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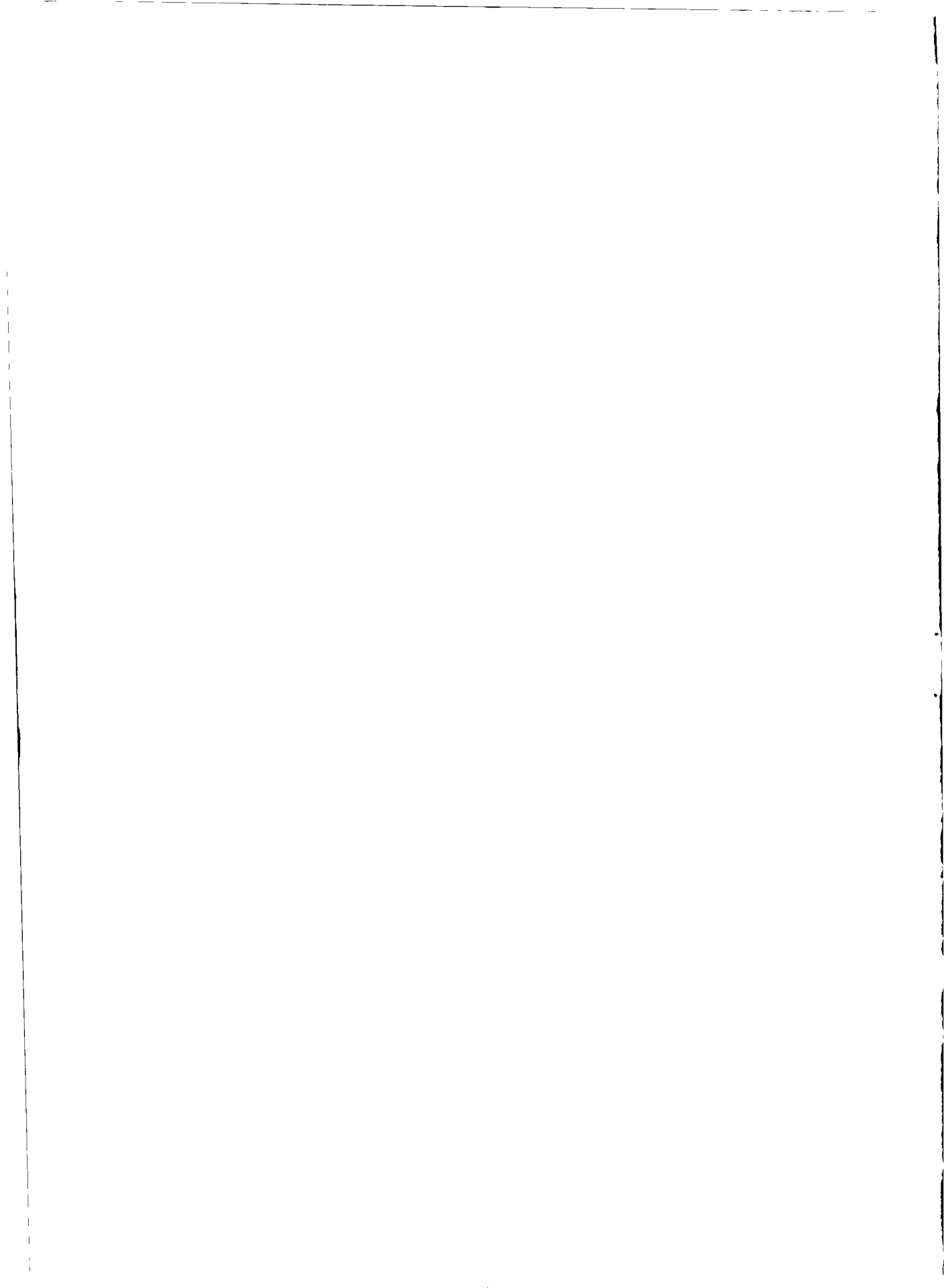
NAIROBI, 11th December, 2014

CONTENT

Act—

PAGE

The Meru County Water and Sanitation Services Act, 2014..... 1



2014

Meru County Water and Sanitation Services

No. 10

THE MERU COUNTY WATER AND SANITATION SERVICES ACT, 2014

No. 10 of 2014

Date of Assent: 4th December, 2014

Date of Commencement: 11th December, 2014

ARRANGEMENT OF SECTIONS

Section

PART I—PRELIMINARY

- 1—Short title.
- 2—Interpretation.
- 3—Purpose of the Act.

