

**EXECUTION
VERSION**

18.03.2016

FACILITY AGREEMENT

made and entered into by and between

THE DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED

and

OVERSTRAND LOCAL MUNICIPALITY

in respect of funding the

OVERSTRAND 2015/16 - 2017/18 MTREF CAPITAL EXPENDITURE PROGRAMME



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SUMMARY

1.	FACILITY AMOUNT	:	R90 000 000.00
2.	TERM	:	15 years
3.	INTEREST RATE FIXED	:	See clause 6 (<i>Interest</i>)
4.	GRACE PERIOD FOR INTEREST PAYMENT	:	Nil
5.	GRACE PERIOD FOR CAPITAL PAYMENT	:	Nil
6.	CAPITAL REPAYMENT	:	30 half- yearly instalments, commencing on the last day of the Half-year during which first disbursement was made
7.	INTEREST REPAYMENT	:	Repayments will be effected in accordance with clause 9 (<i>Repayment</i>)
8.	PROJECT FILE NO.	:	12007977






1. INTERPRETATION

In this Agreement, unless inconsistent with or otherwise indicated by the context:

- 1.1 **"Accounting Officer"** will have the meaning ascribed thereto in the MFMA, as may be amended from time to time;
- 1.2 **"Agreement"** means the agreement as set out in this document together with the Annexures hereto;
- 1.3 **"Applicable Interest Rate"** means a fixed interest rate of a 15 (fifteen) year swap plus the Cost of Funding Margin and Margin;
- 1.4 **"Authorisation"** means any authorisation, consent, registration, filing, agreement, notarisation, certificate, licence, approval, resolution, permit and/or authority or any exemption from any of the aforesaid, by or with any Authority;
- 1.5 **"Authority"** means the Government of South Africa and any province or municipality therein and any organ of state as contemplated in section 239 of the Constitution of the Republic of South Africa Act, No. 108 of 1996, including without limitation, any ministry, department, board, agency, court, tribunal, commission, entity or any other authority, subdivision or instrumentality of the Government of South Africa, or of any province or municipality therein;
- 1.6 **"Availability Period"** means 36 (thirty six) months from Fulfilment Date;
- 1.7 **"Borrower"** means the Overstrand Local Municipality, a municipality established or deemed to be established in terms of section 12 of the Local Government: Municipal Structures Act, as amended from time to time;
- 1.8 **"Borrower's Account"** means the bank account with the following details:

Account Holder	:	Overstrand Local Municipality
Bank	:	ABSA
Account Number	:	32-2000-0035
Branch	:	Hermanus
Branch Code	:	334812
- 1.9 **"Business Day"** means any day (other than a Saturday, Sunday or officially recognised public holiday) on which day banks generally are open for business in Johannesburg, South Africa;

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- 1.10 **"Breakage Costs"** means the amount (if any) determined by the DBSA by which:
- 1.10.1 the interest (but excluding the Margin) which the DBSA would have received for the period from the date of receipt of an amount repaid or prepaid in respect of a Facility to the last day of the applicable Interest Period for that Facility, if the principal received had been paid on the last day of that Interest Period,
exceeds;
 - 1.10.2 the amount which the Lender would be able to obtain by placing an amount equal to the amount received by it on deposit with a leading bank in the Johannesburg interbank market for a period starting on the Business Day following receipt and ending on the last day of the applicable Interest Period;
- 1.11 **"Cancellation Fee"** means a fee in an amount equal to 1% (one per cent) of the amount of the Capital or a portion of the Capital being cancelled, which is payable by the Borrower to the DBSA in accordance with clause 13.4 of this Agreement;
- 1.12 **"Capital"** means an amount which shall not exceed in aggregate a total maximum amount of R90 000 000.00 (ninety million Rand);
- 1.13 **"Capital Payment Date"** means the last day of the half-year during which the first Disbursement is advanced by the DBSA to the Borrower;
- 1.14 **"Change in Law"** means any implementation, introduction, abolition, withdrawal or variation of any applicable laws and/or regulations;
- 1.15 **"Commitment Fee"** means an amount equal to 0,5% (nought comma five per cent) per annum;
- 1.16 **"Conditions Precedent"** means the conditions precedent contained in clause 5 (*Conditions Precedent to Disbursement*);
- 1.17 **"Cost of Funding Margin"** means the costs that the DBSA incurs in acquiring its requisite liquidity and is quoted above the swap curve. The final Cost of Funding Margin shall be determined and fixed 2 (two) days prior to each disbursement;
- 1.18 **"Council"** means the municipal council as detailed in Chapter 3 of the Municipal Structures Act;
- 1.19 **"Default Interest"** means any interest which accrues at the Default Rate in terms of this Agreement;

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- 1.20 "**Default Rate**" means the Interest Rate plus 200 (two hundred) basis points;
- 1.21 "**Disbursement**" means any amount drawn down by the Borrower, and disbursed by the DBSA under and in terms of a Disbursement Request;
- 1.22 "**Disbursement Date**" means the date on which a Disbursement is stipulated to be made or actually made by the DBSA to the Borrower;
- 1.23 "**Disbursement Request**" means a notice substantially in the form of Annexure A;
- 1.24 "**Disbursement Schedule**" means the schedule annexed hereto as Annexure C;
- 1.25 "**Discharge Date**" means the date on which the Borrower has fully and finally discharged all of its obligations of any nature whatsoever (other than the contingent obligations in respect of which no claim has been made) under and in terms of this Agreement, including the payment in full of the Facility Outstandings;
- 1.26 "**Economic Failure**" means any adverse change in the South African or international capital markets or in South African or international monetary, financial, political or economic conditions which adversely affect the DBSA's access to the relevant local capital markets or which renders it unlawful or impossible for the DBSA to advance any portion of the Capital on any Disbursement Date. In the case of the Borrower, Economic Failure means any adverse change in the South African or international capital markets or in South African or international monetary, financial, political or economic conditions which renders it impossible for the Borrower to request a disbursement as it will be financially unsustainable and will have a severe impact on the sustainability of the Borrower;
- 1.27 "**Event of Default**" means an event of default as defined in clause 19 (*Events of Default*);
- 1.28 "**Facility**" means the term loan facility in an amount not exceeding the Capital, to be made available by the DBSA to the Borrower under this Agreement, plus all the Interest capitalised in accordance with this Agreement;
- 1.29 "**Facility Outstandings**" means at any time, the aggregate of all amounts of principal of whatsoever nature (whether in respect of the Interest, Capital or otherwise) then owing by the Borrower to the DBSA under this Agreement on account of the Facility;
- 1.30 "**FICA**" means the Financial Intelligence Centre Act, No. 38 of 2001, as may be amended from time to time;

