



THEEWATERSKLOOF MUNICIPALITY

**NOTICE: LONG TERM AGREEMENT – OVERBERG WATER / THEEWATERSKLOOF MUNICIPALITY FOR
THE SUPPLY OF WATER TO CALEDON**

Notice is hereby given in terms of Section 21 A of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) and Section 33 of the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003).

Theewaterskloof Municipality intends to enter into a long term agreement with Overberg Water to supply water to Caledon. The draft agreement will be available on the web site (www.twk.org.za) for the local community and interested groups to provide written comments or objections. The agreement is a legal requirement.

The above mentioned documents are also available for inspection at the Municipal Offices and libraries and any person who cannot read or write, may seek the assistance of the persons indicated below to transcribe his / her comments or objections:

- | | |
|--------------------------------------|---------------------------------------|
| (a) Fontein Street Botrivier | Tel : 028 – 284 9538 - Ms A Stander |
| (b) Plein Street Caledon | Tel : 028 – 214 3300 - Ms A Plaatjies |
| (c) Strydom Ave Genadendal | Tel : 028 – 251 8130 - Mr A Potberg |
| (d) Arbour Drive Grabouw | Tel : 021 – 859 2507 - Ms T Madwayi |
| (e) Ds Botha Street Greyton | Tel : 028 – 254 9620 - Ms J Swart |
| (f) Buitekant Street Riviersonderend | Tel : 028 - 261 1360 - Ms J Fullard |
| (g) Main Street Villiersdorp | Tel : 028 – 840 1130 - Ms M Pietersen |

Estimate Financial Impact

Approximately R 4.2 million per annum, based on a consumption of approximately 2 000 ML per annum.

Written comments or objections on the documentation should reach the Office of the Municipal Manager at or before 4 March 2010 (12:00).

HSD Wallace
MUNICIPAL MANAGER
6 Plein Street / P O Box 24
CALEDON
7230

SECTION A: INTRODUCTION

1. RECORDAL

Whereas the MUNICIPALITY is responsible for ensuring that all residents within the jurisdictional area of the MUNICIPALITY have access to water services in accordance with the Constitution of the Republic of South Africa Act, Act 108 of 1996, the Local Government: Municipal Structures Act, Act 117 of 1998, the Local Government: Municipal Systems Act, Act 32 of 2000 and the Water Services Act, Act 108 of 1997 and at the effective date is providing water services to the residents and will continue to do.

And whereas, at the effective date, the WATER BOARD has been providing bulk water supply services to the MUNICIPALITY and has the expertise, capacity and infrastructure to continue to provide bulk water services to the MUNICIPALITY.

THEREFORE the parties agree that the WATER BOARD be appointed to provide bulk water services to the MUNICIPALITY on the terms and conditions as more fully set out in this contract.

2. INTERPRETATION AND PRELIMINARY

2.1. Unless a contrary intention indicates, word imparting-

- 2.1.1. The singular include the plural and vice versa;
- 2.1.2. Any one gender include both genders; and
- 2.1.3. Natural persons include created entities (corporate or unincorporated) and the 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. “bulk water supply services” means the provision of potable water by the WATER BOARD to the MUNICIPALITY at identified customer connections;
- 2.2.2. “Department” means the Director- General of the Department of Water Affairs or any other official duly authorised by him;
- 2.2.3. “capital expenditure programme” means the programme of the WATER BOARD describing all significant capital expenditure to be incurred or investments to be made by the WATER BOARD in respect of all

immovable assets, including but not limited to pipelines, reservoirs and pumping stations;

- 2.2.4. “competent authority” means collectively the Minister, all spheres of Government, any court of competent jurisdiction or any agency, authority, body or standard setting institution, established or appointed in terms of any regulatory provision to regulate and oversee the activities of the MUNICIPALITY or the WATER BOARD pursuant to this contract or if the context is appropriate any one of them;
- 2.2.5. “contract” means this contract and any annexure or annexures hereto, as well as any subsequent amendment, notation or substitution of this contract and annexure or annexures in accordance with this contract:
- 2.2.6. “contract term” means the period defined in clause 5;
- 2.2.7. “CPIX” means the consumer price index excluding interest on mortgage bonds, for metropolitan and other urban areas (Base 2000 = 100), published from time to time by Statistics SA in Statistical Release PO141.1;
- 2.2.8. “customer connection” means the equipment installed by the WATER BOARD to connect the MUNICIPALITY to the WATER BOARD’s existing pipeline, the piping from the connection to the meter installation, the meter installation itself (that is, the meter, meter housing and the upstream and downstream isolation valves) and the 1,5 meters of piping downstream of the outer meter housing, with the length of piping between existing WATER BOARD infrastructure and the meter installation limited to minimum length necessary to ensure-
- 2.2.8.1. The proper functioning of the meter; or
- 2.2.8.2. The accessibility of the meter installation and non-interference with the WATER BOARD’s infrastructure or adjacent infrastructure;
- 2.2.9. “effective date” means either the date of last signature of this contract or another date as agreed between the parties in writing. (Which date could be earlier than the last date of signature of the contract);
- 2.2.10. “meter” means a meter which is used to determine the volume of water provided to the MUNICIPALITY at the customer connection on which bulk water supply services charges payable by the MUNICIPALITY is calculated;
- 2.2.11. “Minister” means the Minister of Water Affairs

- 2.2.12. “municipal customers” means the MUNICIPALITY and all other municipalities and water services providers to whom the WATER BOARD provides bulk water supply services, individually or collectively, as the context may require;
- 2.2.13. “MUNICIPALITY” means the Theewaterskloof Local MUNICIPALITY established in terms of Section 12 and authorized in terms of the Local Government: Municipal Structures Act, Act 117 of 1998 to exercise executive authority for water and sanitation services;
- 2.2.14. “municipal manager” means the municipal manager as defined in section 82(1)(a) of Local Government: Municipal Structures Act, Act 117 of 1998;
- 2.2.15. “normal growth” means the estimated growth in demand for water in a financial year or a number of financial years defined by the MUNICIPALITY in its Integrated Development Plan or Water Services Development Plan, which estimate is based on social and economic development;
- 2.2.16. “parties” means the MUNICIPALITY and the WATER BOARD , individually or collectively, as the context may require;
- 2.2.17. “regulatory provision” means collectively, the provision of any legislation or any regulation, a notice issued pursuant to such legislation, or a policy directive or notice issued by a competent authority, any or all of which are directly related to the provision of bulk water supply services or the related activities of the MUNICIPALITY or the WATER BOARD , or if the context is appropriate, any one of them;
- 2.2.18. “SALGA” means the South African Local Government Association recognized in terms of the Organised Local Government Act, Act 52 of 1977, to represent local government nationally;
- 2.2.19. “WATER BOARD ” means Overberg Water, a WATER BOARD deemed to be or established in terms of the Water Services Act, Act 108 of 1997;
- 2.2.20. “WATER BOARD infrastructure” means the WATER BOARD ’s overall bulk water supply services infrastructure and equipment including customer connections;

- 2.2.21. “commencement date” means the either the date of last signature of this contract or another date as agreed between the parties in writing, (which date could be earlier than the last date of signature of the contract)
- 2.3. Clause headings in this contract are for the purpose of convenience and shall not be used in interpretation to modify or amplify the terms or any clause of this contract.
- 2.4. If any provision in a definition or the recordal is a substantive provision conferring rights or imposing duties on any party, notwithstanding that it is only in the definition or recordal clause, effect shall be given to it as if it were a substantive provision in the operative part of this contract.
- 2.5. When any period of days is prescribed, days shall mean calendar days and the period shall be reckoned exclusively of the first day and inclusively of the last day and shall include any Saturday or Sunday or any public holiday.
- 2.6. 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.
- 2.7. 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 for otherwise, it will act reasonably and within a reasonable period.
- 2.8. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 2.9. 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.
- 2.10. The expiration or termination of this contract shall not affect such of the provisions of this contract as expressly provided that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 2.11. General words preceded 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.

3. OBJECTIVES OF THE CONTRACT

Recognizing the executive authority of the MUNICIPALITY to provide water services within its area of jurisdiction the parties agree that his contract should be concluded to –

- 3.1. Formalise and record the current and continued provision of bulk water supply services by the WATER BOARD to the MUNICIPALITY in writing in accordance with the requirements of the Water Services Act, Act 108 of 1997 and this contract; and
- 3.2. Provide for the rendering of bulk water supply services in an efficient, equitable, cost effective and sustainable manner; and
- 3.3. Set terms that are fair and equitable to the MUNICIPALITY and the WATER BOARD

SECTION B: APPOINTMENT, SCOPE, DURATION AND REVIEW

4. APPOINTMENT AND SCOPE

The effective date of this contract is the date on which the MUNICIPALITY and the WATER BOARD enter into this contract to provide bulk water supply services to the MUNICIPALITY

5. COMMENCEMENT AND DURATION

5.1. This contract shall commence on the effective date and shall endure for an initial period of 20 (twenty) calendar years thereafter.

5.2. The contract may be extended at the end of the initial period or during the initial period as may be necessitated by the recovery period of any capital contribution agreed by the parties, provided that the parties reach agreement on the terms and conditions of the extension.

6. REVIEW

Notwithstanding any other provisions in this contract, this contract shall be reviewable at any time during the initial or extended contract period at the written request of the MUNICIPALITY, subject to clauses 6.2 and 6.3

6.1. The objectives of any review shall be to measure the performance of the WATER BOARD against the key performance areas as determined in accordance with clause 28 and to consider any reasonable amendments to the contract that may be necessitated by the review.

6.2. Any amendments resulting for any review contemplated in this clause shall be reduced to writing and signed by both parties.

SECTION C: WATER SUPPLY STANDARDS

7. QUANTITY OF WATER AND CUSTOMER CONNECTIONS

- 7.1. It is hereby recorded that, on the commencement date, the WATER BOARD provides and shall continue to provide at all times, unless the provisions of clause 14 and 41 apply, the quantities and estimated quantities of water for future years at the existing customer connections to the MUNICIPALITY as set out in Annexure A.
- 7.2. The WATER BOARD may only adjust the estimated quantity of water specified in Annexure A with the agreement of the MUNICIPALITY.
- 7.3. If the MUNICIPALITY, at any time, requires the WATER BOARD to provide water in excess of the maximum quantity of water or estimated in Annexure A or a new customer connection, the MUNICIPALITY must apply to the WATER BOARD for an increased supply in accordance with clause 15.
- 7.4. The WATER BOARD must notify the MUNICIPALITY in writing, at least 14 (fourteen) days in advance, of any planned reduction in the quantity of water at any customer connection, the reasons therefore, the actions to be implemented to rectify the reduction and the duration of such a reduction, in accordance with the agreed system operating standards. In the event that the WATER BOARD is unable to supply the agreed quantity the provisions of clause 29 will apply.

