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## **EXHIBIT X6**

# **AFFIDAVIT & ANNEXURE OF MPOLOKENG MOKALOBÉ**

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**AFFIDAVIT**

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I, the undersigned,

Mpolokeng Mokalobe

ID number: 760913 0613 087

Hereby make oath and state as follows:

1.

I am an adult female and currently the Director for Sector Development at the Free State Department of Economic, Small Business Development, Tourism and Environmental Affairs ("**DESTEA**").

My office number is 051 400 9588.

2.

I depose to this affidavit with the aim to provide the Commission of Inquiry into State Capture ("**SCC**") with information at my disposal in relation to my knowledge about the "City for Tomorrow" project ("**City for Tomorrow project**").

*M.*

3.

The facts stated herein fall within my personal knowledge, save as stated otherwise or where the context indicates the contrary. I confirm that, to the best of my knowledge, all such facts are both true and correct.

**Background**

4.

I joined DTEEA (now DESTEA) on 18 August 2008.

I was the Deputy Director, Strategic Planning at Department of Economic Development, Tourism and Environmental Affairs (DETEA) (currently called DESTEA) during 2010/2011. I was part of the task team responsible for high impact projects including the City for Tomorrow project.

**Approach from SCC**

5.

On 16 July 2019 I was approached by investigators from the SCC to provide information about my knowledge of the City for Tomorrow project.

**Work performed in relation to the City for Tomorrow project**

6.

To the best of my knowledge, the first meeting I attended regarding the City for Tomorrow project was when a presentation was made by "P3" (a private company) on 22 June 2011 at the Free State Department of the Premier (now Office of the Premier) to the Free State **Economic Cluster**. Among the people who attended the meeting

from “P3” was Mr John Thomas. A copy of Mr Thomas’ business card, as obtained during this meeting, is attached to my affidavit as **Annexure “MM 1”**.

7.

As per the attached business card (**Annexure “MM 1”**), Mr John Thomas appears to be from California in the United States of America.

8.

Initially, I thought that only P3 was involved in the City for Tomorrow project but when I reviewed my notes, which were scribbled during the meeting on 22 June 2011, after the interview with SCC investigators, I noticed that a private entity “**Nulane**” was also represented in the same meeting. I cannot recall who represented Nulane.

#### ***Workings of the Economic Cluster***

9.

Based on my understanding, with particularly high impact economic projects, they will typically be placed on the agenda of the Economic Cluster for consideration. On approval, the cluster will make recommendation to EXCO to consider and approve the project before implementation by the department.

Usually, where a private entity is involved, it will be invited to present to the Economic Cluster for the cluster’s consideration before recommendations can be made to EXCO.

Although I am unsure who placed the City for Tomorrow project on the agenda of the cluster, the Economic Cluster manager at the time may know who placed this matter on the agenda.

10.

Except for the presentation at the Economic Cluster on 22 June 2011, members of the task team that included myself, attended a consultation workshop, on 16 November 2011 at "Bloem Spa" in Bloemfontein. .

At this workshop, the City for Tomorrow related presentation was done by P3. A number of Free State Provincial Government Departments and other stakeholders were invited to this workshop. It should also be noted that some of the representatives at the workshop did not attend the first presentation to the Economic Cluster. The individuals who attended the first presentation at the Economic Cluster (Mr John Thomas and an unknown individual from Nulane) also attended this workshop.

Members of the task team, including myself, did not keep records of the workshop as they were to be provided by the conveners of the workshop. Neither did we keep any records of the cluster meeting as this would normally be the responsibility of cluster manager.

11.

During the said workshop on 16 November 2011, the idea of building a new city was presented and inputs were provided by Government officials. I believed it was a great idea to build a new city in the Free State because of potential benefits.

*Handwritten signature*

12.

Except for the two events on 22 June 2011 and 16 November 2011 respectively, I am not aware of any other events where P3 and/or Nulane were involved. As far as I recall, DETEA (now DESTEA) was supposed to receive a report on the consultation process from the convenors and this did not happen.

The workshop was part of the consultative process to develop a plan for the City of Tomorrow, but I have not seen the plan except what was presented in the two meetings.

***Final outcome of the City for Tomorrow project***

13.

To my knowledge, nothing came of the City for Tomorrow project and the new city was never built.

It was my understanding that P3 was to provide the plan for the City for Tomorrow project at no cost. However, I later learned that payment was requested for the plan.

***Payments in relation to the City for Tomorrow project***

14.

I am not aware of any payments that were made by DETEA (now DESTEA) to P3 and/or Nulane.



15.

I do however recall being asked by the then Director of Financial Accounting, from the DETEA (now DESTEA) whether there was a plan for City for Tomorrow submitted as there was a request for payment for which I advised that the task team never received any plan.

***Documents purportedly signed by Mr Dukwana***

16.

