

TENDER NUMBER: BID NUMBER CORP (L) 05/2020

SERVICE LEVEL AGREEMENT (SLA)

by and between

MOGALE CITY LOCAL MUNICIPALITY
("The Municipality")

And

PHUNGO INCORPORATED
("Law Firm")

WHEREAS:

- The Municipality had called for interested **INCORPORATED** / law firms to serve on a panel of **INCORPORATED** for Mogale City Local Municipality for a period of three (3) years on and as and when required basis under **BID NUMBER CORP (L) 05/2020**;
- **PHUNGO INCORPORATED** has the necessary expertise and knowledge and was appointed in order to provide services and --- **PHUNGO INCORPORATED** has accepted same. (Copies of the Resolution, Letter of Appointment and Acceptance Letter are attached herein as annexure "A", "B" and "C" respectively)
- **MOGALE CITY LOCAL MUNICIPALITY** wishes to make use of the Services offered by **PHUNGO INCORPORATED**, full details of which appear in the approved tender attached herein as annexure "D".
- **PHUNGO INCORPORATED** and **THE MUNICIPALITY** have reached an agreement on the terms and conditions which will regulate the provision of the Services and wish to reduce their agreement to writing and as follows: -

1. DEFINITIONS

- 1.1 The headings to the clauses, schedules and annexure of this Agreement are for reference purposes only and shall in no way govern or affect the interpretation of, nor modify, nor amplify the terms of this Agreement, nor any clause, schedule or annexure thereof;
- 1.2 Unless the context indicates otherwise, the words and expressions set out below shall bear the following meanings and cognate expressions shall bear corresponding meanings:
- 1.2.1 "**Agreement**" means the agreement as set out in this document together with any annexure hereto, RFQ, the LOA and any Service request;
- 1.2.2 "**Acceptance Period**" means the period of 30 (thirty) days (or such other period as may have been agreed to in writing), after delivery, during which the parties may consider whether the Service complies with the Specifications and/or is not of inferior workmanship;
- 1.2.3 "**Attorney**" means an attorney as defined in the Legal Practice Act 28 of 2014;
- 1.2.4 "**Business Day**" means Monday to Friday between the hours of 08:00 to 16:30, excluding Saturdays, Sundays or a day which, from time to time, is proclaimed a public holiday in South Africa;
- 1.2.5 "**Calendar Month**" means a period from the first to the last day of a month (e.g. 1 January to 31 January);
- 1.2.6 "**Checks**" means the background check on the Law Firm's employees, as defined in 11.2;
- 1.2.7 "**Contact Person**" means the relevant person(s) appointed by the Municipality from time to time, to oversee the execution of this Agreement and whose name(s) appears on the Service Request;
- 1.2.8 "**Commencement Date**" means the date on which the contract begins and in this case it would be the 1ST August 2020;
- 1.2.9 "**Fault**" includes, but is not limited to, failure to comply with the Municipality's specifications, non-compliance with agreed Service levels, inferior service, and inferior workmanship;
- 1.2.10 "**Invoice**" means the original tax invoice prepared by the Law Firm reflecting the consideration or the adjusted consideration (if any), owing by the Municipality to the Law Firm and which conforms to the provisions of the VAT Act;
- 1.2.11 "**Local Law Firm**" means a Law Firm which has its registered address in Mogale City;
- 1.2.12 "**Municipality**" means Mogale City Local Municipality, a Municipality established in terms of section 12(1), read with section 14(2) and section 90(2) of the Local Government: Municipal Structures Act 117 of 1998, herein represented by **Mr Maanda Pringle Raedani** in his capacity as the Municipal Manager and duly authorised thereto by a Municipal Council resolution dated 31 January 2017; (Copy of the resolution attached herein as annexure "E");

- 1.2.13 **"Notice of Non-Acceptance"** means the written notice to be delivered by the Municipality to the Law Firm in the event that the Service is inferior and/or does not comply with the Specifications;
- 1.2.14 **"Parties"** means the Law Firm and the Municipality and a "Party" shall as the context requires, be either of them;
- 1.2.15 **"Quotation"** means the written response of a Law Firm to the RFQ issued by the Municipality;
- 1.2.16 **"Purchase Consideration"** means the price to be paid by the Municipality for the Services as reflected in this Agreement or Annexures thereto and confirmed in the Service Request;
- 1.2.17 **"Services"** means the services set out in the RFQ, in respect of which the Municipality has invited Law Firms to submit Proposals and which are set out in a Service Request;
- 1.2.18 **"Service Location"** means the physical address where the Services will be rendered;
- 1.2.19 **"Service Request"** means the Municipality's written request to the Law Firm, issued in terms of this Agreement, requesting the Law Firm to render the Services set out in that request to the Municipality on the terms and conditions set out in that request;
- 1.2.20 **"Specifications"** means the requirements for the Service as more fully detailed in the RFQ or in a Service Request;
- 1.2.21 **"Service Provider"** means **PHUNGO INCORPORATED**, a company registered in terms of the Companies Act, **registration number: 2002/015326/21** and herein represented by **LIMON PHUNGO** in his capacity as the Director
- 1.2.22 **"Term"** means the period of three (3) years from commencement date;
- 1.2.23 **"VAT Act"** means the Value Added Tax Act, No. 89 of 1991.
- 1.3 Any reference in this agreement to legislation or subordinate legislation is to such legislation or subordinate legislation at the date of signature hereof and as amended and/or re-enacted from time to time;
- 1.4 Words importing the singular shall include the plural, and vice versa, words importing the masculine gender shall include the feminine and neuter genders, and vice versa, and words importing natural persons shall include legal persons, and vice versa;
- 1.5 The head notes to the clauses to this agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
- 1.6 The rule of construct law states that, in the event of ambiguity, the contract shall be interpreted against the party responsible for the drafting thereof, shall not apply in the interpretation of this Agreement.

