

**8.
WATER AND WASTE WATER TREATMENT OPERATIONS MANAGEMENT
CONTRACT: SC1508/2014 – PROPOSED AMENDMENTS**

8/2/2

Stephen Müller/ Hanré Blignaut (028) 313 5047

Corporate Head Office

22 September 2015

1. Executive Summary

On 29 July 2015 Council approved the contract for the management of the operation and maintenance of the water and waste water treatment works in the jurisdiction of Overstrand Municipality (the Contract) and authorised the Municipal Manager to sign the contract with Veolia Water Solutions & Technologies (Pty) Ltd (the Operator).

The purpose of this report is to advise Council regarding the process of implementation and to seek Council approval of proposed amendments to the Contract to address practical issues arising in the administrative processes involved with the implementation of the Contract and Council's resolution.

The proposed amendments can be summarized as follows: (1) to move the effective date of the contract from 1 September 2015 to 1 November 2015; (2) to permit that the accrued leave liability in respect of the Transferred Employees be paid to the Operator rather than the Transferred Employees; (3) to protect Council from excessive claims from the Operator in the case of a judgement being granted which sets aside the tender award to the Operator; and (4) to permit the Operator to delay the building of the new permanent offices until there is certainty about the outcome of the risk of judgment being grant to set aside the tender award to the Operator.

2. Service Delivery and Budget Implementation Plan – IGNITE

Infrastructure and Planning and Community Services
Water and Waste Water Services

3. Compliance with Strategic Priorities

Creation and maintenance of a safe and healthy environment
Management and conservation of the natural environment
Provision of democratic, accountable and ethical governance

4. Delegated Authority

None

5. Legal Requirements

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

Local Government: Municipal Systems Act, 32 of 2000 (MSA)

Labour Relations Act, 66 of 1995 (LRA)

Water Services Act, 108 of 1997 (WSA)

Municipal Asset Transfer Regulations No.R878

Overstrand Municipality Supply Chain Management Policy

Overstrand Municipality Contract Management Policy

6. Background/Discussion/Evaluation/Conclusion

Background

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

The feasibility of such a contract was confirmed through a competitive bidding process in compliance with the Supply Chain Management Framework. The Municipal Manager awarded the contract (Contract SC 1508/2014) to the Operator on 22 July 2015.

Following the prescribed process in terms of the MFMA and its regulations, including section 33 regarding future budgetary implications, the proposed long term contract was approved by Council on 29 July 2015, and Council authorised the Municipal Manager to sign the contract.

Since then, an application to the High Court to review Overstrand Municipality's decision of 10 March 2015 to identify Veolia as the preferred bidder on Contract SC 1508/2015, dated 7 September 2015, was received from the 2nd preferred bidder, Water and Sanitation Services South Africa (Pty) Ltd (WSSA).

Legal advice was obtained and an opposing affidavit is being compiled. Initial indications are that there are serious flaws in WSSA's review application. It is however necessary to protect the interest of the municipality, should the review succeed.

Specific amendments are therefore recommended to clauses regarding termination (clause 42) and effective date (clause 2.2.9 and 3.2), and also to address the practical issues arising in regard to the accrued leave liability. These are discussed in the following sections (not in chronological order).

Discussion

The proposed amendments to the Contract are set out below, marked up for ease of reference.

1. Consequences on Termination

Clause 42 of the approved contract deals with termination of the contract. In order to protect Council in case of a successful review application, and to describe what happens if the review application succeeds and/or the award of the tender is set aside, it is proposed that a new clause 42.6 be added to clause 42, to limit the contingent liability of the Municipality towards the Operator:

42.6. Notwithstanding what is contained elsewhere in this Contract and more specifically this clause 42, the Parties record and agree for the sake of absolute certainty that the Municipality shall have the right to terminate this Contract, in the event of a judgment being granted (whether pursuant to WCHC Case No. 17203/2015 or any other case), which sets aside the tender award (Tender No. SC 1508/2014) to the Operator, and that judgment not being subject to appeal, or, if it is, where such an appeal is not pursued within the permissible allowed time: in which event neither party shall have any claim against the other for any loss or other damage arising from or connected to the conclusion or termination of the Contract, save that the Operator will have the right to be paid for services performed up until the date of termination as contemplated herein, and the Municipality will retain its rights in respect of any breach committed by the Operator during the duration of the Contract which has not yet been remedied or compensated. The termination of the Contract as contemplated in this clause 42 shall be without prejudice to any other rights that the Municipality may have at law.

Consequently, clause 42.1 needs to be amended to include reference to the new clause 42.6, as follows:

42.1. In addition to what is set out in clause 42.6 below, the termination of this Contract may occur at the instance of the Municipality and on a date specified in writing by the Municipality.

Clause 42.2 to 42.4 effectively allows for a transition or hand over phase of inter alia staff and assets in case of termination, until such time as control of the undertaking of the function is taken over by a new operator or the municipality (clause 42.4). Clause 42.5 needs to be amended to be aligned with clause 42.4, to allow for this transition phase until control of the undertaking of the function is taken over by a new operator or the municipality. The proposed amended wording of clause 42.5 is the

following:

42.5. 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 provision of the service.

Further, clause 22 dealing with the Operator's proposal to build new offices on the Municipality's property is updated by the insertion of 22.9 to confirm that the Operator needs not build the new offices after the legal process of review is finalised. Clause 22.8 is amended to clarify that there is no compensation due to the Operator for any building of offices on municipal land.

22.8 The new office building shall accede to the land of the Municipality without compensation to the Operator. On termination of the Contract risk in the new office building shall transfer to the Municipality at no cost to the Municipality.

22.9 The Operator will only be required to commence with the building of permanent new offices on the Municipality's property when the right to terminate referred to in clause **Error! Reference source not found.** has come to an end and in the interim the Operator will provide temporary site offices.

2. Effective Date:

The effective date of the contract is defined in clause 2.2.9 as 1 September 2015. Due to the extent of administrative processes involved in e.g. the transfer of staff, and the legal review process, it is agreed between the parties that the effective date be moved to 1 November 2015 or as soon thereafter as is possible in the circumstances and agreed to by the parties. Clauses 2.2.9 and 3.2 therefore need to be amended as follows:

2.2.9. "Effective Date" means 1 November 2015, unless otherwise agreed between the parties.

3.2 The appointment shall commence on the Effective Date, notwithstanding date of signature of the Contract.

3. Transfer of Accrued Leave liability:

The Contract provided in clause 28.5.1 that the employees would be paid out accrued leave at the date of transfer to the Operator. Employees have indicated they may want to transfer with leave accrued. Accordingly the Municipality will transfer the contingent liability to the Operator rather

than to the Transferred Employees, and the Operator and the Transferred Employee will agree what is to be paid out and what is to be taken as paid leave. There is no financial implication for the Municipality - it is an alternative payment mechanism to address the employees voiced concerns. Clause 28.5.1 therefore needs to be amended as follows:

- 28.5.1 the leave pay accrued to the Transferred Employees. The Municipality will transfer the value of the Transferred Employee's leave pay accrued up to the Effective Date to the Operator within 30 days of the Effective Date. The Operator agrees to execute the Transferred Employee's option to have the full or partial leave accrued as at the Effective Date paid to the Transferred Employee, less any tax due, provided that the Transferred Employee must have exercised the option in writing with the Operator within three months of the Effective Date. Payment shall be made by the Operator to the Transferred Employee based on the Transferred Employees election, within 30 days of the Transferred Employee making the election in writing and the Municipality having made the transfer to the Operator. The parties will disclose the agreement in this respect to the Transferred Employees;

4. Salary Contribution

Council to note that the salary increases as nationally negotiated at SALGBC have been confirmed at 7% effective 1 July 2015. The Salary Contribution will thus be adjusted from the assumption of 6.1% used to the actual, to reflect the actual escalation, as provided for in the Schedule: Salary Contribution Base 2015.

Evaluation

Approval of the proposed amendments will take steps to ensure that the Municipality is protected against excessive claims in the unlikely case of a successful review application, that the effective date can be practically implemented, and that the Municipal Manager signs the contract in its final form as approved by Council.

Conclusion

The proposed amendments to the contract will not affect the feasibility and affordability of the contract, nor the future budgetary implications as presented to Council on 29 July 2015.

7. Financial Implications

The proposed amendments to the Contract do not change the financial implications of the Contract as presented to and considered by Council on 29 July 2015, other than to protect the Municipality against a potential contingency subject to the outcome of the legal review process and to delay the effective date.

8. Asset Implications

The proposed amendments do not change the asset implications as presented to and considered by Council on 29 July 2015.

9. Employee Implications

The proposed amendments do not change the employee implications as presented to and considered by Council on 29 July 2015, other than to address the employee request that they have the option to transfer with accrued leave.

