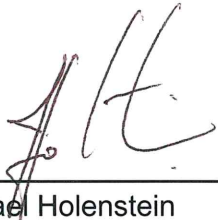
3. Therefore, OUTA Local acts on behalf of supporters, the residents, businesses and communities and more specifically interested and affected parties who represent the interests of residents and businesses within the area of jurisdiction of the local municipality.
4. Chapter 13 of the Constitution deals with General Financial Matters and Section 215 provides that national, provincial and municipal budgets and budgetary processes must promote transparency, accountability and the effective financial management of the economy, debt and the public sector. Section 216 of the Constitution obligates National Treasury to enforce compliance with the measures established in terms of national legislation as prescribed by Section 216(1) of the Constitution by ensuring both transparency and expenditure control in each sphere of government.
5. Section 152 of the Constitution deals with the objects of local government that obligates municipalities to:
 - 5.1 provide democratic and accountable government for local communities;
 - 5.2 ensure the provision of services to communities in a sustainable manner;
 - 5.3 promote social and economic development;
 - 5.4 promote a safe and healthy environment; and
 - 5.5 encourage the involvement of communities and community organisations in the matters of local government.
6. Section 153 of the Constitution obligates municipalities to:
 - 6.1 structure and manage its administration, and budgeting and planning processes to give priority to the basic needs of the community, and to promote the social and economic development of the community; and
 - 6.2 participate in national and provincial development programmes.
7. Section 154(1) of the Constitution obligates the national government and provincial governments to support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions by legislative and other measures. Commensurate with the a foregoing, Section 155(7) of the Constitution empowers the national government and the provincial governments to have the legislative and executive authority to see to the effective performance by municipalities of their functions in respect of matters listed in Schedules 4 and 5, by regulating the exercise by municipalities of their executive authority.
8. Section 139 of the Constitution deals with a variety of permutations relating to the fulfilment of executive obligations and measures to be taken to normalise such situations. Subsection 139(5) deals specifically with a situation where a municipality, as result of a crisis in its financial affairs, is in serious or persistent material breach of its obligations to provide basic services or to meet its financial commitments or admits that it is unable to meet its obligations or financial commitments. In such an instance the relevant provincial executive must:
 - 8.1 impose a recovery plan aimed at securing the municipality's ability to meet its obligations to provide basic services or its financial commitments, which:
 - 8.1.1 is to be prepared in accordance with national legislation; and
 - 8.1.2 binds the municipality in the exercise of its legislative and executive authority, but only to the extent necessary to solve the crisis in its financial affairs;

