WATER SERVICES DELIVERY AGREEMENT

ENTERED INTO BETWEEN

CAPRICORN DISTRICT MUNICIPALITY (DC35)

RE ŠOMA LE SETŠHABA

AND

BLOUBERG LOCAL MUNICIPALITY

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PREAMBLE

WHEREAS the CONSTITUTION allocates water and sanitation services, limited to the potable water supply systems and domestic waste-water and sewage disposal systems, as a functional area of local government competence;

AND WHEREAS the STRUCTURES ACT allocates this function to the district municipalities in terms of section 84(1) (b) and 84(1) (d) and acting in terms of Section 84(3) the Minister of Provincial and Local Government published a notice in Government Gazette No 25076 dated 13 June 2003 (Notice Number 816) in terms of which the Capricorn District Municipality (DC35) was authorized to perform the functions and exercise the powers mentioned in sections 84(1) (b) and 84(1) (d) of the Act as the Water Services Authority [WSA] in its area, excluding the area of the Polokwane Local Municipality who act as a water services authority;

AND WHEREAS the District Municipality is entitled to the rights and bound by the obligations applicable in respect of local government powers and functions and municipal services under the Constitution, the Water Services Act, the MFMA, the Systems Act and the Structures Act in respect of the powers and functions mentioned in sections 84(1) (b) (potable water supply systems) and 84(1) (d) (domestic wastewater and sewage disposal systems), of the Structures Act;

CONSEQUENTLY the Capricorn District Municipality is in the process of finalizing the community consultation and information dissemination actions in terms of section 80(2), a feasibility study in terms of section 80(3), as well as the assessment process for deciding on appropriate mechanisms to provide the water services as required by section 78 of the Systems Act and section 19 of the Water Services Act;

NOW THEREFORE the Capricorn District Municipality has agreed to appoint on an interim basis the LM as the water service provider in line with the Water Services Provider Contract Regulations (R980 of 19 July 2002) in respect of the retail water services and the Local Municipality herby accepts such interim appointment. The parties have reached agreement on the terms and conditions of the interim appointment and this agreement is concluded to give effect thereto as follows:

- to provide for the rendering of water services in an efficient, equitable, cost effective and sustainable manner for the benefit of the customers as proposed by section 73 of the Systems Act;
- to set fair and equitable terms to Capricorn District Municipality, the Local Municipality and the customers for the provision and consumption of the water services;
- to manage a financial "ring-fenced" water service delivery system in the contract area; and
- to ensure that Capricorn District Municipality and the Local Municipality gather and assess information for future resolutions in regard to the provision of the water services.

THEREFORE the parties agree as follows on an interim basis:

SECTION A: INTRODUCTION

1. INTERPRETATION

1.1 Unless a contrary intention indicates, words imparting –

1.1.1 any one gender includes both genders;

1.1.2 the singular include the plural and *vice versa*; and

1.1.3 natural persons include created entities (corporate or unincorporated) and the Government.

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

1.2.1 "**Act**" means the Water Services Act (Act 108 of 1997);

1.2.2 "**bulk sanitation services**" means the sewage treatment plants as well as the sewage ponds. Bulk sewers are where pump stations pump sewage in main collector lines of 200mm and larger;

1.2.3 "**bulk water services**" means the infrastructure from the point at water source abstraction up to the water purification plant through to the pump stations and up to an including command reservoirs. A command reservoir is a reservoir that feeds other reservoirs but do not deliver water directly to water distribution networks. Boreholes that delivers water to command reservoirs inclusive of the borehole, pump, pipe line to the reservoir is considered bulk if the borehole delivers water directly to a command reservoir;

1.2.4 "**contract**" means this agreement and includes the Annexures to this agreement and Annexures to be finalised after the signing of the contract;

1.2.5 "**contract area**" means the LM's geographical area of jurisdiction, as demarcated as the water service area;

1.2.6 "**competent authority**" means collectively the Minister of Water Affairs and Forestry, all spheres of Government, any Court of competent jurisdiction or any agency, authority, body or standard setting institution appointed by such entities to regulate and/or oversee the activities of the

WSA and the WSP pursuant to this contract, and in terms of any regulatory provision, or if the context is appropriate any one of them;

1.2.7 "**Contract Regulations**" means the Water Service Contract Regulations published as R980 on 19 July 2002;

1.2.8 "**contract term**" means the period defined in Clause 2;

1.2.9 "**consumer**" means any end user within the water services area to whom the WSP provides water services on the effective date and to whom the WSP may provide water services or must provide water services in accordance with this agreement;

1.2.10 "**District Municipality**" means the Capricorn District Municipality DC35 or CDM;

1.2.11 "**effective date**" means 01 July 2018 irrespective of the date of signature of this contract;

1.2.12 "**emergency situations**" includes without limitation fires, floods, water pollution, restrictions in respect of raw water, droughts, operational emergencies and obstacles such as pipe bursts and other out of order installations and any other situation that may create danger to the consumers or the normal provision of water services in the water services area;

1.2.13 "**employees**" means the employees of the WSA as employed by the WSA on the effective date and seconded to the WSP in terms of section 81(2) (c) of the Municipal Systems Act;

