

Maluti-a-Phofung Local Municipality

Performance Agreement

Municipal Manager



2016

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MALUTI-A-PHOFUNG LOCAL MUNICIPALITY

PERFORMANCE AGREEMENT

MUNICIPAL MANAGER

2016

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Performance Agreement

Made and entered into by and between

Maluti-A-Phofung Local Municipality

Herein represented by

Cllr Vusumusi William Tshabalala

In his duly authorised capacity as the **Executive Mayor** of Maluti-A-Phofung
Local Municipality

And

Advocate Mokoana Robert Tsupa

In his capacity as the **Municipal Manager** of Maluti-A-Phofung Local
Municipality

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WHEREAS:

- A. The Employer has entered into an Agreement of Employment with the Employee in terms of section 54A of the Local Government: Municipal Systems Amendment Act, 7 of 2011;
- B. Section 54A of Local Government: Municipal Systems Amendment Act, 7 of 2011, read with the Employment Contract concluded between the parties, requires the parties to conclude an annual Performance Agreement within sixty days of assumption of duty, and renew it annually within one month of commencement of the beginning of the financial year;
- C. The parties must ensure that they are clear about the goals to be achieved, and secure the commitment of the Employee to a set of outcomes that will secure local government policy as defined in the Municipal Integrated Development Plan; and
- D. The parties must ensure that there is compliance with Sections 57(4A), 57(4B) and 57(5) of the Local Government: Municipal Systems Act, 32 of 2000.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION AND DEFINITIONS

1.1 In this Agreement, unless the context indicates otherwise-

- a) An expression, which denotes any gender, includes the other genders, a natural person includes a judicial person and vice versa and the singular includes the plural and vice versa;
- b) Clause headings are for convenience only and will not be used in its interpretation, and the following expressions bear meanings assigned to them and cognate expressions bear corresponding meanings-
 - "Agreement"** means this Performance Agreement and all the Appendices hereto;
 - "Employee"** means Advocate Mokoana Robert Tsupa
 - "MFMA"** means the Local Government: Municipal Finance Management Act, 56 of 2003
 - "Municipality"** means the Maluti-A-Phofung Local Municipality, established in terms of the Local Government: Municipal Structures Act, 117 of 1998
 - "Parties"** means municipality and the employee
 - "Regulations"** means the Local Government: Municipal Planning and Performance Management Regulations of 2001, Performance Regulations for Managers and Managers Directly Accountable to Municipal Managers of 2006 and Regulation on Appointment and Condition of Senior Managers, 167 of 2013
 - "Structures Act"** means Local Government: Municipal Structures Act, 117 of 1998
 - "Systems Act"** means the Local Government: Municipal Systems, 32 of 2000 and the Regulations promulgated in terms of the Act
- c) Words and expressions defined in any sub-clause, for the purpose of the clause of which that sub-clause; and
- d) This agreement is governed by and construed in accordance with the laws of the Republic of South Africa.

2. PURPOSE OF THIS AGREEMENT

2.1 The purpose of this Agreement is to-

- a) Comply with the provision of Section 54A of the Local Government: Municipal Systems Amendment Act 7 of 2011 as well as the Contract of Employment entered into between the parties;
- b) Communicate the Employer's performance expectations and accountabilities to the Employee, by specifying objectives and targets as defined in the Integrated Development Plan, the Service Delivery and Budget Implementation Plan and the Budget of the municipality;

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- c) Specify accountabilities as set out in the Performance Plan, which must be in a format substantially compliant with Appendix "A"
- d) Monitor and measure performance against set targeted outputs;
- e) Use this Agreement and Performance Plan as a basis for assessing the performance of the Employee and to establish whether the Employee has met the performance expectations applicable to the position; and
- f) Appropriately reward the Employee in accordance with the Employer's performance management policy in the event of outstanding performance.

3. COMMENCEMENT AND DURATION

- 3.1 This Agreement will commence on **04 January 2016** and will remain in force until **30 June 2017**, where after a new Agreement, Performance Plan and Personal Development Plan must be concluded between the parties for each of the following financial years or any portion thereof for the duration of the Contract of Employment.
- 3.2 This Agreement will terminate on termination of the Employee's employment for any reason whatsoever.
- 3.3 The content of this Agreement may be revised at any time during the abovementioned period to determine the applicability of the matters agreed upon.
- 3.4 If at any time during the validity of this Agreement the work environment alters, whether as a result of government or council decision or otherwise, to the extent that the contents of this Agreement are no longer appropriate, the contents must immediately be revised.
- 3.5 Any significant amendments or deviation must take cognisance of the requirements of sections 34 and 42 of the Local Government: Municipal Systems Act, 32 of 2000, and regulation 4(5) of the Regulations.

