

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

ENTERED INTO BY AND BETWEEN

**WEST RAND DISTRICT MUNICIPALITY**

Demarcation Code DC48

(Herein represented by Mr Mpheng Elias Koloi in his capacity as Municipal Manager and duly authorised thereto.

(Hereinafter with its successors-in-law and title referred to as "WRDM")

AND

**MERAFONG CITY LOCAL MUNICIPALITY**

Demarcation Code GT484

Herein represented by Ms. Morakane Mokoena in her capacity as Municipal Manager and duly authorised thereto

(Hereinafter with its successors-in-law and title referred to as "MerCLM")

AND

**MOGALE CITY LOCAL MUNICIPALITY**

Demarcation Code GT481

Herein represented by Mr Pringle Raedani in his capacity as Municipal Manager and duly authorised thereto.

(Hereinafter with its successors-in-law and title referred to as "MogCLM")

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**RAND WEST CITY LOCAL MUNICIPALITY**

Demarcation Code GT485

Herein represented by Mr Themba Goba in his capacity as Municipal Manager and duly authorised thereto.

(Hereinafter with its successors-in-law and title referred to as "RWCLM")

(Jointly referred to as "the Parties")

**PREAMBLE**

**WHEREAS** the Spatial Planning and Land Use Management Act, 2013 (Act No 16 of 2013) makes provision in Section 34(2) for the establishment of a Tribunal to consider land development and land use applications, as per the By-Laws passed by the respective parties, as amended from time to time. (herein referred to as "the By-Laws").

**AND WHEREAS** the Parties have undertaken an assessment as contemplated in Regulation 2 of the Regulations;

**AND WHEREAS** the Parties are desirous to conclude an agreement to establish a Tribunal to consider relevant land development and land use applications submitted to the respective municipalities;

**NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:**

**1. DEFINITIONS AND INTERPRETATION**

The headings of the clauses in this 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.

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- 1.3 When any number of days is prescribed in this Agreement, it shall refer to calendar days, to be reckoned exclusively of the first and inclusively of the last day.
- 1.4 In the event of a conflict between the provisions of the Spatial Planning and Land Use Management Act, 2013 (Act No 16 of 2013) and its Regulations and this agreement, the provisions of the Act and Regulations, as amended from time to time, will receive preference.
- 1.5 The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have a corresponding meaning, namely:
- 1.5.1 "Agreement" means this Memorandum of Agreement and the attached schedule/s.
  - 1.5.2 "Chairperson" means the Chairperson of the Tribunal appointed in terms of Clause 4.6;
  - 1.5.3 "commencement date" means, irrespective of the date of signature of this Agreement, the date of publication of the notice referred to in Section 34(3) of the Act;
  - 1.5.4 "Designated Tribunal" means a Tribunal constituted in terms of Clause 8.2 of this agreement;
  - 1.5.5 "the Act" means the Spatial Planning and Land Use Management Act, 2003 (Act No 16 of 2013) as amended from time to time;
  - 1.5.6 "the Regulations" means the Spatial Planning and Land Use Management Regulations: Land Use Management and General Matters, 2015 as amended from time to time.
  - 1.5.7 "Tribunal" means the Municipal Planning Tribunal for the West Rand District Municipal Area as established in terms of Section 34(2) of the Act.

## 2 FUNDING

- 2.1 The WRDM shall make provision in its annual budget to fund the cost of the proceedings of the Tribunal, the remuneration of members not in the fulltime service of the Municipalities appointed to it and any other necessary operational costs.
- 2.2 MerCLM, MogCLM and RWCLM shall pro rata contribute funds to the WRDM towards the operational cost of the Tribunal in terms of an amount to be agreed upon annually between the parties and provided for on their respective budget.

## 3 DURATION OF THE AGREEMENT

- 3.1 This Agreement commences on the date of publication of the notice contemplated in Section 34(3) of the Act.
- 3.2 This Agreement shall terminate –
- (a) When all but one of the participating municipalities withdraw from the agreement;
  - (b) When the WRDM withdraws from the agreement;
  - (c) By written agreement among the participating municipalities; or
  - (d) upon the fulfilment of any condition for termination contained in the agreement.

Provided that the provisions of this agreement, as far as they may be applicable, will be deemed to remain in place in respect of any matters pending before the Tribunal, until all such matters have been finalised.

