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LEGAL NOTICE NO. 1

THE CONSTITUTION OF KENYA
THE URBAN AREAS AND CITIES ACT
(No. 13 of 2011)

MUNICIPAL CHARTER

THE MUNICIPAL CHARTER OF THE MUNICIPALITY (REVISED 2019) OF
MARSABIT

PREAMBLE

Following the amendment of the Urban Areas and Cities Act, 2011 through the Urban Areas and Cities (Amendment) Act No. 3 of 2019 and in line with the decree of the court issued on 1st October, 2018, the County Government of Marsabit undertook to revise its Municipal Charter.

Having been duly approved by the County Assembly, the County Governor of Marsabit hereby grants Marsabit Municipality, a Revised Municipal Charter this 30th day of August, 2019.

Consequently, the Marsabit Municipal Charter published under the Gazette Notice No. 8065 of 10th August, 2018 is hereby revoked and replaced with the Revised Municipal Charter.

INTERPRETATION

Meaning of words used

1. In this Charter, unless the context otherwise requires—

“Board” means the Board of Marsabit Municipal established under Article 4 of this Charter;

“County Assembly” means the County Assembly of Marsabit established under Article 177 of the Constitution;

“County Executive Committee” means the County Executive Committee of Marsabit established in accordance with Article 179 of the Constitution;

“County Executive Committee Member” means County Executive Committee member for the time being responsible for matters relating to Urban areas and Cities

“County Revenue Fund” is the Marsabit County Revenue Fund established under Article 207 of the Constitution as read with Section 109 of the Public Finance Management Act, 2012;

“Citizen fora” means a forum for citizens organized for purposes of participating in the affairs of the Municipality;

“County Government” means the County Government of Marsabit as established under Article 176 of the Constitution;

“County Public Service Board” means the County Public Service Board of Marsabit as established under Section 57 of the County Government Act, 2012;

“Manager” means the Municipal Manager of Marsabit Municipality; and

“Municipality” means the Marsabit Special Municipality of the County Government of Marsabit.

INCORPORATION, NAME AND BOUNDARIES

Incorporation and Name

2. (1) This is the Municipal Charter of Marsabit Special Municipality, within the County of Marsabit, Kenya.

(2) All processes affecting the Municipality shall be served on the Office of the Municipal Manager.

Boundaries

3. (1) The boundaries of Marsabit Special Municipality as now exist or as may subsequently be altered with the approval of the County Assembly shall be the boundaries of Marsabit Special Municipality.

(2) Notwithstanding the provisions of paragraph 2.2.1, the boundaries of the municipality is as delineated in the map under the First Schedule and its subsequent delineation shall be undertaken in accordance with section 4A of the Urban Areas and Cities Act.

POWERS AND OBJECTS OF THE MUNICIPALITY

Powers of the Municipality

4. (1) Marsabit Municipality shall have all the powers, general and special, governmental or proprietary, expressed or implied, which may be possessed or assumed by municipalities under the Urban Areas and Cities Act, 2011, the County Government Act, 2012, and other written laws.

(2) No enumeration of specific powers in this Charter shall be held to be exclusive. All such powers shall be exercised in the manner prescribed in this Charter, or, if not prescribed herein, in such manner as Board of the Municipality may determine, or, unless a contrary intent appears in this Charter or in the Resolutions of the Board of the Municipality, in such manner as may be provided by the County or National legislation.

Objects of the Municipality

5. (1) The objectives of the Municipality are to—

- (a) provide for efficient and accountable management of the affairs of the Municipality;
- (b) provide for a governance mechanism that will enable the inhabitants of the Municipality to—
 - (i) participate in determining the social services and regulatory framework which will best satisfy their needs and expectations;
 - (ii) verify whether public resources and authority are utilized or exercised, as the case may be, to their satisfaction; and
 - (iii) enjoy efficiency in service delivery;
- (c) vigorously pursue the developmental opportunities which are available in the Municipality and to institute such measures as are necessary for achieving public order and the provisions of civic amenities, so as to enhance the quality of life of the inhabitants of the Municipality;