8. WATER QUALITY

- 8.1. The WATER BOARD shall 96% of the time provide water at least equal to Class I water as specified by SANS 241 of 2006 and detailed in Annexure B unless the provisions of clause 41 apply. If the WATER BOARD fails to comply with quality standards as specified the provisions of clause 29 will apply.
- 8.2. The WATER BOARD shall monitor the quality of water within its water supply network on a monthly basis and inform the MUNICIPALITY of the results thereof.
- 8.3. The WATER BOARD shall indicate a dedicated and lockable sampling point at each of its connection points before entering the Bulk Water System of the MUNICIPALITY, whether it is on the end of a pipeline or from a WATER BOARD reservoir before entering the Municipal network. The MUNICIPALITY shall withdraw samples for analysis together with its monthly monitoring programme acting as a control for the monitoring of the WATER BOARD. The MUNICIPALITY shall make the results of this analysis available to the WATER BOARD. The sampling by the Municipality or their appointed agent shall be done in the presence of Water Board officials who will take a sample for its own control.

8.4. The WATER BOARD must inform the MUNICIPALITY, at least 14 (fourteen) days in advance if possible, of any planned deviation in the quality of water at any customer connection, the reasons therefore, the actions to be implemented to rectify such deviation and the period of such deviation, in accordance with the agreed system operating standards.

9. FLOW RATE

9.1. Annual Average Daily Demand

- 9.1.1. The annual average daily demand at each existing customer connection and the projected annual average daily demand are as recorded in Annexure A.
- 9.1.2. The WATER BOARD will every 2 (two) years at least 6 (six) months prior to the commencement of its financial year, provide the MUNICIPALITY with a list of all the MUNICIPALITY's customer connections, and the annual average daily demand of the full year of supply at each of the customer's connections.
- 9.1.3. The MUNICIPALITY taking cognisance of clause 24, must within 2 (two) months of receipt of the list referred to in clause 9.1.2 provide the WATER BOARD with projected demands at set intervals, for at least each of the most recent customer connections, based on expected growth, over the contract period and may provide amended projected demands in respect of all the remaining customer connections.
- 9.1.4. Normal growth at each customer connection will be defined by the demand projections provided by the MUNICIPALITY.
- 9.1.5. In the event that the MUNICIPALITY fails to provide the information relating to the most recent customer connections required in terms of clause 9.1.3 the WATER BOARD may determine the projected demands for each customer connection, based on expected growth, over the contract period and shall not be liable for any increased costs (in the form of capital contributions or water services supply charges because of capital costs incurred or committed and operational resources required to operate and maintain under utilized WATER BOARD infrastructure) that may be incurred by the MUNICIPALITY due to incorrect estimates. The WATER BOARD will prior to finalizing its tariffs for the following financial year inform the MUNICIPALITY of the projected demands used by the WATER BOARD in their calculations.

- 9.1.6. The WATER BOARD shall at all times meet the annual average daily demand projections as increased by normal growth at each customer connection, unless the provisions of clause 14 and 41 apply. Should the WATER BOARD fail to meet the demand for other reasons; the provisions of clause 29 shall apply.
- 9.1.7. The MUNICIPALITY shall notify in writing the WATER BOARD and all other municipal customers at least 1 (one) year in advance of any anticipated reduction of more than 15% (fifteen percent) in the projected annual average daily demands due to water demand management initiatives or any other similar circumstances. The WATER BOARD must within 2 (two) months of receiving a notice from the MUNICIPALITY notify in writing the MUNICIPALITY and other municipal customers of the projected financial implications of such a reduction.
- 9.1.8. The MUNICIPALITY must on receipt of a notice referred to in clause 9.1.7 initiate the process set out in clause 44.
- 9.1.9. Where the MUNICIPALITY fails to inform the WATER BOARD in accordance with clause 9.1.7 or fails to initiate the process referred to in clause 9.1.8 the MUNICIPALITY shall remain liable for all costs associated with its projected annual average daily demand prior to any reduction, irrespective of whether it uses lower quantities of water or not.

9.2. Daily and Hourly Peak Flows

- 9.2.1. Notwithstanding the provisions of clause 9.1, the WATER BOARD shall at all times meet the MUNICIPALITY's agreed estimated daily peak flows as recorded in Annexure A and must take all reasonable measures, including the provision of adequate storage, to ensure that this demand is met at all times. The provisions of clause 29 shall apply should the WATER BOARD fail to comply with the agreed delivery rates. Where the parties fail to reach agreement on the estimated daily peak flows or the method of calculating the estimated daily peak flows either party may refer the matter for resolution in terms of Section O of this contract.
- 9.2.2. The WATER BOARD shall undertake a detailed assessment of its ability to meet the MUNICIPALITY's daily peak flows immediately after the effective date and shall prepare and agree with the MUNICIPALITY a detailed action plan, with identified priorities, for meeting the MUNICIPALITY's daily peak flow demand, where it was unable to so on the effective date. Where the parties fail to reach agreement either party may refer the matter for resolution in terms of Section O of this contract.

- 9.2.3. The MUNICIPALITY shall be responsible for ensuring that the hourly peak flow demands do not exceed the agreed rate of flow.

10. WATER PRESSURE

- 10.1. The WATER BOARD shall maintain the minimum and maximum supply pressure per customer connection under normal operating conditions based on existing and projected annual average daily demand as set out in Annexure A.
- 10.2. The WATER BOARD must inform the MUNICIPALITY timeously of any planned reduction or increase in water pressure at any customer connection, the reasons therefore, and the actions implemented to rectify such reduction or increase and the period thereof, in accordance with the system operating standards.

SYSTEM OPERATING STANDARDS

11. NORMAL MAINTENANCE AND REPAIRS

11.1. Interruptions in Supply

- 11.1.1. The WATER BOARD may interrupt the MUNICIPALITY's supply for the purpose of renewing, testing, examining, repairing, maintaining or rehabilitating the WATER BOARD's infrastructure. The WATER BOARD shall endeavour to keep interruptions to a minimum.
- 11.1.2. The WATER BOARD shall give 21 (twenty one) days written notification of its intention to interrupt a supply and the estimated duration of such an interruption. The WATER BOARD may proceed with a planned interruption unless the MUNICIPALITY indicates that the interruption may not take place. In such an event the parties will have to agree on alternative dates or mitigating actions.

11.2. Failures and Leaks

- 11.2.1. The WATER BOARD shall repair unexpected failures and leaks in its infrastructure causing a deviation in the agreed quantity, quality, flow rate or pressure within 24 (twenty four) hours.

- 11.2.2. If it becomes clear that it will not be possible to adhere to the times specified in clause 11.2.1 the WATER BOARD shall immediately notify the MUNICIPALITY. It is specifically recorded that all repairs that exceeds 24 (twenty four) hours shall be treated as an emergency by both parties and that the provisions of clause 13 will apply. In the event that it is proven that the inability of the WATER BOARD to effect the repairs within the times specified is due to operational reasons which should have been foreseen by the WATER BOARD, the provisions of clause 29 will apply.

12. METERS

12.1. Maintenance of Meters

- 12.1.1. The WATER BOARD must develop and agree with the MUNICIPALITY on a meter testing and calibration program for all meters within 6 (six) months of the effective date. Where the parties fail to reach an agreement either party may refer the matter for resolution in terms of Section O of this contract.
- 12.1.2. The WATER BOARD must annually, 2 (two) months prior to the commencement of the forthcoming financial year, submit a summary report detailing all meters and maintenance conducted in respect of meters for the preceding year and maintenance planned for the forthcoming year, including meters replaced or to be replaced.

12.2. Accuracy of Meters

- 12.2.1. The WATER BOARD shall do all that it reasonable can do to ensure that all its meters are at all times correctly sized and that they operate under optimum conditions.
- 12.2.2. The MUNICIPALITY reserves the right to introduce check meters (owned and maintained by the MUNICIPALITY) at any point in a supply pipeline subject to technical feasibility in order to verify the accuracy of the WATER BOARD's meters.
- 12.2.3. The WATER BOARD and the MUNICIPALITY agree that the maximum levels of acceptable errors on meters to be installed are as set out in the table below. The maximum levels of acceptable errors must be guaranteed by the supplier, prior to installation, as set out in the table below:

Type of Meter	Required Accuracy
Mechanical meters	5% - for flows below minimum 2% - between max. & minimum 5% - above maximum flow
Differential Pressure meters	5% - for flows below minimum 2% - between max. & minimum 5% - above maximum flow
Electromagnetic Flow meters	0.5% for flow velocities between 0.5 m/sec and 10m/sec where the flow is through the restricted section of the meter 2% where flow velocities are outside the above limits
Ultrasonic flow meters	2% for flow velocities between 0.5 m/sec and 10m/sec 2% where flow velocities are outside the above limits

12.3. Meter Testing

- 12.3.1. The WATER BOARD must regularly, but no less than annually, test all meters in accordance with the meter testing and calibration program agreed in terms of clause 12.1.1. The results of such tests must be submitted to the MUNICIPALITY within 1 (one) month of the end of the relevant financial year.
- 12.3.2. If a test indicates that a meter is registering outside the maximum limits of acceptable errors on meters as established in clause 12.2.3, such a meter must be repaired or replaced within 1 (one) month of reporting the error.
- 12.3.3. When removing a meter from site for testing, it must be replaced by an alternative calibrated meter.

- 12.3.4. The WATER BOARD and the MUNICIPALITY may agree on the methods of testing. Where the parties fail to reach an agreement either party may refer the matter for resolution in terms of Section O of this contract.
- 12.3.5. Where the MUNICIPALITY has installed a check meter and the difference between the meters at any time varies by more than 5% (five percent) both meters shall be tested.