10. Comments from other Departments, Divisions, Administrations and relevant Organs of State**Senior Manager: Legal Services, Mr Lionel Wallace:**

Legal Services agree that the incorporation of an additional clause is needed in order to protect the Municipality's position in the event of an unfavourable outcome in the review application. In addition to ensure that section 42.5 tie in with section 42.4, an additional amendment was made to section 42.5. We can further advise that our office discussed both the merits of the review application, and the protection and mitigation of the Municipality against any risk flowing from an unfavourable court judgment with our attorneys. I further agree with the recommendations set forth in the agenda.

11. Annexures

Annexure A: Council resolution of 29 July 2015
Annexure B: Amended Contract as it is to be executed
Annexure C: Contract as approved by Council on 29 July 2015

RECOMMENDATION TO THE COUNCIL:

1. that the proposed amendments to the approved contract, as contained in the report, for the management of the operation and maintenance of the water and waste water treatment works in the jurisdiction of Overstrand Municipality, **be approved;**

2. that the Municipal Manager be authorised to forthwith sign the contract, as amended herein, on behalf of the Overstrand Municipality.

RESPONSIBLE OFFICIALS :

**STEPHEN MÜLLER
HANRÉ BLIGNAUT
MIKE BARTMAN**

TARGET DATE FOR IMPLEMENTATION :

1 NOVEMBER 2015

TARGET DATE TO INFORM APPLICANT:

30 SEPTEMBER 2015

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 : SPECIAL COUNCIL MEETING**29 JULY 2015**

RESPONSIBLE OFFICIAL :**S MÜLLER
H BLIGNAUT
M BARTMAN****TARGET DATE FOR IMPLEMENTATION :****1 SEPTEMBER 2015****TARGET DATE TO INFORM APPLICANT :****29 JULY 2015**



WATER AND WASTE WATER
BULK WORKS CONTRACT

entered into between

OVERSTRAND LOCAL MUNICIPALITY
("the Municipality")

and

VEOLIA WATER SOLUTIONS & TECHNOLOGIES SOUTH AFRICA (PTY)
LTD

(Registration No 1964/007768/07)

("the Operator")

Final September 2015

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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 & 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 include both 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. “Accounting Officer” means the Municipal Manager as defined in the MFMA;
 - 2.2.2. “Annual Plan” means the document prepared annually including the Asset Register, Technical Specifications, Pricing Schedule, various Plans and associated Performance Indicators for a Financial Year, more fully referred to in clause 12;
 - 2.2.3. “Asset Register” means the technical asset register developed for purposes of this Contract defining the Bulk Works as more fully referred to in clause 23, updated on an annual basis in the Annual plan;
 - 2.2.4. “Bulk Works” means the water and waste water treatment plants, pump stations and associated assets and consumables as described in the RFP, and as updated annually in the Asset Register;
 - 2.2.5. “Chief Executive Officer” means the chief executive of the Operator as appointed from time to time;
 - 2.2.6. “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;
 - 2.2.7. “Contract” means this agreement and any annexures hereto, as well as any subsequent amendment, novation or substitution of this Contract and annexures;
 - 2.2.8. “Corrupt Action” means –
 - 2.2.8.1. giving 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
 - 2.2.8.2. any solicitation, offering, participation, conspiracy or attempt to bring about the circumstances mentioned in clause 2.2.8.1 above;
 - 2.2.9. “Effective Date” means 1 November 2015, unless otherwise agreed to between the parties;
 - 2.2.10. “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;

- 2.2.11. "Escalation Factor" means the headline 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 Transferred Employees stated in 19.2 and unless otherwise motivated by the Operator and accepted by the Municipality as set out in 19.3;
- 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 operating and maintaining of the Bulk Works by the Operator to achieve the Technical Specifications as more fully set out in 7 below;
- 2.2.14. "IA Fee" means the Operator's remuneration for delivering the IA Services, as set out clause 18.4 below;
- 2.2.15. "IA Services" means the services to be provided by the Operator as agent of the Municipality as more fully set out in clause 8 below;
- 2.2.16. "Large Repair and Maintenance Projects" means repair and maintenance events undertaken as part of the Function of which the cost is greater than R50 000, including materials, labour and specialist advisory services as required by the circumstance per event, as set out in 7.3.2, and escalating as per 2.4 below;
- 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;
- 2.2.19. "Municipal Manager" means the accounting officer of the Municipality;
- 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 and the IA Services;
- 2.2.21. "Municipality" means Overstrand Local Municipality or its successor in title;
- 2.2.22. "Operator" means Veolia Water Solutions & Technologies South Africa (Pty) Ltd, Registration Number: 1964/007768/07;
- 2.2.23. "Operator Fee" means the Operator's remuneration as set out in the Pricing Schedule;
- 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 Performance Indicators as measured against the baseline are not achieved as set out on clause 14 , Annexure B and updated or amended in the Annual Plan;
- 2.2.26. "Performance Indicators" means the indicators to measure the performance of the Operator as set out in clause 13, Annexure B and updated or amended in the Annual Plan;
- 2.2.27. "Pricing Schedule" means the pricing schedule attached as Annexure A, and as updated in the Annual Pan;
- 2.2.28. "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;
- 2.2.29. "RFP" means the Municipality's issued bidding documentation including the Request for Proposal and annexures, and correspondence with bidders during the RFP procurement process attached as Appendix D
- 2.2.30. "Salary Contribution" means the Municipality's capped contribution to the Operator's human resource costs as set out in 18.3 below;
- 2.2.31. "SALGBC" means the South African Local Government Bargaining Council;

- 2.2.32. "Support Services" means the services to be provided by the Municipality to the Operator as set out in 11 below;
- 2.2.33. "Systems Act" means the Local Government: Municipal Systems Act 32 of 2000;
- 2.2.34. "Technical Specifications" means the specifications as set out in the RFP, and as updated or amended in the Annual Plan;
- 2.2.35. "Transferred Employees" means employees of the Municipality which transfer to the Operator identified in the Organisational Plan referred to in 29 below;
- 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.
- 2.5. Reference to legislation includes regulations issued under the legislation and amendments to such legislation or regulations from time to time, subject to 41.
- 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 agreement 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;
- 2.14.3. The Annexures to the Contract;

- 2.14.4. The RFP documentation and
- 2.14.5. Any communication or correspondence between the Operator and the Municipality prior to the Effective Date.

PART B: APPOINTMENT

3. APPOINTMENT

- 3.1. The Municipality hereby appoints the Operator to undertake the Function and if required by the Municipality, to provide the IA Services.
- 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 and provide the IA Services 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 appointment shall continue for 15 years from the Effective Date, unless terminated early in accordance with clause 42 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, 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 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, Transferred Employees, and the Bulk Works to the Operator.
- 5.2. The Operator shall have a period of 3 months to develop the Annual Plan for the period ending 30 June 2016 (the first Annual Plan). This shall include the Asset Register; the Technical Specifications; the Energy Management Plan; the Prevention and Emergency Plan; the Operations and Maintenance Plan; the Training and Development Plan; the Performance Indicators, including the updated base line for measurement of performance based on the Municipality's existing; the Pricing Schedule; the Organisational Plan; any IA Services for the period ending June 2016; any support services required from the Municipality; and any other thing relevant to the Contract and performance of the parties.
- 5.3. During the first 3 months from the Effective Date there shall be a phased approach to the hand-over of operations, including the supply of chemicals, maintenance, parts and staff. The parties shall work closely together to ensure uninterrupted service delivery. 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.
- 5.4. If both parties are reasonably satisfied that the obligations in relation to the transfer of the Function, Transferred Employees and Bulk Works to the Operator, have been reasonably fulfilled, they shall sign the first Annual Plan for the period ending June 2016 and it shall be deemed to replace the Annexures; and shall be appended to the Contract to form part of the Contract.

