

Aluochier Dispute Resolution

Arbitral Institution | Arbitration | Mediation

*P O Box 436-40404, Rongo, Kenya
Telephone: +254 114 712 433
info@aluochier.co.ke | www.aluochier.co.ke
Registration No: BN-BGCLBG7*

15th January, 2025

**County Government of Migori
P O Box 195-40400
Suna-Migori**

**Email: procurement@migori.go.ke / migoricountygov@gmail.com /
countyattorney@migori.co.ke**

Dear County Government of Migori

REQUEST FOR ARBITRATION
CASE NUMBER 001 OF 2025: FOUR SONS HOLDINGS (K) LIMITED v COUNTY
GOVERNMENT OF MIGORI

Aluochier Dispute Resolution (ADR) is an arbitral institution that administers arbitrations under the Aluochier Dispute Resolution Arbitration Rules, 2025 (ADR Arbitration Rules). Article 1(3)(c) of the Constitution of Kenya, 2010 provides that part of the sovereign power belonging to the people of Kenya, and that is to be exercised only in accordance with the said Constitution, is delegated to the Judiciary and independent tribunals, with the Judiciary and independent tribunals to perform their functions in accordance with the said Constitution. Article 159(1) reiterates that judicial authority is derived from the people and vests in, and shall be exercised by, the courts and tribunals established by or under the said Constitution. Article 159(2)(c) provides that in exercising judicial authority, the courts and tribunals shall be guided by principles including the mandatory promotion of alternative forms of dispute resolution including arbitration. Article 50(1) provides that every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body. Consequently, independent and impartial arbitral tribunals, just as the courts, have the constitutional mandate derived from the people's sovereign power to exercise judicial authority on their behalf in the resolution of disputes capable of resolution by the application of law.

Section 2 of the Arbitration Act, 1995 provides that except as provided for in a particular case, the provisions of the said Act shall apply to domestic arbitration and international arbitration. The Arbitration Act is itself subject to the Constitution of Kenya, 2010, as Article 2(1) of the Constitution provides that the said Constitution is the supreme law of Kenya and binds all persons and all State organs. And section 7(1) of the Sixth Schedule of the Constitution provides that all law in force immediately before the effective date of the Constitution – 27th August, 2010 – continues in force and shall be construed with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with the said Constitution. The Arbitration Act, an existing law at the time the Constitution became effective, is therefore to be construed to bring it into conformity with the Constitution, including allowing for, pursuant to Article 50(1) of the Constitution, the institution of arbitral proceedings, just as is the case with the institution of court proceedings, by any person without the consent or agreement of any other person, as it is the right of every person to

have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.

Consequently, in the exercise of its right under Article 50(1) of the Constitution, Four Sons Holdings (K) Limited has instituted arbitral proceedings under the administration of ADR against the County Government of Migori.

Pursuant to the ADR Arbitration Rules:

- 1 Rule 5.2.1 – **Claimant's Contact Details: Four Sons Holdings (K) Limited, P O Box P O Box 405-40404, Rongo. Telephone: 0720 862 439 / 0732 862 439. Email address: foursonsholdings@gmail.com.**
- 2 Rule 5.2.2 – **Respondent's Contact Details: County Government of Migori, P O Box 195-40400, Suna-Migori. Email addresses: procurement@migori.go.ke / migoricountygov@gmail.com / countyattorney@migori.go.ke.**
- 3 Rule 5.2.3 – The Claimant is relying on Article 50(1) of the Constitution of Kenya, 2010 that provides that every person has the right to have any dispute than can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body. The Claimant has therefore instituted these proceedings before an independent and impartial tribunal, being an arbitral tribunal administering arbitration under the ADR Arbitration Rules.
- 4 Rule 5.2.4 – Statement describing the nature and circumstances of the dispute giving rise to the claim, and the relief sought by the Claimant against the Respondent:
 - 4.1 This claim arises from the following contract: CGM/EDU/58/2021-2022 – Completion of Uiri Vocational Training Centre.
 - 4.2 This project has been duly completed and handed over, but no payment has been made to the Claimant, contrary to the contract. Outstanding amount is **Kshs 14,994,461.60**.
 - 4.3 The Claimant has documentary evidence to assert its claim.
 - 4.4 The reliefs that the Claimant is seeking from the Respondent are:
 - 4.4.1 Payment of the amounts of **Kshs 14,994,461.60** on the CGM/EDU/58/2021-2022 – Completion of Uiri Vocational Training Centre.
 - 4.4.2 Compensation, by way of interest, at commercial rates, for delayed payment.
 - 4.4.3 An order that the Respondent implements Article 226(5) of the Constitution against the public officers within the Respondent who are responsible for the extra costs that have arisen on this contract, at the Respondent's expense.
 - 4.4.4 The costs of the arbitration.
- 5 Rule 5.2.5 – the Claimant proposes that the language of the arbitration be English – the same as the language of the contracts.
- 6 Rule 5.2.6 – not applicable.
- 7 Rule 5.2.7 – the Claimant intends to serve the Respondent electronically through the Institute, Aluochier Dispute Resolution, with this Request for Arbitration and any supporting documents.
- 8 Rule 5.2.8 – the Claimant on 14th January, 2025 paid a filing fee of Ksh 1,000/- in cash, which was subsequently remitted by Mpesa, with Mpesa reference number TAF88QJ4H4 on 15th January, 2025.
- 9 Rule 5.3 – **the arbitration is deemed to have commenced on 14th January, 2025**, upon the Claimant providing the Institute with the requisite payment amount.
- 10 Rule 6.1 – The Respondent should send, electronically, by email, its response to this request for arbitration within 30 days of service of this request for arbitration. The response

should contain the information as provided for in ADR Arbitration Rule 6. The ADR Arbitration Rules can be downloaded at <https://www.aluochier.co.ke/ADR-Arbitration-Rules-20250102.pdf>.

Please go through the ADR Arbitration Rules to familiarise yourself with the arbitration process as administered by ADR, taking special note of dates by which any actions on your part are required. We look forward to receiving your response to facilitate progression of the arbitration proceedings in a manner in harmony with Article 50(1) of the Constitution.

Yours faithfully
For and on behalf of
Aluochier Dispute Resolution



Isaac Aluochier
Chief Executive

cc **Four Sons Holdings (K) Limited, P O Box 405-40404, Rongo. Telephone: 0720 862 439 / 0732 862 439. Email address: foursonsholdings@gmail.com.**

REPUBLIC OF KENYA



MIGORI COUNTY GOVERNMENT
MINISTRY OF PUBLIC WORKS AND INFUSTRUCTURE

Telegrams: "MIGORI COUNTY" Migori
Tel: +254-059-20928

URIRI SUBCOUNTY,
P. O. Box 100 - 40405

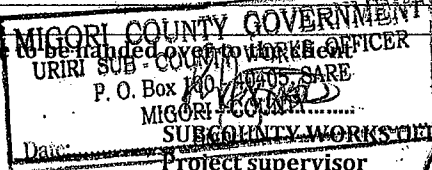
E-mail:

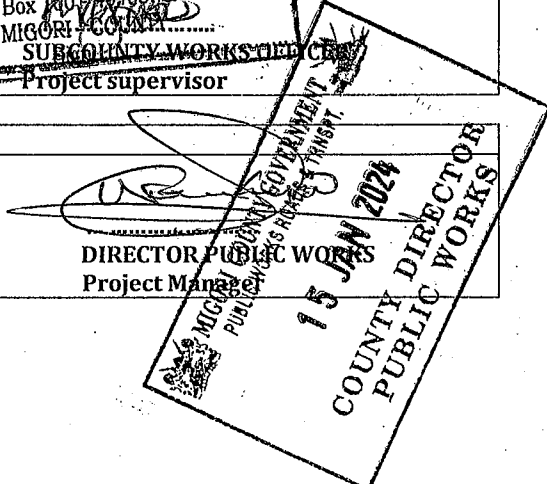
SARE

CERTIFICATE OF PRACTICAL COMPLETION

FROM: SUB COUNTY WORKS OFFICER MINISTRY OF PUBLIC WORKS,AND INFUSTRUCTURE. MIGORY COUNTY P.O BOX 100 -40405 SARE Ref: CGM/EDU/58/2021-2022	TO: THE CHIEF OFFICER, EDUCATION AND SOCIAL SERVICES P.O BOX 195-40400 Date 9/01/2024
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DETAILS OF WORKS ;PROPOSED COMPLETION OF URIRI VETC			
Contract Period		Description of Works	Ministry Agency
Commencement Date	Completion Date	NAME OF WORKS. PROPOSED COMPLETION OF URIRI VETC	COUNT GOVERNMENT.
AUG 2023	JAN 2024		
Contract Number DATE CGM/EDU58/2021-2022		Contract Sum: Kshs. . 14,994,461.60	Name and Address of Contractor FOURSONS (K)LTD P.O BOX.405-40404 RONGO

