Annexure 8.1

Western Cape Government

Local Government

TERMS OF REFERENCE FOR THE INVESTIGATION TO BE CONDUCTED AT BITOU MUNICIPALITY IN TERMS OF SECTION 106(1) OF THE LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT, 2000, READ WITH SECTION 7(1) OF THE WESTERN CAPE MONITORING AND SUPPORT OF MUNICIPALITIES ACT, 2014

1. Designation of an investigator

1.1 The designation by the Provincial Minister of Local Government, Environmental Affairs and Development Planning ("the Provincial Minister") of one or more persons to investigate the new allegations concerning Bitou Municipality ("the Municipality") in terms of section 106(1)(b) of the Local Government: Municipal Systems Act, 2000 ("the MSA"), read with section 7(1)(a) of the Western Cape Monitoring and Support of Municipalities Act, 2014 ("the Western Cape Act"), shall become effective upon the acceptance of the designation as investigator, in writing, by the person(s) so designated, on the terms and conditions of the said designation, including but not limited to the fees and disbursements that shall be paid to such person(s) by the Department of Local Government ("the Department").

1.2 The designated person(s) in this regard shall hereinafter be referred to as "the investigator".

2. Deliverables

2.1 Subject to 2.2 below, the investigator shall be required to give effect to the following:

2.1.1 The investigator must develop an investigation plan, which must be submitted to and approved by the Department. This investigation plan must detail the scope of the investigation, milestones for completion of all phases of the investigation and timeframes (including but not limited to a date on which each of the reports referred to in 2.1.6 below shall be issued to the Department);

2.1.2 The investigation is to be conducted by the investigator in accordance with best practice in the forensic investigative industry and subject to the provisions set out herein;

2.1.3 Gathering of evidence for the purposes of the investigation must include digital forensic evidence, where applicable;

2.1.4 Collection of all evidence obtained for the purposes of the investigation must be done in a manner that will ensure that such evidence is admissible in a court of law. Evidence collected must include statements or affidavits, where necessary and appropriate;

2.1.5 All interviews (consultations) must be digitally recorded and the recordings must be provided to the Department for filing purposes;

2.1.6 All findings must be recorded in a comprehensive forensic investigation report together with substantiating source documents. Such report shall initially be issued as a preliminary forensic investigation report and shall only be issued as the final forensic investigation report after receiving and addressing feedback from the Department on the preliminary forensic investigation report. All data, information, analyses and other related documents contained in such reports will become the property of the Department upon the issue of these reports to the Department. The use of such data, information, analyses and other related documents by the investigator will only be permitted by obtaining the prior written confirmation to this effect from the Department;

2.1.7 The investigator must be available to commence with the investigation immediately upon conclusion of the agreement referred to in 1 above and must be able to provide the final forensic investigation report with detailed findings and recommendations not later than eight weeks after the date of commencement of the investigation;

2.1.8 An A1 affidavit must be drafted by the investigator for the purpose of reporting any criminal action to the South African Police Services (if applicable); and

2.1.9 The Department may require two presentations to be made by the investigator, namely one presentation to the Municipality in question and one presentation to officials and public representatives of the Western Cape Government. In this regard, the presentations must be done by the leader of the forensic investigation team that successfully completes the investigation contemplated herein.

2.2 The investigator will be paid at a rate that does not exceed the standard prescribed fees applicable to the profession. Invoices for work done and expenses incurred, may be submitted at the end of each phase of the investigation.

2.3 The investigator shall be required to deliver on all items set out in 2.1 above (where applicable) in phases as per the table below:

SCOPE OF THE INVESTIGATION	MILESTONES	TIMEFRAME
Phase 1: Preparation & Planning The preparation phase establishes the forensic investigation team and secures the information for the investigation.	• Secure and review relevant policies, procedures, guidelines and standard operating procedures. • Secure and review documentation and information from officials and third-parties that may have knowledge of the issues. • Secure the human resource files of the implicated officials. • Secure the list of computers, tablets and mobile phones of the implicated officials. • Prepare scenarios for the interaction with implicated individuals and/or entities based on a thoroughly considered set of fictitious facts. • Hold meetings with the key stakeholders.	1 Week
Phase 2: Intelligence on Individuals and Entities The investigator will secure intelligence on the selected individuals and entities using a comprehensive range of sources, including numerous local and multinational subscription-based corporate intelligence database services that provide the most accurate and current information available. The investigator's corporate intelligence analysts will secure information from social media, open source intelligence, subscription-	• Personal particulars including, *inter alia*, identity number or passport number, name, gender, marital status, current contact information, residential and postal address and employment information. • Marital status including, inter alia, identity number, first name, surname and marital type of spouse/partner. • Asset interests including, inter alia, business interests, immoveable (property) interests and moveable (motor vehicle) interests. • Debt summary including, inter alia, current debt obligations, legal enforcement action taken, court notices, credit enquiries performed on the individual by credit providers and debt counselling information. • Payment profile of credit accounts including, inter alia, a 24-month payment behaviour of all credit agreements as reported by the	1 Week

