

MODEL CONSTITUTION OF A COMMUNITY BASED ORGANISATION AS WATER SERVICES PROVIDER

1 Name of Community Based Organisation (CBO)

- 1.1 The name of the CBO is(**specify the name**) hereinafter referred to as 'the CBO'.

2 Purpose of this Constitution

- 2.1 The purpose of this constitution is to form a legal association, the CBO, being:
- 2.1.1 A not-for-profit organisation;
 - 2.1.2 Based within the(**specify name of the community**) community, hereinafter referred to as the 'Community';
 - 2.1.3 Which is located in(**specify the area or geographical location**) area, hereinafter referred to as the 'Service Area';
 - 2.1.4 Which has the mandate of (**state percentage which must be at least 51% of participating households**) percentage of households within the Community to enter into a municipal service partnership for the purpose of providing water services (**include other services if applicable**), to the Community. A description of how the mandate was obtained is attached to this constitution as Annexure 1.

3 Objects of the CBO

- 3.1 The CBO is established for the purposes of acting in the overall interests of the Community with respect to:
- 3.1.1 improving the quality of life and poverty alleviation within the Community;
 - 3.1.2 improving access to basic water supply and sanitation services by the Community;
 - 3.1.3 (**include other services if applicable**)

4 Area of Operation

- 4.1 The CBO will only undertake activities in the Service Area.
- 4.2 The area within which the CBO will be entitled to collect contributions or donations will include the entire area of the Republic of South Africa.

5 Application of Legislation to this Constitution

- 5.1 This constitution is subject to the following sections of the Water Services Act No. 108 of 1997:
- 5.1.1 Chapter 1: Sections 4 which outlines conditions for provision of water services and Section 5 which provides for basic water supply and basic sanitation to have preference to higher levels of service.
 - 5.1.2 Chapter 3: Section 19, which provides for contracts between water services authorities and water services providers.
- 5.2 This constitution is subject to the regulations and bylaws of the Water Services Authority within whose area of jurisdiction the CBO operates, being the**(state name of the relevant municipality)** municipality, hereinafter referred to as the 'Municipality'.
- 5.3 **(State any other relevant legislation or regulations)**

6 Members of the CBO

- 6.1 Membership of the CBO may be made up of individual members (the 'Members') nominated or elected by members of the Community in accordance with clause 6.1 of this constitution.
- 6.2 The Members of the CBO are the Members who have been duly nominated or elected to act on behalf of the Community in establishing the CBO and whose names appear in Annexure 2 of this constitution.
- 6.3 Membership will be effective from the date of signature by the Member of this Constitution and will be for a fixed term of**(specify number of years in words and figures)** years.
- 6.4 The CBO may agree to admit institutional Members from time to time.
- 6.5 The members of the Community in a General Meeting may agree to admit further individual Members from time to time.
- 6.6 Membership of the CBO may be granted to persons other than those mentioned above or withheld, suspended, or cancelled at the discretion of the members of the Community in a General Meeting.
- 6.7 The members of the Community may call on the CBO to cancel the membership of any Member who breaks the rules of this Constitution.
- 6.8 Through a resolution adopted by a two thirds majority/or by the members of the Community in a General Meeting, the CBO will be entitled to remove any of the Members, whether they were nominated or elected.
- 6.9 The office of a Member of the CBO will be vacated:-
- 6.9.1 if he or she resigns;
 - 6.9.2 if he or she becomes of unsound mind

- 6.9.3 if he or she is unfit and/or incapable of acting in a way that is necessary to fulfil his or her functions in a reasonable manner ;
- 6.9.4 if he or she would be disqualified in terms of the Companies Act, from acting as a Director of a Company; or
- 6.9.5 if he or she is removed by a decision of the members of the Community in a General Meeting or in terms of a resolution passed in accordance with the provisions above.

7 Composition of the CBO

- 7.1 The CBO will be made up of at least(**state minimum number in words and figures, being not less than three (3) persons**) and not more than(**state maximum number in words and figures, being not less than three (3) persons**) persons, who will be elected / nominated by the members of the Community in a General Meeting.
- 7.2 In the General Meeting, the members of the Community will be required to identify and appoint a Chairperson, a Secretary and a Treasurer. There must be agreement that where possible, persons elected to these offices should have the necessary skills to perform their specific functions and/or must be willing to undergo training to perform such functions. The position of Secretary of the CBO can be an employed person.
- 7.3 Each Member of the CBO will have the power to appoint one other person to act as his or her alternate, during a temporary absence or inability to act. The alternate must not be disqualified from acting under this Constitution and must have been approved by a majority of the remaining Members of the CBO. The alternate will be entitled and required to exercise all powers, and authorities of such Member whom he or she represents, subject to any specific limitation confirmed in writing by the Member whom he or she represents.