4 (C) 
B

1.7 Where any provision of this Agreement requires a Party to perform any act in writing, this requirement will only be satisfied if such performance is made in a written or paper-based form. The provisions of the Electronic Communications and Transactions Act, No. 25 of 2002, are expressly excluded from this Agreement.

1.8 Where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the same meaning as ascribed to it for all purposes in terms of this Agreement, notwithstanding that the term has not been defined in this interpretation clause.

1.9 When any number of days are prescribed in this agreement, same shall be reckoned exclusively of the first and inclusively of the last day.

2. ACRONYMS

The acronyms, for purposes of this agreement, will mean the following;

2.1 "LOA" means the Letter of Acceptance in terms of which a Law Firm is advised by the Municipality of its conditional appointment as a Law Firms subject to the conclusion of this Agreement;

2.2 "RFQ" means the Request for Quotation, being the formal written invitation issued by the Municipality requesting third parties to submit proposals to the Municipality in respect of the supply of the Services; and

2.3 "VAT" means Value Added Tax at the rates specified in the VAT Act;

2.4 "ABD" means Accepted Bid Document, as submitted by the Law Firm(s).

3. PRECEDENCE

3.1 These documents, the LOA, ABD and the SLA, constitute this Agreement.

3.2 In the event of a conflict, the order of precedence for the interpretation thereof shall be as listed in 3.1 above.

4. AGREEMENT

4.1 The Law Firm agrees to render the Services to the Municipality under the terms and conditions of this Agreement. This Agreement constitutes an agreement on the basis of which the Law Firm will render the Services to the Municipality;

4.2 The Law Firm shall not be entitled to impose any terms and conditions on the Municipality other than those contained in this Agreement;

4.3 All Instructions to the Law firms will only come from Corporate Support Services: Legal Services in writing and signed, any other instructions from any other department will be deemed illegal and will not be compensated.

4.4 No claim by the Law Firm for additional payment on any grounds will be allowed, including, without limitation, misunderstanding or misinterpretation in respect of the RFQ, nor will the Law Firm be released from any risk or

obligations imposed on/or undertaken by the Law Firm on any such grounds or on the ground that it could not have foreseen any matter which might affect, or have affected its performance in terms of this Agreement;

4.5 All consultations regarding any matter must be made with the full ratification of the **Executive Manager: CORPORATE SERVICES**;

4.6 Should any matter be of an URGENT nature, the Law firm must first obtain approval to proceed with the matter through the office of the Manager: Legal Services.

5. DURATION

5.1 This Agreement shall commence on the 1st August 2020 and shall remain in force for a period of three (3) years;

5.2 Notwithstanding clause 5.1 above, the Parties shall have the right to terminate this Agreement in terms of clause 20 herein.

6. SERVICE REQUEST

6.1 The true intention and meaning of the Service Request is that the Law Firm will, in all respects, render and complete the Service in a workmanlike manner to the satisfaction of the Municipality;

6.2 Notwithstanding anything contained herein each Service Request will constitute an instruction to proceed with the subsequent phase;

6.3 If there appears to be any conflict, or want of agreement and/or contradiction between this Agreement and a Service Request, the Law Firm will refer the matter to the Municipality for a decision before proceeding with the execution of the Service Request, or part thereof, affected by the conflict or want of agreement;

6.4 All Services and the like, not expressly mentioned in the Service Request or this Agreement, but which are necessary to fulfil its intent, will be performed by the Law Firm as if specifically mentioned or described in the Service Request;

6.5 Immediately or reasonably possible after receiving the Service Request as per clause 6.4 the Law Firm will, in writing, confirm receipt of each Service Request. Failure by the Law Firm to confirm receipt will constitute a material breach of this Agreement;

6.6 It is specifically recorded that the Municipality reserves the right to, during the execution of this Agreement, require the Law Firm, by notice, to alter, amend, omit, add to, or otherwise vary any Service without invalidating the

Service Request and the Law Firm will be obliged to carry out such variations;

6.7 If such variations involve an additional payment or prevent the Law Firm from fulfilling any obligations and/or guarantees, and within 5 (five) working days of receipt of the notice, the Law Firm will, before proceeding therewith, notify the Municipality in writing of its acceptance of the amendment.

6.8 In such case the Municipality will decide not later than five (5) working days whether the Law Firm may proceed.

6.9 If the Municipality confirms its instructions to proceed with the said variation and the Law Firm's obligations and guarantees will be varied to such extent;

6.10 To the extent that the amendment results in an adjustment to the Service costs;

6.10.1 the Law Firm shall not give effect to the amendment notice until the Law Firm has received written confirmation, in the form of a letter on the Municipality's official stationery, from the Municipality signed by the Municipal Manager or his duly authorised representative ("the Confirmation Notice") of its approval of such adjusted Service costs;

6.10.2 such Confirmation Notice will constitute a valid variation of the Service Request;

6.11 The Municipality shall, subject to the Service Request that has already been issued, be entitled to source the Services from any Law Firm of its choice.

7. SCOPE OF WORK

7.1 The Law firms selected should have demonstrable qualifications and experience to handle legal work in the following practice areas but not limited to the below mentioned areas of law:

7.1.1 General and Commercial litigations;

7.1.2 Local Government laws;

7.1.3 Corporate Law;

7.1.4 Administrative Law;

7.1.5 Constitutional law;

7 (C)
R

- 7.1.6 Environmental law;
- 7.1.7 Labour law;
- 7.1.8 Taxation law;
- 7.1.9 Electronic Communications and Media Law (IT Law);
- 7.1.10 Planning and Property law;
- 7.1.11 Pension and Insurance law;
- 7.1.12 Health and Safety law;
- 7.1.13 Intellectual and Banking law;
- 7.1.14 Construction and Engineering law;
- 7.1.15 Transportation and Forensic Investigations;
- 7.1.16 Criminal law;
- 7.1.17 Conduct legal due diligence on proposed transaction, projects and Agreements, and
- 7.1.18 Land Transactions.