4. PERFORMANCE OBJECTIVE

- 4.1 The Performance Plan must set out the-
 - a) performance objectives and targets that must be met by the Employee;
 - b) time frames within which those performance objectives and targets must be met.
- 4.2 The performance objectives and targets reflected in the Performance Plan must-
 - a) be set by the Employer in consultation with the Employee;
 - b) be based on the Integrated Development Plan and Budget of the Employer; and
 - c) include key objectives, performance indicators, target dates and weightings.
- 4.3 It is agreed that-
 - a) the key objectives must describe the main tasks that must be performed by the Employee;
 - b) the key performance indicators provide the details of evidence that must be provided to indicate that a key objective has been achieved;
 - c) the target dates describe the timeframe in which the work must be achieved; and
 - d) the weightings indicate the relative importance of the key objectives to each other.
- 4.4 The Employee's performances will, in addition, be measure in terms of contributions to the goals and strategies set out in the Employer's Integrated Development Plan and Service Delivery and Budget Implementation Plan.

5. PERFORMANCE MANAGEMENT SYSTEM

- 5.1 The Employee agrees to participate in the performance management system that the Employer adapts or introduces for the municipality, and accepts that the purpose of the performance management system is to provide a comprehensive system, with specific performance standards, to assist the municipality to perform to the standards required.

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- 5.2 The Employer must consult the Employee about the specific performance standards that are included in the performance management system which are applicable to the Employee.
- 5.3 The Employee undertakes to actively focus on the promotion and implementation of Key Performance Areas, including special projects relevant to the Employee's responsibilities, within the local government framework.
- 5.4 The Employee must be assessed on his or her performance in terms of the performance indicators identified in the attached Performance Plan and include:
- the Key Performance Areas; and
 - Core Managerial Competencies, with a weighting of 80:20 allocated to sub-clause (a) and (b) respectively.
- 5.5 Key Performance Areas will make up 80% of Employee's assessment score, and will contain the following Areas:

Key Performance Areas (80% of Total)	Weighting
Basic Service Delivery and Infrastructure	40%
Local Economic Development	20%
Organisational Development and Transformation	20%
Financial Viability and Management	10%
Good Governance and Public Participation	10%
Total	100%

- 5.6 The Core Management Criteria will make up the other 20% of the Employee's assessment score, and are deemed to be most critical for the Employee's specific selected from the list below as agreed to between the Employer and the Employee:

CORE COMPETENCY REQUIREMENT FOR EMPLOYEES (20% OF TOTAL)	
CORE MANAGERIAL COMPETENCIES (CMC)	WEIGHT
Strategic Capability	10
Programme and Project Management	6
Financial Management-Compulsory	6
Change Management	5
Knowledge Management	5
Service Delivery Innovation	5
Problem Solving and Analytical Thinking	5
People Management and Empowerment-Compulsory	5
Communication	5
Customer Management-Compulsory	5
Ethics Integrity and Professionalism	5
Policy Conceptualisation and Implementation	5
Political Astuteness	5
Advanced Negotiation Skills	7
Impact and Influence	5
Partnership and Stakeholder Relations	5
Supply Chain Management	5
Governance and Risk Management	5
Total	100%

6. EVALUATING PERFORMANCE

- 6.1 The Performance Plan, attached as Appendix "A", must set out the-
 - a) standards and procedures for evaluating the Employee's performance; and
 - b) intervals for evaluation of the Employee's performance.
- 6.2 Despite the establishment of agreed intervals for evaluation, the Employer may in addition review the Employee's performance at any stage during the validity of the Contract of Employment.
- 6.3 personal growth and development needs identified during any performance review discussion, as well as the actions and timeframes agreed to, must be documented in the Personal Development Plan, which must be in a format substantially compliant with Appendix "B"
- 6.4 The Employee's performance will be measured in terms of contributions to the goals and strategies contemplated in the Employer's Integrated Development Plan.
- 6.5 the annual performance appraisal must involve-
 - a) an assessment of achievement of results as outlined in the performance plan;
 - b) an assessment of each Key Performance Area according to the extent to which the specified standards or performance indicators have been met and with due regard to ad hoc tasks that had to be performed;
 - c) a rating on the five-point scale for each Key Performance Area;
 - d) the use of the applicable assessment rating calculator to add the scores and calculate a final Key Performance Area score.
- 6.6 The Core Management Criteria must be assessed-
 - a) according to the extent to which the specified standards have been met;
 - b) with an indicative rating on the five-point scale for each criteria
 - c) by using the applicable assessment rating calculator to add the score and calculating a final score
- 6.7 An overall rating is calculated by using the applicable assessment rating calculator, which represents the outcome of the performance appraisal, provided that the performance assessment of the Employee will be based on the following rating scale for both Key Performance indicators and Core **Management Criteria**:

Level	Terminology	Description	Rating				
			1	2	3	4	5
5	Outstanding	Performance far exceeds the standard expected of an employee at this level. The appraisal indicates that the employee has achieved above fully effective results against all performance criteria and indicators as specified in the PA and PP and maintained this in all areas of responsibility throughout the six months period.					
4	Significantly above	Performance is significantly higher than the standard expected in the job. The appraisal indicates that the employee has achieved above fully effective results against more than half of the performance criteria and indicators and fully achieved all others throughout the six months period.					

3	Fully Effective	Performance fully meets the standards expected in all areas of the job. The appraisal indicates that the employee has fully achieved effective results against all significant performance criteria and indicators as specified in PA and PP.					
2	Not full effective	Performance is below the standard requires for the job in key areas. Performance meets some of the standards expected for the job. The review/assessment indicates that the employee has achieved below more than half the key performance criteria and indicators as specified in PA and PP.					
1	Unacceptable	Performance does not meet the standard expected for the job. The review/assessment indicates that the employee has achieved below fully effective results against almost all of the performance criteria and indicators as specified in the PA and PP. the employee has failed to demonstrate the commitment or ability to bring performance up to the level expected in the job despite management efforts to encourage improvements.					

- 6.8 Each KP1 (outputs and OCR's) will be rated according to the abovementioned five-point scale. The score of each KPI is calculated as follows:

Weight per indicator x Rate /3

The sum of respectively all the output KPI scores and all CCR KPI scores is converted to 80% and 20%. The sum of these two scores is used for calculating performance bonuses (see paragraph 11.2)

- 6.9 For the purpose of evaluating the annual performance of the Municipal Manager, an evaluation panel constituted of the following persons must be established-
- i. The Mayor
 - ii. Chairperson of the Audit Committee
 - iii. Member of the Mayoral Committee
 - iv. Mayor/Municipal Manager from another municipality; and
 - v. Member of a ward committee as nominated by the Mayor

7. SCHEDULE FDR PERFORMANCE REVIEWS

- 7.1 Considering the Employee started to perform his duties in January, the performance in relation to his performance agreement must be reviewed during-
- a) January to March for the Third Quarter : April 2016
 - b) April to June for the Fourth Quarter : July 2016

Reviews in the Third and Fourth quarters may be verbal if performance is satisfactorily.

- 7.2 The responsibility for rescheduling a cancelled coaching session will be with the individual who requested the rescheduling.
- 7.3 The fourth quarter coaching is followed up by a review which may be conducted concurrently with the coaching session.

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- 7.4 The Employer must keep a record of the mid-year review and annual assessment meetings, and feedback must be based on the Employer's assessment of the Employee's performance.
- 7.5 Performance feedback shall be based on the Employer's assessment of the Employee's performance.
- 7.6 The Employer will be entitled to review and make reasonable changes to the provision of Annexure "A" from time to time for operational reasons. The Employee will be fully consulted before such change is made.
- 7.7 The Employer may amend the provisions of the Performance Plan whenever the performance management system is adopted, implemented or amended, provided that the Employee must be consulted before such change is made.

8. DEVELOPMENTAL REQUIREMENTS

- 8.1 The Personal Development Plan (PDP) for addressing development gap will be provided when required.

9. OBLIGATION OF THE EMPLOYER

- 9.1 The Employer shall-
 - a) create an enabling environment to facilitate effective performance by the Employee;
 - b) provide access to skills development and capacity building opportunities;
 - c) work collaboratively with the Employee to solve problems and generate solutions to common problems that may impact on the performance of the Employee;
 - d) on request of the Employee delegate such powers reasonably required by the Employee to enable him to meet the performance objectives and targets established in terms of this Agreement; and
 - e) make available to the Employee such resources as the Employee may reasonably require from time to time to assist him/her to meet the performance objectives and targets established in terms of this Agreement.

