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[AGREEMENT OF LEASE IN RESPECT OF IMMOVABLE ASSETS]

entered into between

[LOCAL AUTHORITY]

and

[OPERATOR]

THIS LEASE is made on the [DATE]

BETWEEN

- (1) [] (the "**Lessor**" which expression shall include successors and permitted assigns); and
- (2) [] (registered number []) whose registered office is at [] (the "**Lessee**" which expression shall include successors and permitted assigns).

WHEREBY IT HAS BEEN AGREED AND IS RECORDED AS FOLLOWS :

1. INTERPRETATION AND PRELIMINARY

The headings of the clauses in this agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this agreement nor any clause hereof. Unless a contrary intention clearly appears –

- a. words importing –
- i. any one gender include the other two genders;
 - ii. the singular include the plural and *vice versa*; and
 - iii. natural persons include created entities (corporate or unincorporate) and the state and *vice versa*;
- b. the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely –
- i. "asset schedule" means the assets, reflected and identified on the asset schedule annexed hereto marked **Schedule II**;
 - ii. "Concession" means the Concession for the construction, financing, design, expansion, rehabilitation, maintenance operation, management of the Water Services and the Sanitation Services and the Works within the Concession Area;
 - iii. "Contract" means the agreement to be entered into between the lessor and the lessee to which this lease is annexed marked **Annexure B7**;
 - iv. "Effective Date" means the same day as the Effective Date of the Contract;
 - v. "leased premises" means: -
 - 1.the immovable property owned or leased by the lessor reflected in the property schedule upon which the assets reflected in the asset schedule are situated; and
 - 2.all improvements, fixtures and fittings on the immovable property as more specifically defined and identified in the asset schedule; and
 - 3.upon their completion, any assets in the process of being constructed, built or erected as at the Effective Date reflected in the schedule to the capital projects schedule annexed hereto marked **Annexure H2**; and
 - 4.in respect of pipelines, the land in which such pipeline is

situate, being the pipeline itself and the land surrounding it measured on the surface of the land from the end of the circumference of each pipe to a distance of 2,5 (two comma five) meters or to the boundary of the immovable property which the lessor may hereby leases to the lessee, whichever is the shorter distance;

- vi. "lessor" means [LOCAL AUTHORITY] and/or its legal successors in title;
 - vii. "lessee" means [OPERATOR], a private limited company incorporated and registered in accordance with [LEGISLATION], and its legal successors and assigns as permitted by the lessor;
 - viii. "Parties" means the lessor and the lessee;
 - ix. "property schedule" means collectively the properties reflected on the property schedule annexed hereto marked **Schedule I** or, if the context is appropriate any one of them;
 - x. "schedule" means collectively **Schedule I** and **Schedule II**.
- c. any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time;
 - d. 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 agreement;
 - e. when any number of days is prescribed in this agreement, same shall be reckoned exclusively of the first 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;
 - f. where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
 - g. expressions defined in this agreement shall bear the same meanings in schedules or annexures to this agreement which do not themselves contain their own definitions;
 - h. the use of any expression in this agreement covering a process available under [country]n law such as a winding-up (without limitation *eiusdem generis*) shall, if any of the Parties to this agreement is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such defined jurisdiction;
 - i. where any term is defined within the context of any particular clause in this agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this agreement, notwithstanding that that term has not been defined in this interpretation clause; and
 - j. the expiration or termination of this agreement shall not affect such of the provisions of this agreement as 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.
 - k. in the event of any conflict or ambiguity between the provisions of the Contract and this Lease Agreement, the provisions of the Contract shall govern the interpretation of this Lease Agreement.

2. CONDITION PRECEDENT

This Lease Agreement shall be subject to the conclusion of the Contract and it becoming unconditional due to the fulfilment of any conditions precedent contained therein.

3. PREMISES LEASED

- a. The lessor hereby lets to the lessee, which hereby hires the leased premises, subject to the terms and conditions set out hereunder.
- b. In the event of any dispute between the Parties concerning the identity or extent of the leased premises, such dispute shall be referred to the President or Chairman for the time being of the [country] Council for Professional Land Surveyors and Technical Surveyors. The President/Chairman or his nominee shall act as an expert and not as an arbitrator and his decision shall be final and binding on the Parties.

4. PERIOD OF LEASE

This lease shall commence on the Effective Date and shall continue for the duration of the Contract unless the Contract is terminated pursuant to its terms whereupon this lease shall also terminate.