PART II—ADMINISTRATION

Meru County Water and Sanitation Services Board

- 4—Establishment of the Services Board.
- 5—Composition of the Services Board.
- 6—Functions of the Services board.
- 7—Conduct of Business.
- 8—Powers of the Board.
- 9—Remunerations of the Board.
- 10—Officers of the Services Board.
- 11—Protection from personal liability.

Meru County Urban Water and Sanitation Services Corporation

- 12—Establishment of the Corporation.
- 13—Functions of the Corporation.
- 14—Board of the Corporation.
- 15—Functions of the Board.
- 16—Conduct of Business.
- 17—Remuneration of the Board.
- 18—Chief Executive officer.
- 19—Removal from office.
- 20—Staff of the Corporation
- 21—The Common Seal of the Corporation.
- 22—Protection from personal liability.
- 23—Liability for damages.
- 24—Public awareness.
- 25—Public private partnership.

Sub-county Water and Sanitation Services Co-operative Societies

- 26—Establishment of sub-county water co-operative societies.
- 27—Members of the Co-operative.
- 28—Functions of the Co-operative Society.
- 29—Management Committee.
- 30—Operational guidelines.
- 31—Service Provision Agreements.
- 32—Members' investments.
- 33—Investment by the co-operative society.
- 34—Bonuses.

Directorate of Water and Sanitation Services

- 35—Establishment of the Directorate.
- 36—Functions of the Directorate.
- 37—Director.
- 38—Officers.
- 39—Reporting.

PART III—WATER SERVICES

- 40—Supply of water.
- 41—Service agreements with National Government.
- 42—Development of water works.
- 43—County scheme.
- 44—Community projects.
- 45—Water tariffs.
- 46—Prohibited activities.
- 47—Permit.
- 48—Application for permit.
- 49—Water works conditions.
- 50—Non interference and restoration after construction works.
- 51—Register of permits.
- 52—Water services audit.
- 53—Water services conflict resolution

PART IV—WATER AND SOIL CONSERVATION***Water Conservation***

- 54—Water conservation areas.
- 55—Conservation and water catchments.
- 56—Conservation guidelines.

Soil conservation

- 57—Soil Conservation.
- 58—Flood flow management
- 59—Demarcation of riparian land.
- 60—Prohibited activities on riparian land.

PART V— STORM WATER MANAGEMENT

- 61—Storm water management and land use practices.
- 62—Storm water management plan.
- 63—Reduction of run off water.
- 64—Riparian buffers.

PART VI— SANITATION SERVICES AND POLLUTION CONTROL

- 65—Master plan.
- 66—Provision of sanitation services.
- 67—Waste water management.
- 68—Compliance with effluent standards.
- 69—Discharge of contaminated water and effluent.
- 70—Interference with sewerage system.
- 71—Sewerage tariffs.
- 72—Sector wide forum.

PART VII— FINANCIAL PROVISIONS

- 73—Funds of the Corporation.
- 74—Annual estimates.
- 75—Accounts.
- 76—Financial reports and audit.
- 77—Funds of the Services Board and the Directorate.

PART VIII— ENFORCEMENT

- 78—Authorised officers.
- 79—Power of entry.
- 80—Power of officers.

PART IX— GENERAL PROVISIONS

- 81—Regulations.
- 82—Transitional.
- Schedule**— Provisions as to the conduct of business and affairs of the board of corporation and services board.

THE MERU COUNTY WATER AND SANITATION SERVICES ACT, 2014

AN ACT of the County Assembly of Meru to provide for development, regulation and management of county public works related to water and sanitation services, storm water management systems and water conservation and for connected purposes

ENACTED by the County Assembly of Meru, as follows—

PART I – PRELIMINARY

1. This Act may be cited as the Meru County Water and Sanitation Services Act, 2014 and shall come into force upon publication in the *Gazette*.