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- 1.31 **"Finance Documents"** means all the Finance Agreements including completely without limitation:
- 1.31.1 this Agreement;
 - 1.31.2 this Disbursement Request(s); and
 - 1.31.3 all material documents in respect of the Programme as identified by the DBSA in its sole discretion as Finance Documents.
- 1.32 **"Financial Year"** means the financial year of the Borrower ending on 30 June of each year;
- 1.33 **"Fulfilment Date"** means the date on which the DBSA notifies the Borrower pursuant to clause 5 (*Conditions Precedent to Disbursement*) that it has received all the documents and evidence listed therein in form and substance satisfactory to it;
- 1.34 **"Interest"** means the interest calculated, at the Interest Rate, on the amount of the Facility Outstandings, from time to time in accordance with clause 6.3 below;
- 1.35 **"Interest Payment Date"** means the last Business Day of each Interest Period;
- 1.36 **"Interest Period"** means each period of 6 (six) months commencing on 1 January or 1 July of each calendar year, except that, in respect of the first Interest Period, Interest Period shall mean the period beginning on the date of first Disbursement, ending on the Interest Payment Date immediately following the first Disbursement;
- 1.37 **"Mayor"** means in relation to:
- 1.37.1 a municipality with an executive mayor, means the councillor elected as the executive mayor of the municipality in terms of section 55 of the Municipal Structures Act; or
 - 1.37.2 a municipality with an executive committee, means the councillor elected as the mayor of the municipality in terms of section 48 of the Municipal Structures Act;
- 1.38 **"Margin"** means 68,8 (sixty eight comma eight) basis points, expressed as a percentage rate, per annum;
- 1.39 **"Material Adverse Effect"** means an event, circumstance or matter (or combination of events, circumstances or matters) which has or is likely to have a material adverse effect on:
- 1.39.1 the business, operations, property, condition (financial or otherwise) or prospects of the Borrower; or

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- 1.39.2 the ability of the Borrower to perform its obligations in terms of this Agreement; or
- 1.39.3 the validity or enforceability of this Agreement or the rights or remedies of the DBSA hereunder; or
- 1.39.4 the right or remedies of the DBSA in terms of and pursuant to this Agreement;
- 1.40 "**MTREF**" means the Medium Term Revenue Expenditure Framework as prescribed by National Treasury;
- 1.41 "**MFMA**" means the Municipal Finance Management Act, No. 56 of 2003, as may be amended from time to time;
- 1.42 "**Municipal Structures Act**" means the Municipal Structures Act, No. 117 of 1998, as may be amended from time to time;
- 1.43 "**National Treasury**" has the same meaning ascribed to it in the MFMA;
- 1.44 "**Parties**" means the DBSA and the Borrower, and "**Party**" will as the context requires, be a reference to either one of them;
- 1.45 "**Post Financing Support**" means services and products to be provided by the DBSA to the Borrower from the Signature Date (as agreed between the Parties) to support projects implementation and post-investment monitoring which may inter alia include the following:
 - 1.45.1 Pre-implementation support:
 - 1.45.1.1 advisory services on pre-implementation planning;
 - 1.45.1.2 compliance with technical and regulatory matters;
 - 1.45.1.3 compliance with Conditions Precedent as provided for under clause 5 (*Conditions Precedent to Disbursement*) of this Agreement; and
 - 1.45.1.4 review of technical documentation to ensure norms and standards are met;
 - 1.45.2 Implementation support:
 - 1.45.2.1 oversight on implementation of projects, including those funded by fiscal transfers;
 - 1.45.2.2 projects progress monitoring (quality, time and cost);
 - 1.45.2.3 preparation and/or review of projects claims;

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- 1.45.2.4 guidance and/or assistance with the formulation of operations and maintenance strategy for the new infrastructure; and
- 1.45.2.5 any other solutions, which may assist the Borrower, in conjunction with other stakeholders (Municipal Infrastructure Support Agent, South African Local Governance Association, etc.) in reaching projects milestones in a timeous and efficient manner and to improve service delivery in general;
- 1.46 "**Potential Event of Default**" means any event which would, with the giving of notice, lapse of time or the fulfilment of any other applicable requirement or any combination thereof, if not remedied or waived, become an Event of Default;
- 1.47 "**Programme**" means the Borrower's 2015/2016, 2016/2017 and 2017/2018 MTREF Capital Expenditure Programme;
- 1.48 "**Project**" means the implementation of the Programme, and as more fully described in Annexure B (*Programme/Project Description*);
- 1.49 "**Rand**" means the South African Rand, the lawful currency of South Africa;
- 1.50 "**Signature Date**" means the date on which this Agreement is signed by the last Party signing it;
- 1.51 "**Taxes**" will mean all taxes (including VAT), charges, imposts, levies, deductions, withholdings or fees of any kind whatsoever, or any amount or payment on account of or as security for any of the foregoing by whomsoever and on whomsoever imposed, levied, collected, withheld or assessed, together with any penalties, additions, fines, surcharges or interest relating thereto, and "**Tax**" and "**Taxation**" will be construed accordingly;
- 1.52 "**Term**" means a period commencing from Signature Date and ending on the Discharge Date;
- 1.53 "**the DBSA**" means the Development Bank of Southern Africa Limited, a development funding institution reconstituted and incorporated in terms of the Development Bank of Southern Africa Act, No. 13 of 1997;
- 1.54 "**Unwinding Costs**" means any and all costs, expenses and disbursements incurred by the DBSA in taking out a new hedge position, closing out, settling or unwinding any hedge transaction deposits or funding transactions that may have been entered into by the DBSA or reacquiring any negotiable instruments that have been issued by the DBSA, in respect of funding any part or all of the Facility; and

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- 1.55 "VAT" means value added tax payable in terms of the Value-Added Tax Act, No. 89 of 1991, as may be amended from time to time.
- 1.56 Any reference to the singular includes the plural and vice versa.
- 1.57 Any reference to natural persons includes legal persons and vice versa.
- 1.58 Any reference to gender includes the other genders.
- 1.59 The clause headings in this Agreement have been inserted for convenience only and will not be taken into account in its interpretation.
- 1.60 Words and expressions defined in any sub-clause will, for the purpose of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.
- 1.61 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, effect will be given to it as if it were a substantive clause in the body of the Agreement, notwithstanding that it is only contained in the interpretation clause.
- 1.62 Unless otherwise provided in this Agreement, if any period is referred to in this Agreement by way of reference to a number of days, the days will be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which case the day will be the next succeeding Business Day.
- 1.63 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words will prevail.
- 1.64 Appendices, schedules or annexures to this Agreement will be deemed to be incorporated in and form part of this Agreement.
- 1.65 A reference to a person includes such person's permitted successors, assignees, transferees or substitutes.
- 1.66 Any reference to a document is a reference to that document as amended, novated, ceded or supplemented.
- 1.67 Expressions defined in this Agreement will bear the same meanings in appendices, schedules or annexures to this Agreement which do not themselves contain their own definitions.
- 1.68 Unless stated otherwise, all fees referred to in this Agreement are exclusive of VAT.

