

CONSULTANCY AGREEMENT

Made and entered into
by and between

MANTSOPA LOCAL MUNICIPALITY

(hereinafter referred to as "the municipality")

And

MOLEFI THOABALA INCORPORATED

(hereinafter referred to as "the Consultant")

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1. RECORDAL

- 1.1 On the 18th September 2020 the Municipality requested firms of attorneys on their Panel to submit Quotation to perform Debt Collection for a period of two years, a copy of which is attached hereto as Annexure A;
- 1.2 The Consultancy has submitted a Quotation to perform Debt Collection for a period of two years, a copy which is attached to Annexure B;
- 1.3 The Municipality has accepted the Consultant's Quotation to assist the Municipality with its debt collection and related matters and the parties hereby agree on the appointment of the Consultant as service provider on the terms and conditions contained herein.

2. PARTIES

2.1 The parties to this Agreement are:

- 2.1.1 MANTSOPA LOCAL MUNICIPALITY and
- 2.1.2 MOLEFI THOABALA INCORPORATED.

3. INTERPRETATION AND PRELIMINARY

- 3.1 The headings of the clauses in this Agreement are only for the purpose of convenience and reference, and shall not be used in the interpretation, amplification and modification of the terms of the Agreement and of its clauses. Unless a contrary intention clearly appears:
 - 3.1.1 Words importing any one gender includes the other gender, the singular include the plural and vice versa; and persons include natural, artificial entities (incorporated or unincorporated) and the state and vice versa;
 - 3.1.2 The following terms shall have meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely
 - (a) **"Agreement"** means this Consultancy Agreement, together with all Annexures thereto, entered between the Municipality and the Consultant;
 - (b) **Contract period** means the period commencing on the Effective Date and enduring until the Final Date;
 - (c) **Consultant** means Molefi Thoabala Incorporated;

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- (d) **Effective Date** means 18 September 2020 notwithstanding the date on which the agreement is signed;
- (e) **Final Date** means 18 September 2022 or such later date as the Parties may agree to in writing;
- (f) **Municipality** means MANTSOPA Local Municipality, a municipality established in terms of the provisions of section 12 of the Local Government; Municipal Structures Act, 1998 (Act No. 117 of 1998)
- (g) **Party** means the signatories to the Agreement and parties shall have corresponding meaning;
- (h) **Project** means assisting the Municipality with its debt collection.
- (i) **RSA** means the Republic of South Africa;
- (j) **R and Rands** mean the lawful currency of the Republic of South Africa;

- 3.2 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 3.3 The expiration or termination of this agreement shall not affect the provisions of this Agreement as expressly provided to operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;
- 3.4 The rule of construction that the contract shall be interpreted against the party responsible for the drafting or preparation of the agreement, shall not apply.

4. APPOINTMENT

- 4.1 The Municipality has appointed the Consultant for the execution of the Project and The Consultant has accepted the appointment to act as consultant for the execution of the Project;
- 4.2 The parties wish to record the terms and conditions of the appointment as follows:
 - 4.2.1 The consultant shall act as an independent contractor in the performance of its obligations in terms of this Agreement except to such extent that the Consultant shall be necessity or operation of law, in affecting the mandate of the Municipality, be required or deemed to be an agent of the Municipality
 - 4.2.2 The appointment of the Consultant shall not create an employment contract with the Municipality, the Consultant shall not be entitled to any benefits, which the employees of the Municipality may contractually or equity be entitled to receive.

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5. COMMENCEMENT, DURATION AND COMPLETION

- 5.1 This agreement shall be deemed to have commenced on the Effective Date shall end on the Final Date.
- 5.2 It is specifically recorded that there is no expectation that this agreement will be renewed or extended beyond the final date save as may be necessary to realise and finalise any legal work outstanding on the Final Date.

6. STANDARD OF WORK

- 6.1 The Consultant undertakes and warrants that:
- 6.1.1 it shall execute the Project in a professional, ethical and workmanlike manner in accordance with the prescribed and acceptable professional standards for attorneys;
- 6.1.2 the work shall be performed in a manner of high standards and professionalism equal to the standards normally practiced by firms of attorneys in performing services of a similar nature; and
- 6.1.3 it shall accept responsibility for any breach of professional duty by reason of any error, omission or neglect occurring or committed by the Consultant in connection with the services performed by him.

7. GENERAL OBLIGATIONS OF THE CONSULTANT

- 7.1 The Consultant undertakes
- 7.1.1 to promptly comply with the provisions of applicable legislation which may relate to the execution of its obligations in terms of this agreement;
- 7.1.2 to perform his obligations in a manner and to conduct his business in a way that ensures that all persons which may be affected by his activities, are not subjected to threats to their health well-being or safety;
- 7.1.3 to obtain the necessary licenses, permits or consents which may be necessary for the execution of its obligations in terms of the agreement, at his own expense; to care for the preserve the Municipality's property which may be used by him in the compliance of his obligations in terms of the agreement, in accordance with the terms and conditions and for this purpose, if requested to do so, to make the necessary arrangements for the insurance thereof to the satisfaction of the Municipality;

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7.2 Cession or assignment

The Consultant may not, without the prior written consent of the Municipality, cede, assign, pledge or in any other way transfer any of its rights or obligations in terms hereof.