SCOPE OF THE INVESTIGATION	MILESTONES	TIMEFRAME
based database services and public records.	Credit Grantors belonging to Credit Providers Association. • Payment profile of National Loans Register accounts including, inter alia, a 24-month payment behaviour of all credit agreements as reported by Micro Lenders as part of the National Loans Register. • Collections snapshot including, inter alia, debt summary, affordability & Instalment Determination, payment gap, credit activeness and industry arrear status. • Credit health summary including, inter alia, debt review status, court notices, judgements and legal enforcement action taken by credit providers. • Payment alerts including, inter alia, alerts loaded for early and late stage collections for non-performing accounts. • Credit enquiries including, inter alia, organisations or credit providers who have requested a credit report on the individual. • Authentication including, inter alia, organisations or credit providers who have authenticated the individual. • Adverse media including, inter alia, news and other directory items on various international databases focusing on the usual key areas of concern (with keyword searches including corruption, bribery, fraud, embezzlement, money laundering, crime, murder, government, sentence, fine, litigation, investigation, violation, lawsuit, penalty, theft, antitrust and deception).	
Phase 3: Dismissal of Vuyokazi Mbelani at Ngqushwe Municipality and her subsequent appointment at the Bitou Municipality The investigator will investigate the allegation that Vuyokazi Mbelani was previously dismissed from the Ngqushwe Municipality for misconduct and that her disclosure to the Municipality as part of her application for employment to the position	• Securing and reviewing the human resource file held for Vuyokazi Mbelani at the municipality. • Securing and reviewing the forensic investigation report(s) into her behaviour and conduct at Ngqushwe Municipality. • Securing and reviewing information presented at disciplinary hearings. • Securing and reviewing information presented at the South African Local Government Bargaining Council. • Securing and reviewing information presented at the Labour Court.	1 Week

SCOPE OF THE INVESTIGATION	MILESTONES	TIMEFRAME
of Head of Department: Corporate Services was incomplete and misleading.	• Contacting representatives of the Ngqushwe Municipality and/or their attorneys to confirm the outcome of events. • Contacting the attorney of Vuyokazi Mbelani to confirm the outcome of events recorded in written correspondence.	
Phase 4: Possible Mismanagement of the Grant-In-Aid Discretionary Fund The investigator will investigate 50 applications to the Grant-in-Aid Discretionary Fund to determine whether there was any possible mismanagement of the Grant-in-Aid Discretionary Fund.	• Securing and reviewing the 50 applications to the Grant-in-Aid Discretionary Fund. • Investigating the registration of the beneficiary entities. • Determining whether the applications have a business plan and budget for the expenditure items. • Securing and reviewing the financial reports prepared on a monthly basis by the beneficiary entities. • Securing and reviewing the audit reports prepared by the municipality on the beneficiary entities. • Securing and reviewing financial statements and bank account statements from the beneficiary entities. • Securing and reviewing supporting documentation from the beneficiary entities on the expenditure of the funds. • Comparing the application for funding to the payments made to the beneficiary entities to identify discrepancies and anomalies. • Interviewing officials, beneficiary entities or third-parties which have knowledge of the allegation.	1 Week
Phase 5: Donation of 36,000 Bricks towards the 100-day Programme The investigator will investigate the allegation that bricks were donated towards the 100-day programme and that excess bricks were removed for use at private residential premises.	• Determining the objective and scope of the 100-day programme. • Securing and reviewing the documentation on the request for the donation of bricks. • Securing and reviewing the allocation of bricks to the donation. • Securing and reviewing the delivery of the bricks to designated site(s). • Determining the square meterage of the designated site(s) where the donated bricks would be installed. • Interviewing officials, employees at Kurland Bricks or third-parties which have knowledge of the allegation.	1 Week
Phase 6: Donation of R10,000 towards the Workshop for Mayoral Staff	• Determining the objective and scope of the workshop for mayoral staff.	1 Week

SCOPE OF THE INVESTIGATION	MILESTONES	TIMEFRAME
The investigator will investigate the allegation that a donation of R10,000 was made by Kurland Bricks towards the workshop for the mayoral staff at the Dunes Restaurant.	• Securing and reviewing documentation on the payment for the workshop by the municipality. • Securing and reviewing the documentation on the request for the donation of R10,000 towards a credit line for the consumption of alcohol. • Interviewing officials, employees at Kurland Bricks, employees at the Dunes Restaurant or third-parties which have knowledge of the allegation.	
Phase 7: Possible Misrepresentation of Expenditure at Restaurants The investigator will investigate the allegation that officials have established a scheme to privately entertain themselves at several restaurants in Plettenberg Bay at the expense of the Municipality.	• Identifying restaurants implicated in the allegation. • Interviewing current and previous employees of the restaurants to secure further information on the possible misrepresentation. • Securing and reviewing documentation on the possible fraudulent misrepresentation of expenditure. • Interviewing officials or third-parties which have knowledge of the allegation.	1 Week
Phase 8: Requests for Bribes to secure the Award of a Tender The investigator will investigate the allegation that someone purporting to be "Vincent Mkhefa" is soliciting a bribe of R50,000 to secure the award of tender number SCM/2018/79/ENG for the Upgrading of Natures Valley Bulk Water Supply – Phase 1.	• Securing the mobile telephone number on the person soliciting the bribe from the service providers. • Securing detailed information on the owner of the mobile telephone number/handset secured via a subpoena in terms of Section 205 of the Criminal Procedure Act (51 of 1977) by the Directorate for Priority Crime Investigation. • Securing the bank account information where the bribe needs to be deposited from the service providers. • Securing detailed information on the owner of the bank account secured via a subpoena in terms of Section 205 of the Criminal Procedure Act (51 of 1977) by the Directorate for Priority Crime Investigation. • Interviewing officials, service providers or third-parties which have knowledge of the allegation.	1 Week
Phase 9: Certain Ghost Companies which allegedly do not provide Goods or Services	• Securing and reviewing information on the ten ghost companies. • Determining whether the ten ghost companies are on the supplier database.	1 Week

