

BULK POTABLE WATER SUPPLY

AGREEMENT

Made and entered into by and between

EXXARO COAL (PTY) LTD

exxaro
POWERING POSSIBILITY

and

LEPHALALE MUNICIPALITY



BULK POTABLE WATER SUPPLY AGREEMENT

made and entered into by and between

Exxaro Coal (Pty) Ltd

EXXARO COAL (PTY) LTD
Registration Number: 2000/011078/07

(hereafter referred to as "**Exxaro Coal**")

A company duly incorporated and registered in terms of
the company laws of the Republic of South Africa

(Herein represented by MDM Mgojo, he being duly authorised thereto in his
capacity as Executive General Manager: Exxaro Coal)

and

LEPHALALE MUNICIPALITY

(hereafter referred to as "**the Municipality**")

(Herein represented by AS Naidoo, he being duly authorised thereto in his
capacity as Municipal Manager in terms of a Council resolution of the
Municipality dated 23 FEBRUARY 2010, attached hereto as
Annexure "A")

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ANNEXURES

Annexure "A"	Council resolution of Municipality dated <u>23 FEBRUARY 2010</u> ;
Annexure "B"	Sketch plan of the Potable Water Distribution System;
Annexure "C"	Capital Repayment of the Zeeland WTW Upgrade;
Annexure "D"	Auditor's Report on Exxaro's Weighted Average Cost of Capital ("WACC");
Annexure "E"	Project Schedule of Zeeland WTW Upgrade;

1. DEFINITIONS

1.1 In addition to definitions below, those definitions as contained in the Regulations promulgated in terms of Section 19(5) of the Water Services Act (No. 108 of 1997), and in Section 1 of the said Act are applicable to this agreement, where capitalised terms are used which have not been defined below.

"Act" means the Water Services Act, No. 108 of 1997;

"Additional Municipal Pipeline" means the proposed new pipeline and related infrastructure to be constructed by the Municipality from Point Y in terms of clause 2.6;

"Business Days" means all calendar days which excludes Saturdays, Sundays and public holidays;

"Contract Area" means the areas situated within the town of Lephalale;

“Competent Authority”	means collectively the Minister, all spheres of government, any court of competent jurisdiction or any agency, authority, body or standard setting institution, established or appointed in terms of any regulatory provision to regulate and oversee or regulate or oversee, the activities of the Municipality or Exxaro Coal pursuant to this agreement or if the context is appropriate any one of them;
“days”	means any calendar day, which shall be construed as the Gregorian calendar;
“DWA”	means the Department of Water Affairs, its predecessors and successors in law;
“Effective Date”	means the date when the last signature is appended to this Agreement;
“Force Majeure”	<p>means any of the following events:</p> <ul style="list-style-type: none"> (a) war, civil war, armed conflicts or terrorism; or (b) nuclear contamination unless Exxaro Coal and/or any of its subcontractors are the source or cause of the contamination; or (c) chemical or biological contamination of the Zeeland WTW and/or the Main Delivery

	Pipeline from any of the events referred to above;
(d)	materially adverse government action; which directly causes either Party to be put in unable to comply with all or a material part of its obligations under this agreement;
"Exxaro Coal"	means Exxaro Coal (Pty) Ltd also the "Water Services Provider", and its predecessors and successor in title and law;
"Main Delivery Pipeline"	means the existing pipeline and its related infrastructure from Point Y at the Zeeland WTW up to and including the Exxaro water meter and valve at Point X, which pipeline (with current booster pump) has a maximum capacity of 26Mℓ/day, which is 8Mℓ/day more than the current maximum capacity of the existing Zeeland WTW;
"Municipality"	means the Lephalale Local Municipality, also the "Water Services Authority", its predecessors and successors in law;
"Municipal Pipeline"	means the municipal water pipeline/s and related infrastructure as from Point X, including the Municipality's water meter but excluding the Additional Municipal Pipeline;

“Municipal Reservoir”	means the 10M ³ reservoir constructed at the Zeeland WTW – by the Municipality (with the consent of Exxaro);
“Party” or “Parties”	means either Exxaro Coal or the Municipality, while Parties mean both Exxaro Coal and the Municipality;
“Point X”	means the position of the Exxaro Coal water meter and valve which centre point is at coordinates X= 2623094.561 and Y= -67452.666 (co-ordinates as per the WGS 84 survey system) situated on the North Eastern corner of the farm Paarl 522LQ, as indicated on the sketch attached as Annexure “B” ;
“Point Y”	means the starting point of the Main Delivery Pipeline, other Exxaro Coal pipelines and the proposed Additional Municipal Pipeline from the water reservoirs at the Zeeland WTW, located at coordinates X= 262854.920 and Y= -63311.122 (co-ordinates as per the WGS 84 survey system), as indicated on the sketch attached as Annexure “B” ;
“Relief Event”	means: <ul style="list-style-type: none"> (a) any fire, explosion, tempest, flood, drought, ionising radiation (to the extent it does not constitute an event of Force Majeure), earthquakes, riot and

civil commotion, or pressure waves caused by devices travelling at supersonic speed;

- (b) (without limiting the obligations of Exxaro Coal regarding supply in terms of this agreement) any failure by the Municipality or any other responsible authority, utility or other like body to carry out works or provide services or pipelines;
- (c) any accidental loss or damage to the Zeeland WTW and/or the Main Delivery Pipeline;
- (d) any off-site failure or shortage of power, fuel or transport;
- (e) any blockade or embargo which does not constitute an event of Force Majeure;
- (f) the discovery of any heritage objects or resources that could not reasonably have been discovered by proper due diligence;
- (g) any delay in obtaining any consent or authorisation; or
- (h) any official or unofficial strike, lockout, go slow or other such labour disputes generally affecting the mining industry or a significant sector of it;

unless any of the events listed in clauses (a) to (h) inclusive arises (directly or indirectly) as a result of any negligence, wilful conduct or default of

Exxaro Coal or any subcontractor appointed by it;

“Regulatory Provisions”

means collectively, the provision of any legislation or any regulation, a notice issued pursuant to such legislation or a notice issued by a competent authority, any or all of which are directly related to the provision, of the Municipality or Exxaro Coal, or if the context is appropriate, any one of them; and

“Zeeland WTW”

means the Zeeland Water Treatment Works, two reservoirs and related infrastructure, owned and managed by Exxaro Coal, and situated on the farm Zeeland 526 LQ, including the upgrade of the works as from the commissioning of such upgrade as contemplated in this agreement, and excluding the Main Delivery Pipeline, Municipal Reservoir and proposed Additional Municipal Pipeline from Point Y.

2. RECORDAL AND OBJECTIVE

2.1 In terms of the Constitution (Act No. 108/1996), the Act and the Municipal Systems Act (No. 32 of 2000), the Municipality, as Water Services Authority, is responsible, *inter alia*, to ensure that members of the community have access to basic water supplies, the quality standards of potable water are met, the resources of the Municipality in this respect are used in the best interest of the local community, equitable access to services in

this respect and ensure the affordability and sustainability of such services including any such services rendered by a water services provider.

2.2 Exxaro Coal is responsible, in terms of an agreement entered into with DWA in respect of a revised method of payment that came into effect on 1 April 1990, for an outstanding capital amount, operating, maintenance, running, replacement and administration costs to DWA *inter alia* for the dependable supply of raw water from the Mokolo dam of which a portion is purified to potable water.

2.3 Exxaro Coal acting as a Water Services Provider, is obliged to supply a portion of the said potable water from the Zeeland WTW to the Municipality at Point X in terms of an agreement dated 19 September 1991 entered into with the Municipality and which came into effect as from 1 April 1990.

2.4 Exxaro Coal and the Municipality entered into an agreement on 2 February 2007 that replaced the said agreement dated 19 September 1991 in its entirety, save for obligations relating to cost sharing, running costs and payment and liabilities which continue to exist as further set out herein.

2.5 It is recorded that a pre-feasibility study conducted by a DWA consultant on behalf of the Municipality in respect of future potable water demand in the Lephalale area, indicated that the upgrading of the Zeeland WTW is required in two (2) phases, i.e. phase 1 is an upgrade to 40Mℓ/day as soon as possible and the phase 2 upgrade to 60Mℓ/day during 2017. (The draft pre-feasibility report was submitted to the Municipality during July 2008). Due to this growing demand for potable water in the Contract Area, Exxaro Coal is in the process of upgrading the existing Zeeland WTW from a 16Mℓ/day to a 40Mℓ/day capacity, which upgrade requires the provision of capital by Exxaro Coal.

