

**7.
LONG TERM WATER AND WASTE WATER TREATMENT OPERATIONS
MANAGEMENT CONTRACT : CONTRACT SC 1890/2018**

8/2/1/SC1890/2018

H Blignaut

(028) 313 5047

Hermanus Administration

9 November 2018

1. Executive Summary

A long term water and waste water treatment operations management contract, Contract SC 1890/2018 (the Contract), was awarded to Veolia Water Solutions and Technologies South Africa (Pty) Ltd (the Operator) on 4 September 2018 by the Accounting Officer, following a recommendation by the Bid Adjudication Committee on 31 August 2018.

The purpose of this report is to present Council with the long term water and waste water treatment operations management contract, and to seek Council resolution:

- To approve the Contract in its final form as it is to be executed, and to authorise the Municipal Manager to sign the contract as is required by section 33 of the Local Government: Municipal Finance Management Act, Act no. 56 of 2003 (MFMA); and
- To grant to the Operator the right to use, control and manage the water and waste water treatment works as set out in the Contract, and as is required by the Municipal Asset Transfer Regulations No. R878, published in Government Gazette No. 31346 on 22 August 2008.

2. Service Delivery and Budget Implementation Plan - IGNITE

Directorate: Infrastructure & Planning

Department: Engineering Planning (Bulk Water Services)

3. Compliance with Strategic Priority/ies

Provision of democratic, accountable and ethical governance
Provision and maintenance of municipal services
Creation and maintenance of a safe and healthy environment

4. Delegated Authority

None

5. Legal Requirements

Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003) (MFMA)

Local Government: Municipal Systems Act, Act 32 of 2000 (MSA)
Labour Relations Act, Act 66 of 1995
Water Services Act, Act 108 of 1997
Municipal Asset Transfer Regulations, Regulation No. R878
Overstrand Municipality Supply Chain Management Policy
Overstrand Municipality Contract Management Policy

6. Background/Evaluation/Conclusion

Background

Triggered by significant investment by Overstrand Municipality in water and waste water treatment infrastructure in the preceding years, Council resolved in June 2011 in terms of section 77 of the MSA that the Municipality must undertake an assessment in terms of MSA section 78(1) of the way in which it was structured to deliver water and sanitation services.

Following the MSA section 78(1) assessment, Council resolved on 22 January 2014 (refer to Annexure A) in terms of section 78(2) of the MSA that the Municipality should continue to deliver municipal services by way of an internal water services provider mechanism, but that a competently skilled and experienced operator should be contracted to operate and maintain the water and waste water treatment works.

The key drivers of the decision to contract an operator include the need to secure focussed management of the operations and maintenance of the water and waste water treatment works, and to develop local skills in compliance with the regulatory requirements of the operations. The outcomes sought from the contract are on-going assurance of supply of water, treatment of water and waste water at the right quantity and quality, and asset preservation over the longer term, in order that as water services authority the Municipality can ensure effective and efficient municipal service delivery.

Subsequent to Council's resolution of 22 January 2014, Contract no. SC 1508/2014 (the Existing Contract) was awarded to Veolia Water Solutions and Technologies South Africa (Pty) Ltd (Veolia) for a period of 15 years, commencing on 1 November 2015 and terminating on 31 October 2030. The Existing Contract was approved by Council on 29 July 2015, after it was accepted that the Municipality will derive a significant financial economic benefit from the contract (refer to Annexure B).

The bidder who scored the second most points during this tender process, Water and Sanitation Services South Africa (Pty) Ltd (WSSA), lodged an application for review of the award of the Existing Contract to the Cape High Court. Their application was based on technicalities with regard to the regulatory staffing requirements at the treatment plants. The Cape High Court, the Supreme Court of Appeal, as well as the Constitutional Court ruled that it will be appropriate for the Municipality to commence with a complete

new tender process, in order to make a new contract award within 6 months from the Constitutional Court's decision of 7 June 2018, at which date (i.e. 7 December 2018 latest) the Existing Contract SC 1508/2014 with Veolia has to terminate.

In compliance with Court Order and supply chain management regulation and procedures, tender documentation was compiled, with specific attention to the issues raised by the Court Order and on-going operational needs.

In response to the new competitive tender process, four tenders were received, including bids from Veolia and WSSA. Veolia scored the highest points in terms of Council's Supply Chain Management Policy, and the tender was thus awarded to them on 4 September 2018 (refer to Annexure C). The duration of the Contract will be 15 years, commencing on 8 December 2018 and ending on 7 December 2033, with the option for Council to extend the contract for another 5 years.

Evaluation

The long-term Contract which is the subject of this report is attached to this report as Annexure D. The Contract includes the following improvements and additions to the Existing Contract SC 1508/2014:

- The exact staffing requirements at all the treatment plants are described in detail;
- Security measures at high risk key bulk water services infrastructure are included;
- The operation and maintenance of the following additional infrastructure, which was constructed after commencement of the existing contract, have now been included in the scope of work of this contract:
 - the new Eluxolweni Waste Water Treatment Plant;
 - new Eluxolweni sewerage pump station;
 - 3 new sewerage pump stations in Stanford;
 - all new rising main sewer pipelines linked to the new pump stations;
 - the new Mount Pleasant reservoir and associated infrastructure;
 - the new Gansbaai bulk water supply pipeline;
 - 2 mobile generator sets.

Section 33 of the MFMA provides as follows:

33. (1) A municipality may enter into a contract which will impose financial obligations on the municipality beyond a financial year, but if the contract will impose financial obligations on the municipality beyond the three years covered in the annual budget for that financial year, it may do so only if—

(a) the municipal manager, at least 60 days before the meeting of the municipal council at which the contract is to be approved—

(i) has, in accordance with section 21A of the Municipal Systems Act—

(aa) made public the draft contract and an information statement summarising the municipality's obligations in terms of the proposed contract; and

(bb) invited the local community and other interested persons to submit to the municipality comments or representations in respect of the proposed contract; and

(ii) has solicited the views and recommendations of—

(aa) the National Treasury and the relevant provincial treasury;

(bb) the national department responsible for local government; and

(cc) if the contract involves the provision of water, sanitation, electricity, or any other service as may be prescribed, the responsible national department;

(b) the municipal council has taken into account—

(i) the municipality's projected financial obligations in terms of the proposed contract for each financial year covered by the contract;

(ii) the impact of those financial obligations on the municipality's future municipal tariffs and revenue;

(iii) any comments or representations on the proposed contract received from the local community and other interested persons; and

(iv) any written views and recommendations on the proposed contract by the National Treasury, the relevant provincial treasury, the national department responsible for local government and any national department referred to in paragraph (a)(ii)(cc); and

(c) the municipal council has adopted a resolution in which—

(i) it determines that the municipality will secure a significant capital investment or will derive a significant financial economic or financial benefit from the contract;

(ii) it approves the entire contract exactly as it is to be executed; and

(iii) it authorises the municipal manager to sign the contract on behalf of the municipality.

(2) The process set out in subsection (1) does not apply to—

(a) contracts for long-term debt regulated in terms of section 46(3);

(b) employment contracts; or

(c) contracts—

(i) for categories of goods as may be prescribed; or

(ii) in terms of which the financial obligation on the municipality is below—

(aa) a prescribed value; or

(bb) a prescribed percentage of the municipality's approved budget for the year in which the contract is concluded.

(3) (a) All contracts referred to in subsection (1) and all other contracts that impose a financial obligation on a municipality—

(i) must be made available in their entirety to the municipal council; and

(ii) may not be withheld from public scrutiny except as provided for in terms of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

(b) Paragraph (a)(i) does not apply to contracts in respect of which the financial obligation on the municipality is below a prescribed value.

(4) This section may not be read as exempting the municipality from the provisions of Chapter 11 to the extent that those provisions are applicable in a particular case.

The procedures prescribed by section 33 of the MFMA have been duly followed. This report to Council concludes the section 33 process and includes the projected financial obligations for each financial year and the impact of those financial obligations on the relevant tariffs.

The following activities were completed, in accordance with section 33 of the MFMA:

- A public notice (refer to Annexure F) inviting comments from the local community and other interested persons was published in the local media and on the municipal web site on 14 September 2018 (i.e. more than 60 days before the Council meeting of 28 November 2018). No comment, input or inquiry was received before the closing date of 15 October 2018.
- An Information Statement (refer to Annexure E) discussing the proposed long term contract was made available to the public from 14 September 2018 on Overstrand Municipality's web site.
- The views and recommendations of the following stakeholders have been solicited from 13 September 2018 to 15 October 2018 (refer to Annexure G): National Treasury, Provincial Treasury, the Department of Co-operative Governance and Traditional Affairs, and the Department of Water and Sanitation. No comments were received from any of the stakeholders.

It is envisaged that the long term Contract will have the following financial and economic benefits for Overstrand Municipality:

- Value for money, with better balanced rates than those of the existing contract, which was previously proven to be feasible during the MSA section 78 process as well as during the previous MFMA section 33 process (refer to Annexures A and B). Even with the addition of newly completed infrastructure and security measures to the scope of works under this contract, the estimated expenditure remains within the available budget in the current Medium Term Revenue and Expenditure Framework (MTREF);
- Annual escalation is limited to Consumer Price Index (CPI) on the Fixed and Variable Charges, and South African Local Government Bargaining Council (SALGBC) wage agreements on the Salary Contribution, and the contract will therefore not have an adverse effect on future tariffs;
- An estimated R77 million worth of work will be sub-contracted to Exempt Micro Enterprises and Qualifying Small Enterprises over the 15-year contract period;
- 20 Permanent new jobs are created in the Overstrand under this contract, which did not exist when the function was performed in-house;
- A new office building will be constructed by the Operator, and the asset will be transferred to the Municipality at no cost at the end of the contract (only the successful bidder offered this initiative);
- Intensive training and development of staff and recognition of prior learning ("grand parenting") will be continued, with the aim of regulatory compliance in terms of staffing, which is not achieved at many plants countrywide;
- Focused high level expertise will be available on a continuous basis to improve and optimise treatment and maintenance processes, including professional chemical and electrical engineers, which are not available in-house;

- Full time locally based maintenance teams are employed under this contract to do daily inspections, preventative maintenance work, and immediate response in case of emergency situations. In the past these functions had to be sourced by the Municipality on an ad hoc basis from Cape Town. The numbers of pump station failures, sewerage spillages and water quality issues have already decreased significantly under the Existing Contract to date;
- Asset preservation in the long term is secured for the Municipality, combined with optimized treatment process efficiencies.

The water and waste water treatment works will be made available to the Operator to operate and maintain for the duration of the Contract. Whilst the Operator will take operational risk in regard to the assets, the Municipality will remain the owner. The granting of the right of use is made with the objective of achieving key economic objectives namely asset preservation and operations optimisation.

Because of the direct interface of the contract with the Municipality's water service provider obligations, the risk of non-performance or poor performance must be managed by the Municipality.

The capital assets will not be required for the Municipality's own use during the contract period, other than for access to monitor the performance of the Operator and to execute the planning and capital development function.

Conclusion

It can be concluded from the above and taking into consideration the financial implications in 7 below, that this long term Contract will secure a significant economic financial benefit for Overstrand Municipality. The contract is feasible, affordable, and achieves the objectives of the Municipality.

7. Financial Implications

Source of Funding: Operating Budget Provision

The estimated projected financial implications of the long term contract are illustrated in the table below. The annual escalation on the fixed and variable charges in the contract will be based on the CPI, and with regard to the Salary Contribution for the ex-municipal employees, escalation will be aligned with the annual SALGBC wage agreements. In the table below, the escalation factors were applied as set out in the Overstrand budget directive for 2019/20, i.e. CPI at 5.7% and Wage increases of 8.6% per year. Furthermore, a 3% annual growth in water and waste water produced was applied to the variable cost, to make provision for population growth and development. The same escalation factors would have applied should the function be executed in-house or by another contractor.

	Fixed Cost	Variable Cost	Salary Contribution	Large Maintenance and Repairs	Total Estimated Cost	Average Increase
2018/19	R 8 751 604	R 4 321 383	R 9 450 000	R 787 500	R 23 310 487	7 Months only
2019/20	R 16 761 807	R 8 065 256	R 17 593 200	R 1 426 950	R 43 847 213	7.4%
2020/21	R 17 717 230	R 8 780 725	R 19 106 215	R 1 508 286	R 47 112 456	7.4%
2021/22	R 18 727 112	R 9 559 663	R 20 749 350	R 1 594 258	R 50 630 383	7.5%
2022/23	R 19 794 557	R 10 407 701	R 22 533 794	R 1 685 131	R 54 421 183	7.5%
2023/24	R 20 922 847	R 11 330 968	R 24 471 700	R 1 781 184	R 58 506 699	7.5%
2024/25	R 22 115 449	R 12 336 139	R 26 576 266	R 1 882 711	R 62 910 565	7.5%
2025/26	R 23 376 030	R 13 430 477	R 28 861 825	R 1 990 026	R 67 658 358	7.5%
2026/27	R 24 708 463	R 14 621 895	R 31 343 942	R 2 103 457	R 72 777 758	7.6%
2027/28	R 26 116 846	R 15 919 003	R 34 039 521	R 2 223 354	R 78 298 725	7.6%
2028/29	R 27 605 506	R 17 331 178	R 36 966 920	R 2 350 085	R 84 253 690	7.6%
2029/30	R 29 179 020	R 18 868 627	R 40 146 075	R 2 484 040	R 90 677 762	7.6%
2030/31	R 30 842 224	R 20 542 463	R 43 598 638	R 2 625 631	R 97 608 955	7.6%
2031/32	R 32 600 231	R 22 364 785	R 47 348 120	R 2 775 291	R 105 088 427	7.7%
2032/33	R 34 458 444	R 24 348 765	R 51 420 059	R 2 933 483	R 113 160 751	7.7%
2033/34	R 15 835 164	R 14 930 029	R 23 267 577	R 1 291 955	R 55 324 725	5 Months only
Total	R 369 512 532	R 227 159 059	R 477 473 202	R 31 443 343	R 1 105 588 136	
Total, Including 15% VAT					R 1 271 426 357	

The above table indicates that the long term Contract will not have an adverse effect on the Water and Sewerage operational budgets of the Overstrand Municipality and it can therefore be concluded that the contract will not contribute to excessive annual increases in tariffs.

The contract represents an estimated 26% of the total expenditure budget for Water, and 15% of the total expenditure budget for Sewerage Services.

8. Staff Implications

There are no implications for existing municipal staff. Management will allocate capacity to monitor and implement the Contract. Ex-municipal staff who were directly involved with the function at the time of the conclusion of the Existing Contract were transferred to the Operator at commencement of the Existing Contract, and their employment with the Operator will continue under the new Contract.

