



**WATER AND WASTE WATER
BULK WORKS CONTRACT**

entered into between

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

and

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

(Registration No 1964/007768/07)

("the Operator")

Final ~~Draft~~ 13 November 2018

TABLE OF CONTENTS

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

28.	ACCESS AND SECURITY	23
29.	INSURANCE	23
	PART G: PERSONNEL	23
30.	STAFFING OBLIGATION	23
31.	EXISTING OPERATIONAL STAFF	24
32.	ORGANISATIONAL PLAN	26
33.	TRAINING	27
34.	CONTROL OF EMPLOYEE CONDUCT	27
35.	SAFETY AND SECURITY	27
	PART H: CONTRACTING	27
36.	ASSIGNMENT, TRANSFER, CESSION AND DELEGATION	27
37.	SUB-CONTRACTING	28
38.	PROMOTION OF SOCIALLY RESPONSIBLE PROCUREMENT	29
	PART I: DISPUTE RESOLUTION	30
39.	INTERDICT AND URGENT RELIEF	30
40.	AMICABLE SETTLEMENT	30
41.	EXPERT DETERMINATION	31
42.	ARBITRATION	32
	PART J: BREACH, FORCE MAJEURE & TERMINATION	34
43.	BREACH	34
44.	FORCE MAJEURE	35
45.	TERMINATION	36
46.	EFFECT OF TERMINATION	38
	PART K: GENERAL	39
47.	GOOD FAITH AND CO-OPERATION	39
48.	LIABILITY	39
49.	EXCLUSION OF CONSEQUENTIAL LOSS FOR DIRECT DAMAGES	40
50.	PREVENTION OF CORRUPTION	40
51.	FAILURE TO REACH AGREEMENT	41
52.	SEVERABILITY	41
53.	GOVERNING LAW	41
54.	CONSENT TO JURISDICTION	41
55.	PRESERVATION OF THE POWERS AND DUTIES OF THE MUNICIPALITY	41
56.	CONTRACT BINDING ON SUCCESSORS-IN-TITLE	41
57.	DOMICILIUM CITANDI ET EXECUTANDI	42



ii

58.	WHOLE AGREEMENT, NO AMENDMENT	42
59.	SIGNATURES	43
	ANNEXURE A: EXISTING OPERATIONAL STAFF	44
	ANNEXURE B: BULK WORKS	46
	ANNEXURE C: TECHNICAL SPECIFICATIONS	46
	ANNEXURE D: PRICING SCHEDULE	46

PART A: INTRODUCTION

1. PARTIES

1.1. The Parties to this agreement are:

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

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

1.2. The Parties agree as set out below.

2. INTERPRETATION AND PRELIMINARY

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

2.1.1. any one gender includes the other genders;

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

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

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

2.2.1. "Annual Plan" means the document agreed between the Parties annually for a Financial Year, more fully referred to in clause 11;

2.2.2. "Bulk Works" means the water and waste water treatment plants, pump stations, reservoirs, bulk pipelines, and associated assets and consumables as described in Annexure B and updated in the Annual Plan;

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

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



Handwritten signature and initials, possibly 'J.K.' and '10/12', located in the bottom right corner of the page.

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



Handwritten signature and initials, possibly 'A. G. D. a', with the number '2' written below.

- 2.2.13. "Function" means the function of managing, operating, maintaining and monitoring the Bulk Works by the Operator to achieve the Technical Specifications as more fully set out in 7 below;
- 2.2.14. "KPI" means the indicators to measure the performance of the Operator as set out in clause 12;
- 2.2.15. "Large Maintenance Repair Projects" means breakdown or corrective repair and maintenance events undertaken as part of the Function of which the cost is greater than the Threshold, as set out in 7.5.3;
- 2.2.16. "Mark-Up Fee" means the Operator's remuneration for implementing the Large Maintenance Repair Projects and Maintenance Requests, where sub-contractors are used by the Operator as per 7.5 and 37.
- 2.2.17. "MFMA" means the Local Government: Municipal Finance Management Act 56 of 2003;
- 2.2.18. "Minister" means the Minister referred to in the Water Services Act or its successor in title;
- 2.2.19. "Municipal Manager" means the accounting officer of the Municipality, as defined in the MFMA;
- 2.2.20. "Municipal Plans" means the plans of the Municipality including without limitation the Integrated Development Plan, the Spatial Development Plan, the Water Services Master plan and the Water Services Development Plan as is relevant to the undertaking of the Function;
- 2.2.21. "Municipality" means Overstrand Local Municipality or its successor in title;
- 2.2.22. "Operator" means Veolia Water Solutions and Technologies South Africa (Pty) Ltd, Registration Number 1964/007768/07;
- 2.2.23. "Operator Remuneration" means the Operator's remuneration as set out in 17;
- 2.2.24. "Parties" means the Municipality and the Operator, or if appropriate in the context, either of them;
- 2.2.25. "Penalty/ies" means the incentive/s to be levied if the KPIs as measured against the baseline are not achieved as set out in clause 13;

3

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

Handwritten signature and initials in the bottom right corner of the page.

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



5

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

2.14.1. The Contract;

2.14.2. The most recent Annual Plan; and

2.14.3. The Annexures to the Contract.

PART B: APPOINTMENT

3. APPOINTMENT

3.1. The Municipality hereby appoints the Operator to undertake the Function.

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

3.3. The Operator hereby accepts the appointment to undertake the Function in accordance with this Contract.

4. DURATION

4.1. The Operator shall commence with the performance of its duties on the Effective Date.

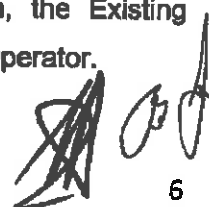
4.2. The effective date will be 8 December 2018.

4.3. The appointment shall continue for 15 (fifteen) years from the Effective Date, unless terminated early in accordance with clause 45 below or extended in accordance with clause 4.4.

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

5. HAND-OVER

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




6

- 5.2. During the first 3 months from the Effective Date the parties shall work closely together to ensure uninterrupted service delivery.
- 5.3. The Bulk Works and minor assets shall be identified and handed over to the Operator for the Operator to use for the duration of the Contract.
- 5.4. In the event that costs are incurred by either party on behalf of the other party during the hand-over period, these shall be reconciled, agreed, and set-off on the Operator's invoices.