- * The Parties agree that Exxaro Coal will recover the Municipality's share of the capital provided for the upgrade from the Municipality through fixed monthly instalments as referred to in clause 6.4 of this agreement and set out in **Annexure "C"** in addition to the capital that is recovered in terms of clause 6.3. It is noted that **Annexure "C"** will be amended after finalisation of the Zeeland WTW upgrade and prior to the commissioning of the upgrade to reflect the actual capital expenditure incurred by Exxaro Coal.

2.6 The increased quantity of potable water from a maximum flow rate of 16Ml/day to a maximum flow rate of 40Ml/day in a 23 (twenty three) hour day due to the upgrade of Zeeland WTW will be available to all users as from Point Y once the upgrade of Zeeland WTW is commissioned. Due to the limited capacity of the Main Delivery Pipeline (26Ml/day, which is 8Ml/day more than the current maximum capacity of the existing Zeeland WTW) from Point Y to Point X and the Municipal Pipeline from Point X onwards, it is specifically recorded that the Municipality will be responsible for the timely construction of the Additional Municipal Pipeline from Point Y to ensure that the increased quantity of potable water (to a maximum of 40Ml/day) will be available to the Contract Area. It is noted that the Municipality has recently entered into an agreement with a private company to construct the Additional Municipal Pipeline.

2.7 The Municipality acknowledges that the current capacity of the Mokolo pipeline is insufficient to supply the entire volume of stakeholder's allocation, and that DWA consultants are currently investigating the possible augmentation of the Mokolo pipeline.

2.8 The Municipality agrees that the augmentation of the Mokolo pipeline, as contemplated in clause 2.7, will impact on the price of raw water to Zeeland WTW and agree further that such price impact as referred to in clause 7.1 will automatically, on a pro-

rata basis, as referred to in clause 6.3, be forwarded by Exxaro Coal to be included in the price of potable water to the Municipality.

2.9 The Parties agree that this agreement will as from the Effective Date, replace the agreement dated 2 February 2007 in its entirety and is inclusive of the new upgrade of the Zeeland WTW by Exxaro Coal, the capital redemption thereof and the Additional Municipal Pipeline.

2.10 It is however recorded that the Parties must still negotiate the increased raw water allocations with DWA.

3. SUPPLY OF WATER

3.1 The Municipality, as the Water Services Authority, hereby authorizes and appoints Exxaro Coal, as the Water Services Provider, in terms of sections 22(1) and 6(1) of the Act and, as further regulated by the terms and conditions set out in this agreement and Regulatory Provisions, to continue the current provision of bulk potable water supply services to the Municipality, farmers along the Main Delivery Pipeline and itself. Exxaro Coal herewith accepts the appointment on the terms and conditions herein.

3.2 Exxaro Coal shall be responsible to supply the potable water from the Zeeland WTW through the Main Delivery Pipeline up to Point X, and for the maintenance of such pipeline. In respect of the Additional Municipal Pipeline, Exxaro will supply the potable water to the Municipality at Point Y.

3.3 The Municipality shall be responsible to take off the potable water from Point X through the Municipal Pipeline to and as far as their responsibilities reach in the Contract Area, and for the maintenance of such pipeline/s. In respect of the Additional

Municipal Pipeline the Municipality's responsibilities will commence at Point Y, and the responsibilities of the Municipality

- 3.4 The potable water supplied by Exxaro Coal from the Zeeland WTW to Point X; and once the upgrade is commissioned and before the Additional Municipal Pipeline is completed, also from Point Y, will comply with "Regulations relating to compulsory national standards" and "measures to conserve water", as per, Sections 9(1) and 73(j) of the Act and SABS 241, "Specifications for drinking water".
- 3.5 The Municipality undertakes to timeously construct such Additional Municipal Pipeline from the Zeeland WTW to increase the current supply of potable water to the Contract Area.
- 3.6 Due to the current capacity of the Mokolo pipeline being insufficient to supply the entire volume of stakeholder's allocation, Exxaro Coal will not be liable to the Municipality should the second pipeline from the Mokolo dam not be completed in time by DWA to supply such additional volume to the Contract Area.

4. PERMITS, LICENSES, EXEMPTIONS, PERMISSIONS AND APPROVALS

- 4.1 It is recorded that the current supply of potable water in terms of this agreement is a continuance of an existing lawful water use. To this extent the current maximum DWA allocation of raw water supply to the Municipality is 4.4 m³ (four point four million cubic metres) per annum with limitations as per the current Exxaro Coal abstraction permit. Each Party shall be responsible for obtaining and maintaining its own licences for the supply of raw water, should it be required.

4.2 The Parties shall be responsible for complying with all legislation applicable to their duties and obligations in terms of this agreement, including, but not limited to, applying for the necessary approvals, consents, licenses or permits, where required.

5. METERS

5.1 Exxaro Coal has provided and installed a water meter in the Main Delivery Pipeline at Point X, in compliance with the Trade Metrology Act (No. 77 of 1973) (the "Trade Metrology Act"), and shall maintain such water meter in terms of the said act.

5.2 The Municipality has provided a second water meter and installed it in series with the Exxaro Coal water meter in the Main Delivery Pipeline at Point X, in compliance with the Trade Metrology Act, and shall maintain such water meter in terms of the said act.

5.3 Each Party shall calibrate in situ and certify its water meter in such manner and at such intervals as may be required in terms of the Trade Metrology Act.

5.4 The meters referred to in clauses 5.1 and 5.2 shall be read once in each calendar month on a mutually agreed date and time on a working day as close as possible to the last Business Day of the month in the presence of representatives of both Parties.

5.5 The arithmetic mean of the advances recorded since the previous reading of the water meters, referred to in clauses 5.1 and 5.2 shall determine the volume of potable water abstracted by the Municipality from the Main Delivery Pipeline.

5.6 In the event of acceptable even advances recorded by the said water meters accepted by both Parties, then the actual reading of the Exxaro Coal water meter as referred to in clause 5.1 will be taken to determine the volume of potable water abstracted by the Municipality for invoicing purposes.

5.7 In the event of a water meter discrepancy between the advances recorded by the Exxaro Coal and Municipality water meters referred to in clauses 5.1 and 5.2 not being acceptable to one or both of the Parties, then the percentage (%) discrepancy will be defined as follows:

% Discrepancy "A" =
$$\frac{[(\text{Advance measured by Exxaro Coal meter "B"}) - (\text{advance measured by the Municipality meter "C"})] \times 100}{[(\text{advance measured by Exxaro Coal meter "B"}) + (\text{advance measured by the Municipality meter "C"})] \times 0,5}$$

$$\% A = \frac{(B-C) \times 100}{(B+C) \times 0,5}$$

5.8 In the event of the absolute value of a discrepancy being in excess of a value of 7,0%, as calculated in clause 5.7, then the total potable water abstraction by the Municipality will be determined by the comparison of the previous 6 (six) months average abstraction of potable water by the Municipality against the arithmetic mean of the advances recorded by the water meters referred to in clause 5.1 and 5.2 separately. The advance measured by the said water meters nearest to the said 6 (six) month's average abstraction will then be taken as the proper volume of potable water abstracted by the Municipality and the Municipality will then be invoiced accordingly.

5.9 The Parties shall arrange to test and recalibrate the meters referred to in clause 5.1 and 5.2 within 30 (thirty) days of discovery of a recorded discrepancy that falls outside the acceptable control limits determined by clause 5.7.

5.10 A water meter will be declared faulty when the calibration test performed in terms of clause 5.9 show it to have a measurement error of the absolute value of a discrepancy in excess of 5% across its normal operating range, determined in accordance with the following measurement error formula where the meter error, conventionally expressed as relative error, is calculated as a percentage and equal to:

$$\frac{(V_i - V_c) \times 100\%}{V_c}$$

Where:

V_i = Is the volume indicated by the water meter at the time of measurement of the same volume, both expressed in the same units

V_c = Is the value accepted as true of the volume passed as determined by a calibrated reference device.

5.11 In the event of there being a discrepancy in excess of the discrepancy control limits referred to in clause 5.7 and 5.8 and the calibration test performed in terms of clause 5.9 and 5.10 shows any one of the meters referred to in clause 5.1 and 5.2 to be faulty:

5.11.1 the cost of the calibration test, subsequent repairs and certified calibration of such meter shall be borne by the owner of such meter, and such repair or replacement and calibration shall be done within 30 (thirty) days of such meter being declared faulty;

5.11.2 the other meter shall be used to determine the volume of the water supplied from the date that the discrepancy was discovered, until the date of the next reading immediately following the rectification of the fault; and

5.11.3 a reconciliation invoice reflecting the volume as per clause 5.11.2 will then be issued to the Municipality by Exxaro Coal.