12.4. Malfunctioning Meters

- 12.4.1. In the event of a meter malfunctioning either by way of not registering at all or by registering outside of the agreed levels of accuracy, the WATER BOARD must repair or replace the meter within 1 (one) month.
- 12.4.2. The WATER BOARD must give notice to the MUNICIPALITY in the event that the repair or replacement of the meter is likely to take longer than the stated period as defined in clause 12.4.1 and indicate the reason or reasons therefore and the period within which the repair or replacement will be completed. The WATER BOARD must, in these circumstances, install a temporary meter or any other measuring device as agreed with the MUNICIPALITY where the installation of a temporary meter is impractical.
- 12.4.3. If the MUNICIPALITY and the WATER BOARD cannot agree on a measuring device where the installation of a temporary meter is impractical, the MUNICIPALITY's consumption during the period for which no measuring through an agreed device could take place will be calculated as being the average monthly water consumption over a period of 3 (three) months after repair or replacement of the meter has been effected.

12.5. Meter Reading

- 12.5.1. The WATER BOARD must read all meters monthly, within 7 (seven) days of the end of the preceding month
- 12.5.2. The WATER BOARD must provide the MUNICIPALITY with a meter-reading schedule and the MUNICIPALITY may be present at any meter reading.

12.6. Queries

- 12.6.1. The MUNICIPALITY may query the consumption reflected on the account, within 14 (fourteen) days of receiving an account.
- 12.6.2. The WATER BOARD must investigate the query and, at the request of the MUNICIPALITY, test the relevant meter or meters within 14 (fourteen) days of a query having been made.
- 12.6.3. The MUNICIPALITY and the WATER BOARD may agree on the methods of testing. Where the parties fail to reach an agreement either party may refer the matter for resolution in terms of Section O of his contract.
- 12.6.4. If a meter is tested and found to be registering outside the agreed accuracy limits, the WATER BOARD shall be liable for the cost of testing the meter and shall repair or replace the meter at its own cost.
- 12.6.5. If a meter is tested and found to be registering within the agreed limits of accuracy, the MUNICIPALITY shall be liable for the cost of testing the meter.

12.7. Adjustment and calculation of consumption where meter malfunctions

- 12.7.1. The quantity of water consumed and the bulk water supply charges charged during a period that the meter registered incorrectly shall be adjusted in accordance with the degree of error found, provided that where the MUNICIPALITY installed a check meter the reading of the MUNICIPALITY's meter shall be used to determine the quantity of water consumed.
- 12.7.2. Where a test meter was not installed by the MUNICIPALITY, the period that the meter registered incorrectly will be assumed to be 30 (thirty) days if the actual period is not known and the quantity of water consumed, during a period within which a meter was found to be registering outside the agreed accuracy levels, shall be calculated as in accordance with one of the following methods as agreed by the MUNICIPALITY and WATER BOARD –
 - 12.7.2.1. The average monthly consumption of water during the 3 (three) months prior to the last registration; or
 - 12.7.2.2. The average monthly water consumption over a period of 3 (three) months after repair or replacement of the meter has been affected.

12.8. New meters to be installed

The WATER BOARD may install no new meters unless the type, make and location of the meter on the WATER BOARD's infrastructure has been agreed with the MUNICIPALITY, and such installations shall be installed in accordance with regulatory provisions and the specifications of the manufacturer of the meter. Where the parties fail to reach an agreement either party may refer the matter for resolution in terms of Section O of this contract.

13. EMERGENCIES

- 13.1. An incident, event or occurrence will be considered an emergency when there is in the opinion of either the MUNICIPALITY or the WATER BOARD , a substantial variation from –
 - 13.1.1. The agreed quantity, quality, flow rate and pressure for a period longer than 24 (twenty four) hours; or
 - 13.1.2. The agreed repair times referred to in clauses 11.1.2 and 11.2.1 exceeds 24 (twenty four) hours
- 13.2. The WATER BOARD or the MUNICIPALITY shall within 1 (one) hour of becoming aware of an emergency immediately notify the office of the Municipal Manager of the MUNICIPALITY or the Chief Executive of the WATER BOARD .
- 13.3. The parties shall agree on a process for addressing the emergency. Where the parties fail to reach an agreement either party may refer the matter for resolution in terms of Section O of this contract.
- 13.4. All joint communications will be undertaken in accordance with Section F.
- 13.5. Where an emergency has been addressed by the parties, a debriefing meeting may be requested by either party to review the process and procedure employed to address the emergency and a formal report will be prepared by the WATER BOARD in respect thereof.
- 13.6. Notwithstanding the provisions of clause 13.3, the WATER BOARD must in the event of an emergency resulting from an incident, event or occurrence other than provided for in clause 41, provide an alternative basic water supply service at the existing customer connections, where at all possible, or be liable for all reasonable costs incurred by the MUNICIPALITY in securing an alternative water supply. The parties shall agree the quantity of water required to provide an alternative basic water supply service. Where the parties fail to reach agreement, either party may

refer the matter for resolution in terms of Section O of this contract. Provided that until resolution is reached in terms of Section O, the WATER BOARD shall supply the quantity as required by the MUNICIPALITY in order to ensure the provision of water supply. Should it be decided in terms of Section O that the MUNICIPALITY required an unreasonable basic water quantity, a decision in terms of Section O will determine whether the MUNICIPALITY should compensate the WATER BOARD for the actual costs incurred in providing the excess quantity provided over and above the required basic quantity that would have been reasonable in the specific emergency.

14. DROUGHTS

- 14.1.** For the purposes of this clause a drought is defined as any event, series of events or changes in water allocation which impact or impacts on the availability of raw water to the WATER BOARD and consequently on the agreed quantity of water to be provided to the MUNICIPALITY in terms of this contract.
- 14.2.** The WATER BOARD is responsible for obtaining and generating all information required to monitor and forecast all factors influencing the quantity of water available. The MUNICIPALITY agrees to assist the WATER BOARD, where possible, in obtaining information on water quantity.
- 14.3.** The WATER BOARD must annually, within 2 (two) months of the commencement of its financial year, provide the MUNICIPALITY with a detailed report on the security of supply to the MUNICIPALITY. The report must reflect availability concerns identified by the WATER BOARD; indicate which measures will be implemented by the WATER BOARD to address or alleviate concerns and make recommendations as to actions that may be taken by the MUNICIPALITY to address or alleviate concerns.
- 14.4.** The WATER BOARD must issue a written drought warning to the MUNICIPALITY within 7 (seven) days of it being notified by the Department that it will be implementing water restrictions. The WATER BOARD must withdraw a drought warning issued within 7 (seven) days of the Department lifting water restrictions.
- 14.5.** The WATER BOARD shall convene a forum with all affected municipalities within 1 (one) month after a drought warning is issued.

SECTION E: NEW OR INCREASED WATER SUPPLY REQUIREMENTS

15. APPLICATION

- 15.1.** The MUNICIPALITY may, in its discretion, apply to the WATER BOARD for new or increased bulk water supply requirements. An application in terms of this clause must specify when the new or increased supply is required, the required quantity, estimated quantity for future years, flow rate and pressure.
- 15.2.** The WATER BOARD will provide the increased bulk water supply requirements if sufficient water is available and within the quantity authorized for abstraction in any relevant license.
- 15.3.** If the new or increased water supply requirements require a new, altered or upgraded customer connection, the WATER BOARD may charge the MUNICIPALITY an installation charge calculated in terms of clause 16, an a capital contribution, if applicable.
- 15.4.** The WATER BOARD and the MUNICIPALITY shall agree on the number and position of customer connections on the existing WATER BOARD infrastructure from which the new of increased water supply requirements will be supplied. Where the parties fail to reach an agreement either party may refer the matter for resolution in terms of Section O of this contract.
- 15.5.** The WATER BOARD shall use the estimated quantity of water in the planning and design of the WATER BOARD infrastructure.

16. INSTALLATION OF CUSTOMER CONNECTION AND RELATED CHARGES.

- 16.1** The WATER BOARD shall be responsible for the supply and installation of equipment necessary for the agreed customer connection or connections.
- 16.2** The MUNICIPALITY shall pay the WATER BOARD an installation charge for the customer connection or connections and a capital contribution charge, where applicable.
- 16.3** Prior to the supply or installation of the consumer connection or connections the WATER BOARD must -
- 16.3.1** provide the MUNICIPALITY with the specifications of the equipment to be installed;

16.3.2 provide the MUNICIPALITY with a fixed price quote for the equipment and the installation thereof; and

16.3.3 demonstrate to the MUNICIPALITY that the quote represents a reasonable cost for the equipment and installation.

16.4 In the event that the MUNICIPALITY considers the quote referred to in clause 16.3.2 unreasonable the parties must agree on a reasonable cost and revised specification.

Where the parties fail to reach an agreement either party may refer the matter for resolution in terms of Section O of this contract.

16.4 The WATER BOARD shall install the customer connection or connections within a period agreed to between the parties. Where the parties fail to reach an agreement either party may refer the matter for resolution in terms of Section O of this contract.

17. OWNERSHIP OF CUSTOMER CONNECTIONS

17.1 The ownership of the customer connection or connections vest in the WATER BOARD is responsible for all maintenance, rehabilitation or modification associated with the equipment and is responsible for insuring such equipment against loss or damage.

17.2 Apart from the downstream isolating valve, the MUNICIPALITY may not operate or interfere with the customer connection. Nothing in this clause may be construed as limiting the MUNICIPALITY's access to the customer connection for meter reading purposes.

SECTION F: COMMUNICATION AND COORDINATION

18. COMMUNICATION

For purposes of this Section F, "communication" means any form of communication whatsoever, including but not limited to sponsorships, advertisements, campaigns, education, brochures, media statements, broadcasts, marketing, meetings, forums, web-pages and liaison.

19. COMMUNICATION WITH THE MUNICIPALITY'S END CONSUMERS

- 19.1** The WATER BOARD shall not communicate directly with the MUNICIPALITY's end consumers where such communication will in any way create doubt or uncertainty in the minds of the MUNICIPALITY's consumers as to the organization mandated to provide water services to them.
- 19.2** The parties may agree jointly to communicate with the MUNICIPALITY's consumers. The parties will share the costs of such communications.