9. Comments from other Departments, Divisions and Administrations

None

10. Annexures

- Annexure A: Council Resolution 4.7 of 22 January 2014
- Annexure B: Council Resolution 4.9 of 29 July 2015
- Annexure C: Bid Adjudication Committee Minutes of 31 August 2018
- Annexure D: Long Term Contract SC 1890/2018
- Annexure E: MFMA Section 33 Information Statement
- Annexure F: MFMA Section 33 Public Notice
- Annexure G: MFMA Section 33 Letter to Stakeholders

RECOMMENDATION TO THE COUNCIL:

1. that **cognisance be taken** that no response was received from the public or any other stakeholder following the invitation for comments, representations, views and recommendations in respect of the long term contract and the right to use the water and waste water treatment works;
2. that the right to use, control and manage the water and waste water treatment works for the contract period of 15 years to Veolia Water Solutions & Technologies (Pty) Ltd **be granted**;
3. that the determination of significant economic financial benefit from the long term contract for the Overstrand Municipality **be noted**;
4. that the long term contract for the Management of the Operation and Maintenance of the Water and Waste Water Treatment Works under the jurisdiction of Overstrand Municipality **be approved**; and
5. that the Municipal Manager **be authorised** to sign the long term contract on behalf of Overstrand Municipality.

RESPONSIBLE OFFICIAL :	H BLIGNAUT
TARGET DATE FOR IMPLEMENTATION :	8 DECEMBER 2018
TARGET DATE TO INFORM APPLICANT :	N/A
TARGET DATE TO INFORM OBJECTOR :	N/A

Annexure A

4.7

REPORT ON MUNICIPAL SYSTEMS ACT, SECTION 78, ASSESSMENT OF WATER AND SANITATION SERVICE DELIVERY MECHANISMS

(ITEM 10, PAGE 144 : SPECIAL MAYORAL COMMITTEE MEETING : 22 JANUARY 2014)

MEMBERS OF THE ANC INDICATED THAT THEY ARE AGAINST RECOMMENDATIONS 4 AND 5. CLLR M MSHEXISWA MADE A COUNTER PROPOSAL TO THE EFFECT THAT THE MUNICIPALITY'S STAFF BE TRAINED TO DO THE WORK.

WHEN PUT TO VOTE, 10 MEMBERS VOTED IN FAVOUR OF THE RECOMMENDATION OF CLLR MSHEXISWA, AND 15 MEMBERS VOTED IN FAVOUR OF THE RECOMMENDATION OF THE EXECUTIVE MAYOR.

THE RECOMMENDATION OF THE EXECUTIVE MAYOR WAS THUS CARRIED.

RESOLVED (UNANIMOUSLY):

1. that the outcomes of the independent assessment be noted;
2. that the comments received from organised labour be noted;
3. that the continuation of water services delivery by way of an internal mechanism be approved;

RESOLVED:

4. that it be approved in principle that a competently skilled and experienced operator be contracted to operate and maintain the Water Treatment Works and Waste Water Treatment Works; and
5. that the Director: Infrastructure & Planning be delegated to:
 - 5.1. Undertake a more detailed study to inform bid specifications;
 - 5.2. Initiate the procurement process;
 - 5.3. Report back with regard to the implications of future financial commitments in terms of section 33 of the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003).

RESPONSIBLE OFFICIAL

**HANRE BLIGNAUT
MIKE BARTMAN**

IMPLEMENTATION DATE:

1 FEBRUARY 2014

4.9

**WATER AND WASTE WATER TREATMENT OPERATIONS MANAGEMENT
CONTRACT: SC1508/2014**

**(ITEM 12, PAGE 169 : SPECIAL MAYORAL COMMITTEE MEETING :
29 JULY 2015)**

**MEMBERS OF THE ANC INDICATED THAT THEY ARE AGAINST THE
RECOMMENDATION AND CLLR V MACOTHA MADE A COUNTER PROPOSAL
TO THE EFFECT THAT THE MATTER STAND OVER UNTIL PROPER
CONSULTATION WAS DONE**

**CLLR V MACOTHA, ON BEHALF OF THE ANC, REQUESTED THE MEETING TO
ADJOURN FOR A CAUCUS AT 11:33**

THE MEETING RECONVENED AT 11:47

**WHEN PUT TO THE VOTE, 8 MEMBERS VOTED AGAINST THE
RECOMMENDATION OF THE EXECUTIVE MAYOR AND 13 MEMBERS VOTED IN
FAVOUR OF THE RECOMMENDATION OF THE EXECUTIVE MAYOR. THE
RECOMMENDATION OF THE EXECUTIVE MAYOR WAS THUS CARRIED.**

**CLLR J JANUARY FROM NICO ABSTAINED FROM TAKING PART IN THE
CONSIDERATION OF THIS ITEM**

RESOLVED:

1. that cognisance be taken of the responses received to the request for comments, representations, views and recommendations in respect of the contract and granting of the right to use the water and waste water treatment works;
2. that the right to use, control and manage the water and waste water treatment works for the contract period of 15 years to Veolia Water Solutions & Technologies (Pty) Ltd, be granted;
3. that the significant economic financial benefit from the contract for the Municipality, be noted;
4. that the Contract for the Management of the Operation and Maintenance of the Water and Waste Water Treatment Works in the jurisdiction of Overstrand Municipality, be approved; and
5. that the Municipal Manager be authorised to sign the contract on behalf of Overstrand Municipality.

Minutes of the Proceedings of a meeting of the Bid Adjudication Committee held in the SGM Committee Room, Hermanus, on Friday, 31 August 2018 at 14:35.

6. ADJUDICATION OF TENDERS/CONTRACTS:

6.1 TENDER NO. SC 1890/2018: WATER AND WASTEWATER BULK WORKS OPERATIONS AND MAINTENANCE

The Director: Infrastructure & Planning, Mr S Müller vacated his chair as committee member of the Bid Adjudication Committee for the duration of the adjudication of this item.

Upon a proposal by the Director: Protection Services, Mr. N Michaels duly seconded by the Acting Director: Management Services, Ms. R Louw it was

RESOLVED TO RECOMMEND TO ACCOUNTING OFFICER:

1.1 That, as they scored the highest points in terms of Council's Preferential Procurement Policy preference point system, TENDER NO. SC 1890/2018, WATER AND WASTE WATER BULK WORKS OPERATIONS AND MAINTENANCE, be awarded to:

Service provider / supplier:	Vedla Water Solutions & Technologies South Africa (Pty) Ltd.	SCM supplier #	927
Service / goods provided:	Water and Waste Water Bulk Works Operations and Maintenance		
Item description 1	OutsrdServ:Sewerage Servs: Water		
Item description 2	OutsrdServ:Sewerage Servs: Sewerage		
Item description 3	Water Facilities Contingency		
Item description 4	Sewerage Facilities Contingency		
Cost account 1	1 2210 2 005700 00	Business key 1	20180705059772
Cost account 2	1 2210 2 005700 00	Business key 2	20180705059771
Cost account 3	5 02 5007 002 1	Business key 3	20170704100448
Cost account 4	5 02 5007 002 1	Business key 4	20170704102359
Amount (Excl. VAT):	Rates: refer to schedule of rates below	Contingency:	Not applicable
Amount in words:	Rates: refer to schedule of rates below		
Escalation percentage:	CPA Rates, and SALGBC wage agreement on Salary Contribution	Escalation date:	1 July annually
Contract owner:	S Müller	Contract champion:	H Blignaut
CONTRACT PERIOD:			
Implementation date:	8 December 2018	End date:	7 December 2033
		Period:	15 Years

TENDER SC 1890/2018, WATER AND WASTE WATER BULK WORKS OPERATIONS AND MAINTENANCE, (O & M)		
SCHEDULE OF RATES FOR 2018/19:		
Ref. no.	ITEM	
A	FIXED CHARGES	
A.1	FIXED CHARGES WASTEWATER TREATMENT WORKS (WWTW)	Fixed rate per Month (Rand, excluding VAT)
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)	
A.1.1	Hawston WWTW: O&M	R 25 060.78
A.1.2	Hermanus WWTW: O&M	R 50 121.56
A.1.3	Stanford WWTW: O&M	R 12 530.39
A.1.4	Gansbaai WWTW: O&M	R 50 121.56

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TENDER SC 1896/2018, WATER AND WASTE WATER BULK WORKS OPERATIONS AND MAINTENANCE, (O & M)		
SCHEDULE OF RATES FOR 2018/19:		
Ref. no.	ITEM	
A.1.5	Kleinmond WWTW O&M	R 25 060.78
A.1.6	Ekxolweni WWTW O&M	R 12 530.39
A.2	FIXED CHARGES WATER TREATMENT WORKS (WTW)	Fixed rate per Month (Rand, excluding VAT)
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)	
A.2.1.a	Freekstoel WTW - Conventional Plant: O&M	R 51 374.60
A.2.1.b	Freekstoel WTW - Bio Plant: O&M	R 51 374.60
A.2.2	Buffels River WTW: O&M	R 102 749.20
A.2.3	Franskraal WTW: O&M	R 102 749.20
A.2.4	Peashy Beach WTW: O&M	R 102 749.20
A.2.5	De Kelders WTW: O&M	R 102 749.20
A.2.6	Stanford WTW: O&M	R 58 133.72
A.2.7	Baardskeendersbos WTW: O&M	R 102 749.20
A.2.8	Kleinmond WTW: O&M	R 102 749.20
A.2.9	Buffeljaga WTW: O&M	R 35 085.09
A	FIXED CHARGES - CONTINUED	
A.3	FIXED CHARGES SURFACE WATER SOURCES	
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)	
A.3.1	Monthly charge for all surface water sources combined	R 12 530.39
A.4	FIXED CHARGES BOREHOLE PUMPS	
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)	
A.4.1	Monthly charge for all borehole pumps combined	R 25 060.78
A.5	FIXED CHARGES SURFACE WATER PUMPSTATIONS	
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)	
A.5.1	Monthly charge for all surface water pump stations combined	R 12 530.39
A.6	FIXED CHARGES BULK WATER PIPELINES	
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)	
A.6.1	Monthly charge for all bulk water pipelines combined	R 12 530.39
A.7	FIXED CHARGES RESERVOIRS	
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)	
A.7.1	Monthly charge for all reservoirs combined	R 12 530.39
A.8	FIXED CHARGES SEWER PUMPSTATIONS	
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)	
A.8.1	Monthly charge for all sewer pump stations	R 50 121.56
A.9	FIXED CHARGES BULK SEWER PIPELINES	
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)	

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TENDER SC 1890/2018, WATER AND WASTE WATER BULK WORKS OPERATIONS AND MAINTENANCE, (O & M)		
SCHEDULE OF RATES FOR 2018/19:		
Ref. no.	ITEM	
A.9.1	Monthly charge for all sewer pipelines combined	R 12 530.39
A.10	FIXED CHARGES MOBILE GENSETS	
	Contractual Requirements (includes all maintenance costs required to undertake the Function as per Technical Specifications)	
A.10.1	Monthly charge for maintenance of 40-60kVA Mobile gensets	R 2 506.08
A.11	OUTSOURCED SECURITY SERVICES - WATER FACILITIES	
	Contractual Requirements for security of all assets, the grounds and employees as per Technical Specifications	
A.11.1	Outsourced Security - On-site Security Guard Services with armed response at Bulk Water Facilities	R 37 500.00
A.11.2	Outsourced Security - Alarm Systems with armed response at Bulk Water Facilities	R 18 750.00

TENDER SC 1890/2018, WATER AND WASTE WATER BULK WORKS OPERATIONS AND MAINTENANCE,		
SCHEDULE OF RATES FOR 2018/19:		
Ref. no.	ITEM	
A.12	OUTSOURCED SECURITY SERVICES - WASTE WATER FACILITIES	
	Contractual Requirements for security of all assets, the grounds and employees as per Technical Specifications	
A.12.1	Outsourced Security - On-site Security Guard Services with armed response at Bulk Waste Water Facilities	R 50 000.00
A.12.2	Outsourced Security - Alarm Systems with armed response at Bulk Waste Water Facilities	R 18 750.00
B	VARIABLE CHARGES BASED ON CHEMICAL TREATMENT	
B.1	VARIABLE CHARGES WASTEWATER TREATMENT WORKS	Rate per KI received by Operator (Incoming Flow to WWTW), (Rand, excluding VAT)
	Contractual Requirements (includes all chemical costs required to deliver the Function as per Technical Specifications)	
B.1.1	Hoofton WWTW	R 0.32
B.1.2	Hermanus WWTW	R 0.25
B.1.3	Stanford WWTW	R 0.41
B.1.4	Gensbaai WWTW	R 0.17
B.1.5	Kleinmond WWTW	R 0.08
B.1.6	Eluxolweni WWTW	R 0.25
B.2	VARIABLE CHARGES WATER TREATMENT WORKS	Rate per KI treated water received by Overstrand (Outflow from WTW), (Rand, excluding VAT)
	Contractual Requirements (includes all chemical costs required to deliver the Function as per Technical Specifications)	
B.2.1.a	Prekstoel WTW - Conventional Plant	R 0.26
B.2.1.b	Prekstoel WTW - Bio Plant	R 0.42
B.2.2	Bullek River WTW	R 0.98
B.2.3	Franskraal WTW	R 4.75
B.2.4	Pearly Beach WTW	R 0.96
B.2.5	De Kelders WTW	R 0.32
B.2.6	Stanford WTW	R 0.023

Minutes of the Proceedings of a meeting of the Bid Adjudication Committee held in the SCM Committee Room, Hermanus, on Friday, 31 August 2018 at 14:35.

