


WorleyParsons

resources & energy

EcoNomics™

OVERSTRAND MUNICIPALITY
WATER AND WASTE WATER TREATMENT WORKS CONTRACT: ASSESSMENT REPORT

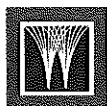
What needs to be noted is that the municipality will still be responsible for the following which will have cost implications:

- water services authority functions
- monitoring issues
- capital planning and budgeting, including repairs and maintenance above the R 50 000.00 (escalating)
- Raw water abstraction charges
- Variances in volumes of water
- Contingencies in regard to the potentially impacted staff

It is therefor recommended that the municipality still budget the full R 35 million for the above.

Certain key positions will need to be filled by the Operator to achieve Regulatory compliance over a period of three years which is not included in the bidder's pricing. These would include the following:

Plant Location	DWA Classification of Plant	Name	Post no.	Job Description	TASK Post Level
Water					
Buffelsrivier	C	Vacant	WC0320826	Plant Operator	T9
Preekstoel	B & C	Vacant	WC0325076	Asst. Operator	T4
Franskraal	C	Vacant	WC0325090	Works Operator	T9
Waste Water					
Gansbaai	E	Vacant	WC0324512	Works operator	T9
Stanford	E	Vacant	WC0320186	Assistant Operator	T8
		Vacant	WC0321280	Assistant Operator	T4
Hermanus	B	Vacant	WC0326378	Senior Superintendent: Waste Water	T13
		Vacant	WC0321718	Plant Operator	T6
		Vacant	WC0322180	Plant Operator	T6
Hawston	E	Vacant	WC0321676	Supervisor Purification	T7
Kleinmond	D	Vacant	WC0320940	Works operator grade 2	T6



WorleyParsons

resources & energy

EcoNomics

OVERSTRAND MUNICIPALITY

WATER AND WASTE WATER TREATMENT WORKS CONTRACT: ASSESSMENT REPORT

From the above it is expected that increase costs of R4 million must be budgeted, which will still mean that the service provider is affordable as the potential total cost will be in the region of R 26 million excluding VAT, dependant on volumes of water treated.

Accordingly the cost of contracting an Operator is found to be within budget. As it remains within budget, there should not be an increase in the cost/kl as a direct result of the Contract.

6.6 Staff transfer

The Municipality has identified the staff directly associated with the operations and maintenance of the water and waste water treatment works. The Municipality has undertaken that no jobs will be lost as result of the Contract. It is proposed that impacted staff will transfer to the operator for the duration of the Contract; alternatively employees will be re-deployed within the Municipal structures. Current benefits are protected in terms of law and will also be in terms of the contract.

Engagements in this regard are ongoing.

Contingency costs can only be determined once it has been clarified who will transfer, and the impact of those not transferring. This could include the obligation to payout outstanding leave; and to address the deployment of employees choosing not to transfer.

6.7 Other issues for consideration

Issues that can impact negatively on the financial performance of the Municipality and the cost of O&M of the Works include the following:

- Currently the municipality has full operational risk with regard to the Works. If this were to be costed it could add an additional 20% to the actual cost of the current function undertaken by Municipality.
- Technological advances will require that additional high level human resources which would most probably come at a higher cost than the current capacity, or the current resources will need a material amount of up skilling / training which requires a certain amount of funding. The fact that human resources is a significant cost of the function would mean that the current estimated costs of the function would increase materially.
- As per the findings of the S78(1) assessment there is a concern that new technology installed is not adequately maintained as there is no urgency at this point in time. In future this could result



WorleyParsons

resources & energy

EcoNomics

OVERSTRAND MUNICIPALITY

WATER AND WASTE WATER TREATMENT WORKS CONTRACT: ASSESSMENT REPORT

in un-planned for increases in maintenance due to a backlog being created and this could accordingly increase the current operational costs of the function be undertaken.

6.8 Feasibility

The question is posed as to whether it is feasible for the Municipality to contract the O&M function rather than undertake the function itself. Will there be a benefit in concluding the contract? We have indicated above that the Contract is affordable, but that here will be no opportunity for budget saving.

We have also indicated that there should not be an increase in cost to the Municipality as a direct result of the Contract.

In assessing whether there would be potential value, the following indicators are relevant:

- Operational risk will be transferred to the Operator for the Contract term.
- Within the existing budget, because it is the core focus of the business of the Operator, the Operator should be able to drive efficiencies and optimise processes to ensure that the technology is utilised appropriately, meaning that use of chemical, electricity, spares etc will be optimised. Key drivers of the Operator's efficiency will be productivity; optimisation of electricity usage; optimisation of processes; and specialisation.
- A key outcome sought is asset preservation as a result of focussed management being measured against KPIs. Asset preservation ultimately impacts on the useful life of the asset which will ensure that potential capital and non-routine costs of the Municipality are deferred for a period of time. Maintaining infrastructure which decreases the probability for future refurbishment or replacement cost.
- Operating infrastructure optimally will extend the operating life of the assets, thereby decreasing the need to replace in future.
- By ensuring the highest quality of water is provided and that the discharge is of an appropriate quality, the probability of the municipality being held financially responsible in the future is decreased.
- A key cost driver of the Function is human resources. This cost needs to be optimised to ensure



WorleyParsons

resources & energy

EcoNomics

OVERSTRAND MUNICIPALITY

WATER AND WASTE WATER TREATMENT WORKS CONTRACT: ASSESSMENT REPORT

- scarce and high level expensive skills are accessible but only used when needed on a draw down basis from the head office of the Operator;
- overtime will be managed appropriately;
- remuneration of employees is optimised, rewarding performance and skills development;
- operating employees will be skilled through the Contract. This cost will be for the Operator, which would have had a budget impact in the absence of the Contract.

A risk to the feasibility is the profit motive of the operator. This, and asset stripping, has been raised by organised labour. The costing has been determined through a competitive bidding process. The Operator will be contracted at the remuneration model proposed in the bid. This risk will need to be carefully managed by the WSA to ensure key outcomes sought by the contract are achieved. The Operator must drive efficiencies, but not to the detriment of service delivery and asset preservation. The key tool to manage this is performance assessment of the KPAs and KPIs which will be updated annually to ensure progressive improvement.

6.9 Conclusion

Although the Contract to undertake the Function will contribute to the costs of delivering water services, the cost will have had to have been incurred by the Municipality and the impact on tariffs will remain within the Municipality's control.

The bid responses to the RFP indicated that it is affordable as the cost is less than that of the Municipality.

In essence we anticipate that the actual cost of the Operator will be equal or less than the current cost of the O&M of the Works by the Municipality and this is supported by the proposals received.

7. GRANTING OF RIGHT TO USE THE WORKS

7.1 The Works

The Works are defined in the Technical Specification attached to the RFP, and which will be attached to the Contract.

7.2 The Right of Use



WorleyParsons

resources & energy

EcoNomics

OVERSTRAND MUNICIPALITY

WATER AND WASTE WATER TREATMENT WORKS CONTRACT: ASSESSMENT REPORT

The Contract is a management contract. The Operator is paid a management fee to operate the works. There is no obligation to pay a lease or right of use fee as this will be passed straight back to the Municipality.

