BULK WATER SUPPLY AGREEMENT

Between

THE CITY OF CAPE TOWN

AND

SWARTLAND MUNICIPALITY

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PREAMBLE

The Parties to this Agreement are the City of Cape Town and Swartland Municipality.

Both Parties are municipalities established in terms of section 12 of the Local Government: Municipal Structures Act of 1998 (Act No. 117 of 1998), as amended from time to time.

Whereas the parties agree to set any previous agreement for the provision of bulk water aside and substitute them with this agreement which will take effect on the date of its signature.

Whereas the Parties wish to regulate the following in the agreement:
Financial and technical aspects of the supply of the Bulk water from the City of Cape Town to Swartland Municipality as required by the Water Services Act of 1997 (Act No 108 of 1997), and in terms of the principles set out in the Strategic Framework for Water Services (September 2003).

Whereas the Parties wish for functional and operational reasons to identify and define functionaries.

NOW THEREFORE THE PARTIES AGREE, AS FOLLOWS:

1. **PARTIES**

The Parties to this Agreement are

1.1. The City of Cape Town represented herein by the Executive Director: Water and Sanitation (or their duly authorised delegate) hereinafter referred to as "The Provider".

1.2. Swartland Municipality represented herein by the Municipal Manager (or their duly authorized delegate), hereinafter referred to as "The Customer".

1.3. The Provider and the Customer are collectively referred to as “the Parties”.

2. **DEFINITIONS**

2.1. “**AADD**” means the annual average daily demand i.e. the annual demand divided by 365 days;

2.2. “**Act**” means the Water Services Act, 1997 (Act No. 108 of 1997*),* as amended;

2.3. “**Agreement**” means this Agreement and any annexure/s hereto, as well as any subsequent amendment, notation of substitution of this agreement and annexure/s, as may be required between the parties from time to time;

2.4. “**Assurance of Supply**” means the likely number of years, out of a hundred years, that a water user will obtain its allocated yield, without the application of water restrictions;

2.5. **"Bulk Water Supply Services"** means the provision of potable water by the City of Cape Town to the Swartland Municipality;

2.6. “**Budgeted Bulk Supply Expenditure**” includes:

2.6.1. All expenditure required to operate, maintain, repair and reinstate the Bulk Supply System;

2.6.2. All expenditure required to augment or improve the Bulk Supply System;

2.6.3. All expenditure associated with water resource development;

2.6.4. Expenditure incurred on fire protection, control and maintenance of catchment areas, including the eradication of undesirable flora;

2.6.5. Expenditure incurred in providing supplies to a Special Local Authority and other consumers in terms of agreements and/or notarial deeds of servitude;

2.6.6. Government charges and levies on water in terms of its Raw Water Pricing Strategy;

2.6.7. All administration costs related to the bulk supply of water; and

2.6.8. Expenditure associated with legislative compliance.

2.7. "**Bulk Supply System Sundry Income**" includes:

2.7.1. All items of income derived from the Bulk Supply System, excluding the sale of water, and including (but not limited to):

2.7.1.1. The rental of property;

2.7.1.2. Permit fees for catchment areas;

2.7.1.3. The sale of by-products (for example, timber);

2.7.1.4. The sale of scrap or material salvaged from Bulk Supply System;

2.7.1.5. Compensation for Occupational Injuries and Diseases Act, 1993, (Act No. 130 of 1993), claims, where applicable; and

2.7.1.6. Monies recovered in terms of this Agreement;

2.7.2. Any income derived from the sale of discounted water to a Special Local Authority and other consumers entitled to discounted water; and

2.7.3. Government Levies on water recovered from Local Authorities;

2.8. "**Bulk Supply System**" means all works and property of the Bulk Water Branch for (or in connection with) the supply of water in bulk (see Annexure A) and shall include the following, both as existing and future additions, extensions, alterations or improvements made from time to time:

2.8.1. Collection Works, including storage reservoirs, dams, catchments, ponds, weirs, wells, springs, streams, rivers, boreholes, adits, galleries, together with their appurtenant lands, roads, buildings, amenities, pipes, conduits, tunnels, intakes, valves, gauges, meters, structures, machinery and plant, electrical equipment, pumping installations, de silting works, works for the control and discharge of flood, compensation, irrigation and other waters, fauna & flora, measures for the conservation of the environment, and the protection of the water quality, and all other ancillary works;

2.8.2. Water Treatment and Chlorination Plants, including land, buildings, structures, pumps, gauges, meters, conduits, roads and access roads, amenities, machinery and plant, electrical equipment and all other ancillary works;

2.8.3. Trunk Pipelines, including land, servitudes, pipes, chambers, aqueducts, conduits, tunnels, with their attendant bridges, culverts, gauges, meters, valves, connections, leadings, specials, break pressure tanks, balancing reservoirs and all other ancillary works;

A Trunk Pipeline includes:

2.8.3.1. Any pipeline from a collection works used to supply water to a service reservoir of the Bulk Water Branch and where there is more than one branch of such pipeline, all such branches;

2.8.3.2. Any pipeline connecting service reservoirs of the Bulk Water Branch being used solely for supplying water between these reservoirs under normal operating conditions;

2.8.3.3. Any other pipeline of the Bulk Water Branch for the supply of water to any Local Authority or Bulk Water consumer;

2.8.4. Pumping stations, including any pumping installations on or capable of increasing the delivery of a trunk pipeline including land, buildings, machinery, pumps, piping, valves, gauges, meters, access roads, and all other appurtenant works;

2.8.5. Meters; and

2.8.6. Service Reservoirs of the Bulk Water Branch, including land, buildings, structures, amenities and all other ancillary works;