20. COORDINATION

- 20.1** The parties shall, at least, meet on a quarterly basis to discuss all matter relating to or impacting on this contract. The venue for these meetings shall alternate between the parties. The party responsible for hosting the meeting shall set the agenda for the meeting and record the minutes of the proceedings and make it available to the other party within 7 (seven) days of the meeting. The senior Operations Manager at OWERBERG WATER and the Director: Technical Services of the MUNICIPALITY shall determine representation at the meetings to successfully address the matters on the agenda.
- 20.2** The WATER BOARD shall be responsible for calling the first meeting and a schedule of future meetings shall be agreed at the first meeting.

SECTION G: INFORMATION AND REPORTING

21 ACCESS TO INFORMATION REQUESTED

- 21.1** The parties shall timeously provide each other with all information in whatever form reasonably required for compliance or monitoring of compliance with obligations in terms of this contract.
- 21.2** All information must be requested in writing and must be provided within 1 (one) month of the date of a request, unless another period has been set in terms of this contract of agreed to by the parties, in writing. Where the parties need to agree on a period within which information must be provided, both parties must act reasonably and agree on a reasonable period. Where the parties cannot agree on a period, the period for providing such information will be 1 (one) month.

22. FINANCIAL STATEMENTS AND ANNUAL REPORTS

- 22.1** The WATER BOARD must comply with the Water Services Act, Act 108 of 1997 and Public Finance Management Act, Act 1 of 1999 in respect of audited financial statements and annual reporting.
- 22.2** The WATER BOARD must submit its audited financial reports for each financial year to the MUNICIPALITY on submission thereof to the Minister in accordance with the Water Services Act. The reports must comply with all regulatory provisions and include complete audited financial statements and the auditor's report. These Audited financial reports may be put on the agenda of the quarterly coordination committee meeting for further discussion and clarification.
- 22.3** The annual report of the WATER BOARD prepared in accordance with the regulatory provisions referred to in clause 22.1 must provide details of any penalties incurred by the WATER BOARD in terms of this contract and a copy thereof must be submitted to the MUNICIPALITY on submission thereof to the Minister in accordance with the Water Services Act. This annual reports may be put on the agenda of the quarterly coordination committee meeting for further discussion and clarification.

SECTION H: BULK WATER SUPPLY CHARGES AND PAYMENT

23. PERMISSIBLE CHARGES

The WATER BOARD may impose the following bulk water supply services charges only –

- 23.1.1** volume based charges in respect of water consumed;
- 23.1.2** installation charges for new customer connections determined in accordance with clause 16; and
- 23.1.3** capital contribution charges where a new or increased water supply requires capital expenditure as set out in clause 24.

24. CAPITAL CONTRIBUTION CHARGES

- 24.1** The WATER BOARD must charge a new or existing customer, on application for a new or increased water supply, a capital contribution for all equipment required to provide the customer's required quantity, quality, pressure and flow rate of water, which is not part of the customer connection.
- 24.2** A capital contribution shall constitute the full cost of capital associated with equipment and the installation thereof, any required alteration of the WATER BOARD's infrastructure at the time of the application and the costs associated with the operational resources that will be required to operate and maintain the equipment.
- 24.3** Where any alteration or alterations to the WATER BOARD's existing infrastructure will serve only one of the WATER BOARD's customers directly, the full capital costs associated therewith shall be recovered from those customers.
- 24.4** Where any alteration or alterations to the WATER BOARD's existing infrastructure serves more than one but not all the WATER BOARD's customers directly, the full capital costs associated therewith shall be proportionately recovered from those customers.
- 24.5** Where any alteration or alterations to the WATER BOARD's existing infrastructure will serve all the WATER BOARD's existing customers at the time of the alteration/s the full capital costs associated therewith shall be for the WATER BOARD's own cost and must be recovered as a fixed fee payable by all customers as part of the water supply services charges.

24.6 Where the WATER BOARD is of the opinion that the sustainability and viability of a municipal customer in respect of providing water services as defined in the Water Services Act will be negatively affected by the implementation of this clause, it may charge a municipal customer a capital contribution less than that stated in clause 24.2, provided that the WATER BOARD is able to motivate and demonstrate how the sustainability and viability of the relevant MUNICIPALITY will be affected and all municipal customers have agreed to the capital contribution to be charged in these circumstances.

24.7 The WATER BOARD must notify the MUNICIPALITY and other municipal customers of its intention to charge a municipal customer a capital contribution less than that stated in clause 24.2

24.8 The MUNICIPALITY must on receipt of a notice referred to in clause 24.7 initiate the process set out in clause 44.

24.9 Capital contribution charges may be recovered by way of -

24.9.1 an once-off payment;

24.9.2 an availability charge;

24.9.3 a minimum quantity to be purchased;

24.9.4 a differential tariff payable by the WATER BOARD 's customers benefiting from the capital expenditure;

24.9.5 a uniform tariff payable by all the WATER BOARD 's customers; or

24.9.6 any other method as may be agreed to by the parties because of their specific circumstances, provided that such a method does not detract from the WATER BOARD 's obligation to impose and the MUNICIPALITY's obligation to pay capital contribution charges in accordance with clause 24.2.

24.10 The parties shall agree on a method for addressing the recovery of capital contribution charges.

25. PROCEDURE FOR SETTING OF BULK WATER SUPPLY SERVICES CHARGES AND ADOPTION OF CAPITAL EXPENDITURE PROGRAMME

25.1 The WATER BOARD must annually, before or on 1st November of each year, submit its proposed bulk water supply services charges and capital expenditure

programme for the forthcoming year to its municipal customers for comments, together with -

- 25.1.1 A 5 (five) year projection for bulk water supply services charges;
- 25.1.2 A detailed cost breakdown of the proposed charges, including all variable and fixed costs;

- 25.1.3 A clear indication as to how the costs associated with other activities as defined in the Water Services Act, Act 108 of 1997, are dealt with by the WATER BOARD ; and

- 25.1.4 A 5 (five) year capital expenditure programme specifying –
 - (a) the manner in which the demand projections of the municipal customers informed the programme;
 - (b) all proposed capital projects relating to immovable assets;
 - (c) the costs associated with operate and maintain the immovable assets on completion of the construction thereof; and
 - (d) the manner in which each proposed capital project will be funded.

25.2 The MUNICIPALITY must take all reasonable actions to ensure that all municipal customers, before or on 15th November in terms of clause 25.1, notify the WATER BOARD if they accept or dispute the proposed charges and capital expenditure programme. Where the proposed charges and capital programme is disputed the MUNICIPALITY must take all reasonable action to ensure that reasons are provided. Where all the municipal customers fail to inform the WATER BOARD of their acceptance or dispute within the specified period, the WATER BOARD may set the charges and capital expenditure programme before on 30th April for implementation on 1st July of the forthcoming financial year.

25.3 Where all municipal customers accept the proposed charges and capital programme, the WATER BOARD may set the charges and capital expenditure programme by 30th April for implementation on 1st July of the forthcoming financial year.

25.4 Where all municipal customers dispute the proposed charges and capital programme, the WATER BOARD must within 7 (seven) days after the expiry of the period referred to in clause 25.2 notify each municipal customer accordingly and simultaneously -

25.4.1 submit revised charges and a revised capital expenditure programme to the municipal customers for acceptance; or

25.4.2 refer the matter to the Department for mediation and notify the municipal customers of such referral.

In the event that the WATER BOARD submits revised charges and a revised capital expenditure programme to the municipal customers for acceptance the process as provided for in this clause applies.

25.5 Where not all the municipal customers accept or dispute the proposed charges and capital programme, the WATER BOARD must, within 7 (seven) day after the expiry of the 14 (fourteen) day period referred to above, notify all municipal customers accordingly and provide each municipal customer with the decisions of the other municipal customers.

25.6 The MUNICIPALITY must take all reasonable actions to ensure that the municipal customers, within 14 (fourteen) days of receiving notice in terms of clause 25.5, discuss the proposed charges and capital expenditure programme amongst each other, agree to accept or dispute the proposed charges and capital expenditure programme and notify the WATER BOARD accordingly. Where the municipal customers fail to inform the WATER BOARD of their acceptance or dispute within the specified period, the WATER BOARD may set the charges and capital expenditure programme before or on 30th April for implementation on 1st July of the forthcoming financial year.

25.7 Where all the municipal customers agree to dispute the proposed charges and capital expenditure programme the WATER BOARD must within 7 (seven) days of receiving such notification -

25.7.1 submit revised charges and a revised capital expenditure programme to the municipal customers for acceptance; or

25.7.2 refer the matter to the Department for mediation and notify the municipal customers of such referral.

In the event that the WATER BOARD submits revised charges and a revised capital expenditure programme to the municipal customers for acceptance, the process as provided for in this clause applies.

25.8 Where the municipal customers cannot agree amongst each other to accept or dispute the proposed charges and capital programme, the MUNICIPALITY must, within 3 (three) days of the expiry of the 7 (seven) day period, refer the matter to SALGA for mediation and must inform the WATER BOARD of such referral by a

MUNICIPALITY of a matter as envisaged herein must also inform SALGA of the obligations imposed on SALGA in terms of this agreement and the implications thereof for the MUNICIPALITY, should SALGA fail to inform the WATER BOARD timemously as required in terms of Clause 25.10.

25.9 Where the matter is referred to SALGA for mediation, SALGA must request the other municipal customers to participate in the mediation.

25.10 Where the matter is referred to SALGA for mediation, SALGA must inform the WATER BOARD, within 14 (fourteen) days of the matter being referred to it, if all the municipal customers accept or dispute the proposed charges and capital programme. Where SALGA fails to inform the WATER BOARD of the municipal customers' acceptance or dispute within 30 (thirty) days of notice by the WATER BOARD in terms of clause 25.2, the WATER BOARD may set the charges and capital expenditure programme before or on 30th April for implementation on 1st July of the forthcoming financial year.

25.11 Where all the municipal customers accept the proposed charges and capital programme, the WATER BOARD may set the charges and capital expenditure programme before or on the 30th of April for implementation on the 1st of July of the forthcoming financial year.

25.12 Where all the municipal customers agree to dispute the proposed charges and capital programme, the WATER BOARD must within 3 (three) days of receiving such notification -

25.12.1 submit revised charges and a revised capital expenditure programme to the municipal customers for acceptance; or

25.12.2 refer the matter to the Department for mediation and notify the municipal customers of such referral.