6. 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.
- 6.2. Provided it is related to the Bulk Works and the Function, and subject to the Regulatory Provisions, the scope of the Function may be varied by written agreement 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;
 - 6.3.2.4. the impact on the Asset Register;
 - 6.3.2.5. the impact on the Performance Indicators and Penalties;
 - 6.3.2.6. the impact on the Organisational Plan;
 - 6.3.2.7. the impact on the Pricing Schedule;
 - 6.3.2.8. any other issue which is relevant.
- 6.4. Where variation is required as a result of Regulatory Provisions not reasonably foreseen at the Effective Date, the impact of the Regulatory Change shall be assessed by the Parties and the Annual Plan updated by agreement between the Parties.
- 6.5. The Annual Plan shall be updated to address the change in scope of the Function agreed to between the parties and the associated Pricing Schedule.
- 6.6. 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 in response to the RFP (as escalated) and the market, before accepting the Pricing Schedule.
- 6.7. 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 Function includes repairs and maintenance, Large Repairs and Maintenance and Emergency Repairs and Maintenance:
- 7.3.1. Repairs and maintenance is covered in the Operator Fee;
 - 7.3.2. Large Repairs and Maintenance Projects shall be identified and prioritised by the Operator in the Annual Plan. The Operator shall define the Large Repairs and Maintenance Projects and propose and motivate the project and present three quotes for the Municipality to approve one quote. The authorised quotation will be implemented and costs as actually incurred by Operator recovered in the month following the occurrence of expenditure (provided that it shall not be more than the authorised quote).
 - 7.3.3. Emergency Repairs and Maintenance shall be addressed by the Operator in Emergency Situations and if it qualified as a Large Repair and Maintenance project, the actual cost will be recovered in the month following the occurrence of the expenditure.
 - 7.3.4. All repairs and maintenance must be guaranteed for at least three months or per the specification.
- 7.4. 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.

8. IA SERVICES

- 8.1. The Municipality may request the Operator to implement bulk work projects related to the

Function.

- 8.2. The IA Services exclude any aspect of the Function.
- 8.3. In the event that the Municipality wishes to request the Operator to render IA Services –
- 8.3.1. the Municipality shall give the Operator reasonable notice thereof, giving details of the proposed appointment, the reason therefore, and the scope of IA Services the Operator would be required to render;
 - 8.3.2. the Municipality and the Operator will meet as soon as possible after the notice mentioned in clause 8.3.1 to discuss the proposed appointment by the Municipality having regard to the following matters–
 - 8.3.2.1. the scope of the IA Services required;
 - 8.3.2.2. the impact on water services delivery and the Municipal Plans;
 - 8.3.2.3. the impact on the existing Function and Bulk Works;
 - 8.3.2.4. the roles and responsibilities of the Municipality and the Operator;
 - 8.3.2.5. the impact on the Asset Register;
 - 8.3.2.6. the scheduling of the IA Fee;
 - 8.3.2.7. any other issue which is relevant.
- 8.4. The Annual Plan shall be updated to address the IA Services agreed to between the parties.

9. STRATEGIC PLANNING

- 9.1. 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 as reasonably requested by the Municipality.
- 9.2. The Operator shall provide information and insights relevant to the interface between the Function and the Municipality's water services delivery strategic planning processes.
- 9.3. The Municipality shall provide the Operator with all relevant Municipal Plans to inform the Annual Plan of the Operator.

10. EMERGENCY

- 10.1. In Emergency Situations, the Operator shall take reasonable steps to continue to undertake the Function.
- 10.2. The Operator shall within 3 (three) months after the Effective Date, submit to the Municipality for comment, a Prevention and Emergency Plan that will include methods and procedures to be implemented in the future for preventing and addressing Emergency Situations. The Operator shall be obliged to continually review the Prevention and Emergency Plan, and at least annually present any necessary amendments thereto to the Municipality for its approval.
- 10.3. 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 10.3.

11. SUPPORT SERVICES

- 11.1. 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 not provided for in this Contract, 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.
- 11.2. 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.
- 11.3. 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 performance indicators required by the

Operator of the Municipality.

12. ANNUAL PLAN

- 12.1. The Operator shall be responsible for the preparation, control, management and execution of the Annual Plan for each Financial Year.
- 12.2. The Annual Plan shall address for the relevant Financial Year:
 - 12.2.1. The Asset Register;
 - 12.2.2. The Technical Specifications;
 - 12.2.3. The Energy Management Plan;
 - 12.2.4. The Prevention and Emergency Plan;
 - 12.2.5. The Operations and Maintenance Plan;
 - 12.2.6. The Training and Development Plan;
 - 12.2.7. The Performance Indicators, including the updated base line for measurement of performance based on the previous Financial Years performance and the Penalties;
 - 12.2.8. The Pricing Schedule;
 - 12.2.9. Any IA Services required by the Municipality;
 - 12.2.10. Any Support Services required from the Municipality; and
 - 12.2.11. Any other thing relevant to the Contract and performance of the parties.
- 12.3. The Municipality shall indicate the IA Services and proposed variations to the Function by end August every year.
- 12.4. The Operator shall 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 12.3 (if any) and the Municipal Plans and the previous year's Annual Plan.
- 12.5. 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.
- 12.6. The parties acknowledge that the process of Annual Planning is to give effect to the obligation of the Operator to show progressive improvement (per 13.4) and to escalate the Pricing Schedule per the Escalation Factor. In the absence of any proposals in terms of 12.3 and agreement in terms of 6, there shall be no negotiation required.
- 12.7. 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.
- 12.8. 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.
- 12.9. If a variation on Function is, or IA Services are, required outside of the planning process referred to in clauses 12.3 to 12.8 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.
- 12.10. 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.
- 12.11. Any existing Annual Plan shall endure, and shall continue to be implemented by the Operator, until a new Annual Plan finalised.
- 12.12. Once approved by the Municipality, the Annual Plan is binding on the Parties.

PART D: PERFORMANCE AND CONDUCT

13. PERFORMANCE INDICATORS

- 13.1. The Operator must undertake the Function to achieve the Technical Specifications.
- 13.2. The Performance Indicators as at the effective Date are set out in Annexure B: Performance Indicators.
- 13.3. The Operator shall report on its achievement of the Performance Indicators to the Municipality at the reporting intervals indicated in the Annual Plan, and consolidate the overall assessment the previous 12 month Performance Report to be submitted in August.
- 13.4. The base line for the measurement of the Performance Indicators shall be established in the 3 month hand over period (see clause 5 above), and there after annually in the in the Annual Plan (see clause 12 above). There must be progressive improvement in the base-line.

14. PENALTIES

- 14.1. Penalties will be levied against the Operator for not achieving the Performance Indicators with reference to the base-lines agreed to in an Annual Plan.
- 14.2. Penalties will not be levied in the first 3 (three) months of the Contract unless otherwise stated in the base lines in the Annual Plans.
- 14.3. The base-line against which performance of the Operator will be measured by the Municipality will be agreed to in the Annual Plan. The Annual Plan will also include exclusions that are beyond the scope or control of the Operator.
- 14.4. Upon becoming aware if non-compliance by the Operator with Performance Indicators, the Municipality shall indicate its intention to levy a penalty in writing, with reasons. The Operator shall respond with 2 (two) days.
- 14.5. In the event that the Operator:
 - 14.5.1. fails to demonstrate to the reasonable satisfaction of the Municipality that the Performance Indicators are being achieved; or
 - 14.5.2. fails to justify to the reasonable satisfaction of the Municipality why the Performance Indicators are not being met; and
 - 14.5.3. provides no plan to the reasonable satisfaction of the Municipality to improve its performance,
 then:
 - 14.5.4. the Operator shall be in breach of its obligations under the Contract and the Municipality may elect to exercise its rights under clauses 40 to notify the Operator of breach; and
 - 14.5.5. penalties shall be enforced in accordance with clause 14.
- 14.6. If the breach of the Operator is as a result of:
 - 14.6.1. non-performance by the Municipality, the Municipality shall do what is necessary with 5 (five) days of notice of non-performance to ensure that performance occurs;
 - 14.6.2. force majeure, the provisions of clause 41 shall apply; and
 - 14.6.3. 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.
- 14.7. If the breach occurs as a result of 14.6,
 - 14.7.1. no Penalties shall apply against the Operator;
 - 14.7.2. the Municipal Manager shall be advised.
- 14.8. 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.

- 14.9. Both parties shall endeavour to rectify non-performance as quickly as possible in the circumstances.
- 14.10. The maximum aggregate of Penalties that may be levied against the Operator in a Financial Year will be capped at 15% of the annual fixed charges of the Operator Fee as stated in the Pricing Schedule.

15. REGULATORY COMPLIANCE AND MUTUAL CO-OPERATION

- 15.1. 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.
- 15.2. 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.
- 15.3. 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 obligations in terms of this Contract. The Municipality shall further timeously provide the Operator with such information as it may reasonable require to enable it to comply with any of the Operator's obligations in terms of this Contract.

16. BY-LAWS AND POLICIES

- 16.1. The Operator shall comply with the Municipality's by-laws and policies to the extent that these apply to it, 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.
- 16.2. 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.

17. ACCESS TO INFORMATION

- 17.1. 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.
- 17.2. 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.
- 17.3. Each party undertakes to ensure that its information technology systems are reasonably compatible with the information technology system of the other.

