

SCANNED

LOAN AGREEMENT

N°CZA6006 01 X

AMONG

**City of Johannesburg Metropolitan Municipality ("COJ"),**

a Category A municipality of the Republic of South Africa, as contemplated by section 155 of the Constitution of the Republic of South Africa, duly established by virtue of Notice No: 6766 dated 1 October 2000, read with section 14(2) of the South African Local Government: Municipal Structures Act, 1998 and Gauteng Provincial Gazette Extraordinary No 141 of 1 October 2000,

represented herein by **Mavela Dlamini**, COJ's accounting officer, for the time being (the "ACCOUNTING OFFICER"), as contemplated in section 60 of the South African Local Government: Municipal Finance Management Act, 56 of 2003 ("MFMA") (or such other person to whom the ACCOUNTING OFFICER has delegated such requisite powers in terms of section 106(1)(a) of the MFMA),

acting in such capacity and pursuant to the powers granted to him under section 46(2)(b) of the MFMA and in accordance with the resolution of the municipal council of COJ in terms of section 46(2)(a) of the MFMA, dated 8 December, 2005 authorising the obtaining of a loan,

OF THE FIRST PART,

**CALYON SOCIÉTÉ ANONYME ("CALYON"),**

a French legal entity having a share capital of EUR 3,435,953,121 with its registered office located at 9, quai du Président Paul Doumer, 92920 Paris La Défense cedex, France, registered under the n° SIREN 304 187 701 at the Registre du Commerce et des Sociétés of Nanterre

represented herein by **Serge de Beaufort**, Senior Country Officer of Calyon South African Branch and **Antoine Castel**, Head of Capital Markets of Calyon South African Branch

acting in such capacity and pursuant to the powers delegated to them by **Edouard Esparbès**, CALYON's Chief Executive Officer,

OF THE SECOND PART,

AND

**AGENCE FRANÇAISE DE DEVELOPPEMENT ("AFD"),**

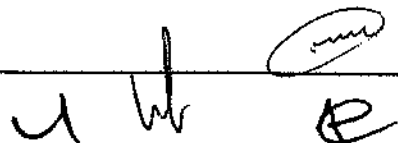
a public industrial and commercial institution having its head office in France at Paris XII°, 5 rue Roland Barthes registered at the Companies Register of Paris under the number B 775 665 599, represented by **Vincent Rousset**, its Director in Johannesburg,

acting in such capacity and in accordance with the powers conferred for such purpose, pursuant to decision n°C20050180 of the Supervisory Board of the said AFD dated 6 October 2005,

OF THE THIRD PART,

IT IS HEREBY AGREED AS FOLLOWS:

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**AGREEMENT**

The PARTIES elect that their obligations shall be defined by the provisions set forth hereinafter and in the SCHEDULES that are made an integral part hereof. The following provisions together with the SCHEDULES shall be deemed to form a single instrument, hereinafter referred to as the "Present Agreement".

**PREAMBLE**

- A. COJ's Treasury Department requested proposals from potential funders for the PROJECT through newspapers advertisements in October 2005.
- B. COJ has, pursuant to the public tender process, resolved to procure from AFD the LOAN. Because of certain statutory and other restrictions imposed on (i) AFD not to lend in Rand and (ii) COJ not to borrow in any currency other than Rand or indexed to, or affected by, fluctuations in the value of the Rand against any foreign currency, AFD has requested COJ to consider Calyon's participation as LENDER through which funding provided by AFD would be made available to COJ, due to Calyon's entrenched presence in the South African market.
- C. Based on discussions among Calyon, COJ and AFD, the PARTIES have agreed that the financing of the PROJECT would be structured through a series of loans. The first loan would be a loan denominated in Euros from AFD to Calyon (the "AFD-CALYON LOAN"), on the express understanding that Calyon would utilise the proceeds of the AFD-CALYON LOAN to then disburse the second loan (the "LOAN") to the BORROWER, on AFD's Instructions, via Rand-denominated financing.
- D. It is agreed that the structure for the financing of the PROJECT is designed to overcome the aforementioned restrictions imposed on AFD and COJ. The PARTIES agreed that the LOAN is not to and will not result in any exposure for the BORROWER to currency volatility at any stage during the currency of the Present Agreement.
- E. Calyon has pursuant to the loan agreement governing the AFD-CALYON LOAN agreed to act as the LENDER in relation to the LOAN on the terms and conditions of the Present Agreement. The PARTIES agree that notwithstanding this all credit risks attaching to the LOAN would vest in AFD, subject to the terms and conditions of the AFD-CALYON FUNDING AGREEMENT and the Present Agreement.
- F. In addition to the involvement of AFD as the lead arranger of finance in respect of the PROJECT, AFD will act under a specific mandate as the agent of the LENDER in the administration of certain aspects of the LOAN, in accordance with and subject to the terms and conditions detailed in clause 15 hereafter.

Wherever used in the Present Agreement, unless the context otherwise requires, the term:

"AFD" shall have the meaning ascribed to that term on the cover page of the Present Agreement;

"AFD-CALYON FUNDING AGREEMENT" shall mean the funding agreement entered into or to be entered into between the LENDER and AFD, on or about the date of the Present Agreement, in terms of which AFD undertakes to provide funding to the LENDER for purposes of granting the LOAN to the BORROWER, on the terms and conditions set out in that agreement;

"AUTHORISATIONS" shall mean any consent, registration, filing, agreement, notarisation, certificate, licence, approval, permit, authority, or any exemption from the aforesaid, by, with or from any

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	AUTHORITY, which is required from time to time in respect of the PROJECT or which has any impact (whether direct or indirect) on the PROJECT;
"AUTHORITY"	shall mean any government (whether national, provincial or local), government department (whether national, provincial or local), governmental, administrative, fiscal or judicial authority, body, court, commission, tribunal, registry or any state owned or controlled entity that performs governmental functions;
"BORROWER"	shall mean COJ;
"BUSINESS DAY(S)"	shall mean any day, excluding Saturdays, Sundays and official public holidays in the Republic of South Africa;
"CALYON"	shall have the meaning ascribed to that term on the cover page of the Present Agreement;
"CO-FINANCING ENTITY"	shall mean any provider of financing for the PROJECT, except the LENDER and AFD, approved by the LENDER acting reasonably and, in particular: <ul style="list-style-type: none"><li>- it does not appear on United Nations, European Union or French embargo or anti-terrorism lists; and</li><li>- its financing resources for the PROJECT are not of illicit origin.</li></ul>
"COMPENSATORY INDEMNITY"	shall mean that additional amount payable by the BORROWER to the LENDER in the event of the acceleration of the LOAN by the LENDER pursuant to the BORROWER breaching its obligations under the Present Agreement, as detailed in Clause 13 of the Present Agreement;
"EFFECTIVE DATE"	shall mean the first BUSINESS DAY after the date on which all the SUSPENSIVE CONDITIONS have been met or waived, as the case may be;
"ENVIRONMENTAL AUTHORISATIONS"	shall mean any and all AUTHORISATIONS issued by any AUTHORITY in respect of or under any ENVIRONMENTAL LAW, and including (without limitation) any record of decision and any AUTHORISATIONS issued under the South African National Heritage Resources Act, 25 of 1999 and/or the South African World Heritage Convention Act, 49 of 1999;
"ENVIRONMENTAL LAWS"	shall mean all LAWS that deal with any aspect of the environment and/or any impact thereon, including (without limitation) the following South African legislation: the Water Act, 54 of 1956, the National Water Act, 36 of 1998, the Water Services Act, 108 of 1997, the Environment Conservation Act, 73 of 1989, the National Environmental Management Act, 107 of 1998, the Atmospheric Pollution Act, 45 of 1965, the Hazardous Substances Act, 15 of 1973, the National Heritage Resources Act and the World Heritage Convention Act;
"ENVIRONMENTAL MANAGEMENT PLAN"	shall mean the environmental management plan that the BORROWER and/or JOHANNESBURG WATER (as the case may be) may be required to prepare and implement from time to time in terms of any ENVIRONMENTAL AUTHORISATION issued by an AUTHORITY;

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**"ENVIRONMENTAL MANAGEMENT SYSTEM"**

shall mean the environmental-management system that may be required from time to time to be prepared and implemented pursuant to an ENVIRONMENTAL MANAGEMENT PLAN and any ENVIRONMENTAL AUTHORISATION issued by an AUTHORITY;

**"EVENT OF DEFAULT"**

shall mean the occurrence of any of the events or circumstances detailed in Clauses 13.1, 13.2 and/or 13.3;

**"EXTRAORDINARY COMMERCIAL COSTS"**

shall mean any commission, charge or expense not detailed in the PROJECT CONTRACTS or which does not result from an independent and valid agreement referred to in the PROJECT CONTRACTS, any commission, charge or expense which is not in consideration of an actual and legitimate service provided, any commission, charge or expense to be paid in countries considered low tax jurisdictions or tax havens, any commission, charge or expense paid to a beneficiary which is not clearly identified or to a company that the LENDER reasonably considers as a front company set up to disguise the intended ultimate beneficiary of such commission, charge or expense;

**"FINANCING PLAN"**

shall mean the manner in which the BORROWER shall finance the cost of constructing and implementing the PROJECT, as outlined in SCHEDULE II to the Present Agreement;

**"FULFILMENT DATE"**

shall mean the date specified in Clause 3.1 for fulfilment of the SUSPENSIVE CONDITIONS (as may be extended pursuant to Clause 3.2);

**"JIBAR"**

shall mean, at any date, the mid-market rate for deposits in RAND with South African Banks for a period of 3 months which is polled and published by SAFEX (or any successor) at 11:00 Johannesburg time on that date. If for any reason such rate is not quoted on any date, the rate shall be the arithmetic mean of the mid-market deposit rates for RAND deposits for a period of 3 months in the Johannesburg inter-bank acceptance market as quoted by the 4 largest South African Banks at approximately 11:00 Johannesburg time on that date. In the event of any dispute, JIBAR shall be the rate certified as such by any director or manager of the LENDER whose appointment and authority it shall not be necessary to prove and whose certificate shall, in the absence of manifest error, be *prima facie* proof thereof;

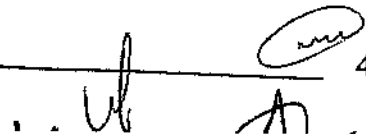
**"JOHANNESBURG WATER"**

shall mean Johannesburg Water (Proprietary) Limited, a company established in accordance with the company laws of the Republic of South Africa with Registration Number 2000/029271/07 and which has as its main business the provision of water services (as defined in the Water Services Act No 108 of 1997) to *inter alia* the Greater Johannesburg Metropolitan area on behalf of the BORROWER. JOHANNESBURG WATER has its head office located at 58 Frederick Street, Marshalltown in Johannesburg;

