



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

FINANCE AGREEMENT

entered into between:

THE CITY OF CAPE TOWN
(hereafter the "City")

and

Observatory Improvement District NPC
(Association incorporated under Schedule 1 of the Companies Act, Act 71 of 2008)
(Registration No.: 2008/020680/08)
(hereafter the "CID Company")

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PREAMBLE

Whereas section 4(1) of the City of Cape Town: City Improvement District By-Law, published in Provincial Notice No. 8743 dated 13 April 2023 (the "By-law"), read with section 22 of the Local Government: Municipal Property Rates Act, Act 6 of 2004 (the "MPRA"), authorises the City's Council (the "Council"), to determine an area within its jurisdiction as a Special Rating Area (SRA) referred to as a City Improvement District ("CID"), and to levy an additional rate on rateable properties within the CID's boundaries to finance improvements and upgrades thereof;

Whereas the Council by resolution no C15/04/22 dated 1 July 2022 extended the term of the Observatory Improvement District for a renewable five-year term with effect from 1 July 2022;

Whereas the City is responsible for determining and collecting the additional rate, administering and paying over the income derived from the additional rate to the CID Company in accordance with the CID Company's approved budget to fund the implementation of its business plan in terms of section 22 of the MPRA read with the By-law;

Whereas the CID Company was established as the management body of the Observatory Improvement District (OBSID) to manage the CID and to use the additional rate payments to carry out the Council-approved business plan in accordance with section 8 of the By-law;

Whereas section 23(7) of the By-law precludes the City from paying over the additional rate revenue without a finance agreement between the Parties;

Whereas the Parties enter into this Agreement for purposes of, *inter alia*, establishing the procedure for determining the additional rate; confirming how the City will collect the additional rate; providing for payment procedures and protocols in respect of the additional rate; accounting and financial reporting obligations of the CID Company; City oversight and enforcement mechanisms; and the monitoring of the CID Company's performance per key performance indicators.

Now, therefore, it is agreed as follows:

1. Definitions and interpretation

In this Agreement, unless inconsistent with or otherwise indicated by the context:

1.1 "additional rate" means the rate levied and collected from owners of rateable property located within the CID, pursuant to section 22 of the MPRA and section 22 of the By-law;

1.2 "additional ratepayer" or "ARP" means an owner of a rateable property located

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within the CID who is liable to pay the additional rate;

- 1.3 **“Agreement”** means this Agreement and all annexures hereto, including any subsequent amendments or alterations agreed to in writing by the Parties;
- 1.4 **“annexures”** mean the annexures attached to this Agreement;
- 1.5 **“annual general meeting”** or **“AGM”** bears the meaning assigned to it in section 1 of the Companies Act, Act 71 of 2008;
- 1.6 **“board”** means the board of directors of the CID Company, as contemplated in section 66 of the Companies Act, Act 71 of 2008;
- 1.7 **“business day”** means any calendar day excluding Saturday, Sunday or statutory public holiday in the Republic of South Africa;
- 1.8 **“business plan”** means the composite document consisting of a motivation report, implementation plan and term budget provided for in section 5 of the By-law, the minimum required contents of which are listed in Schedule 1 thereto;
- 1.9 **“By-law”** means the City of Cape Town: City Improvement District By-law, published in Provincial Notice No. 8743 dated 13 April 2023, or any other By-law approved by the City and dealing with City Improvement Districts;
- 1.10 **“chairperson”** means the chairperson of the board;
- 1.11 **“CID Company”** means the management body of a CID, which shall be a non-profit company (NPC) incorporated in terms of the Companies Act, as contemplated in section 8 of this By-law;
- 1.12 **“CID term”** means the five-year period commencing on **1 July 2022**;
- 1.13 **“City”** means the City of Cape Town, a municipality established by the City of Cape Town Establishment Notice No. 479 of 2000 of 22 September 2000, issued in terms of section 12 of the Local Government: Municipal Structures Act, Act 117 of 1998 or any structure or employee of the City acting in terms of delegated authority;
- 1.14 **“City Improvement District”** or **“CID”** means the contiguous geographic area, designated by Council resolution on **1 July 2009** in terms of section 22 of the MPRA and section 4(1) of the By-law, for the levying of an additional rate on rateable properties within its boundaries to finance improvements and upgrades of the public spaces within the district;

