

SUPPLEMENTARY AGREEMENT

entered into between

MBOMBELA LOCAL MUNICIPALITY

(Successor in title to the Nelspruit Transitional Local Council)

("the Council")

and

THE GREATER NELSPRUIT UTILITY COMPANY (PROPRIETARY) LIMITED

Registration No. 98/16432/07

("the Concessionaire")

 ASHIRA

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PART I: INTRODUCTION

1. PREAMBLE

1.1. It is recorded that:

- 1.1.1. the Council and the Concessionaire concluded the Concession Contract;
- 1.1.2. the Council and the Concessionaire wish to amend and supplement the relevant provisions of the Concession Contract by entering into this Supplementary Agreement;
- 1.1.3. the Council and the Concessionaire hereby record in writing their agreement and undertakings; and
- 1.1.4. this Supplementary Agreement amends and supplements the Concession Contract, in accordance with the requirements of the Concession Contract, as set out below.

2. INTERPRETATION AND PRELIMINARY

2.1. For ease of reference expressions used in this Supplementary Agreement shall have the same meaning as expressions defined in the Concession Contract, unless expressly provided otherwise, and the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely –

- 2.1.1. "Cascal BV" means Cascal BV (formerly Biwater Capital BV) a company duly incorporated in the Netherlands with its corporate seat in Amsterdam, and the majority shareholder of the Concessionaire;
- 2.1.2. "Concession Contract" means the agreement between the Council and the Concessionaire signed on 21 April 1999, which became effective on 1 November 1999, regarding the supply of water services in the concession area, as amended by the clarification memorandum authorized and duly signed by the Council on or about 29 June 2000;
- 2.1.3. "Council" means Mbombela Local Municipality, the successor in title to Nelspruit Transitional Local Council, as established by Part 4 of

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Mpumalanga Provincial Notice No. 261 dated 6 September 2000, or its successor in title;

- 2.1.4. "DBSA" means the Development Bank of South Africa;
- 2.1.5. "Effective Date" means the date determined in terms of clause 6;
- 2.1.6. "ESKOM Bulk Electricity Charge" means the charge that applies from time to time to the sale of bulk electricity from ESKOM to the Municipality;
- 2.1.7. "Facility Agreement" means the secured term loan facility agreement entered into between the Concessionaire and the DBSA;
- 2.1.8. "the Kingstonvale loan" means a loan agreement between the Council and Nedcor relating to assets forming part of the Kingstonvale works that have been leased by the Council to the Concessionaire;
- 2.1.9. "Nedcor" means Nedcor Investment Bank Limited; and
- 2.1.10. "Supplementary Agreement" means this agreement together with its annexure.

3. LEGISLATIVE REQUIREMENTS

The Council has complied with the provisions of section 81(4) of the Local Government: Municipal Systems Act 32 of 2000, prior to the conclusion of this Supplementary Agreement.

4. SUSPENSIVE CONDITION

This supplementary agreement shall not come into force and effect unless and until Nedcor as agent for the lender in accordance with clause 9.4 of the Facility Agreement has approved the amendment to the Concession Contract effected in clause 7 below by providing a letter to that effect to the Concessionaire.

5. THE LENDER

5.1. At the time of signing this Supplementary Agreement the only lender is the DBSA.

5.2. The DBSA has approved the amendment to the Concession Contract effected in

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clause 7 below as reflected in Annexure A.

5.3. The Concessionaire warrants that this Supplementary Agreement is not in contravention of any provisions of the Facility Agreement.

6. EFFECTIVE DATE

The parties agree that the Concession Contract be amended and supplemented as set out in this Supplementary Agreement with effect from the date on which the suspensive condition in clause 4 above is satisfied, from which date all references to the Concession Contract in any agreement signed between the parties shall mean the Concession Contract as amended and supplemented by this Supplementary Agreement.

7. GENERAL TERMINOLOGY

Following the renaming of the major shareholder of the Concessionaire, the parties agree that the reference to "BIWATER CAPITAL BV" as a shareholder of the Concessionaire in Annexure A1 of the Concession Contract shall be read as a reference to "CASCAL BV".