SCOPE OF THE INVESTIGATION	MILESTONES	TIMEFRAME
The investigator will investigate the allegation that ten ghost companies have been the beneficiary of payments without them providing any goods or services to the value of the payments to the Municipality.	• Determining whether contracts and/or service level agreements have been concluded with the ghost companies. • Determining whether payments have been made to the ghost companies for the procurement of goods and services. • Interviewing officials, service providers or third-parties which have knowledge of the allegation.	
Phase 10: Human Resource Mismanagement The investigator will investigate the allegation of mismanagement and maladministration within the Human Resources Department of the Municipality.	• Securing and reviewing documentation pertaining to human resource files. • Securing and reviewing relevant legislation, policies and procedures. • Securing and reviewing relevant minutes of meetings as well as correspondence. • Interviewing officials and third-parties which have knowledge of the allegation.	1 Week
Phase 11: ABSA Loan Agreement for R25 Million The investigator will investigate the allegation that Vuyokazi Mbelani was not duly authorised to sign the agreement on behalf of the Municipality	• Securing and reviewing documentation pertaining to the loan agreement with ABSA. • Determining whether Vuyokazi Mbelani was authorised to sign the loan agreement on behalf of the Municipality. • Determining which official was acting as Municipal Manager at the time. • Interviewing officials and third-parties which have knowledge of the allegation.	1 Week
Phase 12: Purchase of Stationery from a store without authorisation and without the store being a designated supplier. The investigator will investigate the allegation that officials within the Office of the Executive Mayor purchased stationery at the PNA Plettenberg Bay store, without paying for the goods.	• Securing and reviewing documentation pertaining to the purchase of stationery at the PNA Plettenberg Bay store. • Determining whether a valid purchase order was obtained to make the purchase. • Determining whether PNA Plettenberg Bay is a designated supplier to the Municipality. • Interviewing officials and third-parties which have knowledge of the allegation.	1 Week
Phase 13: Unresolved Forensic Investigation: Whistle-blower compliant that Peter Lobese received concurrent salaries The investigator will investigate the allegation	• Securing and reviewing documentation pertaining to the salaries received by Peter Lobese. • Interviewing officials and third-parties which have knowledge of the allegation.	1 Week

SCOPE OF THE INVESTIGATION	MILESTONES	TIMEFRAME
that Peter Lobese is receiving salaries from Makana Municipality as well as Bitou Municipality.		
Phase 14: Rental of Mayoral Vehicle costing R60,000 per month The investigator will investigate the allegation that a vehicle was rented for the Executive Mayor at a cost of R60,000 and bypassing the required Supply Chain Management processes.	• Securing and reviewing documentation pertaining to the rental of vehicles for the Executive Mayor. • Securing and reviewing of relevant legislation, supply chain management policies and procedures. • Interviewing officials and third-parties which have knowledge of the allegation.	1 Week
Phase 15: Procurement of Personal Security and Protection Services for the Executive Mayor The investigator will investigate the allegation that personal security and home protection services to the value of R180,000 per month was procured for the Executive Mayor despite two separate risks assessments conducted by the SAPS.	• Securing and reviewing documentation pertaining to the procurement of personal security and protection services for the Executive Mayor. • Securing and reviewing of relevant legislation, supply chain management policies and procedures. • Interviewing officials and third-parties which have knowledge of the allegation.	1 Week
Phase 16: Reporting The investigator will provide the Western Cape Department of Local Government with regular progress reports. The investigator will present our findings in a forensic investigation report together with supporting exhibits of evidence.	Progress Reports: • Weekly progress reports to the Western Cape Department of Local Government. Comprehensive forensic investigation reports will be issued: • A preliminary report, which will be discussed with the Western Cape Department of Local Government. • Once feedback from the Western Cape Department of Local Government has been received and addressed, a final report will be issued. The forensic investigation report will cover the following: • Scope and Mandate of the forensic investigation. • Key findings and recommendations on further action to be taken.	Weekly TBD TBD

SCOPE OF THE INVESTIGATION	MILESTONES	TIMEFRAME
	• Behaviour and conduct of individuals and entities to determine whether there have been any transgressions and/or violations of legislation, regulations, policies, procedures and guidelines. The transgressions and/or violations will be documented in our recommendations for disciplinary, criminal and/or civil action. • Supporting exhibits of evidence will provide evidentiary proof of the facts and will substantiate the findings of the forensic investigation.	
	An A1 affidavit will be drafted by the investigator for the purpose of reporting any criminal action to the South African Police Services, if applicable.	TBD
	Two separate presentations will be made to the Municipality and to representatives of the Western Cape Government respectively, if required.	TBD

2.4 The investigator shall be required to provide weekly progress reports in writing to the Department throughout the duration of the contract until such time as the final forensic investigation report has been submitted by the investigator.

2.5 Should the Department be unable to proceed with any stage of the work contemplated herein for any legitimate reason whatsoever, the Provincial Minister may, with immediate effect, terminate the designation contemplated herein by way of a written notice to this effect to the investigator. The investigator shall only be entitled in such circumstances to claim payment from the Department for work actually done as at the date upon which the designation is terminated.