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- 1.15 **“confidential information”** means written, oral or electronic information –
- 1.15.1 provided by one Party to the other or by a third party pursuant or related to this Agreement together with written notice to the receiving Party that the
 - 1.15.2 information constituting a trade secret or warranting being kept confidential for its sensitive nature;
 - 1.15.3 “personal information” as defined in section 1 of the Promotion of Access to Information Act, Act 20 of 2000 (“*PAIA*”); and
 - 1.15.4 “personal information” as defined in section 1 of the Protection of Personal Information Act, Act 4 of 2013 (“*POPIA*”);
- 1.16 **“Council”** means the Council of the City;
- 1.17 **“Credit Control and Debt Collection Policy”** means the City’s policy governing its credit control and debt collection procedures as may be in force at any relevant time;
- 1.18 **“executive director”** means the official responsible for CIDs and appointed in terms of section 57 of the Local Government: Municipal Systems Act, Act 32 of 2000 (the “*Systems Act*”), including his/her delegate appointed in terms of section 29 of the By-law;
- 1.19 **“executive officer”** means an executive officer or similar person appointed by the CID Company to manage and operate the affairs of the CID, who need not be a director of the CID Company;
- 1.20 **“financial year”** means the financial year of the CID Company, which runs from 1 July to 30 June.
- 1.21 **“fruitless and wasteful expenditure”** bears the meaning assigned to it in section 1 of the Local Government: Municipal Finance Management Act, Act 56 of 2003 (the “*MFMA*”);
- 1.22 **“implementation plan”** means the plan prescribed under section 5(9)(b)(i) of the By-law, read with item 2 of Schedule 1 thereto;
- 1.23 **“Parties”** mean the City and the CID Company, and **“Party”** means either one of them, as the context may indicate;
- 1.24 **“Policy”** means the City’s Policy governing CIDs;

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- 1.25 **“rolling bad debt reserve”** means funds accumulated during the course of the CID term, comprised of a stipulated percentage of the additional rates payable each month, retained by the City as a provision for bad debt and/or underbilling;
- 1.26 **“signature date”** means the date of signature of this Agreement by the last Party signing;
- 1.27 **“Special Rating Area”** means a geographical area within the City’s jurisdiction designated by Council under section 22 of the MPRA for the levying of an additional rate on rateable properties within its boundaries to improve and upgrade that area;
- 1.28 **In this Agreement:**
- 1.28.1 references to a statutory provision include any subordinate legislation made from time to time under that provision and include that provision as amended or re-enacted from time to time;
- 1.28.2 references to a “policy” of the City shall be interpreted as a reference to such document as may be in force at the relevant time;
- 1.28.3 all terms and phrases used in this Agreement shall bear the meaning assigned to them in the By-law, the MPRA and the Policy;
- 1.28.4 words importing any particular gender include the other genders (i.e. the masculine, feminine and neuter genders, as the case may be); the singular includes the plural and *vice versa*; and “persons” include natural and juristic persons and *vice versa*;
- 1.28.5 any provision in this Agreement that is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability, and shall be treated as having not been written (i.e. *pro non scripto*) and severed from the balance of this Agreement, to the extent it is severable without invalidating the remaining provisions thereof or affecting the validity or enforceability of such provision in any other jurisdiction.
- 1.28.6 the expiration or termination of this Agreement shall not affect those provisions of this Agreement that are expressly provided to survive after any such expiration or termination, or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the relevant provisions themselves do not provide for this.

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2. Exercise of the City's powers as local government authority

This Agreement shall not prejudice, detract from, limit or otherwise affect the rights, discretionary powers, duties and obligations of the City and its Council in terms of the Constitution, any legislation, regulations or by-laws and policies made by the Council in the exercise of its functions as a local government authority.

3. Duration of the Agreement

3.1 This Agreement shall commence on the signature date, and shall terminate in the event that –

3.1.1 the CID term expires, save where the Council approves by resolution an application by the NPC Company for an extension of the CID term under section 27 of the By-law, in which case this Agreement shall continue until expiry of the CID term set out in the aforesaid resolution;

3.1.2 the Council exercises its discretionary power under section 28(1) of the By-law to dissolve the CID; or

3.1.3 the CID Company is wound up in terms of section 28(2) of the By-law read with Part G of Chapter 1 of the Companies Act.

3.2 A termination of this Agreement shall be without prejudice to the City's powers and obligations under the MPRA and the By-law to administer, collect and recover additional rates payable in respect of any period prior to such termination.

4. Relationship between the CID Company and the City

4.1 Unless expressly stated otherwise in this Agreement, the CID Company shall have no authority to act as an agent of the City, or render the City liable for any obligation arising from agreements with third parties; any agreement that purports to impose any obligation or liability upon the City shall be of no force and effect.