PART E: REMUNERATION

18. PRICING

- 18.1. The Operator will be remunerated for undertaking the Function and the delivering the IA Services as set out in Pricing Schedule.
- 18.2. Operator Fee:
- 18.2.1. The Operator Fee due for undertaking the Function is:
- 18.2.1.1. a fixed monthly fee as per the Pricing Schedule; and
- 18.2.1.2. a volume based fee per water treatment work dependant on the treated volumes per month as per the Pricing Schedule;
- 18.2.1.3. a volume based fee per waste water treatment work on inflow (subject to impact of extraordinary storm water) as per the Pricing Schedule;
- 18.2.1.4. any payments for Large Repairs and Maintenance Projects;
- 18.2.1.5. the Salary Contribution as per the Pricing Schedule and 18.3;

- 18.2.1.6. any adjustments due.
- 18.2.2. The Operator Fee will be subject to:
- 18.2.2.1. annual escalation as per clause 19;
- 18.2.2.2. mechanism for penalising partial failure of the availability and performance of the Function, by means of imposing Penalties as per clause 14;
- 18.2.2.3. variation as per clause 6.
- 18.2.3. The Operator undertakes that the remuneration is deemed sufficient to provide for everything for the Operator's undertaking to meet the Technical Specification.
- 18.2.4. The Pricing Schedule shall be updated annually in accordance with the annual planning process as set out in clause 12.
- 18.3. The Salary Contribution:
- 18.3.1. The Salary Contribution is a fixed annual amount that the Municipality will contribute to the Operator's fixed remuneration as agreed upon and set out in the Pricing Schedule and it will be paid out monthly in equal payments in arrears.
- 18.3.2. The Salary Contribution is fixed for the contract duration, subject to the following:
- 18.3.2.1. The Salary Contribution will escalate annually as per 19.2 below.
- 18.3.2.2. 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.
- 18.3.2.3. The actual cost of 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 in respect of Transferred Employees only. The Operator will raise the costs as they incur in its Annual Plan and invoice the Municipality monthly in arrears for the actual cost incurred.
- 18.3.3. The parties record the Operator's acceptance of the following risks including:
- 18.3.3.1. Attaining regulatory compliance as required as at the Effective Date over a period of three years from the Effective Date, including without limitation GNR.2834 of 27 December 1985: Regulations in terms of section 26 read in conjunction with section 12A of the Water Act, 1956 (Act 54 of 1956 for the erection, enlargement, operation and registration of water care works (as amended in 1986));
- 18.3.3.2. The cost of future salary increases for Transferred Employees that attain higher qualifications;
- 18.3.3.3. The trainability of Transferred Employees;
- 18.3.3.4. The mobility of staff to locate to other works to aid the attaining of regulatory compliance.
- 18.4. IA Fee for delivering the IA Services:
- 18.4.1. 6% (six percent) mark up on actual direct costs (excluding VAT) incurred by the Operator on implementing a project as agent of the Municipality.
- 18.4.2. Payment of the IA Fee shall be made monthly in arrears as per the activity schedule agreed to in the Annual Plan and actual costs incurred.
- 18.5. Save a specifically envisaged in clauses 18.2 and 18.4 the Operator shall not be entitled

to any compensation and/or reimbursement in respect of the undertaking of the Function or delivery of the IA Services.

19. ESCALATION

- 19.1. Subject to 19.2 and 19.3, the prices in the Pricing Schedule shall automatically escalate annually in advance by the Escalation Factor.
- 19.2. The Salary Contribution shall be escalated annually at the then relevant published South African Local Government Bargaining Council escalation rate. The schedule of posts and associated costs, benefits and notch increases captured in Annexure A: Pricing Schedule, shall be used to simulate and inform the escalation of the annual Salary Contribution.
- 19.3. 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 fixed cost which occurred in the preceding 12 month period, as well as the escalation which is expected to occur during the forthcoming Financial Year.
- 19.3.1. 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.
- 19.3.2. The submission shall be considered as part of the approval of the Annual Business Plan process.
- 19.3.3. If it not approved by the Municipality, the Escalation Factor shall apply.
- 19.4. The % IA Fee shall not be subject to escalation.
- 19.5. The Escalation Factor shall be applied effective from 1 July of every Financial Year.

20. INVOICING & PAYMENT

- 20.1. The Operator shall by the 20th of each month submit a valid tax invoice with details addressing:
- 20.1.1. the Operator Fee per clause 18.2;
- 20.1.2. the IA Fee per clause 18.4 (if any);
- 20.1.3. less Penalty certificates per clause 14 (if any);
- 20.1.4. less Municipality Support Charges per clause 11 (if any);
- 20.1.5. any adjustments agreed;
- 20.1.6. VAT and other taxes claimed; and
- 20.1.7. all monthly and quarterly reports due.
- 20.2. Once the reports are received and the invoice is approved, the Municipality shall pay within 30 days.

PART F: ASSETS

21. THE BULK WORKS

- 21.1. The Municipality owns the Bulk Works and shall continue to own the Bulk Works for the duration of the Contract.
- 21.2. The Municipality hereby makes available the Bulk Works to the Operator. The Municipality hereby grants the Operator the right of unrestricted access to and use of the Bulk Works for the duration of the Contract in order to execute its obligations under the Contract.
- 21.3. The Bulk Works is made available voetstoots at the Effective Date and no warranties are given by the Municipality in this regard.
- 21.4. 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.
- 21.5. 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.

- 21.6. 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, shall automatically terminate.

22. OFFICES

- 22.1. The Operator is to provide for its own accommodation for its management team for the duration of the Contract, at its own risk.
- 22.2. The Municipality supports the Operator's proposal to build new offices on the Municipality's property and that the Operator operate out of the new offices whilst the Contract is in force.
- 22.3. The Operator shall submit the proposed plans for the new offices to the Municipality for approval of the design concept of the new office building prior to commencing building.
- 22.4. The Operator undertakes to build and operate the new office building at its own cost and risk. All building permits, requirements, approvals and regulations shall be complied with by the Operator. The Operator shall insure the new office buildings.
- 22.5. The Operator undertakes not to interfere with the Municipality's business at the Municipality's existing offices during construction or operating from the new office building on the Municipality's property.
- 22.6. The Municipality undertakes not to interfere with the Operator's right to operate out of the new office buildings.
- 22.7. The Municipality assumes no risk or responsibility for any costs associated with the new office building and operating of the new office building howsoever arising for the duration of the Contract.
- 22.8. The new office building shall accede to the land of the Municipality without compensation to the Operator. On termination of the Contract risk in the new office building shall transfer to the Municipality at no cost to the Municipality.
- 22.9. The Operator will only be required to commence with the building of permanent new offices on the Municipality's property when the right to terminate referred to in clause 42.6 has come to an end and in the interim the Operator will provide temporary site offices.

23. THE TECHNICAL ASSET REGISTER

- 23.1. 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 create, maintain and update a comprehensive technical asset register for purposes of this Contract.
- 23.2. The technical Asset Register shall be updated annually as part of the annual planning process as set out in Clause 12 and submitted with the Annual Plan.

24. INTELLECTUAL PROPERTY

- 24.1. 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 Functions shall be the intellectual property, whether registered or not, of the Municipality.
- 24.2. 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.
- 24.3. 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.

25. 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, –

- 25.1. a record of its own operations, maintenance, inspections and technical auditing;
- 25.2. an asset register including the condition and geographical location of all components of the Bulk Works.

26. EFFICIENCY

- 26.1. 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.
- 26.2. The Parties shall share in any benefit of savings achieved in terms of the Energy Management Plan, as set out in the Energy Management Plan.
- 26.3. 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.