3. Fees and disbursements payable to the investigator

3.1 The total fees and disbursements payable to the person(s) designated to conduct the investigation, shall be based on the written quotation(s) submitted by the investigator to the Department.

3.2 The quotation price of the investigator includes VAT, as well as all costs for any and all accommodation, meals, transport, security services and other services, products or technology/equipment that the investigator will need to undertake and complete the work contemplated herein successfully.

3.3 The investigator shall not be entitled to claim payment from the Department under any circumstances of any amount outside or beyond the all-inclusive fixed price per phase and/or total all-inclusive fixed price referred to above.

3.4 The Department shall only be liable to pay for work actually completed by the investigator. As such, the investigator may only invoice the Department for work actually completed up to the date upon which the designation contemplated herein is terminated.

4. Conflict of interest

The investigator may not act in any way that is inconsistent with his/her/its duties and may not expose him/herself/itself to any situation involving the risk of a conflict of interest between the official responsibilities required of the contract contemplated herein and his/her/its private interest.

5. Declaration of interest

A declaration of interest is required from each person designated to conduct the investigation and to carry out the work contemplated herein. The investigator must ensure that its support staff remains independent in relation to the activities they perform at all times.

6. Confidentiality

6.1 This is a highly sensitive and confidential matter and some of the parties implicated in the investigation contemplated herein might not necessarily be involved in an impropriety. The investigator must therefore ensure that it and its staff will act diplomatically and discreetly at all times in all consultations with subjects of the investigation.

6.2 Information provided to the investigator by the Department and any and all persons pursuant to the investigation contemplated herein, shall be on the basis that it will remain confidential and will not be disclosed to any third party, save as may be otherwise agreed in writing with the Department.

6.3 The investigator is required to take the necessary steps to maintain and uphold the integrity and confidentiality of the information obtained before, during or after the investigation, at all times.

B

INVESTIGATION TO BE CONDUCTED AT BITOU MUNICIPALITY IN TERMS OF SECTION 106(1) OF THE LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT, 2000, READ WITH SECTION 7(1) OF THE WESTERN CAPE MONITORING AND SUPPORT OF MUNICIPALITIES ACT, 2014

INVESTIGATION PLAN

SCOPE OF THE INVESTIGATION	MILESTONES	TIMEFRAME
Phase 1: Preparation & Planning The preparation phase establishes the forensic investigation team and secures the information for the investigation.	• Secure and review relevant policies, procedures, guidelines and standard operating procedures. • Secure and review documentation and information from officials and third-parties that may have knowledge of the issues. • Secure the human resource files of the implicated officials. • Secure the list of computers, tablets and mobile phones of the implicated officials. • Prepare scenarios for the interaction with implicated individuals and/or entities based on a thoroughly considered set of fictitious facts. • Hold meetings with the key stakeholders.	1 Week
Phase 2: Intelligence on Individuals and Entities The investigator will secure intelligence on the selected individuals and entities using a comprehensive range of sources, including numerous local and multinational subscription-based corporate intelligence database services that provide the most accurate and current information available. The investigator's corporate intelligence analysts will secure information from social media, open source	• Personal particulars including, *inter alia*, identity number or passport number, name, gender, marital status, current contact information, residential and postal address and employment information. • Marital status including, inter alia, identity number, first name, surname and marital type of spouse/partner. • Asset interests including, inter alia, business interests, immoveable (property) interests and moveable (motor vehicle) interests. • Debt summary including, inter alia, current debt obligations, legal enforcement action taken, court notices, credit enquiries performed on the individual by credit providers and debt counselling information. • Payment profile of credit accounts including, inter alia, a 24-month payment behaviour of all credit	1 Week

SCOPE OF THE INVESTIGATION	MILESTONES	TIMEFRAME
intelligence, subscription-based database services and public records.	agreements as reported by the Credit Grantors belonging to Credit Providers Association. • Payment profile of National Loans Register accounts including, inter alia, a 24-month payment behaviour of all credit agreements as reported by Micro Lenders as part of the National Loans Register. • Collections snapshot including, inter alia, debt summary, affordability & Instalment Determination, payment gap, credit activeness and industry arrear status. • Credit health summary including, inter alia, debt review status, court notices, judgements and legal enforcement action taken by credit providers. • Payment alerts including, inter alia, alerts loaded for early and late stage collections for non-performing accounts. • Credit enquiries including, inter alia, organisations or credit providers who have requested a credit report on the individual. • Authentication including, inter alia, organisations or credit providers who have authenticated the individual. • Adverse media including, inter alia, news and other directory items on various international databases focusing on the usual key areas of concern (with keyword searches including corruption, bribery, fraud, embezzlement, money laundering, crime, murder, government, sentence, fine, litigation, investigation, violation, lawsuit, penalty, theft, antitrust and deception).	
Phase 3: Dismissal of Vuyokazi Mbelani at Ngqushwe Municipality and her subsequent appointment at the Bitou Municipality	• Securing and reviewing the human resource file held for Vuyokazi Mbelani at the municipality. • Securing and reviewing the forensic investigation report(s) into her behaviour and conduct at Ngqushwe Municipality.	1 Week