1.2.14 "**financial year**" means a 12 (twelve) month period commencing on 1 July and ending the following year on 30 June;

1.2.15 "**grant funding**" means funding made available to the WSP in terms of section 81(2)(b) of the Municipal Systems Act to fulfil obligations in terms of this contract from CDM, DWAF or any other source for the subsidization of services to the poor;

1.2.16 "**manage**" in relation to the water services system; means operate, manage, maintain, rehabilitate, modify and repair as determined and approved in the Business Plan and annual budget;

1.2.17 "**material adverse government action**" means any action of competent authority of whatsoever nature, including but not limited to the introduction, application or change of any law, order, regulation or by-law

after the effective date, the effect of which is to discriminate against or has a material adverse effect on the rights, interest or obligations of the WSP under the contract and results in any actual or prospective change in the WSP's costs and/or revenues, provided that there shall not be deemed to be a material adverse government action to the extent that the WSA's or competent authority's action is required following a *vis major* event provided that such action is reasonable in relation thereto;

1.2.19 "**material deviation**" means a deviation from the water services budget.

1.2.20 "**MFMA**" means the Local Government: Municipal Finance Management Act, Act 56 of 2003;

1.2.21 "**Municipal Structures Act**" means the Local Government: Municipal Structures Act No. 117 of 1998;

1.2.22 "**Municipal Systems Act**" means the Local Government: Municipal Systems Act No. 32 of 2000;

1.2.23 "**Water Services Act**" means Water Services Act no 108 of 1997 as amended by Water Services Amendment Act No 30 of 2005

1.2.24 "**parties**" means the parties in this contract being the WSA and the WSP, or if appropriate in the context, any of them;

1.2.25 "**performance agreement**" means the performance agreement with performance indicators contemplated in Clause 6.10;

1.2.26 "**PPI**" means the weighted average of the Production Index in respect of the LIMPOPO PROVINCE as published monthly by Statistics South Africa;

1.2.27 "**regulatory provisions**" means collectively, the provision of any legislation, regulation, policy directive or notice issued by a competent authority in respect of the provision of water services or the activities of the WSA or the WSP, or if the context is appropriate, any one of them;

1.2.28 "**revenue services**" means the revenue services to be rendered by the WSP;

1.2.29 "**service delivery and budget implementation plan (SD & BIP)**" means a plan as provided for in terms of section 53(1)(c)(ii) of the MFMA;

1.2.30 "**tariffs**" means the tariffs proclaimed by the District Municipality as water services authority in terms of section 75A of the Systems Act in respect of the water services, based on information provided by the LM and the

adjustment of tariffs by the WSP in terms of section 81(3) of the Municipal Systems Act read with Clause 19.1.1, within the limitations set by the CDM;

1.2.31 "**tariff policy**" means the tariff policy of the CDM which it adopts in terms of section 74 of the Municipal Systems Act;

1.2.32 "**water services**" means collectively water services and sanitation services respectively defined in the Act and any services related to the effective and efficient provisioning thereof, including, amongst others –

1.2.33.1 revenue management (meter reading, billing, collection, customer management, credit control an debt collection) associated with providing water services; and

1.2.33.2 management (operation and maintenance) of the water services system;

1.2.33 "**water services area**" means the area in which the WSP provides water services, being the geographical area of the Local Municipality;

1.2.34 "**water services budget**" means the ring fenced budget of the WSP, that is particular to the costs associated with water services as contemplated in section 20(1) of the Act;

1.2.35 "**water services revenue**" means the revenue actually billed and collected which is attributable to the provision of the water services;

1.2.36 "**water services system**" means all immovable and movable assets and property owned by the WSA or, used by the WSP as at the effective date and any new assets or properties which are acquired, built, installed or used after the effective date to provide water services within the water services area, consisting of amongst others without any limitation any reservoir, dam, well, pump house, borehole, any waste water treatment work, purification work, pumping installation, office or structure, electricity transmission line, pipeline, meter, vehicles, fittings, apparatus or equipment (or if the context is appropriate any one of them) which are used or to be used for the effective rendering of the water services;

1.2.37 "**Water Services Institution**" means a water services authority, a water services provider, a water board and a water services committee as defined by water services act;

1.2.38 "**WSA**" means the Capricorn District Municipality established in terms of the Municipal Structures Act (Act 33 of 1998) responsible for the provision of water services in the water services area, or its successor(s) in title;

1.2.39 "**WSP**" means the Local Municipality established in terms of the Municipal Structures Act (Act 33 of 1998) and any successor-in-title approved by the WSA;

1.2.40 "**WSP ring-fenced account**" means the separate independent accounting system account of the WSP into which the water services revenue shall be apportioned and over which the WSP has exclusive control for the contract period as contemplated in section 81(v) of the Municipal Systems Act of 2000;

1.3 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;

1.4 Clause headings in this contract are for the purpose of convenience and shall not be used in interpretation to modify or amplify the terms of this contract or any clause hereof;

1.5 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;

1.6 When any number of days is prescribed in this contract, same shall be working days reckoned exclusively of the first day if it falls on a Saturday, Sunday and/or any public holiday, 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.