10. CONSULTATION

- 10.1 The Employer agrees to consult the Employee timeously where the exercising of the powers will have amongst others-
 - a) a direct effect on the performance of any of the Employee's functions;
 - b) commit the Employee to implement or give effect to a decision made by Employer; and
 - c) a substantial financial effect on the Employer.
- 10.2 The Employer agrees to inform the Employee of the outcome of any decision taken pursuant to the exercise of powers contemplated in 10.1 as soon as is practicable to enable the Employee to take any necessary action without delay.

11. MANAGEMENT OF EVALUATION OUTCOMES

- 11.1 The evaluation of the Employee's performance will form the basis for rewarding outstanding performance or correcting unacceptable performance.
- 11.2 A performance bonus of between 5% and 20% of all inclusive annual remuneration package may be paid to the Employee in recognition of outstanding performance to be constituted as follows

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Score	Performance Rating		Bonus Amount
5	Score above 150%	Outstanding Performance	11%-20% of the Total Package
4	Score above 130% -149%	Significantly above Expectation	5%-10% of the Total Package
3	Score of 100% - 129%	Fully Effective	0%
2	Below 100%	Not fully Effective and Unacceptable Performance	No Bonus but remedial Action Required

- 11.3 In the case of unacceptable performance, the Employer shall-
- provide systematic remedial or developmental support to assist the Employee to improve his or her performance; and after appropriate performance counselling and having provided the necessary guidance and/or support as well as reasonable time for improvement in performance, the Employer may consider steps to terminate the contract of employment of the Employee on the grounds of unfitness or incapacity to carry his or her duties.

12. DISPUTE RESOLUTIONS

- 12.1 Any dispute about the nature of the Employee's performance Agreement, whether it relates to key responsibilities, priorities, methods of assessment and/or salary increment in the Agreement, must mediate by-
- In the case of Municipal Manager, the MEC for local government in the province within (30) days of receipt of a formal dispute from the Employee, or any other person designated by the MEC; and
- 12.2 Any dispute about the outcome of the Employees evaluations, must be mediated by-
- In case of the Municipal Manager, the MEC for local government in the province within (30) days of receipt of a formal dispute from the Employee, or any other person designated by the MEC; and
- 12.3 In the event that mediation processes contemplated above fails, clause 15 of the contract of Employment shall apply.

13. GENERAL

- 13.1 The contents of this Agreement and the outcome of any review conducted in terms of Annexure "A" may be made available by to the public by the employer.
- 13.2 Nothing in this Agreement diminishes the obligations, duties or accountabilities of the employees in terms of his/her contract employment, or the effects of existing or new regulations, circulars, policies, directives or other instruments.
- 13.3 The performance assessment results must be submitted to the Mayoral Committee the Maluti-A-Phofung Local Municipality within (30) days after conclusion of the assessment.

Thus done and signed at... Qwa Qwa on this the 22nd day of January 2016

AS WITNESSES

1. [Signature]

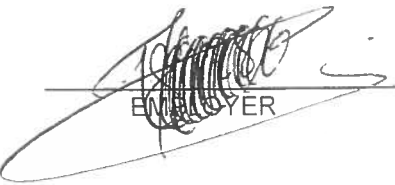
2. F. J. MAYA

[Signature]
EMPLOYEE

AS WITNESSES

1. Chah

2. PJ MAYA


EMPLOYER



CONTRACT OF EMPLOYMENT

Made and entered into by and between:

**MALUTI-A-PHOFUNG LOCAL MUNICIPALITY
PLAASLIKE MUNISIPALITEIT
MASEPALA WA LEHAE**

Represented by the Executive Mayor
(Cllr Vusumusi William Tshabalala)

And

Advocate Mokoana Robert Tsupa

(In his capacity as the **Municipal Manager** of Maluti-A-Phofung Local Municipality)

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CONTENTS

1. INTERPRETATION AND DEFINITIONS
2. PURPOSE OF THIS AGREEMENT
3. COMMENCEMENT AND DURATION
4. PERFORMANCE OBJECTIVE
5. PERFORMANCE MANAGEMENT SYSTEM
6. EVALUATING PERFORMANCE
7. SCHEDULE FOR PERFORMANCE REVIEWS
8. DEVELOPMENTAL REQUIREMENTS
9. OBLIGATION OF EMPLOYER
10. CONSULTATION
11. MANAGEMENT OF EVALUATION OUTCOMES
12. DISPUTE RESOLUTIONS
13. GENERAL

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1. INTERPRETATION AND DEFINITIONS