Short title.

2. In this Act, unless the context otherwise requires—
“authorised officer” means an authorised officer appointed under section 78;

Interpretation.

“board of Corporation” means the Board of Water and Sanitation Services Corporation established under section 14;

“chief officer” means the chief officer for the time being responsible for water services;

“corporation” means the Meru County Urban Water and Sanitation Services Corporation established under section 12;

“directorate” means the Directorate of Water and Sanitation Services established under section 35;

“executive member” means the County Executive member for the time being responsible for water services;

“public works” in this context means storage, intakes, transmission, distribution, pipelines, canals, dykes, water treatment works, sewer treatment works, pumping stations and pumps, drilling and distribution lines;

“sector wide forum” means the water and sanitation services sector wide forum established under section 72;

“services board” means the Meru County Water and

Sanitation Services Board established under section 4;

“water cooperative society” means the sub-county water cooperative society established under section 26;

“water works” means any construction, excavation, piping, drainage of any land, supply or transportation of water, water abstraction works, management of storm water and floods or storage, impounding of water for supply to the public or for private purposes, drainage of any swamp or other land.

3. The purpose of this Act is to provide for a legal framework for implementation of sections 10 (a) and 11 of part 2 of the Fourth Schedule to the Constitution and Article 43 (1) (b) and (d) in order to—

Purpose of Act.

- (a) ensure equitable and continuous access to clean water;
- (b) promote soil and water conservation;
- (c) promote water catchment conservation and protection;
- (d) provide for the development, and management of county water services public works;
- (e) provide for regulation of county water and sanitation public works;
- (f) ensure effective and efficient provision of water and sanitation services;
- (g) promote effective and efficient management of storm water in built up areas;
- (h) enhance sustainable management of water resources; and
- (i) promote interagency collaboration and public participation in water resource development and management.

PART II –ADMINISTRATION .

Meru County Water and Sanitation Services Board

4. There is established a board to be known as Meru County Water and Sanitation Services Board.

Establishment of Services Board.

5. (1) The Services Board shall consist of—

Composition of the Services Board.

- (a) a Non-Executive Chairperson appointed by the Governor and approved by the County Assembly;
- (b) the chief officer for the time being responsible for water services who shall be the secretary;
- (c) the chief officer for the time being responsible for finance;
- (d) the chief officer for the time being responsible for co-operatives;
- (e) three Chairpersons of the sub-county co-operatives nominated by the joint forum of the sub-county co-operatives in accordance with the prescribed procedure and appointed by the Executive Member;
- (f) three officers of the Meru County Sanitation Services Board at the sub-county level appointed by the Executive Member;
- (g) the Chief Executive Officer of the Meru County Urban Water Services and Sanitation Corporation; and
- (h) one person appointed by the Executive Member through a competitive process by virtue of the persons' knowledge, expertise and experience in matters related to water and sanitation management and approved by the County Assembly.

(2) A person shall be qualified for appointment as Chairperson or Member appointed under subsection (1) (g) if the person—

- (a) holds a degree from a recognized university;
- (b) has knowledge and experience of at least five years in matters relating to water resources management, water and sanitation services management or any other related field;
- (c) meets the requirements of Chapter Six of the Constitution; and
- (d) has had a distinguished career in the respective field.

2014

Meru County Water and Sanitation Services

No. 10

Functions of the Services Board.

6. The functions of the Services Board shall be to—
- (a) solving disputes arising from water sector in the county;
 - (b) subject to any other written law regulate water and sanitation services in the county;
 - (c) reviewing and advising on the appropriate governance and management of the institutions established under this Act;
 - (d) in co-operation with other Government agencies regulate development of infrastructure and systems for water and sanitation services in the county;
 - (e) issue authorization to any person intending to carry out any water and sanitation works similar to the public works defined under this Act;
 - (f) regulate use or access to land for the purposes of water conservation;
 - (g) issue permits and regulate the provision of sanitation services;
 - (h) ensure compliance with the established standards related to water and sanitation services and works;
 - (i) receive and address complaints from water consumers and any person affected by a decision of the corporation or the directorate;
 - (j) maintain data and information related to water and sanitation services and disseminate it to the public; and
 - (k) maintain collaboration and cooperation with other Government Agencies other county governments in carrying out its functions.