5. RENTAL

The rental payable by the lessee to the lessor for the first 10 (ten) year period as from the Effective Date shall be an amount of [AMOUNT AND CURRENCY] per year exclusive of value added tax which tax shall be payable thereon by the lessee at the prevailing rate from time to time.

- a. The rental shall be payable by the lessee semi-annually in arrear as follows –
 - i. a first payment in the sum of [AMOUNT AND CURRENCY] exclusive of Service Tax shall be paid by the lessee within 6 (six) months of the Effective Date and thereafter on the anniversary of such date; and
 - ii. a second such payment in the sum of [AMOUNT AND CURRENCY] exclusive of Service Tax shall be paid by the lessee within 12 (twelve) months of the Effective Date;
- b. On the effluxation of the 10 (ten) year period referred to in 6.1., the rental payable exclusive of Service Tax shall be reduced to [AMOUNT AND CURRENCY] per year payable annually in advance.
- c. All amounts payable by the lessee to the lessor in terms of this agreement shall be paid in [LOCAL CURRENCY], at the address appointed by the lessor in terms of clause [] or at such other place as the lessor may appoint from time to time by written notice direct in the manner set out in the Contract.

6. IMPROVEMENTS

- a. The lessee shall be entitled, to develop the leased premises subject to the proviso that the lessor shall, at all reasonable times, be entitled to inspect the building plans and diagrams of the proposed developments.
- b. The lessee undertakes that any development by it on the leased premises shall comply with all applicable laws, by-laws, regulations and with the requirements of any Competent Authority.
- c. The lessee shall be entitled with the prior written consent of the lessor (which the lessor undertakes not to withhold unreasonably) to demolish (whether

partially or totally) any immovable assets and/or buildings previously erected by it on the leased premises and to re-erect or to re-construct any new building/s on the leased premises as it deems fit, the design and/or construction of which need not comply or adhere in any respect to the provisions of clause [] hereof.

- d. The lessee shall not have any claim against the lessor during the currency of nor on the expiry or earlier termination of this Lease Agreement whether for compensation or otherwise arising out of or pursuant to any improvements of whatsoever nature which it has at any time erected or installed on the property whether in terms of or pursuant to this clause [] or otherwise.

7. USE OF LEASED PREMISES

The leased premises are let to the lessee for the purpose of conducting therein the business of a water service provider within the Concession Area as defined in the Contract. The lessee shall not use the leased premises for any other purpose whatsoever without the prior written consent of the lessor, which consent shall not be unreasonably withheld.

8. OBLIGATIONS, RIGHTS AND DUTIES

- a. The lessee shall –
- i. not contravene or permit the contravention of –
 - 1.any of the conditions of the title deeds under which the lessor owns any part of the leased premises; or
 - 2.any laws which the lessor is required to observe by reason of its ownership of the leased premises or any improvements thereon.
 - ii. subject to the provisions of clause [7] hereof, not at any time do or permit anything to be done on the leased premises which may be or cause a nuisance or annoyance to the occupiers of neighbouring premises;
 - iii. be entitled, with the prior written consent of the lessor, which shall not be unreasonably withheld and/or in the manner provided for in the Contract, to –
 - 1.assign any of its rights and/or obligations under this agreement;
or
 - 2.to sublet the leased premises or any part thereof,
to any third Party, provided that in the case of any such assignment or sub-letting the lessee hereby undertakes to guarantee in favour of the lessor the due and punctual fulfilment and compliance by its lessee or assignee, as the case may be, with all of its obligations in terms of this notarial deed of lease.
 - iv. procure that any sub-lessee in terms of clause [7(a)(iii)] uses part of the leased premises sub-let only for the purpose of conducting thereat its normal business;
 - v. use the leased premises only for the purpose of conducting thereat the activities of a water service provider and activities reasonably incidental thereto, or any other business as may be agreed in writing by the lessor and the lessee, from time to time;
 - vi. not contravene or permit the contravention of any law, by-law or statutory regulation or the conditions of any licence relating to or affecting the occupation by the lessee of the leased premises save

and except for any contravention of any laws, by-laws or statutory intentional regulatory or condition of licence caused by the lessor's negligence or acts or omissions and in respect of which the lessor hereby indemnifies the lessee fully against all claims, damages, losses of any nature whatsoever which the lessee may maintain as a result thereof;