2.9. "**Bulk Water Service Provider**" means the Bulk Water Branch of the City of Cape Town as per the definition contained in the Strategic Framework for Water Services (ref. Strategic Framework definitions – Annexure 3);

2.10. "**Bulk Water Branch**" means the Branch within the City of Cape Town's Bulk Services Department within the Water and Sanitation Directorate responsible for the collection, treatment and distribution of bulk water to the City of Cape Town, and other local authorities by agreement;

2.11. "**DWS**" means the national Department of Water and Sanitation;

2.12. "**Net Total Water Consumption**" means:

The total quantity of water supplied to Swartland Municipality, other Local Authorities and other consumers off the bulk system all expressed in kilolitres and all as measured or assessed by the City of Cape Town in accordance with good engineering practice;

2.13. "**Pipeline**" in addition to its ordinary meaning, includes any works for the conveyance of water;

2.14. "**PWD**" means the peak week demand i.e. the highest total demand for a period of a week;

2.15. "**Qualified Engineer**" means a person registered as a Professional Engineer or Technologist in terms of the Engineering Profession Act, 2000 (Act No. 46 of 2000);

2.16. **"Regulatory Provisions"** means collectively, the provision of any legislation or any regulation, a notice issued pursuant to such legislation, or a policy directive or notice issued by a competent authority, any or all of which are directly related to the provision of bulk water supply services or the related activities of the City of Cape Town or the Swartland Municipality, or if the context is appropriate, anyone of them;

2.17 "**Strategic Framework for Water Services**" means the Strategic Framework which sets out the vision of the water services sector in South Africa, jointly formulated by all levels of Government and approved by Cabinet on 17th September 2003.

2.18 General words preceded or followed by words such as "other" or "including" or "particularly" shall not be given a restrictive meaning because they are preceded or followed by a particular example intended to fall within the meaning of the general words.

3. INTERPRETATION

3.1. The headings to the clauses of this Agreement are inserted for reference purposes only and shall in no way govern or affect the interpretation hereof.

3.2. Unless inconsistent with the context, any expression herein contained, including any expression and any definition thereof in a clause, which denotes:

3.2.1. any gender, includes the other gender;

3.2.2. a person, includes a natural and an artificial person;

3.2.3. the singular, includes the plural and vice versa.

4. OBJECTIVE OF AGREEMENT

4.1. Recognising the executive authority of the City of Cape Town to provide water services, the Parties agree that this Agreement should be concluded to –

4.1.1. formalise and record the current and continued provision of Bulk Water Supply Services by the City of Cape Town to the Swartland Municipality in writing in accordance with the requirements of the Water Services Act, and this Agreement;

4.1.2. provide for the rendering of Bulk Water Supply Services in an efficient, equitable, cost effective and sustainable manner; and

4.1.3. set terms that are fair and equitable to the Parties;

5. DURATION

5.1. The duration of this Agreement shall be for a period of 10 (ten) years from the date of commencement of this Agreement.

5.2. The duration of this Agreement may be extended during the initial period or at the end of its initial period, as may be deemed necessary by the Parties.

6. REVIEW

6.1. This agreement shall be reviewed by both Parties to the Agreement at any time during the contract period at the written request of either party to the agreement.

6.2. Any amendments resulting from a review based on this clause shall be reduced to writing and signed by both parties.

7. APPLICATION TO EXISTING AND FUTURE CONNECTIONS

This Agreement shall apply to all existing connections listed in Annexure C and all future connections to be added by the Parties in terms of this clause.

8. UPGRADING OF EXISTING AND FUTURE CONNECTIONS

8.1. An application for additional water supply shall be made by following the application process detailed in Annexure B of this Agreement.

8.2. The following will be taken into account in assessing the need for additional works, and approval will be informed by the following factors:

8.2.1. the availability of resources;

8.2.2. the need for an equitable allocation of resources to all consumers and potential consumers;

8.2.3. the need to regulate access to water services in an equitable way;

8.2.4. the duty to conserve water resources;

8.2.5. the nature, topography, zoning and situation of the land in question;

8.2.6. alternative ways of providing access to water services;

8.2.7. the need for regional efficiency;

8.2.8. the need to achieve benefits of scale;

8.2.9. the need for cost efficiency;

8.2.10. implementation of Water Conservation and Demand Management initiatives; and

8.2.11. other relevant conditions that may be forthcoming during the assessment.

8.3. When applying for an upgrading of an existing connection or for a future connection, Swartland Municipality shall provide all information required by the City of Cape Town for assessing the effect such connection will have on the Bulk Supply System. Such information shall include the following:

8.3.1. a motivation of the need for the new connection or the upgrading of an existing connection;

8.3.2. a locality sketch showing the position of the proposed connection.

8.3.3. the type of development to be supplied;

8.3.4. layout of the supply system;

8.3.5. anticipated average annual daily demand (AADD);

8.3.6. anticipated peak week demand (PWD);

8.3.7. the maximum and minimum anticipated flows;

8.3.8. anticipated ultimate AADD;

8.3.9. anticipated ultimate PWD;

8.3.10. existing supplies to the area, if any; and

8.3.11. Existing or planned water storage facilities for the area being supplied.

8.4. Should it become apparent that additional information is required in order to assess the effect of the proposed connection on the Bulk Supply System, such additional information will be requested in writing.

8.5. Swartland Municipality shall make timeous application for any connection required and must take cognisance of the fact that installation times for connections to certain bulk water mains may be limited to periods of low water demand, normally during the year from May to September.

8.6. In approving the application, the City of Cape Town may impose conditions on Swartland Municipality.

9. POINT OF WATER SUPPLY

9.1. The City of Cape Town shall supply water through a head meter on a connection situated off and immediately adjacent to a service reservoir or trunk pipeline belonging to it or under its control.