7. (1) The conduct and regulation of the business and affairs of the Services Board shall be as set out in the Schedule.

Conduct of business.

(2) Except as provided in the Schedule, the Services Board may regulate its own procedure.

8. The board shall have powers necessary for

Powers of the board.

No. 10 *Meru County Water and Sanitation Services*

discharge and performance of its functions under this Act.

9. The remuneration of the Members of the Services Board shall be as determined by the County Treasury.

Remuneration of the Board.

10. The Executive Member may or designate such officers as are necessary for proper discharge of the functions of the Services Board.

Officers of the Services Board.

(1) No matter or thing done by a Member of the Services Board or by any officer, member of staff, or agent of the Services Board shall, if the matter or thing is done bona fide for executing the functions, powers or duties of the Services Board under this Act, render the member, officer, employee or agent or any person acting on their directions personally liable to any action, claim or demand whatsoever.

Protection from personal liability.

(2) Any expenses incurred by any person in any suit or prosecution brought against him or her in any court, in respect of any act which is done or purported to be done by him or her under the direction of the board, shall, if the court holds that such act was done bona fide be paid out of the funds of the corporation, unless such expenses are recovered by him or her in such suit or prosecution.

Meru County Urban Water and Sanitation Services Corporation

11. (1) There is established a Corporation to be known as the Meru County Urban Water and Sanitation Services Corporation.

Establishment of the corporation.

(2) The Corporation shall be the successor to the-

- (a) Meru Water and Sanitation Services Company; and
- (b) Imenti and Tharaka Nithi Water and Sanitation Services Company.

(3) The corporation shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (b) borrowing money or making investments;

2014

Meru County Water and Sanitation Services

No. 10

- (c) entering into contracts; and
- (d) doing or performing all other acts or things for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

12. The functions of the corporation shall be to—

Functions of the Corporation.

- (a) provide and manage water and sanitation services in the prescribed urban areas;
- (b) develop adequate water supply system for domestic and industrial, purposes in the urban areas;
- (c) promote or develop and manage water recycling systems in urban areas;
- (d) promote efficient water use and management for sustainable development in the urban areas;
- (e) identify, initiate and promote water conservation systems, strategies and programs in the urban areas;
- (f) maintain database related to water and sanitation services;
- (g) disseminate information related to water and sanitation services; and
- (h) maintain collaboration and co-operation with other Government agencies other county governments in carrying out its functions.

13. (1) The management of the corporation shall vest in the board.

Board of the corporation.

(2) The board of the corporation shall consist of—

- (a) a non Executive Chairperson appointed by the Governor and approved by the County Assembly;
- (b) the chief officer for the time being responsible for water services;
- (c) the chief officer for the time being responsible for finance;
- (d) one person nominated by water users in the urban areas in accordance with the prescribed

No. 10

procedure and appointed by the Executive Member, one of whom must be of the opposite gender;

- (e) Chief Executive Officer who shall be an *ex-officio* member and the secretary of the Board; and
- (f) one person appointed by the Executive Member through a competitive process by virtue of their knowledge, expertise and experience in matters related to water and sanitation management.

(3) A person shall be qualified for appointment as Chairperson or a Member appointed under subsection (2) (f) if the person —

- (a) holds a degree from a recognized university;
- (b) has knowledge and experience of at least five years in matters relating to water resources management, water and sanitation services management or any other related field; and
- (c) meets the requirements of Chapter Six of the Constitution.

(4) A person shall be qualified for appointment as a Member under subsection (2) (d) if the person —

- (a) possesses at least a diploma from a recognized institution;
- (b) has knowledge and experience of at least two years in matters relating to water resources management, local development, or any other related field; and
- (c) meets the requirements of Chapter Six of the Constitution.

14. The functions of the board shall be to —

- (a) ensure proper and efficient exercise of the powers and performance of the functions of the corporation;
- (b) advise the management of the corporation generally on the exercise of the powers and the performance of the functions of the corporation;

Functions of the board.