The granting of the right of use is made with the objective of achieving the following key economic objectives namely: asset preservation and operations optimisation. If the function of treating water and waste water can be undertaken properly there will be a direct impact on the water services provision to the community over the longer term.

The Operator will be given right of access to operate and maintain the assets. Whilst the operator will take full operational risk, the Municipality will remain the owner of the Works.

The Municipality will have access to the works to monitor the performance of the Operator.

Because of the direct interface of the Function with the water services provider, the risk of non-performance or poor performance by the Operator needs to be monitored and addressed rapidly.

The contract provides for penalties to incentivise performance, and for dispute and step in rights should it be necessitated by poor or non-performance of the Operator.

A detailed Asset Register will be developed in the first three months of the contract period. Both parties will sign off on this. It will be kept up to date for the duration of the Contract.

On termination of the Contract the Works must be in the same or better condition. If over the duration of the Contract the Works are improved through planning and capital contribution the impact of this will be managed through the annual planning process. KPIs and KPIs will be adjusted accordingly.

The Municipality will continue to execute its water services authority functions in regard to capital planning and budgeting and oversight.

8. CONCLUSION

At this stage it is our independent professional opinion that the Contract will not negatively impact the Municipality's current budget provisions for the operations and maintenance of the Works. Although there is unlikely to be a direct "cost saving" on the current O&M budget for the Works, there will be other benefits inclusive of:

- Skills development and retention – regulatory compliance;



WorleyParsons

resources & energy

EcoNomics

OVERSTRAND MUNICIPALITY

WATER AND WASTE WATER TREATMENT WORKS CONTRACT: ASSESSMENT REPORT

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

The impact of the cost of the staff transfer still needs to be determined.

The granting of the right to use the Works is undertaken with an understanding of the key objectives sought to be achieved namely asset preservation and operations optimisation so as to ensure long term security of supply of water services delivery to the community. The granting of the right is considered and transparent. The right of the Municipality to incentivise performance or to step in are contractually secured.

9. Way Forward

In executing the mandate of the Technical Director to test and report back on the feasibility of the Contract the following is underway:

1. Engagement with potentially impacted employees;
2. Contract finalisation with the preferred bidder;
3. Process of inviting and receiving comments and representations from the local community or interested parties;
4. Solicitation of views and recommendations from Stakeholders.
5. Report to Council for final decision making regarding the Contract.



Navrae: H Blygnaut / M Bartman / M Potgieter
Enquiries:

Léerverwysing: SC 1508/2014 Phase 2 RFP
File Reference:

Datum: 13 March 2015
Date:

KANTOOR VAN DIE MUNISIPALE BESTUURDER
/ OFFICE OF THE MUNICIPAL MANAGER

National Treasury –W McComans; Strover Maganedisa & Themba Mdletshe
Provincial Treasury Western Cape –Z Hoosain & Louise Dean
Co-operative Governance and Traditional Affairs (CoGTA) – T Lebohng
Dept. of Water and Sanitation (National/Bellive)- Rashid Khan & Simpiwe Mashicila

Dear Sirs,

LONG TERM OPERATION AND MAINTENANCE CONTRACT FOR WATER AND WASTE WATER TREATMENT WORKS IN OVERSTRAND

MUNICIPAL FINANCE MANAGEMENT ACT: SECTION 33 AND ASSET TRANSFER REGULATIONS

SOLICITATION OF VIEWS AND RECOMMENDATIONS

1. Further to the Municipal Manager's letter of 2 March 2015, to which the RFP and draft contract were attached, we attach herewith a further report as at 12 March 2015.
2. To inform the preparation of our report for Council's consideration, we hereby solicit your views and recommendations on the proposed Contract. National and Provincial Treasuries' views are also required on the proposed granting of the right of use of the Works.
3. Kindly provide the views and recommendations by 12h00 on Monday, 13 April 2015.
4. As proposed in the Municipal Manager's letter of 2 March 2015, please receive herewith the agenda of the proposed working session:
 - 4.1. Thursday 19th March 2015 at 10:00
 - 4.2. Venue: Committee room of the Mayor, Overstrand Municipality, Hermanus
5. Agenda:

WORKING SESSION: MFMA VIEWS AND RECOMMENDATIONS		
10:00	Welcome	Chair
	Introduction and Apologies	
	Objective of working session and adoption of Agenda	

10:15	Presentation: Process to date; principles of the contract and impact assessment	Overstrand
11:15	Discussion	All
12:30	Way Forward: Views and recommendations	All
13:00	Closure	Chair

6. Kindly rsvp to Ms Adenel Bayley abayley@overstrand.gov.za or 028 313 8982 to confirm your attendance at the working session by close of business 13 March 2015. Alternatively you may email any clarification issues to hblignaut@overstrand.org.za for a written response.

Yours sincerely,

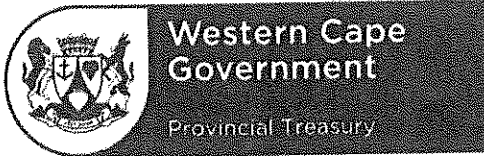

C.C. GROENEWALD
MUNICIPAL MANAGER

Preshane Chandaka

Directorate: Infrastructure

Preshane.Chandaka@westerncape.gov.za

Tel: 021 483 4222 Fax: 021 483 5006



Reference: P8/2/16

**THE MUNICIPAL MANAGER
OVERSTRAND MUNICIPALITY
PO BOX 20
HERMANUS
7200**

FOR ATTENTION: MR H BLIGNAUT

Dear Sir

**LONG-TERM OPERATION AND MAINTENANCE CONTRACT FOR WATER AND WASTE WATER
TREATMENT WORKS IN OVERSTRAND**

We refer to your communication dated 13 March 2015 whereby the Municipality is soliciting comments from Provincial Treasury in accordance with section 33 of the Municipal Finance Management Act 56 of 2003.

1. The Provincial Treasury has taken note of and values the effort of Overstrand Municipality in securing the requisite institutional capacity to ensure the long-term efficient operation and maintenance of water and waste treatment works in Overstrand. Given that South Africa is a water scarce country, the Municipality is commended in exploring alternative service delivery mechanisms in the delivery of this service.
2. The Municipality proposes the contracting out of the function of operating and maintaining the Municipality's bulk water and sewerage purification works in order to secure the availability of key operating staff, the development of local skills and the

assurance of water supply and treatment of sewerage at the right quality and quantity as well as the preservation of assets.