6. ADJUSTMENT & VARIATION

- 6.1. The parties acknowledge that the scope of the Function will vary through the effluxion of time and accordingly the roles and responsibilities of the Parties will need to be adapted. This could be as a result of issues arising after the Effective Date including but not limited to:
 - 6.1.1. Change in Regulatory Provisions directly impacting the Function;
 - 6.1.2. Change in Bulk Works (expansion or reduction as a result of change in water services provision requirements);
 - 6.1.3. Change in raw water quality and/or quantity.
- 6.2. Provided it is related to the Bulk Works and the Function, and subject to the Regulatory Provisions, the impact of the variation in scope of the Function must be determined and agreed to between the Parties.
- 6.3. In the event that the Municipality wishes to vary the scope of the Function –
 - 6.3.1. the Municipality shall be obliged to give the Operator reasonable notice thereof, giving details of the proposed variation, the reason therefore, and the scope of Function the Operator would be required to render;
 - 6.3.2. the Municipality and the Operator will meet as soon as possible after the notice mentioned in clause 6.3.1 to discuss the variation proposed by the Municipality having regard to the following matters–
 - 6.3.2.1. the impact on water services delivery and the Municipal Plans;
 - 6.3.2.2. the impact on the existing Function and Bulk Works;
 - 6.3.2.3. the impact on roles and responsibilities of the Municipality and the Operator in terms of the Contract;
 - 6.3.2.4. the impact on the Technical Asset Register;



- 6.3.2.5. the impact on the KPIs and Penalties;
 - 6.3.2.6. the impact on the Organisational Plan;
 - 6.3.2.7. the consequential impact on the Pricing Schedule;
 - 6.3.2.8. any other issue which is relevant.
- 6.4. The Annual Plan shall be updated to address the impact of the change in scope of the Function agreed to between the parties.
 - 6.5. The Pricing Schedule shall be adjusted at the Operator's tendered rates in the Pricing Schedule. The Municipality shall have the right to bench mark and or test value for money of the proposed pricing to the Operator's competitively tendered rates (as escalated) and the market, before accepting the Pricing Schedule.
 - 6.6. Where no agreement can be reached, the parties shall continue to implement the then current Annual Plan.

PART C: SCOPE

7. THE FUNCTION

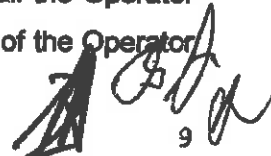
- 7.1. The Operator shall, with effect from the Effective Date, be responsible for the Function.
- 7.2. The Function shall be undertaken by the Operator in accordance with the Annual Plan, so as to achieve the Technical Specifications.
- 7.3. The Operator is responsible for managing its own accounting, financial management and budgeting in relation to the undertaking of the Function in terms of this Contract.
- 7.4. The Function includes management, operations, monitoring, and maintenance as set out in the Technical Specifications.
- 7.5. Maintenance includes repair and maintenance, Maintenance Requests, Large Maintenance Repair Projects and Emergency Repairs:
 - 7.5.1. Routine, scheduled and preventative repairs and maintenance is for the Operators cost and covered in the Operator's Fixed Fee;
 - 7.5.2. Maintenance Requests from the Municipality to the Operator shall be requested in writing by the Municipality. These requests will be for maintenance issues related to the Bulk Works and Function that the Operator has not scheduled but which the Municipality requires to be



8

undertaken. The Operator shall define the scope of the Maintenance Request and respond to the Municipality with three written quotes to undertake the scope of work. The Municipality will consider and if approved, authorise one quote for implementation. The authorised quotation will be implemented.

- 7.5.3. Large Maintenance Repair Projects shall be identified and prioritised by the Operator in the Annual Plan or may arise ad hoc from breakdowns or corrective maintenance requirements identified during the preventative maintenance processes. The Operator shall define the Large Maintenance Repair Projects and propose and motivate the project. The Operator shall then source and present three quotes to implement the Large Maintenance Repair Project. The Municipality will consider and if approved, authorise one quote for implementation. The authorised quotation will be implemented.
- 7.5.4. Emergency Repairs shall be addressed by the Operator in Emergency Situations and if it qualifies as a Large Maintenance Repair Project, the actual cost (sub-contractor invoiced cost plus Operator's Mark-up Fee; or Operator's direct costs at tendered Day works and Monthly Cost to Company rates in the Price Schedule) may be recovered by the Operator in the month following the incurrence of the expenditure.
- 7.5.5. The Operator is not precluded from quoting to do the work in 7.5.2 and 7.5.3; provided that at least two other independent quotes will also be sourced and presented to the Municipality for comparison purposes.
- 7.5.6. The cost of the authorised quote for Large Maintenance Repair Projects and Maintenance Requests will be recovered by the Operator in the month following the occurrence of expenditure. The claim shall not be more than the authorised quote.
- 7.5.7. For quotes which involve sub-contractors, the Operator shall be entitled to claim the Mark-up Fee on the sub-contractor's cost. The Mark-up Fee is inclusive of the Operator's management, supervision, quality control, health and safety, transport and procurement cost in procuring and managing the Sub-contractor. No further costs of the Operator may be claimed. Only if additional work is required from the Operator prior or after sub-contractor repair work, shall the Operator be entitled to add the actual labour and material cost of the Operator



as additional item on the repair cost. No Mark-up Fee will be allowed onto the Operator expenses. The Operator's labour and machinery cost will be according to the tendered day works tariffs in the pricing schedule.

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

8. STRATEGIC PLANNING

- 8.1. To assist the Municipality with its water services delivery planning function, the Operator shall provide information and insights relevant to the Function and the Bulk Works at no cost, as reasonably requested by the Municipality.
- 8.2. The Operator shall provide information and insights relevant to the interface between the Function and the Municipality's water services delivery strategic planning processes at no cost.
- 8.3. The Municipality shall provide the Operator with all relevant Municipal Plans to inform the Annual Plan of the Operator.