9.2. The point at which the connection mentioned in sub clause 9.1 is made, is hereinafter referred to as “the point of connection” and the head meter shall be deemed to be “the point of supply”.

9.3. Swartland Municipality shall pay the cost of making the connection, all works beyond the point of such connection and of the installation of the head meter.

9.4. The head meter chamber, pipework, check valve (if required) and isolating valve upstream of the head meter shall be owned, operated and maintained by the Bulk Water Branch.

9.5. Swartland Municipality is to provide a valve immediately downstream of the infrastructure referred to in sub clause 9.4. This valve will be owned, operated and maintained by Swartland Municipality. Upstream of this chamber will denote the end of the Bulk Supply System.

9.6. The Bulk Water Branch shall, upon request from Swartland Municipality, provide Swartland Municipality with a provisional cost estimate with respect to the expenditure referred to in sub clause 9.3.

9.7. Upon receipt of all the information requested in clause 8.3, the Bulk Water Branch shall within a reasonable timeframe, and subject to it having obtained all the required approvals, submit a cost estimate in writing to Swartland Municipality in respect of any expenditure referred to in sub clause 9.3.

9.8. Upon receipt of payment from Swartland Municipality for the amount referred to in sub clause 9.7, the Bulk Water Branch shall commence with the installation of the point of supply. An estimate of the period for installation will be furnished upon request. This period will commence upon receipt of payment. Compliance with these estimated times shall however be subject to any limitations placed on the Bulk Water Branch with respect to shutting down the affected portions of the Bulk Supply System during periods of high water demand, and limitations on availability of parts, fittings or materials.

9.9. No other connections shall be allowed to the Bulk Supply System apart from those allowed in terms of clauses 7 and 8.

10. METERING

10.1. Head meters at the point of supply (refer to clause 9) will be provided, read and maintained by the Bulk Water Branch. The Bulk Water Branch will on request test a meter, provided it is not larger than 500mm in diameter. Should Swartland Municipality be dissatisfied with the meter readings, the Bulk Water Branch on request will test the meter. Swartland Municipality shall pay all costs arising from such tests, provided that no charge for cost arising from such test shall be payable if inaccuracy of the meter is greater than three percent (3%).

10.2. Should the meter for any period not register or register more than three percent (>3%) in error, the City of Cape Town shall adjust the consumption in accordance with clause 13.2.

11. BULK WATER TARIFF

11.1. The Bulk Water Tariff for water in cents per kilolitre supplied for any financial year shall be based on:

$$\frac{\mathbf{E - I}}{\mathbf{C}}$$

Where:

E = Budgeted Bulk Supply Expenditure (defined in clause 2.6)

C = Net total anticipated water Consumption

I = Budgeted Bulk Supply Sundry Income (defined in clause 2.7)

11.2. The tariff for bulk water shall be revised annually. In setting the tariff, the City of Cape Town shall take into account any applicable norms and standards that may be set by the Minister of Water and Sanitation in terms of section 10 of the Act.

11.3. The Bulk Water Tariff shall be determined in accordance with the City's Water and Sanitation Tariff Policy. The Bulk Water Tariff is set on an annual basis to ensure full cost recovery for the provision of the bulk water service as well as the long term sustainability of this service.

11.4. The City of Cape Town shall inform Swartland Municipality, after the City's March Council meeting at which the draft budget is approved, the anticipated bulk water tariff for the following financial year. Swartland Municipality may submit comments with respect to the proposed bulk water tariff before final determination thereof at the City of Cape Town's June Council meeting, at which the final budget is approved.

11.5. The City of Cape Town expressly confirm that the annual bulk water tariff will be determined by the City's normal budget and tariff approval process.

12. WATER ALLOCATIONS

12.1. Swartland Municipality shall retain its existing allocation from the Western Cape Water Supply System (WCWSS) as determined by the Department of Water and Sanitation (DWS), comprising:

- 1.57 million m³ per annum, abstracted at Misverstand Weir, with water released from Voëlvlei Dam; and

- 7.9 million m³ per annum, abstracted via the canal connecting Voëlvlei Dam to the Berg River.

A portion of this allocation will be abstracted as part of the City of Cape Town's Voëlvlei Water Treatment Scheme and treated to comply with SANS 241 standards. Swartland Municipality shall utilise the City of Cape Town's infrastructure to convey the treated water and abstract it at the Pella Reservoir Scheme subject to clause 15.

12.2. The flowrates per clause 15 are the maximum allowable flowrates from the system and higher flow rates cannot be accommodated irrespective of allocation requirements. The resulting per annum volumes should be an indication of the allocation that can be utilised through the City of Cape Town Bulk Water Supply System to Swartland Municipality.

12.3. Nothing in this Agreement shall be interpreted as a cession, transfer, or reduction of Swartland Municipality's WCWSS allocation in favour of the City of Cape Town.

13. ACCOUNTS

13.1. Accounts for bulk water supplied shall be rendered monthly by the City of Cape Town to Swartland Municipality.

13.2. The monthly accounts shall be based on meter readings and on the bulk water tariff per kilolitre set by the City of Cape Town for that financial year. Should a meter be faulty or if for any reason a meter cannot be read by the Bulk Water Branch in a particular month, a monthly consumption for the connection shall be estimated by the City of Cape Town, based on historical consumption records. This shall be done in consultation with Swartland Municipality. An estimated account rendered to Swartland Municipality shall be clearly marked "estimate" and shall be payable in the normal course, without deduction or set off. The City of Cape Town shall endeavour not to provide an estimated reading for a period of longer than 3 months.