5.12 In the event of there being a discrepancy in excess of the discrepancy control limits referred to in clause 5.7 and 5.8 and the calibration test performed in terms of clause 5.9 and 5.10 shows none of the meters referred to in clause 5.1 and 5.2 to be faulty:

5.12.1 the cost of the calibration test and certified calibration of the meters shall be borne by the respective owner of each meter;

5.12.2 the meter with the smallest percentage discrepancy will be used to determine the volume of water supplied during the period from the date that the discrepancy was discovered, until the date of the next reading immediately following the rectification of the fault; and

5.12.3 a reconciliation invoice reflecting the volume as per clause 5.12.2 will then be issued to the Municipality by Exxaro Coal.

5.13 In the event of there being a discrepancy in excess of the discrepancy control limits referred to in clause 5.7 and 5.8 and the calibration test performed in terms of clause 5.9 and 5.10 shows both of the meters referred to in clause 5.1 and 5.2 to be faulty:

5.13.1 the cost of the calibration test, subsequent repairs and certified calibration of the meters shall be borne by the respective owner of each meter, and any repair or replacement and calibration shall be done within 30 (thirty) days of such meter being declared faulty; and a reconciling invoice reflecting the volume of water measured shall be issued to the Municipality by Exxaro Coal within 30 (thirty) days of the date of the fault;

5.13.2 the volume calculated in terms of clause 5.8 will then be taken as the true volume of water subtracted by the Municipality and the invoice issued in terms of the said clause stays valid, provided that where the advance measured which is nearest the 6 (six) month average referred to in clause 5.8 above, deviates more than 5% (five percent) from said 6 (six) month average, then that 6 (six) month average will be taken as the true volume from the date that the discrepancy was discovered, until the date of the next reading immediately following the rectification of the fault.

5.14 In the event that the Municipality completed the installation of the Additional Municipal Pipeline to provide for off-take of potable water by the Municipality from Point Y:

5.14.1 Exxaro Coal shall provide and install a water meter in the proposed Additional Municipal Pipeline at Point Y in compliance with the Trade Metrology Act, and shall maintain such water meter in terms of the said act;

5.14.2 the Municipality shall also provide and install a water meter in series with the Exxaro Coal meter, in the Additional Municipal Pipeline at Point Y in compliance with the Trade Metrology Act, and shall maintain such water meter in terms of the said act; and

5.14.3 clauses 5.3 to 5.13 above will apply *mutatis mutandis* to such new water meters.

6. COST SHARING

6.1 Operation and Maintenance Costs

- 6.1.1 Actual maintenance and operation costs, including extraordinary expenditure and raw water supply costs, incurred in respect of the Zeeland WTW and the Main Delivery Pipeline shall be shared by the Parties on a pro rata basis based on its monthly consumption.
- 6.1.2 Exxaro Coal will included in the budget referred to in clause 6.2.1, provide the Municipality with a maintenance schedule in respect of the Zeeland WTW and the Main Delivery Pipeline detailing the maintenance to be effected in the following year. The purpose of such schedule is to establish the adherence of the Exxaro Coal to its maintenance obligation under this agreement. The Municipality, at its cost, may at any time appoint an independent expert to carry out an inspection of Zeeland WTW and the Main Delivery Pipeline and produce a written report with regard to the state of the Zeeland WTW and the Main Delivery Pipeline and any maintenance requirements to be carried out by Exxaro Coal that may be apparent from the inspection; a copy of which report shall also be provided to Exxaro Coal. Exxaro Coal will within a reasonable time put in place any further reasonable maintenance requirements recommended by the inspection. In the event of the report being disputed then the dispute may be referred in terms of clause 19 hereof.

6.1.3 The Additional Municipal Pipeline and Municipal Reservoir will be operated and maintained by the Municipality and will not form part of the above cost sharing.

6.2 Operating and Maintenance Budget

6.2.1 An 18 (eighteen) month operating and maintenance budget including planned extra ordinary expenditure will be drawn up by Exxaro Coal annually before 30 November, based on the estimated water consumption of Exxaro Coal and the Municipality and be submitted to the Municipality.

6.2.2 This budget shall be agreed on and be accepted by the Parties as the basis to split costs during the year to follow, whereafter the actual water consumption by each Party will be used to reconcile the accounts and Exxaro Coal will provide the Municipality annually with such a reconciliation statement. In the event of a major variance from the budget, Exxaro Coal shall provide the Municipality with a 6 (six) monthly reconciliation statement. Any amounts owed by one Party to another as a result of the reconciliation will be factored into the following year's operating and maintenance budget or as otherwise mutually agreed by the Parties.

6.2.3 Exxaro Coal will upon written request and at the cost of the Municipality, submit a certificate from its auditors verifying the nature and amounts contained in the annual reconciliation statement as provided to the Municipality in terms of clause 6.2.2.

6.3 Existing Capital Redemption

6.3.1 It is recorded that the Mokolo dam was constructed in 1974 across the Mokolo river by DWA for the purpose of making raw water available in the area. As at 31 March 1990 an amount of R21,980,000.00 (twenty one million, nine hundred and eighty thousand Rand) represented the balance of capital expenditure that was owing to the DWA by Iscor Ltd (liability subsequently assigned to Exxaro Coal) for the construction of the Mokolo dam (previous Hans Strydom Dam). The initial annual repayment amount in respect of the said amount of R21,980,000.00 (twenty one million, nine hundred and eighty thousand Rand) was the amount of R3,130,123.00 (three million, one hundred and thirty thousand, one hundred and twenty three Rand).

6.3.2 It is furthermore recorded that Exxaro Coal and Eskom entered into an agreement dated 14 May 2004 whereby capital redemption of the amount referred to in clause 6.3.1 was split between them based on their respective water allocations from the Mokolo dam according to the following formula:

$$(a) \text{ Exxaro coal} = \frac{10.1 \times 10^6 \text{ m}^3}{17.2 \times 10^6 \text{ m}^3} \times \text{R3 130 123.00} \\ = \text{R1 838 037.34 per annum}$$

$$(b) \text{ Eskom} = \frac{7.1 \times 10^6 \text{ m}^3}{17.2 \times 10^6 \text{ m}^3} \times \text{R3 130 123.00} \\ = \text{R1 292 085.66 per annum}$$

6.3.3 In terms of an agreement between Iscor Ltd (subsequently ceded to Exxaro Coal) and the Municipality as referred to in clause 2.2, the Parties agreed that, as from 01 April 1990, the revised method of payment for capital redemption to DWA for the Mokolo dam referred to in clauses 6.3.1 and 6.3.2 is also applied to the Municipality.

6.3.4 Subject to clause 6.3.3, the Exxaro Coal portion of the capital redemption referred to in clauses 6.3.1 and 6.3.2 was split according to the actual percentage water consumption by Exxaro Coal and the Municipality by applying the following formula:

(a) Exxaro Coal: Exxaro Coal water consumption ÷ (Exxaro Coal water consumption + Municipality water consumption)

$$\times 100 = \text{Exxaro Coal \% consumption.}$$

$\therefore \text{Exxaro Coal \% consumption} \times \text{R}1,838,037 = \text{R for Exxaro Coal}$
 $\text{annually} = \text{R} \div 12 \text{ for Exxaro Coal}$
 monthly.

("R" means Rand amount)

(b) Municipality: Municipality water consumption ÷ (Exxaro Coal water consumption + Municipality water consumption)

$$\times 100 = \text{Municipality \% consumption.}$$

∴ Municipality % consumption x
 (21.0% x 12) R1,838,037 = R for Municipality
 annually = R ÷ 12 for Municipality
 (represented Rand monthly) (R means Rand amount)
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6.3.5 Should the capital redemption agreement between Exxaro Coal and DWA be amended or replaced by virtue of the provisions of the Raw Water Pricing Strategy (published in Government Gazette no. 20615 dated 12 November 1999) or any amendment thereof, Exxaro Coal shall enter into a new or amended agreement with DWA provided that the new or amended agreement is agreed to in writing by the Municipality prior to its finalization, to the extent that Exxaro Coal can agree with the DWA. However, should the DWA through government action terminate the capital redemption agreement or appropriate the property of Exxaro Coal referred to in this agreement, Exxaro Coal undertakes to advise the DWA of the terms of this agreement.

6.4 Costs in respect of the upgrade of the Zeeland WTW

The Municipality shall pay the pro rata portion determined on the actual supply of potable water from the Zeeland WTW to the Municipality, of the fixed monthly instalments to Exxaro Coal calculated in accordance with the terms set out in **Annexure "C"**.

7. RUNNING COSTS

7.1 A pro rata portion of actual capital costs, operating and maintenance costs or regional and administration office expenditure invoiced by DWA for the Mokolo dam will be charged by Exxaro Coal to the Municipality as and when such costs arise. *shall be submitted to the Municipality for approval.*

7.2 A pro rata portion of the actual operating cost incurred by Exxaro Coal for the bulk potable water supply to the Municipality, not otherwise provided for in this agreement, will be charged to the Municipality on a monthly basis, provided Exxaro Coal shall submit proof of any such additional operating costs not provided for in the budget referred to in clause 6.2.1 to the Municipality, upon request, and where feasible ensure such items are factored into the next operating and maintenance budget.