- 1.1 In this Agreement, unless the context indicates otherwise:-
- a) An expression, which denotes any gender, includes the other genders, a natural person includes a judicial person and vice versa and the singular includes the plural and vice versa;
 - b) Clause headings are for convenience only and will not be used in its interpretation, and the following expressions bear meanings assigned to them and cognate expressions bear corresponding meanings-
- 1.2 **"Agreement"** means this Contract of Employment and all the Appendices and Annexures hereto;
- 1.3 **"Employee"** means **Advocate Mokoana Robert Tsupa**
- 1.4 **"MFMA"** means the Local Government: Municipal Finance Management Act, 56 of 2003
- 1.5 **"Parties"** means municipality and the employee
- 1.6 **"Regulations"** means the Local Government: Municipal Planning and Performance Management Regulations of 2001, Performance Regulations for Managers and Managers Directly Accountable to Municipal Managers of 2006 and Regulation on Appointment and Condition of Senior Managers, 167 Of 2013
- 1.7 **"Systems Act"** means the Local Government: Municipal Systems, 32 of 2000 and the Regulations promulgated in terms of the Act;
- 1.8 **"Basic Conditions of Employment Act"** means the Basic Conditions of Employment Act, 1977 (Act No. 75 of 1997);
- 1.9 **"Chief Financial Officer"** means a person designated in terms of Section 80(2)(a) of the Municipal Finance Management Act;
- 1.10 **"Compensation for Occupational Injuries and Diseases Act"** means the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 030 of 1993);
- 1.11 **"Competence"** means having the necessary higher education qualification, work experience and knowledge to obtain at least a competent level of achievement;
- 1.12 **"Conditions of employment"** in relation to a senior manager have a corresponding meaning as the terms or conditions of employment as defined in section 1 of the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997);
- 1.13 **"Constitution"** means the Constitution of the Republic of South Africa, 1996;
- 1.14 **"Department"** in relation to a municipality means an administrative component of a municipality, headed by a manager appointed in terms of Section 56 of the Act;
- 1.15 **"The Disciplinary Regulations"** means the Local Government: Disciplinary Regulations for Senior Managers, (Government Notice No. 344), as published in Government Gazette No. 34213;
- 1.16 **"Employment Contract"** means a contract as contemplated in Section 57 of the Act;
- 1.17 **"Employment Equity Act"** means the Employment Equity Act, 1998 (Act No.55 of 1998);

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- 1.18 "**Executive committee**" means an executive committee established in terms of Section 43 of the Municipal Structures Act;
- 1.19 "**Financial year**" means the financial year of a municipality commencing on 1 July each year and ending on 30 June of the following year;
- 1.20 "**Labour Relations Act**" means the Labour Relations Act, 1995 (Act No. 66 of 1995);
- 1.21 "**Mayor**" means the mayor or executive mayor of a municipality as elected in terms of the Municipal Structures Act;
- 1.22 "**Medical Practitioner**" for purposes of these regulations includes a practitioner as defined by the Health Professions Council of South Africa, and who is legally certified to diagnose and treat patients;
- 1.23 "**Medical Schemes Act**" means the Medical Schemes Act, 1998 (Act No. 131 of 1998);
- 1.24 "**Municipal Finance Management Act**" means the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), and any regulations made under that Act;
- 1.25 "**Municipal Structures Act**" means the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);
- 1.26 "**Pension Funds Act**" means the Pension Funds Act, 1956 (Act No. 24 of 1956);
- 1.27 "**Performance Agreement**" means an agreement as contemplated in Section 57 of the Act;
- 1.28 "**Post**" means a post on the approved staff established of a municipality which has been budgeted for;
- 1.29 "**Senior Manager**" means a Municipal Manager or acting Municipal Manager, appointed in terms of Section 54A of the Act, and includes a manager directly accountable to a Municipal Manager appointed in terms of Section 56 of the Act;
- 1.30 "**Speaker**" has the meaning assigned to it in the Municipal Structures Act;
- 1.31 "**Staff establishment**" means the approved posts created for the normal and regular requirements of a municipality;
- 1.32 "**The Act**" means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000); and
- 1.33 "**Total remuneration package**" means the total costs of a Municipal Manager's remuneration to a municipality and includes the salary, pension contributions, medical aid contributions and other forms of payment or benefit.

2. APPOINTMENT AND DURATION

- 2.1 The Municipality hereby appoints **Advocate Mokoana Robert Tsupa** to the position of Municipal Manager, and the Municipal Manager hereby agrees to the appointment as Municipal Manager of the Municipality, subject to the terms and conditions recorded herein.
- 2.2 Notwithstanding the date of signature hereof, this agreement, and the appointment referred to in 2.1, shall commence and in all respects be deemed to have commenced, on **04th January 2016**, shall endure for a fixed term until a year after the Local Government

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Elections.