SCOPE OF THE INVESTIGATION	MILESTONES	TIMEFRAME
The investigator will investigate the allegation that Vuyokazi Mbelani was previously dismissed from the Ngqushwe Municipality for misconduct and that her disclosure to the Municipality as part of her application for employment to the position of Head of Department: Corporate Services was incomplete and misleading.	• Securing and reviewing information presented at disciplinary hearings. • Securing and reviewing information presented at the South African Local Government Bargaining Council. • Securing and reviewing information presented at the Labour Court. • Contacting representatives of the Ngqushwe Municipality and/or their attorneys to confirm the outcome of events. • Contacting the attorney of Vuyokazi Mbelani to confirm the outcome of events recorded in written correspondence.	
Phase 4: Possible Mismanagement of the Grant-In-Aid Discretionary Fund The investigator will investigate 50 applications to the Grant-in-Aid Discretionary Fund to determine whether there was any possible mismanagement of the Grant-in-Aid Discretionary Fund.	• Securing and reviewing the 50 applications to the Grant-in-Aid Discretionary Fund. • Investigating the registration of the beneficiary entities. • Determining whether the applications have a business plan and budget for the expenditure items. • Securing and reviewing the financial reports prepared on a monthly basis by the beneficiary entities. • Securing and reviewing the audit reports prepared by the municipality on the beneficiary entities. • Securing and reviewing financial statements and bank account statements from the beneficiary entities. • Securing and reviewing supporting documentation from the beneficiary entities on the expenditure of the funds. • Comparing the application for funding to the payments made to the beneficiary entities to identify discrepancies and anomalies. • Interviewing officials, beneficiary entities or third-parties which have knowledge of the allegation.	1 Week
Phase 5: Donation of 36,000 Bricks towards the 100-day Programme	• Determining the objective and scope of the 100-day programme.	1 Week

SCOPE OF THE INVESTIGATION	MILESTONES	TIMEFRAME
The investigator will investigate the allegation that bricks were donated towards the 100-day programme and that excess bricks were removed for use at private residential premises.	• Securing and reviewing the documentation on the request for the donation of bricks. • Securing and reviewing the allocation of bricks to the donation. • Securing and reviewing the delivery of the bricks to designated site(s). • Determining the square meterage of the designated site(s) where the donated bricks would be installed. • Interviewing officials, employees at Kurland Bricks or third-parties which have knowledge of the allegation.	
Phase 6: Donation of R10,000 towards the Workshop for Mayoral Staff The investigator will investigate the allegation that a donation of R10,000 was made by Kurland Bricks towards the workshop for the mayoral staff at the Dunes Restaurant.	• Determining the objective and scope of the workshop for mayoral staff. • Securing and reviewing documentation on the payment for the workshop by the municipality. • Securing and reviewing the documentation on the request for the donation of R10,000 towards a credit line for the consumption of alcohol. • Interviewing officials, employees at Kurland Bricks, employees at the Dunes Restaurant or third-parties which have knowledge of the allegation.	1 Week
Phase 7: Possible Misrepresentation of Expenditure at Restaurants The investigator will investigate the allegation that officials have established a scheme to privately entertain themselves at several restaurants in Plettenberg Bay at the expense of the Municipality.	• Identifying restaurants implicated in the allegation. • Interviewing current and previous employees of the restaurants to secure further information on the possible misrepresentation. • Securing and reviewing documentation on the possible fraudulent misrepresentation of expenditure. • Interviewing officials or third-parties which have knowledge of the allegation.	1 Week
Phase 8: Requests for Bribes to secure the Award of a Tender The investigator will investigate the allegation that someone	• Securing the mobile telephone number on the person soliciting the bribe from the service providers. • Securing detailed information on the owner of the mobile telephone number/handset secured via a subpoena in terms of Section 205 of	1 Week

SCOPE OF THE INVESTIGATION	MILESTONES	TIMEFRAME
purporting to be "Vincent Mkhefa" is soliciting a bribe of R50,000 to secure the award of tender number SCM/2018/79/ENG for the Upgrading of Natures Valley Bulk Water Supply – Phase 1.	the Criminal Procedure Act (51 of 1977) by the Directorate for Priority Crime Investigation. • Securing the bank account information where the bribe needs to be deposited from the service providers. • Securing detailed information on the owner of the bank account secured via a subpoena in terms of Section 205 of the Criminal Procedure Act (51 of 1977) by the Directorate for Priority Crime Investigation. • Interviewing officials, service providers or third-parties which have knowledge of the allegation.	
Phase 9: Certain Ghost Companies which allegedly do not provide Goods or Services The investigator will investigate the allegation that ten ghost companies have been the beneficiary of payments without them providing any goods or services to the value of the payments to the Municipality.	• Securing and reviewing information on the ten ghost companies. • Determining whether the ten ghost companies are on the supplier database. • Determining whether contracts and/or service level agreements have been concluded with the ghost companies. • Determining whether payments have been made to the ghost companies for the procurement of goods and services. • Interviewing officials, service providers or third-parties which have knowledge of the allegation.	1 Week
Phase 10: Human Resource Mismanagement The investigatorwill investigate the allegation of mismanagement and maladministration within the Human Resources Department of the Municipality.	• Securing and reviewing documentation pertaining to human resource files. • Securing and reviewing relevant legislation, policies and procedures. • Securing and reviewing relevant minutes of meetings as well as correspondence. • Interviewing officials and third-parties which have knowledge of the allegation.	1 Week
Phase 11: ABSA Loan Agreement for R25 Million	• Securing and reviewing documentation pertaining to the loan agreement with ABSA. • Determining whether Vuyokazi Mbelani was authorised to sign the	1 Week