**"LAWS"**

shall mean all South African legislation, statutes, regulations, directives, orders, notices, promulgations and other decrees of any AUTHORITY, which have the force of law or which it

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would be an offence not to obey, and the South African common law, as amended, replaced, re-enacted, restated or re-interpreted from time to time;

"LENDER"	shall mean CALYON;
"LOAN"	shall mean the principal amount of the financing granted and advanced to the BORROWER under Clauses 2 and 5.1, respectively of the Present Agreement by the LENDER;
"MFMA"	shall have the meaning ascribed to that term on the cover page of the Present Agreement;
"MUNICIPAL ENTITY"	shall have the meaning ascribed to that expression in the MFMA;
"PARTIES"	shall mean the parties to the Present Agreement, namely AFD, CALYON and COJ, and "PARTY" shall mean any of them;
"PAYMENT DATE(S)"	shall mean the due date(s) detailed in Clause 5.2.1, as set out in SCHEDULE III;
"PROJECT CONTRACTS"	shall mean the agreements entered into or to be entered into by or on behalf of the BORROWER and/or JOHANNESBURG WATER in respect of the construction, operation and maintenance of the PROJECT;
"PROJECT"	shall mean the Operation Gcin'amanzi to be implemented by JOHANNESBURG WATER, which project aims to address the severe water supply problems experienced in the area of Soweto as further outlined in SCHEDULE I and II;
"RAND"	shall mean the lawful currency of the Republic of South Africa, from time to time;
"SCHEDULE(S)"	shall mean the schedules appended to the Present Agreement which provide, in particular, the description of the PROJECT, the projected capital cost of the PROJECT and the FINANCING PLAN, the LOAN repayment schedule, the draft form of the legal opinion required in terms of Clause 3 of the Present Agreement, and the notice of transfer contemplated by and detailed in Clause 20 of the Present Agreement;

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- "SDR"** shall mean the Special Drawing Rights, the value of which (i) is calculated by the International Monetary Fund ("IMF") by reference to a basket of currencies and (ii) is published in U.S. dollars by the International Monetary Fund on its internet site; the Special Drawing Rights being an international reserve asset, created by the IMF in 1969 to supplement the existing official reserves of member countries, which are allocated to member countries in proportion to their IMF quotas; the Special Drawing Rights also serving as the unit of account of the IMF and some other international organisations;
- "SECONDARY AGREEMENT"** shall mean the loan or donation that the BORROWER shall advance or grant (as the case may be) to JOHANNESBURG WATER in an amount equivalent to the amount of the LOAN for exclusive use by JOHANNESBURG WATER in the implementation of the PROJECT;
- "SIGNATURE DATE"** provided that the Present Agreement has been signed by all the PARTIES, shall mean the date on which the Present Agreement is signed by the last PARTY to do so;
- "SUSPENSIVE CONDITIONS"** shall mean the suspensive conditions detailed in Clause 3;
- "TAX"** shall be construed so as to include any tax, levy, impost, duty or other charge of a similar nature (including any penalty or interest payable in connection with any failure to pay or delay in paying of any of the same);
- "ZAR PRIME RATE"** shall mean the publicly-quoted nominal rate of interest per annum charged by ABSA Bank Limited from time to time at any relevant time, at which that bank lends money on unsecured overdraft, which interest rate shall be calculated as a nominal annual rate, compounded monthly in arrear, on a 365-day year, irrespective of whether or not the year in question is a leap year. A certificate from any manager of that bank, whose appointment or authority need not be proved, as to the prime rate at any time and the usual way in which it is calculated and compounded at such time shall, in the absence of clerical or manifest error, be prima facie proof of the prime rate.

In the Present Agreement:

- (i) unless the context otherwise requires, words denoting the singular include the plural and *vice versa*, words denoting natural persons include corporations, partnerships and other legal persons (whether or not having separate legal personality);
- (ii) references to a person include such person's permitted successors, transferees, cessionaries and/or assignees;
- (iii) a reference to a specified Clause or SCHEDULE shall be construed as a reference to that specified Clause or SCHEDULE of the Present Agreement;
- (iv) a reference to an agreement shall be construed as a reference to such agreement as it may be amended, varied, supplemented, novated or assigned from time to time;
- (v) any reference to legislation or a statute shall be a reference to such legislation or statute as amended, varied or re-enacted from time to time;

capital expenditure in relation to the PROJECT shall be undertaken by COJ advancing to JOHANNESBURG WATER the proceeds of the SECONDARY AGREEMENT for exclusive use in the implementation of the PROJECT, as contemplated herein.

**CLAUSE 3 – SUSPENSIVE CONDITIONS**

- 3.1 The rights and obligations of the Parties in terms of the Present Agreement (other than those contained in this Clause 3, the Preamble and definition Clause and Clauses 1, 4, 22, 24, 26, 27, 28, 29, 30 and 31 which commence and become of full force and effect on the SIGNATURE DATE) are subject to and conditional upon fulfilment of the following SUSPENSIVE CONDITIONS, by no later than 31<sup>st</sup> August 2006 ("FULFILMENT DATE") or such later date that the PARTIES may agree in terms of this Clause 3:
- 3.1.1 delivery to the LENDER of a legal opinion prepared by a qualified lawyer selected in agreement with the LENDER in conformity with the form of legal opinion attached as SCHEDULE IV and considered satisfactory by the LENDER in its sole and absolute discretion;
- 3.1.2 delivery to the LENDER of a certified copy of a written authorisation of the South African Reserve Bank in which it authorises the BORROWER to enter into the Present Agreement, to raise the LOAN and to incur all liabilities envisaged in the Present Agreement, either unconditionally or on terms and conditions that meet with the approval of the PARTIES, such approval not to be unreasonably withheld or delayed;
- 3.1.3 delivery to the LENDER of a certified copy of the environmental impact assessment report in respect of the PROJECT together with certified copies of all ENVIRONMENTAL AUTHORISATIONS required in respect of the PROJECT, and any ENVIRONMENTAL MANAGEMENT PLAN, or proof reasonably satisfactory to the LENDER that the BORROWER and/or JOHANNESBURG WATER, as the case may be, has been exempted from any such requirement;
- 3.1.4. delivery to the LENDER of certificate issued by the ACCOUNTING OFFICER, on behalf of the BORROWER, confirming that:
- 3.1.4.1 all the requirements contained in section 46 of the MFMA have been complied with in respect of the Present Agreement;
- 3.1.4.2 other AUTHORISATIONS required in terms of any applicable LAW to implement the PROJECT have been obtained;
- 3.1.4.3 all applicable procurement legislation, including without limitation, the Municipal Supply Chain Management Regulations (published under General Notice 868 in Government Gazette 27636 of 30 May 2005) and the BORROWER'S Supply Chain Management Policy have been complied with in respect of the LAW;
- 3.1.5 delivery to the LENDER of a certified copy of the resolution of the Council of the BORROWER approving the Present Agreement in terms of section 46(2)(a) of the MFMA;
- 3.1.6 delivery to the LENDER of evidence reasonably satisfactory to the LENDER that the PROJECT costs, as detailed in SCHEDULE II, are fully financed; i.e. that, in addition to the LOAN, either a BORROWER supplemental and binding budget decision to apply more funds to the PROJECT from its own resources, or a third party supplemental and binding financing made available either by a CO-FINANCING ENTITY, results in the availability to the BORROWER of sufficient resources allocated to the financing of the PROJECT up to all of the PROJECT anticipated costs, as detailed in SCHEDULE II;
- 3.1.7 delivery to the LENDER of the detailed planning of the works pertaining to the PROJECT;

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- 3.1.8 delivery to the LENDER of evidence reasonably satisfactory to the LENDER that the public tender process in relation to the LOAN was conducted according to all applicable procurement legislation.
- 3.2 The Parties may, by written agreement before the FULFILMENT DATE, extend the FULFILMENT DATE to a mutually agreed date.
- 3.3 The SUSPENSIVE CONDITIONS are for the benefit of the LENDER who shall be entitled, in its sole and absolute discretion, to waive any or all of the SUSPENSIVE CONDITIONS by giving written notice thereof to AFD and the BORROWER prior to the FULFILMENT DATE.
- 3.4 Each of the PARTIES shall use its reasonable endeavours and shall take all such steps and render all such assistance as may be reasonably necessary to procure fulfilment of the SUSPENSIVE CONDITIONS, to the extent that it is within its power to do so.
- 3.5 If any of the SUSPENSIVE CONDITIONS is not fulfilled by the FULFILMENT DATE, the rights and obligations of the PARTIES (save for those contained in this Clause 3, the Preamble and definition Clause and Clauses 1, 4, 22, 24, 26, 27, 28, 29, 30 and 31 of the Present Agreement which shall continue to be of force and effect) shall not come into force or effect and the PARTIES shall be restored, as nearly as may be possible to the positions in which they would have been had the Present Agreement not been entered into. No PARTY shall have a claim against any of the others as a result of the failure of a SUSPENSIVE CONDITION, except for such claims, if any, as may result from a breach of the provisions of this Clause 3.