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- 1.69 The expiration or termination of this Agreement will not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 1.70 Where the day on or by which a payment is due to be made or an obligation is to be performed is not a Business Day, such payment will be made or that obligation done on or by, in the case of a payment due or thing to be done, on the next succeeding Business Day. Interest, fees and charges (if any) will continue to accrue for the period from the due date which is not a Business Day.
- 1.71 This Agreement will be governed by, construed and interpreted in accordance with the law of the Republic of South Africa.
- 1.72 This Agreement will bind the Parties' successors-in-title or in law.

2. RECORDAL

- 2.1 The Borrower is undertaking the Programme and seeks funding in respect thereof.
- 2.2 The Borrower approached the DBSA with a request for funding. The DBSA has, after performing the necessary appraisal of the Borrower, approved the Borrower's request to make available an amount of R90 000 000.00 (ninety million Rand) subject to the terms and conditions contained in this Agreement.
- 2.3 The Parties wish to record their agreement in writing and to regulate matters related thereto.

3. THE FACILITY

- 3.1 **The Facility shall be:**
- 3.1.1 an amount not exceeding, in aggregate, the Capital; and
- 3.1.2 utilised exclusively for the Programme, but notwithstanding anything contained herein, the DBSA shall be under no obligation to monitor or verify the application of any amount borrowed hereunder.
- 3.2 The Facility proceeds will be disbursed by the DBSA to the Borrower in accordance with the provisions of this Agreement.

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3.3. Disbursement Procedure

- 3.3.1. The Borrower shall, subject to clause 5 (*Conditions Precedent to Disbursement*), request a Disbursement by delivering to the DBSA the Disbursement Request at least 10 (ten) Business Days (or such shorter time as may be acceptable to the DBSA for the purpose of the relevant Disbursement) prior to the applicable Disbursement Date.
- 3.3.2. The Disbursement Request shall be irrevocable and will create an obligation on the Borrower to borrow in accordance with such Disbursement Request.
- 3.3.3. The DBSA shall make the Disbursements to the Borrower only (and to no third party) in Rand to the credit of the Borrower's Account as specified by the Borrower in the Disbursement Request.

3.4. Terms and Conditions for Disbursement

The DBSA shall disburse to the Borrower the Facility as required by the Programme of the Borrower and such disbursements will be effected on projects which comply with the norms and criteria contained in Annexure B (*Programme/Project Description*).

4. FACILITY LAPSE DATE

Unless otherwise agreed between the DBSA and the Borrower, the Facility will lapse in its entirety if:

- 4.1. the Finance Documents are not signed on or before 31 March 2016; and
- 4.2. the Borrower does not procure the fulfilment of all the Conditions Precedent within 6 (six) months from the Signature Date.

For the avoidance of doubt, this Agreement shall not become of any force and effect if the Borrower does not comply with both clauses 4.1 and 4.2 above.

5. CONDITIONS PRECEDENT TO DISBURSMENT

5.1. First Disbursement

The obligation of the DBSA to make the first disbursement is subject to the fulfilment, in a manner satisfactory to it, of the conditions specified in the Facility agreement, and, in particular, the DBSA shall have received the following, all to the satisfaction of the DBSA:

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- 5.1.1. a copy of the latest approved MTREF budget of the Borrower reflecting that money for the Project has been appropriated in the capital budget, approving the Project and the total cost thereof. In this regard the Borrower's Chief Financial Officer shall in writing confirm to the DBSA the authentication of the copies of the budget;
- 5.1.2. a certified copy of a resolution of the Council of the Borrower in terms of section 46 of the MFMA:
 - 5.1.2.1. signed by the Mayor;
 - 5.1.2.2. approving the terms of this Agreement;
 - 5.1.2.3. authorising the Accounting Officer to execute the Facility agreement or any other document which creates or acknowledges the Facility on its behalf; and
- 5.1.3. proof from the Accounting Officer that the Borrower has complied with the provisions of section 46(3) of the MFMA;
- 5.1.4. proof that the Provincial or the National Treasury has been advised of the Facility or Programme;
- 5.1.5. all FICA documents from the Borrower as required by legislation;
- 5.1.6. the Borrower shall certify in the form and substance provided for in Annexure A, that no Potential Event of Default or Event of Default has occurred and is continuing and that the proceeds of the disbursement are needed by the Borrower for the purposes of the Programme;
- 5.1.7. a Disbursement Request from the Borrower, which shall have been received during the Availability Period. The DBSA may, after consideration of the reasons for the Borrower's delay to request the first Disbursement, determine to extend the Availability Period. The DBSA shall only consider an extension on receipt of a written request from the Borrower and shall notify the Borrower of its decision in writing;
- 5.1.8. written confirmation from the Department of Environmental Affairs & Development Planning of the Western Cape Provincial Government, sent to the DBSA by the Borrower, indicating which of the projects listed in "**Annexure B**" (*Programme/Project Description*), require environmental authorizations, permits or licenses; and

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- 5.1.9. the Borrower will provide the DBSA with all the required environmental authorizations, permits or licenses required in terms of clause 5.1.8.

