

# DRINKING WATER SUPPLY TO WAENHUISKRANS AND SUIDERSTRAND: DESIGN, BUILD AND OPERATIONAL AGREEMENT

## 1. **AGREEMENT**

This Agreement is entered into between Ikusasa Chemicals (Pty) Ltd and Cape Agulhas Municipality.

## 2. **SCOPE**

This Agreement covers the design, build and operation of water purification plants at Waenhuiskrans and Suiderstrand, according to Tender – Water Treatment Arniston & Suiderstrand (SCM20/2012/13), by Ikusasa Water, a Division of Ikusasa Chemicals (Pty) Ltd, for the Cape Agulhas Municipality, for a three year period.

## 3. **DEFINITIONS**

Definitions of terms referred to in the Agreement:

**IW** shall mean Ikusasa Water, a Division of Ikusasa Chemicals (Pty) Ltd

**CAM** shall mean Cape Agulhas Municipality

**EIA** means Environmental Impact Assessment

**RO** shall mean Reverse Osmosis.

**WHK** shall mean Waenhuiskrans

**SS** shall mean Suiderstrand

**Plant** shall mean the RO plant capable of producing potable water from boreholes at WHK and SS

## 4. **EIA**

EIA's, if required by legislation, is for the account of IW.

## 5. **CAPITAL COSTS**

All capital costs for the design, build and installation of the Plants shall be for the account of IW, and shall include the following:



## 5.1 At WHK

- (i) Refurbishing the existing borehole, and if the demand in water requires it, a second borehole as well
- (ii) Upgrading the existing municipal building, housing the borehole, to house the treatment plant (and a second existing building housing a second borehole if required)
- (iii) Design and build a plant with a capacity of producing 250 to 600 kℓ / day of potable water conforming to SANS 241:2011
- (iv) Installation of a dedicated brine effluent line from the plant to the existing WHK sewage plant
- (v) Decommissioning and removal of the plant, and site clearing, at the end of the 3 year period
- (vi) Installation of a reliable water meter at the outlet of the Plant.

## 5.2 SS

- (i) Upgrading the existing municipal building, to house the treatment plant
- (ii) Design and build a plant with a capacity of producing 40 to 120 kℓ / day of potable water conforming to SANS 241:2011
- (iii) Installation of a dedicated raw water line from the existing reservoirs to the plant
- (iv) Installation of a dedicated brine effluent line from the plant to the existing soak away
- (v) Installation of a reliable water meter at the outlet of the plant
- (vi) Decommissioning and removal of the plant, and site clearing, at the end of the 3 year period.

## 6. CAM RESPONSIBILITIES

CAM is responsible for providing

- Enough and suitable electricity
- Standby generators when required
- Raw water at SS
- Maintenance of the SS boreholes

## 7. RUNNING COSTS

All running costs associated with the operation of the Plants will be for the account of IW, and shall include the following:

- (i) Labour
- (ii) Membrane replacement
- (iii) Chemicals and consumables
- (iv) Electricity (to be billed monthly by CAM)



- (v) Maintenance of the plants

## 8. METERING OF WATER

The water meters used for metering the product water volumes produced, must be approved by both parties. All meters must be calibrated annually.

Water meter readings will be taken jointly on the last working day of each month.

## 9. FINANCIAL AGREEMENT

CAM shall pay IW at an initial price of R 6.50 per kl, VAT excluded, based on the monthly metered volume of water delivered. The price will annually escalate on 1 July according to CPIX.

The difference between the successive monthly water meter readings taken jointly on the last working day of each month, in kiloliters, will be used for invoice purposes. CAM will pay IW within 30 days of date of invoice. Interest may be charged at prime interest rate for late payments by CAM.

Invoicing will be according to CAM financial practices.

## 10. COSTS PAYABLE TO CAM

CAM will invoice IW for the following items on a monthly basis, not later than the last Friday of each month:

- (i) Electricity at CAM tariffs

IW will pay CAM within 30 days of invoice. Interest may be charged at prime interest rate for late payments by IW.

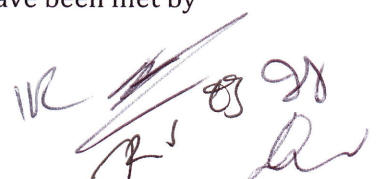
## 11. PENALTIES

### 11.1 WHK

(i) Should CAM be responsible for limiting the electricity to the Plant while the Plant is operational, a pro rata penalty based on the product water loss for the duration of the limitation can be applied at the agreed cost per kiloliter.