7.3 Proof of the execution of the planned and unplanned annual extra ordinary expenditure for improvements, replacements, operating costs, maintenance costs, office expenditure as provided for in the budget referred to in clause 6.2.1 and income received from other consumers will, upon request, be made available to the Municipality by Exxaro Coal before 31 December of each year.

7.4 For purposes of this clause "pro rata portion" shall be a pro rata portion calculated in the manner referred to in clause 6.3.4(a) and (b).

8. TERMS OF PAYMENT TO EXXARO COAL

8.1 Monthly invoices for payment of the capital redemption, and interest referred to in clause 6.3 and 6.4, and for actual costs

incurred in respect of clauses 6.1, 7.1 and 7.2 shall be submitted to the Municipality, the payment of which will be made within 30 (thirty) days of receipt of an invoice.

8.2 All invoices shall be submitted to the Municipal Manager, Private Bag X136, Lephalale, 0555.

9. INTERRUPTION OF SUPPLY

9.1 The Parties shall at all times liaise with each other on the most appropriate manner in which to, where required, repair and re-commission the potable water supply system in the Contract Area, whenever demand or supply will be significantly affected.

9.2 Exxaro Coal may interrupt the Municipality's supply to Point X or Point Y, whichever the case may be, and the Municipality may interrupt its off take at Point X or Point Y, whichever the case may be, for the purpose of repairing and maintaining its infrastructure but both Parties shall endeavour to keep such interruptions to a minimum.

9.3 In the event of a planned interruption, the Party planning the interruption shall give the other 21 (twenty one) days written notice of its intention and a written reminder 2 (two) days before the planned interruption; which planned interruption will not exceed 12 (twelve) hours.

9.4 In the event of an unplanned interruption in the off take at Point X or Y, due to an unexpected failure or leak, the Municipality shall notify Exxaro Coal within 12 (twelve) hours in writing of such interruption occurring and shall effect repairs to restore the demand. If such repair exceeds 48 (forty eight) hours, the incident will be regarded as an emergency.

9.5 In the event that an unplanned interruption of supply occurs at Point X or Y, due to an unexpected failure or leak, Exxaro Coal shall notify the Municipality within 12 (twelve) hours in writing of such interruption occurring and shall effect repairs to restore the supply. If such repair exceeds 24 (twenty four) hours, the incident will be regarded as an emergency.

9.6 The Party who is responsible for the emergency repairs will use all reasonable commercial measures to restore such damaged infrastructure to restore the demand or supply as the case may be. Such Party shall notify the other Party in writing as soon as reasonably possible of any such emergency repair having to be effected as contemplated in clauses 9.4 or 9.5 above and advise the other Party of the measures taken to restore the damaged infrastructure and suspend the water demand/supply until the necessary emergency repairs have been successfully completed.

10. LIABILITY, INDEMNITY AND INSURANCE

10.1 Exxaro Coal shall take all the requisite precautions for the protection of life and property on and about or in any way connected with the whole or any part of providing bulk potable water supply services and shall indemnify and not hold the Municipality accountable for any losses, claims, demands, proceedings, damages, costs (including all legal fees), charges and expenses of whatsoever nature in respect of injury to or death of any person or loss of or damage to any part of the bulk potable water supply service system or any person or property arising from or attributable to any act or omission of Exxaro Coal, its employees or agents in terms of this agreement, unless such injury, death, loss or damage was caused in whole or in part due to any act or omission of wilful misconduct or gross negligence by the Municipality, its employees or agents, contractors or any other person for whom it may be liable in law.

- 10.2 The Municipality hereby indemnifies and holds Exxaro Coal, its directors, managers, agents and employees and/or those of its holding company, associates and affiliates, harmless against any and all loss, liability, claim or damage arising out of and/or suffered by the Municipality as a result of the conduct of any of the activities undertaken in respect of this agreement, unless such loss, liability, claim or damage was caused in whole or in part by an act or an omission of wilful misconduct or gross negligence of Exxaro Coal, its employees or agents, contractors or any other person for whom it may be liable in law.
- 10.3 Exxaro Coal shall not be held liable to the Municipality or any other person for any damages or loss caused by a curtailment or interruption in the supply of potable water for any cause, except in the event where Exxaro Coal can be proven to have grossly neglected its obligations under this agreement or committed any other act of wilful misconduct.

11. RELIEF EVENTS

- 11.1 If and to the extent that a Relief Event:

- 11.1.1 directly causes a delay in supply or the commissioning of the upgraded Zeeland WTW; and/ or

- 11.1.2 materially adversely affects the ability of Exxaro Coal to perform any of its obligations under this agreement,

then Exxaro Coal shall be entitled to apply for relief from any rights of the Municipality arising under clauses 17 and 18.

11.2 To obtain relief, Exxaro Coal must:

11.2.1 as soon as practicable, and in any event within 2 (two) of the

Business Days after it becomes aware that the Relief Event has caused or is likely to cause delay and/or materially adversely affect the ability of Exxaro Coal to or perform its other obligations, submit to the Municipality a notice of its claim for relief from its obligations under this agreement, including full details of the nature of the Relief Event, the date of occurrence and its likely duration;

11.2.2 within 2 (two) Business Days of receipt by the Municipality of the notice referred to in clause 11.2.2 above, give full details of the relief claimed; and

11.3 In the event that Exxaro Coal has complied with its obligations under clause 11.2 above and the Parties have mutually agreed as to the extent of relief required, then:

11.3.1 the scheduled commissioning date of the upgrade shall be postponed by such time as shall be reasonable for such a Relief Event, taking into account the likely effect of delay; and/or

11.3.2 the Municipality shall not be entitled to exercise its rights to terminate this agreement under clause 18.1.3 or its right to claim liquidated damages under clause 17; and

11.3.3 The Municipality shall only pay the pro rata portion of the monthly fixed amount as determined in terms of clause 6.4 above.

11.4 Exxaro Coal shall notify the Municipality if at any time it receives or becomes aware of any further information relating to the Relief Event, giving details of that information to the extent that

such information is new or renders information previously submitted materially inaccurate or misleading.

~~11.2.1.2 If the event of a Relief Event continues for a period in excess of 180 (one hundred and eighty) days the Parties shall meet in order to find a mutually satisfactory solution for dealing with such prolonged Relief Event failing which the matter shall be dealt with in accordance with clause 19.~~

- 11.5 In the event of a Relief Event continuing for a period in excess of 180 (one hundred and eighty) days the Parties shall meet in order to find a mutually satisfactory solution for dealing with such prolonged Relief Event failing which the matter shall be dealt with in accordance with clause 19.
- 11.6 If the Parties cannot agree on the extent of the relief required, or the Municipality disagrees that a Relief Event has occurred or that Exxaro Coal is entitled to any extension of the scheduled commissioning date and/or relief from other obligations under this agreement, the Parties shall first attempt to resolve the matter in accordance with clause 19.

12. FORCE MAJEURE

- 12.1 Subject to clauses 12.2.1 and 12.2.2 the Party claiming relief shall be relieved from liability under this agreement to the extent that by reason of the Force Majeure event it is not able to perform all or a material part of its obligations under this agreement.
- 12.2 Where a Party is (or claims to be) affected by an event of Force Majeure:
 - 12.2.1 it shall take all reasonable steps to mitigate the consequences of such an event upon the performance of its obligations under this agreement, resume performance of its obligations affected by the event of Force Majeure as soon as practicable and use all reasonable endeavours to remedy its failure to perform; and

12.2.2 it shall not be relieved from liability under this agreement to the extent that it is not able to perform, or has not in fact performed, its obligations under this agreement due to its failure to comply with its obligations under sub-clause 12.2.1.

12.3 The Party claiming relief shall serve written notice on the other Party within 3 (three) Business Days of it becoming aware of the relevant event of Force Majeure. Such initial notice shall give sufficient details to identify the particular event claimed to be an event of Force Majeure.

12.4 A subsequent written notice shall be served by the Party claiming relief on the other Party within a further 5 (five) Business Days which shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including (without limitation) the effect of the event of Force Majeure on the ability of the Party to perform, the action being taken in accordance with clause 12.2.1, the date of the occurrence of the event of Force Majeure and an estimate of the period of time required to overcome it (and/or its effects).

12.5 The Party claiming relief shall notify the other as soon as the consequences of the event of Force Majeure have ceased and when performance of its affected obligations can be resumed.