7.2 The above will be categorized under the following:

- 7.2.1 **Litigation;** Legal Services would be expected to include:
 - 7.2.1.1 Advising the Municipality with respect to its rights and obligations under its various operating and other agreements;
 - 7.2.1.2 Advising the Municipality in connection with potential disputes arising out of its various operating and other agreements;
 - 7.2.1.3 General Liability – such as personal injury, property damage, professional liability, labour issues, workmen's compensation;
 - 7.2.1.4 Conduct of litigation and watching briefs;
 - 7.2.1.5 Settlement negotiations; and
 - 7.2.1.6 Town Planning Litigation;

7.2.1.7 Land and Conveyancing Transactions;

7.2.1.8 Legislation;

7.2.1.9 Commercial Transactions; and

7.2.1.10 Employment law.

7.2.2 **Land Transactions:** Advice on and handling of land transactions, including but not limited to:

7.2.2.1 Acquisitions and dispositions involving, e.g., rights-of-way, leases, licenses, and transfers with respect to land, buildings; and

7.2.2.2 Resolution of issues or disputes over property rights and related responsibilities;

7.2.2.3 Preparation and completion of security documentation e.g. notarial leases;

7.2.2.4 Advising on and effecting realization of securities including foreclosures, sales, receivership; etc;

7.2.2.5 Land Restitution;

7.2.2.6 Evictions;

7.2.2.7 Land Use Transactions; and

7.2.2.8 Conveyancing Transactions.

7.3 LEGISLATION: The Law Firm will be expected to advise and or draft legislation matters for the Municipality on the following;

7.3.1 Legislative drafting and Review;

7.3.2 Policy and By-Laws formulation; and

7.3.3 Advise on legislative matters.

7.4 COMMERCIAL: The Law firm will be expected to advise on various commercial matters including but not limited to the following;

7.4.1 Advising the Municipality with regard to possible acquisition, sales, joint ventures and incidental matters;

- 7.4.2 Advising the Municipality with respect to compliance and corporate governance issues;
 - 7.4.3 Mogale City Local Municipality-customer relations;
 - 7.4.4 Settlement negotiations on commercial transactions; and
 - 7.4.5 Town Planning and development.
- 7.5 EMPLOYMENT LAW:** The Law firm will be expected to advise and promptly to attend all matters pertaining to Employment matters but not limited to the following.
- 7.5.1 Attend to disciplinary hearings;
 - 7.5.2 Attend to arbitrations at the South African Local Government Bargaining Council (SALGBC) and the Commissioner for Conciliation, Mediation and Arbitration (CCMA);
 - 7.5.3 Attend to the Labour Court; and
 - 7.5.4 Advise on labour related matters
- 7.6** The Law Firm shall exercise all reasonable skill, care and diligence in discharging these obligations in terms of the agreement and shall comply with all Prevailing Legislation relating the rendering of the Services.
- 7.7** The Municipality expects from time-to-time to require legal advice, assistance and representation on a number of areas, as specified below.
- 7.8** Whilst the Municipality has a competent in-house Legal Unit with experience in many of these areas, the Department seeks to augment the existing capabilities by being able to draw upon the resources of outside Legal expertise when needed and as an when issues arise.
- 7.9** It is expected that the appointed firms shall, at all times, provide the services diligently and in a professional manner.
- 7.10** The Services will be rendered in a timely manner as each request for services requires, and the firm will use reasonable endeavours to adhere to the time limits agreed to the time limits agreed upon instructions are furnished.
- 7.11** The Law firm will be expected to respond within 24 hours to any issue raised verbally pertaining to any instructions; while written instructions must be attended within 48 within 48 hours;
- 7.12** Law Firm may be required to perform work on a pro bono basis should the need arise.

7.13 Timeous and clear communication is vital between the Municipality and the Law Firm;

7.14 The quality and speed of service by the Law Firm may depend on access to information to enable informed assistance.

7.15 To mitigate this risk, the Municipality must have one centre of access where every conceivable information and documents may be stored for easy access.

7.16 Taking note of the decision-making process of the Municipality, the Law Firm may need to communicate sufficiently on time on matters that may need higher level of decision making as informed by the applicable legislation.

8 PERFORMANCE

8.1 The Completion Date specified in the service request is of the utmost importance.

8.2 Non-Compliance, as a result of the negligence of the Law Firm, with the said date will constitute a material breach of this agreement.

8.3 Partial performance will not constitute the provision of the Services.

8.4 The Law Firm assumes professional and technical responsibility for its performance, which will be in accordance with recognised professional standards employed by Law Firms performing work of a comparable nature and that the qualitative and quantitative value added is to the satisfaction of the Municipality.

8.5 The rendering of the Services that is not to the satisfaction of the Municipality, and being of poor qualitative standards, will not be paid for.

8.6 The Law Firm will be an independent Law Firm and not an employee, agent, joint venture or partner of the Municipality.

8.7 Nothing in this Agreement will be interpreted or construed as creating or establishing the relationship of employer and employee between the Municipality and the Law Firm;

8.8 A contractor supplied by the Law Firm will be an independent contractor as defined by the Labour Relations Act, No. 66 of 1995 as amended, and the Occupational Health and Safety Act, No. 85 of 1993, amongst others, and will provide the said Services as such.

8.9 The Law Firm will not;

8.9.1 have the authority to act on behalf of the Municipality or to bind the Municipality without the Municipality's express written consent and;

8.9.2 shall not be considered as having employee status for the purpose of any benefit applicable to the Municipality employees generally, other than those stated in this Agreement.