- 2.3 This contract of employment shall be automatically renewed (**without advertising**) to a further term of four (4) years by agreement at the end of the fixed term or terms on the same conditions or any other condition that the parties may agree upon in writing provided that:
- 2.3.1 All performance agreements concluded and required to be concluded between the Mayor of the Municipality and the Municipal Manager have been fulfilled;
- 2.3.2 Touch based performance reviews indicate a satisfactory performance on the part of the municipal manager.
- 2.4 It is hereby expressly agreed by the parties that any renewals of this contract will have to be negotiated separately from this contract and will not create any expectations of permanent employment of the municipal manager by the municipality.

3. PLACE OF WORK

The Employee is ordinarily required to work at the Head Office of the Municipality situated in Cnr Moremoholo & Setai Streets, Phuthaditjhaba. However, it may be required from time to time to execute the Employee's functions at other units within the jurisdiction of the Maluti-a-Phofung Local Municipality.

4. REMUNERATIONS

- 4.1 The Municipal Manager is appointed on the salary scale of **R 1,679,745.00** (total remuneration package) per annum.
- 4.2 In addition to the Municipal Manager's total remuneration package, the Municipal Manager is entitled to benefits as will be agreed to in writing before commencement of his employment.
- 4.3 Remuneration will be paid monthly in arrears, in a South African currency by means of an electronic transfer into the Municipal Manager's chosen bank account on or before the 23rd day of each month.

5. TERMS OF EMPLOYMENT

- 5.1 The Employee is appointed on a fixed term contract commencing on **the 04th January 2016** and terminating a year after the election of the next council of the Municipality calculated from the date of the next Local Government Elections.
- 5.2 Notwithstanding the initial term of employment provided for in sub paragraph 5.1 the new Municipal Council to be appointed after the Local Government Elections shall after the initial term of employment, automatically extend the term of employment by a maximum of four years.
- 5.3 In such circumstances, the contract of employment shall continue to a further period of four years in respect of the second term and shall be deemed to have been amended accordingly.

6. DEDUCTIONS

- 6.1 Deductions from the Municipal Manager's remuneration will only be done as stipulated in the employment conditions and the relevant legislation on a monthly basis.

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6.1.1 The only deductions that are authorised from the Municipal Manager's salary are:-

- 6.1.1.1 Income Tax.
- 6.1.1.2 Garnishee order.
- 6.1.1.3 Any other negotiated deductions.

7. CONDITIONS OF EMPLOYMENT

7.1 Ordinary hours of work:

7.1.1 The Municipal Manager will be required to work such hours and days in accordance with the operational needs and requirements of the Municipality at any particular time, which should not be less than forty (40) hours per week, five (5) days a week, Monday to Friday.

7.1.2 The ordinary hours presently worked at the Municipality are from 07h30 to 16h00 from Monday to Friday, which may, however be extended at the discretion of the Municipality, having regard to its operational needs and requirements

7.2 Overtime:

A Municipal Manager will be required to work overtime without additional remuneration.

7.3 Annual Leave:

The Municipal Manager will be entitled to a thirty (30) consecutive days annual leave with full pay for each completed twelve (12) month period of employment ("the leave cycle"). Leave must be taken at a time, which is mutually convenient to the Municipality within the leave cycle. The Municipal Manager will be permitted to carry forward leave not taken from one leave cycle to another with a maximum of 10 days per year.

7.4 Sick Leave:

The Municipal Manager will be entitled to ninety (90) days paid sick leave over a three (3) year period, calculated from the date of commencement of his employment ("the sick leave cycle"). During the first twelve (12) months the Municipal Manager is entitled to no more than thirty (30) working days paid sick leave. If the Municipal Manager is absent from work for more than three (3) consecutive days, he will be required to produce a medical certificate in order to qualify for paid sick leave. If the Municipal Manager becomes permanently unable, in the reasonable opinion of the Municipality, to perform his duties adequately be reason of ill health or incapacity, the Municipality may reconsider the conditions of his employment. Any absence from work should be reported to the Municipality as soon as reasonably possible.

7.5 Family Responsibility Leave:

7.5.1 A Municipal Manager is entitled to five (5) working days family responsibility leave per annual leave cycle for utilisation if the Municipal Manager's:-

- a) Spouse or life partner gives birth to the Municipal Manager's child;
- b) Child, spouse or life partner is sick; or
- c) Child, spouse or life partner, or a Municipal Manager's parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling dies.