27. INSURANCE

- 27.1. The Municipality shall continue to insure the Bulk Works.
- 27.2. 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.
- 27.3. 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

28. TRANSFER

- 28.1. In accordance with s197(2) read with s197(3) of the Labour Relations Act (LRA) the Transferred Employees will transfer to the Operator on the Effective Date in accordance with terms and conditions of employment which shall on the whole be no less favourable than the conditions of Transferred Employees' terms and conditions of employment as at the date of transfer.
- 28.2. It is expressly recorded that despite what the rules of the Transferred Employees' respective funds may provide the parties agree that encashment of the Transferred Employees members' share shall not be permitted.
- 28.3. The Operator's intention is that the Transferred Employees will become members of the Operator's pension provident, retirement or similar fund, and as such has agreed and undertaken to comply with the requirements of s197(4) of the Labour Relations Act. The level of respective employer and employee contributions shall continue as applied immediately prior to transfer.
- 28.4. It is further recorded that the Operator desires that the Transferred Employees who are currently members of medical aid schemes should become members of the Operator's recognised medical aid scheme. The Operator shall ensure that the respective employer and employee contributions are no less than those that applied immediately prior to transfer and that the benefits offered by the Operator's medical aid scheme immediately prior to transfer are on the whole no less favourable.
- 28.5. In accordance with s197(7) the Municipality and the Operator undertake that they will agree the valuation as at the date of transfer (the Effective Date) the following:
 - 28.5.1. the leave pay accrued to the Transferred Employees. The Municipality will transfer the value of the Transferred Employee's leave pay accrued up to the Effective Date to the Operator within 30 days of the Effective Date. The Operator agrees to execute the Transferred Employee's option to have the full or partial leave accrued as at the Effective Date paid to the Transferred Employee, less any tax due, provided that the Transferred Employee must have exercised the option in writing with the Operator within three months of the Effective Date. Payment shall be made by the Operator to the

Transferred Employee based on the Transferred Employees election, within 30 days of the Transferred Employee making the election in writing and the Municipality having made the transfer to the Operator. The parties will disclose the agreement in this respect to the Transferred Employees;

- 28.5.2. the severance pay that would have been payable to the Transferred Employees in the event of dismissal by reason of the Operator's operational requirements and shall also disclose to the Transferred Employees and their trade unions the provisions of the agreement.
- 28.6. It is recorded that both the Municipality and the Operator have undertaken to the Transferred Employees that none of the Transferred Employees will be retrenched or made redundant by reason of the transfer in terms of s197 of the Labour Relations Act.
- 28.7. The Operator undertakes that to the extent that the trade unions to which the Transferred Employees belonged prior to the Effective Date had binding collective agreements bestowing organisational rights only in respect of such Transferred Employees and the workplace in which they are currently employed, these will be recognised by the Operator.
- 28.8. 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 should the Transferred Employees and/or their respective trade unions request this.
- 28.9. It is recorded that there will be no decrease in existing remuneration or benefits of the Transferred Employees as a direct result of the transfer of the Transferred Employees to the Operator triggered by the coming into effect of this Agreement.
- 28.10. The Operator undertakes that any proposed changes to the current shift system applicable to the Transferred Employees will be consulted on with the transferred employees and their representative trade unions prior to implementation.
- 28.11. It is recorded that the Operator is contractually obliged to provide appropriate training to the Transferred Employees and the Operator agrees to honour this obligation and acknowledges that the Municipality will monitor the provision of such training.
- 28.12. It is recorded that the transferred employees currently 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 Transferred Employees retire from the Operator's employ whilst this Agreement is in force provided that the benefit is still available to the Municipality's employees when a Transferred 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 Transferred Employee.
- 28.13. The Operator undertakes to provide to the Transferred Employees, prior to transfer, a letter setting out the terms and conditions and benefits that will be available to each on transfer, and shall be provided with written contracts of employment setting out inter alia these terms, conditions and benefits, on transfer.

29. ORGANISATIONAL PLAN

- 29.1. Within 3 (three) months of the Effective Date the Operator shall propose an "Organisational Plan", drafted in consultation with the Municipality. The Organisational Plan shall define how the Transferred Employees and others will be accommodated in the Function, their roles and responsibilities, job descriptions and conditions of employment.
- 29.2. The parties agree that whilst the Organisational Plan will result in re-organisation it will not result in retrenchment, redundancy or decrease in existing remuneration benefits of the Transferred Employees at the time of implementation of the Organisational Plan. Vacant posts will be filled by the Operator where required by the Organisational Plan.
- 29.3. 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.

- 29.4. Once it has been finalised, the key positions will be advertised and filled. Once the Transferred Employees are accommodated, preference will be given to Operator employees and then employees of the Municipality who apply. Only if there is no appropriate skill and expertise available from these two sources may the job be advertised externally. Preference will be given to the local community.
- 29.5. The Operator shall be responsible for paying employees their salaries and benefits.

30. TRAINING

- 30.1. The Operator shall plan for and provide a reasonably adequate and appropriate budget for staff training and development.
- 30.2. The Operator is to achieve regulatory compliance with regard to skills required for the Bulk Works within a period of three years from the Effective Date.
- 30.3. 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.
- 30.4. Every manager in 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.

31. CONTROL OF EMPLOYEE CONDUCT

- 31.1. The Operator shall at all times ensure that sufficient suitable and appropriately qualified and experience 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.
- 31.2. 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.

32. 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

33. 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.

34. PROCUREMENT AND ECONOMIC EMPOWERMENT

- 34.1. The Operator is solely responsible for independently procuring goods and services for the undertaking of its obligations in accordance with this Contract.
- 34.2. For the period ending 30 June 2017 the Operator is to use the Municipality's chemicals supply contract.
- 34.3. The Operator's procurement policy shall promote sustainable:
- 34.3.1. broad-based black economic empowerment; and
 - 34.3.2. support of small and medium enterprises within the area of jurisdiction of the Municipality.

35. SUB-CONTRACTING

- 35.1. The Operator may, in its sole discretion, appoint consultants, contractors and suppliers to undertake any portion of its obligations in terms of this Contract, 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.
- 35.2. 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.
- 35.3. 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.
- 35.4. 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.

PART I: DISPUTE RESOLUTION

36. INTERDICT AND URGENT RELIEF

The provisions of clauses 37, 38 and 39 will apply except where an interdict is sought or urgent relief may be obtained from a court of competent jurisdiction on reasonable grounds.

37. AMICABLE SETTLEMENT

- 37.1. 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.
- 37.2. 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 38.2 or arbitration in terms of clause 39.

38. EXPERT DETERMINATION

- 38.1. 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 38.2 shall apply.
- 38.2. 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 -
- 38.2.1. to an accounting or financial matter, a practicing chartered accountant of not less than 10 (ten) years standing as such;
 - 38.2.2. 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
 - 38.2.3. to a legal matter, a practicing Attorney or Advocate of not less than 10 (ten) years standing as such.
- 38.3. 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.
- 38.4. 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.
- 38.5. 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.
- 38.6. The expert shall determine the liability for his charges.
- 38.7. 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.

39. ARBITRATION

- 39.1. If amicable settlement of a dispute is not reached in terms of clause 37 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:
- 39.1.1. at Hermanus unless otherwise agreed by the Parties;
 - 39.1.2. 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;
 - 39.1.3. with legal representation if required by either of the Parties; and
 - 39.1.4. 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 39.1. The Parties hereby undertake to use their best endeavours to procure the expeditious completion of the arbitration.
- 39.2. The arbitrator shall be a person agreed to between the Parties within 10 (ten) days after the notice in clause 39.1 has been given, failing that, an appropriately experienced person nominated by the President of the relevant professional body subject to the following provisions –
- 39.2.1. 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;
 - 39.2.2. 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
 - 39.2.3. 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.
- 39.3. 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.
- 39.4. 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.
- 39.5. The arbitrator shall –
- 39.5.1. 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;
 - 39.5.2. 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
 - 39.5.3. give his award in writing, fully supported by reasons.
- 39.6. The Parties irrevocably agree and undertake that any award, ruling or order made by the arbitrator –
- 39.6.1. shall be final and binding upon them;
 - 39.6.2. 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
 - 39.6.3. 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.

- 39.7. The provisions of this clause 39 are severable from the rest of this Contract and shall remain in effect even after this Contract is terminated for any reason.
- 39.8. The Parties irrevocably consent to comply with the provisions of this clause 39 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.
- 39.9. 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

40. BREACH

- 40.1. 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.
- 40.2. 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 40.1 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 40.1 and the other Party shall at its election be entitled to terminate the Contract (or part thereof).
- 40.3. Prior to the Party invoking any right to terminate this Contract in terms of clause 40.2, 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).
- 40.4. 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 42 shall commence.

41. FORCE MAJEURE

- 41.1. 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:
- 41.1.1. 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;
 - 41.1.2. any act of God, including extra-ordinary flood, drought, lightning, earthquake and the impact of meteorites;
 - 41.1.3. a consequence arising from or inherent in the design, specification or defective materials of the existing Bulk Works; and
 - 41.1.4. 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.

- 41.2. 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.
- 41.3. 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.
- 41.4. 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.
- 41.5. 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.
- 41.6. 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.
- 41.7. If, following the issue of any notice referred to in clause 41.4, 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.
- 41.8. 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 42.

42. TERMINATION

- 42.1. In addition to what is said in clause 42.6 below, the termination of this Contract may occur at the instance of the Municipality and on a date specified in writing by the Municipality:
- 42.1.1. 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, for the winding up or judicial management of the Operator;
 - 42.1.2. 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);
 - 42.1.3. if, subject to clause 41 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;
 - 42.1.4. by reason of Force Majeure which goes to the essence of the Contract as set out in 41; or
 - 42.1.5. by reason of an unremedied material breach as set out in clause 40.
- 42.2. 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.
- 42.3. The termination process shall be initiated by a notice from either Party who has the right to deliver such notice in accordance with clauses 40, 41 and 42, or 6 (six) months prior to the expiry of the Contract. This notice shall trigger a "transitional phase".