4.2 Nothing in this Agreement shall be construed as giving rise to a partnership, joint venture or the like between the Parties.

4.3 The Parties shall deal with one another in good faith and shall take all reasonable steps to ensure the proper implementation of this Agreement.

4.4 Should any allegations or substance to allegations of criminal conduct be suspected, which could cause reputational damage to the City, the City may undertake a forensic investigation.

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5. Bank account management

- 5.1 The CID Company shall open and maintain in its name a single operating bank account for purposes of receiving all income and effecting payment of all expenditure.
- 5.2 The CID Company may open and maintain additional bank account(s) (e.g. for investing surplus or reserve funds).
- 5.3 The City shall make all payments provided for in this Agreement directly to the CID Company at the following bank account, as contemplated in clause 5.1:

Account holder: **OBSERVATORY IMPROVEMENT DISTRICT**

Name of bank: **FNB**

Branch number: **260209**

Bank account number: **62544664544**

- 5.4 In the event that the CID Company opens any additional bank account(s) other than the account listed in clause 5.3, it shall furnish the executive director with written confirmation from the bank of the banking details set out in clause 5.7 below within 10 days thereof.
- 5.5 The CID Company shall deposit, or cause to deposit, any income raised independently through commercial activities, donations or any other means into the bank account contemplated in clause 5.1, 5.2 or clause 5.4 above.
- 5.6 In order to ensure effective management of its bank account(s), the CID Company shall –

- 5.6.1 close any inactive bank accounts;
- 5.6.2 assign administration of its bank account(s) to the executive officer;
- 5.6.3 provide the executive director with a list of all its bank accounts as at 30 June of each year by the last business day in August of that year;
- 5.6.4 appoint the executive officer and one or more directors as joint signatories to the bank account(s);
- 5.6.5 define signatories' restrictions with regard to:
 - 5.6.5.1 the time, manner and maximum amounts of withdrawals;
 - 5.6.5.2 how they may request bank cards, cheque books and electronic banking access; and

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5.6.5.3 implementing a process in terms of which all withdrawals and payments must be approved by at least two of the signatories.

5.7 Bank account details required under clause 5.4 and 5.6.3 shall include the following information in respect of each account:

5.7.1 The name of the banking institution where the account is held;

5.7.2 The date on which the account was opened;

5.7.3 The account number; and

5.7.4 The purposes for which the account is held.

6. VAT compliance

6.1 The CID Company shall apply for VAT registration within three months of the CID Company's date of incorporation.

6.2 The CID Company shall provide the executive director with its VAT registration number, and a copy of its VAT registration certificate within five days of receiving confirmation of registration.

7. Tax exemption

7.1 The CID Company shall apply for tax exemption within the first year of operation to avoid any tax liability on the additional rate received.

7.2 This application must be made to the South African Revenue Services ("SARS") Tax Exemption Unit ("TEU") established to consider all applications for approval as a tax exempt institution. The approval is normally effective from the date the approval is granted, unless otherwise specified.

7.3 The CID Company must submit annual income tax returns within one year from the relevant financial year-end of the CID Company and can be submitted via e-filing.

8. Financial year

The financial year of the CID Company shall run from 1 July to 30 June of the following year.

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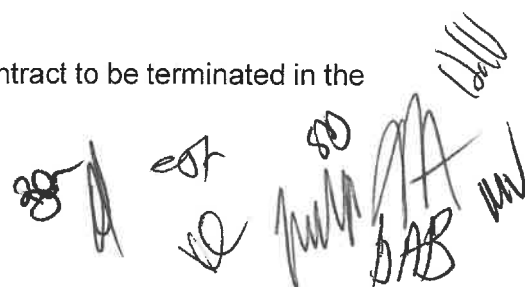
9. Audited financial statements

The CID Company shall submit board-approved audited financial statements in respect of every financial year to the executive director by 31 August of each financial year.

