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The Municipal Secretary
Mantsopa Municipality
Private Bag X11
Ladybrand
9745

Offices / Kantore
Welbedacht
Thaba Nchu
Rustfontein
Bethulie

Attention: Ms. H Gouws



1 October, 2001

**AGREEMENT BETWEEN BLOEM WATER AND THE FORMER
TRANSITIONAL LOCAL COUNCIL OF EXCELSIOR**

Your letter of 24 May, 2001 and subsequent other correspondence related the above refers.

Please find attached a fully signed copy of the agreement for your records. We apologise for the delay in submitting this document to yourselves.

Yours faithfully



Louis van Oudtshoorn
Acting Chief Executive Officer
PP/pnexcelsioragree



SYMINGTON & DE KOK

ATTORNEYS · PROKUREURS · BABUELEDI

Solutions that fit · Oplossings wat pas · Ditharabololo tse di Isegang

AGREEMENT

between

BLOEM WATER

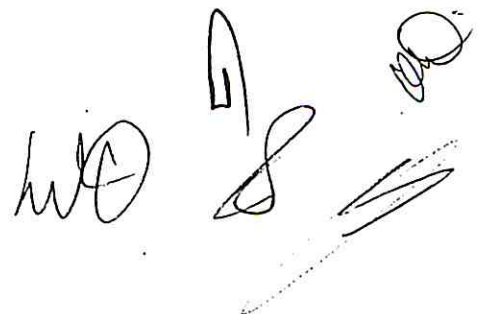
and

Mantsope Local Municipality : (Excelsior Area) (10)
~~TRANSITIONAL LOCAL COUNCIL OF EXCELSIOR~~

WD

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Handwritten signatures and initials at the bottom right of the page, including a large 'W' and 'S' and a signature that appears to be 'M. S.'.

AGREEMENT

This **AGREEMENT** is between

1.1 **BLOEM WATER**

and

Montsopa Local Municipality (Excelsior area)

1.2 ~~TRANSITIONAL LOCAL COUNCIL OF EXCELSIOR~~

INTERPRETATION

2. Unless the context clearly indicates a contrary intention expressions which denote the singular shall include the plural and vice versa and the following expressions shall have the meaning set opposite them below, namely:

- 2.1. **BLOEM WATER** a Water Board constituted in terms of the provisions of the **ACT**;
- 2.2 the **MUNICIPALITY** A water services authority referred to in the **ACT** and defined as such in the **Local Government Transitional Act, Nr 209/1993**,

EXCELSIOR

responsible for insuring access to
water services.

2.3 the **ACT**

the *Water Services Act Nr 108 of 1997* (date of commencement 19th December 1997);

2.4 the **PARTIES**

'n collective reference to **BLOEM WATER** and the **MUNICIPALITY** and means "**PARTY**" one of them;

2.5 a **DAY**

any day of the week with the exclusion of Sundays and South African Public Holidays;

2.6 a **MONTH**

a calendar month and more specifically in reference to a month from a specific date, a calendar month commencing on that day or the same date of any subsequent month and in any other context a month of the calendar, that is, one of the 12 (TWELVE) months of the calendar and "**MONTHLY**" has the corresponding meaning;

2.7 **YEARLY SHORTFALL**

the minimum estimated potable water supply, provided by **BLOEM WATER** to the **MUNICIPALITY** for

EXCELSIOR

the period calculated from 1999 to 2019 as set out in Annexure "A" to the **AGREEMENT** under the heading "**PROPOSED MONTHLY DEMAND FROM PIPELINE**" during the summer and winter periods and further subject to the conditions mentioned in Clause 8;

2.8 the **SIGNATURE DATE**

the date of signature of this **AGREEMENT** by the **PARTY** last signing;

2.9 **POTABLE WATER**

purified water meeting the criteria as stipulated in Clause 13.1.

Where necessary the masculine gender shall include the feminine and the singular shall include the plural and the plural shall include the singular and the following words in the **AGREEMENT** will have the same meaning as defined in the **ACT**, namely:

Water services, water board, water services authority, basic water supply, consumer, water services work and water supply services.