TENDER SC 1890/2018, WATER AND WASTE WATER BULK WORKS OPERATIONS AND MAINTENANCE		
SCHEDULE OF RATES FOR 2018/19:		
Ref. no.	ITEM	
B.2.7	Beardskeerdersbos WTW	R 5.14
B.2.8	Kleinmond WTW	R 0.67
B.2.9	Buffelsjags Bay	R 0.00
C	REPAIRS AND MAINTENANCE ESTIMATED CHARGES	Indicative Values for Evaluation only (Rand per year, excluding VAT)
C.1	Large Maintenance Repairs (In excess of R60 000 per incident)	R 700 000.00
C.2	Maintenance Requests by Municipality	R 300 000.00
		Percentage Mark-up on sub-contractor costs linked to items C.1 & C.2
C.3	% Mark-up on sub-contractor cost	35%

TENDER SC 1890/2018, WATER AND WASTE WATER BULK WORKS OPERATIONS AND MAINTENANCE			
SCHEDULE OF RATES FOR 2018/19:			
Ref. no.	ITEM		
D	SALARY CONTRIBUTION ESTIMATED CHARGES	Sum (Rand per year, excluding VAT)	
D	SALARY CONTRIBUTION ASSUMPTION FOR EVALUATION ONLY (CURRENT WTW AND WWTW OPERATIONAL STAFF COSTS); AMOUNT TO BE FINALIZED BEFORE SIGNING OF CONTRACT	R 15 260 000	
DAY WORKS RATES AND MONTHLY COSTS			
The daywork rates will be used for maintenance and repair projects. The monthly cost rates will be used for the filling of vacant posts, or per diem vacant posts not filled by the Operator.			
DAYWORKS (D)			
No.	DESCRIPTION	Unit	Dayworks Rate (Rand, excluding VAT)
D.1	Suction tanker - 10 000 liter Establish and de-establish	Per Event	2 000.00
D.2	Suction tankers - 10 000 liter	Hourly	900.00
D.3	Suction tanker - 6 000 liter Establish and de-establish	Per Event	2 000.00
D.4	Suction tanker - 6 000 liter	Hourly	900.00
D.5	TLB - Transport to and from site	Km	150.00
D.6	TLB	Hourly	750.00
D.7	Operational Manager	Hourly	750.00
D.8	Maintenance Manager	Hourly	600.00
D.9	Qualified Technician - Maintenance	Hourly	500.00
D.10	Qualified Electrician - Maintenance	Hourly	400.00

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TENDER SC 1890/2018, WATER AND WASTE WATER BULK WORKS OPERATIONS AND MAINTENANCE			
SCHEDULE OF RATES FOR 2018/19:			
Ref. no.	ITEM		
D.11	Qualified fitter - Maintenance	Hourly	300.00
D.12	General Assistant - Maintenance	Hourly	250.00
D.13	Vehicle cost - LDV - Rate per km	Km	5.00
MONTHLY COST TO COMPANY (R)			
No.	DESCRIPTION	Unit	Monthly Cost (Rand, excluding VAT)
M.1	Operational Superintendent - Water or Wastewater Treatment	Monthly	35 000.00
M.2	Process Controller - Water or Wastewater Treatment		
M.2.1	Class I Process Controller	Monthly	7 500.00
M.2.2	Class II Process Controller	Monthly	10 000.00
M.2.3	Class III Process Controller	Monthly	17 000.00
M.2.4	Class IV Process Controller	Monthly	25 000.00
M.2.5	Class V Process Controller	Monthly	30 000.00
M.3	General Assistant - Water or Wastewater Treatment	Monthly	8 500.00
M.4	Qualified Technician	Monthly	40 000.00
M.5	Qualified Electrician	Monthly	35 000.00
M.6	Qualified fitter	Monthly	25 000.00
M.7	General Assistant	Monthly	10 000.00

14.2 That the contract only be signed after approval of the contract by Council in terms of section 33 of the MFMA

Certified as correct by:



Mr. C Le Roux
Deputy Director: Finance & SCM

Date

03 September 2018



Ms. SG Reynolds-Naude
Director: Finance (Chairperson)

Date

3/9/2018

RECOMMENDATION APPROVED / NOT APPROVED



Ms. D Arrison
Acting Accounting Officer

Date

4/9/2018



**WATER AND WASTE WATER
BULK WORKS CONTRACT**

entered into between

**OVERSTRAND LOCAL MUNICIPALITY
("the Municipality")**

and

**VEOLIA WATER SOLUTIONS AND TECHNOLOGIES SOUTH AFRICA
(PTY) LTD**

(Registration No 1964/007768/07)

("the Operator")

Final Draft 13 November 2018

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PART A: INTRODUCTION

1. PARTIES

1.1. The Parties to this agreement are:

- 1.1.1. Overstrand Local Municipality, the water services authority and water services provider in terms of the Water Services Act for its area of jurisdiction;
- 1.1.2. Veolia Water Solutions and Technologies South Africa (Pty) Ltd, an operator with the skills and experience to undertake the Function.

1.2. The Parties agree as set out below.

2. INTERPRETATION AND PRELIMINARY

2.1. Unless the context indicates a contrary intention, words importing –

- 2.1.1. any one gender includes the other genders;
- 2.1.2. the singular include the plural and vice versa; and
- 2.1.3. natural persons include created entities (incorporated or unincorporated) and all spheres of Government.

2.2. The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely –

- 2.2.1. "Annual Plan" means the document agreed between the Parties annually for a Financial Year, more fully referred to in clause 11;
- 2.2.2. "Bulk Works" means the water and waste water treatment plants, pump stations, reservoirs, bulk pipelines, and associated assets and consumables as described in Annexure B and updated in the Annual Plan;
- 2.2.3. "Chief Executive Officer" means the chief executive of the Operator as appointed from time to time;
- 2.2.4. "Competent Authority" means collectively the Minister, all spheres of Government, any court of competent jurisdiction or any agency, authority, body or standard-setting institution, established or appointed in terms of any Regulatory Provision to regulate or oversee the activities of the Operator or the Municipality pursuant to this Contract;

-
- 2.2.5. "Contract" means this agreement and any annexures hereto, as well as the Annual Plan and any subsequent variation, amendment, novation or substitution of this Contract and annexures and Annual Plan;
- 2.2.6. "Corrupt Action" means –
- 2.2.6.1. Offering, giving receiving, soliciting or accepting any undue payment, bribe, gift, gratuity or any other undue benefit in exchange for performing or forbearing to perform any action in connection with this Contract; and
- 2.2.6.2. any solicitation, offering, participation, conspiracy or attempt to bring about the circumstances mentioned in clause 2.2.6.1 above;
- 2.2.7. "Effective Date" means 8 December 2018, unless otherwise agreed to between the parties;
- 2.2.8. "Emergency Situations" includes fires, floods, water pollution, restrictions in respect of raw water, droughts, operational emergencies such as pipe bursts, and any other situation that may negatively impact the usual undertaking of the Function and the Bulk Works and water services delivery;
- 2.2.9. "Escalation Factor" means the headline consumer price index (CPI for all urban areas) annual inflation rate published by Statistics SA in Statistical Release PO141.1 for the month of March preceding the 1 July escalation date (other than for Ex-municipal Employees as stated in 20.2) and unless otherwise motivated by the Operator and accepted by the Municipality as set out in 20.3;
- 2.2.10. "Existing Operational Staff" means the persons identified in Annexure A: Existing Operational Staff;
- 2.2.11. "Ex-municipal Employees" means the Existing Operational Staff specifically identified in Annexure A: Existing Operational Staff, which are employees who were employed by the Municipality and transferred with the Function;
- 2.2.12. "Financial Year" means the period commencing on 1 July and ending the following 30 June;

- 2.2.13. "Function" means the function of managing, operating, maintaining and monitoring the Bulk Works by the Operator to achieve the Technical Specifications as more fully set out in 7 below;
- 2.2.14. "KPI" means the indicators to measure the performance of the Operator as set out in clause 12;
- 2.2.15. "Large Maintenance Repair Projects" means breakdown or corrective repair and maintenance events undertaken as part of the Function of which the cost is greater than the Threshold, as set out in 7.5.23;
- 2.2.16. "Mark-Up Fee" means the Operator's remuneration for implementing the Large Maintenance Repair Projects and Maintenance Requests, where sub-contractors are used by the Operator as per 7.5 and 37.
- 2.2.17. "MFMA" means the Local Government: Municipal Finance Management Act 56 of 2003;
- 2.2.18. "Minister" means the Minister referred to in the Water Services Act or its successor in title;
- 2.2.19. "Municipal Manager" means the accounting officer of the Municipality, as defined in the MFMA;
- 2.2.20. "Municipal Plans" means the plans of the Municipality including without limitation the Integrated Development Plan, the Spatial Development Plan, the Water Services Master plan and the Water Services Development Plan as is relevant to the undertaking of the Function;
- 2.2.21. "Municipality" means Overstrand Local Municipality or its successor in title;
- 2.2.22. "Operator" means Veolia Water Solutions and Technologies South Africa (Pty) Ltd, Registration Number 1964/007768/07;
- 2.2.23. "Operator Remuneration" means the Operator's remuneration as set out in 17;
- 2.2.24. "Parties" means the Municipality and the Operator, or if appropriate in the context, either of them;
- 2.2.25. "Penalty/ ies" means the incentive/s to be levied if the KPIs as measured against the baseline are not achieved as set out in clause 13;

- 2.2.26. "Pricing Schedule" means the pricing schedule attached as Annexure D, and as adjusted in accordance with the Contract;
- 2.2.27. "Regulatory Provisions" means collectively or individually, the provisions of any legislation, regulation, policy directive or notice issued by a Competent Authority under such legislation or regulation which has a direct impact on the Contract and Function;
- 2.2.28. "Salary Contribution" means the Municipality's contribution to the Operator in regard to the Existing Operational Staff as set out in 18 below;
- 2.2.29. "SALGBC" means the South African Local Government Bargaining Council;
- 2.2.30. "Support Services" means any services to be provided by the Municipality to the Operator as set out in 10 below;
- 2.2.31. "Systems Act" means the Local Government: Municipal Systems Act 32 of 2000;
- 2.2.32. "Technical Asset Register" means the technical asset register developed for purposes of this Contract defining the Bulk Works as more fully referred to in clause 24, updated on an annual basis in the Annual plan;
- 2.2.33. "Technical Specifications" means the specifications as set out in the Annexure C, and as updated in terms of the Contract;
- 2.2.34. "Threshold" means R60 000 (sixty thousand rand), excluding VAT, escalated annually on 1 July by the Escalation Factor;
- 2.2.35. "VAT" means value added tax at the prevailing rate;
- 2.2.36. "Water Services Act" means the Water Services Act 108 of 1997 and its successor in title;
- 2.2.37. "water services delivery" means the delivery of water and waste water municipal services to the community by the Municipality;
- 2.3. Where consent or approval of a Party must be obtained or a Party is required to consider or renew something in terms of this Contract, unless it is specifically provided otherwise, it will act reasonably and within a reasonable period.

-
- 2.4. All rand amounts stated in this Contract and the Pricing Schedule shall be escalated annually with effect from 1 July of every year by the Escalation Factor, unless otherwise stated in the Contract.
 - 2.5. Reference to legislation includes regulations issued under the legislation and amendments to such legislation or regulations from time to time.
 - 2.6. Clause headings in this Contract are for the purpose of convenience and shall not be used in the interpretation of, nor modify, nor amplify the terms of this Contract or any clause hereof.
 - 2.7. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Contract.
 - 2.8. When any number of days is prescribed in this Contract, same shall be working days reckoned exclusively of the first day, and all Saturdays, Sundays or any public holidays thereafter, and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.
 - 2.9. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
 - 2.10. Expressions defined in this Contract shall bear the same meanings in schedules or annexures to this Contract which do not themselves contain their own definitions.
 - 2.11. Where any term is defined within the context of any particular clause in this Contract, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Contract, notwithstanding that that term has not been defined in this interpretation clause.
 - 2.12. General words preceded and or followed by words such as "other" or "including" or "particularly" shall not be given a restrictive meaning because they are preceded or followed by a particular example intended to fall within the meaning of the general words.
 - 2.13. The rule of construction that the Contract shall be interpreted against the party responsible for the drafting or preparation of the Contract shall not apply.

2.14. If there is any conflict between the provisions of any of the documents making up this Agreement then the priority of the documents shall be:

- 2.14.1. The Contract
- 2.14.2. The most recent Annual Plan; and
- 2.14.3. The Annexures to the Contract.

PART B: APPOINTMENT

3. APPOINTMENT

- 3.1. The Municipality hereby appoints the Operator to undertake the Function.
- 3.2. The appointment shall commence on the Effective Date, notwithstanding date of signature of this Contract.
- 3.3. The Operator hereby accepts the appointment to undertake the Function in accordance with this Contract.

4. DURATION

- 4.1. The Operator shall commence with the performance of its duties on the Effective Date.
- 4.2. The effective date will be 8 December 2018, subject to the following provisions hereunder:-
 - 4.1.1 That whilst the contract is immediately effective on 8 December 2018, it will only apply for longer than three years if the approval required under MFMA section 33 (1) is obtained.
 - 4.1.2 That the duration of the contract as indicated 15 (Fifteen years with an option of a further five years) is accordingly subject to section 33 (1) of the Municipal Finance Management Act 56 of 2003 approval being obtained within three years.
 - 4.1.3 That if the section 33 (1) of the Municipal Finance Management Act 56 of 2003 approval has not been obtained by the end of the third year covered in the current annual budget, the contract will terminate.
 - 4.1.4 That if at any earlier stage, the municipal council were to reject the contract when considering it under section 33 (1) of the Municipal Finance Management Act 56 of 2003, the contract will terminate once a new contract has been concluded in respect of the relevant services, provided that, if any such new contract has not been entered into by the end of the third year covered in the present budget, it will lapse as indicated above.

4.2 The appointment shall continue for 15 (fifteen) years from the Effective Date, unless terminated early in accordance with clause 4.1.3 or 4.5 below or extended in accordance with clause 4.3.

4.3 The Municipality shall have the right to extend the contract for a further 5 years (subject to clause 4.2 above), provided that 12 months written notice is given to the Operator prior to the expiry of the 15 year period, and the Operator accepts the extension of the Contract period.

5 HAND-OVER

5.1 The Parties acknowledge that the hand-over will be a process rather than an event. Recognising the importance of the undertaking of the Function and the continuity of water services delivery by the Municipality, the Operator and the Municipality agree that they shall co-operate in the period prior to and after the Effective Date to facilitate an efficient hand over of Function, the Existing Operational Staff and the responsibility for the Bulk Works, to the Operator.

5.2 During the first 3 months from the Effective Date the parties shall work closely together to ensure uninterrupted service delivery.

5.3 The Bulk Works and minor assets shall be identified and handed over to the Operator for the Operator to use for the duration of the Contract.

5.4 In the event that costs are incurred by either party on behalf of the other party during the hand-over period, these shall be reconciled, agreed, and set-off on the Operator's invoices.

6 ADJUSTMENT & VARIATION

6.1 The parties acknowledge that the scope of the Function will vary through the effluxion of time and accordingly the roles and responsibilities of the Parties will need to be adapted. This could be as a result of issues arising after the Effective Date including but not limited to:

6.1.1 Change in Regulatory Provisions directly impacting the Function;

6.1.2 Change in Bulk Works (expansion or reduction as a result of change in water services provision requirements);

6.1.3 Change in raw water quality and/or quantity.

6.2 Provided it is related to the Bulk Works and the Function, and subject to the Regulatory Provisions, the impact of the variation in scope of the Function must be determined and agreed to between the Parties.

- 6.3 In the event that the Municipality wishes to vary the scope of the Function –
- 6.3.1 the Municipality shall be obliged to give the Operator reasonable notice thereof, giving details of the proposed variation, the reason therefore, and the scope of Function the Operator would be required to render;
 - 6.3.2 the Municipality and the Operator will meet as soon as possible after the notice mentioned in clause 6.3.1 to discuss the variation proposed by the Municipality having regard to the following matters–
 - 6.3.2.1 the impact on water services delivery and the Municipal Plans;
 - 6.3.2.2 the impact on the existing Function and Bulk Works;
 - 6.3.2.3 the impact on roles and responsibilities of the Municipality and the Operator in terms of the Contract;
 - 6.3.2.4 the impact on the Technical Asset Register;
 - 6.3.2.5 the impact on the KPIs and Penalties;
 - 6.3.2.6 the impact on the Organisational Plan;
 - 6.3.2.7 the consequential impact on the Pricing Schedule;
 - 6.3.2.8 any other issue which is relevant.
- 6.4 The Annual Plan shall be updated to address the impact of the change in scope of the Function agreed to between the parties.
- 6.5 The Pricing Schedule shall be adjusted at the Operator's tendered rates in the Pricing Schedule. The Municipality shall have the right to bench mark and or test value for money of the proposed pricing to the Operator's competitively tendered rates (as escalated) and the market, before accepting the Pricing Schedule.
- 6.6 Where no agreement can be reached, the parties shall continue to implement the then current Annual Plan.

