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A Model City and Centre of Excellence

OFFICE OF THE MUNICIPAL MANAGER
Tel (017) 620 – 6279 | Fax (017) 634 8019

**NOTICE IN TERMS OF SECTION 33 OF THE LOCAL GOVERNMENT MUNICIPAL FINANCE
MANAGEMENT ACT, NO. 56 OF 2003**

NOTICE IS HEREBY GIVEN in terms of Section 33 of the Local Government: Municipal Finance Management Act, No. 56 of 2003 that Govan Mbeki Municipality (GMM) intends entering into long term contract relating to the repayment of debt owed to Rand Water. The contract will impose financial obligations on the Municipality for a period longer than three (3) years covered in the annual budget for the financial year 2022/23. The municipality is indebted to Rand Water in the amount of **R489 141 421.43** (four hundred and eighty nine Million, one hundred and forty one thousands and four hundred and twenty one Rands – forty three cents) being the initial debt which has since escalated to **R 612 400 670.01** (Six Hundred and twelve million, four hundred thousand, six hundred and seventy rand and one cent) as at end December 2022 for the Water that was supplied to the residents of Govan Mbeki Municipality which amount is due and payable.

NOTICE IS FURTHER GIVEN in accordance with Section 21A of the Local Government Municipal Systems Act, No. 32 of 2000 that-

- The local community and other interested persons are invited to submit comments or representations to the Municipality in respect of the proposed draft contract. Such comments or representations must be received by no later than **Friday, 17 February 2023** via electronic mail on the email address provided below or delivered to the mailing address provided hereunder.
- Copies of the draft contract and information statement summarizing the Municipality's obligations in terms of the draft agreement is available for inspection at the locations listed hereunder as well as at all the libraries and will also be accessible on www.govanmbeki.gov.za
- Further details and clarity may be requested via email on office.cfo@govanmbeki.gov.za or Telephone 017 620 6274/5 and will be made available on the above-mentioned website.

PHYSICAL ADDRESS	MAILING ADDRESS
GOVAN MBEKI MUNICIPALITY CENTRAL BUSINESS DISTRICT HORWOOD STREET SECUNDA	P/BAG X 1017 SECUNDA 2302 office.cfo@govanmbeki.gov.za
SUBMISSIONS MUST BE MARKED "RAND WATER REPAYMENT PLAN AGREEMENT"	

Other Satellite Offices:

Kinross: 27 Voortrekker Street, Tel: (017) 687 1155; **Trichardt:** 5 Bekker Street, Tel: (017) 638 0600
Evander: 13 Lisbon Street, Tel: (017) 6206300; **Embalenhle:** Stand 3868 Lindile Nxiweni Drive, Tel: (017) 685 4712;
Lebohang: 3265x 10 Butana Nkambule Road, Tel: (017) 638 3000; **eMzinoni:** 1st Street, Tel: (017) 647 3741

People with physical disability or who are unable to write but need to participate in the process may present themselves at **CUSTOMER CARE OFFICES** during office hours at all Municipal listed hereunder where a staff member will assist them to transcribe the relevant comments or representations.

LATE SUBMISSIONS WILL NOT BE CONSIDERED



**MUNICIPAL MANAGER
MR. E. N. MASEKO**

DATE:

Other Satellite Offices:

Kinross: 27 Voortrekker Street, Tel: (017) 687 1155; **Trichardt:** 5 Bekker Street, Tel: (017) 638 0600
Evander: 13 Lisbon Street, Tel: (017) 6206300; **Embalenhle:** Stand 3868 Lindile Nxiweni Drive, Tel: (017) 685 4212;
Lebohang: 3265x 10 Butana Nkambule Road, Tel: (017) 638 3000; **eMzinoni:** 1st Street, Tel: (017) 647 3741



RAND WATER

DEBT SETTLEMENT AGREEMENT

entered into by and between:

RAND WATER

AND

GOVAN MBEKI LOCAL MUNICIPALITY

for the settlement of the debt owed by **Govan Mbeki Local Municipality**
to **Rand Water**

PART I: PARTIES, PREAMBLE & INTERPRETATION

1. The Parties

The Parties to this Agreement are:

- 1.1 **Govan Mbeki Local Municipality ("The Municipality")**, a Municipality created in terms of Section 12 of the Local Government: Municipal Structures Act, No.117 of 1998 herein represented by Mr **EN Maseko** in his/her capacity as the **Municipal Manager**, who warrants that he/she is duly authorized to enter into and sign this Agreement; and
- 1.2 **RAND WATER ("Rand Water")**, a Water Board deemed to be established and continues to exist in terms of Section 84 of the Water Services Act, 108 of 1997, herein represented by Mr **SA Mosai** in his capacity as the **Chief Executive** who warrants that he is duly authorized to enter into and sign this Agreement;

2. Preamble

Common Knowledge Matters:

- 2.1 Rand Water is a Water Board in terms of the Water Services Act 108/1997.
- 2.2 Rand Water and the Municipality ("Parties") have a contractual relationship in terms of which the latter is a customer of Rand Water for the provision of bulk potable bulk water services in accordance with the Act.
- 2.3 Consequent to the bulk water services rendered by Rand Water to and for the Municipality, the Municipality became indebted to Rand Water for unpaid services.
- 2.4 As a consequence of such indebtedness, the Parties now wish to enter into this Agreement in order to record such indebtedness and further set out the payment terms that will govern the liquidation of such debt.

THE PARTIES WHEREFORE AGREE AS FOLLOWS:

3. Interpretation

- 3.1 In this Agreement, clause headings are for convenience and shall not be used in its interpretation;
- 3.2 Unless the context clearly indicates a contrary intention, -

3.2.1 an expression which denotes -

3.2.1.1 any gender includes the other gender;

3.2.1.2 a natural person includes an artificial or juristic person and vice versa;

3.2.1.3 the singular includes the plural and vice versa;

3.3 The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings -

“Agreement” means this Debt Settlement Agreement together with all its annexures, as amended by the parties in writing from time to time;

“Equitable Share” for the purposes of this Agreement, means the revenue received by the Municipality from the equitable division of revenue raised nationally for the purpose of sharing amongst the national, provincial and local spheres of government.

“The Municipality” means Govan Mbeki Local Municipality, a municipality created in terms of Section 12 of the Local Government: Municipal Structures Act, No.117 of 1998;

“on-going/current debt” means the monthly debt that will arise as a result of on-going services to be rendered by Rand Water for the Municipality on each respective monthly interval subsequent to and/or coinciding with the signing of this Agreement;

“Overdue Debt” means the amount owed by the Municipality to Rand Water for services rendered as at the signature date;

“Principal Agreement” means the Bulk Water Supply Agreement in existence between the Parties, for the provision of bulk potable water to the municipality.

“Signature Date” means the date of signature of this Agreement by the last Party signing;

“Services” means the supply of potable bulk water to the Municipality;

3.4 any reference to any statute, regulation or other legislation shall be a reference to that statute, regulation or other legislation as at the signature date, and as amended or substituted from time to time;

3.5 if any provision in a definition is a substantive provision conferring a right or imposing an obligation on any party then, notwithstanding that it is only in a definition, effect shall be given to that provision as if it were a substantive provision in the body of this Agreement;

3.6 where any term is defined within a particular clause other than this 3, that term shall bear the meaning ascribed to it in that clause wherever it is used in this Agreement;

3.7 where any number of days is to be calculated from a particular day, such number shall be calculated as excluding such particular day and commencing on the next day. If the last day of such number so calculated falls on a day which is not a business day, the last day shall be deemed to be the next succeeding day which is a business day;

3.8 any reference to days (other than a reference to business days), months or years shall be a reference to calendar days, months or years, as the case may be;