11 LC (EM)
B

- 8.10** The Law Firm is deemed to have full knowledge of the relevant statutory, collective and other stipulations applicable to the relationship with its contractors and the relationship with the Municipality.
- 8.11** This full knowledge includes, is not limited to;
- 8.11.1 the Labour Relations Act, No. 66 of 1995, as amended and;
 - 8.11.2 the Basic Conditions of Employment Act, No. 75 of 1997, or;
 - 8.11.3 any other employment legislation currently in force or which may come into force during the duration of this Agreement.
- 8.12** The Law Firm warrants that it is not and will not in future be in contravention of the said legislation and in the event of such contravention, the Law Firm undertakes to immediately remedy such contravention.
- 8.13** In the event that the Municipality advises the Law Firm of a contravention, the Law Firm shall, within ten (10) Business Days, remedy such contravention and shall keep the Municipality informed regarding the steps taken and the implementation and the results thereof.
- 8.14** The Law Firm hereby indemnifies and holds Mogale City Local Municipality harmless against any claim or action whatsoever taken against the Municipality by a contractor of the Law Firm or an independent or agent of his contractor to the extent permissible in terms of the Laws of the Republic of South Africa.
- 8.15** In the event of the Law Firm or its contractor rendering the Service to the Municipality, becoming involved in arbitration or falling within a collective agreement under a Bargaining Council, then the Law Firm shall immediately inform the Municipality thereof and on request, supply the Municipality with a copy of such award, agreement or any documentation that the Municipality may request.
- 8.16** Non-compliance with these clauses above, will be considered to be a material breach of this Agreement and will entitle the Municipality to terminate this Agreement with the Law Firm, without limiting the Municipality's right to recover damages from the Law Firm resulting from such cancellation, or to take all steps and do all things necessary to remedy such a contravention itself.
- 8.17** The Law Firm will render the Services at the address indicated in the Service Request.
- 8.18** Upon any delay beyond the set date, the Municipality may, without terminating this Agreement, be entitled forthwith to obtain similar Services from a third party as the Municipality may require.
- 8.19** The Municipality will recover any adverse difference in price it may incur as well as any other damages that may be suffered by the Municipality due to the Law Firm's non or partial performance of the Services and such damages to be determined against the total tender amount.

- 8.20 If the Law Firm fails to render the Services within the Completion Date, the Municipality will have the right, in its sole discretion to either deduct as a penalty an amount equivalent to 2,5% (two and a half percent) of the Service Request/Agreement value (as the case may be) per week/portion of a week for the period of delay, or to claim any damages or loss suffered in lieu of such penalty, provided that the penalty will be applied to the value of the outstanding portion of the Service Request/Agreement (as the case may be), only where the Municipality has Beneficial Use of the Services.
- 8.21 The provisions of clause 8.18 above are subject to the Municipality providing the required documentation and or information and attends all meetings to enable compliance with the contract.

9 PERIODIC REVIEW

- 9.1.1 The parties shall review this contract and assess performance of the Law Firm twice a year;
- 9.1.2 The Law Firm shall furnish the Municipality with the reports on all matters that he been instructed on and the progress thereof;
- 9.1.3 The reports stated in 9.2 above shall be submitted upon request by the Municipality to enable the legal services to prepare reports for the relevant committee.
- 9.1.1 The reports stated in 9.1.2 above shall be inclusive of but not limited to:
- 9.1.2 The status of the matter;
- 9.1.3 Prospects of the case;
- 9.1.4 Estimated future financial obligations; and
- 9.1.5 Any other information regarding the case.
- 9.1.6 Law firms may be requested by the Auditor General to provide some or all the information relating to the matter handled, i.e., cause of action, amounts involved and the progress/status of the matter on all or some matters.
- 9.1.7 Law firms are required to provide such information as soon as it is reasonably possible.
- 9.1.8 Should the Municipality not be satisfied with the performance of the Law Firm; the Municipality will be entitled to terminate this agreement.

10 ASSESSMENT

- 10.1 The Law Firm shall be assessed on the following criteria:

Evaluation Criterion	Weight	Scale	Total Score (Weight Scale)

DM

C 13 B

Goods/ Services delivered within stipulated timeframes	5		
Quality of goods/ services specified/ agreed	5		
Invoice delivered on time and correct	5		
General ease of working with supplier	5		
Total			
Formula: Total score 80			%
Total Score: Poor: 50%; Average: 50 -59%; Good: 60- 69%; Excellent: 70%			

11 Evaluation of the Law Firm's Employees

11.1 The Law Firm shall at all times provide Municipality with qualified employees and ensure that each employee meets the requirements set out in the Service Request.

11.2 The Law Firm shall further ensure that background checks ("Checks") on such employees have been conducted and such Checks shall include those set out in the Service Request, and in any event, the following:

11.2.1 qualifications authenticity;

11.2.2 confirmation that the employee's curriculum vitae is an accurate reflection of his/her profile and career history; and

11.2.3 Reference checks from previous employer.

11.3 The Law Firm shall, on request from the Municipality, provide the Checks on any or all of its employees.

11.4 The Municipality reserves the right to refuse access, without explanation, to any of the Law Firm's employee who, in the sole discretion of the Municipality, is deemed to be unsuitable or unsatisfactory.

12 PRICING/PAYMENT/INVOICING

12.1 The Law Firm warrants that the prices, charges and fees to the Municipality as contained in this Agreement are at least as favourable as those offered by the Law Firm to any of its other customers that are of the same or similar standing as Municipality.

12.2 After due completion of the Services, and upon request by the Law Firm, the Municipality will supply the Law Firm with a written acknowledgement to the effect that the Services have been rendered in accordance with this Agreement.

13 PAYMENT/TARIFF STRUCTURE/FEE STRUCTURE

13.1 The tables below reflect the payment fee structure of the Municipality and shall be reviewed annually based on the CPIX;

13.2 The tariff structure/fee structures per hour (excluding VAT);

13.3 The Municipality will only pay for disbursements, in addition to agreed rates that have only been incurred, all fixed tariff charged and paid to any of the Regulatory body e.g. (Deeds Office) will be disbursed as such and paid for.

13.4 In the event that the Law Firm is not resident within the jurisdictional area of Mogale City, 1% (one) percent Social Responsibility Contribution levy will be deducted from all payments to the Law Firm.