12.6 If, following the issue of any notice referred to in clause 12.4, the Party claiming relief receives or becomes aware of any further information relating to the event of Force Majeure (and/or any failure to perform), it shall submit such further information to the other Party as soon as reasonably possible.

12.7 During the continuance of any event of Force Majeure which occurs on or after the Effective Date or the commencement date of the upgrade of the Zeeland WTW, the payments in terms of

clause 6.3 and 6.4 in respect of such period shall be reduced pro rata to an amount equivalent in respect of that water supplied to the Municipality during such period after taking account of the effects of such event of Force Majeure.

12.8 The Parties shall endeavour to agree any modifications to this agreement which may be equitable having regard to the nature ~~other~~ of an event or events of Force Majeure, failing which this agreement shall terminate in terms of clause 18 below.

13. WATER QUALITY AND QUANTITY

13.1 The quality of potable water delivered at the Exxaro Coal water meter at Point X or, in respect of the Additional Municipal Pipeline at the Exxaro Coal water meter at Point Y, shall comply with "Regulations relating to compulsory national standards and measures to conserve water" issued by the Minister of Water Affairs and Forestry under sections 9(1) and 73(j) of the Act. It is recorded that Exxaro Coal is not responsible for the quality of water from the Exxaro Coal water meter at Point X or, in respect of the Additional Municipal Pipeline at Point Y, to the consumers in the Contract Area, which is the responsibility of the Municipality.

13.2 Exxaro Coal will monitor the quality of the potable water at the Zeeland WTW, Point X and Y, on a routine basis. A record of test results thereof will be kept for a period of 3 (three) years. Exxaro Coal will also have the water quality tested monthly at the said points by an independent SABS accredited laboratorium, which results will be made available to the Municipality.

13.3 All other records, not specifically addressed in terms of this agreement including maintenance, meter calibration certificates, inspection and audit reports will be kept and made available to

the Municipality on request.

13.4 Exxaro Coal is currently supplying potable water to a maximum flow rate of 16Mℓ/day in a 23 (twenty three) hour day for all users as from Point X.

13.5 Exxaro Coal will be able to supply potable water to a maximum flow rate of 40Mℓ/day in a 23 (twenty three) hour day for all users as from Point X and Point Y jointly once the upgrade of the Zeeland WTW is commissioned.

13.6 The Municipality acknowledges that Exxaro Coal does not guarantee the quantity of potable water available to the Municipality for consumption. However, Exxaro Coal undertakes to use its best endeavours to provide such quantities as further provided for in this agreement.

14. PERFORMANCE REPORTING, MANAGEMENT CO-OPERATION AND REVIEW

The Municipality as the water services authority must monitor and measure the performance of Exxaro Coal in terms of this agreement and report thereon in accordance with various regulations in terms of the Act, other applicable legislation and relevant stipulations of the Local Government: Municipal Systems Act, 32 of 2000 and the Local Government: Municipal Finance Management Act, 56 of 2003.

Therefore:

14.1 Exxaro Coal shall monthly provide the Municipality as the water services authority with a performance report consisting of an operation and maintenance report including repairs and refurbishment done and a water quality and quantity report.

14.2 Each obligation of Exxaro Coal in terms of this agreement represents a key performance area of Exxaro Coal for the duration of the agreement subject to changes which may occur in terms of clause 15 hereof.

14.3 The Parties shall meet on a quarterly basis to discuss all matters relating to or impacting on this agreement including key performance indicators referred to in this agreement and as otherwise determined by the Parties. The Municipality shall be responsible for calling the first meeting after the Effective Date at which meeting a schedule of future meetings will be determined and agreed upon as well as the members attending such meetings.

14.4 Notwithstanding any other provisions in this agreement, this agreement shall be reviewable at least once in 3 (three) years or at any time during the contract period at the request of the Municipality with the aim to measure the performance of Exxaro Coal against its key performance areas and to consider any amendments to the agreement that may be necessitated by the review, as may be mutually agreed to by the Parties.

15. COMMENCEMENT AND TERM

15.1 Notwithstanding the provisions of clause 14.2, this agreement shall commence on 2 February 2007, and shall continue for a period of 25 (twenty five) years after it will be renewable by agreement between the Parties.

15.2 In respect of the upgrade of the existing Zeeland WTW to a 40ML/day capacity for all users, Exxaro Coal shall commence with the relevant upgrade within 6 (six) months from the Effective Date and complete the upgrade by not later than 30 June 2011. The Municipality shall commence with its payments towards the Capital Expenditure incurred by Exxaro

Coal, as contemplated in clause 6.4, on the date of commissioning of the Zeeland WTW upgrade, of which date the Municipality will be advised 3 (three) months prior thereto in writing by Exxaro Coal, from which commissioning date the Municipality will be entitled to such increased water supply.

14.3 The Parties shall agree on a mutually-beneficial basis on the above and matters

15.3 The Municipality shall timeously negotiate with Exxaro Coal, should the need arise for a further increase in the proposed 40Ml/day capacity for all users, to determine the feasibility and possibility of extended potable water supply. In such event the Municipality and Exxaro Coal shall first enter into a further agreement in order to provide for the recovery or provision of capital expenditure, extended operating expenditure and maintenance relating to such extended water supply.

16. PROPERTY AND PROPERTY RIGHTS

- 16.1 The Municipality acquires no rights to any property which belongs to Exxaro Coal unless so effected in terms of clause 16.5.
- 16.2 All pipelines, infrastructure and pipework downstream of the Exxaro Coal water meter, as from Point X, including the mechanical water meter installed by the Municipality, will belong to, and be maintained by the Municipality.
- 16.3 The Additional Municipal Pipeline and any further pipelines, infrastructure and pipe work downstream of the Zeeland WTW being Point Y including the mechanical water meter to be installed by the Municipality at Point Y, will belong to and be maintained by the Municipality.
- 16.4 It is recorded that Exxaro Coal is willing to enter into negotiations with the Municipality or another organ of state regarding the transfer of the Zeeland WTW to the Municipality or

other organ of state after the upgrade has been completed and commissioned, subject to the following conditions:

16.4.1 all outstanding capital costs as indicated in

Annexure "C" have been fully paid to Exxaro Coal as verified by external auditors mutually agreed to and paid

for by the Parties in equal parts;

16.4.2 payment of an agreed fair value of the existing Zeeland WTW facilities to Exxaro Coal as determined at the time by independent registered valuer appointed by the Parties; and

16.4.3 any other outstanding payments that is due and payable at that stage within this agreement having been paid to Exxaro Coal.

16.5 Such transfer will include all documentation, manuals, skills transfer, etc as may be required by the Municipality or another organ of state including a GAMAP/GRAP compliant asset register.

17. BREACH

Subject to any express provision to the contrary contained in this agreement, if a Party breaches any material provision of this agreement and remains in breach of such provision for 20 (twenty) days after written notice by the aggrieved Party to the defaulting Party requiring the defaulting Party to rectify the breach, the aggrieved Party shall be entitled (without derogating from any of its other specific rights or remedies provided for under this agreement), at its option:

17.1 to institute a civil claim against the defaulting Party for immediate specific performance or damages or both, as the case may be; or

17.2 to cancel this agreement in which case written notice of the cancellation shall be given to the defaulting Party, and the cancellation shall take effect 48 (forty eight) hours after receipt of the notice by the defaulting Party; provided that a party shall only be entitled to cancel this agreement if:

17.2.1 the breach is a material breach of a material term; and

17.2.2 such breach cannot be remedied by specific performance;

and, in either event, such termination shall be without prejudice to any other claim that either Party may have, whether under this Agreement or in law, including any claim for damages, excluding any indirect or consequential damages.

18. TERMINATION

18.1 The termination of this agreement may occur-

18.1.1 at the expiry of the agreement term;

18.1.2 if the Parties agree thereto in writing;

18.1.3 by reason of an unremedied material breach in terms of clause 17; or

18.1.4 due to a Force Majeure event in terms of clause 12 resulting in a Party not being able to perform a material part of its obligations under this agreement.

18.2 Save as otherwise expressly provided in this agreement termination of this agreement shall

18.2.1 be without prejudice to any accrued rights and obligations under this agreement as at the date of termination; and

18.2.2 not affect the continuing rights and obligations of Exxaro Coal and the Municipality in terms of this agreement. It is hereby agreed that only the parties to this agreement shall

19. **DISPUTE RESOLUTION**

19.1 In the event of one of the Parties ("1st party") breaching any of the terms and conditions of this agreement, and failing to remedy such fault or breach as provided for in clause 17 above, the other Party ("2nd party") shall be entitled, notwithstanding any prior waiver, extension or condonation, without prejudice to any other right the 2nd party may have, to proceed in terms of clause 19.2 to 19.3.