(ii) Should the water quality from the Plant not conform to the water quality specifications of this agreement, CAM may refuse payment for the period of such non-conformance provided that both parties agree on the product water analysis giving rise to the non-conformance.

(iii) Should IW be prohibited during the contract period to put the brine-effluent in the WHK sewage treatment plant, after all regulatory requirements have been met by



IW, a pro rata penalty based on the product water loss for the duration of the limitation will be applied at the agreed cost per kiloliter.

$$\{(hours\ lost \div 24) \times 250 \times tariff\}$$

#### 11.2 SS

(i) Should CAM be responsible for limiting the electricity to the Plant while the Plant is operational, a pro rata penalty based on the product water loss for the duration of the limitation can be applied at the agreed cost per kiloliter.

(ii) Should the water quality from the Plant not conform to the water quality specifications of this Agreement, CAM may refuse payment for the period of such non-conformance provided that both parties agree on the product water analysis giving rise to the non-conformance.

(iii) Should CAM be unable to supply raw water from the borehole during the contract period, a pro rata penalty based on the product water loss for the duration of the limitation will be applied at the agreed cost per kiloliter.

$$\{(hours\ lost \div 24) \times 100 \times tariff\}$$

## 12. PERIOD OF CONTRACT

### 12.1 WHK

(i) The design, build and installation of the plant will commence as soon as environmental approval for the handling of the brine-effluent is obtained from the relevant authorities.

(ii) The design, build and installation will last for 8 weeks.

(iii) Water delivery to CAM will commence on the date that product water from the plant is certified by CAM that it conforms to SANS 241:2011, and then afterwards for a period of three years.

This contract may be extended by mutual agreement for a further period, subject to legal procedures as specified in the MFA.

### 12.2 SS

(i) The design, build and installation of the plant will commence as soon as environmental approval for the handling of the brine-effluent and the new pipeline is obtained from the relevant authorities.

(ii) The design, build and installation will last for 8 weeks.

(iii) Water delivery to CAM will commence on the date that product water from the plant is certified by CAM that it conforms to SANS 241:2011, and then afterwards for a period of three years.

This contract may be extended by mutual agreement for a further period, subject to legal procedures as specified in the MFA.



## 13. PLANT CAPABILITY

### 13.1 WHK

The unit will be capable of producing between 250 kℓ and 600 kℓ/day of potable water, conforming to SANS 241:2011 Class 1 drinking water standard. This includes iron removal, desalination, disinfection and stabilisation.

### 13.2 SS

The unit will be capable of producing between 40 kℓ and 120 kℓ/day of potable water, conforming to SANS 241:2011 Class 1 drinking water standard. This includes iron removal, desalination, disinfection and stabilisation.

## 14. OPERATIONAL MONITORING

Monthly progress meetings will be held between CAM and IW until delivery of the first water. Then a decision may be taken to change the meetings to monitoring meetings, every second month, if need to be.

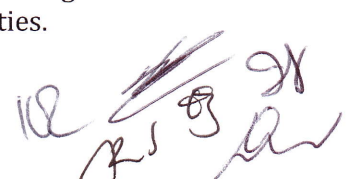
Remote monitoring of both Plants will be available for both CAM and IW.

### 14.1 WHK

- (i) Monthly water quality monitoring, according to SANS 241:2011, chemically and bacteriological, is the responsibility of IW. Copies of the analysis will be supplied to CAM on receipt of the analysis.
- (ii) IW shall be responsible to run routine in-house checks and additional routine monitoring of the water production using a similar set of chemical analytical parameters. The results will be accumulated and available on request to CAM.
- (iii) Water quantity is the responsibility of both CAM and IW. These readings will jointly be taken on the last working day of the month by both parties
- (iv) Likewise electricity readings will jointly be taken on the last working day of the month.

### 14.2 SS

- (v) Monthly water quality monitoring, according to SANS 241:2011, chemically and bacteriological, is the responsibility of IW. Copies of the analysis will be supplied to CAM on receipt of the analysis.
- (vi) IW shall be responsible to run routine in-house checks and additional routine monitoring of the water production using a similar set of chemical analytical parameters. The results will be accumulated and available on request to CAM.
- (vii) Water quantity is the responsibility of both CAM and IW. These readings will jointly be taken on the last working day of the month by both parties.



(viii) Likewise electricity readings will jointly be taken on the last working day of the month.

## 15. **CONSTRUCTION AND REMOVAL OF THE PLANTS**

IW is responsible for the construction of the Plants in all respects. IW shall therefore be responsible for all costs associated with supply, use and disposal of material and equipment as well as site clearing.