In the event that the WATER BOARD submits revised charges and a revised capital expenditure programme to the municipal customers for acceptance the process as provided for in clause 25 applies.

25.13 Where the WATER BOARD refers the matter to the Department for mediation, the Department must, within 14 (fourteen) days of the matter being referred to it, take all reasonable measures to resolve the dispute.

25.14 Where the matter was referred to the Department for mediation, the Department must request all municipal customers, to participate in the mediation.

- 25.15** Where the Department fails to resolve the dispute within the 14 (fourteen) day period of before 30th April of the year preceding the forthcoming financial year, whichever is the latest, the WATER BOARD may increase the most recent charges set by the WATER BOARD prior to the effective date of the contract in respect of the first financial year of the WATER BOARD following the effective date or the most recent charges accepted by the municipal customers in terms of this clause with a percentage agreed by it and the municipal customers, which percentage may not exceed CPIX, pending the resolution of the dispute by the Department. Where the WATER BOARD and municipal customers fail to reach agreement on the percentage increase the WATER BOARD may increase the charges by CPIX.
- 25.16** Where the Department fails to resolve the dispute within a further 14 (fourteen) days the WATER BOARD or the MUNICIPALITY must refer the matter to the Minister of Finance for mediation in accordance with any applicable intergovernmental relations legislation or legislation enacted to give effect to section 41(2) of the Constitution of the Republic of South Africa Act, Act 108 of 1996.
- 25.17** Where a referral to mediation by any party in terms of this clause will result in the WATER BOARD not being able to submit its tariffs to the Department of Water Affairs for tabling in Parliament before or on 15th March of each year in accordance with the Municipal Finance Management Act, both parties, SALGA and DWA must collectively request the Minister of Finance to approve that the tariff that will be set by the WATER BOARD on completion of the mediation may take effect on 1st July of that year, notwithstanding the fact that the tariff to be set will only be tabled in Parliament after the 15th March of that year.
- 25.18** Where a dispute in respect of tariffs is resolved after 1st July of any financial year and the tariff that may be set by the WATER BOARD exceeds the percentage agreed in terms of clause 25.15 of CPIX the WATER BOARD may only apply the tariff with effect from 1st July of the next financial year in terms of Section 42 of the MFMA. The Department of Co-operative Governance and Traditional Affairs through Mr. Alfred Legoabe will be approached to supply the correct position.
- 25.19** The capital expenditure programme may at any time be amended by the WATER BOARD after acceptance thereof by the MUNICIPALITY and other municipal customers in accordance with the process set out in clauses 25.2 to 25.12 and 25.14, has been secured.
- 25.20** The provisions of this clause shall apply in full until such time as legislation regulating the approval of tariffs and capital expenditure programmes by National Government, including legislation that gives effect to the national water services regulatory function as reflected in the Strategic Framework for Water Services as adopted by the Cabinet in September 2003, is promulgated. On promulgation of

such legislation the provisions of this clause shall apply to the extent that this clause is not inconsistent with such legislation.

26. ACCOUNTS FOR PAYMENT OF BULK WATER SUPPLY SERVICES CHARGES

26.1 The WATER BOARD must issue accounts to the MUNICIPALITY at least 30 (thirty) days prior to the last date for payment specified in such account and is payable before on the last date for payment. Accounts must be paid by the method agreed between the parties. Where the parties cannot reach agreement accounts must be paid by electronic transfer to the WATER BOARD's bank account.

26.2 Interest may be levied on arrears at the prevailing prime interest rate.

26.3 Accounts will reflect at least –

26.3.1 the volume of bulk water supply services provided by the WATER BOARD at each customer connection;

26.3.2 the period addressed in the account;

26.3.3 the applicable charges;

26.3.4 the amount due (excluding value added tax payable);

26.3.5 value added tax;

26.3.6 the arrears, if any;

26.3.7 the interest payable on arrears, if any; and

26.3.8 the final date for payment.

26.4

26.4 The MUNICIPALITY may query the accuracy of an amount due and payable or an amount paid for bulk water supply services rendered. A query in respect of an amount due and payable must be accompanied by payment based on the average monthly water consumption of a period of 3 (three) months prior to the month in question.

26.5 Queries relating to consumption will be settled in accordance with the provisions of clause 12.6. All other queries will be settled by applying the dispute resolution mechanisms provided for in Section O.

26.6 On settlement of query any amount paid in excess of what was due and payable as per the outcome of a query must be refunded to the MUNICIPALITY together with interest calculated at the same rate imposed by the WATER BOARD on arrears and any amount outstanding in respect of what is due and payable as per the outcome of a query must be paid to the WATER BOARD together with interest imposed by the WATER BOARD on arrears.

27. SPECIAL PAYMENT ARRANGEMENTS

The MUNICIPALITY and the WATER BOARD may agree to the settlement of the MUNICIPALITY's account in instalments where the MUNICIPALITY is not able to settle an account in full on the due date.

SECTION I: PERFORMANCE MANAGEMENT

28. KEY PERFORMANCE AREAS

28.1 Each obligation of the WATER BOARD in terms of this contract represents a key performance area of the WATER BOARD for the duration of the contract.

28.2 The performance of the WATER BOARD shall be monitored and measured by the MUNICIPALITY.

28.3 The bulk water supply services provided by the WATER BOARD shall be of such a standard to ensure its affordability, continuity, regularity, quality and sustainability, and the basic allocation of potable water by the MUNICIPALITY to its end consumers at all times.

29. FAILURE OF THE WATER BOARD TO MEET OBLIGATIONS

29.1 The parties agree that the WATER BOARD should be incentivised to achieve the key performance areas.

29.2 In the event that the WATER BOARD -

29.2.1 fails to meet its obligation in terms of administrative arrangements specified in this contract including but not limited to the provision of financial reports, annual and operational reports as specified in clause 22.2, the MUNICIPALITY may deduct the amount of R 1 000 per incident. This amount shall be increased by 10 (ten) percent per year.

29.2.2 fails to meet its obligations in terms of reliability of supply in terms of clauses 7, 9, 10 and 11 of this contract the MUNICIPALITY may deduct 3 (three) percent of the amount payable based on the average daily consumption over 3 (three) preceding months for the period during which the failure occurred within the month which such failure occurred or the month following such failure.

29.2.3 fails to meet its obligation in terms of ensuring quality of water in terms of clause 8 of this contract the MUNICIPALITY may deduct 5 (five) percent of the amount payable based on the actual consumption for the period during which the failure occurred. This penalty will apply to the period exceeding 15 (fifteen) days (4% as referred to in Clause 8.1) during which the required standard was not achieved. This reconciliation will be done in July of every year for any failures during the previous financial year, ending 30 June.

29.3 The MUNICIPALITY must notify the WATER BOARD of any proposed deduction at least 10 (ten) days in advance of such a deduction being made and must grant the WATER BOARD an opportunity to:

29.3.1 demonstrate to the reasonable satisfaction of the MUNICIPALITY that the failure referred to in clause 29.2 did not take place; or

29.3.2 justify to the reasonable satisfaction of the MUNICIPALITY why the failure referred to in clause 29.2 could not have been prevented.

29.4 The justification of the WATER BOARD referred to in clause 29.3.2 shall be evaluated by the MUNICIPALITY in accordance with the following criteria:

29.4.1 the seriousness and repetitive nature of a failure;

29.4.2 the degree of impairment to public interest;

29.4.3 the degree of negligence of the WATER BOARD ; and

29.4.4 the diligence displayed by the WATER BOARD in rectifying the effects on the failure.

29.5 Any deduction imposed in terms of this clause shall not in any way limit either party's right to any other remedies provided for in this contract or in any law.

29.6 In the event that the WATER BOARD disputes a deduction in terms of this clause it may refer the matter for resolution in terms of Section O of his contract. The

application of Section O will not suspend the implementation and effect of such a deduction.

29.7 The MUNICIPALITY shall refund any deduction to the WATER BOARD where a dispute is settled in favour of the WATER BOARD.

29.8 The application of a penalty will not release the WATER BOARD from its obligations pursuant to this contract and pursuant to any regulatory provisions.

30. ACTION OR OMMISION OF THE MUNICIPALITY

30.1 Both parties recognize that in order for either of them to achieve their objectives of fulfil their responsibilities, there is significant reliance on the proper and timeous performance of each of them at all times.

30.2 The WATER BOARD shall not be liable for any penalty if its failure arises as a direct result of the action or failure to act of the MUNICIPALITY as is required in accordance with this contract.

SECTION J: OTHER WATER RELATED ACTIVITIES IMPACTING ON THE PARTIES

31. DIRECT SUPPLY BY THE WATER BOARD TO THE MUNICIPALITY'S CONSUMERS

31.1 It is hereby recorded that, at the commencement date, the WATER BOARD is providing bulk water supply services or water for industrial use directly to individuals, business or industrial water users, including mines, within the jurisdictional area of the MUNICIPALITY, with or without approval as required in terms of Sections 6, 7 and 30(2)(d) of the Water Services Act.

31.2 The MUNICIPALITY hereby grants temporary approval to the WATER BOARD to continue providing such bulk water supply services or water for industrial use directly to individuals, businesses or industrial water users, subjects to the following conditions -

31.2.1 the WATER BOARD must provide the MUNICIPALITY with a list of such services detailing the names, contact details, quantity, quality and type of services provided by the WATER BOARD , within 14 (fourteen) days after the commencement date; and

31.2.2 the MUNICIPALITY may at any time, on 12 (twelve) months notice to the WATER BOARD , give notice to persons receiving bulk water supply services or water for industrial use from the WATER BOARD that such services must be accessed from the MUNICIPALITY.

31.3 Where a person receiving bulk water supply services or water for industrial use from the WATER BOARD appeals against a notice issued by the MUNICIPALITY, in terms of clause 31.2 in terms of section 8 of the Water Services Act the WATER BOARD must continue to render such services pending the completion of the appeal.

31.4 The WATER BOARD shall on expiry of any notice period given in terms of clause 31.2.2 or on the conclusion of an appeal in terms of clause 31.3, immediately discontinue bulk water supply services to such persons and shall not in any way whatsoever incur liability for damages suffered by such persons and the MUNICIPALITY specifically indemnifies the WATER BOARD against any such claims, provided that –

31.4.1 where the above actions of the MUNICIPALITY will result in infrastructure or operational resources required to operate and maintain infrastructure of the WATER BOARD becoming redundant or underutilized, the WATER BOARD must within 2 (two) months of receiving a notice from the MUNICIPALITY and other municipal customers of the projected financial implication of the MUNICIPALITY's intention.