EXCLUSION OF OTHER AGREEMENTS

3. This **AGREEMENT** cancels and supersedes all other contracts entered into by the **PARTIES** and any amendment, addition or consensual cancellation

EXCELSIOR

thereof will be of no force or effect unless it appears in writing and is signed by the **PARTIES** hereto.

INDULGENCE



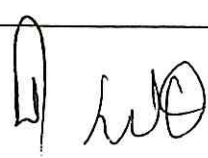
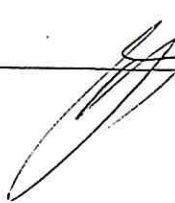
4. Any indulgence in respect of time or anything else granted by a **PARTY** to the other, will not be considered to impair any of the rights of such **PARTY** in terms of the **AGREEMENT**, or effect any right whatsoever of the said **PARTY**.

CLAUSE HEADINGS

5. The head notes in this **AGREEMENT** are used only for the purpose of reference and shall in no way affect or govern the construction or interpretation of this **AGREEMENT**.

RECORDAL

6. The **PARTIES** hereby record that the purpose of this **AGREEMENT** is to make provision inter alia for:
- 6.1 the extent to which the **YEARLY SHORTFALL** will be supplied and provided by **BLOEM WATER** to the **MUNICIPALITY**;
- 6.2 the determination of the water tariffs applicable to the consumption of the **YEARLY SHORTFALL** by the **MUNICIPALITY**;
- 6.3 the limiting and discontinuation of **water services** in terms of the **ACT**.


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WATER SUPPLY

- 7.1 **BLOEM WATER** undertakes to provide the **MUNICIPALITY** with the **YEARLY SHORTFALL** to the existing reservoir of the **MUNICIPALITY** by means of the pipeline constructed by the **MUNICIPALITY**.
- 7.2 The **YEARLY SHORTFALL** is subject thereto that the supply thereof must not be less than 2,0 litres per second as the delivery equals the maximum retention time of 40 hours in the pipeline.
- 7.3 The pipeline must further provide a certain base flow (minimum delivery) varying between the summer and winter demands, evaluated on a yearly basis and that the peak demand must be provided by the **MUNICIPALITY'S** water works.
- 7.4 The said pipeline will further be operational throughout the year (minimum flow of 2,0 litres per second) and the **MUNICIPALITY'S** water works will not be utilized to its full capacity during a year.

MAINTENANCE

- 8.1 To ensure the minimum base flow is utilized to the full extent and that the pipeline (i.e. from the Talla connection up to the reservoir at the **MUNICIPALITY**) are operated and maintained by **BLOEM WATER**, the **MUNICIPALITY** undertakes to consume a minimum of 90% of the **YEARLY SHORTFALL** subject however to the provisions mentioned in Clause 9.1.
- 8.2 Should it prevail that less than 90% of the **YEARLY SHORTFALL** is withdrawn from **BLOEM WATER**, **BLOEM WATER** will demand that the

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shortfall in consumption be integrated into the proceeding financial year. Should the **MUNICIPALITY** still not meet the agreed consumption, **BLOEM WATER** will have the right to adjust the **MUNICIPALITY'S** account to meet the required withdrawal.

- 8.3 In the event of an increase in the consumption by the **MUNICIPALITY** beyond the **YEARLY SHORTFALL**, the **MUNICIPALITY** will inform **BLOEM WATER** with a prior minimum of 30 **DAYS** written notice.

DETERMINING OF CONSUMPTION

- 9.1 The **PARTIES** hereby agree that the estimation as set out in Annexure "A" could be adjusted from year to year should it not be an accurate estimation. The aforementioned adjustment is however, subject thereto that the consumption may not be less than the water demand of the previous **YEAR**. Any adjustment therefore to the **YEARLY SHORTFALL** shall be:
- 9.1.1 agreed to in writing; and
- 9.1.2 be subject to the provisions mentioned in Clauses 8.1 and 8.2.
- 9.2 Flow meters will be installed by **BLOEM WATER** on the pipeline where it connects to the **MUNICIPALITY'S** existing reservoir and **BLOEM WATER** will be responsible for the metering of the water. Should it be found that any of the meters installed by **BLOEM WATER** is registering readings which are more than 5% incorrect, the quantity of water for which the **MUNICIPALITY** should have been charged with regard to the period during which the meter was defective in the opinion of **BLOEM WATER**, shall be calculated on the basis of the average consumption during the previous period of 3 (THREE)

MONTHS, or the period since installation which ever period is the shorter, or in any other manner as such be determined from time to time by **BLOEM WATER**.