PART C: SCOPE

7 THE FUNCTION

- 7.1 The Operator shall, with effect from the Effective Date, be responsible for the Function.
- 7.2 The Function shall be undertaken by the Operator in accordance with the Annual Plan, so as to achieve the Technical Specifications.
- 7.3 The Operator is responsible for managing its own accounting, financial management and

budgeting in relation to the undertaking of the Function in terms of this Contract.

- 7.4 The Function includes management, operations, monitoring, and maintenance as set out in the Technical Specifications.
- 7.5 Maintenance includes repair and maintenance, Maintenance Requests, Large Maintenance Repair Projects and Emergency Repairs:
- 7.5.1 Routine, scheduled and preventative repairs and maintenance is for the Operators cost and covered in the Operator's Fixed Fee;
- 7.5.2 Maintenance Requests from the Municipality to the Operator shall be requested in writing by the Municipality. These requests will be for maintenance issues related to the Bulk Works and Function that the Operator has not scheduled but which the Municipality requires to be undertaken. The Operator shall define the scope of the Maintenance Request and respond to the Municipality with three written quotes to undertake the scope of work. The Municipality will consider and if approved, authorise one quote for implementation. The authorised quotation will be implemented.
- 7.5.3 Large Maintenance Repair Projects shall be identified and prioritised by the Operator in the Annual Plan or may arise ad hoc from breakdowns or corrective maintenance requirements identified during the preventative maintenance processes. The Operator shall define the Large Maintenance Repair Projects and propose and motivate the project. The Operator shall then source and present three quotes to implement the Large Maintenance Repair Project. The Municipality will consider and if approved, authorise one quote for implementation. The authorised quotation will be implemented.
- 7.5.4 Emergency Repairs shall be addressed by the Operator in Emergency Situations and if it qualifies as a Large Maintenance Repair Project, the actual cost (sub-contractor invoiced cost plus Operator's Mark-up Fee; or Operator's direct costs at tendered Day works and Monthly Cost to Company rates in the Price Schedule) may be recovered by the Operator in the month following the incurrence of the expenditure.
- 7.5.5 The Operator is not precluded from quoting to do the work in 7.5.2 and 7.5.23; provided that at least two other independent quotes will also be sourced and presented to the Municipality for comparison purposes.
- 7.5.6 The cost of the authorised quote for Large Maintenance Repair Projects and Maintenance Requests will be recovered by the Operator in the month following the occurrence of expenditure. The claim shall not be more than the authorised

quote.

7.5.7 For quotes which involve sub-contractors, the Operator shall be entitled to claim the Mark-up Fee on the sub-contractor's cost. The Mark-up Fee is inclusive of the Operator's management, supervision, quality control, health and safety, transport and procurement cost in procuring and managing the Sub-contractor. No further costs of the Operator may be claimed. Only if additional work is required from the Operator prior or after sub-contractor repair work, shall the Operator be entitled to add the actual labour and material cost of the Operator as additional item on the repair cost. No Mark-up Fee will be allowed onto the Operator expenses. The Operator's labour and machinery cost will be according to the tendered day works tariffs in the pricing schedule.

7.5.8 All repairs and maintenance and work remunerated for must be guaranteed for at least three months or per the specification.

8 STRATEGIC PLANNING

8.1 To assist the Municipality with its water services delivery planning function, the Operator shall provide information and insights relevant to the Function and the Bulk Works at no cost, as reasonably requested by the Municipality.

8.2 The Operator shall provide information and insights relevant to the interface between the Function and the Municipality's water services delivery strategic planning processes at no cost.

8.3 The Municipality shall provide the Operator with all relevant Municipal Plans to inform the Annual Plan of the Operator.

9 EMERGENCY

9.1 In Emergency Situations, the Operator shall take reasonable steps to continue to undertake the Function, acknowledging that it is an essential service directly impacting water services delivery to the community by the Municipality.

9.2 The Operator shall within 3 (three) months after the Effective Date, at its cost, submit to the Municipality for comment, a Prevention and Emergency Plan that will include a plan to be implemented, addressing how Emergency Situations will be prevented and attended to.

9.3 The Operator shall be obliged to continually review the Prevention and Emergency Plan, and at least annually present any necessary amendments thereto, at its cost, to the Municipality for its approval.

9.4 The Municipality shall review the Prevention and Emergency Plan or any suggested

amendment thereto submitted, within 1 (one) month after it was submitted to it. The Municipality shall be deemed to have reviewed the Prevention and Emergency Plan or any amendment thereto if no comment is received from the Municipality within the 1 (one) month period specified in this clause 9.4.

10 SUPPORT SERVICES

10.1 The Municipality shall account for, and charge to the Operator, any costs incurred by the Municipality in respect of services, other than in fulfilment of its obligations under this Contract, rendered to the Operator, on an arms-length basis, at prices to be negotiated and agreed to between the Municipality and the Operator as part of the annual planning process.

10.2 Such services may include the use of Municipality personnel and premises on an ad hoc basis provided that it is agreed in advance in the Annual Plan.

10.3 In the event that such agreement is reached, it shall be recorded as a written agreement and included in the Annual Plan and shall govern KPIs required of the Municipality's Support Services.

10.4 Notwithstanding the provision of Support Services to the Operator, the Operator shall remain responsible for the execution of the Function in compliance with the Technical Specifications.

11 ANNUAL PLAN

11.1 The Operator shall be responsible for the preparation, control, management and execution of the Annual Plan for each Financial Year, at its cost.

11.2 The Annual Plan shall be a management plan to enable performance monitoring by the Municipality and shall address for the relevant Financial Year:

11.2.1 The Technical Specifications;

11.2.2 The Energy Management Plan;

11.2.3 The Prevention and Emergency Plan;

11.2.4 The Operations, Maintenance and Monitoring Plan;

11.2.5 The Training and Development Plan;

11.2.6 The KPIs, including the updated base line for measurement of performance based on the previous Financial Years performance and the Penalties;

11.2.7 The Pricing Schedule;

11.2.8 Any Maintenance Requests required by the Municipality;

-
- 11.2.9 Any Support Services required from the Municipality; and
- 11.2.10 Any other aspect relevant to the Contract and performance of the parties.
- 11.3 The first Annual Plan is due three months after the Effective Date.
- 11.4 The Municipality shall indicate proposed variations to the Function by end August every year.
- 11.5 The Operator shall, at its cost, prepare and submit the Annual Plan for the following Financial Year to the Municipality by the end of September every year, taking into consideration the Municipality's proposals in 11.3 (if any) and the Municipal Plans and the previous year's Annual Plan.
- 11.6 The Municipality and the Operator shall meet and discuss the proposals by 15 October every year. In this period, the Municipality must either approve the plan or propose amendments with accompanying reasons or suggest alternative proposals, failing which the Municipality shall be deemed to have accepted the proposals.
- 11.7 The parties acknowledge that the process of Annual Planning is to give effect to the obligation of the Operator to show progressive improvement (per 12.4) and to escalate the Pricing Schedule per the Escalation Factor. In the absence of any proposals in terms of 11.3 and agreement in terms of 6, there shall be no negotiation required.
- 11.8 The draft Annual Plan for the following Financial year shall be finalised between the parties by end October every year to inform the Municipality's MFMA budgeting and planning process.
- 11.9 Once agreed between the parties, and the Municipal budget has been approved by Council, the Annual Plan shall be an addendum to the Contract and shall regulate the parties for the relevant Financial Year. In the event that there is not sufficient budget allocated by Council, the Annual Plan shall be reviewed and re-aligned.
- 11.10 If a variation on Function is required outside of the planning process referred to in clauses 11.3 to 11.9 the Annual Plan shall be updated by agreement between the parties. In the event that agreement cannot be reached, the dispute provisions below shall be implemented.
- 11.11 In considering a proposed Annual Plan, the Municipality may at its own cost undertake a bench-marking study which compares the Operator's proposals to inform the Municipality's responses to the proposals.
- 11.12 Any existing Annual Plan shall endure, and shall continue to be implemented by the Operator, until a new Annual Plan is finalised.

11.13 Once approved by the Municipality, the Annual Plan is binding on the Parties.

PART D: PERFORMANCE AND CONDUCT

12 KEY PERFORMANCE INDICATORS

12.1 The Operator must undertake the Function to achieve the Technical Specifications, at its cost.

12.2 The KPIs as at the effective Date are set out in the Technical Specifications attached as Annexure C;

12.3 The Operator shall report on its achievement of the KPIs to the Municipality at the reporting intervals indicated in the Annual Plan, and consolidate the overall assessment into the previous 12 month report on performance, to be submitted annually in August.

12.4 The base line for the measurement of the KPIs shall be reviewed annually in the Annual Plan (see clause 11 above). There must be progressive improvement in the base-line over the Contract period.

13 PENALTIES

13.1 Penalties will be levied against the Operator for not achieving the KPIs.

13.2 Penalties will not be levied in the first 3 (three) months of the Contract unless otherwise agreed.

13.3 Upon becoming aware of the Operator's non-compliance with KPIs, the Municipality shall, in writing and with reasons, indicate its intention to levy a penalty. The Operator shall respond within 2 (two) days of receiving the Municipality's written intention.

13.4 In the event that the Operator:

13.4.1 fails to demonstrate to the reasonable satisfaction of the Municipality that the KPIs are being achieved; or

13.4.2 fails to justify to the reasonable satisfaction of the Municipality why the KPIs are not being met; and

13.4.3 provides no plan to the reasonable satisfaction of the Municipality to improve its performance,

then:

13.4.4 the Operator shall be in breach of its obligations under the Contract and the

Municipality may elect to exercise its rights under clause 43 to notify the Operator of breach; and

13.4.5 penalties shall be enforced in accordance with clause 13.

13.5 If the breach of the Operator is as a result of:

13.5.1 non-performance by the Municipality, the Municipality shall do what is necessary within 5 (five) days of notice of non-performance to ensure that performance occurs;

13.5.2 force majeure, the provisions of clause 43.4 shall apply; and

13.5.3 councillor or staff member of the Municipality failing to comply with the Code of Conduct in Schedules 1 and 2 to the Systems Act, the Operator shall give written notice to the Municipal Manager setting out reasonable particulars of such action and its likely consequences to the Function and Operator.

13.6 If the breach occurs as a result of 13.5,

13.6.1 no Penalties shall apply against the Operator;

13.6.2 the Municipal Manager shall be advised.

13.7 Where the Operator's performance is reliant on the counter-performance of the Municipality, and the Municipality has not performed, the Operator shall not be penalised.

13.8 Both parties shall endeavour to rectify non-performance as quickly as possible in the circumstances.

13.9 The maximum aggregate of Penalties that may be levied against the Operator in a Financial Year will be capped at 15% of the total annual fixed charges of the Operator Remuneration as stated in the Pricing Schedule.

14 REGULATORY COMPLIANCE AND MUTUAL CO-OPERATION

14.1 The Parties shall execute their respective businesses, and undertakings and obligations arising in accordance with this Contract in compliance with all relevant Regulatory Provisions, including but not limited to applying for necessary approvals, consents, licenses or permits, where required.

14.2 Each Party shall, on the reasonable request of the other, do what it reasonably can to assist the requesting Party in complying with all applicable Regulatory Provisions and where such compliance requires any action, undertake such assistance timeously and properly.

14.3 The Municipality and Operator shall consult from time to time with regard to any

assistance or advice which the Operator may require in connection with fulfilling any of its regulatory obligations in terms of this Contract. The Municipality shall, where possible and reasonable, provide the Operator with the Municipality's information under its control, as the Operator may reasonably require access to in order for the Operator to comply with any of the Operator's regulatory obligations in terms of this Contract.

15 BY-LAWS AND POLICIES

15.1 The Operator shall comply with the Municipality's by-laws and policies to the extent that these apply to the undertaking of the Function, and the Operator shall discharge the Municipality's obligations, in terms of its by-laws and policies on its behalf, in terms of this Contract.

15.2 The Municipality undertakes timeously, on request of the Operator or otherwise, to promulgate by-laws and adopt all policies necessary to enable the Operator to comply with its duties and obligations and to exercise its rights in a financially and operationally sustainable manner in terms of this Contract.

16 ACCESS TO INFORMATION

16.1 The Operator shall record and maintain a complete record of compliance to its contractual duties and obligations by the use of appropriate computer software and suitable hard copy storage.

16.2 Each party or its duly authorised representative shall have the reasonable right to use and access all plans, manuals, databases, inventories, surveys, financial and other records and analyses compiled by the other party in accordance with this Contract or in the other party's possession both during the Contract and after termination of this Contract.

16.3 Each party undertakes to ensure that its information technology systems are reasonably compatible with the information technology system of the other.

PART E: REMUNERATION

17 OPERATOR REMUNERATION

17.1 The Operator will be remunerated for undertaking the Function as set out in the Contract and the Pricing Schedule.

17.2 Save as specifically envisaged in the Contract the Operator shall not be entitled to any compensation and/or reimbursement in respect of the undertaking of the Function.

17.3 The Operator Remuneration due for undertaking the Function is:

17.3.1 the fixed annual fee as per the Pricing Schedule; and

17.3.2 the variable (or volume based) fee per water treatment work, dependant on the treated volumes per month as per the Pricing Schedule;

17.3.3 the variable (or volume based) fee per waste water treatment work on inflow as per the Pricing Schedule;

17.3.4 the Salary Contribution as per 18 below and the Pricing Schedule;

17.3.5 any payments due for Large Maintenance Repair Projects and Maintenance Requests as per 7.5; and 19 if applicable; and

17.3.6 adjustments due.

17.4 The Operator Remuneration will be subject to:

17.4.1 annual escalation as per clause 20;

17.4.2 mechanism for penalising partial failure of the availability and performance of the Function, by means of imposing Penalties as per clause 13;

17.4.3 Adjustment and variation as per clause 6.

17.5 The Operator undertakes that the remuneration is deemed sufficient to provide for everything for the Operator's undertaking to meet the Technical Specifications.

18 SALARY CONTRIBUTION

18.1 The Salary Contribution is the payment due by the Municipality to the Operator for the determined costs of the Existing Operational Staff. The Salary Contribution will be reflective of their existing terms and conditions as at the Effective Date.