1.7 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;

1.8 Expressions defined in this contract shall bear the same meanings in schedules or annexures to this contract that do not themselves contain their own definitions;

1.9 Where any term is defined within the context of any particular clause in this contract, 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;

1 10 The expiration or termination of this contract shall not affect the provisions of this contract which expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

2. DURATION OF THE CONTRACT

2.1 Despite date of signature, this contract shall commence on the effective date being 1 July 2018 and remain effective until revised, reviewed, changed, or amended by the parties. Anything done by either party in pursuit of the objectives of agreement prior to the effective date which could have been done in terms of this contract shall be deemed to have been done in terms of this contract.

SECTION B: APPOINTMENT

3. APPOINTMENT

With effect from the effective date the WSA –

3.1 appoints the WSP on an interim basis as the exclusive water services provider for the water services area;

3.2 makes the water services system available to the WSP. The water services system as in existence on the effective date is described in the Asset Register;

3.3 shall allow the WSP to have the exclusive right of use and access to the water services system as the water services system cannot be utilized by other WSP's due to the capacity and design of the system;

3.4 delegates and assigns to the WSP all powers, rights, duties and obligations capable of being delegated and assigned in terms of law, subject to the provisions of this contract, necessary for or incidental to the effective, efficient, sustainable and affordable –

3.4.1 provision of the water services to the consumers within the water services area;

3.4.2 collection of the water services revenue;

3.4.3 control of the WSP's accounting, financial management and budgeting activities in respect of the water services revenue in accordance with the water services budget and this agreement;

3.4.4 applying and enforcing of the credit control and debt collection policy and bylaws in respect of the water services revenue;

3.4.5 exercise of such powers at the WSA enjoys, in discharging its responsibility for ensuring access to water services, in terms of current or future by-laws relating to water services;

3.4.6 discharge, compliance, exercise, or fulfilment of any powers, rights, duties and obligations in terms of this contract.

4. SCOPE OF THE APPOINTMENT

4.1 The rights, duties and obligations of the parties in terms of this contract are limited to the provision of water and ancillary services set out in clause 3.

4.2 The territorial scope of this contract is limited to the water services area.

5. EXTENSION OF SCOPE OF APPOINTMENT: INCREMENTAL APPROACH

5.1 In line with an incremental approach to the provision of services by the WSP, the scope of the water services or the ancillary services may be amended by agreement between the parties. In the event that the WSA wishes to extend the scope of the water services or the ancillary services –

5.1.1 the WSA shall be obliged to give the WSP reasonable notice thereof, giving details of the proposed extension and the reason therefore and what services the WSP would be required to render;

5.1.2 the WSA and WSP will meet as soon as possible after the notice mentioned in Clause 5.1.1 to negotiate the extension of the services or the water services area or to incorporate such new area or services having regard to the following matters –

5.1.2.1 The financial and technical feasibility for and the capacity of the WSP to provide such services;

5.1.2.2 The level of conditions of service including the applicable tariff structure;

5.1.2.3 The required additional capital investment, if any, by the WSA; and

5.1.2.4 Any other issue which is relevant including but not limited to the availability of staff.

SECTION C: RESPONSIBILITIES AND RIGHTS OF THE LM AS THE WSP

6. PROVISION OF WATER SERVICES

The WSP shall, from the effective date be responsible for the provision of the water services to consumers in accordance with an approved business plan and the provisions, below –

6.1 The water services provided shall be of such standard to ensure its affordability continuity, regularity, quality and sustainability, and the basic allocation of potable water (subject to the adequate availability of raw water from water sources or bulk water suppliers, and the capacity of the existing water services system) to all consumers within the contract area.

6.2 In respect of effluent standards, water quality, quantity and pressure, the WSA shall comply with any regulatory provisions relating to the supply of water services, including but not limited to, the regulations enacted under Section 9(1) of the Act.

6.3 The standard or level of the water services may, subject to regulatory provisions, differentiate between different geographical areas within the contract area due to socio-economic and affordability factors as well as physical attributes of each area. If a standard or level of services is to be lowered it must be approved by the WSA.

6.4 The WSA shall be obliged to provide water services to new consumers where such water services can be provided by making additional connections to the existing water services system without substantial changes to the water services system or incurring infrastructure development costs.

6.5 Where it is impossible to provide the water services to the consumers in accordance with the business plan, this or any other provisions of this contract, due only to the inadequacy of the existing water services system or the increased potable water demand resulting from improvements to existing services or new connections to the water services system, the WSA shall authorize the WSP to delay the improvement of existing services or such connections until such time as the capacity of the existing water services system is increased or an increase in the available water resources permits such activities and on such terms that are reasonable, and the business plan shall be amended accordingly.

6.6 The WSP is specifically authorized to impose reasonable water restrictions or limit the provision of water services –

6.6.1 In emergency situations; or

6.6.2 for a limited time in order to undertake maintenance or repairs subject to advance notification to affected consumers.

6.7 The WSP may, with the approval of the WSA and in accordance with section 229(2) of the Constitution and of any regulatory provision, impose a surcharge upon consumers pertaining to the provision of water services during a drought period should a consumer fail to adhere to any water service restrictions imposed upon them by the WSP in respect of the provision of water services.