- (d) provide a high standard of social services in a cost effective manner to the inhabitants of the Municipality;
 - (e) promote social cohesiveness and a sense of civic duty and responsibility among the inhabitants and stakeholders in the Municipality in order to facilitate collective action and commitment towards achieving the goal of a harmonious and stable community;
 - (f) make provision of services, laws and other substantive sequences for the Municipality's benefit; and
 - (g) foster the economic, social and environmental well-being of its community.
- (2) Marsabit Municipality shall, within the boundaries of the Municipality, perform the following functions—
- (a) promotion, regulation and provision of refuse collection and solid waste management services;
 - (b) promotion and provision of water and sanitation services and infrastructure;
 - (c) construction and maintenance of urban roads and associated infrastructure;
 - (d) construction and maintenance of storm drainage and flood controls;
 - (e) construction and maintenance of walkways and other non-motorized transport infrastructure;
 - (f) construction and maintenance of recreational parks and green spaces;
 - (g) construction and maintenance of street lighting;
 - (h) construction, maintenance and regulation of traffic controls and parking facilities;
 - (i) construction and maintenance of bus stands and taxi stands;
 - (j) regulation of outdoor advertising;
 - (k) construction, maintenance and regulation of Municipal markets and abattoirs;
 - (l) construction and maintenance of fire stations; provision of fire-fighting services, emergency preparedness and disaster management;
 - (m) promotion, regulation and provision of Municipal sports and cultural activities;
 - (n) promotion, regulation and provision of animal control and welfare;
 - (o) development and enforcement of Municipal plans and development controls;
 - (p) provision of Municipal Administrative services (including construction and maintenance of administrative offices);
 - (q) promoting and undertaking infrastructural development and services within the Municipality; and
 - (r) any other functions as may be delegated by the County Executive Committee.

THE BOARD OF THE MUNICIPALITY

Establishment of the Board

6. (1) There shall be a Board of Marsabit Municipality.

(2) The Board of the Municipality shall be a corporate body with perpetual succession and common seal and shall in its own corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) borrowing money or making investments within the limits imposed by the Constitution, the Public Finance Management Act, 2012, County legislation and any other written law;
- (d) entering into contracts; and
- (e) doing or performing all other acts or things for the proper performance of its functions in accordance with the Urban Areas and Cities Act, 2011, or any other written law which may lawfully be done or performed by a body corporate.

(3) There shall be a principal and agency relationship between the Board of the Municipality and the County Government of Marsabit.

(4) The board shall govern, manage and administer the Municipality on behalf of the County Government in accordance with laws relating to County Governments.

Powers and Functions of the Board of the Municipality

7. (1) The Board of the Municipality shall have all the powers and shall perform all the functions vested in boards of municipalities under the Urban Areas and Cities Act, 2011, the County Government Act, 2012, and the County legislations.

(2) Except as this Charter otherwise provides, all powers of the Municipality shall be vested in the Board of the Municipality.

(3) The Board of the Municipality shall exercise these powers and perform duties and obligations imposed on it by law and especially—

- (a) the carrying out by the Board of such functions as may be delegated by the County Government;
- (b) financial accountability to the County Government;
- (c) the governance by the Board for and on behalf of the County Government;
- (d) promotion of accountability to the County Government and residents of the Municipality;
- (e) institutionalised active participation by its residents in the management of the Municipality;
- (f) efficient and effective service delivery; and
- (g) clear assignment of functions by the relevant agencies.

(4) Subject to the Constitution and any other written law, the Board of the Municipality shall generally—

- (a) exercise executive authority as delegated by the County Executive;
- (b) ensure provision of services to its residents;
- (c) impose such fees, levies and charges as may be authorized by the County Government for delivery of services by the Municipality;
- (d) promote Constitutional values and principles;
- (e) ensure the implementation and compliance with policies formulated by both National and County Government;
- (f) make by-laws or make recommendations for issues to be included in by-laws;
- (g) ensure participation of the residents in decision-making, its activities and programmes in accordance with the provisions of County Government Act and any other national legislation on public participation;
- (h) exercise such other powers as may be delegated by the County Executive Committee.

(5) Notwithstanding any other provision of law or this Charter, the Board of the Municipality shall exercise such executive authority as may be lawfully delegated by the County Executive Committee for the necessary performance of its functions under the Urban Areas and Cities Act.

