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LOCAL AUTHORITY NOTICE

LOCAL AUTHORITY NOTICE 206

**BY-LAW FOR ESTABLISHING AND
OPERATING**

**SEKHUKHUNE DEVELOPMENT
AGENCY (SDA)**

The Municipal Manager of Sekhukhune Local Municipality hereby, in terms of section 13(a) in conjunction with section 156 (2) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), publishes the by-law establishing and operating Sekhukhune Development Agency for Sekhukhune Local Municipality as approved by the Council set out hereunder.

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2. PURPOSE

- (1) The purpose of this by-law is for the Sekhukhune Development Agency to act as a peculiar vehicle to identify, initiate and implement high impact economic projects, and create sustainable job opportunities.
- (2) Establish Sekhukhune Development Agency in terms of sections 84H of the Municipal Systems Amendment Act, 2003

3. POWERS AND FUNCTIONS OF THE SEKHUKHUNE DEVELOPMENT AGENCY

- (1) The Agency shall have the authority to:-
 - (i) Contract with public, private institutions and corporations to perform appropriate services to its mission. It is authorized to receive money from public and private sources to accomplish the purposes of the Agency.
 - (ii) Place any unused portion of the money it receives into short-term investments and to retain the interest income for use in conduct of its regular business.
 - (iii) implement the following strategic objectives:
 - (a) To act as an engine for economic growth by diversifying and expanding the SDM economic base
 - (b) To secure a stable and sustainable financial base for the future development of the Agency.
 - (c) To initiate, identify and implement high impact economic development projects.
 - (d) To develop businesses that create sustainable job opportunities
 - (e) To source funds for economic development concepts and convert these into projects aimed at transforming the district into a first economy.

4. GOVERNANCE OF THE BOARD OF DIRECTORS

- (1) The board of directors of the agency must be appointed in terms of section 93E of Municipal Systems Amendment Act No.44 of 2003.
- (2) The affairs of the Agency shall be managed by a board of directors consists of seven (7) members, two executives and 5 non executives.
- (3) Nominations of members of the board shall be made through local and national newspapers by individuals and organized formations;
- (4) A list of all nominees reflecting their details shall be compiled and kept for council final decision;
- (5) The Council shall decide on appointment from nominees registered on the compiled list by considering the following: qualifications, experience in local government, rural development, economic development, and persons understanding of the dynamics of Sekhukhune District.

5. DISQUALIFICATION

- (1) Disqualifications of directors of the board shall be in terms of section 93F of Municipal Systems Act No. 44 of 2003
- (2) A person is not eligible to be a director of a municipal entity if he or she-
 - (a) holds office as a councillor of any municipality;
 - (b) is a member of the National Assembly or a provincial legislature;
 - (c) is a permanent delegate to the National Council of Provinces;
 - (d) is an official of the parent municipality of that municipal entity;
 - (e) was convicted of any offence and sentenced to imprisonment without the option of a fine, and a period of five years since completion of the sentence has not lapsed;
 - (f) has been declared by a court to be of unsound mind; or
 - (g) is an unrehabilitated insolvent;
- (3) If a director of a municipal entity during that person's term of office becomes disqualified on a ground mentioned in subsection (1), such person ceases to be a director from the date of becoming disqualified."

6. REMOVAL

- (1) Removal or recall of directors shall be made in accordance with section 93G of Municipal Systems Amendment Act No. 44 of 2003

7. FILLING OF VACANCIES

- (1) In the event of a vacancy by reason of death, resignation or disqualification the Chief Executive Officer shall notify the parent municipality within a period of 30 days of the vacancy.
- (2) In the event of a vacancy by disqualification, removal or recall, death or resignation the parent municipality shall fill the vacancy by applying section 4-5 of this by-law.

8. AMENDMENT TO THE NUMBER OF DIRECTORS

- (1) The number of directors may be increased or decreased from time to time by amendment to of this by-law, provided that no decrease in number shall effect of shortening the term of any incumbent director.
- (2) Any directorship to be filled by reason of an increase in the number of directors may be filled by the Council, upon petition by the board of directors.