- vii. not change or interfere with any electrical installations on the leased premises without the prior written consent of the lessor, which consent shall not be unreasonably withheld. The lessee shall ensure that the electricity Supply on the property is not overloaded at any time during the currency of this agreement;
 - viii. at all times keep the leased premises and any developments erected by it on the property in a clean, tidy and sanitary condition;
 - ix. not hold or permit the holding of sales by public auction on the property without the lessor's prior written consent, which consent shall not be unreasonably withheld;
 - x. have no claim of whatsoever nature, whether for damages or a remission of rent, against the lessor for any interruption in the Supply of water or electricity or any other service on the leased premises save and except for those arising of any negligent or intentional act or omission of the lessor's employees, servants, agents, Contractors or any other persons for whom the lessor may be liable in law;
 - xi. make timeous application for any licences and any renewals thereof required of it necessary for the conduct of its business on the leased premises and to proceed with any such applications without delay.
- b. The lessor shall –
- i. promptly apply for and obtain all necessary permits and authorisations necessary to enable the lessee to operate the leased premises;
 - ii. save as stated in Clause [] not have any rights nor obligations in respect of the improvements effected by the lessee on the leased premises prior to the date on which this agreement of lease terminates for any reason whatsoever;
 - iii. promptly comply with any obligation or duty imposed on it by any law, by-law, statutory regulation or condition of any licence relating to or effecting the occupation by the lease of the leased premises;
- c. The lessor shall grant and/or procure access to or Rights-of-Way to the leased premises by the lessee, subject to the extent of its statutory powers and any Regulatory Provision, the conditions of title and/or the provisions of any Lease Agreement, servitude or existing Right-of-Way.

9. RESPONSIBILITY FOR ELECTRICAL INSTALLATION

The lessee shall be responsible for –

- a. the safety, safe use and maintenance of the electrical installations on the leased premises; and
- b. the safety of the conductors connecting the electrical installations to the point of Supply.

The lessee, to the extent that it fails to comply with the foregoing obligations and as a result the lessor incurs any liability, indemnifies the lessor against all claims, damages or losses of any nature whatsoever which the lessor may sustain as a result thereof.

10. RETURN OF LEASED PREMISES

The lessee shall be entitled on notice to the lessor to return the leased premises or any portion thereof to the lessor and the lessee shall thereby be released of its obligations under this lease in respect of the leased premises or the portion thereof as the case may be returned, save and except for the obligation to pay rental.

11. NOTICES

- a. All notices and other communications under this Agreement to any party to this Agreement shall be deemed to be duly given or made when given in writing and: -
- i. when delivered in the case of personal delivery or post; or
 - ii. when despatched in the case of telex (provided the relevant answer back is received); or
 - iii. when received in the case of facsimile,
 - iv. in each case to such party addressed to it at the address given below or at such address as such party may after the date of this agreement specify in writing for such purpose to the other parties to this agreement by notice in writing.

the Lessor:

[]
for the attention of []
Fax: []

Lessee

[]
for the attention of []
Fax: []

- b. A written notice includes a notice by facsimile provided that a copy by way of confirmation is also delivered by personal delivery or post.
- c. A notice or other communication received on a non-working day or after business hours in the place of receipt shall be deemed to be served on the next following working day in such place.

12. BREACH

It is recorded that the Parties rights and remedies in respect of any breach of this Lease Agreement shall be governed by the provisions of the Contract.

13. WHOLE AGREEMENT, NO AMENDMENT

- a. This agreement constitutes the whole agreement between the Parties relating to the subject matter hereof.
- b. No amendment or consensual cancellation of this agreement or any provision or term hereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this agreement and no settlement of any disputes arising under this agreement and no extension of

time, waiver or relaxation or suspension of or agreement not to enforce or to suspend or postpone the enforcement of any of the provisions or terms of this agreement or of any agreement, bill of exchange or other document issued pursuant to or in terms of this agreement shall be binding unless recorded in a written document signed by the Parties. Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.

- c. No extension of time or waiver or relaxation of any of the provisions or terms of this agreement or any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this agreement, shall operate as an estoppel against any Party in respect of its rights under this agreement, nor shall it operate so as to preclude such Party thereafter from exercising its rights strictly in accordance with this agreement.
- d. 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.

14. **COSTS**

- a. The costs of and incidental to the cost of notarial execution of this agreement shall be borne equally between the Parties.
- b. The stamp duty hereon, if any, shall be borne and paid by the lessor.

SIGNED by the Parties and witnessed on the following dates and at the following places respectively:

| <u>DATE</u> | <u>PLACE</u> | <u>WITNESS</u> | <u>SIGNATURE</u> |
|-------------|--------------|----------------|------------------|
| | | | For: LESSOR |
| | | 1. _____ | |
| | | 2. _____ | |
| | | | For: LESSEE |
| | | 1. _____ | |