During my consultation with the SCC on 16 July 2019, I was shown two documents and asked to comment and express my opinion in relation to *inter alia* what seems to be the signature of Mr Dukwana.

17.

As advised by the SCC, for ease of reference I have attached the two documents presented to me by the SCC to my affidavit and they are marked as follow:

- 17.1. **Master Plan Agreement** dated 5 October 2011. See **Annexure "MM 2"**.
- 17.2. A letter that seems to be an **appointment letter**, purportedly signed by Mr Dukwana on 3 November 2011, appointing P3 and Nulane Management Services. See **Annexure "MM 3"**.

***Master Plan Agreement (Annexure "MM 2")***

18.

I reviewed the document and would like to comment as follows:

- 18.1. I have no knowledge of this document.

- 18.2. I noticed on Page 17, a Mr Dukoana signed as the Head of Department (HOD) of DETEA. As far as I know, at no point was Mr Dukwana Head of Department.
- 18.3. In the document, Mr Dukwana's surname is spelt as "Dukoana", which I have no knowledge of.
- 18.4. I also indicated that the signature on **Annexure "MM 2"** appeared slightly different and I am not sure if it is the signature of Mr Dukwana or not.
- 18.5. On Page 18, a Mr Dukoana signed as Member of Executive Council (MEC) of DETEA. I can confirm that at the time Mr Dukwana was indeed the MEC of DETEA and what I said above about the signature of Mr Dukwana also applies to the signature on Page 18.

*Appointment Letter (Annexure "MM 3")*

19.

I reviewed the document and would like to comment as follows:

- 19.1. I have no knowledge of this document and any appointment of P3 and Nulane by DETEA (now DESTEA). My last interaction with P3 and Nulane was at the above mentioned workshop.
- 19.2. I was still unsure if that was Mr Dukwana's signature as it looked slightly different. What was said above regarding the signatures also applies to the signature on the Appointment Letter.



20.

I should also mention that, if the two documents were indeed official DETEA (now DESTEA) documents, there are chances that the members of high impact projects would have been aware of the documents. Furthermore, as a general rule, contracts amounting to **R140 million** (see Page 8 of **Annexure “MM 2”**) would normally be sent to DETEA Legal Section for review.

Ms ‘Connie’ Sefo, who was also part of the task team, was DETEA’s (now DESTEA) Legal Advisor at the time.

**General aspects**

21.

As far as I recall, other DETEA officials who attended both the meeting and the workshop relevant to the City for Tomorrow project on 22 June 2011 and 16 November 2011 respectively, were Mr Dukwana and Ms Sefo.

22.

I kept documents (mostly presentations) that came to my attention relating to all high impact projects, including the City for Tomorrow project, in a filing box in my cabinet. At some point, when information was requested from me, I realised the box was no longer in my cabinet. It is unknown to me if the box got lost during the movement from old DESTEA premises to the current building.

23.

That is all I wish to declare at this stage with respect to the City for Tomorrow project.



**Signature of deponent**

This affidavit consists of 9 pages (excluding attachments), each signed by me.

I know and understand the content of this affidavit.

I have no objection to taking the prescribed oath.

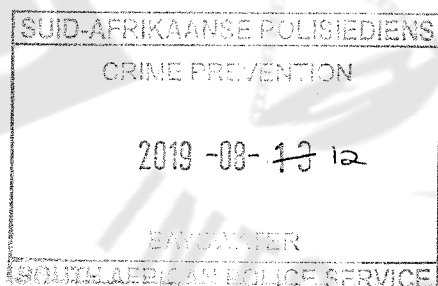
I consider the prescribed oath to be binding on my conscience.



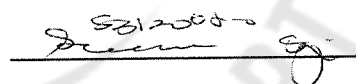
**Signature of deponent**

I certify that the deponent has acknowledged that she knows and understands the content of this affidavit.

This affidavit was sworn to/affirmed before me and the deponent's signature was placed thereon in my presence at Bloemfontein on 12<sup>th</sup> day of August 2019 at 10:10.



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**Commissioner of Oaths**

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Member of the Executive Council  
Economic Development, Tourism and Environmental Affairs  
**FREE STATE PROVINCE**

Mr. Iqbal Sharma and Mr. John Thomas  
Nulane Management Services and P3  
1st Floor East Wing 11 Alice Lane  
Sandton, 2196  
South Africa

**RE: THE CITY FOR TOMORROW - MASTER PLAN AND SCHEMATIC DESIGN**

Dear Mr. Sharma and Mr. Thomas,

Based on our Master Plan Agreement, I am pleased to give Nulane Management Services and P3 the Notice to Proceed with the development of the Master Plan for the City of Tomorrow Project, a new city to be designed in the Province of Free State, as well as prepare a Schematic Design for the new Government Center to be located in the Project.