13.5 Proof of all disbursements must be attached to the statement of account;

13.6 The structure and seniority of INCORPORATED is as follows;

13.6.1 The tariffs for the INCORPORATED with more than seven (7) years' experience will be as follows;

Structures	Fees per hour
High Court	R1 –R1 700.00, excluding VAT
Labour Court and appeal court	R1– R1 700.00,excluding VAT
Magistrate Court	R1 – R1 500.00,excluding VAT
Bargaining Council and or CCMA	R1 – R1 500.00, excluding VAT

13.6.2 The tariffs for the INCORPORATED with less than seven (7) years' experience will be as follows;

Structure	Fees per hour
High Court and superior court	R1 – R1 500.00, excluding VAT
Labour Court and appeal court	R1 – R1 500.00, excluding VAT
Magistrate Court	R1 – R1 200.00, excluding VAT
Bargaining Council and or CCMA	R1 – R1 400.00, excluding VAT

13.6.3 Tariffs for specific matters excluded above;

Structure	Fees per hour
Contraventions of By-Laws & Regulations	R1-R1 200.00,excluding VAT
By-Law Review	R1-R1 200.00,excuding VAT
Disciplinary Hearings	R1-R1 200.00, excluding VAT
Conveyancing Work	As in terms of the tariffs set out by the Regulatory Body.
Registration of Trade Marks	As in terms of the tariffs set out by the Regulatory Body.
Opinions	An hourly rate R1 to R1 600.00 excluding VAT

14 SPECIAL CONDITIONS;

14.1 Law Firms must adhere to the special conditions;

14.1.1 The Law Firm must obtain prior written consent to instruct Counsel and or experts;

14.1.2 Should the Law Firm require the assistance of Senior Counsel written motivation should be provided by Attorney for consideration prior to the brief;

14.1.3 The law firm must appoint a project manager who is a practising attorney to attend to the instructions. Candidate Legal Practitioners will be utilised at the discretion of the Law Firm for learning purposes but no fee will be paid the Municipality for their services;

14.1.4 The appointed Law firm or firms of INCORPORATED should charge in terms of the Fee Structure as outlined;

14.1.5 Notwithstanding the rates of the Law Firm in its Tender as submitted:

14.1.5.1 Billing rates and disbursement rates will be agreed upon by the parties prior to conclusion of the specific Service as in terms of the Fee Structure;

14.1.5.2 The Law Firms shall not charge the Municipality for local traveling within the Gauteng Province;

- 14.1.5.3 The Law Firms shall not charge the Municipality for waiting time;
- 14.1.5.4 The fee notes submitted shall be in itemized form and clearly indicating the actual work done, the time spent on such work (which time shall not exceed 8 hours) and the fee charged for each item;
- 14.1.5.5 The Law Firm may submit interim bills to the Municipality at appropriate intervals during the course of each matter as appropriate and generally at the time when a particular phase of the matter has been completed within the financial year (1 July and 30 June);
- 14.1.5.6 The Municipality will at its discretion inspect and tax (the Law Firm interim bills);
- 14.1.5.7 The Law Firm shall submit interim bills to the Municipality within the financial year upon which the matter is being attended to;
- 14.1.5.8 In the event that the Municipality is successful in any litigation and costs are awarded to it, those costs shall be for the account of the Municipality and must not be defrayed to cover the costs of the Law Firm;
- 14.1.5.9 The Law Firm shall promptly advise the Municipality of any award of costs against it or in its favour in any matter and ensure the recovery of such costs;
- 14.1.5.10 The Municipality shall exercise its best endeavours to settle any invoices sent to it by the Law firm within thirty (30) days of receipt of same. The Law firm will not be entitled to charge interest on any unpaid bills unless specifically agreed with the Municipality;
- 14.1.5.11 The Law firm shall advise the Municipality of the most convenient mode of payment of the fees provided that if the preferred mode of payment entails any bank charges, those charges will be for the firm's account and the Municipality will have no liability to meet those charges;
- 14.1.5.12 In the event that the Municipality asks a Law firm to cease work in relation to any matter, the firm will be entitled to payment of the reasonable fees up to the

cessation of work on the matter and shall hand over the file to the Municipality; and

14.1.5.13 The fees agreed thereto shall be fixed and will be reviewed annually based on the CPIX.

14.2 Disbursements for travelling and accommodation shall only be limited to firms outside Gauteng;

14.2.1 All fees shall as of the 1st of July 2020 be reviewed according to the dictates of the CPIX;

14.2.2 All costs/monies recovered by the attorney in pursuit of his duties belongs to the municipality and no attorney shall disburse such monies without the prior written consent from the municipality;

14.2.3 Advocates' fees will be agreed upon as determined by the bar parameters;

14.2.4 Travelling is included in the hourly rates and day fees and shall only be negotiable in circumstances where the matter is outside the Gauteng Province.

14.3 Payment of Invoices for the Law Firm will be effected not later than 30 (thirty) days from receipt of a correct and original Invoice;

14.4 The monthly statement, invoices and all supporting documentation must be received before payment can be effected. Should the Service Provider's documentation be incomplete or incorrect, payment of these documents will only be effected the month following the month during which the correct documents were received;

14.5 The Law Firm, in the event that it is registered as a VAT vendor in terms of the VAT Act, shall ensure that the Invoice complies with the provisions of the VAT Act, failing which, the Municipality shall not make any payment in respect thereof until such time as it receives an invoice from the Law Firm which complies with the aforementioned provisions;

14.6 The Law Firm acknowledges that, in accordance with section 20(4) of the VAT Act, it is mandatory for the Service Provider to print Mogale City Local Municipality's VAT Registration Number on each and every tax invoice, above R1 000.00 (one thousand rand), that the Law Firm issues to the Municipality;

14.7 Settlement and or discounts, if any, agreed upon shall be deducted from payments;

14.8 The Municipality may set-off any amounts owed by the Law Firm from any amount due, with the exception of payment being withheld in terms of clause 19;

14.9 Payment will be effected by cheque or bank transfer. The Municipality's liability towards the Law Firm will be deemed to have been met when the cheque is posted or bank transfer is made. The Service Provider assumes the entire risk for cheques from the moment of posting, or with bank transfer, upon transfer being made;

14.10 The Service Provider will ensure that the Municipality, at all times, has the correct banking information in order to make a bank transfer;

14.11 All original Invoices must be forwarded to the Municipality to the address stated below:

The Mogale City Local Municipality
Civic Centre

Municipal Manager

P O Box 94

Krugersdorp

1740

For the attention of: **Assistant Manager: Expenditure**

14.12 All payments are provisional and are subject to audit by the Municipality;

14.13 The Law Firm will preserve its records for such a period as the South African Revenue Services may require or seven (7) years from date of payment, whichever is the longer.