3. In preparing your report for Council's final decision, Provincial Treasury offers the following comments and recommendations on the documentation provided:

4. COMMENTS

- 4.1 Section 33(1) and 33(2) of the MFMA which deals with "Contracts having future budgetary implications" as well as section 116(1) and (2) of the MFMA which deals with "Contract and contract management" requires the municipality to solicit the view of the local community, Provincial and National Treasury, by means of requests to submit written comments and representations regarding the proposed transaction.
- 4.2 The afore-mentioned legislative prescripts also warrants the Accounting Officer together with the Municipal Council to consider the mandatory requirements associated with contract management and contract administration for long term contracts/leases having future budgetary implications.
- 4.3 From a supply chain management perspective the municipality needs to have satisfied the following, when entering into the proposed contract:
 - 4.3.1 Section 217 of the constitution requires the municipality to procure or contract for goods and services in a manner, which is fair, transparent, cost effective, equitable and competitive.
 - 4.3.2 Compliance with the supply chain management policy and other applicable legislation, in respect of ensuring that the bid committee has applied its mind on all material aspects of the proposal, and have provided recommendations on the proposed contract.
- 4.4 Furthermore, a proper delegation system as contemplated in section 79 of the MFMA, and proper-delegated structures need to be in place, for vetting of the proposed bid.

4.5 The Municipality needs to ensure that reasonable steps have been taken to ensure that the transaction/contract will:

- Result in an economic benefits for the institution; and
- Yield economic and environment benefit for its constituency.

4.6 The accounting officer needs to be satisfied that all due processes and procedures stipulated in the prescripts and in the Municipality's SCM policy and MFMA Circular 62 have been heeded.

4.7 Furthermore, the municipality needs to ensure adherence to the Section 78 MSA legislative requirements and apply due diligence with the outcome of the investigation.

4.8 In terms of the proposed contract having future budgetary implication, a critical phase of the proposed contract, is that the Municipality needs to ensure that sufficient demand management and planning has been conducted, which includes;

4.8.1 Identification and securing of the funding for the duration of the contract, which includes the possible escalations of costs in the medium period;

4.8.2 Identification of risks, categories and prioritisation of risks, and risk mitigation procedures; and

4.8.3 Designing of specification, which is clear, precise, measurable and speak to the goods and services needed by the Municipality to address the service delivery requirements and targets.

5. RECOMMENDATIONS

5.1 It must be noted that the procurement of these professional services for all intents and purpose must give effect to five pillars of procurement as entrenched in Section 217 of the constitution. Furthermore adherence to all of the requirements stipulated in the SCM policy, and that the accounting officer is satisfied that due process was followed.

5.2 From a contract and prudent financial management perspective, the Municipality should ensure that funds are available for the duration of the contract.

- 5.3 The draft agreement to be entered into with the successful bidder provides for certain functions to be performed by the Private Operator in an Implementing Agent capacity on behalf of the municipality. It is the Treasury's view that any procurement by the operator in this capacity will have to be in accordance with the requirements of the Municipality's Supply Chain Policy. From the contract documentation this principle is not clearly evident.
- 5.4 The transfer of staff associated with the day-to-day operation of the infrastructure to the private party is central to the underlying rationale for improved efficiency and effectiveness of operations and maintenance. The extent to which staff opts to rather be redeployed elsewhere in the Municipality will impact on the financial viability of the proposal and needs to be considered in the final submission.
- 5.5 The contract documentation provides an overview of future infrastructure upgrades that may be required, however, the underlying principles of how the contractor will be remunerated for managing additional assets that may be added over time is not immediately apparent.
- 5.6 Given the current financial position of the Municipality, Treasury has, in principle, no objection against your intention, subject to the required Supply Chain Management processes being followed, the requirements of the MFMA (especially section 33) being adhered to and the carry through implications over the MTREF be taken into account within the budgets of each of the affected years with the required budgetary provision to ensure affordability and sustainability over new MTREF years.

Trusting you would find the above in order.

Yours sincerely



MR H MALILA

DEPUTY DIRECTOR-GENERAL: FISCAL AND ECONOMIC SERVICES

DATE: 13 April 2015



OVERSTRAND WATER AND WASTE WATER TREATMENT
OPERATION MANAGEMENT CONTRACT
TENDER NO. : SC 1508/2014
18 MAY 2015

Overstrand Municipality
PO Box 20
Hermanus
7200

Fax No: 028-3138048
Attention: Municipal Manager

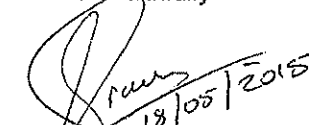
Dear Sir / Madam


**TENDER NO SC 1508/2014 WATER AND WASTE WATER TREATMENT OPERATION
MANAGEMENT CONTRACT.**

S19(4) of the WATER SERVICES ACT No. 108 of 1997

1. We are the preferred bidder in regard to the above mentioned contract.
2. S19(4) of the Water Services Act No. 108 of 1997 requires that before entering into the contract with Overstrand Local Municipality, we disclose and provide information on:
 - 2.1. Any other interests we may have, which are ancillary to or associated with Overstrand Local Municipality;
 - 2.2. Any rate of return on investment we may gain by entering into such contract.
3. We disclose and provide information accordingly:
 - 3.1. At date of this letter we have no other interests which are ancillary to or associated with Overstrand Local Municipality.
 - 3.2. Regarding the rate of return on investment, the contract is structured as a management contract with a management fee and accordingly no investment is required. We have tendered a 6% implementing agent fee.

Yours faithfully


18/05/2015
Lynette Grau
Technical Support


18/5/2015
Abrie Wessels
Regional General Manager: Cape



WATER AND WASTE WATER
BULK WORKS CONTRACT

entered into between

OVERSTRAND LOCAL MUNICIPALITY
("the Municipality")

and

VEOLIA WATER SOLUTIONS & TECHNOLOGIES SOUTH AFRICA (PTY)
LTD

(Registration No 1964/007768/07)

("the Operator")

Final July 2015

2138

TABLE OF CONTENTS

PART A: INTRODUCTION	1
1. PARTIES	1
2. INTERPRETATION AND PRELIMINARY	1
PART B: APPOINTMENT	4
3. APPOINTMENT	4
4. DURATION	4
5. HAND-OVER	4
6. VARIATION	4
PART C: SCOPE	5
7. THE FUNCTION	5
8. IA SERVICES	5
9. STRATEGIC PLANNING	6
10. EMERGENCY	6
11. SUPPORT SERVICES	6
12. ANNUAL PLAN	7
PART D: PERFORMANCE AND CONDUCT	8
13. PERFORMANCE INDICATORS	8
14. PENALTIES	8
15. REGULATORY COMPLIANCE AND MUTUAL CO-OPERATION	9
16. BY-LAWS AND POLICIES	9
17. ACCESS TO INFORMATION	9
PART E: REMUNERATION	9
18. PRICING	9
19. ESCALATION	11
20. INVOICING & PAYMENT	11
PART F: ASSETS	11
21. THE BULK WORKS	11
22. OFFICES	12
23. THE TECHNICAL ASSET REGISTER	12
24. INTELLECTUAL PROPERTY	12
25. OPERATIONAL RECORDS	12
26. EFFICIENCY	13
27. INSURANCE	13
PART G: PERSONNEL	13
28. TRANSFER	13
30. TRAINING	15
31. CONTROL OF EMPLOYEE CONDUCT	15