18.2 The Salary Contribution is fixed for Existing Operational Staff, subject to the following adjustments:

18.2.1 The Salary Contribution will escalate annually as per 20 below, distinguishing the Ex-municipal Employees and the other Existing Operational Staff.

18.2.2 Variation as a result of scope change to the Function by the Municipality or unforeseen changes to Regulatory Provisions will be subject to 6 above. Rates from the Operator's "Day Works Rates and Monthly Costs" in the Pricing Schedule for process controllers will be used to determine the impact of the Variation.

18.2.3 The actual cost of variation in benefits and payments as agreed with the municipality, e.g. medical, housing, overtime and shift work, post-retirement benefits (the cost of medical aid contribution after retirement) and the cost of long

service awards calculated as per the SALGBC standard terms and conditions will be funded by the Municipality as and when the cost is incurred by the Operator. The amount due will be determined by the Parties quarterly in arrears and the Municipality will reimburse the Operator in equal monthly instalments over the following quarter.

18.2.4 If, after the Effective Date, a vacancy arises of a filled Existing Operational Staff post, which post stays vacant for longer than three months from date of vacation of the post, deductions will apply according to the Operator's "Day Works Rates and Monthly Costs" in the Pricing Schedule. If the vacant post is not filled within three months from the date of vacancy the deduction will be made retrospective to the date of vacancy. If filled within three months then no deduction will apply. If the vacancy relates to supervision, the Operator shall appoint at its own cost, a consultant with the required qualifications, to visit the works weekly for so long as the vacancy exists.

18.3 The parties record the Operator's acceptance of the following risks including:

18.3.1 The cost of future salary increases for Existing Operational Staff that attain higher qualifications;

18.3.2 The trainability of Existing Operational Staff;

18.3.3 The mobility of staff to locate to other works.

19 MARK-UP FEE

19.1 35% (thirty five per cent) mark up on demonstrated sub-contractor actual direct costs (excluding VAT) paid for by the Operator to the sub-contractor in undertaking Large Maintenance Repair Projects or Maintenance Requests as set out in 7.5.

19.2 Payment of the Mark-up Fee shall be made monthly in arrears as per the claim of the Operator, provided the claim is approved and authorised by the Municipality.

20 ESCALATION

20.1 Subject to 20.2 and 20.3, the prices in the Pricing Schedule and amounts stated in this Contract shall automatically escalate annually in advance by the Escalation Factor.

20.2 The Salary Contribution for Ex-municipal Employees shall escalate annually at the then relevant published South African Local Government Bargaining Council escalation rate. For all other Existing Operational Staff not identified as Ex-municipal Employees it shall be the Escalation Factor, unless agreed otherwise following a written submission by the

Operator.

20.3 If deemed necessary by the Operator, the Operator may, as part of the Annual Plan, make a written submission to the Municipality in respect of the actual escalation of the monthly variable cost which occurred in the preceding 12 month period, as well as the escalation which is expected to occur during the forthcoming Financial Year.

20.3.1 The submission must include sufficient detail of the escalation factors which the Operator has taken into consideration and sufficient data in respect of the actual cost increases experienced by the Operator.

20.3.2 The submission shall be considered as part of the approval of the Annual Business Plan process.

20.3.3 If it is not approved by the Municipality, the Escalation Factor shall apply.

20.4 The % Mark-up Fee shall not be subject to escalation.

20.5 The Escalation Factor shall be applied effective from 1 July of every Financial Year following the Effective Date.

21 INVOICING & PAYMENT

21.1 The Operator shall by the 7th of each month submit a valid tax invoice for the preceding month, with details addressing:

21.1.1 the Operator Remuneration per clause 17;

21.1.2 less Penalty certificates per clause 13 (if any);

21.1.3 less Municipality Support Charges per clause 10 (if any);

21.1.4 any adjustments agreed; and

21.1.5 VAT and other taxes claimed.

21.2 Once all relevant monthly and quarterly reports are received and the invoice is approved, the Municipality shall pay within 30 days.

PART F: ASSETS

22 THE BULK WORKS

22.1 The Municipality owns the Bulk Works and shall continue to own the Bulk Works for the duration of the Contract.

22.2 The Municipality hereby makes available the Bulk Works and minor assets to the Operator. The Municipality hereby grants the Operator the right of unrestricted access to and use of the Bulk Works and minor assets for the duration of the Contract in order to execute its obligations under the Contract.

22.3 The Bulk Works and minor assets are made available voetstoots at the Effective Date and no warranties are given by the Municipality in this regard.

22.4 The Operator shall be responsible for the management of the Bulk Works to achieve the Technical Specifications and in accordance with the Annual Plan, in order to render the Bulk Works and the Function operational and efficient.

22.5 The Operator agrees that the Municipality shall have access to the Bulk Works to undertake its water services authority function and to monitor the performance of the Operator. This includes access to the testing and laboratory facilities at the Bulk Works. The Municipality undertakes that access will be managed so as not to interfere with the Operator's undertaking of the Function.

22.6 The Parties acknowledge that, but for this Contract, this right of access and obligation to operate and maintain the Bulk Works would not be granted, and that on termination or expiry of this Contract, the right of access and obligation to operate and maintain the Bulk Works, shall automatically terminate.

23 OFFICES

23.1 The Operator is to provide for its own accommodation for its management and administration teams for the duration of the Contract, at its own risk.

23.2 The Municipality assumes no risk or responsibility for any costs associated with the Operator's accommodation howsoever arising for the duration of the Contract.

24 THE TECHNICAL ASSET REGISTER

24.1 The Operator shall within three (3) months of the Effective Date, conduct a detailed assessment of all the Bulk Works (including structures, plant and equipment) and the minor assets and create, maintain and update a comprehensive technical asset register for purposes of this Contract.

24.2 The Technical Asset Register shall be updated annually as part of the annual planning process as set out in Clause 11 and submitted with the Annual Plan.

25 INTELLECTUAL PROPERTY

25.1 Any discovery, invention, process or improvement made by the Operator, its employees or on behalf of the Operator by contractors or consultants in the course of undertaking the Function shall be the intellectual property, whether registered or not, of the Municipality.

25.2 The ownership of and copyright in any intellectual property developed (whether registered or not) or documents (including reports, manuals, financial statements, budgets, research papers or letters) prepared by the Operator or any other employees of the Operator in terms of this Contract shall vest in the Municipality, and shall revert to the Municipality on termination of this Contract.

25.3 If the Operator uses third party licenses to enable the Operator to fulfil its obligations in terms of this Contract, it shall ensure that such use is properly licensed and register the interests of the Operator and ensure continuity of use of this third party intellectual property by the Municipality when this Contract is terminated.

26 OPERATIONAL RECORDS

The Operator must maintain and update during the currency of this Contract, in addition to any other reporting requirements required in the Regulatory Provisions, a record of its own operations, maintenance, inspections and technical auditing.

27 EFFICIENCY

27.1 The Operator is obliged to plan for, and undertake the Function in the most efficient, economical and affordable way, ensuring both the sustainability of itself, and the undertaking of the Function.

27.2 The Parties shall share equally in any benefit of actual savings achieved in terms of the Energy Management Plan, as set out in the Energy Management Plan.

27.3 The Municipality is likewise obliged to provide all reasonable assistance to the Operator in planning and undertaking the Function in the most efficient, economical and affordable way, ensuring the sustainability of the Bulk Works. The Municipality may not inhibit the fulfilment of any of the Operator's obligations or cause or suffer it to be done.

28 ACCESS AND SECURITY

28.1 The Operator shall ensure that access to the Bulk Works is secure at all times and no unauthorised entry is permitted as per the Technical Specifications.

28.2 The Operator will be responsible for the security of all assets, the grounds, employees and access control to all water and wastewater treatment works by means of alarms, armed response or on-site security and for security of the other Bulk Works as per the Technical Specifications.

29 INSURANCE

29.1 The Municipality shall continue to insure the Bulk Works.

29.2 The Operator shall be obliged to ensure that insurance is effected and maintained from the Effective Date for the duration of the Contract, for the undertaking of the Function and all risks for which insurance is normally and reasonably available in regard to the undertaking of the Function as agreed annually in the Annual Plan.

29.3 The Operator shall notify the Municipality of all claims made for or against the Operator, stating the claim, the reason, and the quantum.

PART G: PERSONNEL

30 STAFFING OBLIGATION

30.1 It is the Operator's responsibility to ensure adequate skills and expertise and capacity to execute the Function.

30.2 The Operator acknowledges that the Function directly enables delivery of an essential service (municipal water services delivery) by the Municipality. Accordingly during any industrial action the Operator shall ensure that a sufficient staffing complement is available at all times for operation and maintenance of the Bulk Works during such period

of industrial action.

31 EXISTING OPERATIONAL STAFF

- 31.1 The Operator will employ the Existing Operational Staff on the terms and conditions that the Existing Operational Staff are entitled to as at the Effective Date.
- 31.2 The Operator undertakes that to the extent that the trade unions to which the Ex-municipal Employees belonged to while they were municipal employees had binding collective agreements bestowing organisational rights only in respect of such Ex-municipal Employees and the workplace in which they were employed, these will be recognised by the Operator in regard to the Ex-municipal Employees.
- 31.3 The Operator undertakes to facilitate the establishment of a workplace forum for purposes of consultation and/or negotiation on workplace related issues and matters of mutual interest in regard to this Contract.
- 31.4 It is recorded that there will be no decrease in existing remuneration or benefits of the Existing Operational Staff as a direct result of the coming into effect of this Contract.
- 31.5 The Operator undertakes that any proposed changes to the shift system as at the Effective Date applicable to the Ex-municipal Employees will be consulted on with the Ex-municipal Employees and their representative trade unions prior to implementation.
- 31.6 It is recorded that the Operator is contractually obliged to provide appropriate training to the Existing Operational Staff and the Operator agrees to honour this obligation and acknowledges that the Municipality will monitor the provision of such training.
- 31.7 It is recorded that certain of the the Ex-municipal Employees enjoy the benefit of post-retirement medical aid funding by the Municipality. The Municipality agrees and undertakes to fund the provision of this benefit as and when an Ex-municipal Employee retires from the Operator's employ whilst this Contract is in force provided that the benefit is still available to the Municipality's employees when an Ex-municipal Employee retires, and that the level of funding of this benefit shall not be greater than that enjoyed by the Municipality's employees of equivalent status and remuneration to that of the retiring Ex-municipal Employee.

31.8 The Operator undertakes to provide to the Existing Operational Staff, prior to the Effective Date, a letter setting out the terms and conditions and benefits, and shall be provided with written contracts of employment setting out inter alia these terms, conditions and benefits, with effect from the Effective Date.

32 ORGANISATIONAL PLAN

32.1 Within 3 (three) months of the Effective Date the Operator shall propose an "Organisational Plan", drafted after consultation with the Municipality. The Organisational Plan shall demonstrate how the Existing Operational Staff and the employees of the Operator working on the Function will be structured to execute the Function, their roles and responsibilities, job descriptions and conditions of employment.

32.2 The parties agree that whilst the Organisational Plan may result in re-organisation of the Existing Operational Staff it will not result in retrenchment, redundancy or decrease in existing remuneration benefits of the Existing Operational Staff. Vacant posts will be filled by the Operator where required by the Organisational Plan. Vacant operational staff posts specifically identified in the Technical Specifications will be filled from the Effective Date.

32.3 The Organisational Plan shall be submitted to the Municipality for review and comment. If no comment is received within 20 (twenty) days of submission, it shall be deemed accepted. If comment is received in that time, it shall be assessed by the Operator and incorporated unless expressly rejected as unreasonable by the Operator, with reference to the performance requirements in the Annual Plan.

32.4 Where filled posts become vacant after the Effective Date, and the vacant post stays vacant for longer than three months deductions will apply according to the "Day Works Rates and Monthly Costs" Pricing Schedule (as escalated). If not filled within three months from the date of the vacancy the deduction will be made retrospective to the date of the vacancy. If filled within three months then no deduction will apply. If the vacancy relates to supervision, the operator shall appoint at its own cost a consultant, with the required qualifications, to visit the works as required.

32.5 Any changes to regulatory requirements for operational staff at the Bulk Works after the Effective Date shall be dealt with as a variation in Scope. Rates from the "Day Works Rates and Monthly Costs" in the Pricing Schedule for process controllers will be used to determine the impact.

32.6 The Operator shall be responsible for paying employees, including Existing Operational Staff, their salaries and benefits.

33 TRAINING

33.1 The Operator shall plan for and provide a reasonably adequate and appropriate budget for staff training and development.

33.2 An annual employee professional development plan shall be submitted with the Annual Plan including a comprehensive training, development and succession planning programme to be designed and implemented by the Operator.

33.3 Every manager of the Operator will be responsible for the training and development of their subordinate staff, to provide opportunity for individual growth and to meet the needs of the Operator. This will be done in conjunction with the introduction of a performance management system which will monitor progress and identify training requirements of staff.

34 CONTROL OF EMPLOYEE CONDUCT

34.1 The Operator shall at all times ensure that sufficient suitable and appropriately qualified and experienced personnel will be employed to perform as is required by this Contract. This requirement shall include ensuring that sufficient and adequate staff are on duty and/or available outside normal working hours to deal with such service requirements or emergencies as may occur. Without limiting the generality of the foregoing, the Operator shall ensure that all key personnel positions are filled as soon as reasonably possible as identified in the Organisational Plan.

34.2 The Municipality may only require the Operator to remove any employee or other personnel if it is permissible by law and because such personnel has engaged in conduct which is reasonably certain to result in a breach of any provision of this Contract.

35 SAFETY AND SECURITY

The Operator shall set up and maintain policies and procedures covering all matters relevant to performance under the Contract including without limitation discipline, grievance, equal opportunities and health and safety.

PART H: CONTRACTING

36 ASSIGNMENT, TRANSFER, CESSION AND DELEGATION

No Party shall be entitled to assign, transfer, cede or delegate any of its rights and obligations in terms of this Contract without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

37 SUB-CONTRACTING

37.1 The Operator may, in its sole discretion, appoint consultants, contractors and suppliers to undertake any portion of its obligations in terms of this Contract, taking into account the requirements of clause 9 of the Preferential Procurement Regulations 2017, which appointment shall be at its own cost and risk. In making such appointments, preference shall be given to contractors local to the area in which the contract shall be executed.

37.2 The Municipality intends to advance designated groups therefore the Operator must subcontract a minimum of 4% of the total contract value to:

37.2.1 An exempted micro enterprise (EME) or a qualifying small business enterprise (QSE);

37.2.2 An EME or QSE which is at least 51% owned by black people;

37.2.3 An EME or QSE which is at least 51% owned by black people who are youth;

37.2.4 An EME or QSE which is at least 51% owned by black people who are women;

37.2.5 An EME or QSE which is at least 51% owned by black people with disabilities;

37.2.6 An EME or QSE which is at least 51% owned by black people living in rural or underdeveloped areas or townships;

37.2.7 a cooperative which is at least 51% owned by black people;

37.2.8 an EME or QSE which is at least 51% owned by black people who are military veterans; or

37.2.9 more than one of the categories referred to above.