5.2. All Disbursements

The obligation of the DBSA to make any disbursement shall also be subject to the fulfilment, in form and substance satisfactory to the DBSA, of the conditions that on the date of the Borrower's application for such disbursement and on the disbursement date:

- 5.2.1. the DBSA will have received all such agreements, documents, statements and instruments as the Borrower is bound to deliver in terms of this Agreement and/or reasonably requested by the DBSA;
- 5.2.2. the representations and warranties made or confirmed by the Borrower, in this Agreement, will be true on and as of such dates with the same effect as though such representations and warranties had been made on and as of such dates;
- 5.2.3. the Borrower will certify that no Potential Event of Default or Event of Default has occurred and is continuing and that the proceeds of the disbursement are needed by the Borrower for the purposes of the Programme/Project;
- 5.2.4. the Borrower will certify that to the best of its knowledge (after due enquiry) after receipt of that disbursement, the Borrower would not be in violation of:
- 5.2.4.1. any provision contained in the Finance Documents; or
- 5.2.4.2. any law, rule or regulation directly or indirectly limiting or otherwise restricting the Borrower's borrowing power or authority or its ability to borrow;
- 5.2.5. the Borrower will provide the DBSA with an original Disbursement Request(s) within the Availability Period; and
- 5.2.6. all fees, charges and expenses due and payable to the DBSA under the Finance Documents or in relation to the Programme/Project will have been paid in full.

6. INTEREST

- 6.1. Interest shall be capitalised for each Disbursement made by the DBSA to the Borrower pursuant to a Disbursement Request, on the Interest Payment Date and in terms of this clause 6.

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- 6.2. The Interest Rate applicable in relation to each Disbursement shall be determined and fixed based on the close out rate 2 (two) days prior to each Disbursement and shall consist of the appropriate base rate (swap) plus the Cost of Funding Margin and the Margin.
- 6.3. Interest on the Facility under this Agreement shall;
- 6.3.1. subject to clause 6.4 (*Default Interest*) below, accrue from day to day;
 - 6.3.2. be calculated on the amount of the Facility Outstandings from time to time on the basis of the actual number of days elapsed and a 365 (three hundred and sixty five) day year;
 - 6.3.3. be calculated and payable on an Interest Payment Date;
 - 6.3.4. be calculated on a nominal annual compounded basis on the last day of each Interest Period; and
 - 6.3.5. accrue and be payable before any court judgment is taken.
- 6.4. **Default Interest:**
- 6.4.1. If the Borrower fails to pay an amount payable by it in terms of this Agreement on an Interest Payment Date (any such amount being an overdue amount), interest shall accrue on the overdue amount from the due date up to the date of actual payment of such overdue amount (both before and after judgment, if any) at the Default Rate.
 - 6.4.2. Default Interest due in a particular Interest Period will be calculated in accordance with the following formula:
- $$D1 = \frac{OM \times DR \times d}{365}$$
- Where:
- D1 = the Default Interest amount;
 - OM = the overdue amount;
 - DR = the Default Rate; and
 - d = the number of days from the due date of an overdue amount to the date of actual payment of such overdue amount.

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- 6.4.3. Default Interest shall be payable on demand, or if not demanded, on the first Interest Payment Date, after such failure to pay.
- 6.4.4. The provisions of this clause 6.4 are without prejudice to any other rights which the DBSA may have as a result of the failure by the Borrower to pay amounts whether of stated maturity or upon pre-maturity by acceleration or otherwise and if not so specified, as notified by the DBSA to the Borrower.

7. REPRICING

If the total Capital amount has not been drawn down by the Borrower at the end of the Availability Period or any portion of the Capital has been cancelled by the Borrower during the Availability Period, the DBSA is entitled to reprice the cumulative total of the Capital drawn by the Borrower at the end of the Availability Period or at the date of cancellation, to ensure that the DBSA maintains its return on equity percentage on the drawn Capital.

8. COMMITMENT FEES

- 8.1. If the Borrower draws down the Facility in accordance with the Disbursement Schedule, no Commitment Fee shall be payable.
- 8.2. In the event that the Borrower deviates (on both amount and date) from the Disbursement Schedule, the Borrower shall pay to the DBSA a Commitment Fee on the Capital which from time to time has not been disbursed nor cancelled. The Commitment Fee shall:
 - 8.2.1. commence to accrue from the first day after the date of deviation from the Disbursement Schedule.
 - 8.2.2. be pro-rated on the basis of a 365 (three hundred and sixty five) day year irrespective of whether it is a leap year or not, for the actual number of days elapsed; and
 - 8.2.3. be payable half yearly, in arrears, on each Interest Payment Date, the first such payment to be due on the first Interest Payment Date.

9. REPAYMENT

- 9.1. The Borrower shall, subject to clause 11 (*Early Payment*), repay the Capital and Interest as follows:
 - 9.1.1. in relations to the Capital, 30 (thirty) half-yearly instalments, commencing on the last day of the half-year during which the first Disbursement was advanced to the Borrower; and



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- 9.1.2. in relations to the Interest, 30 (thirty) half-yearly instalments, commencing on the last day of the half-year during which the first Disbursement was advanced to the Borrower.
- 9.2. The DBSA shall invoice the Borrower no less than 15 (fifteen) days prior to each Capital Payment Date, the Capital amount that is due on that Capital Payment Date.
- 9.3. The DBSA shall invoice the Borrower no less than 15 (fifteen) days prior to each Interest Payment Date, the Interest amount that is due on that Interest Payment Date.
- 9.4. Failure to pay the invoiced amount to the DBSA in accordance with this clause 9 shall amount to an Event of Default.
- 9.5. The Facility Outstandings, including interest, shall be repaid in full by no later than the last day of the Term.

10. LATE PAYMENT

- 10.1. The Borrower shall be liable, to the DBSA, for the payment of default interest on all amounts payable, yet unpaid, in terms of this Agreement, should the Borrower:
- 10.1.1. fail to pay, on the due date for payment thereof, any amount owing, or which may become owing, to the DBSA, in terms of this Agreement; or
- 10.1.2. with the DBSA's written consent, defer the payment of any amount so owing.
- 10.2. Penalty interest shall be calculated with regard to the actual period during which the amount payable remained unpaid, at the fixed Interest Rate plus 2% (two per cent) above the applicable Interest Rate. Penalty interest shall be compounded monthly and be payable, on demand.