- 9.3 **BLOEM WATER** will be responsible at its cost to calibrate the meters mentioned in Clause 9.2 from time to time in accordance with the specifications and requirements of the manufacturer of the said flow meters.

FIXATION OF TARRIFS

- 10.1 **BLOEM WATER** will annually, with effect from 1 July of each year, determine tariffs for all consumers in **BLOEM WATER'S** area of supply, in accordance with a widely obtainable policy document of the terms of tariffs.
- 10.2 The flow meters will be read jointly by the **PARTIES** on a **MONTHLY** basis.
- 10.3 Information regarding the previous 12 (TWELVE) **MONTHS'** water consumption must be submitted to **BLOEM WATER** during January and July of each year. The information is required in January of each year for budget purposes and in July of each year for audit purposes.
- 10.4 An audited reconciliation of both the quantity (water balance) and quality is to be submitted to **BLOEM WATER**.
- 10.5 Any fluctuation in consumption that may occur as the result of climate changes, would not be seen as a sufficient cause to modify the projection as set out in Annexure "A".

EXCELSIOR



PAYMENTS

11.1 **BLOEM WATER** will provide the **MUNICIPALITY** with an account for all water consumption which shall be based on meter readings or alternatively on assessments of water consumption as determined by **BLOEM WATER** in the manner as set out in Clause 9.2 within the first 7 (SEVEN) **DAYS** of each **MONTH**.

11.2 Payments must be made

11.2.1 within 30 (THIRTY) **DAYS** from the date of such an account;

11.2.2 at the domicile of **BLOEM WATER**;

11.2.3 without any deductions.

LIMITATION OR DISCONTINUATION

12.1 **BLOEM WATER** will only be entitled to the limitation and discontinuation of **water services** in accordance with the **ACT** as a result of non-payment by the **MUNICIPALITY** if **BLOEM WATER** has given 30 (THIRTY) **DAYS** notice of its intention to limit **water services** or 60 (SIXTY) **DAYS** notice of its intention to discontinue **water services**.

12.2 The notice which is referred to, must also be provided to the relative Province and the Minister as defined in the **ACT**.

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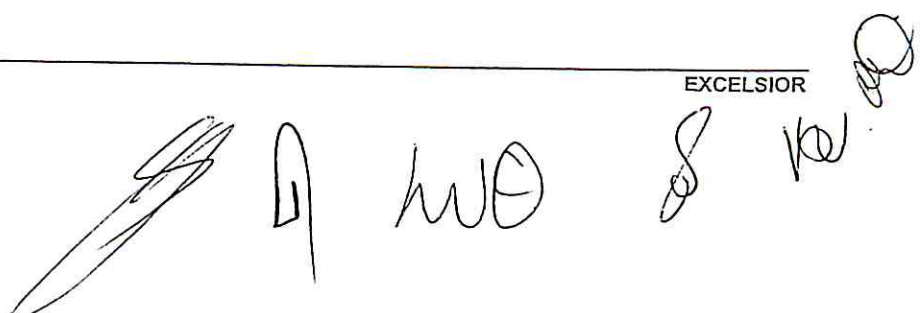
- 12.3 **BLOEM WATER** shall not be responsible to the **MUNICIPALITY** or to any person or property or for any loss of production in connection with any industrial or commercial process, or for any loss of income or profit as a result thereof, arising from any fluctuation in, interruption of, or excess or lack of pressure or quantity of water in **BLOEM WATER'S** reservoirs or pipelines, draw off points or fittings.
- 12.4 **BLOEM WATER** will further not be responsible for any damages which may be incurred by any person as a result of interruptions of ~~the~~ **water supply** as a result of any cause which are beyond the control of **BLOEM WATER**.