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## 4 ESTABLISHMENT OF THE TRIBUNAL

### 4.1 Composition of the Tribunal

4.1.1 The Tribunal shall consist of at least 11 (Eleven) members made up as follows:

- (a) one official, or his alternate, in the full-time service of the WRDM;
- (b) one official or his alternate, in the full-time service of MerCLM;
- (c) one official or his alternate, in the full-time service of MogCLM;
- (d) one official or his alternate, in the full-time service of RWCLM;
- (e) two designated legal advisors in the full time service of anyone of the parties;
- (f) one person registered as professionals with the South African Council for the Planning Profession in terms of the Planning Profession Act, 36 of 2002;
- (g) two persons registered as professionals with the Engineering Council of South Africa in terms of the Engineering Profession Act, 46 of 2000;
- (h) one person either admitted as attorneys in terms of the Attorneys Act, 53 of 1979 or admitted as advocates of the Supreme Court in terms of the Admission of Advocates Act, 74 of 1964; and
- (i) one environmental assessment practitioner registered with a voluntary association;

4.1.2 The officials referred to in sub Clauses in 4.1.1(a) to (d) must be designated officials in the fields of town planning, engineering or environmental services.

4.1.3 In addition to the criteria determined in sub Clause 4.1.1 the persons referred to in paragraphs (f) to (i) must have knowledge and experience of spatial planning, land use management and land development or the law related thereto, and 5 (five) years or more experience.

4.1.4 The quorum for meetings and decisions of the Tribunal as well as a Designated Tribunal will be a majority of the members thereof.

4.1.4 The terms and conditions of service of members of the Tribunal shall be as set out in Schedule 1 of the Act.

4.1.5 Members of the Tribunal will be subject to the Code of Conduct for Members of the Municipal Planning Tribunal as set out in Schedule 3 of the Act. Non-compliance of the Code of Conduct by a Member of the Tribunal is grounds for a disciplinary hearing by the WRDM in the case of Members appointed in terms of regulation 3(1)(b), or by the relevant Party in the case of officials nominated in terms of Regulation 3(1)(a).

4.1.6 Travelling and seating allowances of members of the Tribunal appointed in terms of Regulation 3(1)(b), will be as determined by the WRDM from time to time.

### 4.2 Invitations and nominations to serve on the Tribunal

4.2.1 The Parties shall jointly issue an invitation and a call for nominations for persons referred to in Clause 4.1.1(f) to (i) to serve on the Tribunal.

4.2.2 The procedure for the invitation and nomination of members to serve on the Municipal Planning Tribunal will be in accordance with Regulation 3(3) to (11) of the Act.

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4.2.3 The call for nominations for persons to be appointed as members to the Municipal Planning Tribunal will be done materially as set out in Schedule 2 of the Regulations.

#### 4.3 District Evaluation Panel

4.3.1 The Parties shall constitute a District Evaluation Panel from employees in the full time service of the Parties, to evaluate all nominations received, whether due to an invitation or call for nominations.

4.3.2 Each Party will nominate 2 (two) employees to serve on the District Evaluation Panel. The Chairperson of the District Evaluation Panel will be elected by the members from the representatives of the WRDM.

4.3.3 The District Evaluation Panel of the Parties shall evaluate all nominations received and make recommendations to the Municipal Councils of the parties, including a recommendation with regard to the Chairperson and Deputy Chairperson.

#### 4.4 Appointment of Members

4.4.1 The WRDM shall evaluate the recommendations of the District Evaluation Panel referred to in Clause 4.3 and shall appoint such persons who qualify for appointment as members of the Tribunal, subject to all the terms and conditions of appointment to and serving on the Tribunal referred to in the Act and the Regulations.

4.4.2 The WRDM shall inform the successful nominees of their appointment to the Tribunal.

4.4.3 Members of the Tribunal may be replaced or recalled by the WRDM terms of Section 38(5) of the Act.

4.4.4 Vacancies on the Tribunal will be filled by the WRDM in terms of Section 38(6) of the Act.

#### 4.5 Officials in the full-time employ of the Parties to serve on Tribunal

4.5.1 Each one of the Parties shall designate an official as well as an alternate in their full time service to serve on the Tribunal and shall confer the necessary delegated authority to such officials.

4.5.2 The Parties shall, if necessary review and amend the contracts of service or job descriptions of the officials designated to serve on the Tribunal.

4.5.3 Anyone of the parties may at any time remove or recall an official or an alternate, designated by it in terms of Clause 4.5.1, for whatsoever reason, and designate another full-time official or alternate to replace such official.

#### 4.6 Appointment of the Chairperson and Deputy Chairperson

4.6.1 The Chairperson and the Deputy Chairperson of the Tribunal shall be appointed by the WRDM, from the members of the Tribunal.

4.6.2 If a vacancy of Chairperson or Deputy Chairperson occurs for whatsoever reason, the WRDM Council will fill the vacancy in terms of Clause 4.6.1.

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#### 4.7 Term of Office

The term of office of members of the Tribunal shall be a maximum of five years calculated from the commencement date.