2014

Meru County Water and Sanitation Services

No. 10

- (c) approve the estimates of the revenue and expenditure of the corporation; and
- (d) perform such other functions as are provided for under this Act or any other written law.

15. (1) The conduct and regulation of the business and affairs of the board of the corporation shall be as set out in the Schedule.

Conduct of
business.

(2) Except as provided in the Schedule, the Board of the corporation may regulate its own procedure.

16. The remuneration of the Members of the board of the corporation shall be as determined by the County Treasury.

Remuneration of
the board.

17. (1) There shall be an Chief Executive Officer of the Corporation.

Chief executive
officer.

(2) The Chief Executive Officer shall be appointed by the executive member in consultation with the Governor, on recommendation of the board of the corporation and recruited through a competitive process.

(3) To be eligible for appointment as a Chief Executive Officer, a person must—

- (a) possess a degree from a recognized university;
- (b) have had experience in management for a period of not less than five years.

(4) The Chief Executive Officer shall hold office for a period of three years, on such terms and conditions of employment as the board of the corporation may determine, and shall be eligible for re-appointment for a further and final term of three years.

(5) The Chief Executive Officer shall be an *ex officio* member of the board of the corporation shall have no right to vote at any meeting of the board.

(6) The Chief Executive Officer shall—

- (a) in consultation with the board of the corporation, be responsible for the day to day management and direction of the affairs and transactions of the corporation, the exercise, discharge and performance of its objectives, functions and

No. 10

Meru County Water and Sanitation Services

duties and the general administration of the corporation.

- (b) carry out any other function as may from time to time be assigned by the board.

18. The Chief Executive Officer may —

- (a) at any time resign from office by issuing notice in writing to the Chairperson of the board;
- (b) be removed from office by the Executive Member on recommendation of the board, for—
- (i) serious violation of the Constitution or any other written law;
 - (ii) gross misconduct, whether in the performance of the functions of the office or otherwise;
 - (iii) physical or mental incapacity to perform the functions of office;
 - (iv) incompetence; or
 - (v) bankruptcy.
 - (vi) Serious violation of chapter six of the Constitution, 2010

Removal from office.

19. The board of the corporation may appoint such officers as are necessary for proper discharge of its functions under this Act, upon such terms and conditions of service as it may determine.

Officers of the Corporation.

(1) The common seal of the corporation shall be kept in the custody of the Chief Executive Officer or of such other person as the board may direct, and shall not be used except upon the order of the board.

The common seal of the corporation.

(2) The common seal of the corporation, when affixed to a document and duly authenticated, shall be judicially and officially noticed, and unless the contrary is proved, any necessary order or authorization by the board under this section shall be presumed to have been duly given.

(3) The common seal of the corporation shall be authenticated by the signature of the Chief Executive Officer.

(4) The board shall, in the absence of either the

2014

Meru County Water and Sanitation Services

No. 10

Chairperson or the Chief Executive Officer, in any particular matter, nominate one member of the Board to authenticate the seal of the corporation on behalf of the Chief Executive Officer.

(1) No matter or thing done by a Member of the board or by any officer, member of staff, or agent of the corporation shall, if the matter or thing is done bona fide for executing the functions, powers or duties of the corporation under this Act, render the member, officer, employee or agent or any person acting on their directions personally liable to any action, claim or demand whatsoever.

Protection from personal liability.

(2) Any expenses incurred by any person in any suit or prosecution brought against him or her in any court, in respect of any, act which is done or purported to be done by him or her under the direction of the board, shall, if the court holds that such act was done bona fide be paid out of the funds of the corporation, unless such expenses are recovered by him or her in such suit or prosecution.

The provisions of section 22 shall not relieve the corporation of the liability to pay compensation or damages to any person for any injury to him or her, his or her property or any of his or her interests caused by the exercise of any power conferred by this Act or any other written law or by the failure, wholly or partially, of any works.

Liability for damages.

20. The corporation shall, in carrying out its functions—

Public awareness

- (a) provide public education and awareness on efficient and sustainable water use; and
- (b) invest in water source protection and conservation.