9. EMERGENCY

- 9.1. In Emergency Situations, the Operator shall take reasonable steps to continue to undertake the Function, acknowledging that it is an essential service directly impacting water services delivery to the community by the Municipality.
- 9.2. The Operator shall within 3 (three) months after the Effective Date, at its cost, submit to the Municipality for comment, a Prevention and Emergency Plan that will include a plan to be implemented, addressing how Emergency Situations will be prevented and attended to.
- 9.3. The Operator shall be obliged to continually review the Prevention and Emergency Plan, and at least annually present any necessary amendments thereto, at its cost, to the Municipality for its approval.
- 9.4. The Municipality shall review the Prevention and Emergency Plan or any suggested amendment thereto submitted, within 1 (one) month after it was submitted to it. The Municipality shall be deemed to have reviewed the Prevention and Emergency Plan or any amendment thereto if no comment is received from the Municipality within a 1 (one) month period.

10. SUPPORT SERVICES



- 10.1. The Municipality shall account for, and charge to the Operator, any costs incurred by the Municipality in respect of services, other than in fulfilment of its obligations under this Contract, rendered to the Operator, on an arms-length basis, at prices to be negotiated and agreed to between the Municipality and the Operator as part of the annual planning process.
- 10.2. Such services may include the use of Municipality personnel and premises on an ad hoc basis provided that it is agreed in advance in the Annual Plan.
- 10.3. In the event that such agreement is reached, it shall be recorded as a written agreement and included in the Annual Plan and shall govern KPIs required of the Municipality's Support Services.
- 10.4. Notwithstanding the provision of Support Services to the Operator, the Operator shall remain responsible for the execution of the Function in compliance with the Technical Specifications.

11. ANNUAL PLAN

- 11.1. The Operator shall be responsible for the preparation, control, management and execution of the Annual Plan for each Financial Year, at its cost.
- 11.2. The Annual Plan shall be a management plan to enable performance monitoring by the Municipality and shall address for the relevant Financial Year:
 - 11.2.1. The Technical Specifications;
 - 11.2.2. The Energy Management Plan;
 - 11.2.3. The Prevention and Emergency Plan;
 - 11.2.4. The Operations, Maintenance and Monitoring Plan;
 - 11.2.5. The Training and Development Plan;
 - 11.2.6. The KPIs, including the updated base line for measurement of performance based on the previous Financial Years performance and the Penalties;
 - 11.2.7. The Pricing Schedule;
 - 11.2.8. Any Maintenance Requests required by the Municipality;
 - 11.2.9. Any Support Services required from the Municipality; and
 - 11.2.10. Any other aspect relevant to the Contract and performance of the parties.



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



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

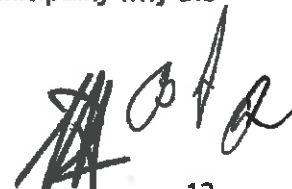
PART D: PERFORMANCE AND CONDUCT

12. KEY PERFORMANCE INDICATORS

- 12.1. The Operator must undertake the Function to achieve the Technical Specifications, at its cost.
- 12.2. The KPIs as at the effective Date are set out in the Technical Specifications attached as Annexure C;
- 12.3. The Operator shall report on its achievement of the KPIs to the Municipality at the reporting intervals indicated in the Annual Plan, and consolidate the overall assessment into the previous 12 month report on performance, to be submitted annually in August.
- 12.4. The base line for the measurement of the KPIs shall be reviewed annually in the Annual Plan (see clause 11 above). There must be progressive improvement in the base-line over the Contract period.

13. PENALTIES

- 13.1. Penalties will be levied against the Operator for not achieving the KPIs.
- 13.2. Penalties will not be levied in the first 3 (three) months of the Contract unless otherwise agreed.
- 13.3. Upon becoming aware of the Operator's non-compliance with KPIs, the Municipality shall, in writing and with reasons, indicate its intention to levy a penalty. The Operator shall respond within 2 (two) days of receiving the Municipality's written intention.
- 13.4. In the event that the Operator:
 - 13.4.1. fails to demonstrate to the reasonable satisfaction of the Municipality that the KPIs are being achieved; or
 - 13.4.2. fails to justify to the reasonable satisfaction of the Municipality why the KPIs are not being met; and



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

then:

13.4.4. the Operator shall be in breach of its obligations under the Contract and the Municipality may elect to exercise its rights under clause 43 to notify the Operator of breach; and

13.4.5. penalties shall be enforced in accordance with clause 13.

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

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

13.5.2. force majeure, the provisions of clause 44 shall apply; and

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

13.6. If the breach occurs as a result of 13.5,

13.6.1. no Penalties shall apply against the Operator;

13.6.2. the Municipal Manager shall be advised.

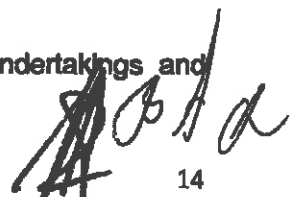
13.7. Where the Operator's performance is reliant on the counter-performance of the Municipality, and the Municipality has not performed, the Operator shall not be penalised.

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

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

14. REGULATORY COMPLIANCE AND MUTUAL CO-OPERATION

14.1. The Parties shall execute their respective businesses, and undertakings and



obligations arising in accordance with this Contract in compliance with all relevant Regulatory Provisions, including but not limited to applying for necessary approvals, consents, licenses or permits, where required.

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

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

15. BY-LAWS AND POLICIES

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

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

16. ACCESS TO INFORMATION

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

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



termination of this Contract.

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

PART E: REMUNERATION

17. OPERATOR REMUNERATION

- 17.1. The Operator will be remunerated for undertaking the Function as set out in the Contract and the Pricing Schedule.
- 17.2. Save as specifically envisaged in the Contract the Operator shall not be entitled to any compensation and/or reimbursement in respect of the undertaking of the Function.
- 17.3. The Operator Remuneration due for undertaking the Function is:
- 17.3.1. the fixed annual fee as per the Pricing Schedule; and
 - 17.3.2. the variable (or volume based) fee per water treatment work, dependant on the treated volumes per month as per the Pricing Schedule;
 - 17.3.3. the variable (or volume based) fee per waste water treatment work on inflow as per the Pricing Schedule;
 - 17.3.4. the Salary Contribution as per 18 below and the Pricing Schedule;
 - 17.3.5. any payments due for Large Maintenance Repair Projects and Maintenance Requests as per 7.5; and 19 if applicable; and
 - 17.3.6. adjustments due.
- 17.4. The Operator Remuneration will be subject to:
- 17.4.1. annual escalation as per clause 20;
 - 17.4.2. mechanism for penalising partial failure of the availability and performance of the Function, by means of imposing Penalties as per clause 13;
 - 17.4.3. Adjustment and variation as per clause 6.
- 17.5. The Operator undertakes that the remuneration is deemed sufficient to provide for



everything for the Operator's undertaking to meet the Technical Specifications.