IW is also responsible for the decommissioning, removal of the plant and site clearance within one month from the termination of the agreement.

As such, IW will comply to all the provisions of the Environmental Legislation, Health and Safety Legislation, including the Construction Regulation, 2003, of the Health and Safety Act and the Labour Laws.

## 16. **OPERATION OF THE PLANTS**

IW is responsible for the operation of the Plants and all costs associated with supply, use and disposal of consumables necessary for Plant operation.

Therefore, IW will comply with all

- The provisions of the Occupational Health and Safety Act.
- The Labour Laws applicable to a production facility.
- Water related legislation including the Water Services Act
- Blue Drop requirements as reasonably prescribed by CAM

Log sheets of all the operating parameters and relevant information to successfully operate the plant will be kept and will be available to CAM on a monthly basis.

One full-time experienced roving process controller, based at WHK and reporting to a Class 5 process controller, at Bredasdorp, will be in charge of operating the Plants.

## 17. **ACCEPTANCE OF PRODUCT WATER**

CAM shall accept product water produced by the Plant complying to SANS 241:2011 Class 1 until up to full storage capacity at both WHK and SS.



18. **OWNERSHIP OF THE EQUIPMENT**

With the exception of the applicable buildings, all plant and equipment belongs to IW and must be removed at the end of the contract period.

19. **INSURANCE OF THE PLANT**

IW is responsible for the insurance required during the construction phase.

IW is also fully responsible for the insurance of the Plants during the operation phase as well as statutory insurances as prescribed by relevant legislation.

CAM is responsible for the insurance of the civil constructions as well as public liability.

20. **SECURITY AND ACCESS TO THE PLANT**

20.1 Suidpunt Security or a similar company will be contracted by IW for security monitoring of the Plants.

20.2 CAM personnel will have access to the plants only when arrangements have been made beforehand with IW.

21. **TERMINATION OF THE AGREEMENT**

Each party shall have the right to terminate the agreement in writing with a three month notice period.

22. **FORCE MAJEURE**

A party is not liable for failure to perform the party's obligations if such failure is as a result of Acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalisation, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption or failure of electricity or telephone service. No party is entitled to terminate this Agreement under Clause 21 (Termination) in such circumstances.

If a party asserts Force Majeure as an excuse for failure to perform the party's obligation, then the nonperforming party must prove that the party took reasonable steps to minimize delay or damages caused by foreseeable events, that the party substantially fulfilled all non-excused obligations, and that the other party was timely notified of the likelihood or actual occurrence of an event described in Clause 22 (Force Majeure).



**23. CLAIMS, DISPUTES AND ARBITRATION**

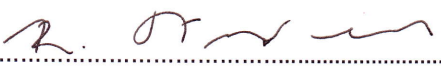
Fidic – Design Build Operate, is applicable on items not covered by this contract.

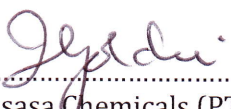
In the event of a dispute related to costs or events, the dispute shall be settled by the following procedure:

- 23.1 The party in dispute shall give written notice to the other party within 14 days of the dispute arising giving details of the nature and cause of the dispute which shall be referred to as the Dispute Notice.
- 23.2 The Dispute Notice shall be backed up with all relevant documentation and evidence within a further 28 days.
- 23.3 A Mediator shall be appointed and selected by agreement between parties or, failing such an agreement within 7 days of written request by either party, nominated on application of either Party by the President of the South African Institution of Civil Engineers.
- 23.4 Each party shall bear his own costs arising and parties shall in equal shares pay the Mediator for his services and expenses before commencement of mediation.
- 23.5 In the event of mediation failing to resolve the dispute, the matter shall be referred to a single Arbitrator to be agreed between the parties or, failing such agreement within 7 days of written request by either party, nominated on application of either party by the President of the South African Institution of Civil Engineers. Such application for arbitration shall be deemed to be in terms of the Arbitration Act No. 42 of 1965, as amended.


**24. APPROVAL OF AGREEMENT**

SIGNED AT Bredasdorp ON THIS 2<sup>nd</sup> DAY OF July 2013

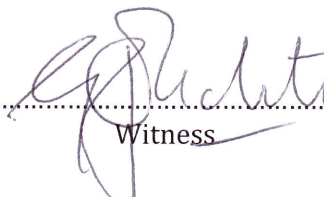
  
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Cape Agulhas Municipality

  
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Ikusasa Chemicals (PTY) LTD

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