21. The corporation or a water co-operative society may enter into public private partnership in order to effectively carry out its functions.

Public private partnership.

***Sub-county Water and Sanitation Services
Cooperative Societies***

22. There is established in each sub-county the Water and Sanitation Services Co-operative Society.

Establishment of sub-county water co-operative societies

No. 10 Meru County Water and Sanitation Services

23. (1) Membership of the Water Co-operative Society shall be open to users and providers of water services who are resident in the sub-county.

Members of the water co-operative.

(2) A person who intends to be a member of the co-operative society shall apply for membership in the prescribed manner.

24. The Water Co-operative Society shall be responsible for provision of water and sanitation services in the rural areas or the prescribed urban areas situated in the sub-county.

Functions of the water co-operative Society.

25. The Water Co-operative Society shall be managed by a Management Committee which shall consist of—

Management Committee.

(a) five persons elected by Members in accordance with the co-operative society's by-laws; and

(b) the Chief Executive Officer who shall be an *ex officio* members and secretary to the committee.

26. In carrying out its functions, the Water Co-operative Society shall comply with the prescribed guidelines.

Operational guidelines.

27. The Water Co-operative Society—

Service Provision Agreements.

(a) shall utilize the infrastructure for water services provision developed by the directorate on such terms and conditions and may be agreed upon;

(b) may enter into partnership with private water service providers operating within its jurisdiction for the purposes of carrying out its functions.

28. Members of the Water Co-operative Society may, invest in shares issued by the co-operative society.

Members' investments.

29. (1) The Water Co-operative Society may, invest in such areas as the Executive Member may permit, for the purposes of developing the Water Co-operative Society for benefits of members.

Investment by the water co-operative society.

(2) For the purposes of this section, an investment related to carrying out of the functions of Water Co-operative Society shall be deemed to be investment for the benefits of the Members.

2014

*Meru County Water and Sanitation Services***No. 10**

30. The Water Co-operative Society may, issue bonuses to members arising from surpluses realized from investments undertaken.

Bonuses.

Directorate of Water and Sanitation Services

31. There is established the Directorate of Water and Sanitation Services which shall be an office in the County Public Service.

Establishment of the Directorate.

32. The directorate shall be responsible for—

Functions of the Directorate.

- (a) developing water and sanitation services infrastructure, including water works and public works that may be used by the corporation and water co-operative society;
- (b) in collaboration with other National or County Government (s) departments, initiating, developing, co-ordinating and managing policies, strategies and plans for water resources management and sanitation services;
- (c) developing and managing works for water conservation
- (d) facilitating public awareness and participation on sustainable water resources, sanitation and storm water management;
- (e) promoting and facilitating adoption and use of water conservation systems and methods, including water harvesting;
- (f) in collaboration with other agencies, develop and manage public infrastructure for storm water management;
- (g) developing and co-ordinating implementation of water and sanitation services management information system;
- (h) developing and promote policies, strategies and mechanisms for climate change mitigation and adaptation in the water sector;
- (i) mobilizing resources for water resources management and development and sanitation services;
- (j) developing performance management system and overseeing its implementation by the agencies established under this Act;

- (k) monitoring and evaluating the implementation of this Act and the water sector;
- (l) conducting and facilitating research and appropriate surveys for water resources management and facilitating dissemination and implementation of research findings;
- (m) acting as the repository of information and data on water sector; and
- (n) advising the Executive Member on the necessary policy to be adopted for sustainable water resources management.

33. (1) The directorate shall be headed by the director who shall be appointed by the County Public Service Board.

Director.

(2) To be eligible for appointment as a director, a person shall—

- (a) possess a degree in water engineering, water resource management, environment management or any related field from a recognized university; and
- (b) have had experience in water resource management for a period of not less than five years.

34. The County Public Service Board shall appoint such number of officers to serve in the directorate for effective carrying out of its functions under this Act.

Officers.

35. (1) The corporation, Services Board and Directorate shall prepare respective annual reports within two months after the end of the financial year in such a form as may be prescribed.

Reporting.

(2) The directorate shall compile the reports into the county water sector report for submission to the executive member for onward transmission to the county executive committee.