32.	SAFETY AND SECURITY	15
PART H: CONTRACTING		15
33.	ASSIGNMENT, TRANSFER, CESSION AND DELEGATION	15
34.	PROCUREMENT AND ECONOMIC EMPOWERMENT	15
35.	SUB-CONTRACTING	15
PART I: DISPUTE RESOLUTION		16
36.	INTERDICT AND URGENT RELIEF	16
37.	AMICABLE SETTLEMENT	16
38.	EXPERT DETERMINATION	16
39.	ARBITRATION	16
PART J: BREACH, FORCE MAJEURE & TERMINATION		18
40.	BREACH	18
41.	FORCE MAJEURE	18
42.	TERMINATION	19
43.	EFFECT OF TERMINATION	20
PART K: GENERAL		20
44.	GOOD FAITH AND CO-OPERATION	20
45.	LIABILITY	20
46.	EXCLUSION OF CONSEQUENTIAL LOSS FOR DIRECT DAMAGES	21
47.	PREVENTION OF CORRUPTION	21
48.	FAILURE TO REACH AGREEMENT	21
49.	SEVERABILITY	21
50.	GOVERNING LAW	21
51.	CONSENT TO JURISDICTION	21
52.	PRESERVATION OF THE POWERS AND DUTIES OF THE MUNICIPALITY	21
53.	CONTRACT BINDING ON SUCCESSORS-IN-TITLE	22
54.	DOMICILIUM CITANDI ET EXECUTANDI	22
55.	WHOLE AGREEMENT, NO AMENDMENT	22
56.	SIGNATURES	24
ANNEXURE A: PRICING SCHEDULE		25
ANNEXURE B: PERFORMANCE INDICATORS		1
APPENDIX: REQUEST FOR PROPOSAL		3

PART A: INTRODUCTION

4138

1. PARTIES

1.1. The Parties to this agreement are:

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

1.1.2. Veolia Water Solutions & Technologies South Africa (Pty) Ltd, an operator with the skills and experience to undertake the Function.

1.2. The Parties agree as set out below.

2. INTERPRETATION AND PRELIMINARY

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

2.1.1. any one gender include both genders;

2.1.2. the singular include the plural and vice versa; and

2.1.3. natural persons include created entities (incorporated or unincorporated) and all spheres of Government.

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

2.2.1. "Accounting Officer" means the Municipal Manager as defined in the MFMA;

2.2.2. "Annual Plan" means the document prepared annually including the Asset Register, Technical Specifications, Pricing Schedule, various Plans and associated Performance Indicators for a Financial Year, more fully referred to in clause 12;

2.2.3. "Asset Register" means the technical asset register developed for purposes of this Contract defining the Bulk Works as more fully referred to in clause 23, updated on an annual basis in the Annual plan;

2.2.4. "Bulk Works" means the water and waste water treatment plants, pump stations and associated assets and consumables as described in the RFP, and as updated annually in the Asset Register;

2.2.5. "Chief Executive Officer" means the chief executive of the Operator as appointed from time to time;

2.2.6. "Competent Authority" means collectively the Minister, all spheres of Government, any court of competent jurisdiction or any agency, authority, body or standard-setting institution, established or appointed in terms of any Regulatory Provision to regulate or oversee the activities of the Operator or the Municipality pursuant to this Contract;

2.2.7. "Contract" means this agreement and any annexures hereto, as well as any subsequent amendment, novation or substitution of this Contract and annexures;

2.2.8. "Corrupt Action" means –

2.2.8.1. giving or accepting any undue payment, bribe, gift, gratuity or any other undue benefit in exchange for performing or forbearing to perform any action in connection with this Contract; and

2.2.8.2. any solicitation, offering, participation, conspiracy or attempt to bring about the circumstances mentioned in clause 2.2.8.1 above;

2.2.9. "Effective Date" means 1 September 2015, irrespective of the date of signature of the Contract;

2.2.10. "Emergency Situations" includes fires, floods, water pollution, restrictions in respect of raw water, droughts, operational emergencies such as pipe bursts, and any other situation that may negatively impact the usual undertaking of the Function and the Bulk Works and water services delivery;

- 2.2.11. "Escalation Factor" means the headline CPI (for all urban areas) annual inflation rate published by Statistics SA in Statistical Release PO141.1 for the month of March preceding the 1 July escalation date, other than for Transferred Employees stated in 19.2 and unless otherwise motivated by the Operator and accepted by the Municipality as set out in 19.3;
- 2.2.12. "Financial Year" means the period commencing on 1 July and ending the following 30 June;
- 2.2.13. "Function" means the function of operating and maintaining of the Bulk Works by the Operator to achieve the Technical Specifications as more fully set out in 7 below;
- 2.2.14. "IA Fee" means the Operator's remuneration for delivering the IA Services, as set out clause 18.4 below;
- 2.2.15. "IA Services" means the services to be provided by the Operator as agent of the Municipality as more fully set out in clause 8 below;
- 2.2.16. "Large Repair and Maintenance Projects" means repair and maintenance events undertaken as part of the Function of which the cost is greater than R50 000, including materials, labour and specialist advisory services as required by the circumstance per event, as set out in 7.3.2, and escalating as per 2.4 below;
- 2.2.17. "MFMA" means the Local Government: Municipal Finance Management Act 56 of 2003;
- 2.2.18. "Minister" means the Minister referred to in the Water Services Act;
- 2.2.19. "Municipal Manager" means the accounting officer of the Municipality;
- 2.2.20. "Municipal Plans" means the plans of the Municipality including without limitation the Integrated Development Plan, the Spatial Development Plan, the Water Services Master plan and the Water Services Development Plan as is relevant to the undertaking of the Function and the IA Services;
- 2.2.21. "Municipality" means Overstrand Local Municipality or its successor in title;
- 2.2.22. "Operator" means Veolia Water Solutions & Technologies South Africa (Pty) Ltd, Registration Number: 1964/007768/07;
- 2.2.23. "Operator Fee" means the Operator's remuneration as set out in the Pricing Schedule;
- 2.2.24. "Parties" means the Municipality and the Operator, or if appropriate in the context, either of them;
- 2.2.25. "Penalty/ies" means the incentive/s to be levied if the Performance Indicators as measured against the baseline are not achieved as set out on clause 14, Annexure B and updated or amended in the Annual Plan;
- 2.2.26. "Performance Indicators" means the indicators to measure the performance of the Operator as set out in clause 13, Annexure B and updated or amended in the Annual Plan;
- 2.2.27. "Pricing Schedule" means the pricing schedule attached as Annexure A, and as updated in the Annual Plan;
- 2.2.28. "Regulatory Provisions" means collectively or individually, the provisions of any legislation, regulation, policy directive or notice issued by a Competent Authority under such legislation or regulation;
- 2.2.29. "RFP" means the Municipality's issued bidding documentation including the Request for Proposal and annexures, and correspondence with bidders during the RFP procurement process attached as Appendix D
- 2.2.30. "Salary Contribution" means the Municipality's capped contribution to the Operator's human resource costs as set out in 18.3 below;
- 2.2.31. "SALGBC" means the South African Local Government Bargaining Council;