8 Annual General Meetings

- 8.1 The CBO will call an Annual General Meeting of the members of the Community within fifteen (15) months of the adoption of this Constitution. Thereafter Annual General Meetings will be held annually.
- 8.2 The CBO will give all members of the Community at least fourteen (14) days prior notice of any such meeting. Notice of Meetings will be delivered personally, sent by prepaid registered post, addressed to the last address notified by each person concerned or put on a community notice board.
- 8.3 The business of an Annual General Meeting will among other matters include:
 - 8.3.1 the presentation and adoption of the CBO's Annual Report;
 - 8.3.2 the presentation and adoption of the CBO's Annual Financial Statement;
 - 8.3.3 the presentation and adoption of the CBO's Annual Budget including an annual water services budget if an annual water services budget is required by the Municipality;

- 8.3.4 the consideration of any proposed extensions to the water service system;
- 8.3.5 the consideration of any proposed changes to the water services tariff;
- 8.3.6 the election or nomination by the members of the Community of the individual Members to serve on the CBO when the Members' fixed term has expired or when a Member's position becomes vacant.
- 8.3.7 **(State any other matters as may be appropriate)**

9 Other General Meetings

- 9.1 Other General Meetings of the Community ("General Meetings") will be convened at the request of:
 - 9.1.1 any Member of the CBO;
 - 9.1.2 any ten (10) individual members of the Community.
- 9.2 Any General Meeting other than the Annual General Meeting will be convened on not less than fourteen (14) days written notice to the members of the Community and such notice will in broad terms advise them of the business to be attended to at the meeting.

10 Resolutions, Voting and Powers at Annual and General Meetings

- 10.1 At the Annual General Meeting and all other General Meetings, a resolution put to the vote of a meeting will be decided by a majority decision of the members of the Community present at the meeting.
- 10.2 A quorum to constitute an Annual General Meeting or other General Meeting of the Community will be the lesser of -
 - 10.2.1**(state number in words and figures)** members of the Community; or
 - 10.2.2**(state percentage in words and figures)** percentage of households within the Community.
- 10.3 A properly announced Annual General Meeting or other General Meeting of the members of the Community, at which a quorum is present, will be able to exercise all or any of the powers, authorities and discretion of the members of the Community as set out in this Constitution. A Chairperson will be appointed at the meeting by decision of those present.

11 Procedure to be followed at CBO Meetings

- 11.1 The CBO has the power to conduct its meetings and perform all other necessary functions provided that:
 - 11.1.1 The Chairperson may at any time convene a meeting of the CBO and will have to do so if called upon by any two (2) Members of the CBO.

- 11.1.2 The quorum necessary for decisions of the CBO shall be
(state number of Members in words and figures) Members.
- 11.1.3 At meetings of the CBO, each Member shall have one (1) vote.
- 11.1.4 Questions arising will be decided by a majority of votes and in the event of an equality of votes the Chairperson will have a second or casting vote.
- 11.1.5 Proper minutes of the proceedings and a record of all persons present at each meeting of the CBO will be kept. The minutes will be signed by the Chairperson, or deputy, and will be available at all times for inspection or copying by any member of the Community.
- 11.1.6 A resolution signed by all the Members of the CBO will be as valid as one passed at a duly convened meeting of the CBO.
- 11.1.7 The CBO may delegate any of its powers to a CBO Member, a sub-committee of the CBO, to a special purpose committee, or to a competent employee whenever appropriate. This Member, employee or Committee will, exercise his or her functions, according to any regulations and procedures that may be required by the CBO.

12 Finances of the CBO

- 12.1 The funds of the CBO, which includes all capital and accrued income to be administered by the CBO (the 'Funds'), may be increased with donations, assets and/or property from any source.
- 12.2 The financial year of the CBO shall be from the first day of**(state month)** to the last day of**(state month, being 12 months after the starting date)**.
- 12.3 It is recorded that the initial Funds of the CBO are R.....**(state amount in words and figures)**

13 Powers and Authorities of the CBO

- 13.1 The CBO will have all the power and authority necessary and appropriate to effectively administer the CBO and promote its objects and purposes, subject to the provisions of this Constitution, including the following:

Call General Meetings

- 13.2 To decide when General Meetings should be called, and the business of such meetings.

Property and Assets

- 13.3 To obtain or administer property or assets of the CBO for the benefit of the Community.