6.8 The WSP may remove, or render un-operational, any unauthorized connection in terms of the procedures set out in the WSA's bylaws.

6.9 The WSP may in terms of section 4 of the Act and section 102 of the Municipal Systems Act restrict or discontinue water services for non-payment by consumers or failure to meet other conditions in respect of the provision of water services, subject to the bylaws.

7. MANAGEMENT OF THE WATER SERVICES SYSTEM

7.1 Access to and Use of Assets

7.2.1 The WSP shall have exclusive access to and use of the immovable and movable assets and the property comprising the water services system. The assets shall not be used for any purpose other than as authorized in this contract.

7.2.2 The WSA as owner of the assets shall be responsible for the payment of any amount that the owner is obliged to pay in respect of any asset comprising such water services system.

7.2.3 Where assets comprising the water services system used but not owned by the WSA are required by the WSP to comply with its duties and obligations and exercise its rights to provide the water services and manage the water services system, and such assets comprising the water services system are not owned by the WSA, the WSA shall ensure, insofar as it is able to, that such assets comprising the water services system are made available to the WSP. The WSA undertakes on request

of the WSP to take such action as may be necessary to obtain access to property or rights in property, including but not limited to servitudes that may be required to enable the WSP to comply with the provisions of this contract.

7.2 Extension and Improvement to the Water Services System

7.3.1 Either the WSA or the WSP may indicate the need for the extension, replacement, refurbishment or betterment of the existing water services system or the construction, leasing or acquiring of new assets which requires capital expenditures due to circumstances that may include but are not limited to a need for increased reticulation, treatment or storage capacity, changes in technology or regulatory provisions, wear and tear, extension of the water services area and vis major. Should the decision of the WSA impact negatively on service delivery by the WSP, the WSA will be publicly accountable for such decision.

7.3.2 The WSA shall obtain funds in respect of Sub-Clause 7.3.1. If loan funding is obtained for the extension, replacement or betterment of the water services system the WSA shall be obliged to cover the repayment obligations of such funding during the contract term.

7.3.3 The WSA shall be responsible on terms to be agreed, for managing the implementation of any projects in respect of the investigation, replacement, refurbishment, betterment or extension of the water services system or the acquiring, leasing or construction of new assets against payment of an agreed fee provided for in the Budget and the Business Plan.

7.3.4 The WSP shall utilise the commission retained as outlined in clause 8.3(b) for betterment and improvement of water services.

8. REVENUE SERVICES

The WSP shall use revenue collected for water services including the following:

8.1 Meter Reading

8.1.1 The WSP shall be responsible for ensuring that meter reading takes place on a monthly basis in the water services area. If, for any reason,

the WSP cannot gain access to the meters it shall make note of this and the reason therefore and make a justifiable estimated consumption of water based on historical information available to the WSP.

8.1.2 Even if the WSP sub-contracts its right and obligations in respect of meter reading, it shall be responsible for managing the sub-contracts and shall remain, responsible to the WSA to ensure accurate and timeous meter readings.

8.1.3 The WSA shall be responsible for the maintenance of the water meters as part of the overall management of the water services system.

8.2 Billing

8.2.1 The WSP shall timeously issue accounts for the services rendered to consumers. If an account is not issued timeously to a consumer, the WSP shall be responsible for any loss incurred.

8.2.2 The WSP shall be responsible for receiving delivery of the accounts to the consumers. The WSP shall be responsible for receiving account queries in respect of water services. The WSP shall be responsible for addressing account queries in respect of water services and shall deal with such queries efficiently and effectively to ensure that there is a response to consumer concerns in line with this agreement and applicable prescripts.

8.2.3 The WSP shall be responsible for the billing and collection of revenue (Connection fee) resulting from customer's request to extend reticulation to areas not reticulated. The WSP can claim commission in with respect to connection fee in line with section 8.3(b) of this SLA.

8.2.4 The WSP shall be responsible for the submission of accurate billing reports to the WSA on a monthly basis by the 11th of every month.

8.3 Revenue collection

The WSP shall:

(a) in terms of section 81(2)(a)(vi) of the Municipal Systems Act, be responsible for the collection of revenue from consumers in accordance with the agreed credit control and debt collection policy and bylaws with the WSA; and

(b) in terms of section 81(2)(a)(v) of the Municipal Systems Act be responsible for controlling its own accounting, financial management and budgeting activities in respect of the water services revenue (but within a framework of transparency, accountability, reporting and financial control determined in accordance with this contract and any regulatory provisions).