#### CLAUSE 4 – REPRESENTATIONS AND WARRANTIES OF THE BORROWER

The BORROWER represents and warrants to each of the LENDER and AFD that:

- it is a Category A municipality in terms of section 155(1) of the Constitution;
- it has been duly established in terms of Notice No. 6766, promulgated in the Provincial Gazette Extraordinary of 1 October 2000 in terms of section 12(1) read with section 14(2) of the Local Government Municipal Structures Act, 1998, as amended;
- it has been duly resolved pursuant to a valid resolution of its Council to obtain the LOAN in accordance with the terms and conditions set out in the Present Agreement;
- the signature and performance of the Present Agreement will not constitute a violation or a default under any contract to which it is a party nor under LAW;
- it has the power to enter into and perform the Present Agreement, and all the AUTHORISATIONS required of JOHANNESBURG WATER and the BORROWER, under applicable LAWS to implement the PROJECT and the Present Agreement have been obtained and are valid;
- it has fully complied with all statutory, regulatory and/or other requirements and procedures that regulate or are otherwise applicable to the long-term borrowing and procurement activities of local authorities in South Africa, including without limitation, sections 160 and 217 of the Constitution and section 46 of the MFMA;
- the BORROWER and JOHANNESBURG WATER have validly obtained, hold and, at all relevant times during the term of the Present Agreement, shall continue to hold all AUTHORISATIONS required of them for purposes of implementing and carrying out the PROJECT, including without limitation all ENVIRONMENTAL AUTHORISATIONS and all AUTHORISATIONS required under the Water Services Act, 108 of 1987;
- the financial projections contained in SCHEDULE II have been prepared on the basis of recent historical information and on the basis of reasonable assumptions;

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- nothing has occurred or been omitted from the SCHEDULE I and SCHEDULE II and no information has been given or withheld that may result in the information contained in SCHEDULE I and SCHEDULE II being untrue or misleading in any material respect;
- it has and will for the duration of the Present Agreement continue to make proper and adequate provision in its budgets, in accordance with the requirements of the MFMA, for the due and timely payment of all financial obligations of the BORROWER in terms of the Present Agreement, including all repayments of capital and payments of interest;
- no litigation, arbitration or administrative proceeding or claim which may by itself or together with any other such proceeding or claim either have a material adverse effect on the BORROWER, its assets or financial condition or adversely affect its ability to observe or perform its obligations under the Present Agreement and the transactions contemplated thereby, is presently in progress or, to the best of its knowledge and belief, is pending or threatened against it or any of its assets;
- the audited annual financial statements of the BORROWER for the year ended 30 June 2005 were prepared in accordance with generally recognised accounting practice and otherwise in accordance with Chapter 12 of the MFMA, consistently applied, except as disclosed therein, and fairly present the financial position of the BORROWER as at the date thereof and the results of the operations and changes in the financial position of the BORROWER for the period, in respect of which they have been prepared;
- since the date of the last audited annual financial statements of the BORROWER, there has been no change (nor any development or event involving a prospective change of which the BORROWER is, or might reasonably be expected to be, aware) which is materially adverse to the condition (financial or otherwise), prospects, results of operations or general affairs of the BORROWER, save as disclosed in the audited financial statements of the Borrower for the financial year ended 30 June 2005;
- the BORROWER is not in breach of or in default under any agreement to which it is a PARTY or which is binding on it or any of its assets or revenues, which has not been notified to the LENDER and AFD and which breach or default is likely to be material in the context of the Present Agreement;
- no event has occurred or circumstance arisen which, had the Present Agreement already been entered into, might (whether or not with the giving and/or the passage of time and/or the fulfilment of any other requirement) constitute a breach by the BORROWER of the Present Agreement;
- all funds allocated to the financing of the PROJECT, save for the proceeds of the LOAN and for the proceeds of the financing facilities, which may be made available by a CO-FINANCING ENTITY (including in the form of the SECONDARY AGREEMENT), will have been properly provided for in the BORROWER's budget in accordance with all applicable LAWS;
- it shall procure that JOHANNESBURG WATER shall utilise the proceeds of the SECONDARY AGREEMENT solely for purposes of financing the costs of the PROJECT; and
- neither the BORROWER nor JOHANNESBURG WATER is entitled to claim for itself or in respect of any of its assets immunity from suit, execution, attachment or other legal process in South Africa.

## CLAUSE 5 – MANAGEMENT OF THE LOAN AND INTEREST

### 5.1 MANAGEMENT IN A SINGLE DISBURSEMENT

It is expressly agreed among the PARTIES that the LOAN shall be disbursed on the date which is three BUSINESS DAYS after the EFFECTIVE DATE by direct transfer to the bank account opened in the name of the BORROWER and defined in Clause 6.

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Therefore, the signature of the Present Agreement by the PARTIES is deemed to constitute, as concerns the BORROWER, an irrevocable disbursement request by the BORROWER of the whole LOAN being made available to the BORROWER by the LENDER under the Present Agreement.

## 5.2 INTEREST

### 5.2.1 INTEREST DUE

All amounts outstanding and due by the BORROWER to the LENDER, from time to time, pursuant to the LOAN, shall bear interest at a nominal rate equal to JIBAR less 35 basis points; such rate being 7.874 as at the SIGNATURE DATE.

Interest payments on the LOAN shall be due and payable in arrears on the PAYMENT DATES, being those dates falling on the last BUSINESS DAY of each quarterly period, it being recorded that:

- for the purposes of this Clause 5.2.1, a "quarterly period" shall be any period of 3 consecutive calendar months during the term of the Present Agreement which ends on 31 March, 30 June, 30 September and 31 December;
- notwithstanding any other provision to the contrary, the first PAYMENT DATE shall be on 30 September 2006;
- the date of final repayment by the BORROWER of all amounts due and owing to the LENDER under the Present Agreement shall, notwithstanding that such day may not fall on the last BUSINESS DAY of a quarterly period, be deemed to be a PAYMENT DATE.

JIBAR applicable for each quarterly period shall be noted two BUSINESS DAYS prior to the first day of each quarterly interest period, and each period shall commence on the day following the PAYMENT DATE.

### 5.2.2 CALCULATION OF INTEREST

For the purpose of calculating interest payable on the outstanding amount of the LOAN, as contemplated in Clause 5.2.1 a year shall be deemed to consist of 365 days.

#### 1° Interest on principal

Subject to 2, interest shall be calculated at the rate referred to in Clause 5.2.1, initially based on the actual number of days elapsed, between the day following the date of the disbursement of funds in accordance with Clause 5.1 and the first PAYMENT DATE immediately following such date, and thereafter between the date following a PAYMENT DATE and the immediately succeeding PAYMENT DATE, both dates inclusive.

#### 2° Late payment interest on all amounts due and unpaid

Should the BORROWER fail to make full or timeous payment of any amount due and payable in terms of the Present Agreement as and when due, the LENDER shall be entitled, without prejudice and in addition to its other rights and remedies under the Present Agreement or at LAW, to charge and receive, and the BORROWER shall pay, penalty interest on such unpaid amount, calculated from the due date for payment until the date on which such unpaid amount is actually paid in full (both dates inclusive) at the ZAR PRIME RATE plus 3%. All such penalty interest shall be calculated, capitalised and compounded monthly in arrear.

## CLAUSE 6 – PLACE OF PERFORMANCE AND SERVICE OF THE LOAN

°/ All amounts payable in terms of the Present Agreement shall be paid and settled in RAND.

°/ Subject to the terms and conditions of Clause 5.1, the funds to be made available to the BORROWER under Clause 5.1 of the Present Agreement shall be paid to the BORROWER by

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way of electronic transfer by the LENDER to the following bank account of the BORROWER:

Bank: ABSA Bank Ltd  
Branch: Public Sector Gauteng West  
Account number: 4054394859  
Account beneficiary: City of Johannesburg Metropolitan Municipality

3°/ Except in the case where a cession and delegation to AFD of all the LENDER's rights and obligations under the Present Agreement has occurred in accordance with the provisions of Clause 20:

- (i) the place of performance and service of the LOAN shall be Johannesburg.
- (ii) all the amounts payable by the BORROWER pursuant to the Present Agreement shall be paid to the LENDER by way of electronic funds transfer ("EFT") to the following bank account:

Bank: Calyon South African Branch;  
Branch: South African Branch;  
SWIFT: BSUIZAJJ;  
Account number: 208 217 621 5000 1 ZAR;  
Account beneficiary: CALYON PARIS,

or such other bank account as may be designated by the LENDER and notified in writing to the BORROWER from time to time.

4°/ With effect from the date that the BORROWER has been notified that a cession and delegation to AFD of all the LENDER's rights and obligations under the Present Agreement has occurred in accordance with the provisions of Clause 20:

- (i) the place of performance and service of the LOAN shall be Johannesburg;
- (ii) all the amounts payable by the BORROWER pursuant to the Present Agreement shall be paid by way of EFT to the following bank account opened by AFD:

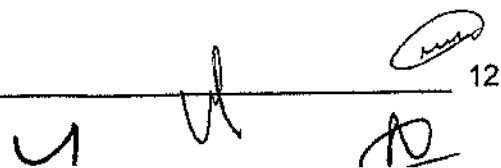
Bank: Nedbank;  
Branch: Sandton;  
Branch number: 197005;  
Account number: 1970-576057;  
Account beneficiary: Agence Française de Développement,

or such other bank account as may be designated by AFD and notified in writing to the BORROWER from time to time, provided however that the payment by the BORROWER to AFD into such other bank account does not result in the BORROWER violating South African exchange control laws and regulations or any other applicable LAWS.

5°/ All payments made to the LENDER in terms of the Present Agreement shall be made in immediately available freely transferable funds by EFT free of the cost of transfer of funds and without any deduction or set-off or counter-claim of whatsoever nature, in RAND, and otherwise in accordance with the written payment instructions of the LENDER from time to time, provided however that any such written instructions shall have been received by the BORROWER no later than 7 (seven) BUSINESS DAYS prior to the relevant PAYMENT DATE .

6°/ The PARTIES agree to co-operate with each other in reviewing the performance of their obligations under the Present Agreement once every three years; provided that this Clause shall not entitle a PARTY to terminate the Present Agreement on grounds other than those contemplated in Clause 13 of the Present Agreement, and that the undertakings in this Clause 6.6 shall not require the PARTIES to deal with each other otherwise than on an arm's -length basis.

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**CLAUSE 7 – INCIDENTAL EXPENSES**

- 1° The following incidental expenses shall be borne and paid by the BORROWER:
- a) all costs, charges and other expenses reasonably necessary in respect of or in connection with the execution and implementation of the Present Agreement paid or payable by the LENDER, including in particular stamp and registration duties and all costs, charges and other expenses incurred in respect of or in connection with legal advice and the issuing of legal opinions required by and for purposes of the Present Agreement;
  - b) the fees and transfer costs, if any, of the funds disbursed by the LENDER to the BORROWER in terms of Clause 5.1, as well as the fees and transfer costs, if any, arising from the payment by the BORROWER to the LENDER of all amounts owing under the LOAN;
  - c) costs, calculated on a scale as between attorney and own client, of all legal action, including the institution and carrying out of legal proceedings against the BORROWER, incurred by the LENDER for purposes of enforcing its rights under the Present Agreement unless otherwise ordered by application of an arbitration decision or of a court decision rendered pursuant to the provisions of Clauses 22 or 30 of the Present Agreement;
  - d) all taxes, levies or duties whatsoever, including without limitation any penalties and interest in respect thereof, whether incurred on the SIGNATURE DATE or imposed subsequently by statute, which the LENDER may have to pay or may otherwise incur by reason of granting the LOAN to the BORROWER and/or earning and receiving interest income under the Present Agreement; except all taxes on the LENDER's interest income
- 2° If, for whatever reason, any incidental expenses to be paid by the BORROWER in terms of this Clause 7 are paid on behalf of the BORROWER by the LENDER, or if such expenses are paid on behalf of the BORROWER by AFD, whether pursuant to its mandate in terms of Clause 15 of the Present Agreement or for any other reason whatsoever, such expenses shall be debited to the account of the BORROWER kept by the LENDER for purposes of the Present Agreement, capitalised to the balance of all amounts outstanding under the Present Agreement and shall be payable by the BORROWER to the LENDER on the relevant PAYMENT DATES, provided that the BORROWER shall be entitled to require copies of invoices or other substantiating documentation evidencing the payment of such expenditure by the LENDER and/or AFD.