18. SALARY CONTRIBUTION

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

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

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

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

18.2.3. The actual cost of variation in benefits and payments as agreed with the municipality, e.g. medical, housing, overtime and shift work, post-retirement benefits (the cost of medical aid contribution after retirement) and the cost of long service awards calculated as per the SALGBC standard terms and conditions will be funded by the Municipality as and when the cost is incurred by the Operator. The amount due will be determined by the Parties quarterly in arrears and the Municipality will reimburse the Operator in equal monthly instalments over the following quarter.

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

qualifications, to visit the works weekly for so long as the vacancy exists.

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

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

18.3.2. The trainability of Existing Operational Staff;

18.3.3. The mobility of staff to locate to other works.

19. MARK-UP FEE

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

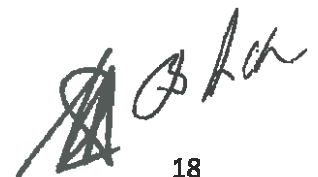
19.2. Payment of the Mark-up Fee shall be made monthly in arrears as per the claim of the Operator, provided the claim is approved and authorised by the Municipality.

20. ESCALATION

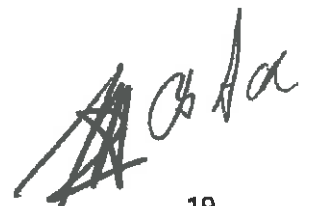
20.1. Subject to 20.2 and 20.3, the prices in the Pricing Schedule and amounts stated in this Contract shall automatically escalate annually in advance by the Escalation Factor.

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

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



- 20.3.1. The submission must include sufficient detail of the escalation factors which the Operator has taken into consideration and sufficient data in respect of the actual cost increases experienced by the Operator.
- 20.3.2. The submission shall be considered as part of the approval of the Annual Business Plan process.
- 20.3.3. If it is not approved by the Municipality, the Escalation Factor shall apply.
- 20.4. The % Mark-up Fee shall not be subject to escalation.
- 20.5. The Escalation Factor shall be applied effective from 1 July of every Financial Year following the Effective Date.

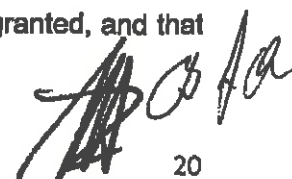
A handwritten signature in black ink, appearing to be 'A. C. A.', is located in the bottom right corner of the page.

21. INVOICING & PAYMENT

- 21.1. The Operator shall by the 7th of each month submit a valid tax invoice for the preceding month, with details addressing:
- 21.1.1. the Operator Remuneration per clause 17;
 - 21.1.2. less Penalty certificates per clause 13 (if any);
 - 21.1.3. less Municipality Support Charges per clause 10 (if any);
 - 21.1.4. any adjustments agreed; and
 - 21.1.5. VAT and other taxes claimed.
- 21.2. Once all relevant monthly and quarterly reports are received and the invoice is approved, the Municipality shall pay within 30 days.

PART F: ASSETS**22. THE BULK WORKS**

- 22.1. The Municipality owns the Bulk Works and shall continue to own the Bulk Works for the duration of the Contract.
- 22.2. The Municipality hereby makes available the Bulk Works and minor assets to the Operator. The Municipality hereby grants the Operator the right of unrestricted access to and use of the Bulk Works and minor assets for the duration of the Contract in order to execute its obligations under the Contract.
- 22.3. The Bulk Works and minor assets are made available voetstoots at the Effective Date and no warranties are given by the Municipality in this regard.
- 22.4. The Operator shall be responsible for the management of the Bulk Works to achieve the Technical Specifications and in accordance with the Annual Plan, in order to render the Bulk Works and the Function operational and efficient.
- 22.5. The Operator agrees that the Municipality shall have access to the Bulk Works to undertake its water services authority function and to monitor the performance of the Operator. This includes access to the testing and laboratory facilities at the Bulk Works. The Municipality undertakes that access will be managed so as not to interfere with the Operator's undertaking of the Function.
- 22.6. The Parties acknowledge that, but for this Contract, this right of access and obligation to operate and maintain the Bulk Works would not be granted, and that



on termination or expiry of this Contract, the right of access and obligation to operate and maintain the Bulk Works, shall automatically terminate.

23. OFFICES

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

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

24. THE TECHNICAL ASSET REGISTER

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

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

25. INTELLECTUAL PROPERTY

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

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

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

26. OPERATIONAL RECORDS

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

operations, maintenance, inspections and technical auditing.

A handwritten signature in black ink, appearing to be 'A. B. P.' or similar, located in the bottom right corner of the page.

27. EFFICIENCY

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

28. ACCESS AND SECURITY

- 28.1. The Operator shall ensure that access to the Bulk Works is secure at all times and no unauthorised entry is permitted as per the Technical Specifications.
- 28.2. The Operator will be responsible for the security of all assets, the grounds, employees and access control to all water and wastewater treatment works by means of alarms, armed response or on-site security and for security of the other Bulk Works as per the Technical Specifications.