a. Shall account for the revenue collected as per paragraph b below) as commission earned from the agency services.
b. Shall retain a percentage of revenue collected from water services and sanitation services for the duration of the contract as follows:
    i. For 2018/19 financial year – 30% per annum.
    ii. For 2019/20 financial year – 30% per annum.
    iii. For 2020/21 financial year – 30% per annum.
    iv. For 2021/22 to 2022/23 financial year – 30% per annum.
c. Shall retain a percentage of revenue to be collected on an accrual basis from water services and sanitation services for the duration of the contract as follows:
    i. For 2018/19 financial year – 30% per annum.
    ii. For 2019/20 financial year – 30% per annum.
    iii. For 2020/21 to 2022/23 financial year – 30% per annum.
d. The parties agree that any monies due to WSA for the provision of water and sanitation services shall be paid within 30 days after. (This clause will applicable from 01 July 2018).
    i. Signed confirmation of balances by both CFO's of WSA and WSP.
    ii. Quarterly review of revenue schedules by the WSA and WSP internal auditors.
e. The WSA shall account for a percentage of revenue billed from water services and sanitation services for the duration of the contract as follows:
    i. For 2018/19 financial year – 100% per annum.
    ii. For 2019/20 financial year – 100% per annum.
    iii. For 2020/21 to 2022/23 financial year – 100% per annum.

8.4 Credit Control and Debt Collection

8.4.1 The WSP is authorized and shall be obliged to implement and enforce the agreed Credit and Debt Collection Policy and By-laws of the WSA in respect of water services revenue.

8.4.2 The WSP may enforce in terms of the Debt Collection and Credit Control Policy and Bylaws in respect of non-payment for water services control measures which will include the right to limit and disconnect water services connections as well as the right to take legal action for its own account as contemplated in section 81(2) (a) (vi) of the Municipal Systems Act, as is necessary in the circumstances in order to recover the water services revenue.

8.5 Cost of Revenue Services

The total cost of the rendering of revenue services shall be budgeted by the WSA in the revenue budget and the WSP shall budget for the commission received from agency services.

9. CUSTOMER CARE AND RELATIONS

9.5.1 The WSP undertakes to interact with consumers concerning matters related to the provision of water services, in particular to provide information about the provision of water services as requested and communicate with consumers about the conditions for provision of water services.

9.5.3 The WSP shall undertake educational and awareness programmes in the communities within the water services area in respect of water demand management, water conservation, health and hygiene awareness, payment for services and other matters related to water services.

10. FINANCIAL MATTERS

10.1 Audited Financial Statements

10.1.1 The WSP shall submit to the WSA a copy of the un-audited financial statements for the financial year by 15 August of each year.

10.1.2 Within 7 (seven) months after year-end, i.e. before the end of January, the WSP must submit financial reports, complying with all regulatory provisions, including:

10.1.2.1 completed audited financial statements of the WSP;

10.1.2.2 the auditor's report in respect of the WSP; and

10.1.2.3 detailed statements regarding the WSP revenue collected and how costs associated with the collection was allocated.

10.1.3. The WSP shall submit the draft general ledger and trial balance to the WSA 1 (one) month after the financial year end

10.2 Annual Water Services Budget

10.2.1 The WSA shall be responsible for the preparation, control and management of the water services budget for each financial year. The water services budget for each ensuing financial year shall be included in the business plan and shall be submitted by the WSP to the WSA.

10.2.2 The water services budget shall reflect at least the following items for the ensuing year –

10.2.2.1 Water services –

(a) projected water services revenue;

(b) Projected operation and maintenance cost of the water services system;

(c) projected operational costs of the WSP, including salaries and all other expenditures;

(d) recommendations in respect of tariffs to be set;

(e) refurbishment requirements;

(f) capital investment requirements;

(g) the equitable share to be allocated to water services and;

(h) all available financial resources.

10.2.2.2 Revenue services –

(a) projected water services revenue to be collected;

(b) projected costs associated with the rendering of the revenue services; and

(c) projected operational costs associated with the rendering of the revenue services, such as professional fees associated with the collection of arrears.

10.3 Water Services Tariffs

The WSP shall utilize water services tariffs approved by the WSA. Such information shall be used to levy consumers by the WSP. The WSP shall not implement any tariff increase without written approval by the WSA

10.4 Equitable Share

The WSA shall use the allocation of the equitable share grant to provide free basic water services to indigents consumers in the water services area as contemplated in section 81(2)(b) of the Municipal Systems Act.

11. INSURANCE

As owner of the assets, the WSA shall be responsible for the costs of insuring any assets, rights and obligations of the WSA in respect of the water services. The WSA shall be obliged to ensure that insurance is effected and maintained in respect of all water related assets

12. BY-LAWS AND POLICIES

The WSA undertakes to provide water services to WSP in accordance with the by-laws and policies as adopted by the council

13. PERMITS, LICENSES, EXEMPTIONS, PERMISSION AND/OR APPROVAL

The WSA shall (unless specifically otherwise provided in this contract) remain responsible for complying with all regulatory provisions applicable to its duties

and obligations in terms of this contract, including but not limited to applying for the necessary approvals, consents, licenses or permits, where required.

14. PERSONNEL

14.1 The WSA shall at all times be and remain the employer of employees allocated to the performance of its rights and responsibilities in terms of this contract and be responsible for all labour relations matters and compliance with all labour legislation in respect of such employees.