The Master Plan will involve the creation of overall plans for the Project's infrastructure, public transportation facilities, sustainability and integration of services (governmental, housing, medical, high-tech private development, entertainment, public safety, parks, etc.), in light of local conditions and within a broader regional context. The design of the Master Plan will also incorporate a site for a new Government Center.

We look forward to the planning workshop scheduled for November 15 and 16, 2011 and would like to wish you well on this groundbreaking and exciting project.

Kind Regards,

**M. Dikwana**  
MEC: Economic Development, Tourism and  
Environmental Affairs Province of Free State

3/11/11

Office of the MEC  
34 Marignol Street  
Bloemfontein 9300  
Website:  
<http://www.dikwa.gov.za>

Private Bag 222001  
Bloemfontein 9300  
e-mail: [meconam@dekwa.gov.za](mailto:meconam@dekwa.gov.za)





**MASTER PLAN AGREEMENT**

entered into between

**THE PROVINCIAL GOVERNMENT OF THE FREE STATE ACTING  
THROUGH ITS DEPARTMENT OF ECONOMIC DEVELOPMENT,  
TOURISM AND ENVIRONMENTAL AFFAIRS**

and

**THE CONSORTIUM**

consisting of:

**P3 INTERNATIONAL, LLC**

Registration No. 201014810054

a company duly registered in terms of the laws of the State of California,  
United States of America

and

**NULANE INVESTMENTS 204 (PROPRIETARY) LIMITED t/a NULANE  
MANAGEMENT SERVICES**

Registration No. 2008/020988/07

a company duly registered in terms of the laws of the Republic of South Africa

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**WHEREBY IT IS AGREED AS FOLLOWS:****1. INTERPRETATION AND PRELIMINARY**

The headings of the clauses in this Agreement are for the purpose of convenience and reference only and will not be used in the interpretation of nor modify nor amplify the terms of this Agreement nor any clause hereof. Unless a contrary intention clearly appears:

**1.1. words importing:**

1.1.1. any one gender include the other two genders;

1.1.2. the singular include the plural and vice versa; and

1.1.3. natural persons include created entities (corporate or unincorporate) and the state and vice versa;

**1.2. the following terms will have the meanings assigned to them hereunder and cognate expressions will have corresponding meanings, namely:**

1.2.1. "Agreement" means this master plan agreement;

1.2.2. "Business Day" means any day other than a Saturday, Sunday or official public holiday in South Africa;

1.2.3. "City of Tomorrow" means the "City of Tomorrow", a new city to be designed and built in the Province of the Free State, which new city will include the following elements:

1.2.3.1. general infrastructure;

1.2.3.2. public transportation facilities;

1.2.3.3. housing;

1.2.3.4. medical facilities;

1.2.3.5. high-tech private development;

1.2.3.6. entertainment;

1.2.3.7. public safety;

1.2.3.8. parks; and

1.2.3.9. the Government Centre;

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- 1.2.4. **"Commencement Date"** means a date on which the Consortium commences the Project, being a date not later than 10 (ten) Business Days after the Consortium receives from Free State a written Notice to Proceed;
- 1.2.5. **"Conditions Precedent"** means the conditions precedent set out in clause 3;
- 1.1.1. **"Consortium"** means the unincorporated joint venture between P3 and Nulane;
- 1.2.6. **"Consortium Representative"** means any director of P3 or of Nulane, or any person duly authorised in writing by the management board of P3 and of Nulane to act on behalf of the Consortium under or with respect to this Agreement;
- 1.2.7. **"Construction Funding"** means sufficient funding to undertake the Construction Phase;
- 1.2.8. **"Construction Phase"** means the construction and building of the City of Tomorrow, which construction and building is intended to commence, in whole or in modular part, at a stage after the completion of the Project;
- 1.2.9. **"Event of Default"** means one or more events as defined in clause 11.1 of this Agreement;
- 1.2.10. **"Government Centre"** means the buildings, parking and ancillary grounds and structures intended to house the administrative and office functions of the Matchabeng Municipality, such Government Centre to be approximately 160,000 square metres in size;
- 1.2.11. **"Free State"** means the Provincial Government of the Free State acting through its Departments of Treasury and of Economic Development, Tourism and Environmental Affairs;
- 1.2.12. **"Free State Representative"** means the MEC of Economic Development of Free State, or any other person duly authorised in writing to act on behalf of Free State under or with respect to this Agreement;