8. RENTAL PAYMENTS

8.1. The Council has reviewed and restructured its financial obligations in regard to the existing assets and has determined that the only outstanding obligation which requires to be serviced by the rental repayments is the Kingstonvale loan. The parties agree that the Concessionaire's rental payments be reduced to R6.6 million *per annum* for a period of 4 (four) years from the Effective Date or until such time as the Kingstonvale loan is redeemed, whichever is the sooner, and therefore that:

8.1.1. New Annexure B6: LEASE AGREEMENT IN RESPECT OF MOVABLE ASSETS of the Concession Contract is amended by:

8.1.1.1. the insertion at the end of clause 8.1 "until 30 April 2003"; and

8.1.1.2. the deletion in clause 8.3 of "after the 10th anniversary of the effective date" and the insertion in its place of "of May 2003"; and

8.1.2. New Annexure B7: LEASE AGREEMENT IN RESPECT OF IMMOVABLE

PROPERTY of the Concession Contract be amended by:

8.1.2.1. the deletion in 6.1 of "10 (ten)" and insertion in its place of "3 (three) years and 6 (six) months" ; and

8.1.2.2. the amendment of 6.3 to read "From 1 May 2003 the rental payable, exclusive of VAT shall be R6.6 million rand *per annum*, or *pro rata* part thereof, for four (4) years from the effective date or until such time as the Kingstonvale loan is redeemed, whichever is the sooner. On redemption, in full of the Kingstonvale loan (as certified by Nedcor), or after four years from the Effective Date, the rental payable exclusive of VAT shall be reduced to R50,00 (fifty rand) per year payable annually in advance."

9. THE ANNUAL CONCESSION FEE

9.1. Whereas the Council has reviewed its costs for the fulfilment of its monitoring and regulatory functions in respect of the supply of water services, the parties agree that Annexure B2: ANNUAL CONCESSION FEE AND PAYMENT PROVISION SCHEDULE of the Concession Agreement be amended as follows:

9.1.1. the deletion in clause 2 of "the end of the first 5 (five) year period of the contract" and the insertion in its place of "1 May 2003. Thereafter from 1 May 2003 until any accumulated surplus from previously paid concession fees has been fully depleted by the COUNCIL in the course of conducting and fulfilling its monitoring function, the concession fee shall be R750 000,00 (seven hundred and fifty thousand rand) *per annum* (or *pro rata* portion thereof). Once the Council has determined and the Accounting Officer of Council has certified that the accumulated unspent concession fee has been utilized in meeting any shortfall in the recovery of the costs of the Council's functions, the amount of the concession fee shall be determined in accordance with clause 3 of Annexure B2; and

9.1.2. the deletion in the first line of clause 3 of "year 6 (six) and each year of the next 5 (five) year periods" and the insertion in its place of "the year following the depletion of the surplus referred to in clause 2 and

each year of the next 5 (five) year period (or part thereof)".

9.2. The Municipal Services (S) Grant:

9.2.1. The Council, in endeavouring to support the delivery of the first 6kl of water at no cost to residential consumers agrees to increase the municipal services (S) grant payable to the Concessionaire as set out in clause 9.2.2 below.

9.2.2. The Parties agree that the Council shall, in furtherance of its undertakings in clause 46 of the Concession Contract, for the 5-year period commencing 1 July 2003 and ending 30 June 2008, allocate and pay at least the following to the Concessionaire from its equitable share allocation:

Period	Municipal services (S) grant payment - equitable share (inclusive)
July 2003	A once off amount of R746 755 (seven hundred and forty six thousand seven hundred and fifty five rand)
July 2003 - June 2004	R3 000 000 (three million rand)
July 2004 to June 2005	R3 500 000 (three million five hundred thousand rand)
July 2005 to June 2006	R3 700 000 (three million seven hundred thousand rand)
July 2006 to June 2007	R3 900 000 (three million nine hundred thousand rand)
July 2007 to June 2008	R4 200 000 (four million two hundred thousand rand)

PART II: SUPPLEMENTARY AGREEMENTS

10. ELECTRICITY TARIFFS

10.1. The Council agrees that commencing 1 July 2003, the Council will introduce a special tariff for the electricity consumption of the Concessionaire in respect of

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the operation of its water and sewerage treatment plants such that if applied to the Concessionaire's actual electricity charges for the period 1 April 2002 to 31 March 2003 a saving of R800 000 (eight hundred thousand rands) would be achieved.

10.2. The special tariff referred to in clause 10.1 will escalate annually at the same annual rate of escalation as the ESKOM bulk electricity charge and will continue to apply for the duration of the Concession Contract or until such time as a more beneficial tariff becomes available from ESKOM or any successor to ESKOM.

10.3. The Concessionaire agrees to install off-peak electricity meters where appropriate and as agreed between the parties and to endeavour to conduct its operations that require electricity consumption as far as reasonably possible during off-peak periods.