13.3. If Swartland Municipality disagrees with the amount of an account, whether estimated or not, it shall notify the City of Cape Town forthwith in writing within 2 (two) weeks of receiving the account, and in such notice it may request details of any breakdown of the calculation of the account. If an account is disputed, officials from the City of Cape Town and Swartland Municipality should first attempt to resolve the dispute. Should agreement on a quantity supplied be reached, the City of Cape Town shall send correspondence to Swartland Municipality stating the agreed upon consumption figure. Swartland Municipality shall then make payment on this agreed upon figure. Failing resolution, a formal dispute may be declared in terms of the provisions of this Agreement. Pending the outcome of the formal dispute, Swartland Municipality shall continue to pay the full amount of the account rendered to it, whether an estimated account or not. On determination of the disagreement, an adjustment shall be made. In the event of an overpayment by Swartland Municipality, such overpayment shall be credited to the next account rendered by the City of Cape Town to Swartland Municipality, and in the event of an underpayment by Swartland Municipality, the amount shall be included on the next account rendered to Swartland Municipality.

13.4. This agreement does not place any minimum purchase obligation on Swartland Municipality.

14. SERVICE RESERVOIRS

All service reservoirs of Swartland Municipality shall comply with the following:

14.1. Where a Swartland Municipality reservoir impacts on the bulk water supply system of the City of Cape Town, any alterations, additions and extensions thereto, shall be submitted to the Bulk Water Branch for their information and comment before construction begins.

14.2. Service Reservoirs of Swartland Municipality and appurtenant works such as pumping stations, control valves, etc., shall be designed so as to balance diurnal fluctuations of demand on the Bulk Supply System and to distribute to Swartland Municipality's system during an interruption of the supply. Swartland Municipality works shall be such as to meet safely any pressure resultant from

a supply from such service reservoir. The arrangement of inlets and outlets shall be such as to permit the adequate functioning of circulation and disinfection measures.

14.3. The details of the design and the materials to be used shall be such as to ensure protection from any source of pollution.

14.4. Swartland Municipality shall notify the Bulk Water Branch at least 12 (twelve) months in advance of its intention to construct any new service reservoirs which may impact on the Bulk Supply System. In such notification, Swartland Municipality shall specify the intended completion date of such construction and inform the Bulk Water Branch upon completion thereof.

14.5. Subject to any special operating arrangements specified by the Bulk Water Branch, all service reservoirs and appurtenant works including pumping stations, pumping sumps and control valves shall be operated so as to take water at reasonably constant rates, especially during the summer period. Such operation must iron out diurnal fluctuations in demand and ensure that bulk withdrawals from the Bulk Supply System are constant over periods of at least 24 hours.

14.6. Where in the opinion of the Bulk Water Branch, a service reservoir and appurtenant works of Swartland Municipality are not being operated as set out in sub clause 14.5, the Manager: Bulk Water may, in writing, notify Swartland Municipality of the situation. Such notice shall clearly state the problem to be rectified.

14.7. Swartland Municipality shall, upon receipt of such notice, forthwith take reasonable measures to rectify the problem. If it is not possible to rectify it within a reasonable time, Swartland Municipality shall inform the Manager: Bulk Water in writing stating the reasons therefore. If the problem has not been rectified within 14 days of dispatch of such notice (or any further notice), and no written explanation has been received from Swartland Municipality, the City of Cape Town may declare a dispute in terms of clause 30.

15. BULK WATER SUPPLY CAPACITY

15.1. Swartland Municipality shall provide a minimum of 48 hours emergency storage based on the Annual Average Daily Demand (AADD) within their own reticulation system.

15.2. If the required storage if not available at the time of signing this Agreement, provision of storage should form part of the Swartland Municipality Master Plan.

15.3. The volume of water supplied by the City of Cape Town in terms of this clause shall be billed at the prevailing Bulk Water Tariff applicable to external municipal customers.

15.4. The supply is subject to the following conditions and must be noted:

15.4.1. The current maximum supply that the CCT is able to provide to Swartland via Pella reservoir is 2 MLD.

15.4.2. Rehabilitation of Witzands wellfields is currently ongoing and up until works are complete, the City will not be able to supply in the future short to medium estimated 4.3 MLD Chatsworth demand.

15.4.3. Upon completion of the Witzands rehabilitation and refurbishment projects, including pretreatment at the Witzands softening plant, it is envisaged that a peak supply of 1.3 x AADD will be available up to a maximum flowrate of 5.6 MLD.

15.4.4. In the event that a desalination plant is built to feed into the City's Witzands supply scheme, operational- and other procedures may have to be revised.

16. FLOW RATES AND FORECAST OF DEMAND

16.1. The annual average daily demand at each existing point of supply and the projected average annual daily demand are as recorded in Annexure C.

16.2. The Bulk Water Branch shall every 2 (two) years provide Swartland Municipality with a list of all Swartland Municipality's connections as well as the annual average daily demand of the last full year of supply at each of the points of supply.

16.3. Swartland Municipality must within 2 (two) months of the receipt of the list referred to above, provide the Bulk Water Branch projected AADD's and Peak Week Demands at set intervals, for each point of supply, based on the expected growth in water demand at that point of supply.

16.4. The City of Cape Town shall be entitled to query any of the demand projections supplied by Swartland Municipality. It should do so in writing and give reasons for the query. Swartland Municipality shall respond in writing.

16.5. Should Swartland Municipality fail to provide the information as required in terms of sub clause 16.3, the City of Cape Town may determine the projected growth rates at each point of supply. In such event, the City of Cape Town shall not be held accountable for the planning implications of the projections.