11. EARLY PAYMENT

- 11.1. At any time the Borrower may, by giving the DBSA not less than 30 (thirty) days prior written notice to that effect, prepay the whole or any part of the Facility Outstandings on any Interest Payment Date and no other.
- 11.2. Any notice of prepayment pursuant to clause 11.1 shall:
- 11.2.1. be irrevocable;
- 11.2.2. specify a date (the "**Prepayment Date**") upon which prepayment is to be made;



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- 11.2.3. specify the amount of the Facility Outstandings to be prepaid; and
- 11.2.4. oblige the Borrower to make such prepayment on the Prepayment Date.
- 11.3. The Borrower will not be entitled to make more than 1 (one) prepayment in any calendar month.
- 11.4. The Borrower shall not be entitled to re-borrow any of the Facility Outstandings prepaid.
- 11.5. Any prepayment shall be:
 - 11.5.1. applied to the Facility being prepaid in inverse order of maturity;
 - 11.5.2. made together with accrued interest on the amount prepaid (together with other amounts than due to the DBSA); and
 - 11.5.3. subject to Breakage Costs and/or Unwinding costs.
- 11.6. The Borrower shall not prepay all or any of the Facility Outstandings except at the times and in the manner expressly provided in this Agreement.
- 11.7. If any prepayment of all or any part of the Facility Outstandings is made from funds other than the allocations received from National Treasury and otherwise than on an Interest Payment Date, then the Borrower shall pay the DBSA within 3 (three) Business Days of demand by the DBSA a sum equal to the Breakage Costs and/or Unwinding costs applicable thereto.

12. PAYMENT COVENANTS

- 12.1. All payments to be made by the Borrower in terms of this Agreement to the DBSA shall be made in Rand, in same day funds, free of exchange and bank commission and without deduction or set-off into such bank account as the DBSA may from time to time direct in writing.
- 12.2. The Borrower shall not be entitled to defer, withhold or adjust any payment due to the DBSA arising out of this Agreement;
- 12.3. All payments made in terms of this Agreement shall be made free and clear of any Taxes and, to the extent that Taxes are payable, the amount to be paid will be increased to the extent necessary such that, after deduction or withholding of Taxes, the DBSA receives the amount that it would have received, but for the Taxes.

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12.4. If the DBSA at any time receives less than the full amount then due and payable to it under this Agreement, the DBSA may allocate and apply such payment as follows notwithstanding any instruction from the Borrower:

12.4.1. firstly, in or towards payment or satisfaction of all costs, charges, expenses and liabilities, incurred and payments made by the DBSA, under or pursuant to this Agreement including without limitation, legal expenses on an attorney and own client scale, reinstatement costs and any costs incurred by the DBSA;

12.4.2. secondly, in or towards payment of any accumulated and accrued interest in respect of the Facility; and

12.4.3. thirdly, in or towards repayment of the Facility.

12.5. The DBSA may set off any obligations due under this Agreement from the Borrower against any obligations owed by the DBSA to the Borrower.

12.6. The Borrower shall not set off any obligations due under this Agreement from the DBSA against any obligations owed by the Borrower to the DBSA.

13. **SUSPENSION/CANCELLATION OF DISBURSEMENTS**

13.1. **By the DBSA**

13.1.1. The DBSA may, by notice to the Borrower at any time after the receipt of the Disbursement Request but prior to the Disbursement Date, in whole or in part suspend the making of the Disbursement if an Economic Failure has occurred.

13.1.2. Such suspension shall continue until the DBSA notifies the Borrower that it may again submit a Disbursement Request.

13.1.3. The DBSA may suspend or cancel the right of the Borrower to disbursements if an Event of Default or Potential Event of Default has occurred or is continuing.

13.1.4. Upon the happening of an Event of Default or Potential Event of Default the right of the Borrower to any further Disbursement will be suspended or cancelled, as the case may be. The exercise by the DBSA of its right of suspension will not preclude the DBSA from exercising its right of cancellation, as provided for in this clause 13 (*Suspension/Cancellation of Disbursements*), either for the same or any other reason, and will not limit any other rights of the DBSA under this Agreement or in law.

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- 13.1.5. Any Capital amount undrawn at the end of the Availability Period will be automatically cancelled.

13.2. By the Borrower

- 13.2.1. The Borrower may at any time upon 30 (thirty) days' written notice to the DBSA, request the DBSA to cancel all or a portion of the undisbursed portion of the Capital on the date specified in such request.
- 13.2.2. If, after having received a notice in accordance with clause 13.2.1 above, the DBSA is satisfied that the Borrower has sufficient funding available on terms satisfactory to the DBSA, to complete the Programme (whilst complying with the provisions of this Agreement), then the DBSA shall, by notice to the Borrower, cancel the requested amount of the undisbursed portion of the Capital effective as of such specified date.
- 13.2.3. Any such reduction shall be made *pro rata* across the Capital.
- 13.2.4. A Cancellation Fee shall be paid in the event of such cancellation as detailed in clause 13.4 below.

13.3. Reinstatement

Unless otherwise provided in this Agreement, no amount of the Capital cancelled under this Agreement may be reinstated.

13.4. Cancellation Fee

Should the Borrower cancel the Facility or fail to request advances on the Facility once this Agreement has been executed by both Parties, a Cancellation Fee shall be payable by the Borrower to the DBSA within 30 (thirty) days from the earlier of the date of written notice of cancellation of the Facility by the Borrower or the expiry of the Availability Period.

13.5. Other requirements

- 13.5.1. Unless otherwise agreed by the DBSA, the Borrower may not repay or prepay all or any part of the Facility Outstandings or cancel all or any part of the Capital, except at the times and in the manner expressly provided for in this Agreement.
- 13.5.2. A notice of prepayment and/or cancellation under this Agreement is irrevocable and must specify the relevant date or dates on which the proposed cancellation or

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prepayment is to be made, and the amount of the proposed cancellation or prepayment.

13.5.3. The DBSA may agree a shorter notice period for a voluntary prepayment or a voluntary cancellation.

13.5.4. A prepayment by the Borrower of the Facility Outstandings in full under this Agreement must be made with accrued (but unpaid) interest on the amount prepaid. No premium or penalty is payable in respect of any prepayment, except for Breakage Costs (if applicable).

14. INCREASED COSTS

14.1. Increased Costs

Except as provided in clause 14.3 below, the Borrower must pay to the DBSA the amount of any Increased Cost incurred by the DBSA as a result of:

- 14.1.1. a Change in Law;
- 14.1.2. compliance with any law or regulation made after the date of this Agreement;
- 14.1.3. the introduction of a new law or requirement by any statutory or tax authority which obliges the Borrower to make any Tax deduction in respect of any amounts which the Borrower must pay to the DBSA in respect of the Facility; or
- 14.1.4. any other event, which did not exist at the Signature Date, attributable to a statutory or tax authority in the Republic of South Africa which is beyond the control of the DBSA, with the result that the DBSA is subject to any VAT, duty or other charge in respects of any payment received or receivable (or deemed to be received or receivable) in terms of this Agreement.