- (6) The Board of the Municipality shall perform the following functions—
 - (a) oversee the affairs of the Municipality;
 - (b) develop and adopt policies, plans, strategies and programmes and set targets for service delivery;
 - (c) formulate and implement an integrated development plan;
 - (d) control land use, land sub-division, land development and zoning by public and private sectors for any purpose, including industry, commerce, markets, shopping and other employment centers, residential areas, recreational areas, parks, entertainment, passenger transport, agriculture, freight and transit stations, within the framework of the spatial and master plans for the Municipality as may be delegated by the County Government;
 - (e) promoting and undertaking infrastructural development and services within the Municipality as delegated by the County Government;
 - (f) developing and managing schemes, including site development in collaboration with the relevant national and County agencies;
 - (g) maintaining a comprehensive database and information system of the administration and provide public access there to upon payment of a nominal fee to be determined by the board;
 - (h) administering and regulating its internal affairs;
 - (i) implementing national and County legislation;
 - (j) entering into contracts, partnerships or joint ventures as it may consider necessary for the discharge of its function under this Charter or any other written law;

- (k) monitoring and, where appropriate, regulating municipal services where those services are provided by service providers other than the Board of the Municipality;
- (l) preparing and submitting its annual budget estimates to the relevant County Treasury for consideration and submission to the County Assembly for approval as part of the annual County Appropriation Bill;
- (m) settling and implementing tariff, rates and tax and debt collection policies as delegated by the County Government;
- (n) monitoring the impact and effectiveness of any services, policies, programs or plans;
- (o) establishing, implementing and monitoring performance management systems;
- (p) promoting a safe and healthy environment;
- (q) facilitating and regulating public transport; and
- (r) perform such other functions as may be delegated to it by the County the County Government or as may be provided for by any written law.

Composition and Term of the Board

8. (1) A board of a municipality shall consist of nine members appointed by the county governor with the approval of the county assembly.

(2) The members of the board appointed under subsection (1) shall be constituted as follows—

- (a) the county executive member for the time being responsible for cities and urban areas or his representative;
- (b) three members who shall be appointed by the county governor, with the approval of the county assembly;
- (c) four members who shall be nominated by an association and appointed by the county governor, with the approval of the county assembly;
- (d) the chief officer responsible for urban development; and
- (e) the municipal manager appointed under section 28 who shall be the secretary of the board and an ex officio member of the board;
- (f) The four members of the board of a municipality specified under subsection (2) (c), shall be nominated by—
 - (i) an umbrella body representing professional associations in the area;
 - (ii) an association representing the private sector in the area;
 - (iii) a cluster representing registered associations of the informal sector in the area; and
 - (iv) a cluster representing registered neighbourhood associations in the area.
- (3) The county governor shall, while appointing the members of the board, ensure gender equity, representation of persons with disability, youth and marginalised groups.

(4) The county governor shall while considering the nominated members identified by the organizations specified under subsection (2), require the organizations to produce—

- (a) signed minutes as evidence of an accountable process of nomination;
- (b) evidence of compliance with statutory obligations; and
- (c) vetting form to establish that the nominee has complied with the prescribed criteria for appointment as a member of the board.

(5) The term of the members of the Board of the Municipality shall be five (5) years, on a part time basis.

Eligibility for Appointment as Chairperson and Member of the Board

9. (1) A person shall be qualified for appointment as a chairperson of the board if that person—

- (a) holds at least a degree from an institution recognized in Kenya;
- (b) has a distinguished career in a medium level management position in either the private or public sector;
- (c) holds at least ten years' post- qualification professional experience;
- (d) satisfies the requirements of Chapter Six of the Constitution;
- (e) is ordinarily resident or has a permanent dwelling in the municipality; and
- (f) carries on business in the municipality or has lived in the municipality for at least five years.

(2) A person shall be qualified for appointment as a member of the board if that person—

- (a) holds at least a diploma from an institution recognized in Kenya;
- (b) has a distinguished career in a medium level management position in either the private or public sector;
- (c) holds at least five years' post- qualification professional experience; and
- (d) satisfies the requirements of Chapter Six of the Constitution;
- (e) is ordinarily resident or has a permanent dwelling in the municipality; and
- (f) carries on business in the municipality or has lived in the municipality for at least five years.

(3) A person shall not be appointed as a member of the Board if that person —

- (a) is an undischarged bankrupt;
- (b) has been removed from office for contravening the Constitution or any other law;
- (c) is not a citizen of Kenya; or
- (d) has in the conduct of his or her affairs not met any statutory obligations.

Chairperson and Vice-Chairperson of the Board

10. (1) At the first meeting of the Board, and subsequently whenever a vacancy arises, the members of the Board shall elect from amongst themselves, a Chairperson and a vice-chairperson, who shall be of opposite gender.

(2) The Chairperson and vice-chairperson of the Board shall hold office for a term of five (5) years.