**CLAUSE 8 – ACCOUNTING RULES AND VALUE DATES**

- 1° All movements of funds pursuant to payments made in terms of the Present Agreement shall be made by means of electronic bank transfer.
- 2° All movements of funds pursuant to payments made in terms of the Present Agreement shall be debited or credited, as the case may be, to the BORROWER's account in the LENDER's books of account according to the following methods:
- a) the principal amount of the LOAN disbursed by the LENDER in terms of Clause 5.1 shall be debited for value on the date which is 3 (three) BUSINESS DAYS after the EFFECTIVE DATE;
  - b) incidental expenses, as contemplated in Clause 7, paid by the LENDER and/or AFD shall be debited for value on the date that such expenses are actually paid by the LENDER and/or AFD (as the case may be);
  - c) all amounts paid by the BORROWER to the LENDER in terms of the Present Agreement:

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- shall be credited for value on the date of receipt of such amounts if the transfer is credited to the bank account of the LENDER detailed in Clause 6.3 before or by close of business (Johannesburg time); or
- in all other cases, shall be credited for value on the BUSINESS DAY immediately following receipt of such amounts in the bank account of the LENDER detailed in Clause 6.3.

3°/ In all cases, interest due and payable by the BORROWER in terms of the Present Agreement shall be debited to the BORROWER's account in the LENDER's books of account, for value on the relevant PAYMENT DATE.

#### **CLAUSE 9 – DUE DATES**

For the avoidance of doubt, unless otherwise provided herein or agreed between the LENDER and the BORROWER all amounts of any kind whatsoever owed to or that may become owing to the LENDER under the Present Agreement, shall be payable to the LENDER on the relevant PAYMENT DATES.

#### **CLAUSE 10 – REPAYMENT**

The BORROWER shall repay to the LENDER the principal amount of the LOAN in 40 (forty) equal quarterly instalments, on the PAYMENT DATES.

The first instalment shall be due and payable on 30 September 2008, and the fortieth and last instalment shall be due and payable on 30 June 2018.

#### **CLAUSE 11 – APPLICATION OF REPAYMENTS**

All payments made by the BORROWER to the LENDER shall be applied to the amounts due in terms of the Present Agreement in order of maturity and then, in the following order of priority:

- 1) incidental expenses in terms of Clause 7;
- 2) penalty interest in terms of Clause 5.2.2;
- 3) interest in terms of Clause 5.2.1; and
- 4) the principal amount of the LOAN.

#### **CLAUSE 12 – PROHIBITION OF ANY PREPAYMENT OF THE LOAN**

The BORROWER shall not be entitled to make any prepayment of the principal amount outstanding in respect of the LOAN from time to time, whether by way of a partial prepayment or a prepayment of the whole amount so outstanding.

#### **CLAUSE 13 – BREACH AND ACCELERATION OF THE LOAN**

The LENDER may, by written notice to the BORROWER and without prejudice to any other rights that the LENDER may have in LAW (including the right to specific performance and the right to claim damages), cancel its commitment towards the BORROWER under the Present Agreement and declare all outstanding amounts under the LOAN to be immediately due and payable by the BORROWER under any of the following circumstances:

1°/ The BORROWER fails to pay any or all amounts of principal, interest, late payment or default interest or incidental expenses payable in terms of the Present Agreement unless:

- a) such failure to pay is caused by administrative or technical error; and
- b) payment is made within five 5 (five) BUSINESS DAYS of its due date.

2°/ The BORROWER breaches one or more of its contractual obligations under the Present Agreement (other than those referred to hereabove) and such breach, if capable of remedy, is not remedied to the satisfaction of the LENDER following receipt by the BORROWER of a notice from the LENDER requiring the BORROWER to remedy the breach within 30 (thirty) BUSINESS DAYS of the BORROWER's receipt of the aforesaid notice, save that the LENDER shall be under no obligation to deliver such notice to the BORROWER if:

- a) the BORROWER has applied any part of the proceeds of the LOAN for purposes other than those specified in Clause 2, unless otherwise agreed in writing between the BORROWER and the LENDER;
- b) any of the undertakings given or representations made by a third party in the scope of any document referred to in the CONDITIONS PRECEDENT becomes unenforceable or is shown to be materially inaccurate;
- c) the BORROWER breaches any of the provisions of Clause 16, in particular by incurring EXTRAORDINARY COMMERCIAL COSTS, by committing a corrupt practice or by failing to take all appropriate measures, to the reasonable satisfaction of the LENDER and AFD, to remedy any such practice.

3°/ Any of the following circumstances affects the PROJECT, whether as a result of any act or omission of JOHANNESBURG WATER or otherwise:

- a) the implementation of the PROJECT is suspended or postponed for a period exceeding six months, unless otherwise agreed in writing between LENDER and the BORROWER;
- b) the PROJECT is abandoned (through a cessation of operations and/or a cessation of the use of installations forming part of the PROJECT) or the termination of third party contracts renders the implementation and/or operation of the PROJECT unlikely in the reasonable opinion of the LENDER, acting in consultation with AFD;

4°/ Any of the following events occurs:

- a) the BORROWER has a final judgement obtained against it and such judgement remains unsatisfied for a period of 30 days after the BORROWER becomes aware of such judgement and the judgement creditor has or acquires the right to execute against any property of the BORROWER and the BORROWER fails to take timeous steps to appeal or rescind or stay such execution; or
- b) the BORROWER commits an act, which had it been a natural person would have constituted an act of insolvency as defined in the Insolvency Act, 1936 (as amended);
- c) any of the following events contemplated in Chapter 13 of the MFMA occurs in respect of the BORROWER:
  - a provincial intervention in terms of sections 136, 137 and/or 139 of the MFMA, or a national intervention in terms of section 150 of the MFMA, is implemented or threatened by any relevant AUTHORITY;
  - it is determined by the relevant AUTHORITY, in terms of section 138 of the MFMA, that the BORROWER experiences serious financial problems;

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- it is determined by the relevant AUTHORITY, in terms of section 140 of the MFMA, that the BORROWER is in serious or persistent material breach of its obligations to provide basic services or to meet its financial commitments;
  - it is requested that a financial recovery plan be prepared in respect of the BORROWER, as contemplated in section 141 of the MFMA;
  - a court application is lodged for an order to stay legal proceedings against the BORROWER, in terms of section 152 of the MFMA; and/or
  - a court application is lodged for extraordinary relief in respect of the BORROWER, in terms of section 153 of the MFMA;
- d) the BORROWER repudiates the Present Agreement;
- e) the BORROWER, in the reasonable opinion of the LENDER, is unable or ceases for any reason whatsoever to conduct its normal line of business in the ordinary and regular course;
- f) the BORROWER is unable to pay its debts, or a material part of any indebtedness of the BORROWER in respect of monies borrowed and guarantees given whether present or future, actual or contingent;
- g) the BORROWER ceases to carry on the whole or the material part of its business, other than in terms of a merger, amalgamation, consolidation, reconstruction or reorganisation required in terms of any LAWS;
- h) an attachment, execution or other legal process is levied, enforced, issued or sued out on or against any material assets of the BORROWER and is not discharged or stayed within 30 days;
- i) any security on or over any material asset of the BORROWER becomes enforceable and executable by virtue of default and any legally endorsed step (including the taking of possession, attachment or the appointment of a receiver, manager or similar person) is taken to enforce that security;
- j) the auditors of the BORROWER in any financial statements of the BORROWER published after the SIGNATURE DATE materially qualifies those annual financial statements in any respect or inserts a note in the supporting documents to that financial statement relating to any material irregularity; or
- k) a total or partial transfer or donation of the BORROWER's assets which affects the Borrower's capacity to repay the LOAN;
- l) the BORROWER is obliged, following an event of default under any other agreement, to make an accelerated payment of any other long or medium-term credit extended by the LENDER or by any other lender. For the purposes of this sub-clause, "long or medium-term credit" shall mean credit repayable over a period of 3 or more years;
- m) any material misrepresentations or omissions are shown to exist in respect of any supporting documentation or information provided by the BORROWER to the LENDER, whether on or before the SIGNATURE DATE or during the term of the Present Agreement;
- n) any event occurs which has or may have a material adverse effect on the BORROWER's financial situation and/or its ability to fulfil its payment obligations under the Present Agreement;
- o) amounts received either from a CO-FINANCING ENTITY, JOHANNESBURG WATER or the BORROWER for the PROJECT are of illicit origin;

- p) the existence of a business relationship between the BORROWER and/or JOHANNESBURG WATER and persons or entities which are on United Nations, European Union or French embargo or anti-terrorism lists is established or found to have been in existence after the SIGNATURE DATE;
- q) the proceeds of the LOAN are used to finance equipment or sectors which are subject to United Nations, European Union or French embargo;
- r) any company participating in the implementation of the PROJECT is on United Nations, European Union or French embargo or anti-terrorism lists;
- s) the maintaining of the Present Agreement becomes illegal, prohibited or impossible for either the LENDER, the BORROWER and/or AFD, by reason of a new legislative or regulatory provision or of the modification or interpretation thereof, which is made by an AUTHORITY whether such AUTHORITY is French, European or South African;
- t) any security conferred by any security agreement entered into from time to time by the BORROWER for the benefit of the LENDER in connection with the Present Agreement is avoided (for any reason), or ceases to be enforceable, or its value, in the reasonable opinion of the LENDER, is reduced, and is not replaced by security of equivalent value (in the LENDER's reasonable opinion) within 6 months or such longer period as may be agreed in writing after the date upon which such avoidance or unenforceability comes to the notice of the BORROWER.
- 5°/ Should an EVENT OF DEFAULT occur and the LENDER exercises its rights in terms of this Clause 13 by declaring all amounts outstanding in respect of the LOAN immediately due and payable by the BORROWER, the BORROWER shall, in addition to such accelerated payment, be liable to pay to the LENDER an amount equal to the COMPENSATORY INDEMNITY, which shall be calculated by multiplying the amount of such prepayment by the number of years remaining between the date on which such prepayment is made and the original maturity date of the LOAN (as provided for in SCHEDULE III) and by applying to the value so obtained the difference, if positive, in percentage terms, between:
- the interest rate applicable to the LOAN as detailed in Clause 5.2.1 plus 4 (four) per cent; and
  - the fixed rate, corresponding to JIBAR minus 35 basis points, that could be obtained in the South African capital market, on the date that such prepayment is to be made, in respect of a RAND-denominated loan equal to the value of all amounts then outstanding in respect of the LOAN, with an amortisation and repayment profile corresponding to the then outstanding repayments of the principal amount of the LOAN (as reflected in SCHEDULE III). An interest rate certified as such by any manager of the LENDER, whose appointment and authority it shall not be necessary to prove, shall, in the absence of manifest error be *prima facie* proof and binding upon the Parties and shall be sufficient for all purposes.
- 6°/ The requirement of full and immediate payment of all outstanding amounts in respect of the LOAN, including payment of the COMPENSATORY INDEMNITY, shall take effect from the date on which the aforesaid written notice is received by the BORROWER.
- 7°/ However, should the LENDER, in its absolute and sole discretion, decide to grant to the BORROWER a cure period, which cure period (unless another cure period if already provided in respect of the default in question) shall not exceed a maximum period of 30 (thirty) BUSINESS DAYS, the requirement of full and immediate payment of all outstanding amounts in respect of the LOAN, including payment of the COMPENSATORY INDEMNITY, shall take effect if, upon expiry of such cure period, the BORROWER has failed to remedy the relevant EVENT OF DEFAULT.