SCOPE OF THE INVESTIGATION	MILESTONES	TIMEFRAME
The investigator will investigate the allegation that Vuyokazi Mbelani was not duly authorised to sign the agreement on behalf of the Municipality	loan agreement on behalf of the Municipality. • Determining which official was acting as Municipal Manager at the time. • Interviewing officials and third-parties which have knowledge of the allegation.	
Phase 12: Purchase of Stationery from a store without authorisation and without the store being a designated supplier. The investigator will investigate the allegation that officials within the Office of the Executive Mayor purchased stationery at the PNA Plettenberg Bay store, without paying for the goods.	• Securing and reviewing documentation pertaining to the purchase of stationery at the PNA Plettenberg Bay store. • Determining whether a valid purchase order was obtained to make the purchase. • Determining whether PNA Plettenberg Bay is a designated supplier to the Municipality. • Interviewing officials and third-parties which have knowledge of the allegation.	1 Week
Phase 13: Unresolved Forensic Investigation: Whistle-blower compliant that Peter Lobese received concurrent salaries The investigator will investigate the allegation that Peter Lobese is receiving salaries from Makana Municipality as well as Bitou Municipality.	• Securing and reviewing documentation pertaining to the salaries received by Peter Lobese. • Interviewing officials and third-parties which have knowledge of the allegation.	1 Week
Phase 14: Rental of Mayoral Vehicle costing R60,000 per month The investigator will investigate the allegation that a vehicle was rented for the Executive Mayor at a cost of R60,000 and bypassing the required Supply Chain	• Securing and reviewing documentation pertaining to the rental of vehicles for the Executive Mayor. • Securing and reviewing of relevant legislation, supply chain management policies and procedures. • Interviewing officials and third-parties which have knowledge of the allegation.	1 Week

SCOPE OF THE INVESTIGATION	MILESTONES	TIMEFRAME
Management processes.		
Phase 15: Procurement of Personal Security and Protection Services for the Executive Mayor The investigator will investigate the allegation that personal security and home protection services to the value of R180,000 per month was procured for the Executive Mayor despite two separate risks assessments conducted by the SAPS.	• Securing and reviewing documentation pertaining to the procurement of personal security and protection services for the Executive Mayor. • Securing and reviewing of relevant legislation, supply chain management policies and procedures. • Interviewing officials and third-parties which have knowledge of the allegation.	1 Week
Phase 16: Reporting The investigator will provide the Western Cape Department of Local Government with regular progress reports. The investigator will present our findings in a forensic investigation report together with supporting exhibits of evidence.	Progress Reports: • Weekly progress reports to the Western Cape Department of Local Government. Comprehensive forensic investigation reports will be issued: • A preliminary report, which will be discussed with the Western Cape Department of Local Government. • Once feedback from the Western Cape Department of Local Government has been received and addressed, a final report will be issued. The forensic investigation report will cover the following: • Scope and Mandate of the forensic investigation. • Key findings and recommendations on further action to be taken. • Behaviour and conduct of individuals and entities to determine whether there have been any transgressions and/or violations of legislation, regulations, policies, procedures and guidelines. The transgressions and/or violations will be documented in our recommendations for disciplinary, criminal and/or civil action.	Weekly TBA TBA

SCOPE OF THE INVESTIGATION	MILESTONES	TIMEFRAME
	• Supporting exhibits of evidence will provide evidentiary proof of the facts and will substantiate the findings of the forensic investigation.	
	An A1 affidavit will be drafted by the investigator for the purpose of reporting any criminal action to the South African Police Services, if applicable.	TBA
	Two separate presentations will be made to the Municipality and to representatives of the Western Cape Government respectively, if required.	TBA

The forensic investigation will be based on a number of key assumptions:

- The timely provision of documentation and information.
- The full co-operation of internal and external resources to support the investigation.
- The timely provision of the policies, procedures, guidelines and standard operating procedures for the organisation.
- The support of the sponsor to remove organisational and business obstacles that are hampering the investigation.
- The co-operation and support of the Directorate for Priority Crime Investigation to secure subpoenas in terms of Section 205 of the Criminal Procedure Act (51 of 1977) to secure and preserve digital and documentary evidence.

PREPARED BY:

Peter Allwright and

Sias Strydom

Annexure 8.2

1. LEGISLATIVE FRAMEWORK

1.1 The Municipal Finance Management Act 56 of 2003 ("MFMA")

1.1.1 The MFMA has defined a number of terms as follows:

(a) "irregular expenditure", in relation to a municipality or municipal entity, means-

(i) expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, a requirement of this Act, and which has not been condoned in terms of section 170;

(ii) expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, a requirement of the Municipal Systems Act, and which has not been condoned in terms of that Act;

(iii) expenditure incurred by a municipality in contravention of, or that is not in accordance with, a requirement of the Public Office-Bearers Act, 1998 (Act No. 20 of 1998); or

(iv) expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, a requirement of the supply chain management policy of the municipality or entity or any of the municipality's by-laws giving effect to such policy, and which has not been condoned in terms of such policy or by-law, but excludes expenditure by a municipality which falls within the definition of "unauthorised expenditure";

(b) "official", in relation to a municipality or municipal entity, means-

(i) an employee of a municipality or municipal entity;

(ii) a person seconded to a municipality or municipal entity to work as a member of the staff of the municipality or municipal entity; or

(iii) a person contracted by a municipality or municipal entity to work as a member of the staff of the municipality or municipal entity otherwise than as an employee;

(c) "fruitless and wasteful expenditure" means expenditure that was made in vain and would have been avoided had reasonable care been exercised;

1.1.2 Section 32 of the MFMA outlines how unauthorised, irregular or fruitless and wasteful expenditure is managed within a Municipality. Section 32(1) sets out in which situations a political office-bearer, the accounting officer or a municipal official will be liable for such expenditure. Section 32(1)(c) and (d) specifically set states that where a political office-bearer or municipal official who deliberately or negligently made or authorised either an irregular expenditure or a fruitless and wasteful expenditure, they are liable for that expenditure.