7.3 Records

The Consultant shall keep accurate and systematic records in respect of the work done by him in such form and detail as is customary in his profession and shall provide the Municipality with copies thereof when requested in writing to do so.

8. OBLIGATIONS OF THE MUNICIPALITY

The Municipality undertakes to use its best endeavours to ensure that the Consultant has timely and adequate access to all information, meetings and documentation required to execute the Project.

9. FEES AND DISBURSEMENTS

9.1 In consideration for the execution of its obligations contained herein, the Municipality shall pay to the Consultant fees and disbursements as follows;

9.1.1 for the assistance with debt collections and related matters, the contingency fees are as set out hereunder;

9.1.1.1 10% commission only on collected money,

9.1.1.2 18% on issuing of summons and the matter is not defended.

9.1.1.3 Legal costs to be borne by the Defendant when the matter is defended but in certain circumstances the Legal Costs shall be borne by the Mantsopa Local Municipality.

9.1.1.4 Data Purification is R85, 00(EIGHTY FIVE RAND) per file, if needed.

9.1.2 All payments shall be made within 30 days after receipt of a tax invoice indicating in detail the work that has been performed, and will be made in the RSA and in South African currency.

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10. CONFIDENTIALITY ISSUES

10.1.1 "Confidential information" shall, for the purpose of this agreement include, without limitation, any technical, commercial, scientific information, know-how, trade secrets, processes, designs, drawings, technical specifications, verbal and written proposals, advice, information, reports, documents, papers, programmes, models diagrams or other materials provided by either and data in whatever form, related to the business of either party/or and solutions developed by it, communicated to the receiving party or acquired by the receiving party from either party during the Contract period.

10.1.2 The parties agree that the confidential information given and received shall not be copied or disclosed or permitted to be copied or disclosed in any way, in whole or in part, by either party to any third party other than their own agents, contractors and employees without the written consent of the other party.

10.1.3 The terms of this agreement and any confidential information or data exchanged among the parties arising out of this Agreement or from the performance of the mandate herein shall be treated as strictly confidential and shall not be divulged or permitted to be divulged by either party to any person not being a party to this Agreement and shall not be used for any purposes without the written consent of either party, unless such information;

10.3.1 is or later becomes public knowledge other than by breach of the foregoing; or

10.3.2 is in the possession of the recipient with the full right to disclose prior to receiving it from the other; or

10.3.3 is independently received by the recipient from a third party having the full right to disclose that information; or

10.3.4 is required to be disclosed pursuant to obligations under this Agreement, or any other agreement related to the Project or by operation of law; or

10.3.5 is disclosed to a subsidiary, associate or holding company of the CONSULTANT provided that such affiliates act in accordance with this clause as if a party hereto.

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11. BREACH

Should either party ("defaulting party") breach contract by non-compliance with any of the provisions of this Agreement and fails to rectify such breach within 14 (fourteen) days of the date which a written notice was given to rectify such breach, then either party ("aggrieved party") shall be entitled to summarily cancel this agreement by written notice, without prejudice to any other rights which the aggrieved party may have, including but not limited to patrimonial damages and/or specific performances against the defaulting party as a results of such breach.

12. DISPUTE RESOLUTION

- 12.1.1 Amicable Settlement. The Parties shall use their best efforts and in good faith seek to resolve amicably all disputes and differences arising between them out of or in connection with the Agreement or its interpretation or its implementation.
- 12.1.2 Referral to Mediator. If the parties are unable to resolve any such dispute or difference within a period of 15 (fifteen) days or such period as the Parties may subsequently agree, the Parties shall refer the dispute or difference to a neutral Mediator. If the parties are unable to agree on the choice of Mediator, any Party may apply to the President for the time being of the Legal Practice Council of the Free State province or another mutually agreed nominating organisation, to appoint a Mediator. If the Parties accept recommendations in an agreement, which shall be legally binding on the Parties.
- 12.1.3 Arbitration. If the Parties or any other of them do not accept the recommendations of the Mediator, the Parties or any of them shall refer the dispute or difference to arbitration. Any arbitration in terms of this Agreement shall be conducted in accordance with the Rules of the Arbitration Foundation of Southern Africa, in force from time to time. Nothing in this clause shall preclude any Party from seeking interlocutory relief in any court having jurisdiction pending the institution of appropriate proceedings for the enforcement of any rights under this Agreement. The provisions of this clause are separate and severable from the rest of the Agreement and, accordingly, shall remain in effect despite the determination or invalidity for any reason of this Agreement
- 12.1.4 Obligations during Dispute Settlement. Pending any attempt at amicable settlement, mediation or arbitration, each Party shall continue to perform its obligations under this Agreement.