37.3 The Operator will sub-contract EME or QSE organisations for implementing the Contract, where feasible. All EME or QSE organisations employed on the works shall be registered on the Central Supplier's data base. If the EME or QSE is not registered on the data base it shall apply for registration on the data base before being employed on the contract.

37.4 The Operator may not sub-contract any of its rights, duties and obligations in terms of this Contract to the extent that the agreement in terms of which such rights, duties and obligations are sub-contracted does not terminate prior to or on the termination of this Contract, without the prior written consent of the Municipality first being obtained, which consent shall not unreasonably be withheld. In such circumstance, the Municipality may prescribe matters to be included or addressed in such sub-contract.

37.5 The appointment of any sub-contractor shall not release the Operator of its duties or obligations in terms of this Contract or in any way affect the Operator's responsibility in respect of fulfilling such duties and obligations.

37.6 The Operator shall keep records of all contracts entered into in connection with or associated with its rights, duties or obligations in terms of this Contract and shall on request provide information in respect thereof to the Municipality.

38 PROMOTION OF SOCIALLY RESPONSIBLE PROCUREMENT

38.1 The intensifying triple challenges of unemployment, poverty and inequality contributes negatively to the well-being of the poor and disadvantaged, resulting in deteriorating socio-economic conditions that affect the quality of life in the jurisdiction of the Municipality. The current economic climate places tremendous strain on the income of poor communities and perpetuates unemployment and poverty exposing the vulnerable and poor to dilapidating socio-economic conditions.

38.2 The Operator shall provide an outline of socio-economic projects to be implemented through its corporate social responsibility in the Municipality's area of jurisdiction in its Annual Plan. Proposed projects must be measurable with specific focus on vulnerable groups and designated groups (youth, woman, people with disabilities and children).

38.3 The Operator must propose any of the following socio-economic project practices for consideration or identify additional projects in the Annual Plan:

- 38.3.1 On the job training and development of staff (learnerships), particularly for the unemployed or young people including the recruitment of long-term job seekers and handicapped people;
- 38.3.2 Young women / mothers upliftment / leadership programme;
- 38.3.3 Skills development initiatives (technical and soft skills) must be provided by accredited and recognized institutions;
- 38.3.4 Financial support / bursaries to previously disadvantaged youth;
- 38.3.5 Youth leadership and empowerment projects;
- 38.3.6 Early childhood development;
- 38.3.7 Projects can be in collaboration with Local Community Based Organisations (CBOs), Non-Government Organisation (NGOs) and relevant local institutions;
- 38.3.8 Business skills and enterprise support including mentoring of local enterprises; and
- 38.3.9 Development of Parks and open spaces.

PART I: DISPUTE RESOLUTION

39 INTERDICT AND URGENT RELIEF

The provisions of clauses 40, 40.2 and 42 will apply except where an interdict is sought or urgent relief may be obtained from a court of competent jurisdiction on reasonable grounds.

40 AMICABLE SETTLEMENT

40.1 If any dispute arises in terms of this Contract the parties shall try to resolve it. If it cannot be resolved, it shall be referred to the Municipal Manager of the Municipality and the Chief Executive Officer of the Operator who shall meet within 10 (ten) days of written notice of the dispute being given to reach an amicable settlement.

40.2 If the Municipal Manager and the Chief Executive Officer do not or cannot resolve the dispute within 10 (ten) days of the referral, or they fail to meet within the 10 (ten) day period, then either Party may immediately indicate its written intention to refer the dispute to expert determination in terms of clause 41.2 or arbitration in terms of clause 42.

41 EXPERT DETERMINATION

41.1 Where a dispute arises in respect of the determination of any matter in the Contract that requires the intervention of an expert, the provisions of clause 41.2 shall apply.

41.2 The dispute shall be referred to an appropriately experienced expert appointed by agreement between the parties who shall be, if the matter in dispute relates primarily -

41.2.1 to an accounting or financial matter, a practicing chartered accountant of not less than 10 (ten) years standing as such;

41.2.2 to, *inter alia*, engineering, construction, technical or other similar matter a practicing professional engineer of not less than 10 (ten) years standing as such;
or

41.2.3 to a legal matter, a practicing Attorney or Advocate of not less than 10 (ten) years standing as such.

41.3 If the Parties cannot agree on the identity of the expert timeously, the parties shall refer the matter to the President of the relevant professional body to nominate the expert.

41.4 The expert, who shall not act as an arbitrator, shall have the fullest and freest discretion with regard to the proceedings, save where any clause of this Contract confines the discretion of the expert.

41.5 The determination of the expert shall be final and binding on the Parties, save that if any determination is manifestly unjust and if a court determines what a just and equitable valuation would be, the Parties shall be bound by such a modified valuation.

41.6 The expert shall determine the liability for his charges.

41.7 The Parties shall use their best endeavours to ensure that the decision of the expert is rendered within 10 (ten) days after the dispute has been referred to him.

42 ARBITRATION

42.1 If amicable settlement of a dispute is not reached in terms of clause 40 above, either Party shall be entitled by giving 10 (ten) days written notice to the other Party to require that the dispute be settled by arbitration. The arbitration shall be held:

42.1.1 at Hermanus unless otherwise agreed by the Parties;

42.1.2 in a summary manner, that is, on the basis that it shall not be necessary to observe or carry out either the usual formalities or procedures as prescribed by any relevant arbitration legislation or rules of evidence in South Africa;

42.1.3 with legal representation if required by either of the Parties; and

42.1.4 as soon as is reasonably practicable in the circumstances and with a view to it being completed within 30 (thirty) days of the dispute being referred to the arbitrator in terms of clause 42.1. The Parties hereby undertake to use their best endeavours to procure the expeditious completion of the arbitration.

42.2 The arbitrator shall be a person agreed to between the Parties within 10 (ten) days after the notice in clause 42.1 has been given, failing that, an appropriately experienced person nominated by the President of the relevant professional body subject to the following provisions –

42.2.1 if the question in issue relates primarily to an accounting or financial matter, the arbitrator shall be a practicing chartered accountant of not less than 10 (ten) years standing as such;

42.2.2 if the question in issue relates primarily to, *inter alia*, engineering, construction, technical or other similar matter, the arbitrator shall be a practicing professional engineer of not less than 10 (ten) years standing as such; or

42.2.3 if the question in issue relates primarily to a legal matter, the arbitrator shall be a practicing Attorney or Advocate of not less than 10 (ten) years standing as such.

42.3 Immediately after the arbitrator has been appointed, he may be called upon by either of the Parties to fix a date for the arbitration proceedings to be held and to settle the procedure and manner in which proceedings shall be held.

42.4 The arbitrator or his representative shall be entitled to investigate or cause to be investigated any matter, fact or thing which he considers necessary or desirable in connection with the dispute. The Parties to the dispute shall co-operate with the arbitrator by providing all reasonably relevant information, plans, manuals, databases, inventories, surveys, financial and other records and analyses compiled by either Party in accordance with this Contract as may be in their possession upon request.

42.5 The arbitrator shall –

42.5.1 decide the matters submitted to arbitration according to South African law, taking into account where appropriate all relevant market-related factors and having regard to all relevant evidence and circumstances;

42.5.2 make an award or orders relating to the subject matter of the dispute including a grant of interim relief and the costs of the arbitration or relating to any other matter arising therefrom; and

42.5.3 give his award in writing, fully supported by reasons.

42.6 The Parties irrevocably agree and undertake that any award, ruling or order made by the arbitrator –

42.6.1 shall be final and binding upon them;

42.6.2 may at the option of either party be made an order of the division of the High Court

of South Africa to which jurisdiction the Parties are subject; and

42.6.3 the arbitrator shall have the power to give default judgment if any party fails to make submissions on due date or fails to appear at the arbitration, provided that reasonable notice has been given to Parties to make their submission or appearances.

42.7 The provisions of this clause 42 are severable from the rest of this Contract and shall remain in effect even after this Contract is terminated for any reason.

42.8 The Parties irrevocably consent to comply with the provisions of this clause 42 and neither Party shall be entitled to withdraw from or claim at any such proceedings that it is not bound by these provisions or by any ruling or procedure laid down in terms of such provisions.

42.9 No dispute arising from this Contract shall entitle the other party to discontinue or suspend the execution or exercise of any of its powers, rights, duties or obligations in terms of this Contract, pending the settlement of the dispute.

PART J: BREACH, FORCE MAJEURE & TERMINATION

43 BREACH

43.1 If any Party commits a breach of this Contract after the Effective Date and should the other Party wish to claim specific performance or damages or both from the defaulting Party in respect of such breach, then prior to the latter Party exercising such right, it shall deliver a written notice to the defaulting Party notifying it of the breach giving rise to such right and requesting the defaulting Party to remedy the breach in question within a period of 15 (fifteen) days (or such longer period stipulated in the notice if the breach in question cannot reasonably be remedied by the defaulting Party within a 15 (fifteen) day period), and should the defaulting Party fail to remedy the breach within such period then the Party giving notice may institute legal proceedings to claim specific performance or damages or both, as the case may be. If any damages are claimed, the defaulting Party shall not be absolved from performing such acts, until payment of the damages has been received.

43.2 If the defaulting Party again commits a breach in respect of which the other Party has previously instituted legal proceedings and successfully claimed damages or specific performance in terms of clause 43.1 as a result of legal proceedings, the breach shall be deemed to be a material breach if the defaulting Party fails to remedy the breach within the 15 (fifteen) day notice period given in terms of clause 43.1 and the other Party shall at its election be entitled to terminate the Contract (or part thereof).

43.3 Prior to the Party invoking any right to terminate this Contract in terms of clause 43.2, it shall deliver a further written notice to defaulting Party notifying it of the material breach giving rise to such right and requesting the defaulting Party to remedy the breach in question within a further period of 7 (seven) days (or such longer period stipulated in the notice if the breach in question cannot reasonably be remedied by the defaulting Party within a 7 (seven) day period) and stating the intention to terminate the Contract (or part thereof if relevant).

43.4 Should the defaulting Party fail to remedy the material breach in question within the period reflected in the notice, the termination process referred to in clause 45 shall commence.

44 FORCE MAJEURE

44.1 For the purposes of this Contract, force majeure shall be any relevant event, occurrence, circumstance or condition (including viz major, causus fortuitus or act of State) beyond the control of the Parties which could not have been reasonably foreseen when the Contract was entered into and which, despite the exercise of diligent efforts, could not have been prevented, limited or minimised and which results in either of the Parties not being able to comply with all or a material part of its obligations under this Contract. It may include without limitation:

44.1.1 war, civil war, insurrection, rebellion, revolution, armed conflict or terrorism riot, commotion, civil disorder, strike or lock-out by persons, other than the Operator's own personnel and those of their sub-contractors;

44.1.2 any act of God, including extra-ordinary flood, drought, lightning, earthquake and the impact of meteorites;

44.1.3 a consequence arising from or inherent in the design, specification or defective materials of the existing Bulk Works; and

44.1.4 material adverse governmental action through changes in the Regulatory Provisions, or in the judicial or official government interpretation of such Regulatory Provisions after the Contract becomes legally effective.

44.2 The Party claiming relief from performance shall be relieved from liability under this Contract to the extent that by reason of the Force Majeure event it is not able to perform all or a material part of its obligations under this Contract.

44.3 Where a Party is or claims to be affected by an event of Force Majeure it shall take all reasonable steps to mitigate the consequences of such an event upon the performance of its obligations under this Contract, resume performance of its obligations affected by

the event of Force Majeure as soon as is practicable and use all reasonable endeavours to remedy its failure to perform.

44.4 The Party claiming relief shall serve written notice on the other Party within 10 (ten) days of it becoming aware of the relevant event of Force Majeure. Such initial notice shall give sufficient details to identify the particular event claimed to be an event of Force Majeure.

44.5 A subsequent written notice shall be served by the Party claiming relief on the other Party within a further 10 (ten) days which shall contain such relevant information relating to the failure to perform (or delay in performing) as is available including the effect of the Force Majeure on the ability of the Party to perform, the action being taken to mitigate, the date of the occurrence of the events of Force Majeure and an estimate of the period of time required to overcome it and/or its effects.

44.6 The Party claiming relief shall notify the other as soon as the consequences of the event of Force Majeure have ceased and when performance of its affected obligations can be resumed.

44.7 If, following the issue of any notice referred to in clause 44.4, the Party claiming relief receives or becomes aware of any further information relating to the event of Force Majeure and/or any failure to perform, it shall submit such further information to the other Party as soon as reasonably possible.

44.8 The Parties shall endeavour to agree any modifications to this Contract which may be equitable having regard to the nature of an event or events of Force Majeure, unless the impact is such that the essence of the Contract is made impossible to achieve in which case the Contract may be terminated as more fully set out in 45.

45 TERMINATION

45.1 The Contract will terminate on the expiry of the contract term as set out in 4 above.

45.2 The termination of this Contract may occur at the instance of the Municipality and on a date specified in writing by the Municipality:

45.2.1 where any judgment has been granted which is not subject to appeal or review, or if it is, where such an appeal or review is not diligently pursued, in regard to the implementation of the Contract;

45.2.2 where any judgment has been granted which is not subject to appeal or review, or if it is, where such an appeal or review is not diligently pursued, for the winding up or judicial management of the Operator;

45.2.3 if the Operator defaults under any agreement for the payment of money, where the creditor obtains judgment against Operator in an amount exceeding R 500 000

(five hundred thousand rand);

45.2.4 if, subject to clause 43.4 and the Prevention and Emergency Plan, the Operator fails in the undertaking of the Function to such an extent that there is significant widespread danger to public health, which will be presumed to be the case if the Operator fails to undertake the Function for a continuous period of 5 (five) days;

45.2.5 by reason of Force Majeure which goes to the essence of the Contract as set out in 43.4; or

45.2.6 by reason of an unremedied material breach as set out in clause 0.

45.3 The parties acknowledge that termination of this Contract will be a process rather than an event and undertake in good faith to work together efficiently to ensure as far as reasonably possible an uninterrupted operation and maintenance of the Bulk Works.

45.4 The termination process shall be initiated by a notice from either Party who has the right to deliver such notice in accordance with clauses 43.4 and 45, or 6 (six) months prior to the expiry of the Contract. This notice shall trigger a "transitional phase".

45.5 During the transitional phase triggered in terms of clause 45.4:

45.5.1 the Municipality shall determine whether the Function (including without limitation the employees, operational assets, liabilities and IT licenses) of the Operator is to transfer as a going concern to the Municipality or rather its nominee, and the consequences of such decision;

45.5.2 the parties shall agree on a "hand back process" which is cost-effective, efficient, orderly and designed to ensure an uninterrupted operation, maintenance and monitoring of the Bulk Works and the Function;

45.5.3 the Operator shall continue to undertake the Function in accordance with the Contract until the Municipality or its nominee has taken control of the undertaking of the Function.