QUALITY OF WATER

- 13.1 **BLOEM WATER** shall supply the water in accordance with the provisions of the **ACT** and the **AGREEMENT** and all reasonable action will be taken in order to comply with the standard of quality as set out by the South African Bureau of Standards (latest addition) and well as the criteria as stipulated in the latest South African water quality guidelines for domestic use, Appendix 4, Table 1 (maximum limit for no risk) as issued by the Department of Water Affairs and Forestry.
- 13.2 **BLOEM WATER** may at any time, by virtue of vis major, limit the supply of water to such hours and such quantities as it may deem necessary.

DOMICILIUM

- 14.1 All notices and legal proceedings flowing from this **AGREEMENT** shall be in writing and shall either be delivered by hand or be forwarded by pre-paid registered post to-

EXCELSIORHandwritten signatures and initials at the bottom of the page, including a large stylized signature, the letters 'A', 'WE', and other scribbles.

BLOEM WATER

2 Houtepoppie Street

Pellissier

BLOEMFONTEIN

The **MUNICIPALITY**

32 Kommissie Street

EXCELSIOR

- 14.2 The **PARTIES** hereby agree that their respective addresses as set out above, will be their respective **domicilium citandi et executandi**, in other words the addresses to which all notices and documents relating to the **PARTIES** must be forwarded to and where any legal documents must be served which may arise or relate to this **AGREEMENT**.
- 14.3 Either party shall be entitled to change their **domicilia citandi et executandi** from time to time by giving written notice of an alternative address in the Republic (which address shall not be a postal address) to the other party, which notice shall take effect upon receipt thereof by the addressee.
- 14.4 All notices required to be given in terms of this **AGREEMENT**, in which latter event they shall be deemed, until the contrary has been proven, to have been received by the addressee on the 7th **DAY** after posting.

WATER SERVICES AND DEVELOPMENT PLAN

- 15.1 The **PARTIES** hereby record that the **MUNICIPALITY** as a **water service authority** as defined in the **ACT** will from time to time be responsible to furnish a water service development plan.




EXCELSIOR



15.2 The **MUNICIPALITY** hereby gives an undertaking to **BLOEM WATER**, at the latter's written request, to furnish to **BLOEM WATER** such development plan as and when it must be prepared and lodged in terms of the provisions of the **ACT** to enable **BLOEM WATER** to:

15.2.1 formulate a policy in terms of Section 39 of the **ACT**;

15.2.2 prepare a business plan which will inter alia also provide for precautionary measure with regard to water demand and conservation.

15.3 **BLOEM WATER** undertakes to submit to the **MUNICIPALITY** as *water services authority* within the jurisdiction of **BLOEM WATER** the necessary policy and any amendment thereto as contemplated in Section 39(5) of the **ACT**.

INTEREST ON OVERDUE PAYMENTS

16. Should any sum for which a **PARTY** is liable in terms hereof not be paid timeously as provided in the **AGREEMENT**, the default **PARTY** shall pay interest thereon on at the rate of 2% (TWO percent) per **MONTH** on the outstanding amount calculated from date such an amount become due, until date of receipt of payment.


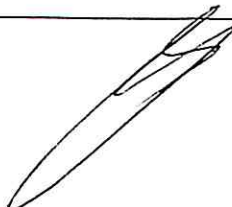
COMMENCEMENT

17. The **PARTIES** hereby agree that this **AGREEMENT** will commence on the **SIGNATURE DATE** and will terminate on 31st of December 2019 and can be renewed at approval of both **PARTIES**.

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DISPUTE

- 18.1 A dispute between the **PARTIES** relating to any matter arising out of this **AGREEMENT** or the interpretation thereof, shall be referred to arbitration, by either of the **PARTIES**, by way of a notice to the other **PARTY**, in which notice particulars of the dispute are set out.
- 18.2 When arbitration proceedings are held it shall not be necessary to observe or carry out the usual formalities of procedure (e.g. there shall not be any pleadings or discovery or in accordance with the strict rules of evidence.)
- 18.3 Arbitration shall be held immediately in Bloemfontein and with a view to it being completed within 14 (FOURTEEN) **DAYS** after it is demanded.
- 18.4 An arbitrator for such arbitration proceedings shall be a suitably qualified person agreed upon by the **PARTIES** and failing agreement, nominated by the President from time to time by the Association of Arbitrators (Southern Africa).
- 18.5 The decision of the arbitrator shall be final and binding on the **PARTIES**, who shall summarily carry out that decision and either of the **PARTIES** shall be entitled to have the decision made an order of any Court with competent jurisdiction.
- 18.6 The "arbitration" clause in this **AGREEMENT** shall be severable from the rest of this **AGREEMENT** and therefore shall remain effective between the **PARTIES** after this **AGREEMENT** has been terminated.