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

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- 1.2.13. "Master Plan" means the overall integrated plan for the City of tomorrow and includes, inter alia, the creation of overall infrastructure plans, public transportation facilities, sustainability and integration of services (governmental housing, medical, high-tech private developments, entertainment, public safety, parks etc), in light of local conditions and within the broader regional context including as well a site for a new government center;
- 1.2.14. "Notice to Proceed" will mean a written communication, signed by the Free State representative, directing the Consortium to cause commencement of the Project as provided in this Agreement and which is delivered to the Consortium at the address provided herein by registered mail or email;
- 1.2.15. "Nulane" means Nulane Investments 204 t/a Nulane Management Services (Proprietary) Limited, a company incorporated under the laws of the South Africa, with registration number 2008/020998/07;
- 1.2.16. "P3" means P3 International, LLC, a company incorporated under the laws of the State of California, United States of America, with registration number 201014810054
- 1.2.17. "PFMA" means the Public Finance Management Act 1 of 1999;
- 1.2.18. "Project" means the commissioning and preparation of:
- 1.2.18.1. the Master Plan; and
- 1.2.18.2. the Schematic Design;
- 1.2.19. "Schematic Design" means the schematic designs for the Government Centre, in such form and detail as it can be delivered to a South African design and build team for implementation and final completion of all construction documents, plans and specifications, without major modification;
- 1.2.20. "Signature Date" means the date of signature of this Agreement by the party signing last in time;
- 1.2.21. "South Africa" means the Republic of South Africa;

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1.2.22. "Term" means the period commencing on the Commencement Date and, unless otherwise provided in this Agreement, terminating on the date 6 (six) months from such date;

- 1.3. any reference to an enactment is to that enactment as at the Signature Date and as amended or re-enacted from time to time and includes any subordinate legislation made from time to time under such enactment. Any reference to a particular section in an enactment is to that section as at the Signature Date, and as amended or re enacted from time to time and/or an equivalent measure in an enactment, provided that if as a result of such amendment or re-enactment, the specific requirements of a section referred to in this Agreement are changed, the relevant provision of this Agreement will be read also as if it had been amended as necessary, without the necessity for an actual amendment;
- 1.4. if any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect will be given to it as if it were a substantive provision in the body of this Agreement;
- 1.5. when any number of days is prescribed in this Agreement, same will be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which case the last day will be the next succeeding Business Day;
- 1.6. if figures are referred to in numerals and in words and if there is any conflict between the two, the words will prevail;
- 1.7. expressions defined in this Agreement will bear the same meanings in annexures to this Agreement which do not themselves contain their own conflicting definitions;
- 1.8. If 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, will bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation clause;
- 1.9. the expiration or termination of this Agreement will not affect such of the provisions of this Agreement as expressly provide that they will operate after

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any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;

- 1.10. the rule of construction that a contract will be interpreted against the party responsible for the drafting or preparation of the contract, will not apply;
- 1.11. any reference in this Agreement to a party will include a reference to that party's assigns expressly permitted under this Agreement and, if such party is liquidated or sequestrated, be applicable also to and binding upon that party's liquidator or trustee, as the case may be;
- 1.12. the words "include", "including" and "in particular" will be construed as being by way of example or emphasis only and will not be construed as, nor will they take effect as, limiting the generality of any preceding words;
- 1.13. any reference in this Agreement to any other agreement or document will be construed as a reference to such other agreement or document as same may have been, or may from time to time be, amended, varied, novated or supplemented;
- 1.14. the words "other" and "otherwise" will not be construed *ejusdem generis* with any preceding words if a wider construction is possible.

## 2. RECITALS

- 2.1. Free State desires the commissioning and preparation of the Master Plan and the Schematic Design.
- 2.2. The Consortium has the necessary skills and expertise to undertake the Project.
- 2.3. The parties wish to record their agreement in writing in relation to the appointment by Free State of the Consortium to undertake and deliver the Project.

## 3. CONDITIONS PRECEDENT

- 3.1. This Agreement, save for the provisions of this clause 3, is subject to the fulfilment of the following suspensive conditions by no later than 31 October 2011 or such later date as may be agreed in writing by the parties prior to such date:

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3.1.1. Free State provides confirmation to the satisfaction of the Consortium that it has authorisation for the execution of this Agreement;

3.1.2. Free State provides confirmation to the satisfaction of the Consortium that, to the extent required, Free State has complied with any and all obligations under or arising out of the PFMA as may be required to implement this Agreement and the Project and to be bound by the provisions of this Agreement;

3.2. The parties will use their reasonable endeavours to procure the fulfilment of the Conditions Precedent.

3.3. Neither party will be liable to the other party for any failure of the fulfilment of the Conditions Precedent.

#### 4. THE CONSORTIUM

It is recorded that the Consortium is a limited purpose unincorporated joint venture comprising the following members:

4.1. P3; and

4.2. Nulane.

#### 5. APPOINTMENT AND WORK SCHEDULE

5.1. Free State hereby appoints the Consortium to undertake the Project in accordance with the terms and conditions of this Agreement, and the Consortium accepts such appointment.

5.2. The Consortium is appointed for a period of 6 (six) months to undertake the Project and will provide the Free State with a planned work schedule for the Project for the 6 (six) month period. This work schedule will further be broken down into monthly deliverables to be presented by the Consortium to the Free State.

5.3. The Project has a defined scope of deliverables. Subject to clause 6.4, however, the Free State and the Consortium may agree changes to the scope of the Project.