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**SECTION II - PERFORMANCE AND FOLLOW-UP**

**CLAUSE 14 – USE OF THE LOAN**

The funds made available to the BORROWER under the LOAN shall be advanced to JOHANNESBURG WATER pursuant to the SECONDARY AGREEMENT and the BORROWER warrants and shall procure that those funds are exclusively earmarked by JOHANNESBURG WATER for financing expenses pertaining to the PROJECT (according to the break-down set out in SCHEDULE II).

Taxes or levies may not be financed using the funds of the LOAN and shall be financed by either the BORROWER or a CO-FINANCING ENTITY.

**CLAUSE 15 – MANDATE GIVEN BY THE LENDER TO THE AFD**

- 1°/ Subject to 5 below, the LENDER irrevocably mandates and appoints AFD to act as its agent in connection with the monitoring and enforcement of the rights of the LENDER detailed in Clauses 16, 17, 18, 19 and 21 of the Present Agreement. The LENDER authorises AFD to exercise the rights, powers, authorities and discretions specifically given to AFD under or in connection with Clauses 16, 17, 18, 19 and 21 of the Present Agreement, together with any incidental rights, powers, authorities and discretions.
- 2°/ The LENDER shall not be entitled to revoke the mandate or cancel the authorisation given to AFD in terms of Clause 15.1, except in case of gross negligence or wilful misconduct of AFD or AFD breaching any of its material obligations under the Present Agreement and fails to remedy such breach within 15 days following the receipt of written notice by the LENDER requiring AFD to do so.
- 3°/ For the avoidance of doubt, the mandate and authorisation of AFD shall be strictly limited to the rights, powers, authorities and discretions specifically given to AFD under or in connection with Clauses 16, 17, 18, 19 and 21 of the Present Agreement and any incidental rights, powers, authorities and discretions.
- 4°/ AFD shall promptly forward to the LENDER the original or a copy of any document which is delivered to or obtained by AFD pursuant to Clauses 16, 17, 18, 19 and 21 of the Present Agreement.
- 5°/ If AFD becomes aware of any EVENT OF DEFAULT in respect of Clauses 16, 17, 18, 19 and 21 of the Present Agreement, it shall promptly notify the LENDER. Notwithstanding the mandate and authorisation contemplated in 1 to 4 above only the LENDER may act against the BORROWER under Clause 13 of the Present Agreement in respect of an EVENT OF DEFAULT in relation to any obligations of the BORROWER under Clauses 16, 17, 18, 19 and 21.
- 6°/ All costs and legal fees incurred in respect of the administration of the LOAN under this mandate which are not to be borne by the BORROWER in terms of the Present Agreement, shall be for the account of AFD.
- 7°/ The BORROWER acknowledges and consents to the aforesaid mandate and appointment, to the fullest extent required in law, and undertakes to provide all reasonable co-operation and assistance, and to procure that JOHANNESBURG WATER provides all reasonable cooperation and assistance, required by AFD for the purposes of carrying out its obligations under the Present Agreement.

**CLAUSE 16 – AWARD AND PERFORMANCE OF CONTRACTS**

- 1°/ Subject to any applicable LAWS, including without limitation the MFMA, and the provisions of Clause 16 2°/, the BORROWER undertakes to apply, to the maximum extent reasonably

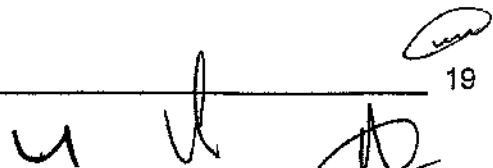
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possible, the principles of competition and transparency, pursuant to internationally recognised and OECD recommended standards for the award and making of contracts, in particular such principles that apply to the provision of information and pre-selection of potential suppliers, the content and publication of tender specifications, the evaluation of offers and the award of contracts.

The BORROWER undertakes, to the extent possible in terms of applicable LAW, to take steps to adapt locally applicable provisions concerning public procurement in respect of the PROJECT to such principles.

- 2°/ The BORROWER undertakes, without exception, to entrust or to ensure that JOHANNESBURG WATER entrusts performance of the works or services necessary for the implementation of the PROJECT to contractors presenting sufficient evidence of their capacity to satisfactorily perform their obligations, provided always that relevant South African engineering and/or building standards shall apply in determining compliance with such obligations.
- 3°/ The BORROWER undertakes to provide AFD with the following information in respect of all third PARTY contracts of a value exceeding SDR 700 000 that it considers entering into in respect of the PROJECT: the rules governing the making of such contracts, the deadlines for the presentation of bids, and the addresses of the persons or bodies to be contacted in respect of such bids. The BORROWER shall provide that information at such times as would allow AFD to give prior notification to the Development Aid Committee of the OECD at, by the latest, thirty full calendar days prior to the opening of the period for the submission of tenders to the BORROWER.
- 4°/ The BORROWER represents and warrants to the LENDER that no contract or order concluded or to be concluded with third-party contractors in respect of the PROJECT has given or will give rise to EXTRAORDINARY COMMERCIAL COSTS being incurred, paid or received by the BORROWER. The BORROWER shall provide to AFD all such information and supporting documents as AFD may reasonably request in respect of the terms on which contracts have been or are to be concluded with third-party contractors in respect of the PROJECT, and the performance by such third-party contractors of their obligations in terms of such contracts.
- 5°/ The BORROWER undertakes to ensure that the following Clauses be included in all PROJECT CONTRACTS financed by the proceeds of the LOAN executed after the Signature Date:
  - a) The parties represent that the negotiation, signature and performance of the contract and its related transactions have not, do not and will not give rise to the collection of EXTRAORDINARY COMMERCIAL COSTS.
  - b) The contractors appointed pursuant thereto undertake to transmit to JOHANNESBURG WATER and to the BORROWER full supporting documentation on the conditions of performance of such contracts, with the authority to transmit the same to the LENDER, at the LENDER's request.
  - c) Each party has not and will not propose, directly or indirectly, any benefits (offers, promises of gifts, gifts and the like) which constitute, or could constitute, the offence of corruption within the meaning of the OECD Convention of December 17, 1997 with respect to measures against corruption of foreign public officials.
- 6°/ The BORROWER undertakes to ensure that no company participating in the implementation of the PROJECT is on the United Nations, European Union or French embargo or anti-terrorism lists.
- 7°/ The BORROWER undertakes not to give or propose to give to any third party, to request from, or to obtain any promise, directly or indirectly, for its own benefit or for that of a counterparty, of any unfair advantage, either pecuniary or other, which constitutes or could constitute a corrupt practice within the meaning of the OECD Convention of December 17, 1997 with respect to measures against corruption of foreign public officials.

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- 8°/ The BORROWER shall procure that JOHANNESBURG WATER shall not give or propose to give to any third party, request from, or obtain any promise, directly or indirectly, for its own benefit or for that of a counterparty, of any unfair advantage, either pecuniary or other, which constitutes or could constitute a corrupt practice within the meaning of the OECD Convention of December 17, 1997 with respect to measures against corruption of foreign public officials.
- 9°/ The BORROWER shall procure that JOHANNESBURG WATER complies with all of the requirements detailed in this clause 16, as if it was a party to the Present Agreement.

#### CLAUSE 17 – PERFORMANCE AND FOLLOW-UP OF THE PROJECT

The BORROWER undertakes to:

- a) procure financing for all costs to be incurred in respect of the PROJECT which are not financed from the LOAN, including those costs resulting from any cost overruns from the forecasts contained in SCHEDULE II to the Present Agreement;
- b) procure that JOHANNESBURG WATER keep separate accounting books for the PROJECT following the accounting principles applicable to the BORROWER, identifying the operating expenses and revenues pertaining to the PROJECT;
- c) identify by a single accounting code the investment expenses charged on funds provided by the present LOAN;
- d) deliver on a quarterly basis to AFD a PROJECT progress report on the roll-out of the PROJECT dealing, in particular, with the reduction in water losses, water sales statistics, local labour employed, public participation and social issues, media and marketing, and other related matters and containing such other information as AFD, acting reasonably, may specify;
- e) deliver quarterly to AFD a quarterly report in relation to JOHANNESBURG WATER's activities;
- f) deliver annually to AFD an annual report relating to the fulfilment of the requirements of Service Appendix 9.1(1) of the Service Level Agreement entered in to between the BORROWER and JOHANNESBURG WATER for the Provision of Water and Wastewater Services to the City of Johannesburg;
- g) deliver annually, on the anniversary of the EFFECTIVE DATE, to AFD a technical and financial implementation report summarising the financial and technical data relating to each third-party contract concluded in respect of the PROJECT and financed by the LOAN;
- h) keep at its Seat, for a period of three years from the first disbursement of the LOAN in terms of Clause 5.1, a file containing for each contract concluded with a third-party contractor in respect of the PROJECT: (i) the report on the examination of the bids, (ii) the written agreement pertaining to the relevant contract; and (iii) the accounts and documentary proof evidencing expenses paid (including invoices, statements, payment certificates signed by such third-party contractor);
- i) provide AFD (if applicable) during the period in which any feasibility and/or technical studies are carried out, provisional and definitive reports drawn up by the relevant service providers and, after such studies are carried out, a general performance report;
- j) inform AFD of any decision or occurrence which could have a material effect on the organisation, implementation and operation of the PROJECT, and in particular of any modification to any contracts with third-party contractors related thereto, of the financial stability of the PROJECT, of its technical implementation as well as of the general context and the specific economic and industrial context of the sector in which the PROJECT is being implemented;

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- k) after the PROJECT has been completed, provide AFD with an overall report on its implementation, within six months following the completion of the PROJECT;
- l) authorise the LENDER and/or AFD to carry out follow-up and audit activities in order to examine the conditions in which the PROJECT is being implemented and operated. For such purpose, the BORROWER undertakes to receive the personnel carrying out such activities whose visits to inspect the site and all documents related thereto will take place with such frequency and under such conditions as shall be determined by the LENDER and/or AFD after consultation with the BORROWER and to procure that JOHANNESBURG WATER shall comply with these provisions and enable any above described follow-up and audit activities to take place;
- m) provide AFD with any financial and/or budgetary documents or decisions concerning the BORROWER and/or JOHANNESBURG WATER as well as any reasonably necessary information on the BORROWER and/or JOHANNESBURG WATER as AFD may request from time to time;
- n) send AFD, upon receipt of an AFD's request, any JOHANNESBURG WATER's corporate document, including any shareholders or management requests.