EXCELSIOR

Proposed Excelsior Water Pipeline

Scenario 2: Estimated future water demand and proposed demand from Bloomwater (minimum flow in pipeline is maintained)

Year	Water demand		Present bulk supply system					Shortfall		Simulated total demand										Proposed operational methodology										Total de- mand from pipeline
	Total yearly demand kl/yr	Total avg monthly demand kl/mnth	Yield of existing system kl/yr	Average monthly yield kl/mnth	Peak summer month		Peak winter month l/s	Monthly shortfall kl/mnth	Percent- age of Total	Total Peak monthly demand				Shortfall Peak monthly demand				Peak Summer Monthly demand from present system kl/mnth	Proposed monthly demand from pipeline				Operational mnths							
					kl/mnth	l/s				kl/mnth	l/s	kl/mnth	l/s	kl/mnth	l/s	kl/mnth	l/s		kl/mnth	l/s	kl/mnth	l/s	kl/mnth	l/s	Summer demand	Winter demand				
1999	232,992	19,416	198,550	16,546	24,819	9.4	0.273	3.1	2,870	14.8	29,124	11.1	9,708	3.7	4,305	1.6	1,435	0.5	23,668	9.1	6,256	2.0	6,256	2.0	0.0	12.0				
2000	237,250	19,771	198,550	16,546	24,819	9.4	0.273	3.1	3,225	16.3	29,656	11.3	9,805	3.8	4,338	1.8	1,613	0.6	24,400	9.3	6,256	2.0	6,256	2.0	0.0	12.0				
2001	250,609	20,894	198,550	16,546	24,819	9.4	0.273	3.1	4,338	20.8	31,928	11.9	10,442	4.0	6,507	2.5	2,169	0.8	24,819	9.4	6,507	2.5	6,256	2.0	0.0	12.0				
2002	263,968	21,997	198,550	16,546	24,819	9.4	0.273	3.1	5,452	24.8	32,996	12.6	10,999	4.2	8,177	3.1	2,728	1.0	24,819	9.4	8,177	3.1	6,256	2.0	0.0	12.0				
2003	277,327	23,111	198,550	16,546	24,819	9.4	0.273	3.1	6,565	28.4	34,666	13.2	11,555	4.4	9,847	3.7	3,282	1.2	24,819	9.4	9,847	3.7	6,256	2.0	0.0	12.0				
2004	290,686	24,224	198,550	16,546	24,819	9.4	0.273	3.1	7,678	31.7	36,336	13.8	12,112	4.6	11,517	4.4	3,309	1.5	24,819	9.4	11,517	4.4	6,256	2.0	0.0	12.0				
2005	304,045	25,337	198,550	16,546	24,819	9.4	0.273	3.1	8,791	34.7	38,006	14.5	12,669	4.8	13,167	5.0	4,396	1.7	24,819	9.4	13,167	5.0	6,256	2.0	0.0	12.0				
2006	318,134	26,511	198,550	16,546	24,819	9.4	0.273	3.1	9,905	37.6	39,767	15.1	13,256	5.0	14,940	5.7	4,983	1.9	24,819	9.4	14,940	5.7	6,256	2.0	0.0	12.0				
2007	332,223	27,685	198,550	16,546	24,819	9.4	0.273	3.1	11,019	40.2	41,528	15.8	13,843	5.3	16,709	6.4	5,570	2.1	24,819	9.4	16,709	6.4	6,256	2.0	0.0	12.0				
2008	346,312	28,859	198,550	16,546	24,819	9.4	0.273	3.1	12,134	42.7	43,289	16.5	14,430	5.5	18,470	7.0	6,157	2.3	24,819	9.4	18,470	7.0	6,256	2.0	0.0	12.0				
2009	360,401	30,033	198,550	16,546	24,819	9.4	0.273	3.1	13,248	44.9	45,050	17.1	15,017	5.7	20,231	7.7	6,744	2.6	24,819	9.4	20,231	7.7	6,256	2.0	0.0	12.0				
2010	374,490	31,208	198,550	16,546	24,819	9.4	0.273	3.1	14,362	47.0	46,811	17.8	15,604	5.9	21,993	8.4	7,331	2.8	24,819	9.4	21,993	8.4	6,256	2.0	0.0	12.0				
2011	379,454	31,621	198,550	16,546	24,819	9.4	0.273	3.1	15,476	47.7	47,432	18.0	15,811	6.0	22,613	8.6	7,530	2.9	24,819	9.4	22,613	8.6	6,256	2.0	0.0	12.0				
2012	384,418	32,035	198,550	16,546	24,819	9.4	0.273	3.1	16,590	47.7	48,052	18.3	16,017	6.1	23,234	8.8	7,745	2.9	24,819	9.4	23,234	8.8	6,256	2.0	0.0	12.0				
2013	389,382	32,449	198,550	16,546	24,819	9.4	0.273	3.1	17,704	49.0	48,673	18.5	16,224	6.2	23,854	9.1	7,951	3.0	24,819	9.4	23,854	9.1	6,256	2.0	0.0	12.0				
2014	394,346	32,862	198,550	16,546	24,819	9.4	0.273	3.1	18,818	49.0	49,293	18.8	16,431	6.3	24,476	9.3	8,158	3.1	24,819	9.4	24,476	9.3	6,256	2.0	0.0	12.0				
2015	399,310	33,276	198,550	16,546	24,819	9.4	0.273	3.1	19,932	50.3	49,914	19.0	16,638	6.4	25,095	9.5	8,365	3.2	24,819	9.4	25,095	9.5	6,256	2.0	0.0	12.0				
2016	404,270	33,702	198,550	16,546	24,819	9.4	0.273	3.1	21,046	50.9	50,533	19.2	16,851	6.4	25,734	9.8	8,578	3.3	24,819	9.4	25,734	9.8	6,256	2.0	0.0	12.0				
2017	409,530	34,128	198,550	16,546	24,819	9.4	0.273	3.1	22,160	51.5	51,191	19.5	17,064	6.5	26,373	10.0	8,791	3.3	24,819	9.4	26,373	10.0	6,256	2.0	0.0	12.0				
2018	414,640	34,553	198,550	16,546	24,819	9.4	0.273	3.1	23,274	52.1	51,930	19.7	17,277	6.6	27,011	10.3	9,004	3.4	24,819	9.4	27,011	10.3	6,256	2.0	0.0	12.0				
2019	419,750	34,979	198,550	16,546	24,819	9.4	0.273	3.1	24,388	52.7	52,469	20.0	17,490	6.7	27,650	10.5	9,217	3.5	24,819	9.4	27,650	10.5	6,256	2.0	0.0	12.0				