7.5.2 A Municipal Manager must apply for family responsibility leave on an official leave form.

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- 7.5.3 The Municipality may require reasonable proof of an incident in respect of which family responsibility leave is granted.

7.6 Special Leave:

Special leave on full salary shall be granted to the Municipal Manager according to the prescriptions of the conditions of service applicable to other employees.

7.7 Study leave:

- 7.7.1 A Municipal Manager must apply for study leave on an official leave form.
- 7.7.2 If a Municipal Manager plans to attend a training programme that forms part of the Municipal manager's personal development plan, the Municipality may, upon receipt of official proof of the programme, grant the Municipal Manager up to twenty working days' leave per year, ten days of which must be for examinations linked to formal qualifications and ten days to attend classes or lectures.
- 7.7.3 Notwithstanding subregulation (2), a Municipal manager may be granted leave to attend workshops, conferences or seminars associated with continued professional development: Provided that the mayor has approved the Municipal Manager's attendance at such workshop, conference or seminar.
- 7.7.4 A Municipal Manager who is required to attend a training programme in relation to a priority skill identified by the municipality in terms of the Municipal Manager's personal development plan must be granted paid time off to attend the training in addition to the Municipal Manager's entitlement to leave.
- 7.7.5 The municipality may grant appropriate flexible working arrangements to a Municipal Manager who is required to complete a structured learning programme.

8. UNAUTHORIZED ABSENCE FROM WORK

- 8.1 If a Municipal Manager is absent from work without permission:-
- 8.1.1 such absenteeism will be regarded as leave without pay;
- 8.1.2 the Municipal Manager will be regarded as having deserted his post and therefore resigned:-
- 8.1.2.1 if the period of absence exceeds fifteen (15) or more consecutive working days; and
- 8.1.2.1 if the municipality has taken reasonable steps to trace the Municipal Manager without success.
- 8.2 The provisions of subregulation (1) do not apply to a Municipal Manager who shows good cause that he was unable to inform the municipality of the reasons for the absenteeism.

9. DISCLOSURE OF BENEFITS AND INTERESTS

- 9.1 A Municipal Manager who enters into an employment contract in terms of the regulations must:-
- 9.1.1 within sixty (60) days after his appointment, and

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9.1.2 annually thereafter, from the commencement of the new financial year of a municipality,

declare his benefits and interests.

9.2 The benefits and interest contemplated in subregulation (21) may include any shares, directorships or property, which may potentially be in conflict with the Municipal Manager's official duties.

9.3 A Municipal Manager must disclose all his registerable interest.

9.4 If the circumstances change significantly after an initial disclosure has been made, and new or additional facts become material, the Municipal Manager must disclose such facts as soon as reasonably possible.

9.5 Failure to disclose benefits and interests is a breach of contract and must be dealt with in terms of the Code of Conduct for Municipal Staff as provided for in Schedule 2 to the Act, read in conjunction with the Disciplinary Regulations.

10. MOBILE PHONE AND DATA CARD

A Municipal Manager is entitled to compensation for the use of a mobile telephone and data card for official purposes in accordance with the relevant policy of the municipality.

11. APPOINTMENT TO BE FULL TIME

During the subsistence of this agreement, the Municipal Manager shall devote all his time and attention during working hours to the administration and affairs of the municipality and he/she shall not be engaged either directly or indirectly in any other form of business without the prior written consent, or resolution where necessary, of the Municipality.

12. SUSPENSIVE CONDITION

10.1 This agreement shall be subject to the following suspensive conditions:-

10.1.1 the completion of the concurrence by the MEC of COGTA;

10.1.2 the approval of the appointment by MEC and or the Minister of Cogta.

13. TERMINATION

13.1 This contract will terminate in terms misconduct on Employee's part and the disciplinary processes has taken place and the sanction is dismissal.

13.2 This contract may be terminated based on the Municipal Manager's poor work performance and/or incapacity.

13.3 This contract may terminate based on the operational requirements of the Employer.

13.4 This contract may be terminated by mutual consent between the Employee and the Employer.

*M.R. V.W.T.
MM
P.J.*

- 13.5 Subject to procedures that have to be followed with regard to the Termination of employment, either party may give one calendar month notice but the Employer reserve the right to terminate the contract on a shorter notice.

14. CONFLICT OF INTEREST

For the duration of Municipal Manager's employment, he/she may not be directly or indirectly engaged in any other business other than that of Maluti-a-Phofung Local Municipality, unless written consent is obtained from the Council of the Maluti-a-Phofung Local Municipality.