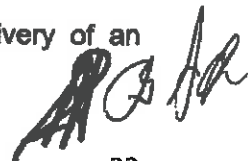
29. INSURANCE

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

PART G: PERSONNEL

30. STAFFING OBLIGATION

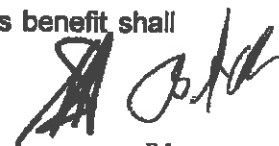
- 30.1. It is the Operator's responsibility to ensure adequate skills and expertise and capacity to execute the Function.
- 30.2. The Operator acknowledges that the Function directly enables delivery of an



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

31. EXISTING OPERATIONAL STAFF

- 31.1. The Operator will employ the Existing Operational Staff on the terms and conditions that the Existing Operational Staff are entitled to as at the Effective Date.
- 31.2. The Operator undertakes that to the extent that the trade unions to which the Ex-municipal Employees belonged to while they were municipal employees had binding collective agreements bestowing organisational rights only in respect of such Ex-municipal Employees and the workplace in which they were employed, these will be recognised by the Operator in regard to the Ex-municipal Employees.
- 31.3. The Operator undertakes to facilitate the establishment of a workplace forum for purposes of consultation and/or negotiation on workplace related issues and matters of mutual interest in regard to this Contract.
- 31.4. It is recorded that there will be no decrease in existing remuneration or benefits of the Existing Operational Staff as a direct result of the coming into effect of this Contract.
- 31.5. The Operator undertakes that any proposed changes to the shift system as at the Effective Date applicable to the Ex-municipal Employees will be consulted on with the Ex-municipal Employees and their representative trade unions prior to implementation.
- 31.6. It is recorded that the Operator is contractually obliged to provide appropriate training to the Existing Operational Staff and the Operator agrees to honour this obligation and acknowledges that the Municipality will monitor the provision of such training.
- 31.7. It is recorded that certain of the the Ex-municipal Employees enjoy the benefit of post-retirement medical aid funding by the Municipality. The Municipality agrees and undertakes to fund the provision of this benefit as and when an Ex-municipal Employee retires from the Operator's employ whilst this Contract is in force provided that the benefit is still available to the Municipality's employees when an Ex-municipal Employee retires, and that the level of funding of this benefit shall



not be greater than that enjoyed by the Municipality's employees of equivalent status and remuneration to that of the retiring Ex-municipal Employee.

A handwritten signature in black ink, appearing to be "C. B. Ad" or similar, located in the bottom right corner of the page.

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

32. ORGANISATIONAL PLAN

- 32.1. Within 3 (three) months of the Effective Date the Operator shall propose an "Organisational Plan", drafted after consultation with the Municipality. The Organisational Plan shall demonstrate how the Existing Operational Staff and the employees of the Operator working on the Function will be structured to execute the Function, their roles and responsibilities, job descriptions and conditions of employment.
- 32.2. The parties agree that whilst the Organisational Plan may result in re-organisation of the Existing Operational Staff it will not result in retrenchment, redundancy or decrease in existing remuneration benefits of the Existing Operational Staff. Vacant posts will be filled by the Operator where required by the Organisational Plan. Vacant operational staff posts specifically identified in the Technical Specifications will be filled from the Effective Date.
- 32.3. The Organisational Plan shall be submitted to the Municipality for review and comment. If no comment is received within 20 (twenty) days of submission, it shall be deemed accepted. If comment is received in that time, it shall be assessed by the Operator and incorporated unless expressly rejected as unreasonable by the Operator, with reference to the performance requirements in the Annual Plan.
- 32.4. Where filled posts become vacant after the Effective Date, and the vacant post stays vacant for longer than three months deductions will apply according to the "Day Works Rates and Monthly Costs" Pricing Schedule (as escalated). If not filled within three months from the date of the vacancy the deduction will be made retrospective to the date of the vacancy. If filled within three months then no deduction will apply. If the vacancy relates to supervision, the operator shall appoint at its own cost a consultant, with the required qualifications, to visit the works as required.
- 32.5. Any changes to regulatory requirements for operational staff at the Bulk Works after the Effective Date shall be dealt with as a variation in Scope. Rates from the "Day Works Rates and Monthly Costs" in the Pricing Schedule for process controllers will be used to determine the impact.



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

33. TRAINING

- 33.1. The Operator shall plan for and provide a reasonably adequate and appropriate budget for staff training and development.
- 33.2. An annual employee professional development plan shall be submitted with the Annual Plan including a comprehensive training, development and succession planning programme to be designed and implemented by the Operator.
- 33.3. Every manager of the Operator will be responsible for the training and development of their subordinate staff, to provide opportunity for individual growth and to meet the needs of the Operator. This will be done in conjunction with the introduction of a performance management system which will monitor progress and identify training requirements of staff.

34. CONTROL OF EMPLOYEE CONDUCT

- 34.1. The Operator shall at all times ensure that sufficient suitable and appropriately qualified and experienced personnel will be employed to perform as is required by this Contract. This requirement shall include ensuring that sufficient and adequate staff are on duty and/or available outside normal working hours to deal with such service requirements or emergencies as may occur. Without limiting the generality of the foregoing, the Operator shall ensure that all key personnel positions are filled as soon as reasonably possible as identified in the Organisational Plan.
- 34.2. The Municipality may only require the Operator to remove any employee or other personnel if it is permissible by law and because such personnel has engaged in conduct which is reasonably certain to result in a breach of any provision of this Contract.

35. SAFETY AND SECURITY

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

PART H: CONTRACTING

36. ASSIGNMENT, TRANSFER, CESSION AND DELEGATION



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

37. SUB-CONTRACTING

- 37.1.** The Operator may, in its sole discretion, appoint consultants, contractors and suppliers to undertake any portion of its obligations in terms of this Contract, taking into account the requirements of clause 9 of the Preferential Procurement Regulations 2017, which appointment shall be at its own cost and risk. In making such appointments, preference shall be given to contractors local to the area in which the contract shall be executed.
- 37.2.** The Municipality intends to advance designated groups therefore the Operator must sub-contract a minimum of 4% of the total contract value to:
- 37.2.1.** An exempted micro enterprise (EME) or a qualifying small business enterprise (QSE);
 - 37.2.2.** An EME or QSE which is at least 51% owned by black people;
 - 37.2.3.** An EME or QSE which is at least 51% owned by black people who are youth;
 - 37.2.4.** An EME or QSE which is at least 51% owned by black people who are women;
 - 37.2.5.** An EME or QSE which is at least 51% owned by black people with disabilities;
 - 37.2.6.** An EME or QSE which is at least 51% owned by black people living in rural or underdeveloped areas or townships;
 - 37.2.7.** a cooperative which is at least 51% owned by black people;
 - 37.2.8.** an EME or QSE which is at least 51% owned by black people who are military veterans; or
 - 37.2.9.** more than one of the categories referred to above.