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- 8.2 dissolve the Municipal Council, if the municipality cannot or does not approve legislative measures, including a budget or any revenue-raising measures, necessary to give effect to the recovery plan, and:
- 8.2.1 appoint an administrator until a newly elected Municipal Council has been declared elected; and
- 8.2.2 approve a temporary budget or revenue-raising measures or any other measures giving effect to the recovery plan to provide for the continued functioning of the municipality; or
- 8.3 if the Municipal Council is not dissolved, assume responsibility for the implementation of the recovery plan to the extent that the municipality cannot or does not otherwise implement the recovery plan.
9. The Municipal Finance Management Act (Act 56 of 2003) (MFMA) deals with municipal finances. Section 18 of the MFMA provides that an annual budget may only be funded from:
- 9.1 realistically anticipated revenues to be collected;
- 9.2 cash-backed accumulated funds from previous years' surpluses not committed for other purposes; and
- 9.3 borrowed funds, but only for the capital budget.
- It thus follows that revenue projections in the budget must be realistic, considering projected revenue for the current year based on collection levels to date and actual revenue collected in previous financial years.
10. Section 96 of the Municipal Systems Act (Act 32 of 2000) (MSA2000) obligates all municipalities to collect all money that is due and payable to it subject to the Act and any other applicable legislation. To ensure legal enforcement, Section 98 of MSA2000 requires that by-laws as local laws of general application be promulgated in the relevant provincial gazette. To ensure oversight and implementation:
- 10.1 Section 99 of the MSA2000 designates a supervisory authority (executive mayor, executive committee or the municipal council itself depending on the grading of the municipality to oversee and monitor:
- 10.1.1 the implementation and enforcement of the municipality's credit control and debt collection policy and any by-laws enacted in terms of section 98; and
- 10.1.2 the performance of the municipal manager in implementing the policy and any by-laws;
- 10.1.3 when necessary, evaluate or review the policy and any by-laws, or the implementation of the policy and any such by-laws, to improve efficiency of its credit control and debt collection mechanisms, processes and procedures; and
- 10.1.4 at such intervals as may be determined by the council report to a meeting of the council,
- 10.2 Section 100 of the MSA2000 obligates the municipal manager or service provider to:
- 10.2.1 implement and enforce the municipality's credit control and debt collection policy and any by-laws enacted;
- 10.2.2 establish in accordance with the credit control and debt collection policy and any such by-laws, effective administrative mechanisms, processes and procedures to collect money that is due and payable to the municipality; and
- 10.2.3 report at such intervals as may be determined by the council, the prescribed particulars to a meeting of the supervisory authority.
11. Section 54 of the MFMA charges a mayor with budgetary control and early identification of financial problems. If the municipality faces any serious financial problems, the mayor must:
- 11.1 promptly respond to and initiate any remedial or corrective steps proposed by the accounting officer to deal with such problems, which may include:

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- 11.1.1 steps to reduce spending when revenue is anticipated to be less than projected in the municipality's approved budget;
 - 11.1.2 the tabling of an adjustments budget; or
 - 11.1.3 steps in terms of Chapter 13 of the MFMA; and
- 11.2 alert the council and the MEC for local government in the province to those problems.
12. In addition, an obligation is placed by Section 41 of the MFMA on the National Treasury to monitor the prices and payments for bulk resources. For this purpose, Section 41(2) of the MFMA provides that each organ of state providing bulk resources to a municipality must within 15 days after the end of each month furnish the National Treasury with a written statement setting out, for each municipality or for each municipal entity providing municipal services on behalf of such municipalities:
 - 12.1 the amount to be paid by the municipality or municipal entity for such bulk resources for that month and for the financial year up to the end of that month;
 - 12.2 the arrears owing and the age profile of such arrears; and
 - 12.3 any actions taken by that organ of state to recover arrears.
 13. To ensure further oversight on the financial affairs of a municipality, Section 131 of the MFMA deals with issues raised by Auditor-General in municipal audit reports. The mayor is obligated to ensure that the municipal council addresses all issues raised by the Auditor-General in such report. In addition, The MEC for local government in the province must:
 - 13.1 assess all annual financial statements of municipalities in the province, the audit reports on such statements and any responses of municipalities to such audit reports, and determine whether municipalities have adequately addressed any issues raised by the Auditor-General in audit reports; and
 - 13.2 report to the provincial legislature any omission by a municipality to adequately address those issues within 60 days.
 14. In terms of Section 135 of the MFMA, the primary responsibility to avoid, identify and resolve financial problems in a municipality, rests with the municipality itself. If a municipality encounters a serious financial problem or anticipates problems in meeting its financial commitments, it must immediately:
 - 14.1 seek solutions for the problem;
 - 14.2 notify the MEC for local government and the MEC for finance in the province; and
 - 14.3 notify organised local government.
 15. Section 136 of the MFMA gives effect to the provisions of Section 139(5)(a)(i) of the Constitution by providing for the types of provincial intervention where there is a serious financial problem in a municipality.
 - 15.1 If the MEC for local government in a province becomes aware that there is a serious financial problem in a municipality, the MEC must promptly:
 - 15.1.1 consult the mayor of the municipality to determine the facts;
 - 15.1.2 assess the seriousness of the situation and the municipality's response to the situation; and
 - 15.1.3 determine whether the situation justifies or requires an intervention in terms of section 139 of the Constitution.
 - 15.2 If the financial problem has been caused by or resulted in a failure by the municipality to comply with an executive obligation in terms of legislation or the Constitution, and the conditions for an intervention in terms of section 139 (1) of the Constitution are met, the provincial executive must promptly decide whether to intervene in the municipality. If the