5.4. Free State and the Consortium will cooperate at all times in bringing about the timely completion of the Project.

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## 6. PROJECT COST

6.1. In consideration for the Consortium undertaking and delivering the Project, Free State will pay to the Consortium a fixed amount of R140,000,000 (one hundred and forty million rand) ("Project Cost"). This Project Cost corresponds to the defined scope of deliverable for the Project.

6.2. The Project Cost will be paid by Free State to the Consortium, without deduction or set off, as follows:

6.2.1. 5 (five) equal monthly instalments payable by the Free State in advance every month, commencing with the first payment within 7 (seven) days after Free State issues the written Notice to Proceed, and within 7 (seven) days upon delivery of each monthly milestone succeeding the month in which the Commencement Date occurs; (Annexure A)

6.2.2. the sixth and final payment ("Final Payment") will be paid in arrears 60 (sixty) days after the Consortium has presented its final deliverable to Free State and both parties have signed off on the Project as presented and delivered by the Consortium;

6.3. Each instalment of the Project Cost will be paid by Free State by way of electronic funds transfer into such South African bank account as the Consortium may notify in writing to Free State, from time to time.

6.4. In the event that the Free State requires changes to the scope of the Project, after payment of the Final Payment then such changes will be costed by the Consortium and presented to the Free State for approval and, thereafter, if so approved charged to the Free State as an additional Project Cost on the same payment terms as referred to in clause 6.2 above.

6.5. The Consortium will be solely responsible for engaging, managing and remunerating all third party service providers as may be required by it to undertake and deliver the Project, including:

6.5.1. architects;

6.5.2. planners;

6.5.3. landscape architects;

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- 6.5.4. surveyors;
- 6.5.5. civil and structural engineers;
- 6.5.6. traffic and transportation consultants;
- 6.5.7. sustainability consultants; and
- 6.5.8. geotechnical and environmental engineers.

## 7. PROJECT TERM

- 7.1. Subject to compliance by Free State with its obligations under this Agreement and to clause 6.2, the Consortium will undertake and deliver the Project within the Term.
- 7.2. The Consortium, in consultation with the Free State, and for just cause may be entitled to extend the Term for successive periods of 1 (one) month each, subject to notice in writing to Free State, and at no additional cost to Free State.

## 8. WARRANTIES AND REPRESENTATIONS

- 8.1. As from the Signature Date, as the context indicates, the Free State represents and warrants to the Consortium to the best of Free State's knowledge, as follows:
  - 8.1.1. The Free State has the full power and authority to enter into, to execute and to deliver this Agreement, and to perform all of its duties and obligations hereunder, and has duly authorised the execution of this Agreement. The representatives of Free State executing this Agreement are fully authorised to execute the same.
  - 8.1.2. Neither the execution and delivery of this Agreement nor the fulfilment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach or default (with due notice or the passage of time, or both) of any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or a breach of any of the terms, conditions or provisions of any

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restriction or any agreement or instrument to which Free State is now a party or by which Free State is bound, or constitutes a default under any of the foregoing.

- 8.1.3. Other than the terms of clauses 8.1.2 and 8.1.3 no further consent, permission, authorisation, order or license, or filing or registration with any governmental authority is necessary in connection with the execution and delivery of the Project by the Consortium..

8.2. The Consortium represents and warrants to Free State as follows:

- 8.2.1. The Consortium is a unincorporated joint venture comprising and has the full capabilities, know-how and capacity to deliver on the Project and has the necessary powers to enter into and execute this Agreement.

- 8.2.2. Neither the execution and delivery of this Agreement, nor the fulfilment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Consortium is now a party or by which the Consortium is bound, or constitutes a default under any of the foregoing.

- 8.2.3. There is no pending or, to the knowledge of the Consortium, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of the Consortium to perform its obligations under this Agreement.

9. **DISCLAIMER OF WARRANTIES**

Free State acknowledges the Consortium makes no other warranties except as specifically set forth in this Agreement.

10. **ASSIGNMENT**

- 10.1. This Agreement may not be assigned by Free State.

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- 10.2. The Consortium may assign its right, title and interest in this Agreement, in whole or in part to one or more assignees with the prior written consent of Free State, such consent not to be unreasonably withheld or delayed.

# 11. EVENTS OF DEFAULT AND REMEDIES

- 11.1. The following will be "Events of Default" under this Agreement and the terms "Event of Default" and "Default" will mean, whenever they are used in this Agreement, any one or more of the following events:

11.1.1. failure by Free State to comply with any of its obligations in this Agreement, for a period of 30 (thirty) days after written notice specifying such failure and requesting that it be remedied has been given to Free State by the Consortium, provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Consortium will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Free State within the applicable period and diligently pursued until the default is corrected;

11.1.2. failure by the Consortium to comply with any of its obligations in this Agreement, for a period of 30 (thirty) days after written notice specifying such failure and requesting that it be remedied has been given to the Consortium by Free State, provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Free State will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Consortium within the applicable period and diligently pursued until the default is corrected;

11.1.3. prior to completion of Project, either of P3 or Nulane should be found insolvent, or commence or have commenced against it proceedings for liquidation or, if it should make a general assignment for the benefit of its creditors, or if a liquidator should be appointed on account of its insolvency.