15. NON-EXCLUSIVITY

15.1 This Agreement is not exclusive;

15.2 Notwithstanding the delivery of the LOA and the signing of this Agreement, the Municipality reserves the right, within the framework of the law, to replace or procure Services from any other Law Firm.

16. LIMITATION OF LIABILITY

Notwithstanding anything to the contrary contained in this Agreement, the Municipality shall not be liable to the Law Firm for any indirect or consequential loss or damage, including without limitation, loss of profit, revenue, anticipated

savings, business transactions or goodwill or other contracts whether arising from negligence or breach of contract.

17. SAFETY AND SECURITY

17.1 The Law Firm agrees to comply with the Municipality's security and safety procedures. Without limiting the generality hereof, the Law Firm will specifically comply with the Occupational Health and Safety Act;

17.2 The Municipality may allow the Law Firm access to the Municipality's premises in terms of its security procedures as amended from time to time.

17.3 The Municipality will be entitled to request the Law Firm to remove any employee, agent, consultant or subcontractor from its team if the Municipality is of the opinion that such a person is a security or safety risk or that the conduct of such a person is detrimental to the relationship between the Parties;

17.4 The Law Firm will remove such a person within the time period stipulated by the Municipality.

17.5 The Law Firm indemnifies the Municipality against any claims that might arise due to such removal.

18. FRAUD

18.1 If, at any time during the duration of this Agreement the Municipality, in its reasonable discretion determines, based on *prima facie* evidence, that the Law Firm has, in respect of this Agreement to which they were or are Parties acted dishonestly and/or in bad faith; and/or as made any intentional or negligent misrepresentation to the Municipality, whether in any negotiations preceding the conclusion of, or in the execution of the Agreement between the parties, then the Municipality will be entitled by written notice to the Law Firm forthwith to terminate this Agreement;

18.2 Upon such termination the Municipality shall be entitled, in addition to all other remedies available to it, to recover from the Law Firm all damages it has suffered by virtue of such conduct by the Law Firm;

18.3 If, at any time of such termination, the Municipality be indebted to the Law Firm for any amounts whatsoever, the Municipality shall be entitled to withhold payment in respect thereof for a period of 90 (ninety) days from the date of termination in order to investigate the Law Firm's conduct and any damages suffered by the Municipality;

18.4 No payment by the Municipality to the Law Firm after the lapse of such period shall preclude the Municipality, thereafter, from recovering from the Law Firm any such damages as it may have suffered.

19. LIENS AND CLAIMS BY THIRD PARTY

- 19.1. The Law Firm waives all liens and rights of possession relating to the Services.
- 19.2 If a third party makes a claim on the Municipality to anything connected with the Services, the Law Firm will:
- 19.3 after notification by the Municipality, deal with such a claim in such a manner as to avoid all prejudice to Mogale City Local Municipality and keep the Municipality fully informed; or
- 19.4 Alternatively, the Municipality may deal with such a claim at its discretion; in which event the Law Firm will render to the Municipality all necessary assistance.
- 19.5 If the Municipality incurs any fair and reasonable expenses or makes any disbursements in terms of this clause, such expenses may be set-off against moneys owed to the Law Firm.

20. THE MUNICIPALITY'S PROPERTY IN POSSESSION OF THE LAW FIRM

- 20.1 The Municipality's property supplied to a Law Firm for the execution of this Agreement remains the property of the Municipality and will at any time be available for inspection by the Municipality representative.
- 20.2 Any such property in the possession of the Law Firm on completion of this Agreement will, at the Law Firm's expense, be returned to the Municipality forthwith.
- 20.3 The Law Firm will be responsible at all times for any loss of or damage to the Municipality's property in its possession, and if required the Law Firm will furnish such security for the payment of any such loss or damage as the Municipality may require.

21. FORCE MAJEURE

If either Party is prevented or restricted directly or indirectly from carrying out all or any of its obligations under this Agreement, including but not limited to, by reason of strike, lock-out, fire, explosion, floods, riot, war, accident, act of God, embargo, legislation, shortage of or a breakdown in transportation facilities, civil commotion, unrest or disturbances, cessation of labour, government interference or control, or any other cause or contingency beyond the control of that Party, the Party so affected shall be relieved of its obligations hereunder during the period that such event and its consequences continue, but only to the extent so prevented and shall not be liable for any delay or failure in the performance of any obligations hereunder or loss or damages either general, special or consequential which the other Party may suffer due to or resulting from such delay or failure, provided always that written notice shall forthwith be given of any such inability to perform by the affected Party. Any Party invoking

force majeure shall, upon termination of such event giving rise thereto forthwith give written notice thereof to the other Party. Should such *force majeure* continue for a period of more than 90 (ninety) days then either Party shall be entitled forthwith to cancel this Agreement in respect of any obligations still to be performed hereunder.