16.6. The City of Cape Town shall endeavour to ensure that the Bulk Water Supply System can supply the annual average daily demand projections and peak week demand projections at each point of supply as set out in sub clause 16.1 and sub clause 16.3, subject to conditions set out in clause 15. Swartland Municipality shall be responsible for meeting the diurnal fluctuations in water demand by providing sufficient storage capacity in their distribution system.

16.7. The Parties may by mutual agreement deviate from the demands as set out in Annexure C. Such deviation may be necessitated by operational constraints placed on the Bulk Supply System, the local reticulation system or both systems.

16.8. If Swartland Municipality intends to undertake any work which may entail a large increase in water consumption on the bulk water system, it shall do the following:

16.8.1. Submit new estimates of future consumption and indicate which points of supply are affected;

16.8.2. Make application for additional water supply in terms of clause 8; and

16.8.3. Timeously inform the City of Cape Town of such expansion in order to allow sufficient time to construct any additional works which may be required to adequately service the new demand.

17. **PRESSURE**

17.1. Where topographically possible the Bulk Water Branch shall endeavour (within their normal operating parameters) to maintain adequate pressure at the point of supply in order to enable Swartland Municipality to operate its distribution networks subject to the conditions stipulated in Section 12.5. Any extension to the existing system or new systems designed by Swartland Municipality must take cognisance of the fact that pressure could vary and should be designed to cater for minimum and maximum pressures that could normally be expected. Swartland Municipality is not permitted to make use of in-line pumping directly from the Bulk Supply System.

17.2. Should Swartland Municipality experience unusually low pressures at the point of supply or great fluctuations in pressure, it shall inform the Bulk Water Branch in writing of the occurrence and the Bulk Water Branch shall then investigate the problem and take such measures that are reasonably possible to rectify the situation. If it is not possible to rectify the problem, the Bulk Water Branch shall inform Swartland Municipality within 14 days in writing stating the reasons for the low pressure.

17.3. The Bulk Water Branch shall inform Swartland Municipality at least 14 days in advance of any planned reduction in water pressure, at any of the points of supply. The Bulk Water Branch shall also give reasons for the reduction, the actions to be implemented and the timeframe until the restoration of normal pressures.

18. WATER QUALITY

18.1. The City of Cape Town shall supply water consistent with SANS 241: Specification for Drinking Water

18.2. The quality of the water within the Bulk Supply System is monitored by the Water and Sanitation Directorate's Scientific Services Branch or any other SANAS accredited laboratory. The results of the water quality analysis shall be made available to Swartland Municipality monthly.

18.3. The City of Cape Town Incident Management Protocol (IMP) is attached as Annexure E. All water quality incidents up to the point of supply will be handled according to the procedure as set out in the IMP.

18.4. Swartland Municipality must maintain the water quality between the point of supply and their consumers. Any consumer queries regarding water quality shall be addressed by Swartland Municipality, who after a thorough investigation of the possible causes, shall approach the Bulk Water Branch should the water quality problem originate upstream of the point of supply. If so required by the Bulk Water Branch, Swartland Municipality shall allow and assist the Bulk Water Branch in obtaining water samples downstream of their point of supply.

18.5. Irrespective of the origin of the water quality problem, Swartland Municipality shall be responsible for informing and communicating to its consumers.

18.6. The City of Cape Town will include Swartland Municipality in its Water Safety Planning Process, which is required by the national Department of Water and Sanitation's Blue Drop Programme.

19. CONTINUITY OF SUPPLY, PRESSURE AND WATER QUALITY

The City of Cape Town shall not be responsible or liable for any loss or damage to property or injury to persons or for loss of production or for loss of income or profit resulting from an interruption, variation or deficiency in the water supply or water quality or from excess or lack of pressure from the City of Cape Town's Bulk Water System.

If on reasonable grounds it is believed that a water supply shortage exists or is imminent, restrictions may be applied on the water supply to Swartland Municipality and other users as may be appropriate at that time. The City of Cape Town will use all reasonable endeavours to consult the User directly in the event of the likelihood of the imposition of water restrictions.

20. AUGMENTATION AND IMPROVEMENT SCHEMES OF THE BULK WATER SYSTEM

20.1. Planning, design and expansion of the Bulk Water System to meet the growth in peak week water demand will be based on the City of Cape Town's most recent water master plan as well as meeting its water demand management objectives as set out in its water conservation and water demand management strategy.

20.2. The development of water resource infrastructure will be carried out in accordance with the City of Cape Town most recent water master plan as well as the "Raw Water Supply Agreement" signed between the City of Cape Town and the then Department of Water Affairs and Forestry dated 15 April 2003. The City of Cape Town will similarly endeavour to supply Swartland Municipality at a 97% level of supply assurance.

20.3. The City of Cape Town and Swartland Municipality shall be members of the Western Cape Water System Reconciliation Strategy Steering Committee, and together with the national Department of Water and Sanitation, through this forum engage in joint long-term planning to ensure that water resources are developed timeously and responsibly.

21. WATER RESTRICTIONS AND WATER SAVINGS

21.1. If for whatever reason the supply of water from the Western Cape Water Supply System is curtailed either through restrictions or by agreement with the Department of Water and Sanitation, the City may be required to restrict water to its consumers. Swartland Municipality shall comply with all such restrictions

and shall enforce the measures to ensure the restriction on all its consumers and any water services institutions supplied by it.

21.2. If the City of Cape Town experiences problems with the operation or experiences a shortfall in the capacity of its bulk water supply system, then the City may be required to restrict water to its consumers including the Swartland Municipality. Swartland Municipality shall comply with all such restrictions and shall enforce the measures to ensure the restriction on all its consumers and any water services institutions supplied by it. Swartland Municipality shall take reasonable responsibility for the shortfall in meeting demand by augmenting the shortfall with alternative schemes and make system operational adjustment in their system for the duration of the imposed restrictions.