19.2 The Parties shall, considering the nature of the business relationship to be entered into, jointly decide on appropriate mechanisms to resolve any disputes that may arise during the duration of this agreement. The mechanism shall as far as possible endeavour to be as informal as possible, to avoid any formal dispute resolution and to expedite the process as far as possible.

19.3 In the event of any disagreement arising and the Parties being unable to reach agreement within 20 (twenty) Business Days, the dispute will be referred to the Municipal Manager of Lephalale Municipality and the General Manager, Grootegeluk Mine respectively in order to endeavour to settle the dispute through *bona fide* negotiations.

19.4 Failing settlement within 20 (twenty) Business Days after the referral in terms of clause 19.3 either Party may in writing request mediation / arbitration in which case the provisions of clause 20 shall apply.

20. MEDIATION / ARBITRATION

Subject to clause 19.1, all disputes or differences whatsoever which may at any time (whether during the continuance in effect of this agreement or after its discharge or cancellation) arise between the parties to this agreement concerning this agreement or its construction or effect, or to the meaning or interpretation of any provisions of this agreement, or as to the rights, duties or liabilities of the Parties under and by virtue of this agreement or otherwise, or as to any other matter in any way arising out of the subject matter of this agreement will be referred (if the matter cannot be resolved between the Parties in terms of clause 19), directly to mediation by a mediator appointed by Arbitration Foundation of South Africa ("AFSA") or in the event of not being in existence, such body as the Parties may agree upon.

- 20.2 The Parties intend that the mediator will consider and if possible determine the dispute within 7 (seven) days of referral, which may be extended by written agreement between the Parties. If the dispute cannot be resolved in this manner, then it will be referred to arbitration as provided for hereunder.
- 20.3 The Arbitration shall be held in Pretoria in terms of the rules and procedures of AFSA.
- 20.4 3 (three) arbitrators shall be appointed, 1 (one) by Exxaro Coal, 1 (one) by the Municipality and 1 (one) by AFSA.
- 20.5 The arbitrators shall be, if the question in issue is:
 - 20.5.1 Primarily an accounting matter, a practicing chartered accountant of not less than 10 (ten) years' standing, as agreed upon between the Parties;
 - 20.5.2 Primarily a legal matter, a practising counsellor of not less

than 10 (ten) years' standing, as agreed upon between the Parties;

20.5.3 Any other matter, a suitably qualified person, as agreed upon between the Parties.

20.6 If the Parties cannot agree upon whether any dispute is, for

purposes of this clause an accounting matter, a legal matter or any other matter, within 1 (one) business day after the arbitration has been demanded, then such matter shall be deemed to be a legal matter.

20.7 The Parties irrevocably agree that any decision in such arbitration proceedings:

20.7.1 shall be binding on them;

20.7.2 shall be carried into effect;

20.7.3 shall include such order as to costs as the arbitrators deem fit.

20.8 This clause 20 shall be severable from the remaining provisions of this Agreement and shall continue to be of application for a period of 3 (three) years following the termination or purported cancellation of this agreement.

20.9 The arbitrators' decision, which shall be a majority decision, shall be final and binding on the parties to this dispute.

20.10 The provisions of this clause shall not preclude any Party from access to any appropriate court of law for:-

20.10.1 Interim relief in the form of an interdict, mandamus or other for specific performance pending the outcome of an arbitration in terms hereof or in respect of such arbitration; or

20.10.2 Another form of relief on the basis of facts which are not disputed, provided that if a bona fide dispute arises in the course of the proceedings that shall be stayed pending on arbitration on the dispute in terms thereof; or

20.10.3 An order for the payment of a liquidated amount in money on the basis of facts which are not bona fide in dispute at the commencement of such proceedings.

21. *DOMICILIUM CITANDI ET EXECUTANDI*

21.1 The Parties choose as their domicilia citandi et executandi for all purposes under this agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature, the following addresses:

21.1.1 Exxaro Coal (Pty) Ltd: General Manager,
Grootegeeluk Mine
Grootegeeluk Mine PO Box 178
LEPHALALE LEPHALALE
0555

21.1.2 The Municipality: Municipal Manager
Civic Centre Private Bag X 136
LEPHALALE LEPHALALE
0555

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

telefax notice

21.3 Any Party may by notice to all Parties change its *domicilium*

21.3.1 *locum tenentes* *citandi et executandi* address, provided that the change shall become effective from the date of the deemed receipt of the notice.

21.4 Any notice to a Party:

21.4.1 Send by pre-paid registered post in a correctly addressed envelope to it at its *domicilium* address shall be deemed to have been received on the 5th business day after posting; or

21.4.2 Delivered by hand to a responsible person during ordinary business hours at its *domicilium* shall be deemed to have been received on the day of delivery; or

21.4.3 Sent by telefax to its chosen telefax numbers stipulated above, during normal business hours, shall be deemed to have been received on the date of dispatch.

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

[Handwritten signatures and initials]

22. PREVENTION OF CORRUPTION

Both the Municipality and Exxaro Coal will take all reasonable steps to ensure that no corruption by either employees or agents or contractors takes place. In case any such actions does occur and becomes known, the other Party to this agreement will be notified and fully informed in writing without undue delay.

23. CESSION AND ASSIGNMENT

Neither party shall cede, delegate, assign, make over or transfer or otherwise dispose of any of its rights or obligations arising from this agreement to any third party without the prior written consent of the other Party, provided however that such consent shall not be unreasonably withheld.

24. VARIATION AND CANCELLATION

- 24.1 No agreement extending, varying, adding to, deleting from, or cancelling this agreement and no waiver of any right under this agreement, will be effective unless reduced to writing and signed by the Parties.
- 24.2 Should circumstances or legislative changes justify a change of this agreement, the Parties shall meet and negotiate in good faith and agree on changes which will restore a situation wherein each of the Parties shall bear, in full, its fair share of the costs of managing, operating and maintaining an efficient and reliable system to supply each of the Parties with volumes of water which will satisfy their reasonable needs from time to time.

25. SEVERABILITY AND DIVISIBILITY

25.1 This agreement and all other agreements and contracts contemplated in terms of this agreement are indivisible.

25.2 If any provision of this agreement is found or held to be invalid or unenforceable, such term shall be severable and the validity of all other terms of this agreement shall not be affected thereby.

26. CONFIRMATIONS

26.1 The Municipality herewith warrants and confirms that it has complied with all the relevant legislative provisions required to enter into this agreement with Exxaro Coal, and more specifically the Municipality confirms that:

26.1.1 it has considered all other options of water supply to the Contract Area in terms of Section 19(2) of the Act;

26.1.2 the intention of the Municipality to replace the existing agreement dated 19 September 1991 with this agreement has been publicly disclosed in terms of Section 19(3) of the Act;

26.1.3 it has completed the community consultation process in compliance with sections 21 and 21A of the Local Government: Municipal Systems Act (No. 32 of 2000), as amended by Act No. 44 of 2003;

26.1.4 it has complied with the provisions of Section 33 of the Local Government: Municipal Finance Management Act (No. 56 of 2003);

26.1.5 in the event of its Water Services By-laws including any aspects which will necessitate a variation to this Agreement, the matter will be dealt with as provided for in clause 24.

26.2 In terms of Section 19(4) of the Act, Exxaro Coal confirms that:

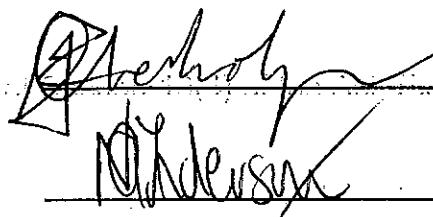
26.2.1 has no interests ancillary to or associated with the Municipality; and

26.2.2 provides water to the Municipality on a non-profit basis.

SIGNED at PRSTORIA **on this** 16 **day of** APRIL **2010**

WITNESSES:

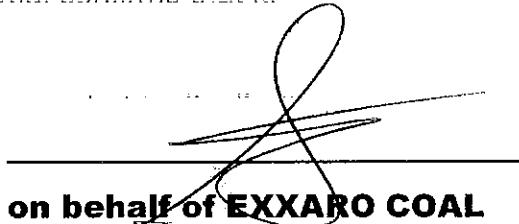
1.



2.



and I, the undersigned, do hereby declare that the above document is true and correct.


on behalf of EXXARO COAL

SIGNED at LEPHALALE **on this** 24 **day of** FEBRUARY **2010**

WITNESSES:

1.