14.2. Economic Failure

- 14.2.1. If an Economic Failure and/or Material Adverse Effect occurs during the Availability Period, which in the opinion of the DBSA may reduce the rate of return which the DBSA may receive on the Capital under the Finance Documents then, at the DBSA's sole discretion:

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- 14.2.1.1. the DBSA may demand in writing that the Borrower will pay to the DBSA an additional amount as will be sufficient to compensate the DBSA for such reduction in return;
 - 14.2.1.2. the DBSA will be entitled to increase the Margin by such percentage as will be necessary to compensate the DBSA for such reduction in return. The increase in the Margin pursuant to this clause 14 will take effect from the date specified in a written notice delivered by the DBSA to the Borrower but in any event not less than 30 (thirty) days after the date of such written notice; or
 - 14.2.1.3. if an Economic Failure occurs that in the opinion of the DBSA affects the DBSA's ability to make any advance or to maintain any funding previously advanced, including, but not limited to the DBSA being unable to obtain matched funding in the market for its obligations under this Agreement, the DBSA shall be entitled to withhold further disbursements and make demand for repayment of advances made prior to such Economic Failure, if any.
- 14.2.2. If in the reasonable opinion of the Borrower, an event of Economic Failure has occurred which shall have an adverse impact on the financial sustainability of the Borrower, the Borrower shall have the right to reject and cancel the facility within the Availability Period, without incurring a Cancellation Fee.

14.3. Exceptions

The Borrower need not make any payment for an Increased Cost to the extent that the Increased Cost is:

- 14.3.1. attributable to a Tax deduction required by law to be made by the Borrower; or
- 14.3.2. attributable to the DBSA failing to comply with any law or regulation.



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15. OTHER INDEMNITIES

- 15.1. The Borrower indemnifies the DBSA against any direct cost, loss or liability (including legal fees on an attorney and own client scale) which the DBSA directly or indirectly incurs as a result of:
- 15.1.1. the occurrence of any Event of Default, including legal fees on an attorney and own client scale;
 - 15.1.2. funding, or making arrangements to fund the Facility which, after a Disbursement Request has been delivered, is not made (other than by reason of the gross negligence or wilful conduct by the DBSA); and or
 - 15.1.3. the Facility (or part of the Facility) not being prepaid in accordance with this Agreement;
 - 15.1.4. the information produced or approved by the Borrower under or in connection with the Finance Documents being misleading and/or deceptive in any respect;
 - 15.1.5. any enquiry, investigation, subpoena (or similar order) or litigation with respect to the Borrower or with respect to the Programme/Projects contemplated or financed under this Agreement;
 - 15.1.6. a failure by the Borrower to pay any amount due under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result thereof;
 - 15.1.7. funding, or making arrangements to fund a Facility requested by the Borrower in a Disbursement Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by the DBSA);
 - 15.1.8. a Facility (or part of a Facility) not being prepaid in accordance with this Agreement;
- 15.2. The Borrower indemnifies the DBSA against any direct loss or liability directly or indirectly incurred by the DBSA as a result of:
- 15.2.1. investigating any event which the DBSA reasonably believes to be a Potential Event of Default or an Event of Default; or

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- 15.2.2. acting or relying on any notice, request or instruction from the Borrower which the DBSA reasonably believes and which on the face thereof appears to be genuine, correct and appropriately authorised.
- 15.3. The Borrower's liability in each case includes any direct loss or expense on account of funds borrowed, contracted for or utilised to fund any amount payable under the Finance Documents or any Facility, but excludes any form of indirect or consequential loss.

16. UNDERTAKINGS

- 16.1 Each undertaking is a continuous undertaking and the Borrower will comply with each undertaking for the entire period which, unless otherwise provided, commences on the Signature Date and which terminates on the Discharge Date.
- 16.2 In this Agreement, the Borrower will furnish customary covenants (subject to customary qualifications and exceptions, including materiality qualifications) for this type of transaction, and deemed to be repeated on each date on which funds are advanced and on each Interest Payment Date, including but not limited to the following:
- 16.2.1 the Borrower hereby undertakes to comply with acceptable environmental management principles as contained in the National Environmental Management Act, No. 107 of 1998 and to ensure that an Environmental Management System is in place, as agreed to by the Parties, which adheres to environmental requirements throughout the lifetime of the Project, and to ensure compliance with all environmental requirements;
- 16.2.2 the Borrower warrants that it has obtained and in future will or cause to be obtained from the relevant government authorities any Authorisation(s) and/or permit(s)/licences which are or may be required in terms of the relevant legislation. The Borrower agrees to provide the DBSA with copies of any such Authorisation(s) and/or permit(s)/licences as received;
- 16.2.3 the Borrower will ensure that the Facility proceeds are used solely for the funding of this Programme;
- 16.2.4 the Borrower undertakes to cover any cost overruns (if any) and/or secure additional funding in order to complete the Projects funded by the DBSA;
- 16.2.5 the Borrower will ensure that all construction work to be as per standards: SABS 1200; National Building Regulations and Occupational Health and Safety Act. All building materials used are to be SANS approved;

- 16.2.6 the Borrower will also ensure that all engineering services comply with the guidelines for the provision of engineering services and amenities are complied with;
- 16.2.7 the Borrower will arrange suitable insurance to cover any possible damage and such insurance will be in line with the MFMA;
- 16.2.8 the Borrower will ensure proper maintenance of the assets created through this Facility in line with National Treasury Municipal Finance Management Act Circular No. 66, dated 11 December 2012;
- 16.2.9 the Borrower will on request from the DBSA, provide its Asset Management Plan in accordance with Circular 55 and 66; and
- 16.2.10 the Borrower shall deliver its audited annual financial statements to the DBSA within 180 (one hundred and eighty) days of the last day of the Financial Year.