6138

- 2.2.32. "Support Services" means the services to be provided by the Municipality to the Operator as set out in 11 below;
- 2.2.33. "Systems Act" means the Local Government: Municipal Systems Act 32 of 2000;
- 2.2.34. "Technical Specifications" means the specifications as set out in the RFP, and as updated or amended in the Annual Plan;
- 2.2.35. "Transferred Employees" means employees of the Municipality which transfer to the Operator identified in the Organisational Plan referred to in 29 below;
- 2.2.36. "Water Services Act" means the Water Services Act 108 of 1997 and its successor in title;
- 2.2.37. "water services delivery" means the delivery of water and waste water municipal services to the community by the Municipality;
- 2.3. Where consent or approval of a Party must be obtained or a Party is required to consider or renew something in terms of this Contract, unless it is specifically provided otherwise, it will act reasonably and within a reasonable period.
- 2.4. All rand amounts stated in this Contract and the Pricing Schedule shall be escalated annually with effect from 1 July of every year by the Escalation Factor, unless otherwise stated.
- 2.5. Reference to legislation includes regulations issued under the legislation and amendments to such legislation or regulations from time to time, subject to 41.
- 2.6. Clause headings in this Contract are for the purpose of convenience and shall not be used in the interpretation of, nor modify, nor amplify the terms of this Contract or any clause hereof.
- 2.7. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Contract.
- 2.8. When any number of days is prescribed in this Contract, same shall be working days reckoned exclusively of the first day, and all Saturdays, Sundays or any public holidays thereafter, and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.
- 2.9. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 2.10. Expressions defined in this Contract shall bear the same meanings in schedules or annexures to this Contract which do not themselves contain their own definitions.
- 2.11. Where any term is defined within the context of any particular clause in this Contract, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Contract, notwithstanding that that term has not been defined in this interpretation clause.
- 2.12. General words preceded and or followed by words such as "other" or "including" or "particularly" shall not be given a restrictive meaning because they are preceded or followed by a particular example intended to fall within the meaning of the general words.
- 2.13. The rule of construction that the Contract shall be interpreted against the party responsible for the drafting or preparation of the agreement shall not apply.
- 2.14. If there is any conflict between the provisions of any of the documents making up this Agreement then the priority of the documents shall be:
- 2.14.1. The Contract;
- 2.14.2. The most recent Annual Plan;
- 2.14.3. The Annexures to the Contract;

7/38

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

PART B: APPOINTMENT

3. APPOINTMENT

- 3.1. The Municipality hereby appoints the Operator to undertake the Function and if required by the Municipality, to provide the IA Services.
- 3.2. The appointment shall commence on the Effective Date.
- 3.3. The Operator hereby accepts the appointment to undertake the Function and provide the IA Services in accordance with this Contract.

4. DURATION

- 4.1. The Operator shall commence with the performance of its duties on the Effective Date.
- 4.2. The appointment shall continue for 15 years from the Effective Date, unless terminated early in accordance with clause 42 below or extended in accordance with clause 4.3.
- 4.3. The Municipality shall have the right to extend the contract for a further 5 years, provided that 12 months written notice is given to the Operator prior to the expiry of the 15 year period, and the Operator accepts the extension of the Contract period.

5. HAND-OVER

- 5.1. The Parties acknowledge that the hand-over will be a process rather than an event. Recognising the importance of continuity of water services delivery by the Municipality, the Operator and the Municipality agree that they shall co-operate in the period prior to and after the Effective Date to facilitate an efficient hand over of Function, Transferred Employees, and the Bulk Works to the Operator.
- 5.2. The Operator shall have a period of 3 months to develop the Annual Plan for the period ending 30 June 2016 (the first Annual Plan). This shall include the Asset Register; the Technical Specifications; the Energy Management Plan; the Prevention and Emergency Plan; the Operations and Maintenance Plan; the Training and Development Plan; the Performance Indicators, including the updated base line for measurement of performance based on the Municipality's existing; the Pricing Schedule; the Organisational Plan; any IA Services for the period ending June 2016; any support services required from the Municipality; and any other thing relevant to the Contract and performance of the parties.
- 5.3. During the first 3 months from the Effective Date there shall be a phased approach to the hand-over of operations, including the supply of chemicals, maintenance, parts and staff. The parties shall work closely together to ensure uninterrupted service delivery. In the event that costs are incurred by either party on behalf of the other party during the hand-over period, these shall be reconciled, agreed, and set-off on the Operator's invoices.
- 5.4. If both parties are reasonably satisfied that the obligations in relation to the transfer of the Function, Transferred Employees and Bulk Works to the Operator, have been reasonably fulfilled, they shall sign the first Annual Plan for the period ending June 2016 and it shall be deemed to replace the Annexures; and shall be appended to the Contract to form part of the Contract.

6. VARIATION

- 6.1. The parties acknowledge that the scope of the Function will vary through the effluxion of time and accordingly the roles and responsibilities of the Parties will need to be adapted.
- 6.2. Provided it is related to the Bulk Works and the Function, and subject to the Regulatory Provisions, the scope of the Function may be varied by written agreement between the Parties.
- 6.3. In the event that the Municipality wishes to vary the scope of the Function –
 - 6.3.1. the Municipality shall be obliged to give the Operator reasonable notice thereof, giving details of the proposed variation, the reason therefore, and the

- scope of Function the Operator would be required to render;
- 6.3.2. the Municipality and the Operator will meet as soon as possible after the notice mentioned in clause 6.3.1 to discuss the variation proposed by the Municipality having regard to the following matters–
 - 6.3.2.1. the impact on water services delivery and the Municipal Plans;
 - 6.3.2.2. the impact on the existing Function and Bulk Works;
 - 6.3.2.3. the impact on roles and responsibilities of the Municipality and the Operator;
 - 6.3.2.4. the impact on the Asset Register;
 - 6.3.2.5. the impact on the Performance Indicators and Penalties;
 - 6.3.2.6. the impact on the Organisational Plan;
 - 6.3.2.7. the impact on the Pricing Schedule;
 - 6.3.2.8. any other issue which is relevant.
 - 6.4. Where variation is required as a result of Regulatory Provisions not reasonably foreseen at the Effective Date, the impact of the Regulatory Change shall be assessed by the Parties and the Annual Plan updated by agreement between the Parties.
 - 6.5. The Annual Plan shall be updated to address the change in scope of the Function agreed to between the parties and the associated Pricing Schedule.
 - 6.6. The Municipality shall have the right to bench mark and or test value for money of the proposed pricing to the Operator's competitively tendered rates in response to the RFP (as escalated) and the market, before accepting the Pricing Schedule.
 - 6.7. Where no agreement can be reached, the parties shall continue to implement the then current Annual Plan.