Powers and Functions of the Chairperson and Vice-Chairperson

11. (1) The Chairperson of the Board shall—

- (a) be the head of the Board;
- (b) chair the meetings of the Board; and
- (c) perform such other duties as may be delegated by the Board.

(2) The Vice-Chairperson shall, in the absence of the Chairperson, perform the functions of the Chairperson and shall perform such other functions as may be delegated by the Chairperson or the board.

Removal from Office

12. (1) A person may be removed from the office of chairperson, vice chairperson or a member of the board on any of the grounds—

- (a) is unable to perform the functions of the office by reason of mental or physical infirmity;
- (b) Is declared or becomes bankrupt or insolvent;
- (c) is convicted of a criminal offence and sentenced to a term of imprisonment of six months or more;
- (d) without reasonable cause, the member is absent from three consecutive meetings of the board or committee within one financial year;
- (e) is found guilty of professional misconduct by the relevant professional body;
- (f) is disqualified from holding a public office under the Constitution;
- (g) is convicted of an offence and is sentenced to imprisonment for a term of six months or more;
- (h) in any particular case, the member fails to declare his or her interest in any matter being considered or to be considered by the board or committee;
- (i) engages in any gross misconduct;

(2) A person may be removed under sub-article 4.7.1 by—

- (a) by the county governor;
- (b) by the board, supported by the vote of at least two-thirds of the members of the board; or
- (c) upon petition by the residents of a municipality.

3. The procedure for the removal or petition for removal of a chairperson or vice chairperson shall be provided for by regulations under the Urban Areas and Cities Act,

2011, and in the absence thereof in accordance with Kenyan law having regard to fair labour practices.

4. A vacancy in the office of a chairperson, vice chairperson or a member of the board shall, be filled in accordance with provisions of this Charter and any other written law.

Secretary of the Board of the Municipality

13. The Municipal manager shall be the secretary to the board of the municipality.

Committees of the Board of the Municipality

14. (1) The Board of the Municipality may –

- (a) establish such Committees for any general or special purpose which, in its opinion, would regulate or manage its affairs more efficiently and as may be necessary for the performance of its functions under the Urban Areas and Cities Act, 2011;
- (b) delegate to such Committee such functions as are necessary for the efficient performance of its duties in respect to the whole or any part of the area under the jurisdiction of the Board; and
- (c) include persons who are not members of the Board in any Committee.

(2) The Committees of the Board to which members of the Board delegates any of their powers and functions must follow procedures which are based, as far as they are applicable, on the provision of this Charter which govern the making of decisions and performance of functions by the Board.

Remuneration of the Members of the Board

15. The chairperson, vice chairperson and members of a Board shall not receive a salary from the Board but shall be paid such allowances and benefits as the County Executive Committee shall, with the approval of the County Assembly, and on the advice of the Salaries and Remuneration Commission, determine.

Ordinary and Special Meetings of the Board

16. (1) The Board shall hold its sittings to transact the business of the Board once every three (3) months.

(2) Notwithstanding Article 4.11.1., the Chairperson of the Board may, and upon request in writing by at least one-third of the members of the Board, convene a special meeting to transact any urgent business of the Board.

(3) All regular meetings of the Board called for the purpose of transacting public business, where a majority of the members elected are present, shall be open to the public.

(3)The Board shall have the privilege of holding executive sessions from which the public is excluded but no legislative proposal, resolutions, rules or regulations shall be finally adopted at such an executive session.

Quorum

17. (1) A majority of the members of the Board is a quorum to conduct business, but a smaller number may meet and compel attendance of absent members as prescribed by the Board's Rules.

(2) A member of the Board who is interested in any discussions or decision-making regarding any subject or transaction under consideration by the Board, shall not be counted as participating in the discussions or decision-making, and is not entitled to vote on, or agree to the subject or transaction relating to it.

(3) If it comes to the knowledge of an officer employed by a Board that a bargain, contract or arrangement in which he or she has any direct or indirect pecuniary interest (other than a bargain, contract or arrangement to which he or she is a party) has been or is proposed to be made or entered into by the Board, that officer shall as soon as practicable give notice in writing to the Board disclosing the fact that he or she has interest therein.

Rules of the Board

18. The Board shall by resolution adopt rules to govern its meetings.

Record of Information of the Board

19. (1) The minutes and other information of the Board shall be kept by the Secretary of the Board.