17. REPRESENTATIONS AND WARRANTIES

- 17.1. In addition to any representation and warranties given elsewhere in the Agreement by the Borrower to the DBSA, the Borrower gives the warranties contained in this clause 17 to the DBSA.
- 17.2. The Borrower acknowledges that it makes the representations and gives the warranties in this clause 17 with the intention of inducing the DBSA to enter into this Agreement and that the DBSA enters into this Agreement on the basis of, and in full reliance on, each such representation and warranty.
- 17.3. Each such representation and warranty set out below:
 - 17.3.1. is separate and distinct;
 - 17.3.2. is material and does not omit any matter, the omission of which makes any such warranty and representation misleading;
 - 17.3.3. is given, save where otherwise indicated, a continuing warranty in the sense that such warranty will be deemed to have been repeated by the Borrower on each day during the period which commences on the Signature Date and which terminates on the Discharge Date;

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- 17.3.4. insofar as it is promissory or relates to a future event, shall be deemed to have been given as at and with reference to the circumstances prevailing as at the due date for fulfilment of such promise or happening of the event (as the case may be); and
- 17.3.5. shall not be qualified by or limited with reference to any other warranty or representation contained in this clause 17.
- 17.4. The Borrower represents and warrants that:
- 17.4.1. it has full power to execute, deliver and perform its obligations under this Agreement and that all necessary action has been taken to authorise the execution, delivery and performance of the same, and no limit on the powers of the Borrower to borrow or to create security will be exceeded as a result of borrowings under this Agreement;
- 17.4.2. the execution, delivery and performance of the obligations of the Borrower under, and compliance with the provisions of, this Agreement by the Borrower does not and will not violate or conflict with, or result in any breach of, any law or court order or judgment or any contractual obligations binding on the Borrower or affecting the Borrower or any of the Borrower's assets;
- 17.4.3. applicable and adequate insurance in respect of the Project is in full force and effect;
- 17.4.4. the Borrower is not presently involved in any litigation, arbitration or administrative proceeding and, to the knowledge of the Borrower, no litigation, arbitration or administrative proceeding is pending or threatened against it or any of its assets which if adversely determined, would have a Material Adverse Effect;
- 17.4.5. the rights of the DBSA under this Agreement will rank at least *pari passu* with all of the Borrower's unsecured obligations;
- 17.4.6. the Projects conforms in all material respects with the detailed descriptions forwarded to the DBSA from time to time;
- 17.4.7. the Borrower has, all Authorisations required in connection with the Projects and is in compliance with such Authorisations;



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- 17.4.8. the Borrower is not aware of any facts or circumstances which could lead to the revocation, suspension or variation of the terms of any Authorisation in connection with the Projects;
- 17.4.9. to the best of the Borrower's knowledge and belief (having made due enquiry) no Potential Event of Default or Event of Default has occurred and/or is continuing and no such event will occur as a result of its entering into performing its obligations under this Agreement;
- 17.4.10. the Borrower is not a party to any agreement that has or could reasonably be expected to have a Material Adverse Effect on the ability of the Borrower to comply with its obligations in terms of this Agreement;
- 17.4.11. the Borrower is not in default of any of its obligations in respect of other borrowed monies;
- 17.4.12. from the Signature Date and for so long as any moneys are owing under this Agreement, it will:
- 17.4.12.1. ensure that the Projects are undertaken and completed in a good and workmanlike manner with good and suitable materials, and in compliance with all applicable technical, safety and environmental regulations and all other relevant statutory or other regulatory requirements and/or consents and approvals;
- 17.4.12.2. obtain and maintain all further requisite planning consents, building regulation approvals and other matters to enable it to commence, continue with and complete the Projects; and
- 17.4.12.3. comply with all relevant laws of the national government and/or the applicable provincial government and/or regulations made thereunder and all by-laws, regulations and codes of practice of any local or competent authority in relation to the Projects and all deeds, agreements or other obligations binding upon the owner or occupier of the land upon which the Projects are situated and obtain all necessary consents in respect of the Projects upon reasonably satisfactory terms; and
- 17.4.13. the Borrower is carrying out the Programme and its operations in compliance with the laws of the Republic of South Africa.

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17.5. Disclosure

The Borrower has disclosed to the DBSA all such information as is material to the granting of the Facility and all information disclosed by the Borrower to the DBSA, whether in writing or otherwise, is true, correct and complete in every material respect.

18. RIGHTS AND REMEDIES

The rights and remedies of the DBSA in relation to any misrepresentations or breach of warranty on the part of the Borrower are not prejudiced:

- 18.1. by any investigation by or on behalf of the DBSA into the affairs of the Borrower; or
- 18.2. by any other act or thing which may be done by or on behalf of the DBSA in connection with this Agreement and which might, apart from this clause 18, prejudice such rights or remedies.

19. EVENTS OF DEFAULT

19.1. An Event of Default will occur if any one of the following events, each of which shall be several and distinct from each other, occur (whether or not caused by any reason whatsoever outside the control of the Borrower):

- 19.1.1. the Borrower fails to pay to the DBSA any amount which becomes due and payable pursuant to the Facility and/or pursuant to any agreement that the Borrower has entered into with the DBSA strictly on due date for such payment and fails to remedy such breach within 7 (seven) Business Days after its due date;
- 19.1.2. the Borrower breaches any representation and/or warranty given by it pursuant to this Agreement and/or any other agreement it has entered into with the DBSA, if such breach is capable of remedy, fails to remedy such breach within 10 (ten) days of receipt of written demand from the DBSA;
- 19.1.3. the Borrower fails to comply with any undertaking given by it to the DBSA pursuant to clause 16 (*Undertakings*) and/or any other agreement it has entered into with the DBSA, if such breach is capable of being remedied, fails to remedy such breach within 10 (ten) days of receipt of written demand from the DBSA;
- 19.1.4. the Borrower fails to comply with any obligations imposed on it pursuant to this Agreement, if such breach is capable of remedy, fails to remedy that breach within days of receipt of written demand from the DBSA;

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- 19.1.5. Authorisations in respect of the Projects are modified in a manner unacceptable to the DBSA or are not granted or are revoked or terminated or expire and are not renewed or otherwise cease to be in full force and effect;
 - 19.1.6. any third party loan, debt, guarantee or any other obligations constituting indebtedness of the Borrower, whether or not the DBSA is concerned therewith, becomes due and payable prior to its specified maturity by reason of default by the Borrower;
 - 19.1.7. the Borrower is unable to pay its debts as and when they fall due for payment, threatens to stop or suspend payment thereof or commences negotiations with its creditors with a view to rescheduling or otherwise compromising its indebtedness;
 - 19.1.8. the Borrower allows judgment for an amount in excess of R1 000 000.00 (one million Rand) to be entered against it and fails to pay the amount of such judgment within 5 (five) Business Days after the date on which the judgment becomes final (in the sense that the Borrower has exhausted all avenues for appeal or review open to it);
 - 19.1.9. the Borrower abandons the Projects or suspends the operation of the Projects for a period of more than 3 (three) months; and/or
 - 19.1.10. an event occurs which the DBSA reasonably determines to have a Material Adverse Effect and the Borrower is unable, within 30 (thirty) days of receipt of written notice from the DBSA, to overcome such event.
- 19.2. If an Event of Default occurs, the DBSA will, in addition to and without prejudice to any other rights which it may have in terms of this Agreement or in law, be entitled without further notice to:
- 19.2.1. accelerate or place on demand payment of all amounts owing by the Borrower to the DBSA (whether in respect of principal, interest or otherwise) and all such amounts will immediately become due and payable;
 - 19.2.2. cancel any undrawn amount of the Capital;
 - 19.2.3. require the Borrower to indemnify the DBSA in respect of any loss, claim expense or similar costs incurred as a result of the Event of Default; and/or
 - 19.2.4. charge Default Interest on any Facility Outstandings.