31.4.2 the MUNICIPALITY must on receipt of a notice from the WATER BOARD initiate the process as set out in clause 44.

31 Where the MUNICIPALITY fails to inform the WATER BOARD in accordance with clause 31.2.2 or fails to initiate the process referred to in clause 31.4 the WATER BOARD may not discontinue bulk water supply services to such persons and shall not in any way whatsoever incur liability for damages incurred by the MUNICIPALITY in this regard.

32 DIRECT SUPPLY BY THE WATER BOARD TO CONSUMERS OF ANOTHER MUNICIPALITY WHICH IS NOT A CUSTOMER OF THE WATER BOARD

32.1 It is hereby recorded that, at the commencement date, the WATER BOARD is providing bulk water services or water for industrial directly to individuals, businesses or industrial water users including mines, within the jurisdictional area of the municipalities that are not municipal customers of the WATER BOARD, with or without approval as required in terms of Sections 6, 7 and 30(2)(d) of the Water Services Act.

- 32.2 It is further recorded that such municipalities may at any time give notice to persons receiving bulk water supply services or water for industrial use from the WATER BOARD that such services must be accessed from those municipalities.
- 32.3 Where any notice referred to in clause 32.2 results in the infrastructure of the WATER BOARD becoming redundant or underutilized, the WATER BOARD must, on becoming aware that a notice was given to a person or persons receiving bulk water services or water for industrial use from the WATER BOARD, as soon as reasonably possible notify the MUNICIPALITY and all other municipal customers of the projected financial implication of such a notice.
- 32.4 The MUNICIPALITY may on receipt of a notice from the WATER BOARD issued in terms of clause 32.3 initiate a process similar to that set out in clause 44 to address any projected financial implications.

33 USE OF WATER FROM SOURCES OTHER THAN THE WATER BOARD

- 33.1 The MUNICIPALITY must give the Water Board at least 12 (twelve) months advanced notice of its intention to obtain water from an alternative source, where such activity will result in a reduction of the quantity of water provided by the Water Board in terms of this contract.
- 33.2 Where such notice will result in infrastructure of the Water Board becoming redundant or underutilized the Water Board must within 2 (two) months of receiving a notice from the Municipality notify the Municipality and other municipal customers of the projected financial implications of the Municipality's intention.
- 33.3 The Municipality must on receipt of a notice from the Water Board initiate the process set out in clause 44.
- 33.4 Where the Municipality fails to inform the Water Board in accordance with clause 33.1 or fails to initiate the process referred to in clause 33.3, the Municipality shall remain liable for all costs associated with its projected annual average daily demand prior to any reduction, irrespective of whether it uses lesser quantity.

SECTION K: RISK MANAGEMENT

34 LIMITATION AND DISCONTINUATION OF WATER SUPPLY SERVICES

- 34.1 The Water Board must comply with all and any legislation, guidelines and policies of National Government relating to the limitation and disconnection of bulk water supply services. The provisions of clause 34.2 must be applied to the extent that it is consistent with any legislation, guidelines and policies of National Government.

- 34.2 In the event that the Municipality fails to pay its account on the due date, the Water Board shall: -
- 34.2.1 give the Municipality written notice that the account is outstanding and that it intends to reduce the bulk water supply services to the Municipality by 20% (twenty percent) within 30 (thirty) days of such notice if at least 50% (fifty percent) of the account is not paid within this period or the Municipality fails to enter into an agreement with the Water Board for the payment of the account in instalments.
 - 34.2.2 in the event that the Municipality again fails to pay outstanding and current accounts and where the Water Board has reduced the bulk water supply services by 20% (twenty percent) in accordance with clause 34.2.1, it shall again give the Municipality notice in a manner similar to that stated in clause 34.2.1, that the bulk water supply services will be limited by a further 20% (twenty percent).
 - 34.2.3 the phased reduction in bulk water supply services may, on further notice in a manner similar to that stated in clause 34.2.1, exceed 40% (forty percent), provided that bulk water supply services shall under no circumstances whatsoever be reduced at the existing customer connections by a percentage that will limit the provision of basic water supply services to the Municipality's customers. The parties shall agree on the quantity of water required for basic water supply services. Where the parties fail to reach agreement either party may refer the matter for resolution in terms of Section O of this contract.
 - 34.2.4 Copies of the notices given in terms of clauses 34.2.1 and 34.2.2 shall be sent to the Minister of Water Affairs, the Minister of Provincial and Local Government and the Member of the Executive Committee responsible for local government in the Western Cape Province. The Water Board will, together with the copies of the notices to be sent, send a request to the Member of the Executive Committee responsible for local government in the Western Cape Province, the Minister and any other national organ of state that has legislated intervention authority to intervene in accordance with relevant regulatory provisions.
 - 34.2.5 The Water Board, where possible, should provide reasonable assistance to the Municipality in respect of the payment of its bulk water supply account, including agreements referred to in clause 27.

35. PERMITS, LICENCES, EXEMPTIONS, PERMISSION AND APPROVALS

- 35.1** The permits shall be responsible for complying with all legislation applicable to their duties and obligations in terms of this contract, including, but not limited to, applying for the necessary approvals, consents; licenses or permits, where required.
- 35.2** The WATER BOARD guarantees that on the effective date all permits, licenses, exemptions, permissions and approvals that may have been required in terms of legislation in respect of providing bulk water supply services are obtained in the required manner.

36. LIABILITIES AND INDEMNITIES

- 36.1** Subjects to terms stated in this contract, the WATER BOARD undertakes and assumes the responsibility for the provision of the bulk water supply services at its own technical risk and will be liable to the MUNICIPALITY for the fulfilment and discharge of its obligations and requirements in respect of providing bulk water supply services with effect from the effective date.
- 36.2** The WATER BOARD shall, with effect from the effective date, take all the requisite precautions for the protection of life and property on and about or in any way connected with the whole of any part of providing bulk water supply service and shall indemnify and not hold the MUNICIPALITY accountable for any losses, claims, demands, proceedings, damages, costs (including all legal fees), charges and expenses of whatsoever nature in respect of injury to or death of any person or loss or damage to any part of the bulk water supply services system or any person or property arising from or attributable to any act or omission of the WATER BOARD, 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.

37. INSURANCE

Each party shall be responsible for the costs of insuring infrastructure and assets owned by it and its own third party liability insurance.

38. GUARANTEES

- 38.1** The WATER BOARD may require the MUNICIPALITY to deposit with the WATER BOARD as security for the due payment by it of any amounts that may be due and payable in terms of this contract, a sum of money equal to the estimated maximum

quantity of water that the MUNICIPALITY is likely to use during a calendar month, where the MUNICIPALITY has defaulted on payment.

- 38.2** The WATER BOARD may, in lieu of a deposit, accept a bank guarantee for an amount calculated in accordance with clause 38.1 as security for payment of any amount that may be due and payable by the MUNICIPALITY for, or in respect of, the provision of water.
- 38.3** The WATER BOARD may use this deposit to cover any outstanding amount payable on termination of this contract or any arrears.
- 38.4** Any deposit or guarantee shall be refunded or cancelled, after deducting any amount due and payable, within 60 (sixty) days after termination of this contract.

39. WARRANTIES

The parties warrant that –

- 39.1** they are entities duly created pursuant to legislation and have full legal right, and authority to enter into this contract and perform the obligation hereunder;
- 39.2** this contract has been duly authorized and executed and constitutes a legal, valid and binding obligation;
- 39.3** the execution of this contract does not violate any legislation, judgment order, regulation, regulatory provision, right or obligation, or rule of any Court or other authority applicable in relation to them, or the provision of services rendered in terms of this contract.

SECTION L: BREACH AND VIS MAJOR

40. BREACH

- 40.1** if any party commits a breach of this contract and should the other party wish to claim specific performance or damages or both specific performance and damages from the defaulting party in respect of such breach in addition to any penalty it may apply in terms of this contract, then prior to the latter party exercising such a 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 20 (twenty) days (or such longer period stipulated in the notice if the breach in question cannot reasonably be remedied by the defaulting

party within 20 (twenty) day period, and should the defaulting party fail to remedy the breach within such period then the party giving notice may institute a civil claim for specific performance or damages or both, as the case may be.

- 40.2** If the defaulting party again commits a breach in respect of which the other party has successfully claimed damages or specific performance in terms of clause 40.1, the breach shall be deemed to be a material breach if the party fails to remedy the breach within the 20 (twenty) day notice period given in terms of clause 40.1 and the party shall be entitled to cancel the contract.
- 40.3** Prior to the party evoking any right to terminate this contract in terms of clause 40.2, it shall deliver a further written notice to the 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 20 (twenty) days (or such longer period stipulated in the notice if the breach in question cannot reasonably be remedied by the defaulting party within a 20 (twenty) day period).
- 40.4** Should the defaulting party fail to remedy the material breach in question within the period reflected in the notice issued in terms of clause 40.3 the contract shall terminate in accordance with clause 43.
- 40.5** Upon any termination of the contract in terms of clause 40.4, the defaulting party shall compensate the party terminating the contract for damages suffered as a result of such termination and all other costs and expenses incurred by the party terminating the contract in connection with or relating to such termination.
- 40.6** For purposes of this clause, damages specifically include but are not limited to, -
- 40.6.1** any amount which the MUNICIPALITY is required to pay in relation to loss or damage suffered by a person to whom the MUNICIPALITY provides water supply services; or
 - 40.6.2** the difference between the revenue lost by the MUNICIPALITY and all direct and indirect costs that the MUNICIPALITY would have incurred if they did not occur as a result of the WATER BOARD's failure.

41. VS MAJOR

- 41.1** No party shall be liable for any failure to fulfil its duties and obligations in terms of this contract where such failure is caused by any event, occurrence, circumstance or condition beyond the reasonable control of such party (including, but not limited to *casus fortuitus*, landslides, lightning, earthquakes, tornados, floods, other acts of God, acts of military of third-party civil authorities or public enemies, war blockade, sabotage, fire, explosion, bombing, insurrection, riot or civil disobedience), the

occurrence of which could not have been reasonably foreseen and which, despite the exercise of diligent efforts could not have been prevented, limited or minimized, that affects the powers, rights, duties or obligations of the parties under this contract. It is specifically recorded that failure by the Department to effectively manage water resources constitutes an event, occurrence, circumstance or condition for purposes of this clause.