21.3. A growth in water demand in excess of the stated water conservation and water demand management strategy objectives of the City of Cape Town, may lead to the imposition of water restrictions in order to curtail peak week water demand. The City of Cape Town shall, after consulting with Swartland Municipality, timeously inform Swartland Municipality in writing should restrictions of this nature be required. Swartland Municipality shall comply with such restrictions and shall enforce the measures to ensure the restriction on all its consumers and any water services institutions supplied by it.

21.4. Should the DWS or the City of Cape Town impose water restrictions on Swartland Municipality, Swartland Municipality shall supply the Bulk Water Branch with monthly consumption figures in order for the Branch to monitor the effectiveness of the water restrictions imposed.

21.5. The implementation of water restrictions may necessitate an increased Bulk Water Tariff in order to ensure cost recovery. In terms of the Municipal Finance Management Act, 2003 (Act No. 56 of 2003), the City of Cape Town will determine, each financial year, a set of tariffs based on various reduction and restriction water demand scenarios. The applicable set of tariffs will be determined by the City of Cape Town in consultation with the Swartland Municipality.

22. LIMITATION/ DISCONTINUATION OF WATER SUPPLY

22.1. Planned interruptions of supply:

22.1.1. Should the Bulk Water Branch have cause to limit or discontinue the water supply for maintenance, upgrading, meter or valve replacement, repair, including operational or any other unforeseen reason, and should such a limitation or discontinuation impact on the Swartland Municipality, the Bulk Water Branch shall give fourteen (14) days' notice to the agreed contact person in Swartland Municipality of its intention to do so, unless there is an emergency or unplanned situation. Notices shall be given in writing, by email or fax. In giving such notice the Bulk Water Branch shall allow Swartland Municipality opportunity to make representations, in writing.

22.1.2. Discontinuation of water supply by the Bulk Water Branch for any planned activity shall not exceed seventy-two (72) hours. The Bulk Water Branch shall, immediately (by telephone), notify the agreed contact person in Swartland Municipality once it becomes clear that the announced planned period of discontinuation in water supply will be exceeded. Such notification shall include the reason for exceeding the announced time period, as well as the estimated revised time of restoration of water supply.

22.1.3. The Bulk Water Branch shall before the end of April each year, issue Swartland Municipality with their anticipated annual programme for planned maintenance and shutdowns, which will generally but not exclusively take place during the months of May to September.

22.2. Failures or Leaks

22.2.1. In the event of an unexpected failure or leak on the pipeline, the Bulk Water Branch will notify the agreed contact person telephonically.

22.2.2. The Bulk Water Branch will generally repair unexpected failures or leaks in its infrastructure within the following times:

Pipe Diameters	Time to Repair*
Up to 1000 mm	Within 72 hours
> 1000 to 1800 mm	
> 1800 mm	

* This excludes draining and filling times

22.2.3. These timeframes are for repairs under normal conditions and on steel pipelines. The timeframes to repair will also be dependent on the availability of an alternate supply to the area. If it becomes clear that it will not be possible to adhere to these timeframes, the Bulk Water Branch will notify the agreed contact person at Swartland Municipality.

23. THE DESIGN OF WATER SUPPLY SYSTEMS OF SWARTLAND MUNICIPALITY

23.1. Any major alterations, additions and extensions to the water supply system of Swartland Municipality which may impact on the operation of the bulk water system of the City of Cape Town, and are to be constructed or made after the commencement of this Agreement, shall be constructed to a design and specification prepared by a Qualified Engineer. The design shall conform to good engineering practice and the requirements set out hereinafter. Swartland Municipality shall notify the Bulk Water Branch prior to detailed design of any new work as set out herein, and shall submit to the Bulk Water Branch all documents and information requested by the Branch in regard thereto.

23.2. In the design of distribution systems, Swartland Municipality shall ensure that:

23.2.1. where topographically possible, it shall provide storage in accordance with clause 14;

23.2.2. where storage is not provided, the reasons for not providing storage shall be given to the City of Cape Town Bulk Water Branch, as well as the mitigation measures planned to ensure compliance with sub clause 14.5.

23.2.3. any pressure sufficiently high to damage the bulk supply system, including those due to water hammer in the system as a result of valve operation or any other reason, does not occur;

23.2.4. pipes, fittings and specials of a type and thickness sufficient to meet the maximum head (plus any water hammer effect), with a recognised factor of safety, are provided;

23.2.5. water wastage and pollution of water supplies are prevented as far as possible; and

23.2.6. provision for adequate corrosion protection is made.

24. DISTRIBUTION INFRASTRUCTURE REQUIRED BY SWARTLAND MUNICIPALITY

The Bulk Water Branch may, at the request of Swartland Municipality, provide certain supply works beyond the point of connection referred to in clause 8 of this Agreement. All the expenditure, including charges for supervision and administration, capital outlay, depreciation, maintenance and repairs and any other expenditure related thereto shall be paid by Swartland Municipality.

25. INSPECTIONS

Swartland Municipality shall permit officials of the Bulk Water Branch, after notice to Swartland Municipality where feasible, to make whatever inspections that may be desired by the Branch of the water supply system of Swartland Municipality and its construction, operation and maintenance. Such inspections shall, as far as possible, be carried out in the presence of a responsible officer of Swartland Municipality. This shall also apply to officials of Swartland Municipality wishing to inspect the Bulk Supply System.

26. WATER CONSERVATION AND WATER DEMAND MANAGEMENT MEASURES

26.1. The City of Cape Town and Swartland Municipality must at all times, ensure that water is being used efficiently within their respective jurisdictional areas and must promote the efficient use of water to their respective customers.

