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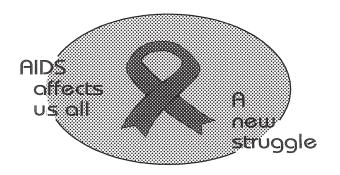
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MUNICIPAL NOTICES • MUNISIPALE KENNISGEWINGS

MUNICIPAL NOTICE 87 OF 2022

ESTABLISHMENT OF A DISTRICT MUNICIPAL PLANNING TRIBUNAL FOR FRANCES BAARD DISTRICT MUNICIPALITY.

Notice is hereby given that Frances Baard District Municipality entered into an agreement with Phokwane, Magareng and Dikgatlong local municipalities to establish a District Municipal Planning Tribunal (DMPT) in accordance with the provisions of section 34 (2) of the Spatial Planning & Land use management Act 2013 (Act 16 of 2013). The said Agreement is enclosed hereto in terms of section 34(3) of the Act.

The following officials are appointed to serve in their respective designated positions in the DMPT for a period of up to five years from the date of this notice.

FRANCES BAARD DISTRICT MUNICIPAL PLANNING TRIBUNAL						
Title	POSITION	MUNICIPALITY	NAME			
		REPRESENTED				
Manager: Legal and	Member	Frances Baard District	Mr. Kgosietsile Matlakala			
compliance		Municipality				
Manager: Spatial	Deputy	Frances Baard District	Mr. Freddy Netshivhodza			
Planning	Chairperson	Municipality				
Senior Town Planner	Member	Frances Baard District	Ms. Mpho Mashego			
		Municipality				
Housing Officer	Member	Phokwane Municipality	Mr. Tebogo Mabilo			
Building Inspector	Member	Phokwane Municipality	Mr. Sam Lebatlang:			
Land use officer	Member	Phokwane Municipality	Mr. Odirile Mecwi			
Technical Planner	Member	Dikgatlong Municipality	Mr Marvelous Seele			
Engineering Technician	Authorised	Dikgatlong Municipality	Mr. Desmond Makaleni			
	Official					
Assistant Town Planner	Member	Dikgatlong Municipality	Ms. Thandekile Shitlhavani			
Manager: Housing and	Member	Magareng Municipality	Mr. Milton Namelang			
Land use			_			
HOD Technical services	Member	Magareng Municipality	Mr. Tumelo Thage			
EXTERNAL MEMBER						
Practicing Attorney	Chairperson	Van De Wall & Partners	Mr. Oban Cronje			

Furthermore, in compliance with section 37(4) the DMPT shall commence its operations effectively from 06 June 2022.

Enquiries may be directed to the Municipal Manager at the Frances Baard District Municipality during normal office hours (8h00 to 16h30) by telephone at 053 838 0911, or in writing at the address below or by email at: Freddy@fbdm.co.za

THE MUNICIPAL MANAGER,
FRANCES BAARD DISTRICT MUNICIPALITY,
PRIVATE BAG X6088,
KIMBERLEY
8300
or
51 DRAKENSBERG AVENUE,
CARTERS GLEN,
KIMBERLEY, 8300.

MEMORANDUM OF AGREEMENT FOR THE ESTABLISHMENT OF A DISTRICT MUNICIPAL PLANNING TRIBUNAL

Concluded by and between:

FRANCES BAARD DISTRICT MUNICIPALITY (DC 9)

Herein represented by MS. Z.M. BOGATSU in her capacity as Municipal Manager)

(Hereinafter referred to as "FBDM")

AND

DIKGATLONG LOCAL MUNICIPALITY (NC 092)

Herein represented by **MS. B. TSINYANE** in her capacity as Acting Municipal Manager)

(Hereinafter referred to as "DIKGATLONG MUNICIPALITY")

AND

MAGARENG LOCAL MUNICIPALITY (NC 093)

Herein represented by MS. D. MONCHO in her capacity as Municipal Manager)

(Hereinafter referred to as "MAGARENG MUNICIPALITY")

AND

PHOKWANE LOCAL MUNICIPALITY (NC 094)

Herein represented by **MS. B. MGAGULI** in her capacity as Acting Municipal Managér)

(Hereinafter referred to as "PHOKWANE MUNICIPALITY")

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WHEREAS the Spatial Planning and Land Use Management Act, 16 of 2013, makes provision in section 34(2) for the establishment of a District Municipal Planning Tribunal to determine land development and land use applications.