- 37.3. The Operator will sub-contract EME or QSE organisations for implementing the Contract, where feasible. All EME or QSE organisations employed on the works shall be registered on the Central Supplier's data base. If the EME or QSE is not registered on the data base it shall apply for registration on the data base before being employed on the contract.
- 37.4. The Operator may not sub-contract any of its rights, duties and obligations in terms of this Contract to the extent that the agreement in terms of which such rights, duties and obligations are sub-contracted does not terminate prior to or on the termination of this Contract, without the prior written consent of the Municipality first being obtained, which consent shall not unreasonably be withheld. In such circumstance, the Municipality may prescribe matters to be included or addressed in such sub-contract.
- 37.5. The appointment of any sub-contractor shall not release the Operator of its duties or obligations in terms of this Contract or in any way affect the Operator's responsibility in respect of fulfilling such duties and obligations.
- 37.6. The Operator shall keep records of all contracts entered into in connection with or associated with its rights, duties or obligations in terms of this Contract and shall on request provide information in respect thereof to the Municipality.
38. PROMOTION OF SOCIALLY RESPONSIBLE PROCUREMENT
- 38.1. The intensifying triple challenges of unemployment, poverty and inequality contributes negatively to the well-being of the poor and disadvantaged, resulting in deteriorating socio-economic conditions that affect the quality of life in the jurisdiction of the Municipality. The current economic climate places tremendous strain on the income of poor communities and perpetuates unemployment and poverty exposing the vulnerable and poor to dilapidating socio-economic conditions.
- 38.2. The Operator shall provide an outline of socio-economic projects to be implemented through its corporate social responsibility in the Municipality's area of jurisdiction in its Annual Plan. Proposed projects must be measurable with specific focus on vulnerable groups and designated groups (youth, woman, people with disabilities and children).



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

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

PART I: DISPUTE RESOLUTION

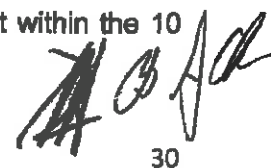
39. INTERDICT AND URGENT RELIEF

The provisions of clauses 40, 41 and 42 will apply except where an interdict is sought or urgent relief may be obtained from a court of competent jurisdiction on reasonable grounds.

40. AMICABLE SETTLEMENT

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

40.2. If the Municipal Manager and the Chief Executive Officer do not or cannot resolve the dispute within 10 (ten) days of the referral, or they fail to meet within the 10



(ten) day period, then either Party may immediately indicate its written intention to refer the dispute to expert determination in terms of clause 41.2 or arbitration in terms of clause 42.

41. EXPERT DETERMINATION

- 41.1. Where a dispute arises in respect of the determination of any matter in the Contract that requires the intervention of an expert, the provisions of clause 41.2 shall apply.
- 41.2. The dispute shall be referred to an appropriately experienced expert appointed by agreement between the parties who shall be, if the matter in dispute relates primarily -
- 41.2.1. to an accounting or financial matter, a practicing chartered accountant of not less than 10 (ten) years standing as such;
 - 41.2.2. to, *inter alia*, engineering, construction, technical or other similar matter a practicing professional engineer of not less than 10 (ten) years standing as such; or
 - 41.2.3. to a legal matter, a practicing Attorney or Advocate of not less than 10 (ten) years standing as such.
- 41.3. If the Parties cannot agree on the identity of the expert timeously, the parties shall refer the matter to the President of the relevant professional body to nominate the expert.
- 41.4. The expert, who shall not act as an arbitrator, shall have the fullest and freest discretion with regard to the proceedings, save where any clause of this Contract confines the discretion of the expert.
- 41.5. The determination of the expert shall be final and binding on the Parties, save that if any determination is manifestly unjust and if a court determines what a just and equitable valuation would be, the Parties shall be bound by such a modified valuation.
- 41.6. The expert shall determine the liability for his charges.



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

42. ARBITRATION

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

42.1.1. at Hermanus unless otherwise agreed by the Parties;

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

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

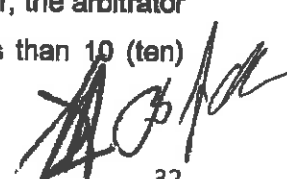
42.1.4. as soon as is reasonably practicable in the circumstances and with a view to it being completed within 30 (thirty) days of the dispute being referred to the arbitrator in terms of clause 42.1. The Parties hereby undertake to use their best endeavours to procure the expeditious completion of the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

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

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

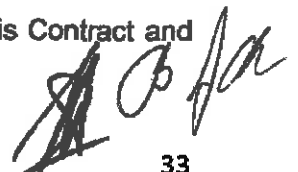
42.2.2. if the question in issue relates primarily to, *inter alia*, engineering, construction, technical or other similar matter, the arbitrator shall be a practicing professional engineer of not less than 10 (ten) years standing as such; or

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



years standing as such.

- 42.3. Immediately after the arbitrator has been appointed, he may be called upon by either of the Parties to fix a date for the arbitration proceedings to be held and to settle the procedure and manner in which proceedings shall be held.
- 42.4. The arbitrator or his representative shall be entitled to investigate or cause to be investigated any matter, fact or thing which he considers necessary or desirable in connection with the dispute. The Parties to the dispute shall co-operate with the arbitrator by providing all reasonably relevant information, plans, manuals, databases, inventories, surveys, financial and other records and analyses compiled by either Party in accordance with this Contract as may be in their possession upon request.
- 42.5. The arbitrator shall –
- 42.5.1. decide the matters submitted to arbitration according to South African law, taking into account where appropriate all relevant market-related factors and having regard to all relevant evidence and circumstances;
 - 42.5.2. make an award or orders relating to the subject matter of the dispute including a grant of interim relief and the costs of the arbitration or relating to any other matter arising therefrom; and
 - 42.5.3. give his award in writing, fully supported by reasons.
- 42.6. The Parties irrevocably agree and undertake that any award, ruling or order made by the arbitrator –
- 42.6.1. shall be final and binding upon them;
 - 42.6.2. may at the option of either party be made an order of the division of the High Court of South Africa to which jurisdiction the Parties are subject; and
 - 42.6.3. the arbitrator shall have the power to give default judgment if any party fails to make submissions on due date or fails to appear at the arbitration, provided that reasonable notice has been given to Parties to make their submission or appearances.
- 42.7. The provisions of this clause 42 are severable from the rest of this Contract and



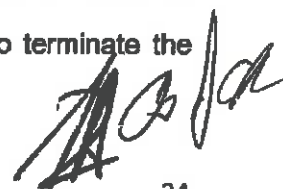
shall remain in effect even after this Contract is terminated for any reason.