(2) Access to information on the activities and resolutions of the Board shall be as provided under the Urban Areas and Cities Act, 2011 and other written laws.

Citizen Fora

20. (1) The Board shall ensure the development of mechanisms for the participation of the residents of the Municipality in the management and administration thereof.

(2) All recommendations from the Citizen Fora of the Municipality shall be forwarded to the Board for deliberation.

(3) All recommendations on issues raised in the Citizen Fora and addressed and/or resolved by the Board shall be forwarded to the Municipal Manager for implementation.

(4) Without prejudice to the foregoing, residents of the Municipality may—

- (a) deliberate and make proposals to the relevant bodies or institutions on:
 - (i) the provision of services;
 - (ii) proposed issues for inclusion in County policies and County legislation;
 - (iii) proposed national policies and legislation;
 - (iv) the proposed annual budget estimates of the County and of the national government;
 - (v) the proposed development plans of the County and of the national government; and
 - (vi) any other matter of concern to the citizens;
- (b) formulate strategies for engaging the various levels and units of government on matters of concern to citizens;
- (c) monitor the activities of elected and appointed officials of the Municipality, including members of the Board; and
- (d) receive representations, including feedback on issues raised by the county citizens, from elected and appointed officials.

5. The board shall invite petitions and representations from the Citizen Fora with regard to the administration and management of the affairs within the Municipality.

6. The Manager shall make a report on the decision made by the Board in respect of a petition or presentation made by a citizen fora and reasons for such decision.

Recommendation to the County Government Relating to Legislation

21. The Board may make recommendation to the County Government on topical substantive and procedural issues relating to the Municipality that the County Government should make legislation on.

Administrative Authority Resolutions

22. The Board shall exercise its administrative authority by approving resolutions.

Approval of Resolutions

23. (1) Approval of a resolution or any other Board administrative decision requires approval by a majority of the Board.

(2) Any substantive amendment to a resolution must be read aloud and made available in writing to the public before the Board adopts the resolution.

(3) After approval of a resolution or other administrative decision, the vote of each member must be entered into the Board minutes.

Effective Date of Resolutions

24 Resolutions and other administrative decisions take effect on the date of approval, or on a later date expressly provided in the resolution.

THE MUNICIPAL MANAGER

Office of the Municipal Manager

25 (1) There is established the office of the Municipal Manager.

(2) The Municipal Manager shall be the administrative head of Marsabit Municipality.

Appointment and Term of Office

26. (1) A Municipal manager shall be competitively recruited in accordance with Section 29 of Urban Areas and Cities Act.

(2) The office of the Municipal Manager shall be an office in the county public service.

(3) The Municipal Manager shall be answerable to the board for the administration of the Municipality.

(4) The Municipal Manager may resign from office by giving notice, in writing, to the board.

(5) The office of the manager shall become vacant, if the manager—

(a) is unable to perform the functions of the office by reason of mental or physical infirmity;

(b) Is declared or becomes bankrupt or insolvent;

- (c) is convicted of a criminal offence and sentenced to a term of imprisonment of six months or more;
- (d) resigns in writing to the county governor;
- (e) without reasonable cause, the member is absent from three consecutive meetings of the board or committee within one financial year;
- (f) is found guilty of professional misconduct by the relevant professional body;
- (g) is disqualified from holding a public office under the Constitution;
- (h) is convicted of an offence and is sentenced to imprisonment for a term of six months or more;
- (i) in any particular case, the member fails to declare his or her interest in any matter being considered or to be considered by the board or committee;
- (j) engages in any gross misconduct;
- (k) dies.

(6) Before removal from office under paragraph (1) (a), a member shall be accorded a fair opportunity to be heard by the Board or such other body that determines the removal of the Municipal manager.

Qualifications

27. (1) Subject to Article 232 of the Constitution, a person shall qualify to be appointed as a municipal manager if the person—

- (a) is a Kenyan citizen;
 - (b) holds a degree from a university recognized in Kenya or its equivalent; and
 - (c) has proven experience of not less than five (5) years in administration or management either in the public or private sector;
 - (d) is a Certified Public Secretary of good professional standing as per section 59(2) of the County Government Act
- (2) In appointing the Municipal Manager, the County Public Service Board shall ensure—
- (a) gender equity;
 - (b) the inclusion of minorities and marginalized communities; and
 - (c) the person satisfies the requirements of Chapter six of the Constitution.

(3) The Municipal Manager need not reside within the Municipality but must be a resident within the County.