AND WHEREAS the Parties have undertaken an assessment as contemplated in regulation 2 of the Regulations No. R 239 of 23 March 2013.

AND WHEREAS the Parties are desirous to conclude an agreement to establish a District Municipal Planning Tribunal (DMPT) to jointly consider and decide on land development and land use applications submitted to their respective municipalities.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

PART 1

INTRODUCTORY PROVISIONS

1. Definitions and Interpretation

The headings of the clauses in this Memorandum of Agreement, hereafter referred to as "the agreement", are for the purposes of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Agreement nor any clause hereof.

In this Agreement, unless a contrary intention clearly appears:

- 1.1 Words importing –
- 1.1.1 any one gender includes the other gender;
- 1.1.2 the singular includes the plural and vice versa; and
- 1.1.3 natural persons include created entities (corporate or non-corporate) and vice versa.
- 1.2 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, effect shall be given to it as if it were a substantive clause in the body of the agreement, notwithstanding that it is only contained in the interpretation clause.
- 1.3 When any number of days is prescribed in this Agreement, it shall be reckoned exclusively of the first and inclusively of the last day.
- 1.4 The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have a corresponding meaning, namely:

1.4.1 "commencement date" means the date of publication of the relevant notice as contemplated in terms of section 34(3) of the Act irrespective of the date of signature of this MOA;

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- 1.4.2 "external member" means a person appointed in terms of section 36(1) (b) of the Act as a member of the District Municipal Planning Tribunal;
- 1.4.3 "internal member" means an official of a participating municipality authorised by the municipality in terms of section 36(1) (a) of the Act as a member of the District Municipal Planning Tribunal;
- 1.4.4 "notice" means a written notice;
- 1.4.5 **"parties"** means the parties (the FBDM, Dikgatlong, Phokwane, and Magareng Municipalities) to this Agreement identified herein;
- 1.4.6 **"registered planner"** means a professional or technical planner registered in terms of the Planning Profession Act, 2002 (Act 36 of 2002);
- 1.4.7 "the Act" means the Spatial Planning and Land Use Management Act,16 of 2013 and the Regulations issued thereunder;
- 1.4.8 "the Regulations" means the Spatial Planning and Land Use Management Regulations: Land Use Management and General Matters, No. R.239 of 23 March 2015;
- 1.4.9 "this MOA" means the subject Memorandum of Agreement duly signed by all authorised persons representing the participating municipalities in the District Municipal Planning Tribunal; and
- 1.4.10 "the designated officer" means that official who represents that municipality as the authorised official as contemplated in section 35(2) of the Act.

PART 2

INSTITUTION OF DISTRICT MUNICIPAL PLANNING TRIBUNAL

2. Type of Municipal Planning Tribunal and purpose

This Memorandum of Agreement (MOA) makes provision for a District Municipal Planning Tribunal (DMPT) for participating local municipalities within the Frances Baard District as provided for in Section 34(2) of the Act, hereafter referred to as the **"Frances Baard DMPT"**.

The main purpose of the Frances Baard DMPT is to provide for a pool of suitably qualified persons to serve as a credible independent and professional authority to responsibly consider and decide the land development and land use applications submitted by the participating municipalities.

3. Criteria for participating municipalities

The criteria for Local Municipalities to participate in the Frances Baard DMPT are:

a) Council Resolution to participate in DMPT.

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- b) Adoption of the Memorandum of Agreement.
- c) Adoption of a Land Use Planning By-Law.
- d) Must have a functional Land use scheme or relevant applicable legislation.

4. Participating Municipalities

The signatory municipalities will be party to the Frances Baard District Municipal Planning Tribunal (FBDMPT).

5. Duration

- 5.1 This Agreement commences on the commencement date.
- 5.2 The term for the Frances Baard DMPT will be for a period of 5 years after which the participating Municipalities must review this MOA as it may be necessary, and any amendments need not be published in the government gazette.
- 5.3 This Agreement shall otherwise terminate on the date that the term of office of the members of the District Municipal Planning Tribunal expires.