- 42.4. During the transitional phase triggered in terms of clause 42.3:
- 42.4.1. the Municipality shall determine whether the business (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 its nominee, and the consequences of such decision;
 - 42.4.2. the parties shall agree on a "hand back process" which is cost-effective, efficient, orderly and designed to ensure an uninterrupted operation and maintenance of the Bulk Works and delivery of the IA Services;
 - 42.4.3. the Operator shall continue to undertake the Function in accordance with the Contract until the Municipality or its nominee have taken control of the undertaking of the Function.
- 42.5. 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.
- 42.6. Notwithstanding what is contained elsewhere in this Contract and more specifically this clause 42, the Parties record and agree for the sake of absolute certainty that the Municipality shall have the right to terminate this Contract, in the event of a judgment being granted (whether pursuant to WCHC Case No. 17203/2015 or any other case), which sets aside the tender award (Tender No. SC 1508/2014) to the Operator, and that judgment not being subject to appeal, or, if it is, where such an appeal is not pursued within the permissible allowed time; in which event neither party shall have any claim against the other for any loss or other damage arising from or connected to the conclusion or termination of the Contract, save that the Operator will have the right to be paid for services performed up until the date of termination as contemplated herein. The Municipality will retain its rights in respect of any breach committed by the Operator during the duration of the Contract which has not yet been remedied or compensated. The termination of the Contract as contemplated in this clause 42 shall be without prejudice to any other rights that the Municipality may have at law.

43. EFFECT OF TERMINATION

- 43.1. On the date of termination of the Contract as referred to in clause 42.5 -
- 43.1.1. the rights and obligations of the Operator in respect of undertaking the Function shall terminate;
 - 43.1.2. the rights and obligations of the Operator in relation to the Bulk Works shall terminate;
 - 43.1.3. the Bulk Works owned by the Municipality 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;
 - 43.1.4. the obligations of the Operator under this Contract as well as the staff and Bulk Works, shall be transferred at no additional cost to the Municipality in accordance with the instructions of the Municipality;
 - 43.1.5. all the 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
 - 43.1.6. all monies due and payable by either Party to the other shall be settled.

PART K: GENERAL

44. GOOD FAITH AND CO-OPERATION

- 44.1. 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.

44.2. 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.

45. **LIABILITY**

45.1. Subject to terms stated in this Contract, the Operator undertakes and assumes the responsibility for the undertaking of the Function and provision of the IA Services 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.

45.2. 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.

45.3. Subject to clause 45.2, the Operator shall, with effect from the Effective Date and during the currency of this Contract -

45.3.1. 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;

45.3.2. 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

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

45.4. Subject to clause 45.2, 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.

45.5. 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 or provide the IA Services in terms of this Contract that may occur after the Effective Date.

46. **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.

47. **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.

48. **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.

49. **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.

50. 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.

51. 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.

52. 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.

53. CONTRACT BINDING ON SUCCESSORS-IN-TITLE

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

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

54. DOMICILIUM CITANDI ET EXECUTANDI

54.1. 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 –

54.1.1. **Municipality:**

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

54.1.2. **Operator:**

Attention: Chief Executive Officer: Operator
 Physical Address: Unit 7 Riverside Industrial Park, 25 Textile Street, Paarl, 7646
 Postal Address: P O Box 7240 Noorder Paarl 7623
 Telephone No: 021 871 1877

54.2. 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.

- 54.3. 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*.

55. WHOLE AGREEMENT, NO AMENDMENT

- 55.1. 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.
- 55.2. 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.
- 55.3. 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.
- 55.4. 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.

56. SIGNATURES

- 56.1. This Contract is signed by the parties on the dates and at the places indicated below.
- 56.2. This Contract, together with its annexures, may be executed in several counterparts, each of which shall together constitute one and the same document.
- 56.3. The persons signing this agreement in a representative capacity warrant their authority to do so.

DATEPLACEWITNESSSIGNATUREFor: **OVERSTRAND LOCAL MUNICIPALITY**

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

ANNEXURE A: PRICING SCHEDULE

A) Fixed Monthly Rates				
Ref no	ITEM	No of months	Fixed rate pm (excluding VAT)	TOTAL
A	GENERAL			
A.1	FIXED CHARGES WASTEWATER TREATMENT WORKS			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.1.1	Hawston WWTW: O&M	12	R 19 220.00	R 230 640.00
A.1.2	Hermanus WWTW: O&M	12	R 46 830.00	R 561 960.00
A.1.3	Stanford WWTW: O&M	12	R 18 225.00	R 218 700.00
A.1.4	Gansbaai WWTW: O&M	12	R 26 250.00	R 315 000.00
A1.5	Kleinmond WWTWL O&M	12	R 23 170.00	R 278 040.00
A.1	SUBTOTAL A.1			R 1 604 340.00
A.2	FIXED CHARGES WATER TREATMENT WORKS			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.2.1	Preekstoel WTW: O&M	12	R 432 920.00	R 5 195 040.00
A.2.2	Buffels River WTW: O&M	12	R 17 680.00	R 212 160.00
A.2.3	Franskraal WTW: O&M	12	R 54 740.00	R 656 880.00
A.2.4	Pearly Beach WTW: O&M	12	R 3 760.00	R 45 120.00
A.2.5	De Kelders WTW: O&M	12	R 5 075.00	R 60 900.00
A.2.6	Stanford WTW: O&M	12	R 115.00	R 1 380.00
A.2.7	Baardskeerdersbos WTW: O&M	12	R 4 890.00	R 58 680.00
A.2.8	Kleinmond WTW: O&M	12	R 35 660.00	R 427 920.00
A.2.9	Buffeljags WTW: O&M	12	R 135.00	R 1 620.00
A.2	SUBTOTAL A.2			R 6 659 700.00

A) Fixed Monthly Rates				
Ref no	ITEM	No of months	Fixed rate pm (excluding VAT)	TOTAL
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	12	R 38 300.00	R 459 600.00
A.3	SUBTOTAL A.3			R 459 600.00
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	12	R 2 725.00	R 32 700.00
A.4	SUBTOTAL A.4			R 32 700.00
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	12	R 22 810.00	R 273 720.00
A.5	SUBTOTAL A.5			R 273 720.00
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	12	R 74 210.00	R 890 520.00
A.6	SUBTOTAL A.6			R 890 520.00

A) Fixed Monthly Rates				
Ref no	ITEM	No of months	Fixed rate pm (excluding VAT)	TOTAL
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	12	R 25 060.00	R 300 720.00
A.7	SUBTOTAL A.7			R 300 720.00
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 pumpstations	12	R 28 760.00	R 345 120.00
A.8	SUBTOTAL A.8			R 345 120.00
A.9	FIXED CHARGES BULK SEWER PIPELINES			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.9.1	Monthly charge for all sewer pipelines combined	12	R 63 250.00	R 759 000.00
A.9	SUBTOTAL A.9			R 759 000.00

B) Variable Rates based on Overstrand Chemicals Contract					
Ref no	ITEM		No of months	Rate per kl (excluding VAT)	TOTAL (for year)
B	VARIABLE CHARGES (Based on OM Chemicals contract)				
B.1	VARIABLE CHARGES WASTEWATER TREATMENT WORKS Contractual Requirements (includes all costs required to deliver undertake the Function as per Technical Specifications)	Assume monthly demand (kl/m) for bidding purpose		Rate per Kl received	
B.1.1	Hawston WWTW	10 490	12	R 0.36	R 45 316.80
B.1.2	Hermanus WWTW	227 490	12	R 0.20	R 545 976.00
B.1.3	Stanford WWTW	14 170	12	R 0.43	R 73 117.20
B.1.4	Gansbaai WWTW	35 190	12	R 0.18	R 76 010.40
B.1.5	Kleinmond WWTW	42 920	12	R 0.10	R 51 504.00
	SUBTOTAL B.1				R 791 924.40
B.2	VARIABLE CHARGES WATER TREATMENT WORKS Contractual Requirements (includes all costs required to deliver undertake the Function as per Technical Specifications)	Assume monthly demand (kl/m) for bidding purpose		Rate per Kl treated water received by Overstrand	
B.2.1	Preekstoel WTW: O&M	334 340	12	R 0.24	R 962 899.20
B.2.2	Buffels River WTW: O&M	73 700	12	R 0.83	R 734 052.00
B.2.3	Franskraal WTW: O&M	81 610	12	R 4.13	R 4 044 591.60
B.2.4	Pearly Beach WTW: O&M	15 850	12	R 0.94	R 178 788.00
B.2.5	De Kelders WTW: O&M	46 420	12	R 0.42	R 233 956.80
B.2.6	Stanford WTW: O&M	24 640	12	R 0.03	R 8 870.40
B.2.7	Baardskeerdersbos WTW: O&M	970	12	R 4.97	R 57 850.80
B.2.8	Kleinmond WTW: O&M	63 080	12	R 0.55	R 416 328.00
B.2.9	Buffelsjags Bay	140	12	R 0.00	R 0.00
	SUBTOTAL B.2				R 6 637 336.80

Note: if the cession of Overstrand Municipality's chemicals contract to Veolia for the remainder of the contract period is not successful, the amounts for chemicals supplied by Overstrand Municipality will be deducted from payments due to Veolia for the function.