22. BREACH AND TERMINATION

22.1 A Party to this Agreement shall be in default if it:

22.1.1 fails to pay any amount due by it in terms of this Agreement, by the due date, and fails to remedy such breach within 7 (seven) days of written notice to do so; or

22.1.2 commits a material breach of any provision of this Agreement and fails to remedy such breach within 5 (five) days (or such period as may be reasonable in the circumstances) written notice to do so; or

22.1.3 commits an act of insolvency within the ambit of Section 8 of the Insolvency Act, No. 24 of 1936, is deemed unable to pay its debts within the ambit of Section 345 of the Companies Act, No. 61 of 1973, alternatively Section 69 of the Close Corporations Act, No. 69 of 1984, as the case may be, finds itself in circumstances capable of being wound up in terms of Section 344 of the Companies Act, alternatively Section 68 of the Close Corporations Act, as the case may be, is deregistered or applies for deregistration in terms of Section 73 of the Companies Act, alternatively Section 26 of the Close Corporations Act, as the case may be, or is subject to application by a person other than a Party for the provisional winding up or judicial management of such Party, or a special resolution is passed for the winding up of such Party.

22.2 If a Party is in default, the aggrieved party shall be entitled, in addition to all other remedies to which it may be entitled in law or in terms of this Agreement, to terminate this Agreement.

22.2.1 Notwithstanding the provisions of clause 22.2, the Municipality may, without prejudice to any other rights herein, at any time and by giving thirty (30) days written notice, forthwith terminate the Agreement if;

22.2.2 The Municipality has any reason to believe that the Law Firm or anyone employed by it or acting on its behalf, whether with or without the Law Firm's knowledge, engages in a fraudulent practice in connection with this Agreement;

22
B

22.2.3 there is a substantial change of the ownership in or in the control of the Law Firm (save in the event of the restructuring of the group of companies of which the Law Firm forms part), without prior notification of such change to the Municipality;

22.2.4 the Law Firm fails to satisfy a judgement against the Law Firm within 21 (twenty-one) days after the Law Firm becomes aware of the judgement, except if the Law Firm provides evidence on an ongoing basis to the reasonable satisfaction of the Municipality that steps have been initiated within the 21 (twenty-one) days to appeal or rescind the judgement and to procure suspension of execution of the judgement and that such steps are being expeditiously pursued. The period of 21 (twenty-one) days shall run from the date succeeding the date on which judgement becomes final, or the date on which the attempts to procure the suspension of the execution fail; or

22.2.5 The Law Firm acts against the expressed policies and instructions of Agreement as expressed in terms of this Agreement.

22.3 The termination of this Agreement will not prejudice the rights of the Municipality to claim damages or to obtain any other relief in respect of any antecedent breach of the terms and conditions of this Agreement prior to such termination.

22.4 Notwithstanding any other provision contained in this Agreement, in the event that the Law Firm fails to complete the Services on the Completion Date (or such later date as the Parties may have agreed to in writing), or fails to deliver the Services in compliance with the Specifications, then the Municipality shall, at its election, be entitled, but not obliged to:

22.4.1 terminate this Agreement forthwith; and

22.4.2 acquire the Services from any third party and recover such additional expenditure (if any), in relation to the cost of the Service incurred by the Municipality and damages (if any), from the Law Firm; or

22.4.3 deduct from any amount owing to the Law Firm by the Municipality, as a penalty, an amount equal to 2.5% (two point five percent) of the service consideration (or the adjusted service consideration) for every week or part thereof during which delivery remains outstanding or incomplete or during which the product fails to comply with the specifications, provided that such penalty amount shall not be in excess of the service consideration or the adjusted service Consideration; or

22.4.4 claim damages or loss suffered in lieu of such penalty;

22.4.5 Any Law Firm seeking the services of another Law firm with regard to commissioning of documents must first consider any potential conflict of interest before executing same;

22.4.6 The Law Firm cannot handle any matter or case against the Municipality on behalf of any third party and must also declare a potential conflict of interest well in advance and withdraw forthwith from such a conflict, read in conjunction with Clause 6.3 above.

23. ARBITRATION

23.1 In the event that the Parties agree to refer a dispute to arbitration, such arbitration shall be held subject to the provisions of this clause:

23.1.1 at Krugersdorp;

23.1.2 otherwise in accordance with the provisions of the Arbitration Act, No. 42 of 1965, as amended, and it being the intention that, if possible, it shall be held and concluded within 21 (twenty-one) Business Days after it has been demanded.

23.2 The arbitrator shall be if the question in issue is:

23.2.1 an accounting matter, an Attorney or Advocate agreed upon between the Parties;

23.2.2 primarily a legal matter, a practising Senior Counsel with no less than 10 (ten) years standing agreed upon between the Parties; or

23.2.3 any other matter, an independent person agreed upon between the Parties.

23.3 If the Parties cannot agree upon a particular arbitrator in terms of 23.2 above within 7 (seven) Business Days after the arbitration has been demanded, the nomination in terms of 23.2.1, 2 or 23.2.3, as the case may be, shall be made by the President of the Law Society of the Northern Provinces (or its successor), within 7 (seven) days after the Parties have so failed to agree.

23.4 The Parties irrevocably agree that the decision in these arbitration proceedings:

23.4.1 shall be binding on them;

23.4.2 shall be carried into effect;

23.4.3 shall have right for review;

23.4.4 may be made an order of any Court of competent jurisdiction; and

23.4.5 shall not exclude the Parties' right to urgent relief.

24
DM
P

24. NOTICES AND DOMICILIUM

24.1 The Parties choose as their *domicilium citandi et executandi* (address for purpose of legal proceedings), their respective addresses set out in clause 24.2 below, at which addresses all processes and notices arising out of or in connection with this Agreement, its breach or termination may validly be served upon or delivered to the Parties.

24.2 For the purposes of this Agreement the Parties' *domicilium citandi et executandi* is:

PHYSICAL ADDRESS:

CIVIC CENTRE NO 38

Cnr. Market and Commissioner Streets,
Krugersdorp, 1739

POSTAL: P.O. BOX 94

KRUGERSDORP, 1740

Telephone Number: 011 951-2451

CELL NUMBER: 083 766 9286

Facsimile Number: (011) 951-2543

EMAIL Justin.baloyi@mogalecity.gov.za

PROJECT MANAGER: JUSTIN BALOYI

24.2.1 as regards the **Law Firm** at:

PHYSICAL: 75 OXFORD STREET

FERNDAL

RANDBURG

2194

(25)
R

Telephone Number: 011 781 4145

Facsimile Number: 011 781 4150 / 086 510 1664

Cell Number: 083 675 3454

DIRECTOR: LIMON PHUNGO

or at such other physical address, not being a post office box or poste restante, of which the Party concerned may notify the other in writing.