- 11.2. In case of an event of Default by a party ("Defaulting Party") under paragraph 11.1 without the same having been timely remedied, the other party may terminate this Agreement in writing and (except as otherwise set forth herein) will have no further obligation to the Defaulting Party under this Agreement and will be entitled to exercise any remedy available to it in law,

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including, without limitation, an action for specific performance and/or an action for damages.

- 11.3. In no event will either party be entitled to indirect, special or consequential damages.

## 12. NOTICES AND DOMICILIA

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

### 12.1.1. Free State

12.1.1.1. Physical: 34 Markgraaf Street,  
Bloemfontein, 9300

12.1.1.2. Telefax: 051 400 4709

12.1.1.3. Email: nonom@dtsea.fs.gov.za

### 12.1.2. The Consortium

12.1.2.1. Physical: 1<sup>st</sup> Floor East Wing, 11 Alice Lane,  
Sandton, 2196

12.1.2.2. Telefax: 0866 727 806

12.1.2.3. Email: iqbal.sharma@issar.co.za

- 12.2. Any notice or communication required or permitted to be given in terms of this Agreement will be valid and effective only if in writing but it will be competent to give notice by fax or e-mail.

- 12.3. Any party may, by notice to the other parties, change the physical address chosen as its *domicilium citandi et executandi* to another physical address in the Republic of South Africa, or its fax number, provided that the change will become effective on the 5<sup>th</sup> (fifth) Business Day from the deemed receipt of the notice by the other party.

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**12.4. Any notice to a party:**

**12.4.1.** delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its *domicilium citandi et executandi* will be deemed to have been received on the day of delivery; or

**12.4.2.** sent by fax to its chosen fax number stipulated in clause 12.1, will be deemed to have been received on the date of despatch (unless the contrary is proved).

**12.5.** Notwithstanding anything to the contrary contained herein, a written notice or communication actually received by a party will be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

**13. SEVERABILITY**

Each phrase, sentence, paragraph and clause in this Agreement is severable the one from the other, notwithstanding the manner in which they may be linked together or grouped grammatically and if in terms of any judgment or order any phrase, sentence, paragraph or clause is found to be defective or unenforceable for any reason, the remaining phrases, sentences, paragraphs and clauses, as the case may be, will nevertheless be and continue to be of full force and effect, unless elimination of such invalid provision materially alters the rights and obligations embodied in this Agreement.

**14. EXECUTION IN COUNTERPARTS**

This Agreement may be executed in several counterparts, each of which will be an original and all of which will constitute but one and the same instrument.

**15. APPLICABLE LAW**

**15.1.** This Agreement and all matters or disputes incidental thereto or arising herefrom will, in all respects, be governed by and construed in accordance with the law of the Republic of South Africa, including all matters of construction, validity and performance.

**15.2.** Subject to clause 16, the parties hereby consent to the non-exclusive jurisdiction of the Free State High Court, Bloemfontein.

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**16. ARBITRATION**

16.1. Save in respect of those provisions of this Agreement which provide for their own remedies which would be incompatible with arbitration, a dispute which arises in regard to:

16.1.1. the interpretation of; or

16.1.2. the carrying into effect of; or

16.1.3. any of the parties' rights and obligations arising from; or

16.1.4. the termination or purported termination of or arising from the termination of; or

16.1.5. the rectification or proposed rectification of

this Agreement, or out of or pursuant to this Agreement, (other than where an interdict is sought or urgent relief may be obtained from a court of competent jurisdiction), will be submitted to and decided by arbitration.

16.2. That arbitration will be held:

16.2.1. with only the parties and their representatives present thereat;

16.2.2. at Sandton.

16.3. It is the intention that the arbitration will, where possible, be held and concluded within 21 (twenty one) working days after it has been demanded. The parties will use their best endeavours to procure the expeditious completion of the arbitration.

16.4. Save as is expressly provided for in this Agreement to the contrary, the arbitration will be subject to the arbitration legislation for the time being in force in the Republic of South Africa.

16.5. The arbitrator will be an impartial admitted attorney or advocate whether practising or non-practising of not less than 15 (fifteen) years standing, appointed by the parties or, failing Agreement by the parties within 7 (seven) days after the arbitration has been demanded, at the request of either of the parties will be nominated by the President for the time being of the Law Society of the Northern Provinces (or its successor body in Gauteng), whereupon the parties will forthwith appoint such person as the Arbitrator. If

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that person fails or refuses to make the nomination, either party may approach the High Court of South Africa to make such an appointment. To the extent necessary, the court is expressly empowered to do so.