C) Variable Rates based on Veolia's own chemical supply					
Ref no	ITEM		No of months	Rate per k (excluding VAT)	TOTAL (for year)
C	VARIABLE CHARGES (Based on own Chemicals supply)				
C.1	VARIABLE CHARGES WASTEWATER TREATMENT WORKS Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)	Assume monthly demand (kl/m) for bidding purpose		Rate per Kl received	
C.1.1	Hawston WWTW	10 490	12	R 0.28	R 35 246.40
C.1.2	Hermanus WWTW	227 490	12	R 0.18	R 491 378.40
C.1.3	Stanford WWTW	14 170	12	R 0.36	R 61 214.40
C.1.4	Gansbaai WWTW	35 190	12	R 0.15	R 63 342.00
C.1.5	Kleinmond WWTW	42 920	12	R 0.07	R 36 052.80
	SUBTOTAL C.1				R 687 234.00
C.2	VARIABLE CHARGES WATER TREATMENT WORKS Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)	Assume monthly demand (kl/m) for bidding purpose		Rate per Kl treated water received by Overstrand	
C.2.1	Preekstoel WTW: O&M	334 340	12	R 0.22	R 882 657.60
C.2.2	Buffels River WTW: O&M	73 700	12	R 0.76	R 672 144.00
C.2.3	Franskraal WTW: O&M	81 610	12	R 3.73	R 3 652 863.60
C.2.4	Pearly Beach WTW: O&M	15 850	12	R 0.82	R 155 964.00
C.2.5	De Kelders WTW: O&M	46 420	12	R 0.27	R 150 400.80
C.2.6	Stanford WTW: O&M	24 640	12	R 0.02	R 5 913.60
C.2.7	Baardskeerdersbos WTW: O&M	970	12	R 4.22	R 49 120.80
C.2.8	Kleinmond WTW: O&M	63 080	12	R 0.52	R 393 619.20
C.2.9	Buffelsjags Bay	140	12	R 0.00	R 0.00
	SUBTOTAL C.2				R 5 962 683.60

D.1	PROVISIONAL SUMS		Veolia: Provisional Sum (excluding VAT)
D.1.1	Provisional capital sum for equipment or major repairs (in excess of R50 000 per incident) as may be required by the Employer	Sum	R 350 000.00
D.1.2	Provisional sum for upgrading of facilities	Sum	R 200 000.00
	SUBTOTAL (OM chemicals)		R 19 304 681.20
	Contingencies (5%)		R 965 234.06
	SUBTOTAL 1		R 20 269 915.26
E.	SALARY CONTRIBUTION (OM STAFF COSTS)	Sum	R 13 283 247
	SUB TOTAL 2 (Estimated value of contract for 2015/2016, excluding VAT)		R 33 553 162.26
	14% VAT ON SUBTOTAL 1		R 2 837 788.14
	TOTAL TENDER SUM FOR YEAR 1 (Estimated value of contract for 2015/2016, including VAT, for 12 months)		R 36 390 950.40
F. VEOLIA: TENDERED IMPLEMENTING AGENT FEE			
	Veolia % Implementing Agent Fee		6 %

Notes:

1. The total is the annual amount for the period 2015/16. The Operator will only be paid from the Effective Date of the Contract for the remainder of the 2015/16 Financial Year.
2. The amounts in D.1.1 and D.1.2 are indicative amounts which will be drawn against as and when costs are incurred by the Operator and invoiced.
3. Provisional sum D.1.1. will be determined annually and budgeted for by the Municipality in accordance with the requirements of the Function as determined in the Annual Plan.
4. Provisional sum D.1.2 is only applicable in the first year.
5. The fixed cost contribution for salary costs of posts associated with the Function as at October 2014 (E) will be paid out monthly in 12 equal payments. This amount will be escalated yearly based on the SALGBC increases and the schedule below will be used for the calculation.
6. The Salary Contribution determination was based on the assumption that SALGBC will apply a 6.1 % average increase from 1 July 2015 and the amounts in the schedule reflects this assumption.

SCHEDULE: SALARY CONTRIBUTION COST BASE 2015**Note:**

1. Schedule to be used only for determination of annual escalation of Salary Contribution.
2. The Salary Contribution determination was based on the assumption that SALGBC will apply a 6.1 % average increase from 1 July 2015 and the amounts in the schedule reflects this assumption.
3. Costs and benefits of the posts in the schedule to be escalated and increased as per annual published SALGBC increases.