45.6 This Contract shall terminate on a date or an occurrence of an event agreed between the parties or if no such date or event is agreed between the parties when a new operator is appointed by the Municipality, and where the Municipality or its nominee has taken control of the Function.

46 EFFECT OF TERMINATION

46.1 On the date of termination of the Contract as referred to in clause 45.6 -

46.1.1 the rights and obligations of the Operator in respect of undertaking the Function shall terminate;

- 46.1.2 the rights and obligations of the Operator in relation to the Bulk Works shall terminate;
- 46.1.3 the Bulk Works together with all requisite licenses shall be returned and handed over to the Municipality in good condition of use and operation, fair wear and tear excepted, based on the premise that the Bulk Works is an integral system that must be returned to the Municipality in proper functioning order;
- 46.1.4 the obligations of the Operator under this Contract shall be transferred at no additional cost to the Municipality in accordance with the instructions of the Municipality;
- 46.1.5 all the minor assets, records, plans, specifications, engineering documents, operation procedures, utility location plans, recorded maps, license, permit and contracts associated with or connected to the Bulk Works and the undertaking of the Function shall be handed over to the Municipality; and
- 46.1.6 all monies due and payable by either Party to the other shall be settled.

PART K: GENERAL

47 GOOD FAITH AND CO-OPERATION

- 47.1 The Parties hereby undertake to exercise good faith in all dealings with one another arising out of the negotiation, conclusion, implementation and termination of this Contract and undertake to take such steps as may be reasonably necessary in order to ensure the successful implementation and fulfilment of this Contract.
- 47.2 The Parties shall at all times co-operate with each other to facilitate the prompt and successful completion of their obligations in terms of this Contract.

48 LIABILITY

- 48.1 Subject to terms stated in this Contract, the Operator undertakes and assumes the responsibility for the undertaking of the Function at its own risk and will be liable to the Municipality for the fulfilment and discharge of its obligations and requirements in respect of the Function with effect from the Effective Date.
- 48.2 The Operator shall not assume any of the liabilities of the Municipality that arose prior to the Effective Date and the Municipality shall indemnify the Operator against any losses, damages, injury or costs, charges, penalties, levies, fines and expenses of whatsoever nature suffered by the Operator, its employees, agents, contractors or representatives which are connected to, based on, or arising from any such liabilities or against any actions or claims demands, proceedings, damages, costs, charges and expenses of whatsoever nature by any third party of whatsoever nature whether brought before or

after the Effective Date and which are connected to, based on, or arising from any such liabilities, and the Operator will not be held responsible for such liability.

48.3 Subject to clause 48.2, the Operator shall, with effect from the Effective Date and during the currency of this Contract -

48.3.1 take all reasonable precautions for the protection of life and property on and about or in any way connected with the whole or any part of undertaking the Function and the Bulk Works;

48.3.2 indemnify and not hold the Municipality accountable for any losses, claims, demands, proceedings, damages, costs, charges and expenses of whatsoever nature in respect of injury to or death of any person or loss of or damage to any part of the Bulk Works or any person or property arising from or attributable to any act or omission of the Operator, its employees or agents, unless such injury, death, loss or damage was caused in whole or in part due to any act or omission of the Municipality its employees or agents, contractors or any other person for whom it may be liable in law; and

48.3.3 report all material occurrences in terms of this paragraph to the Municipality within 3 (three) business days of becoming aware of such occurrence.

48.4 Subject to clause 48.2, the Municipality shall with effect from the Effective Date not be liable to third parties for the discharge of any obligations which the Operator is responsible for in terms of this Contract.

48.5 The Operator will be obliged to intervene and shall assume responsibility in respect of any action or right that is instituted against the Municipality in respect of any act or omission of the Operator or any person for whom it may be liable in law in respect of the Bulk Works or the provision or failure to undertake the Function in terms of this Contract that may occur after the Effective Date.

49 EXCLUSION OF CONSEQUENTIAL LOSS FOR DIRECT DAMAGES

Neither Party shall be liable for any indirect, special or consequential loss or damage of any kind whatsoever or howsoever caused (whether arising under contract, delict or otherwise and whether the loss was actually foreseen or reasonably foreseeable), sustained by the other party, including but not limited to any loss of profits, loss of operation time, loss of information or loss of contracts.

50 PREVENTION OF CORRUPTION

The Parties hereby undertake to identify Corrupt Action and to take all reasonable steps to prevent employees, sub-contractors, agents or anybody under their control and the

employees, sub-contractors, agents of the other party or anybody under the other party's control from involvement in Corrupt Action.

51 FAILURE TO REACH AGREEMENT

Where it is specified in this Contract that certain matters are to be agreed between the Parties, failure to reach agreement in respect of such matter will not affect the validity and enforceability of the remaining provisions of this Contract.

52 SEVERABILITY

Any provision in this Contract which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Contract shall, as to such jurisdiction, be ineffective to the extent of such prohibition or un-enforceability and shall be treated *pro non scripto* and severed from the balance of this Contract, without invalidating the remaining provisions of this Contract or affecting the validity or enforceability of such remaining provisions.

53 GOVERNING LAW

The interpretation, implementation and termination of this Contract will be in accordance with the laws of South Africa which shall, for all purposes of this Contract, be the governing law of this Contract.

54 CONSENT TO JURISDICTION

The Parties agree that any legal action or proceeding arising out of any proceedings in terms of arbitration or in respect of any interdict or urgent relief in terms thereof may be brought in the High Court of South Africa (Cape Local Division) (or any successor to that court) and irrevocably submit to the exclusive jurisdiction of such court. Each appoints a person (at the address chosen as its *domicilium citandi et executandi*) to receive for and on its behalf service of process in such jurisdiction in any legal action or proceedings with respect to this Contract. The Parties irrevocably waive any objection they may now or hereafter have that such action or proceeding has been brought in an inconvenient forum. Nothing herein shall affect the right to serve process in any manner permitted by law.

55 PRESERVATION OF THE POWERS AND DUTIES OF THE MUNICIPALITY

Nothing in this Contract shall curtail the statutory powers of the Municipality in its capacity as the water services authority and provider as defined in the Water Services Act in respect of the provision of water services in any manner whatsoever.

56 CONTRACT BINDING ON SUCCESSORS-IN-TITLE

56.1 This Contract shall be binding on any successor in title of the Operator and any successor in title of the Municipality.

56.2 The Operator shall not be construed as giving rise to a partnership or quasi-partnership.

57 DOMICILIUM CITANDI ET EXECUTANDI

57.1 The Parties choose as their *domicilia citandi et executandi* for all purposes under this Contract, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the following addresses –

57.1.1 Municipality:

Attention:	Municipal Manager
Physical Address:	Magnolia Avenue Hermanus
Postal Address:	PO Box 20 Hermanus 7200
Telephone No:	028 313 8000

57.1.2 Operator:

Attention:
Physical Address:
Postal Address:
Telephone No:

57.2 Any notice or communication required or permitted to be given in terms of this Contract shall be valid and effective only if in writing, but it shall be competent to give notice by telefax.

57.3 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

58 WHOLE AGREEMENT, NO AMENDMENT

58.1 This Contract including the annexures constitutes the whole agreement between Parties relating to the subject matter hereof. No representations, warranties or other terms and conditions of whatever nature not contained or recorded herein have been made or agreed to.

58.2 No amendment or consensual cancellation of this Contract or any provision or term hereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Contract and no settlement of any disputes arising under this Contract and no extensions of time, waiver or relaxation or suspension of or

agreement not to enforce or to suspend or postpone the enforcement of any of the provisions or terms of this Contract or of any agreement, bill of exchange or other document issued pursuant to or in terms of this Contract shall be binding unless recorded in a written document signed by the Parties. Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.

58.3 No extension of time or waiver or relaxation of any of the provisions or terms of this Contract, bill of exchange or other document issued or executed pursuant to or in terms of this Contract, shall operate as an estoppel against any Party in respect of its rights under this Contract, nor shall it operate so as to preclude such Party thereafter from exercising its rights strictly in accordance with this Contract.

58.4 To the extent permissible by law no Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the Contract or whether it was negligent or not.

59 SIGNATURES

59.1 This Contract is signed by the parties on the dates and at the places indicated below.

59.2 This Contract, together with its annexures, may be executed in several counterparts, each of which shall together constitute one and the same document.

59.3 The persons signing this Contract in a representative capacity warrant their authority to do so.

DATE

PLACE

WITNESS

SIGNATURE

.....

For: **OVERSTRAND LOCAL MUNICIPALITY**

.....

For: **VEOLIA WATER SOLUTIONS AND
TECHNOLOGIES SOUTH AFRICA (PTY) LTD**

ANNEXURE A: EXISTING OPERATIONAL STAFF

[Note to bidders.

This annexure will be developed by the Municipality during negotiations with the preferred bidder with reference to Table 4.2.1 in the Technical Specifications. During the process of finalising the contract, the Existing Operational Staff (process controllers) will be detailed and the existing terms and conditions will be determined. This will inform the base line for the final determination of the Salary Contribution. All terms and conditions will be identified and relevant mechanism for escalation or change will be determined depending on the terms and conditions of each employee identified as Existing Operational Staff.

Existing Operational Staff who are ex-municipal employees of Overstrand Local Municipality will be identified as Ex-municipal Employees. Existing Operational Staff who are not identified as ex-municipal employees (including contract workers) will continue to receive their terms and conditions as at the Effective Date of the Contract and will not be entitled to ex-municipal employee recognition of terms and conditions.

For example ex-municipal employees will continue to receive their SALGBC annually agreed increases, and all individual recognised terms they enjoy as at the effective date of this Contract including employer contributions to medical and pension fund and post retirement contributions, notch increases, housing subsidies, long service bonuses etc. Changes per the terms and conditions of the ex-municipal employees will be determined quarterly and payment with the Operator reconciled. For the other Existing Operational Staff who are not ex-municipal employees, the Salary Contribution for their specific posts will escalate per the Escalation Factor.

From the Effective Date, the terms and conditions of the employment of the Existing Operational Staff will continue to be matched by the Operator viz a viz the Existing Operational Staff. The Municipality will adjust the Salary Contribution to give effect to any changes the Ex-municipal Employees would have been entitled to at the Effective Date, which the Operator will need to pass on until the Ex-municipal Employees are no longer employed by the Operator to execute functions under the Contract. At that stage the Operator's terms and conditions will apply to the vacancy filled and the Salary Contribution of the Municipality will be aligned for that post at the Operator's terms and conditions and escalate by the Escalate Factor.

ANNEXURE B: BULK WORKS

[Note to bidders:

- **PART B: BULK WORKS** will be attached to the Contract.]

ANNEXURE C: TECHNICAL SPECIFICATIONS

[*Note to bidders:*

- **PART C: TECHNICAL SPECIFICATIONS** will be attached to the Contract.
- Note that the Technical Specifications form part of the Contract and are reviewed and updated annually as part of the Annual Plan.
- Note that Key Performance Indicators are stated in the Technical Specifications.]

ANNEXURE D: PRICING SCHEDULE

[*Note to bidders:*

- **PART D: PRICING SCHEDULE** from Bidder's tender response, distinguishing Fixed Fee, Variable Charges, Day Works Rates and Monthly Total Costs to Company and % Mark-up Fee will be attached to the Contract.
- Note that Salary Contribution will be determined prior to Effective Date, with the finalisation of the Annexure A: Existing Operational Staff, which is statement of fact as at Effective Date and will apply to all bidders equally]



TENDER NO. SC 1890/2018
WATER AND WASTE WATER BULK WORKS OPERATION AND
MAINTENANCE

MFMA INFORMATION STATEMENT

1. OBJECTIVE

Overstrand Municipality has made public its intention to enter into a long term support contract in regard to the operation and maintenance of its water and waste water treatment works.

Because the proposed Contract is for more than three years, and because the right to use, control and manage the Municipality's water and waste water treatment works will vest in an Operator, the Municipality must comply with Section 33 of the Local Government: Municipal Finance Management Act, Act No. 56 of 2003 (MFMA), and with the Local Government: Municipal Finance Management Act: Municipal Asset Transfer Regulations No. R. 878, as published in Government Gazette No. 31346 on 22 August 2008.

The objective of this Information Statement is to inform the community and other interested parties of the proposed contract and the granting of rights in regard to the operation and maintenance of the Municipality's water and waste water treatment works.

2. INVITATION

The local community and other interested parties are invited to submit to the Municipality comments or representations in respect of the proposed contract and the granting of the right to an operator to operate and maintain the Municipality's water and waste treatment works for a period of 15 years.

3. PROCEDURE FOR GIVING COMMENTS

Members of the local community and other interested persons are invited to submit to the Municipality their comments or representations in respect of the proposed contract and the granting of the right to manage the assets **before 12:00 on Monday 15 October 2018**, in a sealed envelope clearly endorsed "**Contract SC 1890/2018: Long term operation and maintenance contract for water and waste water treatment works in Overstrand Municipality**" and addressed to: Municipal Manager, P.O. Box 20, Hermanus, 7200, and to be deposited in Tender box no. 7.

Written enquiries for clarification can be directed to Mr Hanré Blignaut at e-mail: hblignaut@overstrand.gov.za.

Any person who wishes to submit comments or representations in respect of the proposed contract and/or the granting of the right to manage the assets, and who cannot write, will be assisted by the Director: Infrastructure and Planning or a person designated by him, at the Overstrand Municipality's head office in Magnolia Avenue, Hermanus.

4. PROJECT BACKGROUND

In terms of the Water Services Act, Overstrand Local Municipality is the water services authority and the water services provider for its area of jurisdiction.

Following an investigation in terms of Section 78 (s.78) of the Local Government: Municipal Systems Act into the way in which it is structured to deliver water services to its community, Council took a s.78 (2) decision that a competently skilled and experienced operator be contracted to operate and maintain the water and waste water treatment works.

To give effect to the Council resolution, a competitive procurement process was undertaken in terms of the municipality's Supply Chain Management Policy, and the requirements of the Municipal Finance Management Act.

A 15 year contract (Contract SC 1508/2014) was awarded, and commenced in 2015, but has subsequently been set aside by a court order. The Municipality was ordered to complete a full new tender process, which has been undertaken.

In response to the court-ordered competitive procurement process, four tenders were received. Following supply chain management rules and procedures, the tender was awarded to the bidder who scored the highest points in terms of Council's preferential procurement policy. The tender price of the successful bidder is lower than the current contract, which is beneficial to the Overstrand Municipality and its water consumers.

5. THE CONTRACT

5.1. Key Driver

The key drivers of the contract are the needs to:

- secure focussed management of the operations and maintenance of the bulk works; and
- to develop local skills in compliance with the regulatory requirements of the works.

5.2. Key Outcomes

The key outcome sought, as with the current contract, is effective and efficient water services delivery by taking steps to ensure:

- on-going assurance of supply of water and treatment of sewerage at the right quality and quantity; and
- infrastructure asset preservation over the longer term.