- 16.6. The parties will keep the evidence in the arbitration proceedings and any order made by any arbitrator confidential.
- 16.7. The arbitrator will be obliged to give his award in writing, fully supported by reasons.
- 16.8. The provisions of this clause are severable from the rest of this Agreement and will remain in effect even if this Agreement is terminated for any reason.
- 16.9. The arbitrator's award will be final and binding on the parties to the dispute. There will be a right of appeal against any award of the arbitrator provided that:
- 16.9.1. the appeal is noted within 7 (seven) days of the arbitrator's award; and
- 16.9.2. the appellant delivers the record to the respondent within 5 (five) days of the record becoming available to the appellant. The relevant provisions of this arbitration clause will apply *mutatis mutandis* in regard to the appeal.

The appeal will be heard before a panel of 3 (three) arbitrators.

- 16.10. The costs of any venue, arbitrator's remuneration, recording, transcription and other costs and expenses ancillary to the hearing will be borne by the parties in equal shares and will be recoverable, as costs in the cause under the provisions of any award. The parties, together with the arbitrator will agree from time to time on the arbitrator's remuneration, which will be paid by the parties in equal shares, upon receipt of invoices therefor.

#### 17. CONSORTIUM REPRESENTATIVES AND FREE STATE REPRESENTATIVES

Whenever under the provisions of this Agreement the approval of the Consortium or Free State is required, or the Consortium or Free State is required to take some action at the request of the other, such approval or such request will be given for the Consortium by the Consortium's Representative and for Free State by Free State's Representative, and any party hereto will be authorised to rely upon any such approval or request.

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## 18. FORCE MAJEURE

18.1. If *vis major* or *force majeure* or *casus fortuitus* ("Interrupting Circumstances") cause delays in or failure or partial failure of performance by a party of all or any of its obligations hereunder, this Agreement, or as the case may be, the affected portion thereof will be suspended for the period during which the Interrupting Circumstances prevail, but if they affect any material part of the Agreement for a maximum period of 30 (thirty) days, any affected party will be entitled on 5 (five) days' written notice to cancel this Agreement.

18.2. Written notice of the Interrupting Circumstances specifying the nature and date of commencement thereof will be despatched by the party seeking to rely thereon (on whom the onus will rest) to the other/s as soon as reasonably possible after the commencement thereof. Written notice of the cessation of the Interrupting Circumstances will be given by the party who relied thereon within 1 (one) day after such cessation. No party will subsequently be obliged to comply with the obligations suspended during such period. The party whose performance is interrupted by the Interrupting Circumstances will be entitled, provided that such party will give notice to that effect with the written notice of the Interrupting Circumstances as provided above, to extend the period of this Agreement by a period equal to the time that its performance is so prevented.

18.3. For the purposes hereof *vis major* and *force majeure* include acts or omissions of any government, government agency, government authority or similar authority, (other than the Free State) any laws or regulations having the force of law, civil strife, riots, insurrection, sabotage, acts of war or public enemy, legal and illegal strikes, interruption of transport lockouts, combination of workmen, prohibition of exports, rationing of supplies, flood, storm, fire or (without limitation *et cetera*) any other circumstances beyond the reasonable control of the party claiming *force majeure* or *vis major* and comprehended in the terms *force majeure* or *vis major*.

## 19. WHOLE AGREEMENT, NO AMENDMENT

19.1. This Agreement constitutes the whole agreement between the parties relating to the subject matter hereof.

19.2. No amendment or consensual cancellation of this Agreement or any provision or term hereof or of any agreement, bill of exchange or other

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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 any of the provisions or terms of this Agreement or of any agreement, bill of exchange or other document issued pursuant to or in terms of this Agreement will be binding unless recorded in a written document signed by the parties (or in the case of an extension of time, waiver or relaxation or suspension, signed by the party granting such extension, waiver or relaxation). Any such extension, waiver or relaxation or suspension which is so given or made will be strictly construed as relating strictly to the matter in respect whereof it was made or given.

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

19.4. To the extent permissible by law no party will be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorised officers.