3.9 any term which refers to a South African legal concept or process (for example, without limiting the foregoing, winding-up or curatorship) shall be deemed to include a reference to the equivalent or analogous concept or process in any other jurisdiction in which this Agreement may apply or to the laws of which a party may be or become subject;

- 3.10 the use of the word "including" followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule (the rule of construction, that if general words or terms are used in association with specific words or terms which are a species of a particular genus or class, the meaning of the general words or terms shall be restricted to that same class) - shall not be applied in the interpretation of such general wording or such specific example/s.
- 3.11 The terms of this Agreement having been negotiated, the *contra proferentem* rule shall not be applied in the interpretation of this Agreement.

PART II: THE SETTLEMENT AND ITS CONDITIONS

4. Overdue Debt

- 4.1 The Municipality hereby acknowledges its indebtedness to Rand Water for the amount of **R489,141,421.43 (four hundred and eighty-nine million one hundred and forty-one thousand and four hundred and twenty-one rands and forty-three cents)** as at 21 July 2022.
- 4.2 The Municipality undertakes to settle this debt in instalments which shall be payable in the following manner:
- 4.2.1 **Ring-fenced Amount:**
- 4.2.1.1 The parties hereby agree that a portion amounting to **R489,141,421.43 (four hundred and eighty-nine million one hundred and forty-one thousands and four hundred and twenty-one rands and forty-three cents)** due and payable to Rand Water as at 28 March 2022 is to be ring-fenced and be paid over a period of Five (5) years commencing on the effective date of this Agreement. This portion of the debt shall be referred to as '***the Ring-fenced Amount***'.
- 4.2.1.2 The Ring-fenced Amount shall not bear interest during the period of five (5) years.

4.2.2 Equitable Share

- 4.2.2.1 The Municipality declares that it receives an allocation of an equitable share from the National revenue at three intervals of each respective financial year.
- 4.2.2.2 The Municipality undertakes to ring-fence a portion of its equitable share, the purpose of which is to settle the Ring-fenced amount.
- 4.2.2.3 Accordingly, the Municipality undertakes to settle ring-fenced amount from its equitable share by effecting payments to Rand Water in the following manner:

Months	Year 1 : 2022/23	Year 2 : 2023/24	Year 3 : 2024/25	Year 4 : 2025/26	Year 5 : 2026/27
July	R20,000,000.00	R35,000,000.00	R45,000,000.00	R55,000,000.00	R65,000,000.00
December	R10,000,000.00	R20,000,000.00	R35,000,000.00	R45,000,000.00	R45,000,000.00
March	R10,000,000.00	R15,000,000.00	R25,000,000.00	R35,000,000.00	R40,000,000.00
Total	R40,000,000.00	R70,000,000.00	R105,000,000.00	R135,000,000.00	R150,000,000.00

4.2.3 On-going / current debt

- 4.2.3.1 The Parties acknowledge that the contractual relationship between the Parties shall still continue until its termination. As a consequence, Rand Water shall continue to render the services and the Municipality shall thus continue to be indebted to Rand Water for the services rendered at each given period.
- 4.2.3.2 In light of the aforesaid, the Municipality understands that in addition to the payment arrangements made in terms of this Agreement, the Municipality shall still have a contractual obligation to pay the monthly amounts as would be invoiced to it for water supply of each respective month.
- 4.2.3.3 Accordingly, the Municipality, herein agrees and undertakes to pay the current account within the provisions on the long

term relief option program offered by Rand Water to its customers to assist with the repayment of its debt during and post the devastating impact of Covid-19 with an extension of payment terms from 30 to 45 days, with 60% of current account payment expected by no later than every month end while the balance of 40% is expected within 15 days following the end of each month.

4.2.3.4 The Municipality undertake to honor and pay the full current account amount during the June and December period (being our annual and interim reporting period), a full will be paid within the traditional 30 days' interval.