2.




on behalf of

LEPHALALE MUNICIPALITY



Munisipaliteit
Municipality

LEPHALALE

Tel: 014 763 2193
Faks/Fax: 014 763 5662
E-pos/E-mail: munic@lephalale.gov.za
Webblad/Website: www.lephalale.com

Privaatsak/Private Bag X136
LEPHALALE
0555

Ons Verw/Our Ref

U Verw/Your Ref

Navrae/Enquiries

Aandag/Attention

Certified copy from the minutes of a meeting of the Council of the Lephalale Municipality held on Tuesday, 23 February 2009.

ITEM A10/2010(2)

AGREEMENT REGARDING THE UPGRADING OF THE ZEELAND BULK WATER SERVICE TREATMENT PLANT

16/1/2/4

COUNCIL: 23 FEBRUARY 2010

RESOLVED

1. That the Municipality enters into an agreement with Exxaro for the upgrading of the Zeeland Water Treatment Plant.
2. That the Accounting Officer concludes the Agreement in (1) above on behalf of Council.
3. That the resolution in 1 above be forwarded to the National and Provincial Offices of the Treasurer, the National and Provincial Offices of the Department of Water and Environmental Affairs, the National and Provincial offices of Local Government and Housing, the MEC for Local Government and Housing and the Office of the Premier of Limpopo.
4. That in terms of Section 21A of the Municipal Systems Act, the community be informed of the resolution taken in 1 above.

Op skriflike versoek binne sewe (7) dae na datum van brief sal 'n soortgelyke brief in Afrikaans verskaf word	Rig asseblief alle korrespondensie aan die Municipale Bestuurder Please address all correspondence to the Municipal Manager	Upon written request made within seven (7) days from date of letter, a similar letter will be supplied in English
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5. That the process to expand the license for the capacity of raw water to the Municipality be start with before the end of February 2010.

CERTIFIED A TRUE COPY FROM THE MINUTES OF A MEETING OF THE COUNCIL OF LEPHALALE MUNICIPALITY HELD ON TUESDAY, 23 FEBRUARY 2010.

13.3

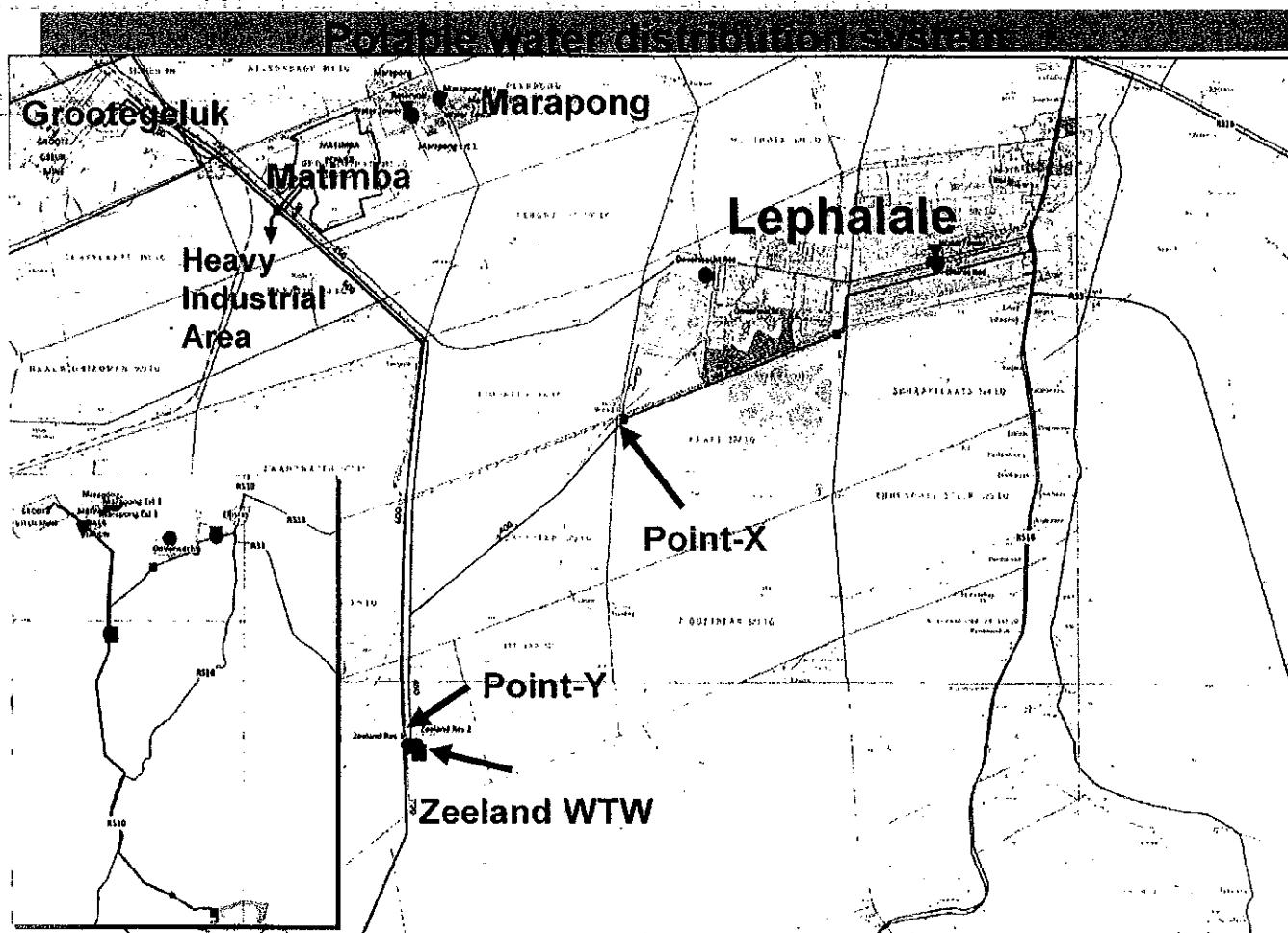
Signed at Lephalale on this 24th day of February 2010.

Yours faithfully


A S NAIDOO 14/2/10.
MUNICIPAL MANAGER



Sketch plan of the Potable Water Distribution System



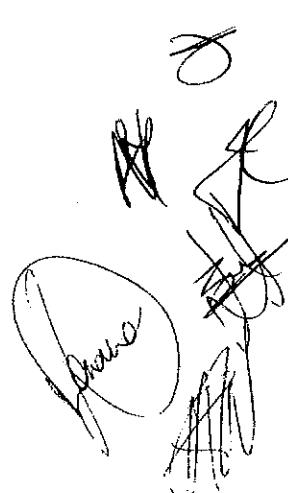
Capital repayment of the Zeeland WTW upgrade

1. In terms of the agreement Exxaro Coal will upgrade the Zeeland WTW to increase the quantity of potable water to a maximum flow rate of 40Ml/day in a 23 (twenty three) hour day for all users, and the capital expenditure so incurred by Exxaro Coal will include the actual third party costs with regard to the Environmental Impact Assessment and accompanying record of decision, study and design of the said upgrade, as well as all of the actual project execution costs and Exxaro Coal's costs in respect thereof ("Capital Expenditure") of which the current estimate is set out in clause 6 below.
2. The actual Capital Expenditure incurred by Exxaro Coal will be fixed on the date of commissioning of the upgraded Zeeland WTW. The current estimated Capital Expenditure amount is R 112,624,092.00 (one hundred and twelve million six hundred and twenty four thousand ninety two Rand) excluding VAT and including interest up to date of commissioning.
3. The Capital Expenditure is payable in fixed monthly instalments until the full amount is paid over a fixed term of 15 (fifteen) years at an interest rate equal to Exxaro Resources Limited's Weighted Average Cost of Capital ("WACC") as calculated from time to time.
4. Exxaro Coal will submit a certificate from its auditors certifying (with explanation) Exxaro Resources Limited's WACC calculation within sixty ("60") days from the Effective Date. The auditor's report will be incorporated into this agreement as **Annexure "D"**. Any further auditor certificates required from time to time will be provided upon written request and at the cost of the Municipality.
5. The Municipality will pay the pro rata portion (determined on the actual supply of potable water from the Zeeland WTW) of the fixed monthly instalments to Exxaro Coal calculated in accordance with clauses 2 and 3 above.

6. The Municipality shall commence with payment on the date of commissioning of the Zeeland WTW upgrade, as provided for in clause 15.2 of the agreement, and continue for a period of 15 (fifteen) years.

7. The Municipality shall be entitled to pay the full balance of the outstanding Capital Expenditure to Exxaro Coal at any time, or accelerate payment thereof for any reason whatsoever, provided that the full Capital Expenditure amount, plus interest up to that point in time, is paid (e.g. should cheaper funds become available).

8. Capital Expenditure estimate (August 2009; to be finalised upon commissioning of the Zeeland WTW upgrade):

A cluster of handwritten signatures and initials, including "D", "H", "J", and "P", along with a large, stylized "X" mark, located in the bottom right corner of the page.