Finances and Fundraising

- 13.4 To seek and accept donations and contributions for the CBO; provided that the Municipality has given authority for all donations exceeding an amount of R.....(**state amount in words and figures**)
- 13.5 To borrow monies for the purposes of the objects of the CBO and in the best interest of the Community, on terms and conditions that the CBO deems appropriate, provided that:
- 13.5.1 the Municipality has given authority for all such loans;
- 13.5.2 a resolution has been passed at a meeting of the CBO at which not less than(**state number of Members, which should be not less than two thirds of the Members**) Members of the CBO are present.
- 13.6 To spend the Funds of the CBO in undertaking projects for the Community provided that the projects fall within the objects of the CBO. In applying the Funds and undertaking projects for the Community, the CBO will at all times consider the wishes and needs of the Community, as expressed democratically at meetings of members of the Community.
- 13.7 To open a bank account and to invest all funds not immediately required.
- 13.8 To pay any amount as the CBO considers necessary to meet its objectives.
- 13.9 If necessary, to take legal steps to recover monies owing to the CBO by the Community or other persons or bodies.
- 13.10 To appoint an auditor if required.

Contracts and Partnerships

- 13.11 To join with other bodies having the same or similar objects as the CBO and to enter into partnerships or joint ventures to achieve the objects of the CBO.
- 13.12 To enter into a municipal service partnership with the Municipality for the provision of water services (**state other services if appropriate**) to the Community in the Service Area.
- 13.13 To enter into contracts that are in the overall interests of the Community.
- 13.14 In consultation with the Community, to decide on the policy and criteria for awarding contracts for items and services financed by the Funds.
- 13.15 Subject to provisions set out above, to appoint agents, contractors and consultants to provide specialist advice and support.

Employ Staff

- 13.16 To employ staff as the CBO considers necessary to perform the CBO's functions under this constitution, and to terminate employment contracts. The appointment of employees or any change in their conditions of service must

be approved by resolution of the CBO. All employees of the CBO will remain in office despite any change in the composition and membership of the CBO.

14 Duties and Obligations of the CBO

- 14.1 In undertaking its duties the CBO shall take the following into account:
- 14.1.1 the availability of resources;
 - 14.1.2 the need for an equitable allocation of resources to all Community members in the Service Area;
 - 14.1.3 the need to regulate access to the services in an equitable way;
 - 14.1.4 the nature, topography, zoning and situation of the Service Area;
 - 14.1.5 the right of the CBO to recommend limitation or discontinuity of provision of services;
 - 14.1.6 the need to ensure that procedures for limiting or discontinuing services provided by the CBO to any Community member within the Service Area are on a fair and equitable basis;
 - 14.1.7 that the CBO may not unreasonably exclude any Community member from access to services provided by the CBO.
- 14.2 The CBO will have the duties and obligations described below:
- 14.3 To comply with the bylaws and the Water Services Development Plan **(and Integrated Development Plan if applicable)** of the Municipality when fulfilling any function related to the provision of water services **(state other services if applicable)** to the Community.
- 14.4 To deposit on receipt all monies in a suitable account opened in the name of the CBO, with a registered Bank or Building Society, which falls within the definition of a Financial Institution as defined in the Financial Institutions (Investment of Funds) Act No.1 of 1984.
- 14.5 To ensure that the assets and Funds of the CBO shall be utilised solely in the furtherance of the CBO's objects.
- 14.6 To compile budgets for the CBO to be approved at a General Meeting.
- 14.7 To ensure that no funds are paid or transferred, directly or indirectly to any of the members of the CBO by way of profit distribution. However, the CBO may make payment in good faith to any person (including a member) of reasonable remuneration for services actually rendered to the CBO and reimbursement of actual costs, expenses and commitments reasonably incurred on behalf of the CBO.
- 14.8 To keep the Community informed about all funds received, on a regular basis and on request for information by the Community.

- 14.9 To present the annual financial statement of the CBO for the preceding financial year at the Annual General Meeting of the CBO, including the full details of:
 - 14.9.1 all income received;
 - 14.9.2 any remuneration paid by the CBO to Members and employees of the CBO;
 - 14.9.3 the balance of funds within the CBO at the end of the financial year.
- 14.10 To submit the annual financial statement and all financial records for an independent review if required by either the Municipality or two thirds of the members present at the Annual General Meeting.
- 14.11 To present the annual report of the CBO at the Annual General Meeting of the CBO, including the full details of:
 - 14.11.1 all projects undertaken and related progress;
 - 14.11.2 all services provided to the Community;
 - 14.11.3 benefits from the projects and/or services.
- 14.12 To keep good records of all operations and activities being carried out with the Funds and to ensure that the records are available for inspection by the Municipality or any member of the Community for a period of at least three (3) years.
- 14.13 To furnish the Community with information reasonably requested with regard to the progress of projects or provision of services undertaken by the CBO and the general status of the Funds of the CBO.
- 14.14 To furnish the Municipality with any information required in terms of the Water Services Act (***state other Acts if appropriate***) or reasonably requested by the Municipality.
- 14.15 To survey the needs and determine and address any complaints of the Community from time to time.
- 14.16 To act on behalf of the Community, as the representative of the Community in any matters related to the provision of services, particularly in terms of relations with the Municipality and other government departments.
- 14.17 To plan, manage and maintain work carried out within the context of any project, provided that the Community is consulted in this regard when necessary.
- 14.18 To ensure that any tenders are competitive, open, fair and equitable to all interested parties.
- 14.19 Where necessary, to ensure that contractors to whom contracts are awarded:
 - 14.19.1 are insured and remain insured in terms of contractors-all-risk-insurance policies;