(4) The term of office and remuneration of a Municipal Manager shall be determined by the County Public Service Board in line with the Urban Areas and Cities Act 2011 and other written legislation.

Functions and Powers of the Municipal Manager

28 (1) The Municipal Manager shall implement the decisions and functions of the Board and shall be answerable to the Board.

(2) As soon as is practicable, and in any event not later than thirty (30) days from the date of receipt of an audit report together with annual statements and abstracts of accounts, the manager shall—

- (a) lay the documents before the board for consideration; and
 - (b) make them available to any resident of the area within the jurisdiction of the board, upon application and payment of the prescribed fee.
- (3) The Municipal Manager shall—
- (a) act on behalf of the Board of the Municipality—
 - (i) in ensuring the execution or implementation of the directives of the Board; and
 - (ii) during all intervals between meetings of the Board;
 - (b) prepare and present for approval of the Board of the Municipality, an annual estimate of revenue and expenditure to fund and carry out the programmes and operations of the Board;
 - (c) be principally responsible for building and maintaining a strong alliance and effective working relationships between the Board and the civil society, private sector and community based organizations;
 - (d) cause to be prepared and transmitted to the Board an annual report of the activities and accomplishments of the departments and agencies comprising the executive branch of the Municipality;
 - (e) receive written or oral presentations, petitions or complaints made to the Board;
 - (f) make a report on the decision made in respect of a petition or presentation made by a citizen fora and reasons for such decision;
 - (g) act as an ex-officio member of all committees of the Board;
 - (h) submit to the County Executive Committee, a copy of the proposed integrated development plan as adopted by the Board within twenty one (21) days of the adoption or amendment:

Provided that the development of the said proposed integrated development plan shall adhere to the provisions of Sections 108, 111, 112 and 113 of the County Governments Act, 2012; and

- (i) perform such other functions as the Board may, by order, confer upon the Municipal Manager to perform.

(4) The copy of the proposed integrated development plan submitted to the County Executive Committee under sub-Article 7.4.5. (e) shall be accompanied by—

- (a) a summary of the process of its formulation plan provided under Part V of the Urban Areas and Cities Act, 2011; and
- (b) a statement that the process has been complied with, together with any explanations that may be necessary to clarify the statement.

(5) The Municipal Manager shall be fully responsible for the proper conduct of the executive and administrative work and affairs of the Municipality. The Municipal Manager shall have the power to—

- (a) exercise supervision over all departments and agencies of the Municipality and provide for coordination of activities;
 - (b) enforce the provisions of this Charter, legislation that relate to the Municipality, and other applicable laws;
 - (c) exercise powers granted to the Municipal Manager in this Charter, County legislation and other applicable laws concerning the appointment and removal of certain officers, employees, and members of committees of the Board; and
 - (d) exercise such other powers as may be prescribed by this Charter, County legislation and other applicable laws.
- (6) The Municipal Manager shall—
- (a) attend all Board meetings, as an *ex-officio* member, unless excused by the Chairperson of the Board or its members;
 - (b) make reports and recommendations to the Board about the needs of the Municipality;
 - (c) administer and enforce all legislation relating to the Municipality, resolutions, franchises, leases, contracts, permits, and other Municipality decisions;
 - (d) appoint, supervise and remove Municipality employees;
 - (e) organize Municipality departments and develop an administrative structure;
 - (f) prepare and administer the annual Municipality budget;
 - (j) administer Municipality utilities and property;
 - (k) encourage and support regional and intergovernmental cooperation;
 - (l) promote cooperation among the Board, staff and citizens in developing Municipality policies and building a sense of community;
 - (m) perform other duties as directed by the Board of the Municipality; and
 - (n) delegate duties, but remain responsible for actions of all subordinates.

Remuneration of the Municipal Manager

29. The County Public Service Board shall set the compensation and determine the conditions of employment of the Municipal Manager.

Removal of the Municipal Manager

30. (1) The Municipal Manager may be removed from office in accordance with the provisions of civil service and shall have due regard to fair labour practices.

- (2) The Municipal Manager shall cease to hold office if—
 - (a) is unable to perform the functions of the office by reason of mental or physical infirmity;
 - (b) is declared or becomes bankrupt or insolvent;

- (c) is convicted of a criminal offence and sentenced to a term of imprisonment of six months or more;
- (d) resigns in writing to the County Public Service Board;
- (e) without reasonable cause, is absent from three consecutive meetings of the Board;
- (f) is found guilty of professional misconduct by the relevant professional body;
- (g) is disqualified from holding a public office under the Constitution;
- (h) dies; or
- (i) engages in any gross misconduct.