10. Appointment and duties of the executive officer

10.1 The CID Company shall designate a board member or appoint an executive officer responsible for the financial management of the CID Company and its compliance with financial and performance reporting obligations under clause 11 and 12, respectively, including but not limited to –

- 10.1.1 implementing and monitoring of the CID Company's annual budget;
- 10.1.2 ensuring the effective and equitable use of resources;
- 10.1.3 keeping full and proper financial records, including but not limited to preparing monthly income and expenditure statements, bank reconciliation statements; cash flow statements and procurement documentation for any contract entered into for at least the duration of the contract;
- 10.1.4 developing and maintaining a policy governing the procurement of goods and services to give effect to section 217 of the Constitution;
- 10.1.5 ensuring the CID Company undertakes a competitive procurement process to appoint service providers for every subsequent term;
- 10.1.6 ensuring that the CID Company enters into contracts with all service providers which at least includes:
 - 10.1.6.1 clear performance indicators with appropriate targets and/or service levels;
 - 10.1.6.2 provision for regular meetings to review performance against these targets and/or service levels where problems that could impact performance are resolved;
 - 10.1.6.3 penalties that enable the executive officer to correct poor performance; and
 - 10.1.6.4 a termination clause that allows the contract to be terminated in the event of poor performance;

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- 10.1.7 developing and maintaining appropriate expenditure management systems;
- 10.1.8 building up and maintaining financial reserves of not less than two months of monthly pay-overs from the City;
- 10.1.9 ensuring any surplus or reserve funds are invested at low risk with a reputable financial institution;
- 10.1.10 submitting monthly income and expenditure progress reports to the executive director by the 15th of each month;
- 10.1.11 submitting the board-approved adjustment budget by 31 March in order to align the budget with current expenditure patterns, thereby ensuring financial governance;
- 10.1.12 submitting the board-approved audited annual financial statements to the executive director by 31 August;
- 10.1.13 maintaining the CID Company's tax compliance status;
- 10.1.14 reviewing the property database referred to in clause 17.2.2 of this Agreement and submitting any anomalies to the executive director by 31 December of each year;
- 10.1.15 maintaining appropriate financial controls;
- 10.1.16 preventing unauthorised, irregular or fruitless and wasteful expenditure;
- 10.1.17 reporting to the executive director any:
 - 10.1.17.1 unauthorised, irregular or fruitless and wasteful expenditure within five days of becoming aware thereof, as well as measures to be implemented to prevent recurrence;
 - 10.1.17.2 serious or persistent financial problems experienced by the CID Company; and
 - 10.1.17.3 actual or attempted undue interference by a councillor or City official in the financial affairs of the CID Company or the responsibilities of the CID Company's Executive Officer and/or board;

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- 10.1.18 instituting and/or opposing any legal proceedings as may be required, *inter alia*, to comply with the CID Company's statutory and/or contractual obligations;
 - 10.1.19 instituting any disciplinary proceedings against employees of the CID Company that may be required, and reporting same to the executive director within five days;
 - 10.1.20 publishing notice of the CID Company's annual general meeting in accordance with section 10 of the By-law, read with clause 18 of the Policy;
 - 10.1.21 submitting the CID Company's audited financial statements and annual report to the executive director and relevant subcouncil within three months of the CID Company's AGM as per section 18 of the By-law; and
 - 10.1.22 ensuring that all statutory and non-statutory documents are kept in the CID Company's office in a secure and safe environment.
- 10.2 In the event of any of the eventualities in subclause 10.1.17 above arising, the executive officer shall advise the executive director thereof within five days. Within 30 days thereafter, the executive officer must advise the executive director of the steps that have been taken in consequence thereto, and what steps have been taken to prevent a recurrence.
- 10.3 For purposes of this Agreement, the powers and duties of the executive officer may be delegated to an official of the CID Company.

11. Board oversight of executive officer

- 11.1 The board shall take reasonable steps to ensure the executive officer carries out their duties set out in clause 10.

12. Performance reporting

- 12.1 The CID Company shall prepare an annual report in accordance with section 18 of the By-law, read with clause 29 of the Policy, containing at least the following information:
 - 12.1.1 General information of the CID Company;
 - 12.1.2 Performance information relating to each service, projects and capital expenditure;
 - 12.1.3 Corporate governance in relation to the application of King IV; and

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12.1.4 Financial information.

13. Levying the additional rate

13.1 Subject to the other provisions of this clause, the Council shall levy an additional rate on rateable properties on an annual basis:

13.1.1 stated as a rate-in-the-rand of the property value of residential *and/or* non-residential properties located within the CID, as contained in the City's General Valuation Roll and Supplementary Valuations in force at the relevant time, on 1 July of each year of the CID term;

13.1.2 calculated with reference to the total proposed expenditure to be funded by the additional rate in the term budget for the relevant period, as may be amended in accordance with section 15(5) of the By-law.

13.2 When levying the additional rate, the Council may differentiate between categories of rateable property, as contemplated in section 8 of the MPRA.

13.3 Any property owner granted an exemption, rebate or reduction in respect of the municipal rate in terms of the City's Rates Policy, whether partial or in full, shall be granted a full rebate in respect of the additional rate by the Council.