14.2 The day to day management of seconded personnel shall be conducted by the WSP in consultation with the WSA.

15. REPORTING AND INFORMATION MANAGEMENT

15.1 The WSP shall record and maintain a complete record of its contractual duties, income and expenditure, anticipated upgrade or refurbishment and obligations by the use of appropriate technology. Records shall be kept and submitted to the WSA on monthly basis. The WSA and the WSP shall meet as and when there is a need on date and time determined by the WSA in consultation with the WSP to discuss amongst others the revenue collected, debt control, expenditure and any other matter in relation to this agreement.

15.2 The following data must be maintained at the offices of the WSP –

15.2.1 Water meters: locations, consumer's name, reference number, diameter, date of control, reading at time of installation, consumption; and

15.2.2 Drawings and technical documentation in respect of the water services system.

15.3 Subject to reasonable notification from the WSA, all records shall be made available to the WSA or its appointed agents during normal working hours with the object of verifying that they are being correctly maintained and to facilitate the regulatory and monitoring functions of the WSA in respect of the provision of water services.

15.4 The WSP must provide information to the WSA required in respect of the water services development plan and progress made in respect of the provision of

water services shall be on a monthly basis based on the implementation of the service delivery and budget implementation plan.

SECTION D: RESPONSIBILITIES AND RIGHTS OF CDM AS WSA

17. BYLAWS AND POLICIES

17.1 The WSA undertakes to timeously, on request of the WSP or otherwise, promulgate all by-laws and adopt all policies –

17.1.1 required in terms of the Act or any other legislation;

17.1.2 necessary to comply with any regulatory provisions; or

17.1.3 necessary to enable the WSP to comply with its duties and obligations and exercise its rights in terms of this contract;

17.2 The WSA shall, prior to the promulgation of by-laws or policies or the amendment of by-laws or policies that may have financial implications in terms of this contract, quantify such financial implications and agree with the WSP on the most appropriate method of addressing such financial implications.

18. PERMITS, LICENSES, EXEMPTIONS, PERMISSION OR APPROVALS

18.1 The WSA shall ensure compliance with all applicable regulatory provisions and where such compliance requires any action on the part of the WSA, to undertake such action timeously.

18.2 The WSA guarantees that on the effective date all permits, licenses, exemptions, permissions and approvals that may have been required in terms of regulatory provisions in respect of the provision of water services were obtained in the required manner.

19. FINANCIAL MATTERS

19.1 Tariffs

19.1.1 The determination and approval of water services tariffs shall be undertaken by the WSA in accordance with prevailing regulatory provisions including sections 74, 75 and 75A of the Municipal Systems Act and the Regulations made in terms of section 10 of the Act. The adjustment of tariffs can be can be done by the WSP subject to sections 81(1) (d) and 81(3) of the Municipal Systems Act.

19.1.2 In addition to any relevant considerations set out in the regulatory provisions, the WSA shall have regard to the following factors in structuring tariffs, provided that none of these factors are irrelevant in terms of the regulatory provisions –

(a) affordability of water services;
(b) the need to ensure the sustainability and financial viability of water services within the water services area;
(c) different service levels;
(d) the use of the equitable share to meet basic needs;
(e) future capital expenditure necessary for addressing predicted increases in water demand due to population growth;
(f) the operation and maintenance cost of existing services, including the cost of raw water;
(g) inflation;
(h) the need to extend water services;
(i) the need to improve service levels and cost recovery;
(j) the need for extension of the existing water services system or new assets for water services; and
(k) the need to service and repay any capital expenditure or loans.

19.1.3 In addition to the provisions of Clause 19.1.2, tariffs for the provision of sanitation services shall satisfy the following principles, provided that this is consistent with prevailing regulatory provisions such as section 74 of the Municipal Systems Act and the Tariff Policy of the CDM: –

19.1.3.1 the domestic and commercial tariff shall be proportioned to the quantity of water consumed; and

19.1.3.2 the industrial tariff shall be structured having regard to both the quantity of water consumed and the quality of effluent discharge.

19.1.4 The WSA shall set the tariffs for the 2013/14 financial year, and where necessary, such tariffs shall be recoverable from the July account of each financial year.

19.1.5 The WSA agrees to an extraordinary review of and adjustment of tariffs set for a financial year, during that financial year, at the request of the WSP if such a review can be justified as a result of –

(a) an unpredicted increase in the tariffs payable in respect of raw water;

(b) changing legislative requirements that cannot be complied with unless additional expenditure is incurred;

(c) a material change in the business plan as a result of unforeseen circumstances; and

(d) any vis major event, occurrence, circumstances or condition that affects the operation, maintenance of the WSP.

19.2 Grant funding

The WSA undertakes to take all reasonable measures to obtain grant funding available from any third party in respect of the rendering of the water services.

19.3 Equitable share

The WSA shall annually agree with the WSP, in the water services budget, the amount of the equitable share to be allocated to the water services in terms of section 81(2)(b) of the Municipal Systems Act. The minimum annual amount shall not be less than the actual cost of providing basic services in accordance with the WSA's free basic water policy. If the funds available are not sufficient to cover the minimum amount then the WSA shall consider a revision of tariffs and the indigent policy, provided that the WSP is not financially prejudiced by such shortfall in any way.