10.4. The parties agree to commence negotiations regarding a special electricity supply agreement as is required by the National Electricity Regulator. Any failure to reach agreement in respect of the electricity supply agreement will not affect the validity and enforceability of the whole or any part of the Concession Contract.

11. COMMITTEE STRUCTURES

11.1. The Council and the Concessionaire recognise that a process of formal communication is required to facilitate the execution of the concession and therefore agree that in addition to the monitoring obligation of Council, the following consultative forums shall be established:

11.2. A Strategic Indaba:

11.2.1. The objective of the strategic indaba shall be to consider issues of strategic importance to the concession;

11.2.2. At least the following parties shall be invited by the secretariat:

11.2.2.1. The Mayor;

11.2.2.2. the Councillor responsible for the portfolio of water services;

11.2.2.3. the monitoring officer;

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11.2.2.4. all shareholders of the Concessionaire;

11.2.2.5. the lenders;

11.2.2.6. DWAF;

11.2.2.7. the Department of Provincial and Local Government; and

11.2.2.8. the relevant member of the Provincial Executive Council.

11.2.3. The strategic indaba shall be chaired by the Mayor of the Council and the secretariat shall be the Concessionaire.

11.2.4. The strategic indaba shall convene bi-annually and shall agree its own terms of reference from time to time. The first meeting of the strategic indaba shall be called by the Concessionaire not later than 6 (six) months subsequent to the Effective Date of this Supplementary Agreement.

11.2.5. It is acknowledged that the strategic indaba is not a decision-making forum.

11.3. The Co-ordinating Committee:

11.3.1. The objective of the co-ordinating committee shall be to facilitate the implementation of the Concession Contract by endeavouring to ensure that there is continual sharing of information between the Council and the Concessionaire, and by co-ordinating, facilitating and mediating the implementation and execution of the Concession Contract.

11.3.2. The Co-ordinating Committee shall comprise at least:

11.3.2.1. 3 (three) representatives of the Council comprising 1 (one) councillor, 1 (one) official and 1 (one) representative of the monitoring office; and

11.3.2.2. 3 (three) representatives of the Concessionaire, including the executive manager, a representative of the operator and the secretariat.

11.3.3. The Co-ordinating Committee shall meet at least monthly, and shall

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be chaired by a nominee of the Council, and the secretariat shall be nominated by the Concessionaire. The first meeting of the co-ordinating committee shall be called by the Concessionaire, on written notice to the Council and shall be held not later than 1 (one) month subsequent to the entering into of this Supplementary Agreement.

11.3.4. Attendance at the meetings of the co-ordinating committee is compulsory and the Council and the Concessionaire shall ensure that their respective representatives are mandated and designated to attend all meetings.

11.3.5. Any decision made by the strategic committee shall not *ipso facto* amend the Concession Contract unless such decision constitutes an amendment in accordance with the Concession Contract.

12. UNDERTAKINGS OF THE COUNCIL

12.1. The Council undertakes to attend to the following issues forthwith and report on their status at the first meeting of the co-ordinating committee:

12.1.1. the mechanisms of Council support for the Concessionaire's obligations in respect of customer care, debt collection and credit control review;

12.1.2. the review of a consolidated billing system to assist with credit control and debt collection of all municipal services, including water services;

12.1.3. the review and amendment of the Council's Water Services By-Laws, and Debt Collection and Credit Control Policy By-Laws to facilitate and support the credit control and debt collection obligations of the Concessionaire; and

12.1.4. the review of the Concessionaire's charge proposal presented in accordance with the undertaking in clause 13.1.4 of this Agreement.

12.2. Without derogating from the allocation of risk and responsibility set out in the Concession Contract, the Council undertakes to support and co-operate with, insofar as it reasonably can, the Concessionaire with its undertakings in clauses 13.1.1, 13.1.3, 13.1.5 and 13.1.6 below.

13. UNDERTAKINGS OF THE CONCESSIONAIRE

13.1. The Concessionaire undertakes to attend to the following issues forthwith and report on their status at the first meeting of the co-ordinating committee:

- 13.1.1. implement such measures as it in its sole discretion deems necessary to improve payment levels, specifically attending to improve customer interaction taking into account the socio-economic environment within the concession area, and by sub-contracting where necessary specific skills and expertise to further develop and continuously adopt innovative methods to improve understanding of customer needs and appropriate interaction with such customers;
- 13.1.2. review and motivate appropriate service levels, motivated with reference to its demand management plans and capital investment plan which may be adjusted with Council and the lenders as set out in clause 32.2 of the Concession Contract;
- 13.1.3. investigate, in consultation with its shareholders, ways in which to improve black economic empowerment in respect of its shareholding structure;
- 13.1.4. undertake a charge review in line with current best practice of other municipalities, including investigating the extent to which certain tariffs can be reduced to assist indigent consumers, provided that in doing such tariff review any charge proposal shall not prejudice the Concessionaire's base case model;
- 13.1.5. negotiate with the DBSA to restructure the financing arrangement;
- 13.1.6. negotiate with DWAF regarding the rescheduling of the DWAF bulk water subsidy;
- 13.1.7. Settle Cascal BV's shareholder loan to the Concessionaire as at 1 June 2003 of R13 982 921 to be repaid over a period of 5 (five) years commencing June 2003 at a rate of R2 796 584 per annum. This undertaking remains subject to the Concessionaire not being in breach of the Facility Agreement and is also without prejudice to the

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settlement of any new indebtedness between Cascal BV (or any of its subsidiaries) and the Concessionaire after 1 June 2003.

- 13.2. Without derogating from the allocation of risk and responsibility set out in the Concession Contract, the Concessionaire undertakes, in so far as it can, to support and co-operate with the Council in the latter's discharge of its undertakings in clauses 12.1.1 and 12.1.3 of this Supplementary Agreement.

14. REPORTING

Annually on the anniversary date the effective date of this Supplementary Agreement, the Concessionaire will submit a report to the Council setting out the implications and impact of the relief measures provided for in this Supplementary Agreement.

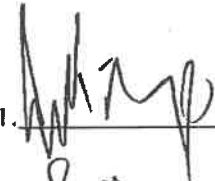

15. GENERAL

- 15.1. This Supplementary Agreement is to be read together with the Concession Contract and is not intended to prejudice any rights of either party to the Concession Contract, unless specifically agreed to herein.
- 15.2. If there is any conflict or ambiguity between the provisions of this Supplementary Agreement and the Concession Contract the provisions of this Supplementary Agreement shall prevail.
- 15.3. Save for the express amendments contained in the Supplementary Agreement, the Concession Contract shall remain of full force and effect in accordance with its terms.

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

DATE PLACE WITNESSES SIGNATURE

For: MBOMBELA LOCAL MUNICIPALITY

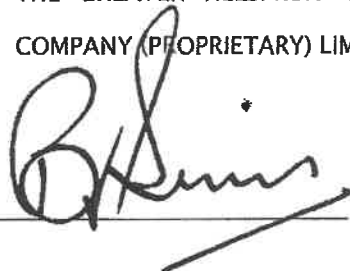
1. 
2. 


ACTING EXECUTIVE MAYOR.

DATE PLACE WITNESSES SIGNATURE

For: THE GREATER NELSPRUIT UTILITY
COMPANY (PROPRIETARY) LIMITED

1. 
2. 


Managing Director

ANNEXURE A: LETTER FROM DBSA

[See Attached]

Ashira Consulting (Pty) Ltd

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PO Box 1234
Midrand, Halfway House
1685, South Africa

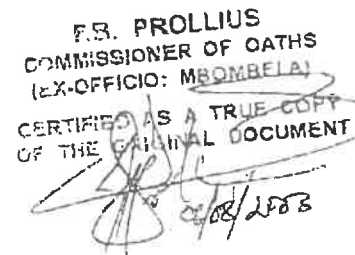
Tel: (011) 313 3911
Fax: (011) 313 3086/3072
Home page: <http://www.dbsa.org>



*Building Foundations
for Development*

29 July 2003

Greater Nelspruit Utility Company
PO Box 12753
Nelspruit
1200



Attention: Mr. Brian Sims

Sir,

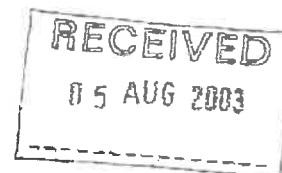
SUPPLEMENTARY AGREEMENT

Thank you for your e-mail received on 29 July 2003.

The DBSA has no objection, and consents that reference to BIWATER CAPITAL BV as a shareholder of the Concessionaire in Annexure A1 of the Concession Contract between the Mbombela Local Municipality ("the Council" and successor in title to the Nelspruit Transitional Local Council) and the Greater Nelspruit Utility Company (Pty) Ltd, ("the Concessionaire"), be read as a reference to CASCAL BV.

Yours sincerely

Helge Switala
Project Manager: Project Finance South Africa Unit



Active Executive Mayor

ACTIVE EXECUTIVE MAYOR