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- provincial executive decides to intervene, Section 137 of the MFMA applies – a discretionary provincial intervention.
- 15.3 If the municipality has failed to approve a budget or any revenue-raising measures necessary to give effect to the budget, as a result of which the conditions for an intervention in terms of Section 139 (4) of the Constitution are met, the provincial executive must intervene in the municipality in accordance with Section 26 of the MFMA to deal with the consequences of failure to approve budget before start of a budget year.
- 15.4 If the municipality, as a result of a crisis in its financial affairs, is in serious or persistent material breach of its obligations to provide basic services or to meet its financial commitments, or admits that it is unable to meet its obligations or financial commitments, as a result of which the conditions for an intervention in terms of section 139 (5) of the Constitution are met, the provincial executive must intervene in the municipality in accordance with Section 139 of the MFMA – a mandatory provincial intervention arising from a financial crisis.
16. Following the dictum of the Supreme Court of Appeal judgement in the *Premier of the Western Cape v Overberg District Municipality (801/2010) [2011] ZASCA 23 (18 March 2011)*, it would appear that a mandatory intervention in terms of Section 139 of the MFMA must be preceded by a discretionary intervention in terms of Section 137 of the MFMA. Before any intervention steps are contemplated, the national government and the provincial government must ensure that all necessary support has been rendered to local government to strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions.
17. Regardless all these remedial actions mentioned above and despite the obligations of ESKOM and water boards to report monthly in terms of Section 41(2) of the MFMA to National Treasury, this municipality is not able to honour its financial obligations towards these institutions resulting in the rationing of bulk electricity and water to its communities with disastrous consequences, especially where such services have been paid in full to the municipality. Despite possible constitutional constraints and the views expressed by the National Council of Provinces on the feasibility of Section 139 interventions in a press release dated 4 October 2017, OUTA believes:
- 17.1 Where bulk suppliers of services have given notice to ration or cease the supply of an essential service, that the provisions of Section 139(5) of the Constitution be invoked read together with Section 139 of the MFMA and that a financial recovery plan be prepared by the Municipal Financial Recovery Service of National Treasury;
- 17.2 There should be consequences for municipal political office bearers similar to those imposed by the Executive Members' Ethics Act (Act 82 of 1998) for non-compliance with constitutional and legislative obligations;
- 17.3 In view of the constitutional obligation by municipalities to encourage the involvement of communities and community organisations in the matters of local government (Section 152(1)(e)) as well as the basic value and principle of the public administration whereby transparency must be fostered by providing the public with timely, accessible and accurate information (Section 195(1)(g)) that Schedule C of the Municipal Budget and Reporting Regulations, 2008 (published under GN 393 in GG 32141 of 17 April 2009) dealing with the monthly Section 71 reports, be amended so as to:
- 17.3.1 reflect the same information as envisaged in Section 41(2) of the MFMA; and
- 17.3.2 arrangements made to settle debts older than 30 days:-
- as information available to the public and published on the municipality's official website.

18. In view of the dire consequences of the rationing and or ceasing of an essential service to communities and members that OUTA represents, you are accordingly requested to:
- 18.1 Indicate within a period of 14 days from the date hereof the steps that you will be taking to ensure that the continuous supply of essential services to communities will not interrupted and how the amounts owed to ESKOM and the water board by the municipality will be paid;
 - 18.2 Take steps to amend existing legislation with the view of keeping municipal office bearers accountable for failure to execute executive obligations as imposed by national legislation; and
 - 18.3 Ensure that Section 71 of the MFMA monthly reporting reflects debt as envisaged in Section 41(2) of the MFMA as well as debt repayment arrangements made there anent and that same be published on the municipality's official website.



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