#### CLAUSE 18 – SPECIFIC UNDERTAKINGS OF BORROWER

The BORROWER undertakes:

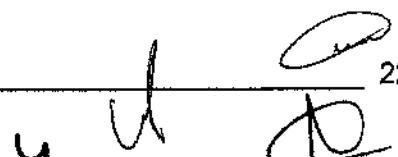
- a) to arrange the delivery to the LENDER of an executed original legal opinion conformed to the draft legal opinion referred to in Clause 3 within three (3) days following the execution of the Present Agreement, the delivery of such executed legal opinion being a SUSPENSIVE CONDITION before any drawdown of the LOAN;
- b) to inform AFD of any modification of the LAWS materially impacting on the Present Agreement or the operations of Local Government in South Africa;
- c) to provide AFD with a copy of its consolidated audited financial statements (balance sheet and profit and loss account) as soon as they are approved, as well as all information which the LENDER and/or AFD may reasonably require concerning its or JOHANNESBURG WATER's financial position;
- d) to be rated annually by a rating agency of international standing for the duration of the Present Agreement and to provide the LENDER with a copy of the rating report and of all information provided by such rating agency;
- e) to inform AFD of any change to the institutional organisation of its sector of activity which could impact the PROJECT, without prejudice to any of the rights of the LENDER under Clause 13 of the Present Agreement;
- f) upon receipt of notice of the cession and delegation of the rights and obligations of the LENDER to AFD in terms of Clause 20, to lodge any such applications with the South African Reserve Bank and to otherwise do all such things as may be reasonably necessary to ensure that the South African Reserve Bank, to the extent that it is required by LAW, approves such cession and delegation of the rights and obligations of the LENDER to AFD;
- g) that the funds which finance the PROJECT will not be of illicit origin under French law or local law and, in particular and without limiting the generality of the foregoing, will not be linked to drug trafficking, fraud against the financial interests of the European Communities, corruption, organised criminal activity or terrorism. In all cases, it undertakes to notify the Lender without delay if it has knowledge of information which raises suspicions concerning the illicit character of such funds with respect to French law or local law;
- h) not to enter into a business relationship with persons or entities which appear on United

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Nations, European Union or French embargo or anti-terrorism lists;

- i) to procure that JOHANNESBURG WATER observes all of the terms and conditions of the SECONDARY AGREEMENT;
- j) not to create or permit to subsist and to procure that JOHANNESBURG WATER does not create or permit to subsist, in favour of any CO-FINANCING ENTITY any security of any kind whatsoever over its assets or those of JOHANNESBURG WATER (as the case may be) and/or revenues of any kind whatsoever, in relation to the financing of the PROJECT, without having, prior to such promise or grant, offered to the LENDER to benefit from such security, surety and/or guarantee on a pari passu basis with any CO-FINANCING ENTITY (as the case may be). For the purposes of the Present Agreement "security" shall mean any mortgage, assignment by way of security, pledge, hypothecation, lien, right of set-off, retention of title provision or any other security interest of any kind whatsoever, or any agreement, whether conditional or otherwise, to create any of the same.
- k) to deliver to the LENDER by 31 December 2006 at the latest a certified copy of the SECONDARY AGREEMENT in respect of the proceeds of the LOAN to be entered into between the BORROWER and JOHANNESBURG WATER on terms and conditions satisfactory to the LENDER; it being agreed that the SECONDARY AGREEMENT shall provide for terms and conditions substantially similar to the BORROWER's undertakings and commitments (save for the LOAN specific repayment characteristics under the terms and conditions of the Present Agreement). The BORROWER shall procure that all relevant requirements under the MFMA in respect of the advance by the BORROWER of the proceeds of the SECONDARY AGREEMENT to JOHANNESBURG WATER have been complied with (whether such requirements apply in respect of the BORROWER or in respect of JOHANNESBURG WATER as a MUNICIPAL ENTITY).

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**SECTION III – INSURANCE, ASSIGNMENT AND ENVIRONMENT**

**CLAUSE 19 – INSURANCE**

Until complete repayment of all amounts payable by the BORROWER in respect of the LOAN, the BORROWER shall procure that the moveable and immovable property acquired by the BORROWER and/or JOHANNESBURG WATER (as the case may be) as part of the PROJECT and financed with the funds of the LOAN shall at all times be insured, by a reputable insurer, against risks of explosion and fire, damage by water, damage to machinery and any other reasonable risk of damage which could block or endanger the creation, performance and long-term viability of the PROJECT.

**CLAUSE 20 – TRANSFER OF THE PRESENT AGREEMENT TO AFD**

- 1° The LENDER shall be entitled, at any time during the term of the Present Agreement by written notice to AFD and to the BORROWER in conformity with the specimen notice attached as SCHEDULE V and without the need for any of the Parties to sign or otherwise execute any further documentation, to immediately cede, assign, transfer and make over to AFD all of the LENDER's rights and interests under the Present Agreement and to delegate to AFD all of the LENDER's obligations under the Present Agreement, on the terms and conditions set out in this Clause 20, which cession and delegation AFD irrevocably and unconditionally consents to and being agreed by the PARTIES that such cession and delegation shall take place with effect from the date of notice of the specimen notice attached as SCHEDULE V.
- 2° The BORROWER irrevocably and unconditionally consents to the cession and delegation detailed in Clause 20 1°.

**CLAUSE 21 – ENVIRONMENTAL**

- 21.1 The BORROWER shall and the BORROWER shall procure that JOHANNESBURG WATER shall, in respect of the PROJECT:
- 21.1.1 comply with all applicable ENVIRONMENTAL LAWS, including without limitation those relating to product registration, pollution control, environment contamination and those governing the generation, use, collection, discharge, or disposal of any hazardous material; and
- 21.1.2 not be subject to any administrative or judicial proceeding pursuant to any abovementioned ENVIRONMENTAL LAWS at any time, provided that the BORROWER shall have the right and be permitted by the LENDER to prove, to the reasonable satisfaction of the LENDER, that any such proceeding is *prima facie* unfounded or incorrect within a reasonable time of such proceeding being instituted against the BORROWER; and
- 21.1.3 obtain all ENVIRONMENTAL AUTHORISATIONS (and, if required by ENVIRONMENTAL LAWS, any ENVIRONMENTAL MANAGEMENT PLAN) which it is required to obtain under any ENVIRONMENTAL LAW; and
- 21.1.4 comply with, and implement all the recommendations outlined in any applicable ENVIRONMENTAL MANAGEMENT PLAN;
- 21.1.5 not violate any ENVIRONMENTAL AUTHORISATION at any time, provided that the BORROWER shall have the right and be permitted by the LENDER to prove, to the LENDER's reasonable satisfaction, that any proceeding alleging violation is *prima facie* unfounded or incorrect within a reasonable time of such proceeding being instituted against the BORROWER; and

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- 21.1.6 procure that there are no facts which form the basis for any claim against the BORROWER relating to environmental matters under any ENVIRONMENTAL LAW or ENVIRONMENTAL AUTHORISATIONS.
- 21.2 The BORROWER shall undertake and shall procure that JOHANNESBURG WATER undertakes all steps required to resolve proceedings described in Clauses 21.1.2 and 21.1.4 as expeditiously as possible and, for so long as the BORROWER and/or JOHANNESBURG WATER is/are diligently undertaking all such steps, the LENDER undertakes not to call a default in respect of any breach of Clause 21.1.2 and 21.1.4.
- 21.3 Within 45 days of the end of each financial year of the BORROWER, the BORROWER shall confirm to the LENDER, in a form and with contents to the reasonable satisfaction of the LENDER, its compliance as well as JOHANNESBURG WATER's compliance, in respect of the PROJECT, with all applicable ENVIRONMENTAL LAWS, including without limitation the occupational health and safety provisions of such LAWS, the provisions and conditions of any applicable ENVIRONMENTAL MANAGEMENT PLAN and ENVIRONMENTAL MANAGEMENT SYSTEM and the ENVIRONMENTAL AUTHORISATIONS, and where there is non-compliance or inadequate compliance, the BORROWER shall detail the nature and extent of any non-compliance, in respect of the PROJECT, with any of the aforesaid by the BORROWER and/or JOHANNESBURG WATER together with any action that the BORROWER and/or JOHANNESBURG WATER is/are or shall be undertaking in order to ensure compliance with the aforesaid.
- 21.4 The BORROWER shall notify the LENDER immediately it becomes aware:
- 21.4.1 of any proceeding or other action of whatever nature pending, threatened or under consideration against it in respect of the PROJECT, under or in respect of any ENVIRONMENTAL LAW or ENVIRONMENTAL AUTHORISATION, the occupational health and safety provisions of applicable ENVIRONMENTAL LAWS, the ENVIRONMENTAL MANAGEMENT PLAN or the ENVIRONMENTAL MANAGEMENT SYSTEM;
- 21.4.2 of any circumstances or facts pertaining to the PROJECT which will or are likely to result in any proceeding, claim by any person or other action of whatever nature being brought against the BORROWER and/or JOHANNESBURG WATER or any sub-contractor of the BORROWER and/or of JOHANNESBURG WATER in respect of any ENVIRONMENTAL LAW or ENVIRONMENTAL AUTHORISATION or the occupational health and safety provisions of applicable ENVIRONMENTAL LAWS;
- 21.4.3 of any decision which is pending or being contemplated in respect of which the BORROWER and/or JOHANNESBURG WATER will or is reasonably likely to be found not to be complying with the requirements of any ENVIRONMENTAL AUTHORISATION or ENVIRONMENTAL MANAGEMENT PLAN in respect of the PROJECT;
- 21.4.4 of any notice, order, judgment or demand requiring the BORROWER and/or JOHANNESBURG WATER or a sub-contractor of the BORROWER and/or of JOHANNESBURG WATER to take remedial or other action in respect of the PROJECT, or which place any other responsibility or liability on the BORROWER and/or JOHANNESBURG WATER or the relevant sub-contractor in respect of the PROJECT under any ENVIRONMENTAL LAW, ENVIRONMENTAL AUTHORISATION or the occupational health and safety provisions of applicable ENVIRONMENTAL LAWS; and
- 21.4.5 of the results of any environmental audit in respect of the PROJECT.
- 21.5 The BORROWER shall:
- 21.5.1 immediately on the occurrence of any of the matters detailed in Clause 21.4, provide the LENDER with a document, under the signature of the ACCOUNTING OFFICER or any official of the BORROWER delegated, in writing, by the ACCOUNTING OFFICER,