Completion of construction Works The contract works are now complete to my satisfaction and are to be handed over to the client. Date..... 9/1/2024	 Project supervisor
--	--

Release of retention and surety bond ATT. Job QS and contractors register office , The first Moiety of retention and surety bond may now be handed over to the client Date.....	 DIRECTOR PUBLIC WORKS Project Manager
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**REPUBLIC OF KENYA
PAYMENT VOUCHER
(VOTED PROVISION)**

Payee's Name and Address PAY AS BELOW

Particulars	LPO/LSO No.	Invoice No.	AMOUNT	
			Shs.	Cts.
PROPOSED COMPLETION OF URIRI VETC				
9/01/2024 TO THE 1 ST PAYMENT ON A/C IN RESPECT OF THE ABOVE PROJECT NO CGM/EDU/58/2021-2022 AS PER THE STATEMENT ATTACHED AND RECORDS HELD IN SUPPORT THEREOF;				
1. M/S. FOUR SONS HOLDINGS (K) LTD. 2. 10% RETENTION MONEY 6. 6% VAT 3. 2% WITHHOLDING TAX			12,848,702	44
			1,499,446	16
			258,525	20
			387,787	80
Total			14,994,461	60

MIGORI COUNTY GOVERNMENT
URIRI SUB-COUNTY WORKS OFFICER
ROUTE P.O. BOX 10405, SARE
MIGORI - COUNTY
Date: _____

COUNTY PUBLIC WORKS OFFICER
15 JAN 2024
CHARLES WAMBURA
DIRECT PUBLIC WORKS

Amount payable (in words) Kenya **FOURTEEN MILLION NINE HUNDRED AND NINETY FOUR THOUSAND FOUR HUNDRED AND SIXTY ONE AND SIXTY CENTS ONLY**

EXAMINATION

Voucher Examine by _____

Date _____

VRC CERTIFICATE

I Certify that the expenditure has been entered in the Vote Book and that adequate funds to cover it are available against the chargeable item as shown below.

Approved Estimates/Allocation-
Item No. _____ Kshs. Less: Total expenditure plus.....
commitments Kshs. _____

Balance Kshs. _____

Less: This ENTRY - Vch.
No. _____ Kshs. _____
Balance Kshs. _____
Date _____ Signature _____
Accountant i/c VBC

Internal Audit

AIE HOLDER CERTIFICATE

I certify that the expenditure detailed above has been incurred for the authorized purpose and should be charged to the item shown here below.

Signature _____ Designation of AIE Holder _____
Date _____

AUTHORIZATION

I certify that the rate/price charged is/are according to regulations/contract, fair and reasonable that the expenditure has been incurred on proper authority and should be charged as under. Where appropriate certificate overleaf has been completed. I hereby **AUTHORIZE** payment of the amount shown above without any alteration.

Signature _____
Accounting officer/District Accountant*
Date _____

Vote		Head		Sub-Head		Item	
A.I.E NO.	Account No.	Dept. Vch. No.	Station	CASH BOOK		AMOUNT	
				Vch. No.	Date	Sh.	Cts.
						14,994,461	60

GPK (L)

REPUBLIC OF KENYA

MINISTRY OF WORKS, HOUSING AND PHYSICAL PLANNING

STATEMENT FOR PAYMENT OF ACCOUNT

CERTIFICATE NO 01

CONTRACT NO. AND DATE CGM/EDU/58/2021-2022

NAME OF WORKS . PROPOSED COMPLETION OF URIRI VETC

NAME OF CONTRACTOR M/S. FOUR SONS (K) LTD

Note:- In the preparation of certificates for payments on account the valuation of work done should arrived at by abstracting such items as wholly or partially completed from the Bill of Quantities, or, in the absence of the latter, by taking detail measurements of completed work priced out at rates proportional to the Contractor Amount. These detail measurements must be recorded in the books provided for the purpose, which shall be kept at the office dealing with the work, and carefully checked totals of the various items shall be entered on this Form. The valuation appearing herein shall be of the work done from the commencement, not from the date of the last preceding payment on account, and, when the work is more than half completed, is best arrived at by deducing the value of the work remaining to be done from the Contract Amount. Such procedure greatly minimizes the risk of overpayment.