(3) Any vacancy arising in the office of the Municipal Manager may be filled in the manner provided under Article 7.2.

Acting Municipal Manager

31. (1) When the Municipal Manager is temporarily disabled from acting as Municipal Manager or when the office of the Municipal Manager becomes vacant, the County Public Service Board shall designate a qualified person from within the County Public Service to be an Acting Municipal Manager.

(2) The Acting Municipal Manager shall have the authority and duties of the Municipal Manager, except that the Acting Municipal Manager may appoint or remove employees only with approval of the Board.

(3) An Acting Municipal Manager shall hold office until such a time as a new Municipal Manager shall be appointed, in which case, such period shall not exceed six (6) months.

MUNICIPAL FINANCES AND FINANCIAL MANAGEMENT

Sources of the Municipality's Funds and Revenue

32. The Board of the Municipality shall derive its revenue and funds from—
- (a) monies allocated by the County Assembly for the purposes of the management and service delivery of the Board;
 - (b) monies or assets that may accrue to the Board in the course of the exercise of its powers or the performance of its functions as per the Urban Areas and Cities Act, 2011;
 - (c) all monies or grants from any other legitimate sources provided or donated to the Board.

Appointment of the Municipality Accounting Officer

33. The Municipality Accounting Officer shall be designated by the County Executive Committee Member for Finance in the manner provided under Section 148 of the Public Finance Management Act, 2012.

Functions and Powers of the Municipality's Accounting Officer

34. (1) The Municipal's Accounting Officer shall be accountable to the County Executive Committee for ensuring that the resources of the Municipal for which the officer is designated are used in a way that is—

- (a) lawful and authorized; and
 - (b) effective, efficient, economical and transparent.
- (2) In carrying out a responsibility imposed by subsection (1), the accounting officer shall, in respect of the Municipality—
- (a) ensure that all expenditure made by the Municipality complies with sub-Article 7.3.1;
 - (b) ensure that the Municipality keeps financial and accounting records that comply with the Public Finance Management Act, 2012;
 - (c) ensure that all financial and accounting records that the Municipality keeps in any form including in electronic form are adequately protected and backed up;
 - (d) ensure that all contracts entered into by the Municipality are lawful and are complied with;
 - (e) ensure that all applicable accounting procedures are followed when acquiring or disposing of goods and services and that, in the case of goods, adequate arrangements are made for their custody, safe guarding and maintenance;
 - (f) bring a matter to the attention of the County Executive Committee Member if, in the accounting officer's opinion a decision or policy or proposed decision or policy of the Municipality may result in misuse of resources;
 - (g) prepare a strategic plan for the Municipality in conformity with the medium term fiscal framework and financial objectives of the County Government;
 - (h) prepare estimates of expenditure of the Municipality in conformity with the strategic plan referred to in paragraph (g);
 - (i) submit the estimates of the Municipality to the County Executive Committee Member who, after approving it, shall forward it to the County Executive Committee member for finance;
 - (j) not later than three (3) months after the end of each financial year, prepare annual financial statements for that financial year and submit them to the Auditor-General for audit, with a copy to the County Treasury;
 - (k) try to resolve any issues resulting from an audit that remain outstanding;
 - (l) manage the assets of the Municipality to ensure that it receives value for money when acquiring, using or disposing of its assets;
 - (m) dispose off assets at the most competitive price and at the lowest possible cost ensuring that the proceeds from all asset disposals are deposited in a bank account of the Municipality;
 - (n) ensure that the Municipality has adequate systems and processes in place to plan for, procure, account for, maintain, store and dispose of assets, including an asset register that is current, accurate and available to the relevant County Treasury or the Auditor-General;
 - (o) provide the County Treasury with any information it requires to fulfill its functions;

- (p) provide information on any frauds, losses, or any violations of subsection (1) and provide explanations for the actions taken to prevent similar conduct in future; and
 - (q) carry out such other responsibilities as may be specified in regulations by the County Executive Committee Member for finance.
- (3) Not later than three (3) months after the County Assembly has adopted a report by a committee of the County Assembly with respect to a report submitted by the Controller of Budget under Article 228 (6) of the Constitution, the accounting officer shall—
- (a) prepare a report on actions taken by the Municipality to implement any recommendations made in the County Executive Committee's report as adopted by the County Assembly; and
 - (b) submit the report to the County Executive Committee with a copy to the County Treasury.
- (4) Not later than one month after receiving a report by the accounting officer, the County Treasury shall submit to the County Assembly the accounting officer's report and may include any comments on the report by the County Treasury.