26.2. The City of Cape Town has developed a long term Water Conservation and Water Demand Management (WC/WDM) Strategy which is periodically

reviewed. The City shall forward an annual progress report to the Swartland Municipality.

26.3. Swartland Municipality shall develop their own WC/WDM Strategy. A copy of this strategy must be forwarded to the City for their comment. This strategy is to include all programs related to the WC/WDM initiatives and an annual report on the progress shall be forwarded to the City of Cape Town.

26.4. By prior arrangement, Swartland Municipality shall allow an authorised official access to any water meter installation, for the purpose of reading, logging or testing the meter. On such an occasion Swartland Municipality shall ensure that a member of its Civil Engineering Services Department (Water Services Division) accompanies and assists such official.

27. WATER MASTER PLAN

27.1. The City of Cape Town has developed a long term Water Master Plan which is periodically reviewed and which will be made available to the Swartland Municipality on request.

27.2. Swartland Municipality shall develop their own Water Master Plan and a copy of this plan must be forwarded to the City for their comment. This plan is to include all projects related to the provision of water over the medium and long term and an annual report on the progress shall be forwarded to the City of Cape Town.

27.3. The City of Cape Town and Swartland Municipality shall meet biennially (once every two years) to discuss the progress of the implementation of and changes to their respective master plans.

28. ACCESS TO INFORMATION

28.1. Swartland Municipality shall provide all reasonably required information, such as their Water Services Development Plan (WSDP), Annual Updates, Annual Reports, as may be required by the City of Cape Town in order for them to perform their function as a regional water service provider.

28.2. The City of Cape Town shall also provide all reasonably required information, such as their WSDP's, Annual Updates, Annual Reports, as may be required by Swartland Municipality in order for them to perform their function as local water service provider.

29. COMMUNICATION CO-ORDINATION

29.1. A protocol to deal with communication procedures during planned and emergency shutdowns of portions of the Bulk Water System is contained in Annexure D of this Agreement. The respective roles and responsibilities of both parties in respect of this clause are also contained in this Annexure.

29.2. Representatives from the Bulk Water Branch and from Swartland Municipality shall endeavour to meet at least twice a year in order to discuss operational and planning issues.

29.3. Both parties may update the information in this Annexure by exchange of electronic mail.

30. DISPUTE RESOLUTION

30.1. Any dispute, which may arise between the Parties, shall be resolved amicable through consultation and negotiation.

30.2. Should any dispute contemplated in this clause remain unresolved, the provisions of section 41 to 45 of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005), shall apply.

31. FORCE MAJEURE

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

sabotage, fire, explosion, bombing, insurrection, riot or civil disobedience), the occurrence of which could not have been reasonably foreseen and which, despite the exercise of diligent efforts could not have been prevented, limited or minimised, that affects the powers, rights, duties or obligations of the parties under this contract. It is specifically recorded that failure, for any reason whatsoever, by the City of Cape Town to effectively manage water resources constitutes an event, occurrence, circumstance or condition for purposes of this clause.

32. AMENDMENT

32.1. Any amendment to this agreement shall only be in writing and by mutual agreement of the Parties. A Party wishing to amend the Agreement shall give the other Party 30 days' notice in writing, unless such notice is extended by agreement. The notice shall specifically set out reasons and motivation for the proposed amendment.

32.2. No extension of time or other indulgence granted by either party to the other in respect of either of the parties' obligations will constitute a waiver of either of the parties' rights to enforce compliance with the terms of this Agreement neither shall it constitute an amendment of this Agreement.

32.3. The Agreement will be reviewed and amended based on updated legislation as and when required.

33. TERMINATION

When a party has reached a stage where it has decided that the breach committed by the other party warrants a termination of this Agreement, it shall observe and comply with the following steps:

33.1. The aggrieved party shall give written notice to the other party of the nature of the alleged breach.

33.2. The notice shall call upon the other party to remove the cause of the alleged breach within 30 days, or any other period agreed upon by the parties.

33.3. If the other party does not in this period act in terms of this notice, the aggrieved party shall give the defaulting party a 30 day notice of its intention to terminate the contract.

33.4. The other party shall have 30 days within which to make representations to the aggrieved party related to its intention to terminate the contract. After the expiry of the aforesaid period, should the other party remain in breach of the contract, the aggrieved party shall be entitled to terminate this contract.

33.5. Should the defaulting party ignore the notice of intention to terminate, the aggrieved party has a right to terminate the contract within 60 days from the issue of notice of intention to terminate.

33.6. Any party that cancels this Agreement without a valid reason shall be liable to pay damages.

34. WARRANTIES AND INDEMNITY

34.1. The Parties acknowledge and agree that this agreement does not imply any warranties or guarantees regarding the uninterrupted supply, quality, or reliability of the water provided. Swartland Municipality accepts the water supply as is, understanding that fluctuations in availability, pressure, and quality may occur due to factors beyond the City of Cape Town's control, including but not limited to natural disasters, envisaged in clause 31 above, including infrastructure failures or any other regulatory, legislative or policy changes.

34.2. Swartland Municipality agrees to indemnify and hold harmless the City Of Cape Town, its agents, employees, and subcontractors, from and against any and all claims, liabilities, damages, losses, costs, and expenses (including legal costs) arising out of or in connection with any breach of this agreement by the City of Cape Town, including but not limited to any claims related to water shortages, interruptions, or quality issues experienced by the Swartland Municipality or third parties.