13.4 The additional rate due in terms of clause 13.1 shall be a debt due to the Council and shall be collected in the same manner as other property rates imposed by the Council.

14. Collecting the additional rate

14.1 The City shall itemise the additional rate payable on the municipal account furnished to ARPs in the ordinary course.

14.2 The City shall collect the additional rate in accordance with its Credit Control and Debt Collection Policy.

15. Payment of the additional rate to the CID Company

15.1 The City shall pay over to the CID Company, on a monthly basis, one twelfth of the Council-approved budget of the CID Company for the relevant financial year on or about the 25th day of each calendar month, less the reserve amount provided for under clause 16.

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- 15.2 The City shall be entitled to withhold any payment due to the CID Company in the event it is in default of its compliance obligations or fails to submit its monthly financial reports, annual financial statements, annual report, proof of tax compliance, annual budget or adjustments budget, until such time as the CID Company remedies such default.
- 15.3 The City shall provide the CID Company with a monthly financial report by the 15th of the following month, indicating all payments made to the CID Company; the balance of the accumulated rolling bad debt reserve; balance of the accumulated arrears and the payment status per property.
- 15.4 If, at the end of any financial year, the balance of the rolling bad debt reserve exceeds the total accumulated additional rate arrears, the City shall pay 75% of such surplus amount to the CID Company by 30 September of the following financial year.

16. Rolling bad debt reserve

- 16.1 The City shall create a rolling bad debt reserve and allocate an amount equal to 3% (three percent), of the monthly budgeted amount due to the CID Company to such reserve.
- 16.2 The rolling bad debt reserve shall cover any shortfall that may be suffered by the City as a result of non-payment or short-payment of the additional rate by ARPs.
- 16.3 Any additional rate surplus or deficit collected by the City, in accordance with the approved annual budget, will be offset against the rolling bad debt reserve.
- 16.4 The City may adjust the percentage of the additional rate allocated to the rolling bad debt reserve –
- 16.4.1 in the event of financial distress; and
 - 16.4.2 if, after consultation with the board, the executive director considers such adjustment reasonably necessary to secure the financial viability of the CID.

17. Property database

- 17.1 The City shall provide the CID Company with an annual database of properties within the CID as contained in Council records by mid-October, as well as a list of all properties and/or ARPs that are exempted from paying an additional rate in terms of the Rates Policy.

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17.2 The City shall update and maintain its database so as to provide the CID Company with the most recent data, provided that –

17.2.1 the City does not guarantee that the database referred to in clause 17.1 is accurate; and

17.2.2 the CID Company shall be required to review the database, and promptly advise the City of inaccuracies, omissions or other deficiencies.

18. Property value adjustments

18.1 In the event the CID's valuation base decreases materially as a result of supplementary property valuations, technical adjustments, valuation court rulings or other corrective action that occurs within a particular financial year, the City shall inform the CID Company accordingly.

18.2 If a decrease in property valuations as contemplated in clause 18.1 renders the City unable to sufficiently fund the CID budget, the CID Company will be required to make the necessary adjustments to its approved budget to accommodate the reduced income, subject to approval by the executive director.

19. Annual budget and implementation plan

19.1 The annual budget shall –

19.1.1 be in a form as may be required by the executive director;

19.1.2 set out the estimated revenues, excluding interest, from-

19.1.2.1 the additional rate to be raised by the City to the NPC; and

19.1.2.2 sources other than the aforementioned additional rate;

19.1.3 set out the estimated expenditure, which shall provide for a contingency margin of at least 3% for expenditure other than the items listed in subclauses 19.1.3.7 – 19.1.3.9, including but not limited to:

19.1.3.1 employee-related expenses such as salaries and wages; pay-as-you-earn, COIDA, unemployment insurance, and skills development levy payments; travel allowances and bonuses;

19.1.3.2 core business related expenses, such as –

19.1.3.2.1 cleansing services;