	Post Position level	Salary	Overtime	Bonus	Rent allowance	Housing allowance	Standby	Night Shift	ACT allowance	Cellphone allowance	ESS allowance	UIF	Medical	Pension allowance	Group Insurance	Prov Fund	Bargaining Council	Skills levy	ORIGINAL SCHEDULE FILLED POSITIONS	
1001	GOUJMS PJ	229189	131331	18872	0	0	35522	0	0	5160	0	1785	47758	41254	1694	0	81	2362	515009	
1013	THOMAS M	173809	92500	14541	0	0	22902	0	0	0	0	1741	37374	31286	1285	0	81	1755	372774	
1003	SMITH P	172442	60399	14199	0	0	17553	717	0	0	0	1731	26762	31040	1593	0	81	1742	328258	
1006	JONAS JJ	171417	64877	14199	0	0	19759	311	2047	0	0	1721	0	30855	1267	0	81	1729	308264	
1007	GERTSES	87230	29047	7312	3000	0	9177	600	11655	0	0	1106	15626	15701	645	0	81	1053	182234	
1004	MGGEL DH	219643	98732	18872	0	0	42522	0	0	5160	56528	1785	31252	41336	2122	0	81	3092	531125	
1005	HENCKE I	264234	57713	21759	0	0	57260	0	0	5160	56528	1785	37374	47562	1953	0	81	3708	555116	
1006	PAMBANISO Y	278697	0	23361	0	0	0	0	0	2268	12233	1785	18359	50165	2060	0	81	2981	389772	
1007	DUPLESSIS J	191846	88928	15987	0	4824	42789	0	0	0	7863	1613	0	34532	1418	0	81	1959	411443	
1008	THONJENI M	154974	96087	12914	0	0	18089	0	0	0	0	0	0	0	1146	27895	81	1622	327109	
1009	PLAATHIES DM	171417	64877	14199	0	0	19759	311	2047	0	0	1741	32675	30855	1267	0	81	1729	326675	
1010	PHILLIPS GA	154974	86156	12914	0	0	0	17064	0	0	17315	1722	18311	0	1146	27895	81	1741	339319	
1011	SIABBERT JJ	172101	94866	14199	0	0	0	18433	0	0	20628	1728	0	30978	1272	0	81	1735	356021	
1012	MOLI M	112532	68933	9267	0	0	0	12998	0	0	23097	1190	0	20256	832	0	81	1134	227215	
1013	SIEGELS CC	113640	69951	9489	0	0	0	13432	0	0	9772	1173	0	20455	840	0	81	1147	253323	
1014	SKINNER RC	111645	61441	9267	0	0	0	12592	0	0	9772	1173	0	20096	825	0	81	1126	228018	
1015	MARS C	110985	55460	9267	0	0	0	11416	0	0	6597	1166	0	19977	820	0	81	1120	216890	
1016	TAYLOR ME	231459	8319	19326	0	0	32275	0	0	5160	56528	1785	32290	41663	1711	0	81	3134	433730	
1017	HENDRICKS F	172101	40057	14199	0	0	24864	0	0	0	0	1785	17313	30978	1272	0	81	1893	304543	
1018	GROBLER HD	172101	44593	14199	0	0	24767	0	0	0	0	1785	17313	30978	1272	0	81	1893	308982	
1019	TAYOB Y	75974	5982	6344	0	0	4111	0	0	0	0	823	0	13675	562	0	81	767	108319	
1020	MAEKISO M	78862	19594	6493	0	0	12778	0	0	0	0	989	16046	14195	583	0	81	941	150573	
1021	FELIX D	86365	13332	7139	0	0	10700	0	0	0	0	1085	17313	15546	638	0	81	1028	153229	
1022	JAENSE M	83175	22892	6972	0	0	12647	0	0	0	0	902	0	14972	615	0	81	840	143095	
1023	HAVENGA CJ	74317	0	6193	0	0	0	0	0	0	0	805	0	13377	549	0	81	750	96072	
1024	MAHANGUF	120839	45467	9951	0	0	25263	0	374	0	0	1258	26762	21751	893	0	81	1218	253858	
1025	MAHANGUF	84500	15697	6972	0	0	15147	0	0	0	0	1065	16941	15210	625	0	81	1006	157244	
1026	KONCO NR	84165	26232	6972	0	0	13019	0	0	0	0	911	0	15150	622	0	81	833	147985	
1027	FERRY S D D	105018	45041	8630	0	0	16161	0	45429	0	0	1113	0	18903	776	0	81	1058	242210	
1028	KROUKAMP IM	171759	55217	14199	0	6264	26724	0	0	2268	0	1774	13369	30917	1270	0	81	1802	325644	
1029	FERRY DJ	91989	48498	7666	0	0	0	0	0	0	0	992	0	680	16558	0	81	934	167398	
1030	KLEINHANS CJ	86711	42687	7139	0	0	0	0	0	0	0	938	0	15608	641	0	81	874	154680	
1031	VANTY A	96470	48000	8039	0	0	0	0	0	0	0	1033	0	17365	713	0	81	963	172664	
1032	FELIX AJ	89141	0	7486	0	0	0	0	0	0	0	965	0	16045	659	0	81	900	115278	
1033	XHINTI M	89141	39511	7486	0	0	0	0	0	0	0	965	0	16045	659	0	81	900	154789	
1034	ARRIES OW	88271	14587	7312	0	0	0	0	0	22249	2268	0	956	0	15889	652	0	81	913	153179
1035	BOTHA K	185523	59349	15246	0	0	43952	0	0	0	0	1785	0	33394	1371	0	81	2012	342714	
1036	MAKONZA V	86711	38099	7139	0	0	0	10070	0	0	0	938	0	15608	641	0	81	874	160162	
1037	MAHANGUF	87749	15448	7312	0	0	0	0	0	0	0	951	0	15795	649	0	81	885	128870	
1038	DLONGWANA M	87749	0	7312	0	0	0	0	0	0	0	951	0	15795	649	0	81	885	113422	
1039	MAFILIKANA ZW	108604	46143	9050	0	0	0	13571	0	0	0	1144	0	19549	803	0	81	1096	200041	
1040	MADLAVULE AS	85338	12010	7139	0	0	0	0	0	0	0	925	0	15361	631	0	81	861	122347	
1041	MALUWA V	108392	48712	9050	0	0	0	0	0	0	0	1142	0	19511	801	0	81	1094	200305	
1042	CHRISTOFFELS AM	168727	46496	13866	0	0	35444	0	93884	0	56528	1697	0	0	1247	30371	81	1712	490054	
1043	STEVENS P	87749	42900	7312	0	0	8393	0	0	0	0	951	0	649	15795	0	81	891	164721	
1044	PHARO J	79019	19971	6493	0	0	1927	0	0	0	0	855	33779	14223	584	0	81	885	133003	
1045	JOHNSON DJ	76274	6872	6344	0	0	4826	437	0	0	0	826	0	13729	564	0	81	769	161066	
1046	ADAMS AS	87749	11198	7312	0	0	0	0	615	0	0	951	0	15795	649	0	81	885	154748	
1047	ADAMS AA	85171	32665	7139	0	0	22770	0	0	0	0	923	0	15331	630	0	81	860	165570	
1048	NGEWHU HC	95715	45474	8039	0	0	12509	0	0	0	0	1025	0	0	884	17229	81	975	181931	
1049	MARITZ WJ	87749	39125	7312	0	0	12903	0	0	0	0	951	0	15795	649	0	81	885	166258	
1050	LE ROUX G	283707	23361	23361	0	0	25000	0	809	0	0	951	42681	51067	2097	0	81	3448	502151	
		213680								12396	56528	1785	42681	51067	2097	0	81		213680	
		708648	223919	570083	3000	11088	628676	142178	233007	39648	139855	67405	496474	1101362	51723	135743	4312	74196	R 13 283 247	

Peak time workers. 5 workers for 8 weeks pa

ANNEXURE B: PERFORMANCE INDICATORS

[Note: Base lines for measuring performance to be established in Hand Over period and agreed in first Annual Plan and annually thereafter]

	KEY PERFORMANCE AREA	KEY PERFORMANCE INDICATOR	Measure	Frequency	Penalty
1	Blue Drop Status	Achieve and maintain status for each water scheme	Blue Drop	Annually	2% of the previous Financial Years Annual Operator Fee for the scheme that did not achieve that scheme's target agreed in the Annual Plan, or R50 000, whichever is the greater
2	Water quality	Compliance with Regulatory Standards (SANS 241)	Percentage of compliance	Monthly	100% of the pro rate monthly Fixed Charges due for the treatment work for period when the sample was taken until proven to comply,; provided that the feed water quality and quantity is within the design limits, and funding for prioritised and related Large Repair and Maintenance projects has been approved by the Municipality.
3	Green Drop Status	Achieve and maintain status for each waste water scheme	Green Drop	Annually	2% of the previous Financial Years Annual Operator Fee for the waste water scheme that did not achieve that scheme's target agreed in the Annual Plan, or R50 000, whichever is the greater
4	Waste Water Quality	Achievement of Regulatory standards (Department of Water and Sanitation)	Monthly tests	Monthly	100% of pro rata monthly Fixed Charges due for the treatment work for the period when the sample was taken until proven to comply, for the treatment work where there is non-compliance; provided that the feed water quality and quantity is within the design limits, and funding for prioritised and related Large Repair and Maintenance Projects has been approved by the Municipality.
5	Treatment Capacity (WTW)	Production capacity managed to exceed demand (up to design capacity)	Interruptions in supply	Monthly	100% of Operator Fee due for the treatment work pro rata for period when the supply is interrupted; provided that the feed water quality and quantity is within the design limits, and funding for prioritised and related Large Repair and Maintenance Projects has been approved by the Municipality.
6	Treatment Capacity (WWTW)	Treatment capacity managed to exceed demand (up to design capacity)	Inflow volumes treated to the required standards	Monthly	100% of Operator Fee due for the treatment work pro rata for the period when the treatment process is interrupted; provided that the feed water quality and quantity is within the design limits, and funding for prioritised and related Large Repair and Maintenance Projects has been approved by the Municipality.
7	Planned Maintenance	Maintenance undertakings in Operations and	Plan submitted and accepted by	Annually	Operator to be liable for all and any costs from issues arising that are routine maintenance and were not

	KEY PERFORMANCE AREA	KEY PERFORMANCE INDICATOR	Measure	Frequency	Penalty
		Maintenance Plan undertaken	Municipality and maintenance undertakings achieved		addressed as part of Plan
8	Water Efficiency	Water losses managed per facility as per Operations and Maintenance Plan	Water meter reading report per facility	Monthly	Volume lost in excess of base line loss to be deducted from variable volume based fee
9	Electricity Efficiency	Energy consumption per facility managed as per Energy Management Plan and with the aim of achieving improved energy efficiency	Electricity meter reading report per facility	Monthly	Any proven saving in the cost of energy obtained by operational improvements implemented by the Operator will be shared equally by the Operator and the Municipality. Operator to be liable for actual additional cost of consumption in excess of planned consumption should there be a future deterioration in performance due to lack of proper management
10	Pump Station Failure	Overflows managed	Per spillage incident	Monthly	R10 000 per day; provided that the design of the system, the redundant capacity and the installed back-up power are sufficient in accordance with industry norms
11	Complaints which can be related to the Function	Number of complaints directly related to Function minimised	Number of complaints	Monthly	Report only
12	Reporting	Routine reporting and meetings with Municipality undertaken	Meetings and Reports	Monthly or as is contractually agreed	0.5% of monthly fixed fee if reporting not undertaken in a required period
13	Contract Management	Contract and Annual Plan updated and implemented	Contract and Annual Plan	Annually or as is required	0.5% of monthly fixed fee per month that Annual Plan is not updated as per contractual process
14	Health and Safety compliance	Health and Safety Incidents managed	Compliance with regulatory provisions	Monthly	Operator to be liable for costs from issues arising that were not addressed as part of Annual Plan for account of Operator
15	Training and Development	Employee training and development undertaken	Plan submitted and accepted by Municipality and undertakings in Plan achieved (including the plan to achieve Regulatory compliance over 3 years)	Annually	Penalty equal to annual budget not spent by Operator as planned for; provided that the handover issues in regard to the Transferred Employees are not the cause of the delays.

APPENDIX: REQUEST FOR PROPOSAL