PART C: SCOPE

7. THE FUNCTION

- 7.1. The Operator shall, with effect from the Effective Date, be responsible for the Function.
- 7.2. The Function shall be undertaken by the Operator in accordance with the Annual Plan, so as to achieve the Technical Specifications.
- 7.3. The Function includes repairs and maintenance, Large Repairs and Maintenance and Emergency Repairs and Maintenance:
 - 7.3.1. Repairs and maintenance is covered in the Operator Fee;
 - 7.3.2. Large Repairs and Maintenance Projects shall be identified and prioritised by the Operator in the Annual Plan. The Operator shall define the Large Repairs and Maintenance Projects and propose and motivate the project and present three quotes for the Municipality to approve one quote. The authorised quotation will be implemented and costs as actually incurred by Operator recovered in the month following the occurrence of expenditure (provided that it shall not be more than the authorised quote).
 - 7.3.3. Emergency Repairs and Maintenance shall be addressed by the Operator in Emergency Situations and if it qualified as a Large Repair and Maintenance project, the actual cost will be recovered in the month following the occurrence of the expenditure.
 - 7.3.4. All repairs and maintenance must be guaranteed for at least three months or per the specification.
- 7.4. The Operator is responsible for managing its own accounting, financial management and budgeting in relation to the undertaking of the Function in terms of this Contract.

8. IA SERVICES

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

9/38

- 8.2. The IA Services exclude any aspect of the Function.
- 8.3. In the event that the Municipality wishes to request the Operator to render IA Services –
- 8.3.1. the Municipality shall give the Operator reasonable notice thereof, giving details of the proposed appointment, the reason therefore, and the scope of IA Services the Operator would be required to render;
 - 8.3.2. the Municipality and the Operator will meet as soon as possible after the notice mentioned in clause 8.3.1 to discuss the proposed appointment by the Municipality having regard to the following matters–
 - 8.3.2.1. the scope of the IA Services required;
 - 8.3.2.2. the impact on water services delivery and the Municipal Plans;
 - 8.3.2.3. the impact on the existing Function and Bulk Works;
 - 8.3.2.4. the roles and responsibilities of the Municipality and the Operator;
 - 8.3.2.5. the impact on the Asset Register;
 - 8.3.2.6. the scheduling of the IA Fee;
 - 8.3.2.7. any other issue which is relevant.
- 8.4. The Annual Plan shall be updated to address the IA Services agreed to between the parties.
9. STRATEGIC PLANNING
- 9.1. To assist the Municipality with its water services delivery planning function, the Operator shall provide information and insights relevant to the Function and the Bulk Works as reasonably requested by the Municipality.
 - 9.2. The Operator shall provide information and insights relevant to the interface between the Function and the Municipality's water services delivery strategic planning processes.
 - 9.3. The Municipality shall provide the Operator with all relevant Municipal Plans to inform the Annual Plan of the Operator.
10. EMERGENCY
- 10.1. In Emergency Situations, the Operator shall take reasonable steps to continue to undertake the Function.
 - 10.2. The Operator shall within 3 (three) months after the Effective Date, submit to the Municipality for comment, a Prevention and Emergency Plan that will include methods and procedures to be implemented in the future for preventing and addressing Emergency Situations. The Operator shall be obliged to continually review the Prevention and Emergency Plan, and at least annually present any necessary amendments thereto to the Municipality for its approval.
 - 10.3. The Municipality shall review the Prevention and Emergency Plan or any suggested amendment thereto submitted, within 1 (one) month after it was submitted to it. The Municipality shall be deemed to have reviewed the Prevention and Emergency Plan or any amendment thereto if no comment is received from the Municipality within the 1 (one) month period specified in this clause 10.3.
11. SUPPORT SERVICES
- 11.1. The Municipality shall account for, and charge to the Operator, any costs incurred by the Municipality in respect of services, other than in fulfilment of its obligations under this Contract, rendered to the Operator not provided for in this Contract, on an arms-length basis, at prices to be negotiated and agreed to between the Municipality and the Operator as part of the annual planning process.
 - 11.2. Such services may include the use of Municipality personnel and premises on an ad hoc basis provided that it is agreed in advance in the Annual Plan.
 - 11.3. In the event that such agreement is reached, it shall be recorded as a written agreement and included in the Annual Plan and shall govern performance indicators required by the Operator of the Municipality.

12. ANNUAL PLAN

- 12.1. The Operator shall be responsible for the preparation, control, management and execution of the Annual Plan for each Financial Year.
- 12.2. The Annual Plan shall address for the relevant Financial Year:
- 12.2.1. The Asset Register;
 - 12.2.2. The Technical Specifications;
 - 12.2.3. The Energy Management Plan;
 - 12.2.4. The Prevention and Emergency Plan;
 - 12.2.5. The Operations and Maintenance Plan;
 - 12.2.6. The Training and Development Plan;
 - 12.2.7. The Performance Indicators, including the updated base line for measurement of performance based on the previous Financial Years performance and the Penalties;
 - 12.2.8. The Pricing Schedule;
 - 12.2.9. Any IA Services required by the Municipality;
 - 12.2.10. Any Support Services required from the Municipality; and
 - 12.2.11. Any other thing relevant to the Contract and performance of the parties.
- 12.3. The Municipality shall indicate the IA Services and proposed variations to the Function by end August every year.
- 12.4. The Operator shall prepare and submit the Annual Plan for the following Financial Year to the Municipality by the end of September every year, taking into consideration the Municipality's proposals in 12.3 (if any) and the Municipal Plans and the previous year's Annual Plan.
- 12.5. The Municipality and the Operator shall meet and discuss the proposals by 15 October every year. In this period, the Municipality must either approve the plan or propose amendments with accompanying reasons or suggest alternative proposals, failing which the Municipality shall be deemed to have accepted the proposals.
- 12.6. The parties acknowledge that the process of Annual Planning is to give effect to the obligation of the Operator to show progressive improvement (per 13.4) and to escalate the Pricing Schedule per the Escalation Factor. In the absence of any proposals in terms of 12.3 and agreement in terms of 6, there shall be no negotiation required.
- 12.7. The draft Annual Plan for the following Financial year shall be finalised between the parties by end October every year to inform the Municipality's MFMA budgeting and planning process.
- 12.8. Once agreed between the parties, and the Municipal budget has been approved by Council, the Annual Plan shall be an addendum to the Contract and shall regulate the parties for the relevant Financial Year. In the event that there is not sufficient budget allocated by Council, the Annual Plan shall be reviewed and re-aligned.
- 12.9. If a variation on Function is, or IA Services are, required outside of the planning process referred to in clauses 12.3 to 12.8 the Annual Plan shall be updated by agreement between the parties. In the event that agreement cannot be reached, the dispute provisions below shall be implemented.
- 12.10. In considering a proposed Annual Plan, the Municipality may at its own cost undertake a bench-marking study which compares the Operator's proposals to inform the Municipality's responses to the proposals.
- 12.11. Any existing Annual Plan shall endure, and shall continue to be implemented by the Operator, until a new Annual Plan finalised.
- 12.12. Once approved by the Municipality, the Annual Plan is binding on the Parties.