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- 19.1.3.2.2 environmental enhancement (e.g. landscaping, removal of alien vegetation and recycling);
- 19.1.3.2.3 public safety services, including procuring services of City law enforcement officials and private security services providers;
- 19.1.3.2.4 any CCTV monitoring services performed by a third party;
- 19.1.3.2.5 social upliftment services; and
- 19.1.3.2.6 urban maintenance services;
- 19.1.3.3 repairs and maintenance of NPC assets and any rental offices should the lease agreement require the NPC to carry such costs;
- 19.1.3.4 general expenditure arising from all other planned operations, such as administration and management costs in the event the NPC outsources its management; accounting fees; bank charges; computer expenses; and insurance premiums;
- 19.1.3.5 individual costs for each proposed project of the NPC;
- 19.1.3.6 capital expenditure;
- 19.1.3.7 interest and redemption costs in the event the NPC intends to finance the purchase of any assets;
- 19.1.3.8 depreciation of all assets, i.e. property, plant and equipment; and
- 19.1.3.9 provision for a rolling bad debt reserve contribution;
- 19.1.4 materially align with the budget contained in the CID's business plan; and
- 19.1.5 meet any further content requirements as may be prescribed under the Policy.
- 19.2 The City shall consider the proposed budget and make recommendations to the board of directors prior to its AGM.
- 19.3 The board shall give effect to the recommendations referred to in clause 19.2 and submit to the AGM for approval by the CID Company members.
- 19.4 The board shall submit a detailed annual budget and implementation plan for each financial year as approved at the CID Company's AGM to the City by 31 January for consideration and comment by the executive director.

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19.5 The executive director shall table the AGM-approved annual budget before Council for consideration by 31 March of the relevant period.

19.6 The annual budget submitted in accordance with clause 19.4 shall be utilised by the City when it determines the proposed additional rate for the forthcoming financial year.

20. Warranties and undertakings by the CID Company

20.1 The CID Company warrants and undertakes that –

20.1.1 the board of directors will adopt a code of conduct as prescribed under the Policy;

20.1.2 the board of directors will, in the case of a formal complaint lodged with the City or a forensic investigation, provide access to the City of all records and organisational processes upon request;

20.1.3 each CID official exercising financial management responsibilities shall act with honesty and in the best interests of the CID, and disclose to the City all facts that may materially affect decisions of the City and the board of directors as it may concern the CID;

20.1.4 it is fully organised, equipped, staffed, qualified and able to render the services contemplated in its business plan; and

20.1.5 it shall observe all applicable laws, ordinances, rules and regulations and service standards in relation to improving and upgrading the CID area.

21. Domicilium and notice

21.1 The Parties choose *domicilium citandi et executandi* for all purposes of the giving of any notice, the payment of any sum, the serving of any process and for any other purpose arising from this Agreement as follows:

The City of Cape Town c/o the City Manager City of Cape Town 5 th Floor Podium Block Civic Centre 12 Hertzog Boulevard Cape Town 8001	The CID Company c/o The Executive Officer Unit 13A St Michaels Office Park, St Michael's Road Observatory Cape Town 7925 Email: matt@obsid.org.za
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21.2 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing and –

21.2.1 if delivered by hand, be deemed to have been duly received by the addressee on the date of delivery; and

21.2.2 if transmitted by electronic means, be deemed to have been received by the addressee one business day after dispatch.

21.3 Notwithstanding anything to the contrary in this Agreement, a written notice or communication actually received by one of the Parties from another, including by way of e-mail addressed to the persons referred to in clause 21.1, shall be adequate written notice or communication to such Party.

22. No variation

No variation of, or addition or cancellation to this Agreement shall be of any force or effect unless it is reduced to writing and signed by or on behalf of both the Parties.

23. Whole Agreement

The Agreement contains the whole Agreement between the Parties and neither Party shall be bound by any warranty, condition, undertaking or obligation, oral or written, express or implied, other than those contained herein.

24. Indulgences and leniencies

No indulgence, leniency or extension which a Party may grant or show to another will in any way prejudice the grantor, or preclude the grantor from exercising any of its rights in the future.

25. Prohibition of cession and assignment

The CID Company shall not be entitled to cede or assign any of its rights, or delegate any of its obligations hereunder without the prior written consent of the City being obtained.

26. Dispute resolution

26.1 Should any dispute, disagreement or claim arise between the Parties concerning this Agreement, the Parties shall refer the dispute for resolution by –

26.1.1 mediation, failing which;

26.1.2 arbitration.