The valuation of materials on side shall follow that of the work done but shall be entered and transferred under an separate heading.

A copy of this Statement must be sent to the Chief Accountant, Ministry of Works, Housing and Physical Planning for transmission to the Auditor.

VALUATION of work done and materials on site for the 1ST PAYMENT OF ACCOUNT UPTO 9/1/2024

Item No.	Description	Quantity	Unit	Rate	Sh.	cts
	VALUATION					
A.	Value of work done					
	A)FINISHES AND TANKS				9,163,560	00
	B)DOORS,				1,216,176	60
	C)WINDOWS				1,232,005	40
	D)ELECTRICAL WORKS				417,305	00
	E)PLUMBING WORKS				602,659	00
	F) LANDSCAPING				94,554	00
	G) PROJECT MANAGEMENT				<u>200,000</u>	
					12,926,260	
	ADD 16% VAT				2,068,201	60
	Carried to collection page.....				<u>14,994,461</u>	<u>60</u>

SUMMARY OF STATEMENT FOR PAYMENT ON ACCOUNT

NAME OF WORK. **PROPOSED COMPLETION OF URIRI VETC**

CONTRACT NO **CGM/EDU/58/2021-2022**

CERTIFICATE NO. 01

DATE **9/01/2024**

AMOUNT OF CONTRACT KSH. 14,994,461 Cts 60			<i>Sh</i>	
Value of Permanent work done, including extra work if any. From page M.O. W 121	14,994,461	60		
	NIL			
GROSS VALUE PAYABLE	<i>Sh</i>			
	14,994,461	60		
Less 10 per cent retention money	1,499,446	16		
NET TOTAL	13,495,015	44		
<i>Less previous payments on account as follows:</i>	<i>Sh.</i>	<i>Cts</i>		
1 st Payment dated Vr. No.				
2 nd Payment dated Vr. No.	NIL			
3 rd Payment dated Vr. No.				
3 rd Payment dated Vr. No.				
TOTAL PAYMENTS ON ACCOUNT			<i>Sh.</i>	NIL
AMOUNT OF PAYMENT ON ACCOUNT.			<i>Sh.</i>	13,495,015 44
CONTRACTOR				

MIGORI COUNTY GOVERNMENT
URIRI SUB-COUNTY WORKS OFFICER
 Date:
 Sign:

REPUBLIC OF KENYA



MIGORI COUNTY GOVERNMENT
URIRI SUB-COUNTY

Telegrams: "MIGORI COUNTY" Migori
Tel: +254-059-20928
E – Mail: migoricountygov@gmail.com

ADMINISTRATOR'S OFFICE,
P.O. BOX 195,
URIRI – MIGORI,
KENYA.
12/01/2024

TO
CHIEF OFFICER
FINANCE AND ECONOMIC PLANNING
P.O. BOX 195,
SUNA.

Dear Sir,

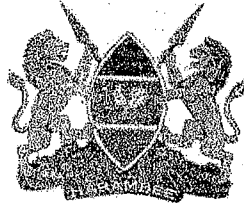
**RE: PROPOSED COMPLETION OF URIRI VOCATIONAL TRAINING
CENTRE: TENDER NO: CGM/EDU/58/2021-2022: NEGOTIATION NO.
924453.**

The subject matter above refers,

I hereby inform your office that the above project is done to completion by M/S
FOUR SONS HOLDINGS (K) LIMITED P.O. BOX 405- RONGO. After
inspection by Public Works Officers, kindly process her payment.