20. MONITORING

20.1 The WSA shall in terms of section 81(1) (b) of the Municipal Systems Act, subject to the provisions of the contract and applicable regulatory provisions–

20.1.1 monitor the activities, performance and compliance of the WSP in accordance with this contract and take any action as is necessary to ensure performance;

20.1.2 monitor the compliance of the WSP with the approved budget;

20.2.3 perform inspections of the water services and monitor any impact which the supply of services may have on the environment;

20.2.4 monitor the financial records of the WSP;

20.2.5 monitor the implementation of customer care; and

20.2.6 monitor the operating procedure on a regular basis.

20.2 If the WSA is of the opinion that the WSP is not complying or only partially complying with any provision of this contract, the WSA may proceed in accordance with the breach provisions or termination provisions in section G of this contract, as is appropriate.

21. INFORMATION COLLECTION AND WATER SERVICES DEVELOPMENT PLAN

21.1 The WSA shall collect information, which it deems necessary from the WSP and consumers concerning the supply of water services necessary for the preparation and adoption of the prescribed water services development plan.

21.2 The WSA shall collect information in respect of –

21.2.1 the quality, quantity and sustainability of the supply of water services and/or the water source having regard to prescribed minimum norms and standards set by the WSA and regulatory provisions;

21.2.2 the nature, operation, sustainability, operational efficiency and economic viability of the supply of services and the water services system.

22. EXTENSION AND IMPROVEMENT TO THE WATER SERVICE SYSTEM

22.1 Either the WSA or the WSP may indicate the need for the extension, replacement, refurbishment or betterment of the existing water services system or the construction, leasing or acquiring of new assets which requires capital expenditures.

22.2 Prior to any loan funding being obtained the WSA shall ensure that the water services revenue is able to address any financial implications of such loan funding and shall consult the WSP in this regard and that provisions of Chapter 6 of the MFMA has been complied with.

SECTION E: FINANCIAL MATTERS

23. INCOME AND EXPENSES

WSP will prepare and maintain financial records and statements in accordance with the Generally Accepted Accounting Practice publication adopted in the Republic of South Africa or, in the case of a sphere of government, in accordance with the relevant financial management legislation as per section 16(a) of the Water Service Act Regulation GNR.980 of July 2002.

WSP must record all existing and past consumers of water services dealt with and maintain a record of operations, maintenance, inspections and technical auditing in terms of section 17(a) and (b) of the Water Service Act Regulation GNR.980 of July 2002.

23.1 cover any loss or shortfalls relating to the provision for water services during the forthcoming financial years;

23.2 extend the existing water services;

23.3 improve existing service levels and fund future operational costs

23.5 improve financial systems of the municipality to achieve completeness of revenue generated and collected

24. ASSETS

The WSP shall under no circumstance be entitled to dispose of or encumber or grant any security rights to any of the water services system without the consent of the WSA. The WSA shall remain the owner of the water services system at all times and the assets listed in the Asset Register.

SECTION F: COORDINATION

25. COORDINATING COMMITTEE

25.1 The object of the coordinating committee as part of the intergovernmental structures provided for in the Intergovernmental Relations Framework Act No. 13 of 2005 is to facilitate the implementation of the contract and to ensure that there is continual sharing of information.

25.2 The co-ordination of water services function and the monitoring of the water services agreement shall be conducted through the district intergovernmental forums. The responsibilities of the forums shall be to:

25.2.1 Co-ordinate, facilitate and mediate the implementation and execution of this contract;

25.2.2 collate and disseminate information; and

25.2.3 facilitate and assist in raising capital and funding for the WSA.

25.3 The WSA shall be responsible for convening the meetings of the intergovernmental forums and to provide the secretariat and the administrative support for such meetings.

SECTION G: LIABILITY, BREACH, TERMINATION AND *VIS MAJOR*

26. BREACH AND TERMINATION AS A RESULT OF MATERIAL BREACH

26.1 If any party commits a breach of this contract and should the other party wish to claim specific performance or damage 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 20 (twenty) days (or such longer period stipulated in the notice if the breach in question cannot reasonably be remedied by the defaulting party within a 20 (twenty) day period)), and should the defaulting party fail to remedy the breach within the such period then the party giving notice may claim specific performance or damages or both, as the case may be. If any damages are claimed the defaulting party shall be absolved from performing such acts.

26.2 If the defaulting party again commits a breach in respect of which the other party has successfully claimed damages or specific performance, the breach shall be deemed to be a material breach if the party fails to remedy the breach within 20 (twenty) day notice period given and the party shall be entitled to cancel the contract.

26.3 Prior to the party evoking any right to terminate this contract, 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 20 (twenty) days (or such longer period stipulated in the notice if the breach in question cannot reasonably be remedied by the defaulting party within a 20 (twenty) day period).

26.4 Should the defaulting party fail to remedy the material breach in question within the period reflected in the notice the contract shall terminate at the expiry of the period stated in the notice.

26.5 Upon any termination of the contract, the defaulting party shall compensate the party terminating the contract for damages suffered as a result of such termination and all other costs and expenses incurred by the party terminating the contract in connection with or relating to such termination.