15. POLICIES, MUNICIPAL PROTOCOLS, DIRECTIVES AND LEGISLATION

- 15.1 The contract of employment is subject to the policies and directives of the Maluti-a-Phofung Local Municipality as well as relevant legislation in force at the date of the commencement of employment and as amended from time to time
- 15.2 The Employee shall work in accordance with all relevant policies, practices and protocols of the Maluti-a-Phofung Local Municipality.

16. CONFIDENTIALITY AND FIDUCIARY LEGAL DUTIES

- 16.1 As an Employee of Maluti-a-Phofung Local Municipality the Employee bear a common law fiduciary duty to act in the best interest of the Municipality for the duration of the employment relationship.
- 16.2 The Employee's employment with Maluti-a-Phofung Local Municipality will be subjected to an undertaking of confidentiality which will be binding upon his both during and after termination of the employment relationship with Maluti-a-Phofung Local Municipality.
- 16.3 No information of a confidential nature that the Employee may have acquired during the course of his employment with Maluti-a-Phofung Local Municipality shall be disclosed to any person during and after termination of his employment.
- 16.4 The Employee may not, whether for own benefit or of that of others, make use of or disclose to others or avail himself/herself to others or derive profit or benefit from, any information concerning the business or affairs of Maluti-a-Phofung Local Municipality or its clients, suppliers or trade connections which he/she may have acquired by reason of his position or association with the business and affairs of Maluti-a-Phofung Local Municipality or its clients or service providers.
- 16.5 On termination of the Employee's employment, he/she shall hand over all information and documents (including but not limited to any training material, standards or manuals and equipment) as well as any and all copies or reproductions thereof in whatsoever manner or form to Maluti-a-Phofung Local Municipality.

17. INTELLECTUAL PROPERTY RIGHT

All the intellectual property rights in and to Maluti-a-Phofung Local Municipality's products and its systems, including any adaptation, development or modification thereto and any discoveries connected therewith, whether by yourself of Maluti-a-Phofung Local Municipality, in the trade marks, software and hardware thereof shall vest in Maluti-a-Phofung Local Municipality and shall be used exclusively for Maluti-a-Phofung Local Municipality purposes only.

V.W-T
MM
M.R. p.5

18. VARIATION AND CANCELLATION

No variation or mutually agreed cancellation of this contract has any force or effect unless it has been reduced to writing and signed by or on behalf of the municipality and the Employee.

19. BREACH

19.1 Any party may terminate this agreement by reason of the material breach of this agreement by the other party. Such termination shall be without prejudice to any other claim that any party may have, whether under this agreement or in law, including any claim for damages.

19.2 If any party commits any non-material breach of this agreement then the other party may claim specific performance or damage or both.

20. DOMICILIUM

20.1 The parties hereto respectively choose *domicilium citandi et executandi* for all notices, demands, process or communications intended for either party and for all purposes in connection with this contract, as follows:-

The Employer: Maluti-a-Phofung Municipality
Corner Moremoholo & Setai Streets
Phuthaditjhaba
9866

Employee: Adv Mokoana Robert Tsupa
65 Kaldins Villa Emfuleni Golf Estate
Vanderbijlpark
1900

20.2 The parties shall be entitled to change from time to time their *domicilium*, provided that any new *domicilium* selected shall be within the Republic of South Africa and shall be a physical address and any such change shall be in writing.

20.3 A notice, communication sent by one party to another party shall, unless otherwise proven, be deemed too be received:

20.3.1 On the same day, if delivered by hand.

20.3.2 Within 3 days if sent by telefax transmission.

20.3.3 On the seventh day after posting, if sent by prepaid registered mail.

21. NO INDULGENCE

No indulgence that these parties may grant to each other with regard to the compliance with any of the obligations in terms of this contract and performance agreement, prejudice or constitute a waiver of any parties rights in terms of the contract.

22. WHOLE AGREEMENT

This document and the documents referred to in it, in particular the performance agreement constitute the entire contract between the Municipal Manager and the Municipality and no terms, warranties, conditions or representations what so ever, have been made or agreed upon apart

N.R.D.S.
V.W.T.
M.M.

from those contained in this document.

Dated and Signed at Qwa Qwa on thus the 22nd day of January 2016.

As Witness:-

1. P.J. MAYA


 Clr Vusimusi Tshabalala
 Executive Mayor
 for Maluti-a-Phofung Local Municipality

2. Chah

Dated and Signed at _____ on thus the ____ day of January 2016.

As Witness:-

1. P.J. MAYA


 Advocate Mokoana Robert Tsupa

2. Chah