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- specifying the nature of such matter and the action which the BORROWER shall take in order to address and rectify such matter; and
- 21.5.2 submit to the LENDER, at reasonable intervals, reports detailing the progress and providing an update of the situation and circumstances in respect of such matter; and
- 21.5.3 at all times and in good faith consider any reasonable recommendations made by any relevant expert appointed by the LENDER in relation thereto.
- 21.6 The BORROWER shall and/or shall procure that JOHANNESBURG WATER shall, in respect of the sites at which the PROJECT is carried on:
- 21.6.1 regularly and at least at intervals of 12 months investigate, assess and evaluate the impact of such operations on the environment (as described in the ENVIRONMENTAL LAWS);
- 21.6.2 inform and educate its employees and shall procure that any relevant sub-contractors have informed and educated their employees about the environmental risks presented by PROJECT and the manner in which the tasks of the employees must be performed in order to avoid causing pollution or degradation of the environment (as described in the ENVIRONMENTAL LAWS);
- 21.6.3 cease, modify and control any act or process of itself, a sub-contractor and any other person for whom the BORROWER and/or JOHANNESBURG WATER is liable, that is causing pollution or degradation of the environment (as described in the ENVIRONMENTAL LAWS);
- 21.6.4 contain or prevent the movement of any environmental pollutants or causes of environmental degradation;
- 21.6.5 eliminate any source of environment pollution or degradation; and
- 21.6.6 remedy the effect of any environmental pollution or degradation.
- 21.7 If the BORROWER and/or JOHANNESBURG WATER fails to comply with any of its obligations under this Clause 21, the BORROWER and/or JOHANNESBURG WATER shall be liable for and bear the full responsibility and consequences for and of such failure, and the LENDER shall bear no liability, responsibility or consequences of such failure.
- 21.8 The BORROWER indemnifies the LENDER and AFD and shall hold them harmless, upon demand, against any claims, damages, losses, expenses and other consequences of or arising out of the failure of the BORROWER or of JOHANNESBURG WATER to comply with this Clause 21.

#### SECTION IV – MISCELLANEOUS

##### CLAUSE 22 - ARBITRATION

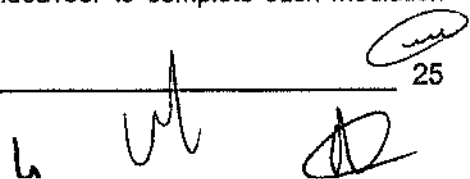
###### 22.1 access to High Court

Subject to Clause 30, notwithstanding any provision to the contrary in this Clause 22 or elsewhere in this Present Agreement nothing shall prevent any PARTY from seeking relief, on an urgent or interlocutory basis or in respect of any claim for payment of any monies by any PARTY to another in terms of the Present Agreement, in such Courts with appropriate jurisdiction.

###### 22.2 mediation

Any dispute in respect of any provision of the Present Agreement among the PARTIES shall first be referred to mediation and the PARTIES shall endeavour to complete such mediation

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Handwritten initials and signatures of the parties involved in the agreement.



within 10 days after determination by the mediator of the manner and procedure of the mediation. The mediation shall be held at Johannesburg, in the English language, and the PARTIES shall agree the identity of the mediator who shall, in consultation with the PARTIES, determine the manner and procedure of the mediation. In the absence of agreement over the identity of the mediator, the PARTIES shall appoint the mediator nominated by the Arbitration Foundation of Southern Africa ("AFSA") in accordance with the AFSA Rules.

**22.3 disputes subject to arbitration**

Any dispute arising out of or in connection with the Present Agreement or the subject matter of this Agreement, which cannot be settled amicably in terms of Clause 22.2, shall, subject to Clause 30, be determined by arbitration in terms of this Clause. The provisions of Clause 22 shall prevail notwithstanding that the rest of this Agreement may be declared void or voidable or may have terminated or been cancelled, this Clause being a separate, divisible agreement.

**22.4 notice to state whether claim is disputed**

A PARTY may call on any other PARTY in writing to state in writing whether a claim is disputed or not. If the other PARTY fails to do so within 7 days the first PARTY may proceed by way of arbitration.

**22.5 appointment of arbitrator**

22.5.1 The PARTIES shall agree on the arbitrator who shall be an attorney or advocate on the panel of arbitrators of the Arbitration Foundation of Southern Africa ("AFSA"). If agreement is not reached within 10 days after any PARTY in writing calls for arbitration, the arbitrator shall be an attorney or advocate nominated by the Registrar of AFSA for the time being.

22.5.2 The request to nominate an arbitrator shall be in writing outlining the claim and any counterclaim of which the PARTY concerned is aware and, if desired, suggesting suitable nominees for appointment, and a copy shall be furnished to the other PARTIES who may, within 7 days, submit written comments on the request to the addressor of the request.

**22.6 venue and period for completion of arbitration**

The arbitration shall be held in Johannesburg and the PARTIES shall endeavour to ensure that it is completed within 90 days after notice requiring the claim to be referred to arbitration is given.

**22.7 Arbitration Foundation of South Africa**

The arbitration shall be governed by AFSA Rules.

**22.8 procedure**

The procedure to be followed in the arbitration shall be determined by the arbitrator, with due regard to Clause 22.7, at the request of either PARTY.

**22.10 arbitrator's powers**

The arbitrator shall have full and unrestricted powers in relation to the arbitration. In particular, but without limitation, the arbitrator:

22.10.1 need not strictly observe the rules of evidence;

22.10.2 may have regard to his personal knowledge of the facts, and any expert knowledge he may have, relating to the issues in dispute, but is to afford the PARTIES an opportunity of challenging the knowledge he claims to have;

22.10.3 may make such award or awards, whether interim, provisional or final, as he may consider

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appropriate, including without limitation *ex parte* awards, declaratory orders, interdicts, and awards for specific performance, restitution, damages, penalties, interest and security for costs or restitution.

**22.11 reasons for award**

The arbitrator shall give his reasons for his award, if so requested by any PARTY within 14(fourteen) days of being required to by any of the PARTIES to the dispute, provided that the award shall have been handed down prior thereto.

**22.12 award binding**

Any award or order of the arbitrator shall be final and binding on the PARTIES, and not subject to appeal. Any PARTY may approach the High Court of South Africa, as detailed in Clause 30, to have such final award or order of the arbitrator made an order of such court.

**22.13 costs**

22.13.1 If the arbitrator's charges and any other costs have to be paid before the arbitrator has made his award in respect of costs, the PARTIES shall pay the costs in equal shares, and if a PARTY fails to pay that PARTY's share the arbitrator may make his award in respect of the claim and costs in the absence of that PARTY.

22.13.2 It is recorded that the PARTIES intend and will require the arbitrator to order that the substantially successful PARTY should be awarded an indemnity up to the costs reasonably incurred by that PARTY and not merely the costs allowed for by the High Court tariffs or any other scale.

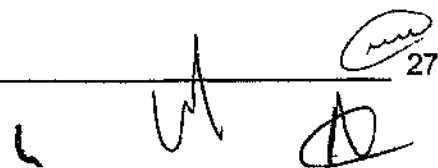
**CLAUSE 23 – INCREASED COST**

If for any reason, be it any change in law or the introduction of any law or in its interpretation or administration by any governmental or regulatory authority charged with the administration of such matters as it affects the LENDER and/or compliance by the LENDER with any request from or requirement of any central bank or other fiscal, monetary or other regulatory authority with whose requests the LENDER is required to comply (including but not limited to a request or requirement in relation to capital adequacy which affects the manner in which or the extent to which the LENDER allocates capital resources to its obligations under the Present Agreement) the LENDER incurs an additional cost (being a cost which the LENDER would not otherwise have incurred) or suffers a loss in income (which the LENDER would otherwise have earned) or the effective return to the LENDER is reduced as a result of the LENDER having entered into and/or performing its obligations under the Present Agreement and/or assuming or maintaining a commitment under the Present Agreement, then the BORROWER shall pay to the LENDER such additional amount or amounts as will compensate the LENDER for such increased cost or reduction.

**CLAUSE 24 – MISCELLANEOUS**

- 1°) In the event of the nullity or non-applicability of any of the Clauses of the Present Agreement the validity of the other Clauses hereof shall not be affected and they shall remain in force among the PARTIES. If deemed necessary by any of the PARTIES, the PARTIES shall endeavour to negotiate in good faith in order to substitute equivalent alternative provisions for the invalid provision.
- 2°) The failure by a PARTY to the Present Agreement to enforce a contractual provision stipulated in its favour or incumbent upon another PARTY shall not constitute a definitive waiver on the part of such PARTY with respect to such provision nor with respect to any other Clause stipulated in its favour herein in the absence of a written waiver to this effect from the PARTY in question.

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**CLAUSE 25 – TERM OF THE PRESENT AGREEMENT**

The Present Agreement shall continue in force until all moneys payable hereunder have been fully paid in accordance with the provisions hereof.

**CLAUSE 26 – ENTIRE AGREEMENT; AMENDMENT AND WAIVER**

The Present Agreement and the documents referred to herein constitute the entire obligation of the PARTIES hereto with respect to the subject matter hereof and shall supersede any prior expressions of intent or understandings with respect to this transaction. Any amendment to, waiver by a PARTY to the Present Agreement of any of the terms or conditions of, or consent given by such PARTY under the Present Agreement shall be of no force or effect unless reduced to writing, signed by that PARTY and, in the case of an amendment, by all of the other PARTIES to the Present Agreement.