- 42.8. The Parties irrevocably consent to comply with the provisions of this clause 42 and neither Party shall be entitled to withdraw from or claim at any such proceedings that it is not bound by these provisions or by any ruling or procedure laid down in terms of such provisions.
- 42.9. No dispute arising from this Contract shall entitle the other party to discontinue or suspend the execution or exercise of any of its powers, rights, duties or obligations in terms of this Contract, pending the settlement of the dispute.

PART J: BREACH, FORCE MAJEURE & TERMINATION

43. BREACH

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

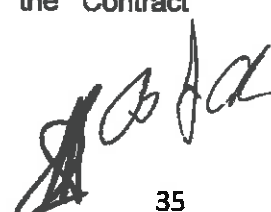


Contract (or part thereof).

- 43.3. Prior to the Party invoking any right to terminate this Contract in terms of clause 43.2, it shall deliver a further written notice to defaulting Party notifying it of the material breach giving rise to such right and requesting the defaulting Party to remedy the breach in question within a further period of 7 (seven) days (or such longer period stipulated in the notice if the breach in question cannot reasonably be remedied by the defaulting Party within a 7 (seven) day period) and stating the intention to terminate the Contract (or part thereof if relevant).
- 43.4. Should the defaulting Party fail to remedy the material breach in question within the period reflected in the notice, the termination process referred to in clause 45 shall commence.

44. **FORCE MAJEURE**

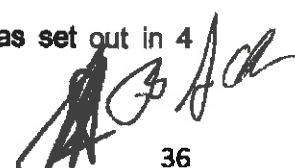
- 44.1. For the purposes of this Contract, force majeure shall be any relevant event, occurrence, circumstance or condition (including viz major, causus fortuitus or act of State) beyond the control of the Parties which could not have been reasonably foreseen when the Contract was entered into and which, despite the exercise of diligent efforts, could not have been prevented, limited or minimised and which results in either of the Parties not being able to comply with all or a material part of its obligations under this Contract. It may include without limitation:
- 44.1.1. war, civil war, insurrection, rebellion, revolution, armed conflict or terrorism riot, commotion, civil disorder, strike or lock-out by persons, other than the Operator's own personnel and those of their sub-contractors;
 - 44.1.2. any act of God, including extra-ordinary flood, drought, lightning, earthquake and the impact of meteorites;
 - 44.1.3. a consequence arising from or inherent in the design, specification or defective materials of the existing Bulk Works; and
 - 44.1.4. material adverse governmental action through changes in the Regulatory Provisions, or in the judicial or official government interpretation of such Regulatory Provisions after the Contract becomes legally effective.



- 44.2. The Party claiming relief from performance shall be relieved from liability under this Contract to the extent that by reason of the Force Majeure event it is not able to perform all or a material part of its obligations under this Contract.
- 44.3. Where a Party is or claims to be affected by an event of Force Majeure it shall take all reasonable steps to mitigate the consequences of such an event upon the performance of its obligations under this Contract, resume performance of its obligations affected by the event of Force Majeure as soon as is practicable and use all reasonable endeavours to remedy its failure to perform.
- 44.4. The Party claiming relief shall serve written notice on the other Party within 10 (ten) days of it becoming aware of the relevant event of Force Majeure. Such initial notice shall give sufficient details to identify the particular event claimed to be an event of Force Majeure.
- 44.5. A subsequent written notice shall be served by the Party claiming relief on the other Party within a further 10 (ten) days which shall contain such relevant information relating to the failure to perform (or delay in performing) as is available including the effect of the Force Majeure on the ability of the Party to perform, the action being taken to mitigate, the date of the occurrence of the events of Force Majeure and an estimate of the period of time required to overcome it and/or its effects.
- 44.6. The Party claiming relief shall notify the other as soon as the consequences of the event of Force Majeure have ceased and when performance of its affected obligations can be resumed.
- 44.7. If, following the issue of any notice referred to in clause 44.4, the Party claiming relief receives or becomes aware of any further information relating to the event of Force Majeure and/or any failure to perform, it shall submit such further information to the other Party as soon as reasonably possible.
- 44.8. The Parties shall endeavour to agree any modifications to this Contract which may be equitable having regard to the nature of an event or events of Force Majeure, unless the impact is such that the essence of the Contract is made impossible to achieve in which case the Contract may be terminated as more fully set out in 45.

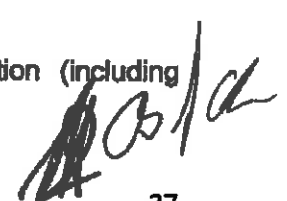
45. TERMINATION

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



above.

- 45.2.** The termination of this Contract may occur at the instance of the Municipality and on a date specified in writing by the Municipality:
- 45.2.1.** where any judgment has been granted which is not subject to appeal or review, or if it is, where such an appeal or review is not diligently pursued, in regard to the implementation of the Contract;
 - 45.2.2.** where any judgment has been granted which is not subject to appeal or review, or if it is, where such an appeal or review is not diligently pursued, for the winding up or judicial management of the Operator;
 - 45.2.3.** if the Operator defaults under any agreement for the payment of money, where the creditor obtains judgment against Operator in an amount exceeding R 500 000 (five hundred thousand rand);
 - 45.2.4.** if, subject to clause 43.4 and the Prevention and Emergency Plan, the Operator fails in the undertaking of the Function to such an extent that there is significant widespread danger to public health, which will be presumed to be the case if the Operator fails to undertake the Function for a continuous period of 5 (five) days;
 - 45.2.5.** by reason of Force Majeure which goes to the essence of the Contract as set out in 43.4; or
 - 45.2.6.** by reason of an un-remedied material breach.
- 45.3.** The parties acknowledge that termination of this Contract will be a process rather than an event and undertake in good faith to work together efficiently to ensure as far as reasonably possible an uninterrupted operation and maintenance of the Bulk Works.
- 45.4.** The termination process shall be initiated by a notice from either Party who has the right to deliver such notice in accordance with clauses 43.4 and 45, or 6 (six) months prior to the expiry of the Contract. This notice shall trigger a "transitional phase".
- 45.5.** During the transitional phase triggered in terms of clause 45.4:
- 45.5.1.** the Municipality shall determine whether the Function (including



