

AGREEMENT

BETWEEN

THE GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA

AND

THE GOVERNMENT OF THE
REPUBLIC OF NAMIBIA

ON

WATER RELATED MATTERS PERTAINING TO THE
INCORPORATION OF WALVIS BAY IN THE
TERRITORY OF THE REPUBLIC OF NAMIBIA

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PREAMBLE

WHEREAS the Government of the Republic of South Africa (hereafter referred to as "South Africa") and the Government of the Republic of Namibia (hereafter referred to as "Namibia") (hereinafter jointly referred to as "the Parties") have agreed that South Africa will, with effect from 1 March 1994, transfer control over Walvis Bay and the twelve offshore islands as hereinafter described, to Namibia; and

WHEREAS the Parties regard it as necessary to make further provision for the smooth transfer of control over Walvis Bay and the of-shore islands from South Africa to Namibia;

NOW THEREFORE the Parties agree as follows:

ARTICLE I

DEFINITIONS

In this Agreement, unless inconsistent with the context in which it is used -

"Effective Date" means 1 March 1994;

"Scheme" means the Rooibank (Walvis Bay) Government Water Supply Scheme referred to in Article 3;

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Walvis Bay" means -

- (a) the port, settlement and territory described in the Walfish Bay and St. John's River Territories Annexation Act, 1884 (Act No. 35 of 1884), of the Cape of Good Hope
as: "the Port or settlement of Walfish Bay situated on the West Coast of South Africa, to the North of the Tropic of Capricorn, together with certain Territory surrounding the same.
and
- (b) the Island of Inchaboe and the other islands, islets and rocks mentioned in the Ichaboe and Penguin Islands Act, 1874 (Ac No. 4 of 1874), of the Cape of Good Hope.

ARTICLE 2

EXTINCTION OF SOUTH AFRICA'S ENTITLEMENT TO A SHARE IN THE WATER RESOURCES OF THE KUISEB RIVER

- 2.1 To the extent that South Africa is entitled under the rules of International Law to share in the waters of the Kuiseb River (including the Kuiseb River Delta) and subject to Sub-article 2.2 South Africa acknowledges that such entitlement shall terminate with effect from the Effective Date and that control over the utilisation of the water resources of the said River shall, with effect from the said date, 'vest in the exclusive jurisdiction of Namibia.
- 2.2 Namibia undertakes to effect the utilisation of the water resources of the Kuiseb River with due regard to the estimated long, term yield of the resource and the conservation of the environment.

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ARTICLE 3

PASSING OF PROPRIETARY RIGHTS

- 3.1 Proprietary rights in the Scheme and all appurtenant equipment as fully described in Annexure I shall, with effect from the Effective Date, pass from South Africa to Namibia and South Africa undertakes to perform any act required in terms of any legislation in force in Walvis Bay, to give formal effect to this provision.
- 3.2 The Parties agree that by virtue of the fact that the pipeline from Mile 7 Reservoir to Langstrand via Dolfynpark, forms an integral part of the water reticulation system currently operated by the Town Council of Walvis Bay, ownership of the said pipeline is to be handed over to the Town Council of Walvis Bay as soon as practicable after the Effective Date.

ARTICLE 4

FLOOD PROTECTION WORKS IN WALVIS BAY

- 4.1 Subject to Sub-article 4.2 proprietary rights in the flood protection works constructed in the northern course of the Kuiseb River within Walvis Bay shall, with effect from the Effective Date, pass from South Africa to Namibia and South Africa undertakes to perform any act required in terms of any legislation in force in Walvis Bay, to give formal effect to this provision.
- 4.2 Namibia accepts responsibility for the operation and maintenance and the further improvement of the flood protection works referred to in Sub-article 4.1 having due regard to environmental requirements and has noted the willingness of the Town Council of Walvis Bay to conclude an agency agreement with Namibia in terms of whereof the said tasks will be executed by the said Town Council.

ARTICLE 5

COMPETENT AUTHORITIES

The Competent authorities responsible for the implementation of this program shall be -

- (a) on behalf of South Africa, the national Department of Water Affairs and Forestry; and
- (b) on behalf of Namibia, the Ministry of Agriculture, Water and Rural Development.

ARTICLE 6

ENTRY INTO FORCE

This agreement shall enter into force once each Party has notified the other in writing through the diplomatic channel of its compliance with the constitutional requirements necessary for the implementation thereof. The date of entry into force shall be the date of last notification.

AT WITNESS WHEREOF the undersigned, being duly authorised by their respective Government, have signed and sealed the Agreement in duplicate in the English language, both being equal authentic.

DONE AT ?????? ON THIS 8th DAY OF April 19??

**FOR THE GOVERNMENT OF THE REPUBLIC OF
SOUTH AFRICA**

FOR THE GOVERNMENT OF THE REPUBLIC OF NAMIBIA