**CLAUSE 27 – NOTICES**

Any notice, application or other communication to be given or made under the Present Agreement to the LENDER, AFD or to the BORROWER shall be in writing. Except as otherwise provided in the Present Agreement, such notice, application or other communication shall be deemed to have been duly given or made when it is delivered by hand, airmail or facsimile transmission to the PARTY to which it is required or permitted to be given or made at such PARTY's address specified below or at such other address as such PARTY designates by notice to the PARTY giving or making such notice, application or other communication.

For the BORROWER:

City of Johannesburg Metropolitan Municipality  
Metropolitan Center  
158 Loveday Street  
Braamfontein  
Johannesburg 2001

Attention: Jason Ngobení, Treasurer

Fax: 27 11 242 10 55

For the LENDER:

CALYON  
9, Quai du Président Paul Doumer  
92920 Paris La Défense cedex  
France

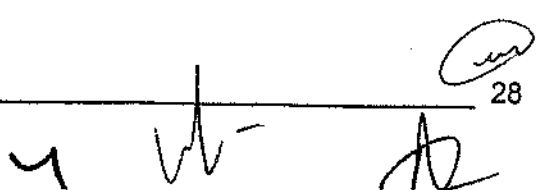
Attention: Laurence Lebeau / Emmanuelle Touroude/ Anne Collobert-Haddad

Fax: 00 33 1 41 89 49 29

For AFD:

Director of the Central, Southern Africa and Indian Ocean Department  
Agence Française de Développement  
5 rue Roland Barthes  
75598 PARIS Cedex 12  
France

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Handwritten initials 'y', 'vb-', and a signature 'A2' are present below the INITIALS label. A circled number '28' is also visible in the bottom right corner.

Attention: Director of the Central, Southern Africa and Indian Ocean Department

Fax: +33 1 53 44 38 63

**CLAUSE 28 – SUCCESSORS AND ASSIGNS**

The Present Agreement shall bind and inure to the benefit of the respective successors and assigns of the PARTIES hereto, except that, save as is provided for in the Present Agreement, no PARTY may cede or assign or otherwise transfer all or any part of its rights or delegate any of its obligations under the Present Agreement without the prior written consent of the other PARTIES to the Present Agreement.

Notwithstanding the above paragraph, the LENDER may transfer, assign, novate or otherwise dispose of all or part of its rights or obligations under the Present Agreement and/or any of the documents and agreements referred to in any of the Clauses of Section III – Insurance, Guarantees and assignment of the Present Agreement, to the benefit of AFD, without the consent of the BORROWER.

**CLAUSE 29 – APPLICABLE LAW**

The Present Agreement shall be governed and construed in accordance with the laws of the Republic of South Africa.

**CLAUSE 30 – COMPETENT COURTS**

Should a Party elect to institute proceedings in the High Court, the Parties consent to the non-exclusive jurisdiction of the Witwatersrand Local Division of the High Court of South Africa.



**CLAUSE 31 – CHOICE OF DOMICILIUM CITANDI ET EXECUTANDI**

For the purposes of the Clauses, terms and conditions of the Present Agreement, the PARTIES elect domicile at the following addresses :

- the LENDER at its head office in Paris La Défense cedex, France,
- the BORROWER at its Seat in the Republic of South Africa,
- AFD at its head office in Paris, France,

wherein all proceedings may be validly served on them.

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Drawn up in four originals,  
one of which is for registration in  
France  
in Johannesburg, on 31<sup>st</sup> August,  
2006,

- the LENDER (1)

*read and approved*

by Serge de Beaufort and Antoine Castel

*read and approved*

respectively, Senior Country Officer of Calyon South African Branch and Head of Capital Markets of Calyon South African Branch  
(together with the relevant evidence of legal capacity of the signatory to issue the letter)

date 31<sup>st</sup> August 2006.

- the BORROWER (1)

by Maveia Dlamini

COJ's accounting officer  
(together with the relevant evidence of legal capacity of the signatory to issue the letter)

date 31<sup>st</sup> August 2006.

*READ & APPROVED*

- AFD, as the mandatory of the LENDER (1)

by Vincent Rousset  
Director of the AFD Johannesburg Regional Office  
(together with the relevant evidence of legal capacity of the signatory to issue the letter)

date 31<sup>st</sup> August 2006.

*read and approved*

(1) Signature preceded by the hand-written words "read and approved"

**SCHEDULE I – DESCRIPTION OF THE PROJECT**

JOHANNESBURG WATER, the water and sanitation service provider for the COJ embarked on the first phase of a large-scale intervention project in Soweto. The PROJECT named "Operation Gcin'amanzi" - Operation Conserve Water, aims to address the severe water supply problems experienced in the area.

The PROJECT started in July 2003 and will be completed in June 2007. A range of intervention measures are included as part of this project to reduce the level of unaccounted for water (one third of Johannesburg Water's purchases from Rand Water are pumped into Soweto. 70% is unbilled) and improve service delivery.

This PROJECT represents a once-off intervention initiative made up of both technical and social interventions aimed at addressing all dimensions related to the water supply problem. A holistic and integrated approach has therefore been adopted which will ultimately ensure long term sustainability in the provision of water and sanitation services in Soweto.

The objectives of Operation Gcin'amanzi can be articulated as follows:

- To reduce unaccounted for water in Soweto
- Rehabilitate and upgrade the network infrastructure
- Provide a better level of service in the form of larger diameter pipes laid in road reserves as opposed to the mid-block system within the erven
- Improve the level of integrity of technical information systems and customer records including captured information.
- To change from a deemed consumption to metered consumption
- To educate customers on the importance of water conservation
- Obtain buy-in from residents of their water consumption
- To educate customers about their rights and obligations


These objectives are supportive of, informed by and aligned to projects, initiatives and actions currently undertaken by Johannesburg Water in terms of the broader mission of providing affordable, cost effective and sustainable water and sanitation services.

The LOAN shall cover a part of the planned investment programme.

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**SCHEDULE II – INDICATIVE COST OF PROJECT AND FINANCING PLAN**


1. Indicative Cost of the PROJECT (all amounts in million RANDS)

<b>Johannesburg Water Management Costs</b>	<b>29.7</b>
<b>Prototype</b>	<b>20.4</b>
<b>Procurement Advisor</b>	<b>6.5</b>
<b>Super-blocks 1 -13a</b>	
- Design and Construct Consortia	339.6
- ITQS	7.1
- Total Prepayment System (TPS)	181.1
- Communications (Marketing)	11.5
- Communications (ISD)	17.6
- Security	25.7
- Plumber training	4.4
<b>Super-block 13b</b>	<b>28.5</b>
<b>Cosmos City</b>	<b>26.8</b>
<b>Miscellaneous and contingencies</b>	<b>51.5</b>
<b>TOTAL</b>	<b>750.4</b>

2. Financing plan

R362,800,000(Three hundred and sixty two million eight hundred thousand Rand) required for the PROJECT shall be financed by the LOAN, and the rest shall be financed either by a loan extended by a CO-FINANCING ENTITY and/or own funds of the BORROWER.

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SCHEDULE III – INSTALMENT REPAYMENT SCHEDULE OF THE LOAN

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StartDate	Payment Date	Fixing date	ZAR Nominal
5-Sep-06	29-Sep-06	1-Sep-06	362,800,000
29-Sep-06	29-Dec-06	27-Sep-06	362,800,000
29-Dec-06	30-Mar-07	27-Dec-06	362,800,000
30-Mar-07	29-Jun-07	28-Mar-07	362,800,000
29-Jun-07	28-Sep-07	27-Jun-07	362,800,000
28-Sep-07	31-Dec-07	26-Sep-07	362,800,000
31-Dec-07	31-Mar-08	31-Dec-07	362,800,000
31-Mar-08	30-Jun-08	31-Mar-08	362,800,000
30-Jun-08	30-Sep-08	30-Jun-08	362,800,000
30-Sep-08	31-Dec-08	29-Sep-08	353,730,000
31-Dec-08	31-Mar-09	29-Dec-08	344,660,000
31-Mar-09	30-Jun-09	30-Mar-09	335,590,000
30-Jun-09	30-Sep-09	29-Jun-09	326,520,000
30-Sep-09	31-Dec-09	28-Sep-09	317,450,000
31-Dec-09	31-Mar-10	29-Dec-09	308,380,000
31-Mar-10	30-Jun-10	29-Mar-10	299,310,000
30-Jun-10	30-Sep-10	28-Jun-10	290,240,000
30-Sep-10	31-Dec-10	28-Sep-10	281,170,000
31-Dec-10	31-Mar-11	29-Dec-10	272,100,000
31-Mar-11	30-Jun-11	29-Mar-11	263,030,000
30-Jun-11	30-Sep-11	28-Jun-11	253,960,000
30-Sep-11	30-Dec-11	28-Sep-11	244,890,000
30-Dec-11	30-Mar-12	28-Dec-11	235,820,000
30-Mar-12	29-Jun-12	28-Mar-12	226,750,000
29-Jun-12	28-Sep-12	27-Jun-12	217,680,000
28-Sep-12	31-Dec-12	26-Sep-12	208,610,000
31-Dec-12	28-Mar-13	31-Dec-12	199,540,000
28-Mar-13	28-Jun-13	26-Mar-13	190,470,000
28-Jun-13	30-Sep-13	26-Jun-13	181,400,000
30-Sep-13	31-Dec-13	30-Sep-13	172,330,000
31-Dec-13	31-Mar-14	30-Dec-13	163,260,000
31-Mar-14	30-Jun-14	31-Mar-14	154,190,000
30-Jun-14	30-Sep-14	30-Jun-14	145,120,000
30-Sep-14	31-Dec-14	29-Sep-14	136,050,000
31-Dec-14	31-Mar-15	29-Dec-14	126,980,000
31-Mar-15	30-Jun-15	30-Mar-15	117,910,000
30-Jun-15	30-Sep-15	29-Jun-15	108,840,000
30-Sep-15	31-Dec-15	28-Sep-15	99,770,000
31-Dec-15	31-Mar-16	29-Dec-15	90,700,000
31-Mar-16	30-Jun-16	29-Mar-16	81,630,000
30-Jun-16	30-Sep-16	28-Jun-16	72,560,000
30-Sep-16	30-Dec-16	28-Sep-16	63,490,000
30-Dec-16	31-Mar-17	28-Dec-16	54,420,000
31-Mar-17	30-Jun-17	29-Mar-17	45,350,000
30-Jun-17	29-Sep-17	28-Jun-17	36,280,000
29-Sep-17	29-Dec-17	27-Sep-17	27,210,000
29-Dec-17	29-Mar-18	27-Dec-17	18,140,000
29-Mar-18	29-Jun-18	27-Mar-18	9,070,000

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