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- 26.2 A dispute within the meaning of this clause shall be deemed to exist once one Party notifies the other in writing of the nature of the dispute and requires the resolution thereof in terms of this clause.
- 26.3 Within 10 business days of a notification in terms of clause 26.2, or any extended or shortened period the Parties may agree to in writing, the Parties shall refer the dispute for resolution by way of mediation in accordance with the rules of the Arbitration Foundation of Southern Africa ("AFSA") (or its successor or body nominated in writing by it in its stead).
- 26.4 In the event of mediation under clause 26.3 failing, the dispute shall be referred to arbitration within 15 business days in accordance with the procedure set forth herein.
- 26.5 The Parties agree that the arbitration will be held as an expedited arbitration at Cape Town in accordance with the then current rules for expedited arbitration of AFSA by one arbitrator appointed jointly by the Parties.
- 26.6 If the Parties are unable to agree on the arbitrator within 10 business days after the referral of the dispute to arbitration, the arbitrator shall be appointed by the secretariat of AFSA.
- 26.7 The provisions of this clause shall not preclude any Party from seeking access to an appropriate court of law for interim relief in respect of urgent matters pending finalisation of this dispute resolution process.
- 26.8 This clause is severable from the rest of this Agreement and shall remain in effect notwithstanding termination, nullification or cancellation of this Agreement for any reason or cause.

27. Breach and termination

The City shall be entitled forthwith to cancel this Agreement by notice in writing to the CID Company, without prejudice to its rights in terms of this Agreement or the By-Law, including its right to claim damages, in the event that the CID Company –

- 27.1 commits any act of insolvency as defined in the Insolvency Act, Act 24 of 1936;
- 27.2 is wound up, whether provisionally or finally and whether compulsorily or voluntarily, or is placed under judicial management;
- 27.3 enters into any arrangement or compromise with the general body of its creditors;
- 27.4 is the subject of any resolution passed for its winding up or dissolution;

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27.5 has a judgment given against it in any court of law which, if appealable, is not appealed against within the period allowed for the lodging of such an appeal or, if not subject to an appeal, remains unsatisfied for a period of 10 (ten) days; or

27.6 breaches any material term or conditions of this Agreement, and fails to remedy such breach within a period of seven business days after receipt of written notice by the City requiring it to do so.

28. Costs

Each Party shall bear its own costs in the negotiation, drafting, conclusion and implementation of this Agreement.

SIGNED on behalf of the City of Cape Town at CAPE TOWN on this 16TH day of JULY 2024 in the presence of the undersigned witnesses:

For: The City of Cape Town


Executive Director
City of Cape Town, or duly authorised

AS WITNESSES:

1. 

2. 



SIGNED on behalf of the Observatory Improvement District NPC at Observatory

_____ on this 7 day of March 2024

in the presence of the undersigned witnesses:

For Observatory Improvement District NPC (Association incorporated under Schedule 1 of the Companies Act 71 of 2008)


Director, duly authorised

AS WITNESSES:

1. 
2. 



Annexure A

IMPORTANT DATE-DRIVEN ACTIONS			
CITY IMPROVEMENT DISTRICT		CITY OF CAPE TOWN	
Date	Action	Date	Action
July			
1	Start of new financial year	1	New CID additional rate becomes applicable for billing
	Prepare for the annual audit of the previous financial year		
15	Submit Progressive Income and Expenditure report (PIE) for previous month	15	Send arrears schedule for previous month
		25	Monthly CID payment
		31	Send the Progressive Income and Expenditure (PIE) template for the new financial year.
			Send final financial summary for previous financial year
August			
15	Submit Progressive Income and Expenditure report (PIE) for previous month	15	Send monthly financial summary and arrears schedule for previous month
		25	Monthly CID payment
31	Submit audited annual financial statements	31	Send the budget and implementation plan template for the next financial year for CIDs not renewing their term
	Submit proposed date for AGM		
September			
15	Submit Progressive Income and Expenditure report (PIE) for previous month	15	Send monthly financial summary and arrears schedule for previous month
		25	Monthly CID payment
		30	Review the status of each CID's rolling bad debt reserve and refund overprovision to qualifying CIDs
October			
15	Submit Progressive Income and Expenditure report (PIE) for previous month	15	Send monthly financial summary and arrears schedule for previous month
		15	Provide a property database of all properties within the CID boundary for review
		25	Monthly CID payment

SA [Signature]

 MV [Signature]

 JLL [Signature]

 DAB [Signature]

 SW [Signature]