6. Conditions and rules for withdrawal of participation from or winding up of operation of DMPT

When any Municipality wants to withdraw from the Frances Baard DMPT the provisions of the Regulations (9) will apply.

7. Publication of Notice

When the Frances Baard DMPT is ready to commence operations, the district municipal manager shall publish the notice as referred to in section 37(4) of the Act.

PART 3

COMPOSITION AND APPOINTMENT OF TRIBUNAL MEMBERS

8. Internal Members

The internal members of the DMPT will consist of such full-time officials as nominated by the respective participating municipalities in accordance with the terms and conditions for such DMPT members as provided for in this MOA.

8. 1 Appointment of internal DMPT members

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- 8.1.1 Each participating Municipality must nominate members who are officials in the full-time employ of the Parties and qualify to serve on the DMPT.
- 8.1.2 Each municipality should nominate a number of members to the Frances Baard DMPT appropriate to the capacity of such municipality.
- 8.1.3 Each Council should mandate the Municipal Manager to nominate such DMPT members in order to curb undue delays and ensure uninterrupted service delivery.
- 8.1.4 The Parties shall, where applicable, review and amend the contracts of service of the officials designated to serve on the Frances Baard District Municipal Planning Tribunal.
- 8.1.5 Should any officials be added or removed from the Frances Baard DMPT in accordance with the provisions of this agreement, the affected municipality must notify the DMPT.

9. External Members

- a. The DMPT may nominate external members to service on the DMPT from different organ of state as may be necessary from time to time should such a need arise.
- b. If the external membership from different organ of state is insufficient, the Frances Baard DMPT, may source additional external members from any other nominations as provided for in the Regulations.

9.1. Appointment of external DMPT members

- 9.1.1 The district must issue an invitation for nominations for external members to serve on the Frances Baard DMPT in the manner and form provided for in the Regulations and/ or respective Municipal Land Use Planning By-Law(s).
- 9.1.2 The district must constitute a joint evaluation panel together with the representatives inclusive of the Planning Directorates of the respective parties to evaluate all nominations received
- 9.1.3 The joint evaluation panel of the Parties shall evaluate all nominations received and make recommendations to the district Council and the district will inform the participating municipalities of the appointment.
- 9.1.4 The district Council shall evaluate the recommendations of the joint evaluation panel and appoint such persons who qualify for appointment as members of the Frances Baard DMPT subject to all the terms and conditions of appointment to, and serving on the District Municipal Planning Tribunal referred to in the Act and the Regulations.

9.1.5 The district shall inform the successful nominees of their appointment to the District Municipal Planning Tribunal.

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PART 4

TERMS AND CONDITIONS OF TRIBUNAL MEMBERS

- 10. Norms and standards for the terms and conditions of service of members of the District Municipal Planning Tribunal
- 10.1 An internal member of the District Municipal Planning Tribunal
 - may only serve as member of the District Municipal Planning Tribunal (a) for five (5) years as long as he or she is in the full-time employ of the municipality; and
 - is bound by the conditions of service determined in his or her contract of (b) employment and is not entitled to additional remuneration, allowances, leave or sick leave or any other employee benefit as a result of his or her membership on the District Municipal Planning Tribunal.
- 10.2 An external member of the District Municipal Planning Tribunal -
 - (a) is not an employee on the staff establishment of any of the participating municipalities;
 - (b) in the case of a person referred to in regulation 3(2)(a), is bound by the conditions of service determined in his or her contract of appointment and is not entitled to additional remuneration, allowances, leave or sick leave or any other employee benefits as a result of his or her membership on the District Municipal Planning Tribunal; and
 - (c) sits at such meetings of the District Municipal Planning Tribunal that requires his or her relevant knowledge and experience as determined by the District Municipal Planning Tribunal.

11. Term of Office for DMPT Members

The term of office for members of the District Municipal Planning Tribunal shall be:

- (a) for up to five (5) years as may be determined by the council resolution of the participating municipalities; or
- as may be determined by the participating municipalities when the party (b) represented by a member withdraws from the DMPT; or
- (c) when the DMPT winds up.