#### 4.8 Publication of Notices

4.8.1 The WRDM shall publish this agreement entered into by and between the parties in the Provincial Gazette and a local newspaper in the area of each of the participating parties.

4.8.2 When the Tribunal is ready to commence operations, the Municipal Managers of the Parties, shall jointly publish the notice referred to in Section 37(4) of Act as well as the names of the members of the Tribunal and their term of office.

#### 4.9 Secretariat and administrative support

4.9.1. The WRDM will provide secretariat and administrative support to the Tribunal.

4.9.2 The WRDM will submit a quarterly report on its obligations and responsibilities in terms of this Agreement to the other Parties, in the manner and format as agreed upon between them from time to time.

#### 4.10 Inspection of records and operations

The Municipal Manager, or his authorised representative, of each participating municipality may, after written notice to the Municipal Manager of the WRDM, inspect the records and operations of the Tribunal on behalf of the participating municipality at the offices of the WRDM during normal business hours.

### 5 APPLICATIONS TO BE HEARD BY THE TRIBUNAL

5.1 Land development and land use applications have been categorised by the Parties in accordance with the provisions of the Act and the Regulations as set out in its respective By-Laws.

5.2 The Municipal Planning Tribunal shall consider all applications as set out in the By-Laws of the respective parties.

5.3 The Tribunal shall exercise and perform the powers, duties and functions of a District Planning Tribunal as provided for in the Act and its Regulations, the relevant National and Provincial Legislation and the By-Laws of the Parties, as may be applicable.

5.4 The WRDM, in consultation with the participating parties, shall develop and approve procedures for the Tribunal which will provide inter alia for the manner in which land development and land use applications must be considered and determined by the Tribunal and if and how to allow for oral representations by parties to an application.

5.5 The Tribunal must submit a quarterly report on its activities and performance to the WRDM as well as the other Parties, in the manner and format as agreed upon by the parties from time to time.

### 6 SEAT OF THE TRIBUNAL

6.1 The administrative seat of the Tribunal shall be at the offices of the WRDM.

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6.2 The hearings of the Tribunal shall be held at the offices of the municipality in whose municipal area the land which the land development or land use application that must be considered and determined by the Tribunal to, is located, or as otherwise determined by the Chairperson, in consultation with the Presiding officer, where applicable.

## 7 REFERRAL APPLICATIONS

7.1 A land development and land use application shall be submitted by an applicant to the municipality in whose municipal area the land to which the application relates, is located.

7.2 The municipality in whose municipal area the land to which the application relates, is located, shall undertake all the required public participation procedures, intergovernmental participation procedures and internal procedures.

7.3 When the necessary procedures have been complied with, the Municipality concerned shall refer the relevant applications and all the required documentation to the Tribunal for consideration.

## 8 DESIGNATION OF MEMBERS TO CONSIDER AND DETERMINE AN APPLICATION

8.1 On receipt of an application referred to in Clause 7.3, the Tribunal shall evaluate the application and decide on the knowledge and skills, which in its opinion, will be required to consider and determine the application.

8.2 The Tribunal shall then designate an unequal number of members, but not less than three, to consider and decide on the application, whereafter the Chairperson must designate one of the members to be the Presiding Officer.

## 9 APPOINTMENT OF TECHNICAL AND OTHER ADVISERS

9.1 The Tribunal shall establish and maintain –

(a) A database of public sector technical and other advisers; and

(b) A database of private sector technical and other advisers,

who it considers appropriate to serve as technical and other advisors to it.

9.2 The Tribunal shall before publication of the notice referred to in Clause 4.8.2 –

(a) in writing request the employer of an official or employee referred to in Clause 9.1 above to make that official or employee available on an arranged basis for technical and other support before that official or employee is placed on the database of public sector technical and other advisers.

(b) publish an invitation in one newspaper circulating in the municipal areas of the Parties for persons referred to in regulation 1 1 (2) to be registered on the database of private sector technical and other advisers and may determine conditions for incorporation into that database.

9.3 The Chairperson shall appoint technical and other advisers to assist the Tribunal per application that it has to consider and determine, if necessary.

9.4 The Chairperson 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



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adviser available with the requisite knowledge and skill, shall the Chairperson consider an adviser from the database of private sector technical and other advisers

9.5 The WRDM is responsible to remunerate that technical or other adviser for services rendered to the Tribunal, if that adviser is not a public service official or in the employ of a Municipality.

## 10 ASSETS

10.1 The Tribunal shall not acquire any assets or incur liabilities and shall not employ any staff.

10.2 The WRDM shall provide the necessary assets and designate staff to assist the Tribunal and shall be responsible for any other operational requirements of the Tribunal.