1.1.3 In terms of section 65 of the MFMA, a municipality is obliged to maintain an effective system of expenditure control, including procedures for the approval, authorisation, withdrawal and payment of funds. Section 65 furthermore states that the accounting officer is responsible for the management of the expenditure of the municipality and must take all reasonable steps to ensure that the municipality has and maintains an effective system of expenditure control.

1.1.4 Section 67 of the MFMA stipulates what conditions must be fulfilled before municipal funds can be transferred to an organisation or body outside any sphere of government otherwise than in compliance with a commercial or other business transaction. The accounting officer must be satisfied that the organisation or body has the capacity and has agreed to comply with any agreement concluded with the municipality. The accounting officer must be satisfied that the organisation or body has agreed to comply with all the reporting, financial management and auditing requirements stipulated in the agreement. The organisation or body must furthermore report on actual expenditure against such a transfer of funds at least monthly, as well as submit audited financial statements for its financial year to the accounting officer. The accounting officer must through contractual and other appropriate mechanisms enforce compliance with the above conditions.

1.1.5 Section 105 of the MFMA puts forward a number of duties on the officials of a municipal entity exercising financial management responsibilities within that official's area of responsibility. Section 105(a) states that the municipal official must ensure that the system of financial management and internal control established for the municipal entity must be carried out diligently. Section 105(1) (c) states that the municipal official must ensure that any irregular expenditure, fruitless and wasteful expenditure and other losses are prevented.

1.2 The Municipal Systems Act 32 of 2000 ("Municipal Systems Act")

1.2.1 The Municipal Systems Act defines a number of terms as follows:

(a) "Code of Conduct", in relation to-

(i) a councillor, means the Code of Conduct set out in Schedule 1; and

(ii) a staff member of a municipality, means the Code of Conduct set out in Schedule 2;

(b) "councillor" means a member of a municipal council;

(c) "MEC for local government" means the MEC responsible for local government in a province;

(d) "Minister" means the national Minister responsible for local government;

1.2.2 Section 54A of the Municipal Systems act governs the process of appointing a municipal manager for a municipality. Section 56 governs the appointment of managers directly accountable to the municipal manager of the municipality. Section 57(1)(b) stipulates that it is required, as part of their appointment, that a separate performance agreement be concluded annually between the Municipality and the municipal manager, as well as any managers directly accountable to him. Section 57(2) governs the requirements of these performance agreements.

1.2.3 Section 67 of the Municipal Systems Act governs the development and adoption of appropriate systems and procedures that ensure fair, efficient, effective and transparent personnel administration. These systems include the following:

(a) the recruitment, selection and appointment of persons as staff members,

(b) service conditions of staff;

(c) the supervision and management of staff

(d) the monitoring, measuring and evaluating of performance of staff

(e) the promotion and demotion of staff;

(f) the transfer of staff;

(g) grievance procedures;

(h) disciplinary procedures;

(i) the investigation of allegations of misconduct and complaints against staff

(j) the dismissal and retrenchment of staff, and

(k) any other matter prescribed by regulation in terms of section 72.

1.2.4 Section 106 (1)(b) allows the MEC to designate a person or persons to investigate a matter where the MEC has reason to believe that a municipality in the province cannot or does not fulfil a statutory obligation binding on that municipality or that maladministration, fraud, corruption or any other serious malpractice has occurred or is occurring in a municipality in the province.

1.2.5 Schedule 1 of the Municipal Systems Act sets out a Code of Conduct for councillors established with the purpose of ensuring that councillors fulfil their obligations to their communities and support the municipality in achieving its objectives.

(a) Section 7 of the Code of Conduct states that councillors must declare a number of financial interests held by them in writing to the municipal manager within 60 days of their appointment/election. Any change in the nature or detail of these financial interests must be declared by the councillor in writing to the municipal manager on an annual basis. Additionally, any gifts received by a councillor above a prescribed amount must be declared in the same way. The financial interests that councillors are prescribed to disclose are as follows:

(i) shares and securities in any company;

(ii) membership of any close corporation;

(iii) interest in any trust;

(iv) directorships;

(v) partnerships;

(vi) other financial interests in any business undertaking;

(vii) employment and remuneration;

(viii) interest in property;

(ix) pension; and

(x) subsidies, grants and sponsorships by any organisation.

(b) Section 14 of the Code of Conduct prescribes the procedure to be followed should this Code of Conduct be breached by a councillor. Section 13 stipulates the duty of a chairperson of a municipal council if they are of the opinion, on reasonable suspicion, that the Code of Conduct has been breached by a councillor.