27. EFFECT OF TERMINATION

27.1 On termination of this contract, the parties agree that for a period of at least 3 (three) months prior to the termination date of the respective parties rights and obligations in this contract, a "hand back procedure" shall be effected, the parties at all times recognizing that continuity of the performance of the obligations in this contract is essential.

27.2 The hand back procedure will include at least the following activities –

27.2.1 the rights and obligations of the WSP in respect of providing water services within the water services area shall terminate;

27.2.2 the WSP's right of use and access to the water services system shall terminate;

27.2.3 the WSP's right of access to the water services revenue shall terminate and the WSP shall reconcile and account for all activity in the water services account prior to the termination date;

27.2.4 all the records, plans, specifications, engineering documents, operation contracts associated with or connected to the water services system and the provision of water services shall be handed over to the WSA;

27.2.5 all monies due and payable to the parties shall be settled; and

SECTION H: DISPUTE RESOLUTION

28 DISPUTE RESOLUTION

28.1 Any dispute or claim between the parties shall be dealt with as follows:

28.1.1 disputes of a financial nature shall be dealt with in terms of section 44 of the Municipal Finance Management Act;

28.1.2 non-financial disputes shall be dealt with in terms of Chapter 4 of the Intergovernmental Relations Framework Act No. 13 of 2005; and

28.1.3 disputes concerning performance of functions or the exercise of powers shall be dealt with in terms of section 86 of the Municipal Structures Act.

SECTION I: MISCELLANEOUS PROVISIONS

29. 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 whole or any part of this contract.

30. 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 no 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 provision.

31. PRESERVATION OF THE POWERS AND DUTIES OF THE WSA

Nothing in this contract shall curtail the statutory powers of the CDM as the WSA in its capacity as the water services authority in respect of the provision of water services or where and if applicable, the responsibility for revenue services in any manner whatsoever.

32. ASSIGNMENT, TRANSFER, CESSION AND DELEGATION

No party shall be entitled to assign, transfer, cede or delegate of its rights and obligations in terms of this contract without the prior written consent of the other party.

33. SUB-CONTRACTING

33.1 The WSP may sub-contract certain but not all of its powers, rights, duties and obligations in terms of this contract if the agreement in terms of which such powers, rights, duties and/or obligations are sub-contracted terminates prior to

the termination of this contract. The WSA shall not have any relationship whatsoever with any sub-contractor.

33.2 The WSP may not sub-contract any of its powers, rights, duties and obligations in terms of this contract if the agreement in terms of which such powers, rights, duties and/or obligations are sub-contracted does not terminate prior to or on the termination of this contract, without the prior written consent of the WSA and in such circumstances the WSA may prescribe matters to be included or addressed in such sub-contract. The WSP shall provide in all such sub-contracting agreements for the cession of such agreements to the WSA on termination of this contract.

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

33.4 The WSP shall keep records of all contracts entered into in connection with or associated with its powers, rights, duties or obligations in terms of this contract and shall on request provide information in respect thereof to the WSA.

34. CONTRACT BINDING ON SUCCESSORS-IN-TITLE

This contract shall be binding on any successor in title of the WSP and any successor in title of the WSA.

35. GOOD FAITH

The parties shall in their dealings with each other display the utmost good faith and undertake to do all such things, perform all necessary acts and procure the taking of all necessary steps and sign all such other documents that may be necessary or incidental or conducive to give effect to the intention and the terms and conditions of the contract.

36. PREVENTION OF CORRUPTION

The parties undertake to identify and take all reasonable steps to prevent the parties, their employees, their sub-contractors, their agents or anybody under its control from–

36.1 involvement in any "corrupt activities" as contemplated in the Prevention and Combating of Corrupt Activities Act No. 12 of 2004; or

36.2 Showing undue favour to any person in relation to a contract.

37. *DOMICILIUM CITANDI ET EXECUTANDI*

37.1 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 --

WSA:	**Capricorn District Municipality**
Physical:	41 Biccard Street POLOKWANE 0699
Postal:	P O Box 4100 POLOKWANE 0700
Tele:	015 294-1000
Contact person:	**Mr T Nonyane (Chief Financial Officer)**
WSP:	
Physical:	Blouberg Local Municipality 2nd Building Mogwadi / Senwabarwana Road Senwabarwana
Postal:	Box 1593 Senwabarwana 0790

or in terms of this contract, shall operate as soon 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.

38.4 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 and/or whether it was negligent or not.

39. COUNTERPARTS

This contract, together with its annexures if any, may be executed in several counterparts, each of which shall together constitute one and the same document. Where the content of the Annexures have not been finalised on signing of the agreement to parties agree finalise it within a reasonable period.

DATED AND SIGNED AT Blouberg **ON THE** 6th **DAY OF** March **2020**

Mahebe M

FOR MACHABA JUNIAS

Blouberg

LOCAL MUNICIPALITY

AS WITNESS

Full Names Sekole Margaret

Signature Sekolem

DATED AND SIGNED AT POLOKWANE ON THE 02 **DAY OF** March **2020**

Nony

T NONYANE

FOR CAPRICORN DISTRICT MUNICIPALITY

AS WITNESS

Full Names Mmonwa M.K

Signature