9. DUTIES OF DIRECTORS

- (1) The Board of Directors must perform its duties in accordance with section 93H of the Municipal Systems Amendment Act No.44 of 2003

- (2) The Board of directors of a municipal entity must-
- (a) provide effective , transparent, accountable and coherent corporate governance and conduct effective oversight of the affairs of the municipal entity;
 - (b) ensure that it and the municipality comply with all applicable legislation and agreements;
 - (c) communicate openly and promptly with the parent municipality of the municipal entity; and
 - (d) deal with the parent municipality of the municipal entity in good faith.
- (3) A Director must-
- (a) disclose to the board of directors, and to the representative of the parent municipality, any direct or indirect personal or business interest that the director or his or her spouse or partner may have in any matter before the board, and must withdraw from the proceedings of the board when that matter is considered, unless the board decides that the director's direct or indirect interest in the matter is trivial or irrelevant; and
 - (b) at all times act in accordance with the Code of Conduct for directors

10. APPOINTMENT OF THE CHAIRPERSON

- (1) The Council must out of the five nominated and non Executive Directors appoint the Chairperson of the Board of Directors;
- (2) An acting Chairperson may be appointed by the Directors present to serve during the absence of the Chairperson from any meeting;
- (3) The Chairperson shall direct, lead and facilitate the Board of Directors in developing the organization through strategic business priorities and policies that are current with the needs of the organization;
- (4) The Chairperson shall call and chair meetings of SEDA Board of Directors board and the annual Board of Directors meeting in consultation with the Chief Executive Officer. Develop agendas with input from other board members;
- (5) The Chairperson shall represent and promote the organization throughout the district, provincial, national and international boundaries as opportunities arise.

11. OPERATING PROCEDURES OF THE BOARD

- (1) The name, address and phone numbers of all Board members and their designated alternates shall be filed in writing with the Board of Directors.

12. NOTICES

- (1) Notice of meetings stating the place, day and hour of the meeting, and in case of special meeting, the purpose for which the meeting is called, shall be mailed, faxed or delivered personally not less than ten days before the date of the meeting to each Board member entitled to vote at such meeting.
- (2) Notice of regular meetings other than annual may be made by providing each member with the adopted schedule of regular meetings for the ensuing year at any time after the annual meeting and ten days prior to a regular meeting and at any time when requested by a member.
- (3) Notice of regular meetings of the Board of Directors shall be made by providing each Director with the adopted schedule of meetings for the ensuing year at any time after the Annual General Meeting and ten days prior to the next succeeding regular meeting and at any time requested by a member.

13. AGENDA

- (1) Agendas with supporting materials shall be mailed, e-mailed or delivered seven (7) days in advance of all regularly scheduled meetings; however, if the Chairperson or Board determines that an emergency exists, either may make a finding to that effect, in which event a special meeting may be held, provided that notice in writing, or via telephone, Fax or e-mail, is delivered to each Board member at least three (3) days in advance.
- (2) The agenda for a special meeting shall be limited to those items specified in the notice. Members may participate in any meeting of members by any means of communication by which all persons participating in the meeting can hear each other during the meeting. A member participating in a meeting by these means is deemed to be present in person at a meeting.

14. QUORUM

- (1) Attendance by forty (40) percent of voting members of the Board shall constitute a quorum in each meeting.

15. VOTING

- (1) All actions and recommendations of the Board shall be approved by simple majority of the voting members present. Each member of the Board shall pose one vote on matters coming before the Board.

16. MEETINGS

- (1) The Annual Meeting shall be the regular meeting of the Board of Directors held in the month of June
- (2) The Board shall designate a date and time for its meetings. Regular meetings of the Board of Directors shall be held a minimum of four (4) times each year; provided, however, that one of the meetings shall be designated the Annual General Meeting and shall be held in the month of June. Meetings shall be held at the SDA offices unless the situation demand otherwise.
- (3) A regular meeting which falls on a legal holiday ordinarily shall be held on the next succeeding business day. If the business at a regular meeting cannot be completed, the Board may designate a time for an adjourned meeting or may hold business over to the next regular meeting.
- (4) Special meetings of the Board may be called by the Board or by the Chairperson. A regularly scheduled meeting held at a location other than the SDA offices shall be considered a special meeting.
- (5) Except as modified by the By-Laws of Sekhukhune District Municipality or rules of procedure, all meetings shall be conducted in accordance with all relevant laws and procedures of the Republic of South Africa.

- (6) At any meeting where there is less than a quorum, the Directors present shall have the authority to establish a date for an adjourned meeting.
- (7) Notice of each special Board meeting shall be delivered personally, telephoned, e-mailed, faxed or mailed to each Director at the address shown on the Agency's records.

17. MINUTES AND RECORDS

- (1) Actions of the Board requiring written execution, such as formal resolutions, may be drawn up after the action has been taken; and the signature of the Chairperson shall be sufficient to validate such resolutions or documents.
- (2) Minutes shall contain a record of all actions of the Board. Maps, reports and other documents constituting an integral part of the Minutes may be identified by reference, provided such exhibits are filed for public record. Minutes shall be signed by the Chief Executive Office when validated by the signature of the Chairperson and approved by the Board.