(3) The County Executive Committee shall within thirty days after adoption of the report transmit it to the County Assembly for consideration.

(4) The report provided under subsection (2) shall

contain among others—

- (a) performance of each institution and directorate against the established performance targets;
- (b) progress on implementation of specific respective functions assigned under this Act;
- (c) level of public participation and outcome of such participation.

PART III- WATER SERVICES

36. The corporation and directorate shall progressively ensure that —

Supply of water.

- (a) every person has access to safe and clean water for domestic use within reasonable distance;
- (b) where applicable, there is accessible water for agricultural, livestock and industrial use;
- (c) equitable distribution of water between consumers in urban and rural areas.

37. The corporation may enter into service performance agreements with a National Government entity provided that such agreement shall be approved by the County Executive Committee.

Service agreements with national government.

38. (1) The corporation or directorate may, for the purposes of carrying out their functions erect or develop water works and public works on a public or private property.

Development of water works.

(2) Notwithstanding subsection (1), the corporation or directorate shall seek consent of the owner of private land or the relevant Government agency occupying or in whose custody the public land falls where they seek to erect any water works or public works and shall provide the prescribed compensation.

(3) The corporation or directorate shall, in collaboration with the department responsible for roads, identify and establish specific areas on any road where public works under this Act may be carried out.

(4) The corporation or directorate shall seek easements from owner or occupier of any land for construction of water works or public works to be

undertaken on such land.

39. (1) The corporation or directorate may, with the approval of the Executive Member, initiate a County Scheme to provide services under this Act for public benefit.

County scheme.

(2) Where the corporation or directorate deems necessary to erect or establish such a scheme or related public works on private property or land, the County Government may purchase the property or in accordance with the laws governing compulsory acquisition seek such compulsory acquisition.

(3) A County Scheme shall take precedence over any private or Community Scheme.

40. A community may initiate a project for water services with the approval of the Services Board.

Community projects.

41. (1) The corporation, Water Co-operative Society or Directorate may levy tariffs and other user charges for the purposes of carrying out their functions.

Water tariffs.

(2) The tariffs and user charges levied under this section shall be established in accordance with the principles set out under the County Governments Act, 2012 and any other written law and shall be approved by the County Executive Committee.

No. 17 of 2012.

(3) The tariffs and user charges collected under this section shall not form part of the County Revenue Fund but shall be utilized for defraying expenditures of the corporation or the directorate in order to carry out their functions efficiently and effectively.

42. A person shall not—

Prohibited activities.

- (a) interfere with any water meter or equipment installed;
- (b) install illegal or un authorized water connections;
- (c) install a pipe or connection which does not comply with the approved standards; or
- (d) any other prohibited activity as prescribed.

(2) A person who contravenes this section commits an offence and shall be liable to a fine not exceeding fifty

2014

Meru County Water and Sanitation Services

No. 10

thousand shillings or to imprisonment for a term not exceeding one year or to both.

43. (1) A person intending to carry out or maintain any water works shall apply for a permit to the Services Board.

Permit.

(2) A person who prior to the commencement of this Act was carrying out water works, managing or maintaining any water works shall within six months apply for a permit.

(3) A person who contravenes this section commits an offence and shall be liable to a fine not exceeding one hundred thousands or to imprisonment for a term not exceeding one year or to both.

44. An application for a permit under section 47 shall, where applicable be accompanied by an environmental impact assessment report in accordance with the Environmental Management and Co-ordination Act, 1999 and shall specify among others —

Application for permit.

No. 8 of 1999.

- (a) the purpose and nature of the works to be undertaken;
- (b) the nature of works to be carried out;
- (c) the duration within which the works are expected to be completed.

(2) The Services Board shall, where the construction of works will be undertaken on public property or where the works will affect a cross section of the residents, issue a public notice within fourteen days after such an application and invite any person to make comments or object to such an application.

(3) A person may lodge an objection to application for a permit.

(4) Every objection to an application shall be made in writing to the secretary of the Services Board setting out the grounds for such an objection.

(5) The Services Board shall, upon receiving the application send a notice the objection received to the applicant for a permit.

(6) The Services Board may, where appropriate