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

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

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

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

46. EFFECT OF TERMINATION

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

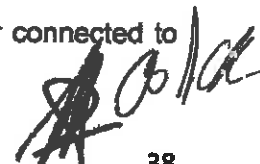
46.1.1. the rights and obligations of the Operator in respect of undertaking the Function shall terminate;

46.1.2. the rights and obligations of the Operator in relation to the Bulk Works shall terminate;

46.1.3. the Bulk Works together with all requisite licenses shall be returned and handed over to the Municipality in good condition of use and operation, fair wear and tear excepted, based on the premise that the Bulk Works is an integral system that must be returned to the Municipality in proper functioning order;

46.1.4. the obligations of the Operator under this Contract shall be transferred at no additional cost to the Municipality in accordance with the instructions of the Municipality;

46.1.5. all the minor assets, records, plans, specifications, engineering documents, operation procedures, utility location plans, recorded maps, license, permit and contracts associated with or connected to



the Bulk Works and the undertaking of the Function shall be handed over to the Municipality; and

- 46.1.6. all monies due and payable by either Party to the other shall be settled.

PART K: GENERAL

47. GOOD FAITH AND CO-OPERATION

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

48. LIABILITY

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



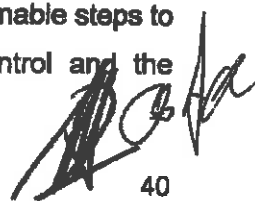
- 48.3.1. take all reasonable precautions for the protection of life and property on and about or in any way connected with the whole or any part of undertaking the Function and the Bulk Works;
 - 48.3.2. indemnify and not hold the Municipality accountable for any losses, claims, demands, proceedings, damages, costs, charges and expenses of whatsoever nature in respect of injury to or death of any person or loss of or damage to any part of the Bulk Works or any person or property arising from or attributable to any act or omission of the Operator, its employees or agents, unless such injury, death, loss or damage was caused in whole or in part due to any act or omission of the Municipality its employees or agents, contractors or any other person for whom it may be liable in law; and
 - 48.3.3. report all material occurrences in terms of this paragraph to the Municipality within 3 (three) business days of becoming aware of such occurrence.
- 48.4. Subject to clause 48.2, the Municipality shall with effect from the Effective Date not be liable to third parties for the discharge of any obligations which the Operator is responsible for in terms of this Contract.
- 48.5. The Operator will be obliged to intervene and shall assume responsibility in respect of any action or right that is Instituted against the Municipality in respect of any act or omission of the Operator or any person for whom it may be liable in law in respect of the Bulk Works or the provision or failure to undertake the Function in terms of this Contract that may occur after the Effective Date.

49. EXCLUSION OF CONSEQUENTIAL LOSS FOR DIRECT DAMAGES

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

50. PREVENTION OF CORRUPTION

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



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

51. FAILURE TO REACH AGREEMENT

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

52. SEVERABILITY

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

53. GOVERNING LAW

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


54. CONSENT TO JURISDICTION

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

55. PRESERVATION OF THE POWERS AND DUTIES OF THE MUNICIPALITY

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

56. CONTRACT BINDING ON SUCCESSORS-IN-TITLE



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

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

57. DOMICILIUM CITANDI ET EXECUTANDI

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

57.1.1. Municipality:

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

57.1.2. Operator:

Attention: Manager: Cape Operations
Physical Address: Riverside Industrial Park
Postal Address: PO Box 7240, Paarl, 7623
Telephone No: 021 871 1877

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

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

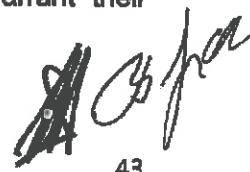
58. WHOLE AGREEMENT, NO AMENDMENT



- 58.1. This Contract including the annexures constitutes the whole agreement between Parties relating to the subject matter hereof. No representations, warranties or other terms and conditions of whatever nature not contained or recorded herein have been made or agreed to.
- 58.2. No amendment or consensual cancellation of this Contract or any provision or term hereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Contract and no settlement of any disputes arising under this Contract and no extensions of time, waiver or relaxation or suspension of or agreement not to enforce or to suspend or postpone the enforcement of any of the provisions or terms of this Contract or of any agreement, bill of exchange or other document issued pursuant to or in terms of this Contract shall be binding unless recorded in a written document signed by the Parties. Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.
- 58.3. No extension of time or waiver or relaxation of any of the provisions or terms of this Contract, bill of exchange or other document issued or executed pursuant to or in terms of this Contract, shall operate as an estoppel against any Party in respect of its rights under this Contract, nor shall it operate so as to preclude such Party thereafter from exercising its rights strictly in accordance with this Contract.
- 58.4. To the extent permissible by law no Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the Contract or whether it was negligent or not.

59. SIGNATURES

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

Handwritten signatures in black ink, appearing to be initials and a full name, located at the bottom right of the page.

<u>Date</u>	<u>Place</u>	<u>Witness</u>	<u>Signature</u>
20.11.2018	Heemskoop	[Signature]	[Signature] Coenraad Cornelius Groenewald Municipal Manager

For: OVERSTRAND LOCAL MUNICIPALITY

04/12/18	Heemskoop	[Signature]	[Signature] Name: Vincent Stragbold Designation: Manager: Cape Operations
----------	-----------	-------------	---

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

[Signature]

ANNEXURE A: EXISTING OPERATIONAL STAFF

[Note to bidders:

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

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

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

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



ANNEXURE B: BULK WORKS

[Note to bidders:

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

ANNEXURE C: TECHNICAL SPECIFICATIONS

[*Note to bidders:*

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

ANNEXURE D: PRICING SCHEDULE

[*Note to bidders:*

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