Notes:

1. The estimated water demand is based on the DWAF approved Technical Report, reference 1016/2
2. The yield of the existing system complies the boreholes (88 560 Mlyr) and the off channel storage dam (100 000 Mlyr).
3. The existing water demand from July 1999 until June 1999 amounts to 190 000 Ml. This confirms the calculated yield of the present system.
4. The peak Average Monthly Demand (AMD) for summer and winter was accepted as 1.8 x AMD and 0.5 x AMD respectively
5. The minimum flow from the pipeline is accepted as 2.0 l/s, being 40 hour retention in the pipeline.
6. The proposal is based on the pipeline providing the yearly shortfall.
7. The shaded area (column 20) refers to the number of months that require an additional flow (not necessarily the peak summer demand) to meet the minimum flow of 2.0 l/s.
8. Date of calculations:

38641.80107

WFO

12/01/07

18.7 No clause in this **AGREEMENT** which refer to arbitration shall mean or be deemed to mean or interpreted to mean that either of the **PARTIES** shall be precluded from obtaining interim relief on an urgent basis from a Court of competent jurisdiction pending the decision of an arbitrator.

SIGNED at

on this 02 day of October

2001
2000.

AS WITNESSES:

1.

2.


BLOEM WATER

SIGNED at

on this 02 day of October

2001
2000.

AS WITNESSES:

1.

2.


MUNICIPALITY