SUB-COUNTY ADMINISTRATOR
URIRI SUB-COUNTY
12/01/2024
P. O. BOX 195 SUNA MIGORI
SIGNATURE
Sub County Administrator
Uriri Sub County

REPUBLIC OF KENYA



COUNTY GOVERNMENT OF MIGORI

CONTRACT DOCUMENT

BETWEEN

COUNTY GOVERNMENT OF MIGORI

AND

M/S FOUR SONS HOLDINGS (K) LIMITED

P.O. BOX 406

RONGO

CCM/EDU/58/2021-2022

PROPOSED COMPLETION OF URIRI VOCATIONAL TRAINING CENTRE.

28TH FEBRUARY 2022

CONTRACT AGREEMENT BETWEEN

Parties:

COUNTY GOVERNMENT OF MIGORI (*Employer*)

AND

M/S FOUR SONS HOLDINGS (K) LIMITED (*supplier*)

Date 28TH, FEBRUARY, 2022

CONTRACT AGREEMENT

THIS AGREEMENT Made on the 28TH DAY OF FEBRUARY, 2022 between the COUNTY GOVERNMENT OF MIGORI P.O BOX 195-40400, MIGORI, KENYA (hereinafter called the Employer) of/or whose office is situated in Migori Town of the one part and M/S FOUR SONS HOLDINGS (K) LIMITED, P.O. BOX 406 RONGO whose office is situated Rongo Town) herein after called the supplier on the other part.

WHEREAS the County Government of Migori is desirous that certain works as have been tabled below, shall be delivered viz, (PROPOSED COMPLETION OF URIRI VOCATIONAL TRAINING CENTRE) and has accepted a Bid by the supplier for the same at a cost of KSHS 14,996,461.60.00 (Fourteen Million, Nine Hundred and Ninety Six Thousand, Four Hundred and Sixty One Shillings and Sixty Cents Only) taxes inclusive.

NOW THIS AGREEMENT WITNESSETH as follows:

1. IN THIS Agreement words and expressions shall have the same meaning as are respectively assigned to them in the Conditions of Contract herein after referred to.
2. The following documents shall be deemed to form and be read and constructed as part of this Agreement, viz:
 - (a) Contract Agreement if Completed
 - (b) Letter of offer
 - (c) The Letter of Acceptance
 - (d) Form of Tender
 - (e) General Conditions of Contract
 - (f) Any other Document(s) that may be found fit to form part of this Contract

All the aforesaid documents are hereinafter referred to as the Contract.

3. **Payment**-In consideration of the payments to be made by the Employer to the Contractor, hereby covenants with the Contractor to execute the provision of service in conformity in all respects with the provision of the Contract.
4. **Agreement**-The Employer hereby covenants to pay the contractor, in consideration of execution of the provision of service and contract price at the time and in the manner prescribed in the contract (**PROPOSED COMPLETION OF URIRI VOCATIONAL TRAINING CENTRE**)
5. **Contract Transfer** -This contract SHALL NOT BE TRANSFERRED to another party without consent of the employer and may lead to automatic termination without prejudice.
6. **Contract Period**- shall be 120 Days from date of commencement notification.
7. **Contract Completion Date**- shall be extended if an occurrence arises which makes it impossible for completion to be achieved by the Intended Completion Date.
8. **Contract Termination**
 - i. The Employer or the Contractor may give notice of the termination in writing 60 days prior.
 - ii. Refusal to carry out the contraction as required under the contract without written communication shall be a fundamental breach of contract.
9. **Dispute Resolution**
 - i. The parties agree that avoidance or early resolution of dispute is crucial for a smooth execution of the contract and the success of the assignment. The parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this contractor its interpretation.
 - ii. Any dispute between the parties as to matters arising pursuant to this contract that cannot be settled amicably within (30) days after receipt by one part of the part of the other party's request for such amicable settlement may proceed to settle the same in a competent ~~part~~ court of law in Kenya.

WITNES WHERE OF the parties have hereto have caused respective common seals to be hereunto affixed (or have hereunto set their respective hands and seals) the day and the year first above written.