12. Qualifications and Experience for MPT Members

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OZZ 12.1 At least one member of the DMPT must be registered with the South Africa Council for Planners (SACPLAN) as a professional or technical planner.

12.2 The DMPT members must possess an adequate range of knowledge and experience in spatial planning, land use management and land development or the law related thereto.

13. Remove, recall, replace or adding of a tribunal member

- 13.1 A municipality may at any time:
 - a) remove or recall a Tribunal member nominated by such municipality, and/
 - b) nominate an official to replace an existing tribunal member or to add an additional new Tribunal Member.
- 13.2 The DMPT must notify the municipal managers of the participating municipalities of the suspension of a tribunal member if there are reasonable grounds that such member has breached the code of conduct as set out in Schedule 3 of the regulations and/ or that the Tribunal member's continued service on the Tribunal is not in the best interest of the tribunal.

PART 5

CHAIRPERSON AND DEPUTY CHAIRPERSON

- 14. Appointment of Chairperson and Deputy Chairperson
- The DMPT Chairperson and Deputy Chairperson will be nominated by the Frances Baard District Municipality municipal council as per Section 36 (4) of SPLUMA.
- 14.2 The term of office of the chairperson and the deputy chairperson shall be for a period of five years calculated from the commencement date of this Agreement.
- 14.3 The DMPT Chairperson and Deputy Chairperson must:
 - possess an adequate range of knowledge and experience in spatial a) planning, land use management and land development or the law related thereto.
- 14.4 If the Chairperson fails to perform the designated duties and functions as required by the agreement and/ or whose conduct is detrimental to the operational efficiency or integrity of the planning tribunal, any tribunal member, with the secondment of another tribunal member, must lodge a complaint of such conduct or failure to perform the duties to the Councils of the participating municipalities.

14.5 The designated municipal manager must investigate any complaint received Page 7 of 15 L perform the duties and functions of a Chairperson, the designated municipal manager must remove such Chairperson from office to rephrase

14.6 When a chairperson or deputy chairperson are dismissed or vacates office for whatever reason, the DMPT must recommend to the Councils the participating municipalities eligible chairperson and/ or deputy chairperson.

15. Duties and functions

- 15.1 In general the members must ensure the efficient and effective functioning of the Frances Baard District Municipal Planning Tribunal and in particular to fulfil the functions and duties as provided for in this agreement including the following:
 - Provide and manage an annual schedule of tribunal meetings with allocated tribunal members in accordance with the provisions of this agreement;
 - b) Arrange special tribunal meetings as provided for in the agreement;
 - c) Receive, consider, and grant or refuse an application for intervener status in a tribunal meeting as provided for;
 - d) Receive, consider, and grant or refuse an application for an oral hearing in a tribunal meeting as provided for; and
 - e) To consider and grant or refuse an for an oral hearing in a tribunal panel meeting as provided for.

PART 6

OPERATIONAL PROCEDURES

- 16. Applications to be considered and decided by the District municipal planning tribunal
- 16.1 The District Municipal Planning Tribunal shall exercise and perform duties and functions of a District Municipal Planning Tribunal referred to in the Act, the relevant provincial legislation, and the by-laws of the Parties.
- 16.2 All land development and land use applications submitted to the DMPT for consideration and decided on must be accompanied by a DMPT checklist.

17. Format of tribunal meetings

17.1 Any municipality may request the Chairperson with an appropriate written motivation to convene a special tribunal panel meeting in order to dispose of an application on the basis of urgency as it relates to social wellbeing, economic vitality or the integrity of the environment.

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18. Venue of Tribunal meetings

- 18.1 The DMPT meetings shall be held at the venue as determined by the DMPT members.
- 18.2 The District Municipal Planning Tribunal meetings shall be held at the offices of the participating Municipalities as determined by the DMPT members.