1.2.6 Schedule 2 of the Municipal Systems Act sets out a Code of Conduct for municipal staff members.

(a) Section 2 of the Code of Conduct sets out the general conduct expected of municipal staff members. Section 2(d) states that municipal staff members must act in the best interest of the municipality and in such a way that they do not compromise the credibility and integrity of the municipality.

(b) Section 4 of the Code of Conduct outlines under which circumstances a municipal staff member will be seen to be acting for personal gain and prohibits municipal staff members from doing so. Section 4(1)(a) in particular prohibits municipal staff members from using the position or privileges of a staff member, or confidential information obtained as a staff member, for private gain or to improperly benefit another person.

(c) Section 5A of the Code of Conduct states that persons appointed in terms of section 56 of the Municipal Systems Act or a municipal manager must declare in writing to the chairperson of the municipal council a number of financial interests held by them within 60 days of their appointment/election. Any change in the nature or detail of these financial interests must be declared in writing to the chairperson of the municipal council quarterly. The financial interests that councillors are prescribed to declare are as follows:

(i) shares and securities in any company;

(ii) membership of any close corporation;

(iii) interest in any trust;

(iv) directorships;

(v) partnerships;

(vi) other financial interests in any business undertaking;

(vii) interest in property; and

(viii) subsidies, grants and sponsorships by any organisation.

(d) Section 14 and 14A of the Code of Conduct prescribes states that any breaches of the Code of Conduct by municipal staff members must be dealt with in terms of the disciplinary procedures of the municipality.

1.2.7 The Regulations on Appointment and Conditions of Employment of Senior Managers of the Municipal Systems Act ("The Regulations") sets out in detail the conditions of employment and the recruitment and selection process for senior managers, being the municipal manager and the managers directly accountable to him. Section 19(1) of The Regulations states that a senior manager who has been dismissed for misconduct from any municipality or any institution governed by the MFMA may not be re-employed as a senior manager in a municipality before a specific period of time has passed based on the category of misconduct the senior manager was dismissed for. The specific period for financial misconduct contemplated in section 171 of the MFMA, corruption or fraud, is ten years. The specific period for gross misconduct involving elements of dishonesty or gross negligence is ten years. Section 19(2) states that If a senior manager is dismissed for more than one category of misconduct, the period of prohibition on re-employment shall run concurrently. Section 19(4) states that a municipality must maintain a record of staff members dismissed for misconduct and staff members who resigned prior the finalisation of any disciplinary proceedings. Section 19(5) states that the record in section 19(4) must be submitted within fourteen days to the MEC for local government and the Minister.

1.3 The Prevention and Combating of Corrupt Activities Act 12 of 2004 ("Prevention and Combating of Corrupt Activities Act").

1.3.1 The Prevention and Combating of Corrupt Activities Act defines a number of terms as follows:

(a) "public officer" means any person who is a member, an officer, an employee or a servant of a public body, and includes –

(i) Any person in the public service contemplated in section 8(1) of the Public Service Act;

(ii) Any person receiving any remuneration from public funds; or

(iii) Where the public body is a corporation, the person who is incorporated as such,

But does not include any-

(i) Member of the legislative authority;

(ii) Judicial officer; or

(iii) Member of the prosecuting authority.

1.3.2 Section 4(1)(a) of the Prevention and Combating of Corrupt Activities Act states that any public officer who, directly or indirectly, accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person, is guilty of the offence of corrupt activities relating to public officers. Section 4(1)(b) states that any person who, directly or indirectly, gives or agrees or offers to give any gratification to a public officer, whether for the benefit of that public officer or for the benefit of another person is also guilty of the above offence. For both section 4(1)(a) and (b), the person or public officer must have acted in a manner:

(a) That amounts to the:

(i) Illegal, dishonest, unauthorised, incomplete, or biased; or

(ii) Misused or selling of information or material acquired in the course of the, exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;

(b) That amounts to-

(i) The abuse of a position of authority;

(ii) A breach of trust; or

(iii) The violation of a legal duty or a set of rules;

(c) Designed to achieve an unjustified result; or

(d) That amounts to any other unauthorised or improper inducement to do or not to do anything.

1.3.3 Section 13 of Prevention and Combating of Corrupt Activities Act states that any person who, directly or indirectly, accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person as-

(a) An inducement to, personally or by influencing any other person so to act –

(i) Award a tender, in relation to a contract for performing any work, providing any service, supplying any article, material or substance or performing any other act, to a particular person; or

(ii) Upon an invitation to tender for such contract, make a tender for that contract which has as its aim to cause the tenderee to accept a particular tender; or

(iii) Withdraw a tender made by him or her for such contract; or

(b) A reward for acting as contemplated above.

Will be guilty of the offence of corrupt activities relating to procuring and withdrawal of tenders.

1.4 The Labour Relations Act 66 of 1995 ("LRA")

1.4.1 Section 198B(3) of the LRA states that an employer may employee an employee on a fixed term contract or successive fixed term contracts for longer than three months of employment only if the nature of the work is of a limited or definite duration or if the employer can demonstrate a justifiable reason for fixing the term of the contract. Section 198B(5) of the LRA states that any contract concluded or renewed in contravention of the above is deemed to be of an indefinite duration.

1.5 The Criminal Procedure Act 51 of 1977 ("CPA")

1.5.1 Section 205 of the CPA allows SAPS to secure a subpoena from a judge of a High Court, a regional court magistrate or a magistrate in order to obtain certain evidence.