For:

THE PROVINCIAL GOVERNMENT OF THE FREE STATE ACTING  
THROUGH ITS DEPARTMENT OF ECONOMIC DEVELOPMENT, TOURISM  
AND ENVIRONMENTAL AFFAIRS

Signature:



who warrants that he / she is duly authorised thereto

HEAD OF DEPARTMENT  
PROVINCIAL GOVERNMENT OF THE  
FREE STATE, DEPARTMENT OF  
ECONOMIC DEVELOPMENT, TOURISM  
AND ENVIRONMENTAL AFFAIRS

Name:

M.A. Nkomo

Date:

5<sup>th</sup> OCTOBER 2011

Place:

BLOEMFONTEIN

Witness:

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Witness:

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For: THE PROVINCIAL GOVERNMENT OF THE FREE STATE

Signature: [Signature]

who warrants that he / she is duly authorised thereto

MEMBER OF EXECUTIVE COUNCIL  
(MEC) FOR ECONOMIC  
DEVELOPMENT, TOURISM AND  
ENVIRONMENTAL AFFAIRS,  
PROVINCIAL GOVERNMENT OF THE  
FREE STATE

Name: M. A. DUKOANA

Date: 5<sup>TH</sup> OCTOBER 2011

Place: BLOEMFONTEIN

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

For: THE CONSORTIUM (represented by P3 INTERNATIONAL, LLC)

Signature: [Signature]

who warrants that he / she is duly authorised thereto

Name: John Thomas

Date: 5<sup>TH</sup> OCTOBER 2011

Place: BLOEMFONTEIN

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

For: THE CONSORTIUM (represented by NULANE MANAGEMENT SERVICES  
(PROPRIETARY) LIMITED

Signature: [Signature]

who warrants that he / she is duly authorised thereto

Name: IQBAL MEER SHARMA

Date: 5<sup>TH</sup> OCTOBER 2011

Place: BLOEMFONTEIN

Witness: \_\_\_\_\_

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**Annexure A****Day Work Stream 1 Scope and Deliverables**

- 0 Visioning Workshop in South Africa  
Regional Analysis  
Site Selection  
Opportunities and Constraints  
Finalize Development Program  
Conceptual Master Plan Alternatives
- 30 Workshop 2 - Preferred Concept / Site Selection  
Preferred Master Plan  
Preferred Land Use Plan  
Open Space and Landscape Plan Concept  
Circulation and Transportation Plan  
Preliminary Character Images  
Preliminary Market Study Analysis  
Preliminary Transportation Strategies and Alternatives  
Preferred Conceptual Plan
- 60 Workshop 3 - Conceptual Plan Presentation  
Preferred Conceptual Plan  
Statistical Land Use Summary  
Preliminary Land Use Diagram  
Preliminary Open Space and Amenities Diagram  
Preliminary Circulation Diagram  
Draft Concept Master Plan Report  
Draft Concept Master Plan Presentation  
Final Concept Master Plan
- 90 Concept Master Plan Presentation  
Final Concept Master Plan Report Production  
Site Analysis  
Road Hierarchy and Accessibility  
Street Sections  
Land Use Plan and Statistical Summary  
Illustrative Plan  
Concept Landscape Design  
Phasing Diagram  
Preliminary Infrastructure Utilities  
Preliminary Security Diagram  
Preliminary Branding Concepts and Strategy  
Electronic Mapping Model  
Artist Renderings  
Conceptual Development Design Standards  
Character Images  
Phase 1 Strategic Land Use Plan  
Phase 1 Alternative Plans  
Develop Site Character Images
- 120 Workshop 4 - Preferred Site Plan and Presentation  
Draft Circulation and Transportation System  
Draft Site Design of Government Center  
Draft Site Design of Community Facilities and Amenities  
Draft Site Design of Plaza/Parks/Public Realm  
Draft Site Design of Streetscapes/Sections
- 150 Draft Phase 1 Site Plan Report and Guidelines  
Circulation and Transportation System  
Site Design of Government Center  
Site Design of Community Facilities and Amenities  
Site Design of Plaza/Parks/Public Realm  
Site Design of Streetscapes/Sections
- 180 Final Phase 1 Site Plan Report and Guidelines

**Work Stream 2 Scope and Deliverables**

- Workshop 1  
Site Visit  
Programming Workshop  
Development of Finalized Program Brief  
Preliminary Design Alternatives
- Workshop 2 - On Site Project Envisioning  
Development of Refined Concept Alternatives  
Development of Preferred Alternatives  
Development Design Documentation & Report
- Workshop 3 - Concept Design Presentation  
Begin Schematic Design Work
- Site Plans  
Floor Plans  
Building Elevations  
Building Sections  
Enlarged Floor Plans
- Reflected Ceiling Plans  
Exterior Detailing  
Interior Detailing  
Door and Window Schedules  
Mechanical Piping Plans  
Mechanical HVAC Plans  
Mechanical Equipment Schedules  
Electrical Power Plans  
Electrical Lighting Plans  
Telecommunication Plans  
Electrical Riser Diagrams  
Fire Alarm Riser Diagrams  
Structural Foundation Plans  
Structural Framing Plans  
Structural Details  
Structural Wall Sections  
Stair and Elevator Details
- Workshop 4 - Schematic Design Progress  
Grading and Topographic Plans  
Utility Plans  
Storm Water Plans  
Civil Engineering Details  
Landscape Planting Plans
- Irrigation Plans  
Planting Schedules
- Schematic Level Performance Specifications
- Workshop 5 - Handoff Meeting of 100% SD

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