- 41.2** The party affected by an event, occurrence, circumstance or condition referred to in clause 41.1 shall promptly notify the other party in writing of the event, occurrence, circumstance or condition and the estimated extent and or duration of such party's inability to perform its duties and obligations.
- 41.3** Upon the cessation of the event, occurrence, circumstance or condition referred to in clause 41.1 the party affected thereby shall notify the other party of such cessation.
- 41.4** If, as a result of the event, occurrence, circumstance or condition referred to in clause 41.1, the performance of a party's duties and obligations is only partially affected, such party shall remain liable for the performance of those duties and obligations not affected by the event, occurrence, circumstance or condition; provided that nothing in this clause shall preclude the operation of the emergency procedure provided for in clause 13.
- 41.5** If an event, occurrence, circumstance or condition referred to in clause 14.1 causes material and unavoidable physical damage or destruction to all or any or the parties infrastructure or materially delays or prevents the performance of any duties and obligations in terms of this contract, or interrupts services and continues for more than 90 (ninety) consecutive days after any notification thereof the affected party may initiate the termination of the contract in accordance with clause 43.

SECTION M: TERMINATION

42. REASONS FOR TERMINATION

The termination of this agreement may occur –

- 42.1** at the expiry of the contract term;
- 42.2** if the parties agree thereto in writing;
- 42.3** by reason of an unremedied material breach;
- 42.4** due to vis major; or

42.5 the WATER BOARD ceases to be a statutory organization deemed to be established in terms of the Water Services Act, Act 108 of 1997 or the institutional structure of the WATER BOARD is changed subsequent to any institutional reform process undertaken by the Minister.

43. TERMINATION PROCESS

43.1 Termination shall be initiated by a notice from either party who has the right to deliver such notice in accordance with clauses 40 and 41, or 6 (six) months prior to the expiry of the contract term, or on the date agreed.

43.2 When termination is initiated in terms of clause 43.1 the WATER BOARD must within 2 (two) months of receiving a notice from the MUNICIPALITY notify the MUNICIPALITY and other municipal customers of the projected financial implications of termination for it and each municipal customer.

43.3 The MUNICIPALITY must on receipt of a notice from the WATER BOARD initiate the process set out in clause 44.

43.4 This notice referred to in clause 43.1 sets in motion a transitional phase. During the transitional phase the WATER BOARD shall continue to provide bulk water supply services in accordance with this contract until such time as the process referred to in clause 43.3 is completed and any outcome thereof has been reduced to writing as an amendment to this contract, which contract only terminates on the fulfillment of all obligations in terms of such an amendment.

SECTION N: PROCESS FOR ADDRESSING MATTER IMPACTING ON MUNICIPAL CUSTOMERS

44.1 The provisions of this section apply to circumstances as set out in clauses 9.1.7 to 9.1.9, 24, 31, 33 and 43.

44.2 The MUNICIPALITY must on receipt of a notice referred to in clauses 9.1.8, 24.7, 31.4.2, 33.3 and 43.3 notify all municipal customers of its reasons for the actions or proposed actions that gave rise to the notice.

44.3 The MUNICIPALITY must take all reasonable actions to ensure that each municipal customer within 14 (fourteen) days of receipt of a notice from the MUNICIPALITY notify the MUNICIPALITY and WATER BOARD, if it accepts or disputes the actions of the MUNICIPALITY. The MUNICIPALITY must take all reasonable actions to ensure that where the actions or proposed actions are disputed reasons are

provided. Where a municipal customer fails to inform the MUNICIPALITY and WATER BOARD of its acceptance or dispute within the specified period, the WATER BOARD may accept that the municipal customer disputes the actions or proposed actions.

- 44.4** Where not all the municipal customers accepted or disputed the action or proposed actions the MUNICIPALITY must within 7 (seven) days after the expiry of the 14 (fourteen) day period referred to above, notify all municipal customers accordingly and provide each municipal customer with the decisions of the other municipal customers.
- 44.5** The MUNICIPALITY must take all reasonable actions to ensure that the municipal customers, within 14 (fourteen) days of receiving a notice in terms of clause 44.4, discuss the actions and proposed actions amongst each other, agree to accept or dispute the actions and proposed actions and notify the WATER BOARD accordingly. Where the municipal customers fail to inform the WATER BOARD of its acceptance or dispute within the specified period, the WATER BOARD may accept that the municipal customers dispute the actions and proposed actions.
- 44.6** Where the municipal customers cannot agree amongst each other to accept or dispute the actions and proposed actions the MUNICIPALITY must, within 7 (seven) days of the expiry of the 14 (fourteen) day period, refer the matter to SALGA for mediation and must inform the WATER BOARD of such referral.
- 44.7** Where the matter was referred to SALGA for mediation, SALGA must request the other municipal customers to participate in the mediation.
- 44.8** Where the matter was referred to SALGA for mediation, SALGA must inform the WATER BOARD, within 14 (fourteen) days of the matter being referred to it, that all the municipal customers accept or dispute the actions and proposed actions. Where SALGA fails to inform the WATER BOARD of the municipal customers acceptance or dispute within 30 (thirty) days of initial notice by the WATER BOARD, the WATER BOARD may assume that the municipal customers dispute the actions and proposed actions.
- 44.9** Where all the municipal customers dispute or some of the municipalities dispute or accepts the action or proposed action the WATER BOARD may refer the matter to the Department for mediation, and the Department must, within 14 (fourteen) days of the matter being referred to it, take all reasonable measures to resolve the dispute.
- 44.10** Where the matter was referred to the Department for mediation, the Department must request all municipal customers to participate in the mediation.

- 44.11** Where the Department fails to resolve the dispute within a further 14 (fourteen) days the WATER BOARD or the MUNICIPALITY must refer the matter to the Minister of Finance for mediation in accordance with any applicable intergovernmental relations legislation or legislation enacted to give effect to section 41(2) of the Constitution of the Republic of South Africa Act, Act 108 of 1996.
- 44.12** Where all the municipal customers accept the actions and proposed actions, the WATER BOARD must implement the action or facilitate the implementation thereof, provided that, where the action relates to the termination of this contract the action must be referred to the Department, with a proposal to -
- 44.12.1** either sell the water board infrastructure dedicated to the supply of bulk water supply services to the MUNICIPALITY and recover all operational expenditure associated with the infrastructure from the MUNICIPALITY; or
 - 44.12.2** where the water board infrastructure dedicated used by the WATER BOARD to provide bulk water supply services to the MUNICIPALITY is partially dedicated to the supply of such services, to pay to the WATER BOARD any capital contribution outstanding in respect of the remaining contract period, where appropriate, as agreed to in terms of this contract by the approval of the charges and capital expenditure programme of the WATER BOARD in terms of clauses 25 and 26 and all operational expenditure associated with the infrastructure.
- 44.13** The Department must approve any sale of assets and capital contribution to be collected by the WATER BOARD on termination of the contract.

SECTION O: DISPUTE RESOLUTION

45. DISPUTE RESOLUTION

- 45.1** Should any difference or questions at any time arise between the parties as to the construction, meaning or effect of this contract or the rights or obligations of the parties hereunder, or should the parties fail to agree upon any matter (hereinafter referred to as “the dispute”), the parties shall resolve the dispute in accordance with this Section O: Dispute Resolution, unless an alternative process for resolving a specific type of dispute has been provided for elsewhere in this contract.
- 45.2** The parties irrevocably consent to comply with the provisions of this clause 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. The parties agree that they shall not commence any litigation procedures in respect of a dispute arising in terms of this contract save where an interdict is sought or urgent relief may be obtained from a court of competent jurisdiction on reasonable grounds.

45.3 No dispute arising from this contract shall entitle the other party to discontinue or suspend the execution of any of its powers, rights, duties or obligations in terms of this contract, pending the settlement of the dispute, unless specifically provided for elsewhere in this contract.

46. NEGOTIATION

The Municipal Manager of the MUNICIPALITY and the Chief Executive of the WATER BOARD shall deal with any dispute between the parties subject thereto that:

- (i) In the event of any difference between the parties escalating into a dispute, the parties will inform the Department: Water Affairs and Forestry for guidance and assistance, immediately prior to any attempts by the parties to settle the dispute.
- (ii) The Department: Water Affairs and Forestry shall have the right to attend the meeting of the Municipal Manager and the Chief Executive Officer of the water Board and to assist with the negotiation for a settlement. To this effect the parties shall timeously either request the Department: Water Affairs and Forestry to convene the meeting or alternatively inform the Department of the details of the meeting to be convened by the parties.

The said representatives shall endeavour to settle the matter amicably through a process of negotiation. Failing the settlement of the dispute between the parties by negotiation within a period of 7 (seven) working days, any of the parties may submit the dispute to mediation. All statements or representations made during the negotiation process shall be made without prejudice.

47. MEDIATION

47.1 Each party shall submit a list with 3 (three) names of knowledgeable persons, with expertise relating to the particular field in which the dispute arose, as potential mediators from which one mediator shall be selected by agreement between the parties. The parties may request the Department: Water Affairs and Forestry to assist in the negotiations to appoint a suitable mediator. Should the parties fail to reach agreement on the choice of the mediator within 5 (five) working days from the

day on which it has become apparent that the matter can not be settled through negotiation, any of the parties may request the Institute for Mediation and Arbitration of South Africa to appoint a mediator.

- 47.2** The mediator shall in his sole discretion determine the form of representations to be made, provided that in making this determination, the mediator shall consult the disputing parties and may be guided by their common reasonable desire on the form in which the said representations are to be made. All representations by the parties shall be made without prejudice.
- 47.3** The mediator shall within a period of 10 (ten) working days after receipt of the representations of the parties endeavour to facilitate an agreement between them or determine a procedure of framework within which they can negotiate to resolve the dispute or difference. All representations by the parties shall be made without prejudice.
- 47.4** Any such negotiated agreement shall be in writing, signed by both parties and be binding on the parties. Failing agreement between the parties the dispute shall be resolved by the submission thereof to arbitration.
- 47.5** The parties agree to contribute equally to the cost of the mediator and each party shall bear any other costs separately regardless of the outcome of the mediation.