November			
15	Submit Progressive Income and Expenditure report (PIE) for previous month	15	Send monthly financial summary and arrears schedule for previous month
		25	Monthly CID payment
December			
15	Submit Progressive Income and Expenditure report (PIE) for previous month	15	Send monthly financial summary and arrears schedule for previous month
		25	Monthly CID payment
January			
15	Submit Progressive Income and Expenditure report (PIE) for previous month	15	Send monthly financial summary and arrears schedule for previous month
		25	Monthly CID payment
31	Submit the final AGM-approved budget and implementation plan for following financial year and application to deviate from original business plan (if required)	31	Send template of the current financial years' budget for the adjustment budget process
	Submit reviewed property database		
February			
15	Submit Progressive Income and Expenditure report (PIE) for previous month	15	Send monthly financial summary and arrears schedule for previous month
		25	Monthly CID payment
		28	Extract updated property database for calculation of the CIDs' additional rate for the next financial year
March			
15	Submit Progressive Income and Expenditure report (PIE) for previous month	15	Send monthly financial summary and arrears schedule for previous month
		25	Monthly CID payment
31	Submit mid-year performance report with supporting board minutes	31	CID budgets and additional rates for next financial year is tabled before Council as part of City's budget
	Submit approved adjustment budget for the current financial year with supporting board minutes		
April			
15	Submit Progressive Income and Expenditure report (PIE) for previous month	15	Send monthly financial summary and arrears schedule for previous month
		25	Monthly CID payment



WLV

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MUM SD

DAB

MV

May			
15	Submit Progressive Income and Expenditure report (PIE) for previous month	15	Send monthly financial summary and arrears schedule for previous month
		25	Monthly CID payment
		31	CID budgets and additional rates for next financial year is presented to Council for approval as part of City's budget
June			
15	Submit Progressive Income and Expenditure report (PIE) for previous month	15	Submit monthly financial summary and arrears schedule for previous month
25	Submit final ad-hoc budget realignment with supporting board minutes	25	Monthly CID payment
30	End of financial year	30	Send out letter of financial position for the attention of the CID auditor
			Send official approval letter to all CIDs where the extension of term application has been approved by Council.
			Send out AGM requirements and timeline calculator
			Send business plan template to all CIDs renewing their term
			Send budget advert to all CIDs to share with their communities for information

12/16
 see MA
 SAB
 call 800
 MV

IMPORTANT LEGISLATIVE REQUIREMENTS
NOT DATE SPECIFIC

Requirement	Legal reference
Board meetings	
Convened at least once every three months.	CID Policy cl 21.1
Notification of board meeting at least 14 days before the meeting.	MOI article 16.6.4
Confirm that all directors are in good standing with their additional rates.	MOI article 16.1.3.3
Ensure that attendees at board meeting signed Declaration of Interest (DOI).	CID Policy cl 6.2.2

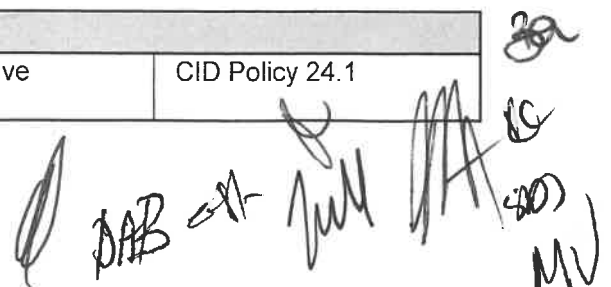
Annual general meeting (pre and post)	
AGM date needs to be before 31 December	CID Policy cl 17.2
Notify company members and rest of the property owners / stakeholders / community of the AGM by advertising in an Afrikaans and English daily newspaper and by sending out notices and the CoR 36.2 form. At least 15 business days before the meeting.	Companies Act - s62(1)(a) and MOI article 15.5.1
Board to approve the draft AGM minutes and submit these to the CID branch within two months after AGM.	CID Policy cl 17.6
Submit the audited annual financial statements and annual report to the local subcouncil within three months of AGM.	CID Policy cl 29.1

Companies and Intellectual Properties Commission (CIPC)	
NPC to submit any changes in company secretary and / or auditor to CIPC within 10 business days following the change.	Companies Act s85(3)
NPC to submit any changes in director information or changes in the composition of the NPC Board to CIPC within 10 business days following the change.	Companies Act s70(6)
NPC to file an annual return within 30 business days after the anniversary date of its incorporation.	Companies Act s33

Membership	
Must be a property owner within the CID boundary and liable for the additional rate.	CID Policy cl 15.1
Ensure the CID membership is up to date and published on the website.	MOI article 12.11
Changes in membership must be noted at the AGM.	MOI article 15.2.2.3

Term extension	
Ensure that term extension application is done in the last year of the current term.	CID By-law s27(2)(b)
Obtain approval at AGM.	CID By-law s27(2)(b)(ii)
Submit a formal application to the CID branch.	CID By-law s27(2)(a)

Website	
Ensure that CID website is up to date and complies with the legislative requirements.	CID Policy 24.1



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