24.3 Any notice given in terms of this Agreement shall be in writing and shall, unless the contrary is proven:

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

24.3.2 if posted by prepaid registered post, be deemed to have been received by the addressee on the 8th (eighth) Business Day following the date of such posting;

24.3.3 if transmitted by facsimile, be deemed to have been received by the addressee 1 (one) Business Day after despatch;

24.3.4 if sent electronically, be deemed to have been received on the first Business Day following the successful transmission thereof as evidenced by the electronic confirmation of receipt.

24.4 Notwithstanding anything to the contrary contained in this Agreement, a written notice or communication actually received by a Party at its chosen address set out above shall be an adequate written notice of communication to such Party.

25. JURISDICTION

25.1 The Parties irrevocably agree that the Magistrates Court Krugersdorp shall have jurisdiction to hear and determine any suit, action or proceeding and to settle any dispute which may arise out of or in connection with the Agreement and for such purpose irrevocably submit to the jurisdiction of the Magistrates Court;

25.2 Each of the Parties irrevocably waives any objection which it might now or hereafter may have to the court referred to in clause 25.1 being nominated as a forum to hear and determine any suit, action or proceedings and to settle any disputes which may arise out of or in connection with this Agreement and agrees not to claim that any such court is not a convenient or appropriate forum.

26
B

25.3 The Parties agree that the process by which any suit, action or proceeding is begun may be served on it by being delivered in connection with any suit, action or proceeding at its registered office for the time being.

25.4. The Law Firm shall, if its registered address is not in South Africa, as soon as any suit, action or proceeding is brought against it, appoint an address in South Africa for purposes of service and failing such appointment within 15 (fifteen) days after such suit, action or proceeding is instituted, Mogale City Local Municipality shall be entitled to appoint such address by notice to the Law Firm. Nothing contained herein shall affect the right to serve process in any other manner permitted by law.

25.5. The submission to the jurisdiction of the court referred to in clause 25.1 shall not be construed so as to limit the rights of either Party to take proceedings against the other Party in any other court of competent jurisdiction for the purposes of obtaining urgent or interdictory relief.

26. ASSIGNMENT AND CESSION

26.1 The Law Firm shall not:

26.1.1 transfer any rights and/or obligations arising out of this Agreement without the written permission of Mogale City Local Municipality; and

26.1.2. make or allow any change to the shareholding or management control of the Law Firm as it is at the time of signature of this Agreement in the absence of prior notification of such change to Mogale City Local Municipality.

27. SEVERABILITY

If any clause or term of this Agreement should be invalid, unenforceable or illegal, then the remaining terms and provisions of this Agreement shall be deemed to be severable there from and shall continue in full force and effect unless such invalidity, unenforceability or illegality goes to the root of this Agreement.

28. DISSOLUTION

28.1. In the event of the dissolution of the partnership or the working relationship between the partners becomes so unbearable that it hampers the effective running of its daily affairs, the municipality reserves the right to instruct one of the partners to proceed with the matter or withdraw such instructions.

28.2. Such discretion shall be communicated to such partner in writing.

29 WAIVER

29.1 The waiver (whether expressed or implied), by a Party of any breach of the terms or conditions of this Agreement by the other Party shall not prejudice any remedy

DM

127 B

of the waiving Party in respect of any continuing or other breach of the terms and conditions hereof.

29.2 No failure, delay, relaxation or indulgence on the part of either party in exercising any power or right conferred on such Party in terms of this Agreement shall operate as a waiver of such power or right nor shall any single or partial exercise of any such power or right preclude any other or further exercises thereof or the exercise of any other power or right under this Agreement.

29.3 The expiry or termination of this Agreement shall not prejudice the rights of either Party in respect of any antecedent breach or non-performance by the other Party of any of the terms or conditions hereof.

30 MODIFICATION

30.1 No amendment, variation or consensual cancellation of this Agreement or any provision or term hereof or of any other document issued or executed pursuant to or in terms of this Agreement and no settlement of any disputes arising under this Agreement and no extension of time, waiver or relaxation or suspension of or agreement not to enforce or to suspend or postpone the enforcement of any of the provisions or terms of this Agreement or of any other document issued pursuant to or in terms of this Agreement shall be binding unless made in accordance with the terms of this Agreement and recorded in a written document signed by the duly authorized representatives of the Parties.

31 APPLICABLE LAW

31.1 This Agreement shall be governed exclusively, in all respects, by and shall be interpreted in accordance with the laws of South Africa.

DM

128

B

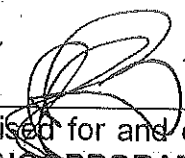
32 ENTIRE AGREEMENT

The Agreement and the incorporated documents represent the entire Agreement between the Law Firm and Mogale City Local Municipality, cancelling and taking the place of all prior oral, written or implied agreements between them, with respect to the supply of the Services.

SIGNED AT KRUGERSDORP ON THE 18th DAY OF September 2020

WITNESSES:

1. _____

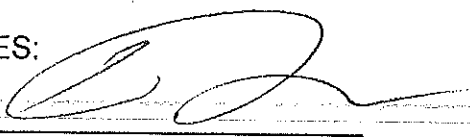
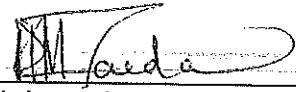

duly authorised for and on behalf of
PHUNGO INCORPORATED

2. _____

SIGNED AT KRUGERSDORP ON THE 28 DAY OF SEPTEMBER 2020

WITNESSES:

1. _____



duly authorised for and on behalf of
THE MUNICIPALITY

2. _____