5 Default

5.1 Act of Default

5.1.2 For the purpose of this Agreement, default shall mean non-receipt of an instalment when it falls due and/or non-receipt of invoiced payment for services, as is set out in Clause 4 above, when the invoice amount becomes due and payable, irrespective of the cause of non-payment.

5.2 Interest

5.2.2 It is herein recorded that Rand Water is, in terms of the PFMA, entitled to charge interest on all amounts that are overdue for services rendered.

5.2.3 When an act of default has been committed, interest shall be charged on all overdue amounts, at a prime rate per annum, from the date such amounts fell due until date of settlement.

5.3 Acceleration

5.3.2 In the event the Municipality defaulting on its obligations as contained in the above clauses, all amounts and accrued interest as on the date of default, shall immediately become due and payable without any declaration, notice or other act from Rand Water.

5.3.3 In such an event, Rand Water shall be entitled to exercise the rights it has in law in giving effect to this Agreement.

5.4 Order of Court

- 5.4.1 Parties agree that this Agreement shall be made an order of Court as soon as possible via unopposed motion proceedings before the High Court of South Africa, having jurisdiction.

PART III: GENERAL PROVISIONS

6 Breach and dispute resolution

- 6.1 The Parties agree that:

6.1.1 there is no dispute in relation to bulk water services rendered in accordance to the Principal Agreement;

6.1.2 this Debt Settlement Agreement affirms that there are no disputes regarding the indebtedness and in effect the Municipality agrees to being indebted to Rand Water.

- 6.2 There being no matters of dispute, in relation to this Agreement, the Parties agree that the Intergovernmental Relations Framework Act 13/2005 does not apply.

- 6.3 The Parties therefore dispense with requirement of this Act and herein agree that each Party may refer matters of default in relation to this Agreement to a competent Court for resolution or execution.

7 Indulgences

- 7.1 Any relaxation or delay (together "Relaxation") by either Party in exercising, or any failure by either Party to exercise, any right under this Agreement shall not be construed as a waiver of that right and shall not affect the ability of that Party subsequently to exercise that right or to pursue any remedy, nor shall any Relaxation constitute a waiver of any other right (whether against that Party or any other person).
- 7.2 The waiver of any right under this Agreement shall be binding on the waiving Party only to the extent that the waiver has been reduced to writing and signed by the duly authorised representative(s) of the waiving Party.
- 7.3 The grant of any indulgence by a Party under this Agreement shall not constitute a waiver of any right by the grantor or prevent or adversely affect the exercise by the grantor of any existing or future right of the grantor.

8 Notices

- 8.1 Any notice, request, consent or other communication made between the Parties pursuant to this Agreement shall be in writing and shall be deemed to have been made when delivered in person to an authorised representative of the Party to whom the communication is addressed, or when sent by registered post, email or fax to such Party at the Address specified in the Special Terms of Agreement.
- 8.2 Electronic communications shall comply with the terms of the Electronic Media Act No. 36 of 2005.
- 8.3 If the sender requires evidence of receipt, the sender shall state such requirements in the communication and, wherever there is a deadline for the receipt of the communication, the sender may demand evidence of receipt of the communication. In any event, the sender shall take all the necessary measures to ensure receipt of communications.
- 8.4 A notice shall be deemed to have been received: -
- 8.4.1 14 (fourteen) days after posting, if posted by registered post to the Party's address;
 - 8.4.2 on delivery, if delivered to a responsible person during normal business hours at the Party's physical address; and
 - 8.4.3 on dispatch, if sent to the Party's facsimile number and confirmed by registered letter posted no later than the next business day following the dispatch.
- 8.5 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a Party shall be adequate written notice or communication to it notwithstanding that it was not sent to or delivered to its chosen address for legal service.
- 8.6 Either Party may change its address stated in 35 for purposes of this clause to another address by giving the other Party 30 (thirty) days advance notice of such a change. The new address becomes effective on receipt by the addressee of such written notice. A notice shall be necessary in respect of a new or changed facsimile number.