19. Appointment of technical and other advisers

- 19.1 The Parties shall establish and maintain
 - a) database of public sector technical and other advisers; and
 - b) a database of private sector technical and other advisers.
- 19.2 The Parties shall -
 - in writing request the employer of an official or employee referred to in regulation 11(2) to make that official or employee available on an ad hoc basis for technical and other support before that official or employee is placed on the database of public sector technical and other advisers; and
 - b) publish an invitation in one newspaper circulating in the municipal areas of the Parties for persons referred to in regulation 11(2) to be registered on the database of private sector technical and other advisers and may determine conditions for incorporation into that database.
- 19.3 The DMPT shall first consider appointing an adviser from the database of public sector technical and other advisers and only if there is no such adviser available or no adviser available with the requisite knowledge and skill, shall the chairperson consider an adviser from the database of private sector technical and other advisers.

20 Site inspection for Tribunal members

20.1 On request from tribunal members for a site inspection for any application to be considered and determined, the DMPT, must contemplate the need for such site inspection and accordingly arrange for a site inspection where all relevant tribunal members are present.

PART 7

SECRETARIAT AND ADMINISTRATION

21 Submission and processing of applications

21.1 Each municipality will be responsible to administer the applications within its own area of jurisdiction for the land development and land use applications for the subject municipality, and includes:

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- a) All land development and land use applications to be considered and decided on by the DMPT shall be submitted by an applicant to the municipality in whose municipal area the land to which the application relates, is located.
- b) Every municipality will keep and administer its own application register.
- c) Each participating municipality is responsible to compile and submit for each DMPT meeting with the items on land development and land use applications to be considered and decided on.
- d) The agenda must be made available to DMPT at least 7 days before the date of the meeting.
- e) Any request by a municipality to add a late but urgent item after the closing of an agenda for a tribunal meeting must be directed to and decided on by the DMPT, who may grant such request if there are valid urgent reasons and the addition of such late item to an agenda will not compromise any rights of any party who may have an interest in such application.
- f) When an application for a late but urgent item after the closing of an agenda is considered, the DMPT may, with the consent of the DMPT members, refer such application to another scheduled panel meeting for another municipality.
- g) During the DMPT meeting, the secretariat is responsible for all secretariat duties and administrative support, inclusive of taking the minutes for such meeting.
- Following a DMPT meeting, the secretariat is responsible for the finalisation, distribution and record keeping of the minutes of the meeting.
- Following the approval of the minutes of a meeting, the secretariat is responsible to communicate the decisions to all parties concerned.
- j) Each municipality is responsible to receive process and submit any Appeals against the decisions of the Planning Tribunal to the respective municipality's Appeal Authority in terms of section 51 of the Act.

22. Rules and procedures

22.1 The Planning Tribunal must decide on a uniform standard and quality of the evaluation report for land development and land use applications to be submitted by the municipalities to the Planning Tribunal in order to ensure compliance to the related planning laws and facilitate responsible decision making.

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- 22.2 Municipalities must ensure that the relevant files for the applications to be decided on are present at the tribunal meetings, as well as the SDF, the Land Use Planning Bylaw, zoning schemes, and any other relevant development plan or policy applicable to any such applications.
- 22.3 The DMPT must provide reasons for the decisions they take, and which must be included in the minutes of the meetings.
- 22.4 Each Municipality is responsible to submit the required Quarterly report to their Council.

PART 8

FUNDING OF OPERATIONAL COST

23. Funding

- 23.1 The Parties shall make provision in their respective budgets to fund the cost of proceedings of the DMPT meetings, including any additional cost such as the remuneration of advisors appointed to it and any other necessary operational costs, on an annual basis from the commence of this agreement.
- 23.2 Any unforeseen shared cost that may arise from the Frances Baard DMPT such as the appointment of an independent external member, if necessary, must obtain the prior approval from all the parties and will be paid by all parties on the basis as must be agreed upon.
- 23.3 Each party shall be responsible to fund the extent of considering and deciding those categories of applications that shall be heard by authorised official as contemplated in section 35 (2) of the Act.
- 23.4 There will be no transfer of funds between the Parties.

PART 9

GENERAL PROVISIONS

24. Assets

The Frances Baard District Municipal Planning Tribunal shall not acquire any assets or incur liabilities and shall not employ any staff.