5.3. Scope

The scope of work addresses the operation and maintenance of the water and waste water treatment works in the jurisdiction of Overstrand Municipality. It excludes any

capital infrastructure planning or development, which functions will remain with the Municipality.

The Operator will report directly to the Municipality, and be paid by the Municipality. The Operator will have no engagement with the community.

5.4. Term

It is planned that the contract will become effective on 8 December 2018, for a period of 15 years, taking into consideration the key drivers and outcomes sought, the proposed risk transfer, the protection of the capital investment made by the Municipality, and the desire to have local employees skilled and trained during the process. An option to extend the contract with another 5 years after the initial 15 years is provided for in the proposed contract.

5.5. Risk Transfer

The Operator will be responsible for the operation and maintenance of the water and waste water treatment works during the Contract period. It will also have the obligation to safeguard the assets.

Although there will be an interface with the municipal water services provider for service delivery, and the municipal water services authority for monitoring purposes, the Municipality will not require the water and waste water treatment works during the period of the Contract.

The Municipality will retain technical and financial risk with regard to planning for and executing of infrastructure development in regard to the water and waste water treatment works.

The Municipality will execute its oversight functions and regulatory role as the water service authority, including setting of tariffs and policies for water services delivery.

The contract provides for annual planning and regular reviews, and will provide for termination and step-in rights of the Municipality in the event of non-performance. Given the interface with municipal service delivery by the municipal water services provider, mechanisms to ensure service delivery have to be addressed promptly. The penalty regime and dispute procedures incentivise the parties to work together to find solutions to challenges.

5.6. Remuneration Model

The Operator will be paid its competitively tendered fixed management fee to undertake the operation and maintenance of the water and waste water treatment works. To address fluctuations in demand, there will also be a fee due based on actual volumes of water and waste water treated at each plant.

Penalties to the payment mechanism will be imposed where the performance does not meet the requirements of the key performance indicators.

Based on the competitive bids received, the cost of the proposed contract will positively impact the Municipality's current budget provisions for the operations and maintenance of the water and wastewater treatment works. The benefits of the proposed contract include:

- A direct cost saving on the current operations and maintenance budget for the water and waste water treatment works;
- Skills development and retention;

- Assurance of supply – as WSA with a duty to ensure service delivery, and as WSP with direct accountability to the community and a mandate to deliver water services, it is important that the Works are operated and maintained optimally;
- Operations optimisation – optimised operations by focused management, in order to ensure on-going effectiveness and efficiency within the current budget;
- Asset preservation – the Municipality has invested significantly in the infrastructure, and it requires focused management to ensure that the use of the assets can be optimised.

5.7. Impacted employees

There will be no change to existing terms and conditions of employees directly associated with the Works as a result of the conclusion of the proposed contract.

6. NEXT STEPS

Members of the local community and other interested persons are invited to submit to the Municipality their comments or representations in respect of the proposed contract and the granting of the right to manage the asset as set out in 2 and 3 above.

The Municipality will solicit and receive the views and recommendations of stakeholders, including the national and provincial Treasuries and the Department of Water and Sanitation and the national department responsible for local government.

The contract and all comments and views received relevant to the contract will be presented to Council in November 2018 for approval of the contract.



NOTICE/KENNISGEWINGASAZISO

<p>Proposed long term contract for the operation and maintenance of Water and Waste Water Treatment Works in Overstrand Municipality. Local Government: Municipal Finance Management Act No. 56 of 2003: Section 33, and Municipal Asset Transfer Regulations, 2008.</p>	<p>Voorgevoemde Langtermyn Kontrak vir die Bedryf en Instandhouding van Water- en Afvalwater Behandelingswerke in die Overstrand Munisipaliteit. Wet op Plaaslike Regering: Munisipale Finansiële Bestuur Wet No. 56 van 2003: Artikel 33, en die Munisipale Bate Oordrag Regulasies, 2008.</p>	<p>Izivumelwano esi Phakanyisiweyo soku Sebuzwa esi Xosha elifide soku Lavula Nokugcina Indawo Yamanzi kunye Namanzi Amadaka ka-Masipala wase Overstrand Ngokweminisielo yama-Candolec 33 lomibetho iLocal Government: Municipal Finance Management Act, No.56 waingo-2003.</p>
<p>The Overstrand Local Municipality, in terms of the provisions of Section 33 of the Local Government: Municipal Finance Management Act, No. 56 of 2003, hereby makes public that it proposes to enter into a contract with a skilled and experienced operator to operate and maintain the Municipality's water and waste water treatment plants, in terms of which the operator will be granted the right and obligation to manage the Municipality's bulk infrastructure for a period of 18 years.</p> <p>The draft contract and an information statement summarising the Municipality's obligations in terms of the proposed contract can be inspected at the Municipality's head and satellite offices and libraries during the official office hours of operation of these offices and libraries or accessed on the Municipality's official web-site www.overstrand.gov.za from 14 September 2018.</p> <p>The proposed contract will be considered by the Municipal Council of the Overstrand Local Municipality at its Council meeting to be held on 28 November 2018 at the Municipal Offices in Hermanus.</p> <p>Notice is hereby further given in terms of Section 21 and 21A of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) that the local community and affected parties are invited to submit comments or representations on the proposed long term contract for the operation and maintenance of Water and Waste Water Treatment Works in respect of the proposed contract and the granting of the right to manage the assets in Overstrand Municipality. Such comments or representations must be submitted by not later than Monday, 15 October 2018 at 12:00.</p> <p>Comments or representations must be submitted in a sealed envelope clearly endorsed "Contract SC1890/2018: Long term operation and maintenance contract for water and waste water treatment works in Overstrand Municipality" and be deposited in tender box no.7.</p> <p>All submissions must be addressed to:</p> <p>The Municipal Manager Tenderbox no. 7 Overstrand Municipality Magnolia Avenue Hermanus 7200</p> <p>Enquiries can be directed to Mr H Blyden, Tel: 028 313 5047 or e-mail tblidanaul@overstrand.gov.za.</p> <p>Persons who are physically disabled or who cannot read or write but wish to participate in the process, may come during office hours to the Municipal Offices, Magnolia Avenue, Hermanus where that person will be assisted by the Director, Infrastructure and Planning or a person designated by him to transcribe that person's comments or representations.</p> <p>C.Groenewald Municipal Manager</p>	<p>Corenkonstig die bepaling van artikel 33 van die Wet op Plaaslike Regering: Munisipale Finansiële Bestuur, Nr 56 van 2003 gee die Overstrand Munisipaliteit hiermee kennis dat dit van voorneme is om met 'n dienstverskaffer 'n kontrak vir 'n termyn van 15 (vyftien) jaar vir die Bedryf en Instandhouding van die Water- en Afvalwater Behandelingswerke in die Overstrand Munisipaliteit aan te gaan.</p> <p>Die konsep kontrak en 'n inligtingstuk wat die Munisipaliteit se voorgedrae ten opsigte van die voorgenoemde kontrak versaf kan by die Munisipaliteit se hoof- en satellietkantore en biblioteke gedurende amptelike kantoorure getsepekteer word. Die kontrak en inligtingstuk is ook werkrygbaar op die amptelike webblad van die Munisipaliteit by www.overstrand.gov.za vanaf 14 September 2018.</p> <p>Die voorgenoemde kontrak sal vir oorweging voor die Munisipale Raad van die Overstrand Plaaslike Munisipaliteit dien tydens die Raadsvergadering geskeduleer vir 28 November 2018 by die Munisipale Kantore in Hermanus.</p> <p>Kennis geskied verder ingevolge artikel 21 en 21A van die Wet op Plaaslike Regering: Munisipale Stelsels, 2000 (Wet 32 van 2000), dat die plaaslike gemeenskap en geïnteresseerde partye genood word om kommentaar of vertoe oor die voorgenoemde langtermyn Kontrak vir die Bedryf en Instandhouding van Water- en Afvalwater Behandelingswerke aan die Munisipaliteit te lewer. Hierdie kommentaar of vertoe moet teen nie later nie as Maandag, 15 Oktober 2018 om 12:00 ingedien word.</p> <p>Kommentare of vertoe moet ingedien word in 'n verseëde kovert, duidelik gemerk "Kontrak SC1890/2018: Langtermyn kontrak vir die bedryf en instandhouding van water- en afvalwater behandelingswerke in die Overstrand Munisipaliteit" en geplaas word in tenderbus nr. 7.</p> <p>Alle voorleggings moet geadresseer word aan:</p> <p>Die Munisipale Bestuurder Tenderbus nr. 7 Overstrand Munisipaliteit Magnolia Avenue Hermanus 7200</p> <p>Navrae kan gerig word aan Mr H Blyden, Tel: 028 313 5047 of e-pos: tblidanaul@overstrand.gov.za.</p> <p>Persones wat liggaamlik gestremd is of nie kan lees of skryf nie, maar aan die proses wil deelneem, kan gedurende kantoorure na die Munisipale Kantore, Magnolia Avenue, Hermanus kom, waar die Direkteur: Infrastruktuur en Begroting of 'n persoon soos deur hom aangewys daartoe persoon sal help om die kommentaar of vertoe neer te skryf.</p> <p>C.Groenewald Munisipale Bestuurder</p>	<p>Umsisipala weNgingqi yase-Overstrand, wazisa ukuba ujonge ukungena kwisiXosha elifide seminyaka elishumi elina ntlana (15) nomlika-ncorco malunga nokudawula nokugcina indawo yamanzi kunye namanzi amadaka ka-Masipala wase Overstrand, oko kusenzima ngokweminisielo yeCandolec 33 lomibetho iLocal Government: Municipal Finance Management Act, No.56 ka2003.</p> <p>Esi sivumelwano esiqulunyweyo kunye nencazelo eshuqakathela iminiselo ka Masipala ngu kwasi sivumelwano esiqulunyweyo sokusobenza ekulindleleke ukuba sibhokwa yintloko kaMasipala lekwifofisi esingamaSityena kwekurye namathala esowadi ngeeyure zo-kusobenza zazi ofisi nala malihala esinwadi.Esi sivumelwano esiphakanyisweyo kunye neenkcakacha siyafumaneka kwi website esemthethweni yakwa Masipala engu- www.overstrand.gov.za ukusukela nge 14 kaSeptemba 2018.</p> <p>Esi sivumelwano esiqulunyweyo siya kuqwalasela iIbhunga likaMasipala elilukaMasipala weNgingqi iOverstrand ngexesha lentlengenisio yeBhunga eye kuba libanjelwe kwiofisi zikaMasipala esihemanus nge 28 November 2018.</p> <p>Izaziso sikhwa ngokweminisielo ye Candolec 21 no 21A kaMasipala weNgingqi: Umibetho wokuziphatha kaMasipala, 2003 (iMihetho 32 ka2000) ukuba ebonis abasuka ekuhlakeni nabanye abantu abachaphazeleliyo baye-merywa ukuba bathumele izimvo zabo okanye izimvo ezabizhalileyo kuMasipala mayelana nesivumelwano sexhasha elide esiphakanyisweyo sokulawula nokugcina indawo yamanzi namanzi Amadaka nokwesiXosha elifide esiqulunyweyo nokunikwa iingqalelo lokulawula nguMasipala iOverstrand izimvo okanye izimvo ezibhalileyo mezwangeniwe engadlulanga ukwivulo, 16 Okthobha 2018 ngo 12:00.</p> <p>Izimvo ezibhalileyo mazifakwa kwimvuloptu ebhalwe ngokucacileyo, siyafinyweyo kubhalwa "SC1890/2018: Isivumelwano sexhasha elide soku lawula nokugcina indawo Yamanzi kunye Namanzi Amadaka ka-Masipala wase Overstrand" mayifakwa kwi Bhokisi ye Zihlithi-maxabiso no.7.</p> <p>Zonke izibhalo zihunywele ku: Umphathi kaMasipala Bhokisi yeZihlithi-maxabiso no.7. UMaepala weNgingqi yase-Overstrand Magnolia Avenue Hermanus 7200</p> <p>Imeluzo ngathunyelwe ku Mnu H Blyden: Umxwebhe: 028 313 5047 ne-imeyili: tblidanaul@overstrand.gov.za</p> <p>Nemaphi na umntu okhwenela ukuthumela izimvo zakhe okanye izimvo ezabizhalileyo abangakwaziyo ukubala baya kuncedwa nguMlawuli wezolwakhawo noCwangciso okanye ngumntu omisekhe nguye kwiZiko loLuntu iOverstrand, eHermanus.</p> <p>C.Groenewald UMinisekela kaMasipala</p>

Navreë:
Enquiries: H Blignaut

Tel. No: 028 313 5047

Verwysing:
Reference: SC 1890/2018



Datum:
Date: 13 September 2018

KANTOOR VAN DIE MUNISIPALE BESTUURDER
OFFICE OF THE MUNICIPAL MANAGER

To: National Treasury – Mr S Mkhwanazi (GTAC) & Mr W McCormans (MFMA Implementation)
Provincial Treasury Western Cape – Mr Z Hoosain
Department of Co-operative Governance and Traditional Affairs (COGTA) – Mr T Lebohang
Department of Water & Sanitation – Mr R Khan

PROPOSED LONG TERM CONTRACT FOR THE OPERATION AND MAINTENANCE OF THE WATER AND WASTE WATER TREATMENT WORKS OF THE OVERSTRAND MUNICIPALITY: NOTICE IN TERMS OF SECTION 33 OF THE LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT, 2003 (ACT NO. 56 OF 2003), AND THE MUNICIPAL ASSET TRANSFER REGULATIONS, 2008

In terms of Section 33(1)(a)(ii) of the Local Government: Municipal Finance Management Act, 2003 (Act no. 56 of 2003) (MFMA), you are hereby notified of the Overstrand Municipality's intention to enter into a contract which will impose a financial obligation beyond the three years covered in the budgets for the 2018/2019 to 2020/21 financial years.

In terms of the Municipal Asset Transfer Regulations, 2008 National Treasury and Provincial Treasury are further notified that the proposed contract will grant the long term right to a contractor to use, control and manage our water and waste water treatment works for the contract period.

As is required, we hereby solicit your views and recommendations on the proposed long term contract between Overstrand Local Municipality and Veolia Water Solutions and Technologies South Africa (Pty) Ltd, with regard to the operation and maintenance of the water and waste water treatment works of the municipality. The contract is planned to come into effect on 8 December 2018, for a contract period of 15 years. Please find attached the following:

1. Annexure A: Information Statement
2. Annexure B: Draft Contract
3. Annexure C: Advertisement inviting the local community and interested stakeholders to submit representations on the draft long term contract

Please express your views and recommendation(s), if any, to the undersigned on or before 15 October 2018, in order for my Council to take all representations into account for decision making, thereby giving effect to the provision of Section 33(1)(b)(i-iv) of the MFMA.

Yours sincerely



C. GROENEWALD
MUNICIPAL MANAGER