PART D: PERFORMANCE AND CONDUCT

13. PERFORMANCE INDICATORS

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

14. PENALTIES

- 14.1. Penalties will be levied against the Operator for not achieving the Performance Indicators with reference to the base-lines agreed to in an Annual Plan.
- 14.2. Penalties will not be levied in the first 3 (three) months of the Contract unless otherwise stated in the base lines in the Annual Plans.
- 14.3. The base-line against which performance of the Operator will be measured by the Municipality will be agreed to in the Annual Plan. The Annual Plan will also include exclusions that are beyond the scope or control of the Operator.
- 14.4. Upon becoming aware if non-compliance by the Operator with Performance Indicators, the Municipality shall indicate its intention to levy a penalty in writing, with reasons. The Operator shall respond with 2 (two) days.
- 14.5. In the event that the Operator:
 - 14.5.1. fails to demonstrate to the reasonable satisfaction of the Municipality that the Performance Indicators are being achieved; or
 - 14.5.2. fails to justify to the reasonable satisfaction of the Municipality why the Performance Indicators are not being met; and
 - 14.5.3. provides no plan to the reasonable satisfaction of the Municipality to improve its performance,
 then:
 - 14.5.4. the Operator shall be in breach of its obligations under the Contract and the Municipality may elect to exercise its rights under clauses 40 to notify the Operator of breach; and
 - 14.5.5. penalties shall be enforced in accordance with clause 14.
- 14.6. If the breach of the Operator is as a result of:
 - 14.6.1. non-performance by the Municipality, the Municipality shall do what is necessary with 5 (five) days of notice of non-performance to ensure that performance occurs;
 - 14.6.2. force majeure, the provisions of clause 41 shall apply; and
 - 14.6.3. councillor or staff member of the Municipality failing to comply with the Code of Conduct in Schedules 1 and 2 to the Systems Act, the Operator shall give written notice to the Municipal Manager setting out reasonable particulars of such action and its likely consequences to the Function and Operator.
- 14.7. If the breach occurs as a result of 14.6,
 - 14.7.1. no Penalties shall apply against the Operator;
 - 14.7.2. the Municipal Manager shall be advised.
- 14.8. Where the Operator's performance is reliant on the counter-performance of the Municipality, and the Municipality has not performed, the Operator shall not be penalised.

- 14.9. Both parties shall endeavour to rectify non-performance as quickly as possible in the circumstances.
- 14.10. The maximum aggregate of Penalties that may be levied against the Operator in a Financial Year will be capped at 15% of the annual fixed charges of the Operator Fee as stated in the Pricing Schedule.
15. REGULATORY COMPLIANCE AND MUTUAL CO-OPERATION
- 15.1. The Parties shall execute their respective businesses, and undertakings and obligations arising in accordance with this Contract in compliance with all relevant Regulatory Provisions, including but not limited to applying for necessary approvals, consents, licenses or permits, where required.
- 15.2. Each Party shall, on the reasonable request of the other, do what it reasonably can to assist the requesting Party in complying with all applicable Regulatory Provisions and where such compliance requires any action, undertake such assistance timeously and properly.
- 15.3. The Municipality and Operator shall consult from time to time with regard to any assistance or advice which the Operator may require in connection with fulfilling any of its obligations in terms of this Contract. The Municipality shall further timeously provide the Operator with such information as it may reasonable require to enable it to comply with any of the Operator's obligations in terms of this Contract.
16. BY-LAWS AND POLICIES
- 16.1. The Operator shall comply with the Municipality's by-laws and policies to the extent that these apply to it, and the Operator shall discharge the Municipality's obligations, in terms of its by-laws and policies on its behalf, in terms of this Contract.
- 16.2. The Municipality undertakes timeously, on request of the Operator or otherwise, to promulgate by-laws and adopt all policies necessary to enable the Operator to comply with its duties and obligations and to exercise its rights in a financially and operationally sustainable manner in terms of this Contract.
17. ACCESS TO INFORMATION
- 17.1. The Operator shall record and maintain a complete record of compliance to its contractual duties and obligations by the use of appropriate computer software and suitable hard copy storage.
- 17.2. Each party or its duly authorised representative shall have the reasonable right to use and access all plans, manuals, databases, inventories, surveys, financial and other records and analyses compiled by the other party in accordance with this Contract or in the other party's possession both during the Contract and after termination of this Contract.
- 17.3. Each party undertakes to ensure that its information technology systems are reasonably compatible with the information technology system of the other.

PART E: REMUNERATION

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

B/B

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

14/38

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

19. ESCALATION

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

20. INVOICING & PAYMENT

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

PART F: ASSETS

21. THE BULK WORKS

- 21.1. The Municipality owns the Bulk Works and shall continue to own the Bulk Works for the duration of the Contract.
- 21.2. The Municipality hereby makes available the Bulk Works to the Operator. The Municipality hereby grants the Operator the right of unrestricted access to and use of the Bulk Works for the duration of the Contract in order to execute its obligations under the Contract.
- 21.3. The Bulk Works is made available voetstoots at the Effective Date and no warranties are given by the Municipality in this regard.
- 21.4. The Operator shall be responsible for the management of the Bulk Works to achieve the Technical Specifications and in accordance with the Annual Plan, in order to render the Bulk Works and the Function operational and efficient.
- 21.5. The Operator agrees that the Municipality shall have access to the Bulk Works to undertake its water services authority function and to monitor the performance of the Operator. This includes access to the testing and laboratory facilities at the Bulk Works. The Municipality undertakes that access will be managed so as not to interfere with the

Operator's undertaking of the Function.

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

22. OFFICES

- 22.1. The Operator is to provide for its own accommodation for its management team for the duration of the Contract, at its own risk.
- 22.2. The Municipality supports the Operator's proposal to build new offices on the Municipality's property and that the Operator operate out of the new offices whilst the Contract is in force.
- 22.3. The Operator shall submit the proposed plans for the new offices to the Municipality for approval of the design concept of the new office building prior to commencing building.
- 22.4. The Operator undertakes to build and operate the new office building at its own cost and risk. All building permits, requirements, approvals and regulations shall be complied with by the Operator. The Operator shall insure the new office buildings.
- 22.5. The Operator undertakes not to interfere with the Municipality's business at the Municipality's existing offices during construction or operating from the new office building on the Municipality's property.
- 22.6. The Municipality undertakes not to interfere with the Operator's right to operate out of the new office buildings.
- 22.7. The Municipality assumes no risk or responsibility for any costs associated with the new office building and operating of the new office building howsoever arising for the duration of the Contract.
- 22.8. The new office building shall accede to the land of the Municipality. On termination of the Contract risk in the new office building shall transfer to the Municipality at no cost to the Municipality.

23. THE TECHNICAL ASSET REGISTER

- 23.1. The Operator shall within three (3) months of the Effective Date, conduct a detailed assessment of all the Bulk Works (including structures, plant and equipment) and create, maintain and update a comprehensive technical asset register for purposes of this Contract.
- 23.2. The technical Asset Register shall be updated annually as part of the annual planning process as set out in Clause 12 and submitted with the Annual Plan.