Financial Year

35. (1) The Municipality shall operate on an annual budget.
- (2) The financial year of the Board shall be a period of twelve (12) months ending on the thirtieth of June, each year.

Budget

36. The budget of the Board shall be developed in the manner provided under Section 175 of the Public Finance Management Act.

Management of Municipality Finances

37. (1) The Board shall, with the approval of the County Executive Committee Member for finance, open and maintain a bank account in the name of the Municipality.
- (2) All monies received by the Board shall be paid into the County Revenue Fund Account.

Borrowing by the Municipality

38. The Board of the Municipality may only borrow —
- (a) from the County Government; or
 - (b) through the County Government;
- and subject to such terms as may be imposed by the County Assembly or such terms as provided by law.

Audit

39. The Audit of the Board shall be as provided for under Section 46 and 47 of the Urban Areas and Cities Act.

MUNICIPALITY HUMAN RESOURCE*Municipality Personnel*

40. The County Public Service Board may, upon request by the Municipal Manager for Human Resource, employ such officers and employees as it deems necessary to execute the powers and duties provided by this Charter or other any other law.

Management of Municipal Personnel

41. Employees of the Municipality shall report to the Municipal Manager.

Retirement Systems

42. All officers of the Municipality shall subscribe to an existing pension scheme approved by the Retirement Benefits Authority.

Compensation of Municipal Personnel

43. The compensation of all employees of the Municipality shall be set by the County Public Service Board upon the advice of the Salaries and Remuneration Commission.

MUNICIPALITY PROPERTY*Acquisition, Possession and Disposal*

44. (1) The Board is a body corporate and may acquire real, personal, or mixed property for any public purpose by purchase, gift, bequest, devise, lease, or otherwise and may sell, lease, or otherwise dispose of any property belonging to the Municipality.

(2) All town property and funds of every kind belonging to or in the possession of Marsabit town at the time this Charter becomes effective are vested in the Municipality, subject to the terms and conditions thereof.

Compulsory Acquisition

45. (1) Whenever the Municipality deems it necessary to acquire private land or community land for its purposes, it shall request the County Executive Committee Member to request the National Land Commission to acquire the land on its behalf.

(2) The provisions of the Land Act, 2012, community land Act, 2016 and other written laws shall apply to any intended compulsory acquisition by the Municipality of property within the Municipality.

Municipal Buildings

46. The Board may acquire, obtain by lease or rent, purchase, construct, operate, and maintain all buildings and structures it deems necessary for the operation of the Municipality.

Protection of Municipality Property

47. The Board shall do whatever is necessary to protect municipal property and to keep all municipal property in good condition in line with existing government policies.

GENERAL PROVISIONS

Official Duties

48. The Municipal Manager, the Chairperson and Vice-Chairperson and the members of the Board, and all other persons elected or appointed to any office of profit or trust in the Municipality, as determined by Board, shall exercise their official duties in accordance with the tenets of the Leadership and Integrity Act, 2012, and the Public Officer Ethics Act, 2003.

Amendments to the Charter

49. (1) The County Executive Committee may at any time, after consultation with the Board, amend any provision of this Charter.

(2) The County Executive Committee shall cause a copy of the proposed amendment to the Charter to be laid before the County Assembly within thirty (30) days of its amendment for approval.

Separability

50. If, at any time, any provision of this Charter is or becomes illegal, invalid or unenforceable in any respect under Kenyan law, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision will in any way be affected or impaired.

TRANSITIONAL PROVISIONS

Effective Date of Charter

51. The provisions of this Charter shall take effect upon publication in the gazette.

Rights and Privileges Preserved

52. Nothing in the Charter except as otherwise specifically provided shall effect or impair the rights or privileges of persons who are Town Officials, Officers or Employees at the time of its adoption.

Departments

53. All Town Departments shall continue to operate with the same powers, duties, activities, budgets, and employees as were in effect at the time this Charter becomes effective until changed by the Municipal Manager with the approval of the Board.

Dated the 30th August, 2019.

MOHAMUD MOHAMED ALI,
Governor, Marsabit County.