SIGNED, SEALED AND DELIVERED

MIGORI COUNTY GOVERNMENT
OFFICE OF THE CHIEF OFFICER FOR EDUCATION
P. O. Box 195-40400 SUNA-M

EMPLOYER

Name: MART MIDIDA Signature: [Signature]
(CHIEF OFFICER-EDUCATION)

CONTRACTOR

For the said contractor JACKSON PAUL (Name) (Sign) [Signature]

In the Capacity of DIRECTOR

In the presence of JANE NUTSKA (Sign) [Signature]

FOUR SONS HOLDINGS (K) LTD.
P. O. Box 405 40404, RONGO
28 FEB 2022
ADMINISTRATION DEPARTMENT

Official Rubber Stamp Date 28/02/2022

COUNTER SIGNED

In the presence of HERBOW OYUGI (Sign) [Signature] Date 28/2/2022
(Director, Supply Chain Management)

MIGORI COUNTY GOVERNMENT
P. O. Box 195 - 40400, SUNA-MIGORI COUNTY
DIRECTOR HEAD SUPPLY CHAIN
MANAGEMENT SERVICES
Date: Sign:

REPUBLIC OF KENYA
PURCHASE ORDER

TO: FOUR SONS HOLDINGS (K)
LIMITED
p.o box 405
rongo

Purchase Order No. 196
Date 28/02/2022
Currency KES
Release No.

MIGORI COUNTY

Please carry out the Goods/Services listed here below at MIGORI - EDUCATION, SOCIAL SERVICES, CULTURE, SPORTS, YOUTH AND POLY TECHNICS, MIGORI COUNTY
2022/03/04 00:00:00

And send the Invoices immediately to PAY AND ACCOUNTS DEPARTMENT, MIGORI - EDUCATION, SOCIAL SERVICES, CULTURE, SPORTS, YOUTH AND POLY TECHNICS

Line No.	Item Type	Item Code	Category	Description	UOM	Qty	Price	Line Total	Account Combination	Req No	Quot No	Contr. No
1	Goods	S00000059 6	01	PROPOSED COMPLETION OF URIRI VOCATIONAL TRAINING CENTRE	Each	1	14,996,461.60	14,996,461.60	5165000101-1-5155-00031001-0503035169-3110102-51600001-000			
TOTAL								14,996,461.60				

Signature

Designation

Proc. Entity

Date

[Handwritten Signature]
Director
Migori County
28/02/2022

Signature

Date

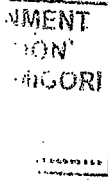
MIGORI COUNTY GOVERNMENT
CHIEF OFFICER EDUCATION
P. O. BOX HOLDER, SUNA-MIGORI
Date: Sign:

MIGORI COUNTY GOVERNMENT
P. O. Box 195- 40400, SUNA-MIGORI COUNTY
DIRECTOR HEAD SUPPLY CHAIN
MANAGEMENT SERVICES
Date: Sign:

REPUBLIC OF KENYA



COUNTY GOVERNMENT OF MIGORI



Telegrams: "MIGORI COUNTY" Migori
Tel: +254-059-20928
E-mail: migoricountygov@gmail.com

MIGORI COUNTY
P.O BOX 195-40400
SUNA-MIGORI, KENYA

28th, February, 2022

REF: CGM/EDU/36/2021-2022/AWD/3 VOL.1

M/S FOUR SONS HOLDINGS (K) LIMITED,
P. O. BOX 406,
RONGO.

Dear Sir/Madam,

RE: PROPOSED COMPLETION OF URIRI VOCATIONAL TRAINING CENTRE; TENDER NO: CGM/EDU/58/2021-2022; NEGOTIATION NUMBER: 924453.

We refer to your bid closed on 24th, January, 2021 and are glad to inform you that, having performed well in both preliminary and detailed technical analysis, your application for the **Proposed Completion of Urii Vocational Training Centre** has been accepted at an evaluated Tender Sum of Kshs. 14,996,461.60 (Fourteen Million, Nine Hundred and Ninety Six Thousand, Four Hundred and Sixty One Shillings and Sixty Cents Only) inclusive of all taxes.

Your formal acknowledgement of this offer should be submitted to the undersigned.

Yours faithfully,

MIGORI COUNTY GOVERNMENT
CHIEF OFFICER EDUCATION
P. O. Box 195-40400, SUNA-MIGORI
Date: Sign:

MARY MIDIA
CHIEF OFFICER, EDUCATION.
COUNTY GOVERNMENT OF MIGORI.