18. SPECIAL COMMITTEES

- (1) Special Committees may be appointed by the Board for efficient and effective running of SDA to advise or assist the Board in its function.
- (2) The Appointment of Special Committees shall be accompanied by clear Terms of Reference stating the mandate and period of the committee.
- (3) Special Committees may either be ad hoc or standing committees. Ad hoc Board Committees shall have a specific charge, within a given time frame, with a required and stated product, and shall cease to exist after their function is performed.

19. ACQUISITION AND TRANSFER OF INFRASTRUCTURE, GOODS, SERVICES, SUPPLIES OR EQUIPMENT

- (1) The Agency shall have the authority to acquire infrastructure, goods, services, supplies or equipment for use in conduct of its regular business.
- (2) The agency must develop supply chain management policy which is fair, equitable, transparent, competitive and cost-effective and comply with a prescribed regulatory framework for agency supply chain management as per sec. 112 of Municipal Finance Management Act No.56 of 2003.
- (3) The Agency may enter into a Memorandum of Understanding with its parent municipality for the transfer of infrastructure, goods, services, supplies or equipment to the Agency. Under the MOU the two institutions shall agree on the transfer of infrastructure, goods, services, supplies or equipment in accordance with applicable assets management policies. The MOU details the terms and conditions on which the transfer is made.

20. APPOINTMENT OF STAFF

- (1) The Agency shall appoint a lean and mean staff as per its approved organogram to assist in the execution of its duties which shall be headed by the Chief Executive Officer accountable to the Board of Directors;
- (2) The Chief Executive Officer shall have the following powers and duties:
- (3) The Chief Executive Officer may hire strategic professional staff e.g. Economic Development Planners, Researchers as per approved organo-gram to assist in the administration of SDA and any of its plans, programmes, projects, or strategies. The work programme and schedule of such professional staff shall be determined by the CEO; however, assignment of work programme items shall not shift implementation accountability from the CEO. Such professional staff may assist the Board of Directors or Executive Committee directly with the concurrence of the Chief Executive Officer.
- (4) The Chief Executive Officer shall be responsible for the overall supervision and management of the business of the Sekhukhune Economic Development Agency including, without limitations of the foregoing: keep a written record of all actions of the Board; receiving monies payable to the Sekhukhune Development Agency and disbursement thereof as authorized by the Board; maintaining accurate and complete accounts of all

receipts and disbursements; supervising all studies and programmes authorized by SDA; supervising all staff; including and firing of staff; and performing such other duties as may assigned to the Chief Executive Officer from time to time by the Board, or Chairperson.

- (5) The CEO shall have the authority to execute contracts in the name of the Sekhukhune Development Agency which are in conformance with the approved work program and budget and which are in the amount as set out in the Supply Chain Management Policy or less without prior approval of the Board. Upon execution of such contracts, the CEO shall notify the Chairperson and such committees as the Board may prescribe from time to time. A contract in which SDA is party and in which is in the amount greater than the amount as set out in the Supply Chain Management Policy shall require the prior approval of the Board before execution by the Chief Executive Officer.
- (6) The Chief Executive Officer shall prepare, under direction of the Board or committee thereof, an annual work programme and budget.

21. TRANSFER AND SECONDMENT OF STAFF

- (1) The Agency may enter into a Memorandum of Understanding with its parent municipality for the transfer and secondment of staff to the Agency. Under the MOU the two institutions agree on the transfer or secondment of staff to SDA in accordance with the applicable labour legislations. The MOU details the terms and conditions on which transfer or secondment is made.

22. BUDGET AND FUNDING ARRANGEMENTS

- (1) The work programme and budget shall be presented to the Board for review, revision, and adoption.
- (2) The Board shall control all expenditures in accordance with the adopted work programme and budget and shall have all the power to amend the work programme and budget to meet the unanticipated needs or changed conditions.
- (3) The financial year of the Sekhukhune Development Agency shall be 1st of July.

- (4) The Agency shall have an annual audit of its financial records and books performed by a qualified chartered accountant at the end of each fiscal year. The audit, where practical, shall be performed in conjunction with the audit policies of the Greater Sekhukhune District Municipality. The completed audit, accepted by the Board of Directors, shall become part of the public record and shall be submitted to public programme sponsors where requested.

23. AMENDMENT TO THE BY LAW

- (1) Any alteration, variation, amendments or repeal of these by-Laws must be in writing and submitted to Council for approval.

24. SHORT TITLE AND COMMENCEMENT

- (1) These by-law are called Sekhukhune Development Agency By-Law and shall come to force and effect upon publication in the government gazette.
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