24. INTELLECTUAL PROPERTY

- 24.1. Any discovery, invention, process or improvement made by the Operator, its employees or on behalf of the Operator by contractors or consultants in the course of undertaking the Functions shall be the intellectual property, whether registered or not, of the Municipality.
- 24.2. The ownership of and copyright in any intellectual property developed (whether registered or not) or documents (including reports, manuals, financial statements, budgets, research papers or letters) prepared by the Operator or any other employees of the Operator in terms of this Contract shall vest in the Municipality, and shall revert to the Municipality on termination of this Contract.
- 24.3. If the Operator uses third party licenses to enable the Operator to fulfil its obligations in terms of this Contract, it shall ensure that such use is properly licensed and register the interests of the Operator and ensure continuity of use of this third party intellectual property by the Municipality when this Contract is terminated.

25. OPERATIONAL RECORDS

The Operator must maintain and update during the currency of this Contract, in addition to any other reporting requirements required in the Regulatory Provisions, –

- 25.1. a record of its own operations, maintenance, inspections and technical auditing;

- 25.2. an asset register including the condition and geographical location of all components of the Bulk Works.

26. EFFICIENCY

- 26.1. The Operator is obliged to plan for, and undertake the Function in the most efficient, economical and affordable way, ensuring both the sustainability of itself, and the undertaking of the Function.
- 26.2. The Parties shall share in any benefit of savings achieved in terms of the Energy Management Plan, as set out in the Energy Management Plan.
- 26.3. The Municipality is likewise obliged to provide all reasonable assistance to the Operator in planning and undertaking the Function in the most efficient, economical and affordable way, ensuring the sustainability of the Bulk Works. The Municipality may not inhibit the fulfilment of any of the Operator's obligations or cause or suffer it to be done.

27. INSURANCE

- 27.1. The Municipality shall continue to insure the Bulk Works.
- 27.2. The Operator shall be obliged to ensure that insurance is effected and maintained from the Effective Date for the duration of the Contract, for the undertaking of the Function and all risks for which insurance is normally and reasonably available in regard to the undertaking of the Function as agreed annually in the Annual Plan.
- 27.3. The Operator shall notify the Municipality of all claims made for or against the Operator, stating the claim, the reason, and the quantum.

PART G: PERSONNEL

28. TRANSFER

- 28.1. In accordance with s197(2) read with s197(3) of the Labour Relations Act (LRA) the Transferred Employees will transfer to the Operator on the Effective Date in accordance with terms and conditions of employment which shall on the whole be no less favourable than the conditions of Transferred Employees' terms and conditions of employment as at the date of transfer.
- 28.2.
- 28.3. It is expressly recorded that despite what the rules of the Transferred Employees' respective funds may provide the parties agree that encashment of the Transferred Employees members' share shall not be permitted.
- 28.4. The Operator's intention is that the Transferred Employees will become members of the Operator's pension provident, retirement or similar fund, and as such has agreed and undertaken to comply with the requirements of s197(4) of the Labour Relations Act. The level of respective employer and employee contributions shall continue as applied immediately prior to transfer.
- 28.5. It is further recorded that the Operator desires that the Transferred Employees who are currently members of medical aid schemes should become members of the Operator's recognised medical aid scheme. The Operator shall ensure that the respective employer and employee contributions are no less than those that applied immediately prior to transfer and that the benefits offered by the Operator's medical aid scheme immediately prior to transfer are on the whole no less favourable.
- 28.6. In accordance with s197(7) the Municipality and the Operator undertake that they will agree the valuation as at the date of transfer (the Effective Date)
- 28.6.1. the leave pay accrued to the Transferred Employees. The Municipality will be responsible for paying the leave pay accrued to the Effective Date and undertakes to pay the Transferred Employees at the end of the third month after the Effective Date, less any tax due. The parties will disclose the agreement in this respect to the Transferred Employees;
- 28.6.2. the severance pay that would have been payable to the Transferred Employees in the event of dismissal by reason of the Operator's operational requirements and shall also disclose to the Transferred Employees and their trade unions the provisions of the agreement.

- 28.6.3. It is recorded that both the Municipality and the Operator have undertaken to the Transferred Employees that none of the Transferred Employees will be retrenched or made redundant by reason of the transfer in terms of s197 of the Labour Relations Act.
- 28.7. The Operator undertakes that to the extent that the trade unions to which the Transferred Employees belonged prior to the Effective Date had binding collective agreements bestowing organisational rights only in respect of such Transferred Employees and the workplace in which they are currently employed, these will be recognised by the Operator.
- 28.8. The Operator undertakes to facilitate the establishment of a workplace forum for purposes of consultation and/or negotiation on workplace related issues and matters of mutual interest should the Transferred Employees and/or their respective trade unions request this.
- 28.9. It is recorded that there will be no decrease in existing remuneration or benefits of the Transferred Employees as a direct result of the transfer of the Transferred Employees to the Operator triggered by the coming into effect of this Agreement.
- 28.10. The Operator undertakes that any proposed changes to the current shift system applicable to the Transferred Employees will be consulted on with the transferred employees and their representative trade unions prior to implementation.
- 28.11. It is recorded that the Operator is contractually obliged to provide appropriate training to the Transferred Employees and the Operator agrees to honour this obligation and acknowledges that the Municipality will monitor the provision of such training.
- 28.12. It is recorded that the transferred employees currently enjoy the benefit of post-retirement medical aid funding by the Municipality. The Municipality agrees and undertakes to fund the provision of this benefit as and when Transferred Employees retire from the Operator's employ whilst this Agreement is in force provided that the benefit is still available to the Municipality's employees when a Transferred Employee retires, and that the level of funding of this benefit shall not be greater than that enjoyed by the Municipality's employees of equivalent status and remuneration to that of the retiring Transferred Employee.
- 28.13. The Operator undertakes to provide to the Transferred Employees, prior to transfer, a letter setting out the terms and conditions and benefits that will be available to each on transfer, and shall be provided with written contracts of employment setting out inter alia these terms, conditions and benefits, on transfer.
29. ORGANISATIONAL PLAN
- 29.1. Within 3 (three) months of the Effective Date the Operator shall propose an "Organisational Plan", drafted in consultation with the Municipality. The Organisational Plan shall define how the Transferred Employees and others will be accommodated in the Function, their roles and responsibilities, job descriptions and conditions of employment.
- 29.2. The parties agree that whilst the Organisational Plan will result in re-organisation it will not result in retrenchment, redundancy or decrease in existing remuneration benefits of the Transferred Employees at the time of implementation of the Organisational Plan. Vacant posts will be filled by the Operator where required by the Organisational Plan.
- 29.3. The Organisational Plan shall be submitted to the Municipality for review and comment. If no comment is received within 20 (twenty) days of submission, it shall be deemed accepted. If comment is received in that time, it shall be assessed by the Operator and incorporated unless expressly rejected as unreasonable by the Operator, with reference to the performance requirements in the Annual Plan.
- 29.4. Once it has been finalised, the key positions will be advertised and filled. Once the Transferred Employees are accommodated, preference will be given to Operator employees and then employees of the Municipality who apply. Only if there is no appropriate skill and expertise available from these two sources may the job be advertised externally. Preference will be given to the local community.
- 29.5. The Operator shall be responsible for paying employees their salaries and benefits.