13. DOMICILIUM CITANDI ET EXECUTANDI

13.1.1 The parties choose as their *domicillium citandi et executandi* for all purposes under this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the following addresses:

13.1.1.1 THE MUNICIPALITY

Physical Address: 38 Joubert Street

LADYBRAND

Postal Address: Private Bag X11 or

P.O Box 64

LADYBRAND

9745

Tell: (051) 924 0654

Fax: (051) 924 0020

E-mail: manisopa@xsinet.co.za

13.1.1.2 THE CONSULTANT

Physical Address: 96 Nelson Mandela Drive

BLOEMFONTEIN

9324

Postal Address: PO Box 2379

BLOEMFONTEIN

9301

Tell: (051) 448 8481

TP. Bm
NP 8 TM

Fax: (051) 448 8585

E-mail: molech@2intuitioneys.co.za

- 13.1.2 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give notice by telefax.
- 13.1.3 Any Party may by notice to any other party change its *domicillium citandi et executandi* provided that the change shall become effective only on either of the other Party acknowledgement receipt of same or the other party positively and objectively establishing proof of such receipt.
- 13.1.4 Any notice to a party-
- 13.1.4.1.1 sent by prepaid registered post (by e-mail if appropriate) in an envelope correctly addressed to it at an address chosen as its *domicillium citandi et executandi* to which post is delivered shall be deemed to have been received on the 7th (seventh) business day after posting (unless the contrary is proved)
- 13.1.4.1.2 delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its *domicillium citandi et executandi* shall be deemed to have been received on the day of delivery; or
- 13.1.4.1.3 sent by telefax to its chosen telefax number stipulated in clause 11.1 hereof, shall be deemed to have been received on the date of dispatch (unless the contrary is proved).
- 13.1.5 notwithstanding anything to the contrary herein contained a written notice or communication actually received by a Party shall be adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicillium citandi et executandi*

14. WHOLE AGREEMENT, NO AMENDMENT

- 14.1.1 This Agreement constitutes the whole agreement between the parties relating to the subject matter hereof.
- 14.1.2 No amendment or consensual cancellation of this Agreement or any provision or term hereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement and no settlement to any

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disputes arising under this Agreement and no extension of time, waiver or relaxation, or suspension of any of the provisions or terms hereof or of any agreement, bill of exchange or other document issued pursuant to or in terms of the Agreement shall be binding unless recorded in a written document signed by the Parties. Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.

14.1.3 No extension of time or waiver or relaxation of any of the provisions or terms of the Agreement or any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement, shall operate as an estoppel against any party in respect of its rights under this agreement, nor shall it operate so as to preclude such party thereafter from exercising its rights strictly in accordance with this Agreement.

14.1.4 No party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.

14.1.5 Neither the Consultant nor the Municipality shall be entitled to cede or assign any of their rights or obligations in terms of this Agreement.

15. GOOD FAITH

The parties shall display good faith in dealing with each other.

16. GOVERNING LAW

This Agreement shall be governed by and interpreted in accordance with laws of the RSA.

17. LIMITATION OF LIABILITY

Either Party shall indemnify the other Party against each and every liability which that Party may incur to any other person whatsoever and against the adverse effects of all claims, including claims by third parties, to the extent that the same may arise as a result of the Party's breach of its obligations in terms of the Agreement, delict, warranty or otherwise.

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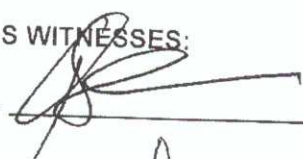
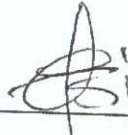
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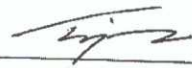
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THUS DONE AND SIGNED ON BEHALF OF THE MUNICIPALITY AT
LADYBRAND ON THIS 10 DAY OF DECEMBER 2020 IN
THE PRESENCE OF THE UNDERSIGNED WITNESSES.

AS WITNESSES:

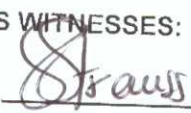

1. 
2. 



For and on behalf of Municipality duly
authorised and represented herein by

T.P. MASEJANE

THUS DONE AND SIGNED ON BEHALF OF THE MUNICIPALITY AT
LADYBRAND ON THIS 10 DAY OF DECEMBER 2020 IN THE
PRESENCE OF THE UNDERSIGNED WITNESSES.

AS WITNESSES:

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2. 


For and on behalf of Consultant duly
authorised and represented herein by

M.P. THOABALA