35. NOTICES AND DOMICILIUM CITANDI ET EXECUTANDI

35.1. The Parties choose domicilium citandi et executandi (domicilium) for purposes of giving any notice, sending any process and for any other purpose arising from this Agreement, as follows:

City of Cape Town

The Executive Director: Water and Sanitation Directorate
Water & Sanitation Department,

2nd Floor, c/o Mike Pienaar Boulevard and Voortrekker Road,

Bellville, 7530

Email: Water&Sanitation.EDDocuments@capetown.gov.za

Swartland Municipality

Swartland Municipality
Department Civil Engineering Services
Private Bag X52
MALMESBURY
7299
Email: swartlandmun@swartland.org.za

35.2. Each of the Parties shall be entitled from time to time by written notice to the other to vary its domicilium to any other physical address and/or vary its facsimile number or email address, provided such notice shall only take effect 10 days after receipt thereof.

35.3. Any notice in terms of this Agreement may be hand delivered to the physical addresses of the Parties, in which event, proof of acknowledgment shall be endorsed upon a copy of the notice together with the name of the recipient and date of receipt, or may be sent by registered post, in which event, proof of postage issued by the relevant postal authority will serve as proof, or may be transmitted by telefax, in which event, the facsimile transmission report will serve as proof of transmission, or may be sent by email, in which event, a hardcopy of the electronic record of transmission will serve as proof of transmission.

35.4. Delivery of notices:

Any notice shall be deemed to have been received, until the contrary is proved-

35.4.1. If delivered during business hours on a business day, on the day of delivery;

35.4.2. If posted by registered post from an address within the Republic of South Africa, on the 4th day from the date of posting;

35.4.3. If sent by telefax, on the date of sending such telefax; and

35.4.4. If sent by email, on the date of sending such email.

36. APPLICABLE LAW AND JURISDICTION

This Agreement shall be governed by and construed in all respects in accordance with the laws of the Republic of South Africa.

37. CONSENT TO JURISDICTION

The Parties agree that any legal action or proceeding arising out of any proceedings in terms of this Agreement or in respect of any interdict or urgent relief in terms thereof may be brought in the Western Cape High Court (or any successor to that court) and irrevocably submit to the exclusive jurisdiction of such court. The Parties irrevocably waive any objection they may now or hereafter have that such action or proceeding has been brought in an inconvenient forum.

38. LIABILITY OF EXPENSES

Each Party must pay its own expenses incurred in the negotiations of executing this Agreement.

39. SUPREMACY OF AGREEMENT

This Agreement supersedes all other Agreements entered into by the Parties.

40. **ANNEXURES**

The Following annexures will form part of this Agreement-

40.1. ANNEXURE A: BULK SUPPLY SYSTEM
40.2. ANNEXURE B: APPLICATION PROCESS FOR A BULK METER CONNECTION
40.3. ANNEXURE C: METER CONNECTIONS AND FUTURE DEMAND ESTIMATES
40.4. ANNEXURE D: COMMUNICATIONS PROTOCOL
40.5. ANNEXURE E: CCT INCIDENT MANAGEMENT PROTOCOL: DRINKING WATER QUALITY FAILURES

41. **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 Agreement without the prior written consent of the other Party.

42. **SUB-CONTRACTING**

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

43. **PROTECTION OF PERSONAL INFORMATION**

43.1. The Parties acknowledge that during the course of the performance of the services, they and their employees, representatives and/or sub-contractors may gain access to and become acquainted with the Personal Information and/or Special Personal Information (collectively, "Personal Information") (as these terms are defined in the Protection of Personal Information Act, 2013 (Act No. 4 of 2013), ("POPIA"), of the other Party, its employees, clients, representatives, sub-contractors and/or suppliers. The Parties will, and will

procure that its employees, representatives and sub-contractors, treat such Personal Information as confidential and respect the privacy of the other Party, its employees, clients, representatives, sub-contractors and/or suppliers. The Parties further acknowledge that during the course of the performance of their services, they and their employees, representatives and/or sub-contractors may also be required to collect, use or process the Personal Information of the other Party and/or its employees, clients, representatives, sub-contractors and/or suppliers and, when doing so, will comply, and will procure that they comply, with (i) the conditions of lawful processing as set out in terms of POPIA and other applicable laws and regulations; (ii) the Parties' respective Privacy Notices and (iii) the Party's data protection procedures.

43.2. The Parties, their employees, representatives and sub-contractors might, from time to time, process the other Party's and/or its employees', representatives' and/or sub-contractors' Personal Information, for purposes of, and/or relating to, this Agreement, for research purposes, and/or as otherwise may be envisaged in the Parties' respective Privacy Notices or as may be otherwise permitted by law. This may include the cross-border transfer of Personal Information and/or Special Personal Information from time to time. The Parties hereby consent to the other Party, its employees and/or representatives and/or sub-contractors processing their Personal Information for those purposes and/or as otherwise contemplated herein.

43.3. The Parties agree to procure that its employees and/or representatives and/or sub-contractors are made aware that the other Party may process their Personal Information from time to time as envisaged herein.

43.4. Without derogating from the generality of the aforesaid, the Parties specifically agree that they shall comply with the requirements in section 19 of POPIA read with section 21 thereof.

44. **SIGNATURE**

This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts.

SIGNED AT ……..ON THIS…….DAY OF…… 20…..

for and on behalf of the City of Cape Town, Executive Director: Water and Sanitation, duly authorised hereto

……

NAME AND DESIGNATION

……..

SIGNATURE

AS WITNESSES:

1. …….

2. …….

SIGNED AT …….ON THIS…….DAY OF…… 20…..

for and on behalf of Swartland Municipality, the Municipal Manger, duly authorised hereto

……

NAME AND DESIGNATION

……..

SIGNATURE

AS WITNESSES:

1. …….

2. …….