- 14.19.2 provide an acceptable performance guarantee that guarantees the completion of the contract.
- 14.20 To insure and keep insured, at replacement value, the CBO's interests in any project against any risks as may be necessary. To insure and keep insured, at replacement value, all assets and equipment belonging to the CBO, against risks.
- 14.21 To ensure that Members of the CBO perform their duties with honesty, care and diligence and disclose any conflict of interest to the other Members.

15 Indemnity

- 15.1 The CBO will pay all costs and expenses, which any such person may incur through a contract or deed done in the discharge in good faith of his or her duties on behalf of the CBO.
- 15.2 Members of the CBO or other office bearers of the CBO will only be liable for loss or damage occurring in the execution of his or her duties if it arises as result of dishonesty, or the failure to exercise the degree of care, diligence and skill required by law.
- 15.3 No Member of the CBO will be liable for the acts, receipts, neglects or defaults of any other Member or office bearer.

16 CBO Discretion

- 16.1 Where discretion (freedom to act or decide) is given to the CBO in this Constitution, such discretion will be complete and absolute; provided that the CBO acts in the overall interests of the Community and in line with the stated objectives of the CBO.

17 Signatures

- 17.1 All cheques, promissory notes, and other documents requiring signatures on behalf of the CBO, will be signed by two (2) Members of the CBO one (1) of whom must be the Treasurer or his/her delegate.

18 Legal Personality

- 18.1 The CBO will have a legal personality, perpetual succession (it will continue to operate when the Members change) and may sue or be sued in its own name.

19 Amendment of the Constitution and Dissolution of the CBO

- 19.1 A two thirds decision of the members of the Community in a General Meeting may call on the CBO to:
- 19.1.1 amend the terms of this Constitution;
 - 19.1.2 amend the name of the CBO; and

- 19.1.3 dissolve the CBO and terminate this Constitution,
- 19.1.4 provided that
 - 19.1.4.1 any General Meeting called for the purposes of taking such a decision shall require that all members of the Community are given fourteen (14) days written notice of such a meeting and the intention to vote on such decision,
 - 19.1.4.2 the quorum for such meeting shall be (**state percentage of the Community or number of Community members**) Community members present at the meeting;
 - 19.1.4.3 A resolution signed by (**state number of Community members**) members of the Community may also record such a decision.

20 Dispute Resolution

- 20.1 Any dispute arising out of any of the provisions of this Constitution, which cannot be resolved through negotiation by the parties involved, will be referred to a General Meeting for discussion and resolution. Should the dispute remain unresolved, it may be referred to:
 - 20.1.1 the Municipality for resolution in accordance with the provisions of the contract between the Municipality and the CBO; or
 - 20.1.2 some other suitable mediator as the parties may determine.

21 Termination

- 21.1 On dissolution of the CBO, after provision is made for the payment of all debts and obligations of the CBO and the costs of dissolving the CBO, all rights and obligations of the surplus income and assets of the CBO will be transferred either to –
 - 21.1.1 the Municipality, or
 - 21.1.2 another CBO or institution with objects similar to those of the CBO, or
 - 21.1.3 any one or more institution, which is or are ecclesiastical, educational and/or charitable institutions within South Africa, which are themselves in terms of section 10(1)(f) of the Income Tax Act exempt from income tax and donations tax and which are registered as fund-raising organisations in terms of the Fund-raising Act.

Annexure 1: Mandate from the Community

The mandate from the Community, for the CBO to enter into a municipal service partnership for the purposes of providing water services (*include other services if applicable*) to the Community was obtained by the following means:

(State how the CBO obtained a mandate from the Community. For example:

- *51% of households in the Community endorsed the CBO as the preferred services provider for the provision of water services in a General Meeting where two thirds of the households in the Community were present at the General Meeting.*

OR

- *A majority decision of members of the Community present as General Meeting (which constituted a quorum) was taken to mandate the CBO to enter into a municipal services partnership with the Municipality for the purposes of providing water services*

Annexure 2: List of Members of the CBO

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