9 Invalidity and Severability

Whenever possible, each provision of this Agreement shall be interpreted in a manner which makes it effective and valid under applicable law, but if any provision of this Agreement is held to be illegal, invalid or unenforceable under applicable law, that illegality, invalidity or unenforceability shall not affect the other provisions of this Agreement, all of which shall remain in full force.

10. Duration

10.1 The Agreement shall commence on Effective Date and shall subsist for a period of five (5) years unless terminated by Parties before the termination date.

11 Legislative Compliance

11.1 This Agreement shall be interpreted in accordance with the laws of the Republic of South Africa.

11.2 Each Party shall be responsible for complying with any legislative requirement that applies to it, and no party shall do or not do anything to prevent the other party from complying with any legislative requirement or fiduciary duty.

12 Waiver

12.1 No waiver by a party of any breach, failure or default in performance by the other party, and no failure, refusal or neglect by a party to exercise any right hereunder or to insist upon strict compliance with or performance of the other party's obligations under this Agreement shall constitute a waiver of the provisions of this Agreement and a party may at any time require strict compliance with the provisions of this Agreement.

13 Terms of the main Agreement

13.1 This Agreement supersedes the terms and conditions of the Principal Agreement, to the extent of the subject matter. All other terms and conditions of the Principal Agreement shall remain applicable.

14 Costs

- 14.1 Each party shall bear and pay its own costs of and incidental to the preparation of this Agreement (including prior drafts and consultations).
- 14.2 In an event of breach, the parties agree that the aggrieved party that institutes legal proceedings against the defaulting party in respect of the rights and obligations contained in this Agreement shall be entitled to costs on an attorney and own client scale.

15 *Domicilium Citandi et Executandi*

- 15.1 The Parties choose, as their address for all purposes under this Agreement, the following:

GOVAN MBEKI LOCAL MUNICIPALITY

Address: Horwood Street
Secunda
2303

Private Bag X1017,
Secunda,
2303

Attention: The Municipal Manager

RAND WATER



Address: 522 Impala Road
GLENVISTA
2058

P.O. Box 1127
JOHANNESBURG
2000

Attention: The Chief Executive

16 Execution

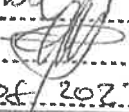
This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which, or when taken together, shall constitute the same instrument.

For GOVAN MBEKI LOCAL MUNICIPALITY:	For RAND WATER:
Signed at _____ on this ____ day of _____ 2022	Signed at <u>Johannesburg</u> on this <u>26</u> day of <u>August</u> 2022
Signatory: _____	Signatory: 
Name: Mr. EN Maseko	Name: Mr SA Mosai
Capacity: Municipal Manager Duly Authorized	Capacity: Chief Executive Duly Authorized
Witnesses:	Witnesses:
1. _____	1.  Lesiba E Phalane
2. _____	2. _____



Approved by: Legal Services

Name: Lesiba E Phalane

Signature: 

Date: 15/08/2022

**RESOLUTION ORIGINATING FROM THE REPORT OF THE EXECUTIVE
MAYOR IN TERMS OF NON-DELEGATED POWERS. CONTINUATION COUNCIL
MEETING HELD ON MONDAY 31 OCTOBER 2022**

A121/10/2022

RAND WATER DEBT SETTLEMENT AGREEMENT

(VKN)

(17/1/1/4)

RESOLVED

1. That the Debt Settlement Agreement received from Rand Water **BE ACCEPTED** subject to the deletion of clause 5.4 wherein Rand Water wants the agreement to be made a court order.
2. That Rand Water **BE INFORMED** that the municipality is required to meet the prescriptions of Section 33 of the Local Government: Municipal Financial Management Act, Act 56 of 2003, and Section 21A of the Local Government: Municipal Systems Act, Act 32 of 2000, before it can sign the Debt Settlement Agreement.