## 11 LIAISON BETWEEN THE PARTIES

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

For the West Rand District Municipality: The Municipal Manager  
Phone number: 011 411 5000  
E-mail: asego@wrdm.gov.za

For Merafong City Local Municipality: The Municipal Manager  
Phone number: 018 788 9506  
E-mail: mmsecretary@merafong.gov.za

For Mogale City Local Municipality: The Municipal Manager  
Phone number: 011 951 2037  
E-mail: mm@mogale.gov.za

For Rand West City Local Municipality: The Municipal Manager  
Phone number: 011 411 0051  
E-mail: Bernadette.vanwyk@randwestcity.gov.za

## 12 DISPUTES

12.1 Any dispute which arises between the Parties in connection with this Agreement shall be resolved amicably through consultation and negotiation.

12.2 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.

## 13 LEGAL OBLIGATIONS AND INDEMNIFICATION

13.1 Whenever a legal challenge is instituted against the Tribunal, each party will be responsible for the legal costs in respect of its own applications and on a shared bases in respect of other matters effecting all the Parties.

13.2 A Policy which will determine the terms and conditions of legal indemnity and legal representation as well as additional circumstances in which such indemnity or legal representation may be withdrawn, will be compiled by the WRDM in consultation with the other Parties.

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**14 ENTIRE AGREEMENT**

- 14.1 This Agreement constitutes the entire agreement and supersedes any and all previous agreements regarding this subject matter that may exist between the Parties.
- 14.2 No representations, either verbal or written, made by any party during the tenure of this Agreement shall be of any force or effect unless agreed to by all parties, reduced to writing, and annexed hereto as an addendum and published in terms of Clause 4.8.1.

**15 NO WAIVER**

The failure of any Party 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.

**16. CONFIDENTIALITY**

- 16.1 Any Party shall treat information furnished by another Party for purposes of the execution of this agreement as confidential.
- 16.2 Subject to this clause, the parties so furnished with information shall not disclose such information to another person without the prior consent of the other Party and shall take reasonable steps to ensure that such information remains confidential.

**17 DOMICILIUM CITANDI ET EXECUTANDI AND NOTICES**

- 17.1 The parties choose as their *domicilia citandi et executandi* the following addresses:-

WEST RAND DISTRICT MUNICIPALITY  
Cnr of 6<sup>th</sup> Street & Park Street-South  
Randfontein  
1760

MERAFONG CITY LOCAL MUNICIPALITY  
3 Halite Street  
Carletonville  
2499

MOGALE CITY LOCAL MUNICIPALITY  
Cnr Commissioner & Market Streets  
Krugersdorp  
1740

RAND WEST CITY LOCAL MUNICIPALITY  
Cnr Sutherland and Pollock Streets  
Randfontein  
1759

- 17.2 All parties hereto shall be entitled from time to time by written notice to the other party, to vary its *domicilium* to any other physical address.
- 17.3 Any notice required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing.

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17.4 Any notice given by one party to the other "the addressee" which –

- (a) is delivered by hand during the normal business hours of the addressee at the addressee's *domicillium* for the time being shall be presumed, until the contrary is proved, to have been received by the addressee at the time of delivery;
- (b) is posted by prepaid registered post from an address to the addressee at the addressee's *domicillium* for the time being, shall be presumed, until the contrary is proved, to have been received by the addressee 5 (five) days after the date of posting;

**18 AUTHORITY**

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

**19 SIGNATURES**

THIS DONE AND SIGNED BY THE WEST RAND DISTRICT MUNICIPALITY AT Lawson ON THIS 12 DAY OF December 2018. ~~2019~~

P.P. [Signature]

MUNICIPAL MANAGER

Mphahlele Elias Kolozi  
FULL NAME OF SIGNATORY

WITNESSES: 1. [Signature]

2. [Signature]

THIS DONE AND SIGNED BY THE MERAFOONG CITY LOCAL MUNICIPALITY AT Carletonville ON THIS 24 DAY OF October 2018.

[Signature]

MUNICIPAL MANAGER

Morakane Mantsamang Makobane  
FULL NAME OF SIGNATORY

WITNESSES: 1. [Signature]

2. [Signature]

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Kenya ON THIS 02 DAY OF November 2018.



MUNICIPAL MANAGER

MAANDA PRINGLE RAEDANI  
FULL NAME OF SIGNATORY

WITNESSES: 1. \_\_\_\_\_

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THUS DONE AND SIGNED BY THE RAND WEST CITY LOCAL MUNICIPALITY AT

Randwest ON THIS 10 DAY OF December 2018. 



MUNICIPAL MANAGER

Themba Goba  
FULL NAME OF SIGNATORY

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