25. Liaison between the parties

The Parties agree to liaise through the following persons or their successors, duly authorised by the Parties:

a) FBDM

Contact person: Ms Z.M. Bogatsu (Municipal Manager)

Telephone Number: 053 838 0998

b) Dikgatlong Municipality

Contact person: Ms B. Tsinyane (Acting Municipal Manager)

Telephone Number: 053 831 6500

c) Magareng Municipality

Contact person: Ms D. Moncho (Municipal Manager)

Telephone Number: 053 497 3111

d) Phokwane Municipality

Contact person: Ms B. Mgaguli (Acting Municipal Manager)

Telephone Number: 053 474 9700

26. Disputes

- 26.1 Any dispute which arises between the Parties in connection with the interpretation of or giving effect to this Agreement shall be resolved amicably through consultation and negotiation.
- 26.2 Should a dispute remain unresolved, the provisions of the Intergovernmental Relations Framework Act, 13 of 2005 shall apply in the absence of specific dispute resolution measures prescribed by the Act.

27. Limitation of liability

Notwithstanding anything contained in this Agreement, the liability of each Municipality shall be limited to –

- (a) an act or omission of the authorised official referred to in section 35(2) of the Act; and
- (b) an act or omission of a member of the District Municipal Planning Tribunal.

28. Entire agreement

- 28.1 This Agreement constitutes the entire agreement and supersedes any and all previous agreements regarding this subject matter that may exist between the Parties.
- 28.2 No representations, either verbal or written, made by either party during the tenure of this Agreement shall be of any force or effect unless agreed to by both Parties, reduced to writing, and annexed hereto, as an addendum.

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29. No waiver

The failure of either one of the parties to insist upon the strict performance of any provision of this Agreement or to exercise any right, power or remedy consequent upon a breach hereof shall not constitute a waiver by such Party to require strict and punctual compliance with each and every provision of this Agreement.

30. Notices and domicilium

- 30.1 The Parties choose as their domicilia citandi et executandi the following addresses: -
 - (a) FRANCES BAARD DISTRICT MUNICIPALITY
 Private Bag X6088
 Kimberley
 8300
 - (b) DIKGATLONG LOCAL MUNICIPALITY
 Private Bag X5
 Barkly West
 8375
 - (c) MAGARENG LOCAL MUNICIPALITY
 P.O. Box 10
 Warrenton
 8530
 - (d) PHOKWANE LOCAL MUNICIPALITY
 Private Bag X3
 Hartswater
 8570
- 30.2 Either party hereto shall be entitled from time to time by written notice to the other party, to vary its domicilium to any other physical address.
- 30.3 Any notice required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing and if received or deemed to have been received by the addressee.
- 30.4 Any notice given by one party to the other, referred to as the addressee, which-
 - (a) is delivered by hand during the normal business hours of the addressee at the addressee's domicilium and for which receipt must be signed.
 - (b) is posted by prepaid registered post from an address to the addressee at the addressee's domicilium for the time being, shall be presumed, until the contrary is proved, to have been received by the addressee on the day after the date of posting.

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31. Authority

The Parties confirm that they have the necessary authorisation to sign this Agreement on behalf of the applicable Party.

THUS, DONE AND SIGNED AT	KIMBERLEY	ON THIS	D3	DAY
OF2022				
As witnesses: 1	MS. Z.M BO MUNICIPAL ON BEHALI DISTRICT N	. MANAGER F OF FRAN	CES BA	- AARD
THUS, DONE AND SIGNED AT	BARKLY- WEST	_ON THIS _	4TH	DAY
As witnesses:	MS. B. TSIN ACTING MU ON BEHA LOCAL MU	JNICIPAL M LF OF D	IKGATL	
THUS, DONE AND SIGNED AT	1. 1. aventon	ON THIS	05	DAY

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As	:	4			
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1.

2.

Moncho

MS. D. MONCHO
MUNICIPAL MANAGER
ON BEHALF OF MAGARENG
LOCAL MUNICIPALITY

THUS, DONE AND SIGNED AT Martswater ON THIS 4/5/22 DAY

As witnesses:

1.

2.

MS. B. MGAGULI

ACTING MUNICIPAL MANAGER
ON BEHALF OF PHOKWANE

LOCAL MUNICIPALITY

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