48. ARBITRATION

- 48.1** The arbitration proceedings shall be held at a convenient location as agreed to by the parties.
- 48.2** Subject thereto that the Department: Water Affairs and Forestry must be informed of all arbitration proceedings and shall have the right to attend such as an observer, the only persons present at the arbitration shall be the legal representatives and a maximum of two other representatives of each of the parties to the dispute. This clause relates only to the limitation in respect of the representation of the parties during arbitration and in no way shall be interpreted to limit any of the parties' to call witnesses and present evidence substantiating its case to the arbitrator.
- 48.3** The proceedings shall be in terms of the Arbitration Act, Act 42 of 1965 (as amended) subject to the provisions of clause 48.5.
- 48.4** The arbitrator shall be, an independent person agreed to by the parties. Should the parties fail to agree on the arbitrator within 5 (five) working days after having submitted the matter to arbitration, an arbitrator shall be appointed at the request of any party to the dispute by the Chairman for the time being of the Cape Bar.

- 48.5** The arbitrator appointed shall not be obliged to follow the strict principles of law in determining the dispute, but shall be entitled, in his sole discretion to determine the dispute with due reference to the equities prevailing in respect of the dispute. 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 submissions or appearances.
- 48.6** The parties irrevocably agree and undertake that any award or order or whatsoever made by the arbitrator shall be final and binding upon them and may at the option of either party be made an order of any division of the High Court of South Africa to which jurisdiction the parties are subject. The parties hereby exclude all rights of appeal, which might otherwise be conferred upon them by law.
- 48.7** This clause shall not prevent any party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.
- 48.8** The parties agree to contribute equally to the cost of the arbitrator and each party shall bear any other costs separately regardless of the outcome of the arbitration.

SECTION P: GENERAL

49. PREVENTION OF CORRUPT ACTION

49.1 For the purposes of this clause “corrupt action” means –

- 49.1.1** giving or accepting any undue payment, bribe, gift, gratuity of any other undue benefit in exchange for performing or forbearing to perform any action in connection with a contract; and
- 49.1.2** solicitation, offering, participation, conspiracy and attempt to bring about the circumstances mentioned above.

50. CONFIDENTIALITY AND PUBLICITY

50.1 For the purposes of this clause, “confidential information” means any knowledge, information or know-how relating to a party’s business, systems, customers,

property, assets of affairs which has been or is disclosed, communicated, delivered or has come to the knowledge of the other party under or in connection with this contract.

50.2 Neither party may disclose any confidential information of the other party without the prior written approval of the other party or require, assist or permit any person to have access to, or use, disclose or reproduce any confidential information of the other party, other than confidential information -

50.2.1 reasonably required by an employee, contractor or consultant of a party to enable that party to exercise its rights or perform its obligations under this contract; or

50.2.2 a party is required by legislation to disclose; or

50.2.3 a party is required to disclose in dispute resolution or court proceedings.

50.3 If a party is required or compelled to disclose confidential information of the other party it must -

50.3.1 immediately give written notice of that fact to the other party; and

50.3.2 take reasonable measures to ensure that the confidentiality of the information is protected.

50.4 A party must not make any public statement relating to this contract unless -

50.4.1 the other party has previously agreed to the form and content of the statement; or

50.4.2 the statement is required to be made by legislation and the other party was consulted in respect of the public statement to be made.

50.5 This clause survives the termination of this contract.

51. 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.

52. SUB-CONTRACTING

The parties may sub-contract its powers, rights, duties and obligations in terms of this contract. The appointment of any sub-contractor shall not release the parties of their duties or obligations in terms of this contract or in any way affect their responsibility in respect of fulfilling such duties and obligations.

53. NOTICES AND DOMICILIUM CITANDI ET EXECUTANDI

53.1 The parties choose as their *domicilia citandi et exectandi* 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 –

53.1.1 the MUNICIPALITY :

Physical : Plein Street, Caledon

Postal : P.O. Box 24, Caledon

Facsimile : 028-214 1289

Contact Person : The Municipal Manager

53.1.2 the WATER BOARD :

Physical :

Postal :

Facsimile :

Contact Person :

53.2 Any submission, notice, communication or information required or permitted to be given and any obligation to submit to, notify or inform a party in terms of this contract shall, unless specifically provided for otherwise, be valid and effective only if in writing and shall be delivered by hand, transmitted by facsimile or sent by prepaid registered post.

53.3 A notice shall be deemed to have been received:

53.3.1 14 (Fourteen) days after posting, if posted by registered post to the party's address in terms of clause 53.1

53.3.2 on delivery, if delivered to a responsible person during normal business hours at the party's physical address in terms of clause 53.1;

53.3.3 on dispatch, if sent to the Party's facsimile number and confirmed by registered letter posted no later than the next Business Day following the dispatch.

54. WHOLE AGREEMENT, NO AMENDMENT

54.1 This contract including the annexures constitutes the whole contract between parties relating to the subject matter hereof and supersedes, all previous contracts or arrangements, whether oral or written, between the parties. No representations, warranties or other terms and conditions of whatever nature not contained or recorded herein have been made or agreed to.

54.2 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 extension 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.

54.3 No extension of time of 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.

54.4 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.

55. FAILURE TO REACH AGREEMENT

Where as it 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 whole or any part of this contract and **where** the parties fail to reach an agreement either party may refer the matter for resolution in terms of Section O of this contract.

56. LEGISLATIVE AND REGULATORY CHANGES

Any provisions of this contract which may become inconsistent with legislation due to amendment to that legislation shall be deemed, insofar as possible, to be amended accordingly, provided that, where such legislative amendments render any provisions illegal, invalid, unenforceable or ineffective, the parties shall renegotiate such provisions in good faith, having due regard to such amendments and to the principles contained herein. If any provision cannot be renegotiated it 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 provisions.

57. LIABILITY FOR EXPENSES

Each party must pay its own expenses incurred in negotiating and executing this contract.

58. RELATIONSHIP BETWEEN PARTIES

Nothing in this contract creates a relationship of partnership, principal and agent or trustee and beneficiary between the MUNICIPALITY and the WATER BOARD.

59. 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 (Western Cape) (or any successor to that court) and irrevocably submit to the exclusive jurisdiction of such court. The parties irrevocably waive any objection they may now or hereafter have that such action or proceeding has been brought in an inconvenient forum.

60. 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 as provided for in the Water Services Act.

61. SUPREMACY OF THIS CONTRACT

In the event that any provision of any other agreement entered into between the MUNICIPALITY and the WATER BOARD, conflicts with the provisions of this contract, the provisions of this Contract shall prevail.

62. CONTRACT NOT BINDING ON SUCCESSORS-IN-TITLE

This contract shall not be binding on any successor in title of the MUNICIPALITY or any successor in title of the WATER BOARD.

63. MUTUAL COOPERATION AND GOOD FAITH

The parties shall in their dealings with each other display the utmost good faith, consult each other from time to time with regard to any assistance or advice which they may require in connection with fulfilling any of its obligations in terms of this contract and undertake to do all such things, perform all necessary acts and procure the taking of all necessary steps and sign all such other documents that may be necessary or incidental or conducive to give effect to the intention and the terms and conditions of the contract.

64. COUNTERPARTS

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

65. GOVERNING LAW

This contract shall be governed by and construed and interpreted in accordance with the law of the Republic of South Africa, provided that in the event of a conflict between or inconsistency in the laws applicable in the various provinces of the Republic of South Africa, the law as interpreted and applied in the Western Cape Province shall prevail.

66. ANNEXURES

The following annexure form part of this contract: -

66.1 Annexure A - Recordal of bulk water supply services provided on the effective date;

66.2 Annexure B - Water Quality Standards

IN WITNESS WHEREOF, the parties have executed this contract on this DAY OF

..... 20__ AT

WITNESSES:

I.

II.

HSD WALLACE
MUNICIPAL MANAGER
THEEWATERSKLOOF MUNICIPALITY

IN WITNESS WHEROF, the parties have executed this contract on this DAY OF

..... 20__ AT

WITNESSES:

I.

II.

the WATER BOARD

ANNEXURE A

CONTRACT BETWEEN OVERBERG WATER

AND

THEEWATERSKLOOF MUNICIPALITY

QUANTITIES AND RELIABILITY OF SUPPLY

Total allotted volume per year	2 409 000 m ³
Average daily allotted volume = Average Annual Daily Demand	6 600 m ³
Average Flow Rate	76,4 l/sec
Required Peak Flow Rate (Factor of 1,5)	114,6 l/sec
Actual Consumption – 2006/2007	1 623 830 m ³
Actual Average Flow Rate – 2006/2007	51,5 l/sec
Actual Consumption – 2007/2008	1 554 500m ³
Actual Average Flow Rate – 2007/2008	49,3 l/sec
Actual Consumption – 2008/2009	1 520 630 m ³
Actual Average Flow Rate – 2008/2009	48,2 l/sec
Storage Capacity	12 746 m ³
Storage Capacity @ AADD	46 hours
Storage Capacity @ Actual Peak Flow	56 hours
Storage Capacity @ Actual Average Daily Flow (2008/2009)	73 hours

ANNEXURE B

**CONTRACT BETWEEN OVERBERG WATER
AND
THEEWATERSKLOOF MUNICIPALITY
QUALITY OF WATER**

The parameters utilised in this document represents some of the indicators of SANS 241 for Class I water.

	Determinant	Unit of Measure	Limits
Health	Total Coliforms	Count / 100 ml	Not detected
	Faecal Coliforms	Count / 100 ml	Not detected
	E.coli	Count / 100 ml	Not detected
	Aluminium as Al	mg / l	< 0,3
Aesthetic / Operational	Colour	Mg / l Pt	< 20
	Conductivity	mS / m	< 150
	Dissolved Solids	mg / l	< 1000
	pH Value	pH Units	5,0 – 9,5
	Odour	TON	< 5
	Taste	FTN	< 5
	Turbidity	NTU	< 1
	Fluoride	mg / l	< 1
	Nitrate & Nitrite as N	Mg / l	< 10
	Iron as Fe	Mg / l	< 0,2
	Manganese as Mn	Mg / l	< 0,1