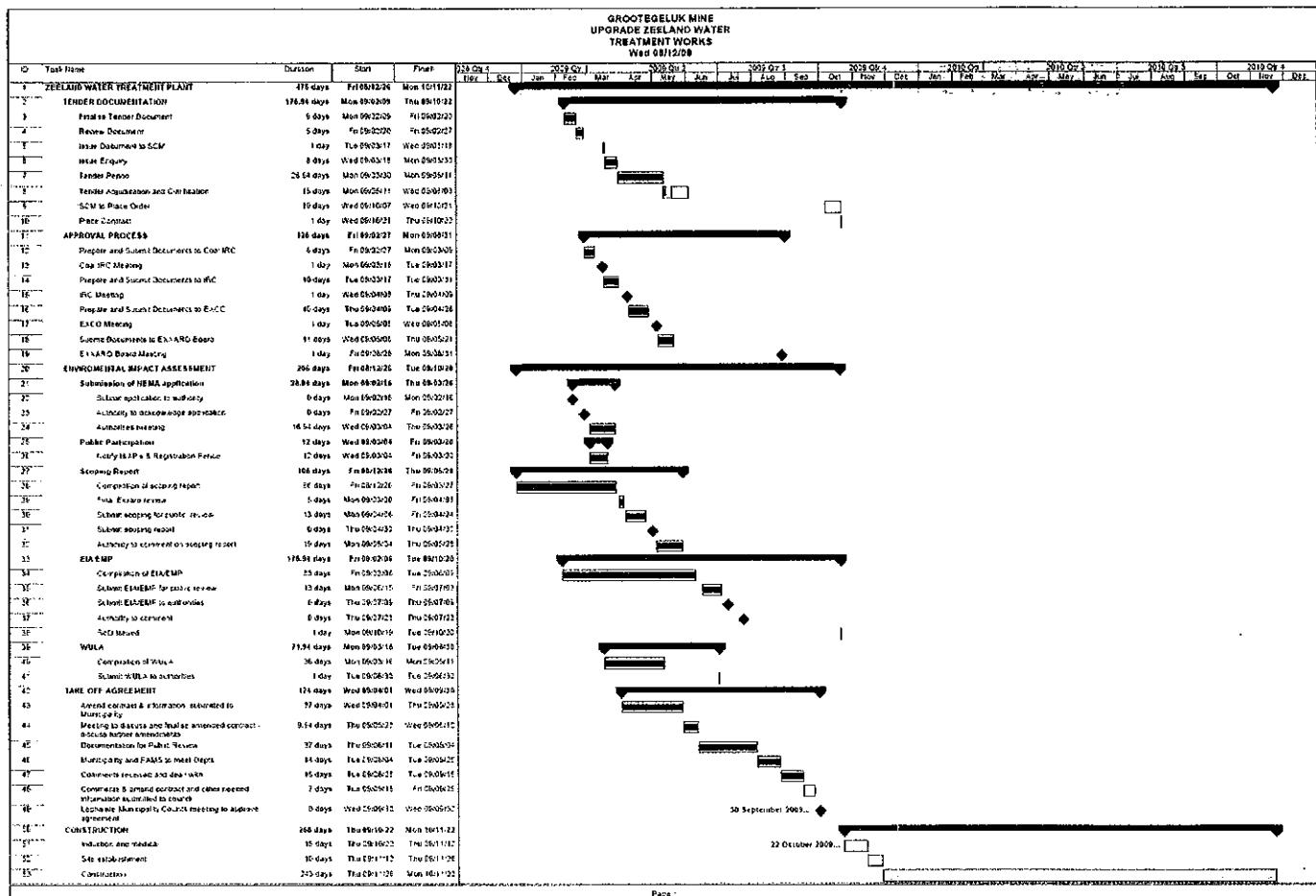
Date	Design (Rands)	EIA (Rands)	Construction (Rands)	Interest Rate (WACC %)	Interest (Rands)	Cumulative Estimate (Rands)
2007 June	487,612.61	-	-	12.28%	4,989.90	487,612.73
July	-	-	-	12.28%	5,040.97	492,602.64
August	452,861.34	-	-	12.28%	9,726.83	950,504.95
September	-	-	-	12.28%	9,826.37	960,231.78
October	-	-	-	12.28%	9,926.93	979,985.08
November	-	-	-	12.28%	10,028.51	990,013.60
December	-	-	-	12.28%	10,131.14	1,000,144.73
2008 January	-	-	-	12.28%	10,234.81	1,401,822.82
February	391,442.77	-	-	12.28%	14,345.32	1,416,167.64
March	-	-	-	12.28%	14,492.12	1,691,923.84
April	261,264.09	-	-	12.28%	17,314.02	1,972,080.42
May	262,842.55	-	-	12.28%	17,314.02	1,994,742.91
June	-	-	-	13.79%	22,662.49	2,148,265.60
July	130,599.77	-	-	13.79%	22,922.92	2,192,662.75
August	-	19,710.00	-	13.79%	24,687.15	2,278,701.20
September	-	60,841.10	-	13.79%	25,197.35	2,352,756.07
October	-	47,868.80	-	13.79%	26,186.07	2,425,324.33
November	-	42,668.65	-	15.25%	29,899.61	2,469,568.16
December	-	13,422.00	-	15.25%	30,821.83	2,531,449.96
2009 January	-	30,497.70	-	15.25%	31,384.10	2,607,486.30
February	-	43,865.83	-	15.25%	32,170.51	2,761,989.16
March	-	121,366.06	-	15.25%	33,136.81	2,825,466.89
April	-	28,377.45	-	15.25%	35,100.28	2,971,373.86
May	-	110,000.00	-	15.25%	35,906.98	3,116,039.89
June	-	110,000.00	-	14.00%	34,666.03	3,865,939.85
July	663,546.16	50,000.00	-	14.00%	36,353.80	3,946,205.09
August	-	35,162.61	-	14.00%	45,102.63	3,992,244.15
September	-	-	-	14.00%	46,039.06	4,038,820.33
October	-	-	-	14.00%	46,576.18	4,085,939.91
November	-	-	-	14.00%	47,119.57	4,781,476.57
December	-	-	647,867.37	14.00%	47,669.30	10,400,540.27
2010 January	-	-	5,563,279.81	14.00%	55,783.89	17,148,496.58
February	-	-	6,626,616.67	14.00%	121,339.64	25,088,687.67
March	-	-	7,740,125.29	14.00%	200,065.79	33,945,481.73
April	-	-	8,564,092.70	14.00%	292,701.36	43,480,356.39
May	-	-	9,138,844.04	14.00%	396,030.62	53,496,789.26
June	-	-	9,509,162.05	14.00%	507,270.82	63,791,402.49
July	-	-	9,670,484.02	14.00%	624,129.21	74,160,627.67
August	-	-	9,624,992.16	14.00%	744,233.03	84,406,178.52
September	-	-	9,380,343.53	14.00%	865,207.32	94,341,599.97
October	-	-	8,950,682.70	14.00%	984,738.75	103,796,879.04
November	-	-	8,354,627.07	14.00%	1,100,652.00	112,624,092.25
December	-	-	7,616,249.63	14.00%	1,210,963.59	112,624,092.25
Total end Dec '10	2,650,169.30	713,780.20	101,387,367.03			

Auditor's Report on Exxaro's Weighted Average Cost of Capital ("WACC")**ANEXURE D****EXXARO WACC CALCULATIONS**

The Exxaro WACC calculations per the official financial management records are as follows:

	Jun 09	Nov 08	Jun 08	Jun 07
Assumptions				
Average tax rate	28.00%	28.00%	28.00%	29.00%
Inflation rate	5.00%	5.00%	5.00%	5.00%
Debt as % of capital	30.00%	30.00%	30.00%	30.00%
Cost of Debt				
Pre-tax cost of debt	12.00%	15.00%	12.00%	10.50%
Less: tax shield	- 3.36%	- 4.20%	- 3.36%	- 3.05%
After-tax cost of debt	8.64%	10.80%	8.64%	7.45%
Cost of Equity				
Risk-free rate (R157)	8.20%	9.06%	9.24%	7.60%
Beta-weighed market risk premium				
- Equity market risk premium	6.00%	6.00%	5.00%	5.00%
- Exxaro beta	1.35	1.35	1.35	1.35
Cost of equity	16.30%	17.16%	15.99%	14.35%
Weighed Average Cost of Capital				
Debt	2.59%	3.24%	2.59%	2.24%
Equity	11.41%	12.01%	11.19%	10.05%
WACC (nominal)	<u>14.00%</u>	<u>15.25%</u>	<u>13.79%</u>	<u>12.28%</u>

Project Schedule of Zeeland WTW Upgrade



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