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20. POST FINANCING SUPPORT

- 20.1 Over and above the DBSA's role as a lender, the DBSA is committed to ensure that the Borrower has the required support needed for the implementation of the various projects under the Programme. To this end, the DBSA will make Post-Financing Support available to the Borrower, at no additional cost, to ensure that the Borrower successfully achieves the objectives of the funded projects under the Programme.
- 20.2 The DBSA's Post-Financing Support, as defined, will focus on assisting the Borrower and providing guidance in the implementation planning including matters of regulatory compliance, in progress monitoring and oversight, in quality, time and cost management, in preparation and/or review of projects claims, in projects reporting processes and in the formulation of operations and maintenance strategy for the new infrastructure.
- 20.3 For the avoidance of doubt, the Post-Financing Support will be provided by the DBSA at no additional cost to the Borrower. However, should the Borrower require additional services outside the scope of Post-Financing Support (as defined) as agreed by the Parties, such services will be provided or facilitated by the DBSA at a fee to be agreed between the Parties.

21. ILLEGALITY OF THE FACILITY

If, after the Signature Date, there is any Change in Law that makes it unlawful for the DBSA to continue to maintain or to fund the Facility then the Borrower will, upon request by the DBSA, repay on the next Interest Payment Date or on such earlier date as the DBSA certifies to be necessary to comply with the relevant, law, regulation or applicable directive in full, the Facility Outstandings. In addition, upon receipt of such notification from the DBSA, the Borrower will have no further right to Disbursement of the undisbursed portion of the Capital.

22. SEVERABILITY

The Parties agree that each and every provision of this Agreement is severable from the remaining provisions of this Agreement and should any provision of this Agreement be in conflict with any applicable law, or be held to be unenforceable or invalid for any reason whatsoever, such provision should be treated as *pro non scripto* and will be severable from the remaining provisions of this Agreement which will continue to be of full force and effect.

23. CESSION AND DELEGATION

- 23.1. The Borrower will not be entitled to cede, assign, delegate or otherwise transfer any of its rights or obligations under this Agreement to any third party.

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23.2. The DBSA will be entitled, without the Borrower's consent, to cede, delegate or assign all or any of its rights, benefits and obligations or obligation only under this Agreement to any third party, either absolutely or as collateral security, and on any such cession, assignment and/or delegation taking place, the Borrower will, if so required make all payments to any specified cessionary.

24. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which will be deemed an original, and all of which will constitute one and the same agreements as at the date of signature of the Party last signing one of the counterparts.

25. GOVERNING LAW

This Agreement will be governed by and construed in accordance with the laws of the Republic of South Africa.

26. JURISDICTION

The Parties hereby agree and that jurisdiction in regard to all matters arising from this Agreement shall be the non-exclusive jurisdiction of the North Gauteng High Court, Johannesburg, South Africa in relation to any dispute arising from or in connection with this Agreement.

27. CERTIFICATE OF INDEBTEDNESS

A certificate signed by any manager of the DBSA (whose appointment and/or designation and/or authority need not be proved) as to the existence of and the amount of indebtedness by the Borrower to the DBSA, that such amount is due and payable, the amount of interest accrued thereon and as to any other fact, matter or thing relating to the borrower's indebtedness to the DBSA in terms of this Agreement, will be sufficient proof of the contents and correctness thereof for the purposes of provisional sentence, summary judgment or any other proceedings, will be valid as a liquid document for such purpose and will in addition, be *prima facie* proof for purposes of pleading or trial in any action instituted by the DBSA arising here-from.

28. REMEDIES AND WAIVERS

Neither failure by the DBSA to exercise, nor any delay by the DBSA in exercising any right or remedy hereunder will operate as a waiver thereof, nor will any single or partial exercise of any right or remedy prevent any further exercise thereof or the exercise of any other right or remedy. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.

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29. COSTS

If in any legal proceedings relating to the enforcement by either party of its rights in terms of this Agreement, a court awards costs to any party, such costs will be determined and recoverable on the scale as between an attorney and his own client and will include collection charges, the costs incurred by such party in endeavouring to enforce such rights prior to the institution of legal proceedings and the costs incurred in connection with the satisfaction or enforcement of any court award or judgment awarded in favour of such party in relation to its rights in terms of or arising out of this Agreement.

30. NOTICES AND DOMICILIA

30.1. The Parties choose as their *domicilia citandi et executandi* their respective addresses set out in this Agreement for all purposes arising out of or in connection with this Agreement at which addresses all processes and notices arising out of or in connection with this Agreement, its breach or termination may validly be served upon or delivered to the Parties.

30.2. For purposes of this Agreement the Parties' respective addresses will be as follows:

30.2.1. The DBSA:

Physical:	The Development Bank of Southern Africa Limited 1258 Lever Road Headway Hill Midrand
Postal:	P.O. Box 1234, Halfway House, 1685
Tel:	(011) 313 3911
Facsimile:	(011) 206 3086
Attention:	The General Manager: Mr. C Mhlongo and

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30.2.2 The Borrower:

Physical: Civic Centre, 1 Harmony Avenue, Hermanus, 7201
 Postal: PO Box 20, Hermanus, 7200.
 Tel: 028 313 8000
 Facsimile: 028 313 8087
 Attention: The Municipal Manager: Mr. CC Groenewald

or at such other address in the Republic of South Africa of which the party concerned may notify the other in writing provided that no street address will be changed to a post office box or post restante.

30.3. Any notice given in terms of this Agreement will be in writing and will:

30.3.1. if delivered by hand be deemed to have been duly received by the addressee on the date of delivery; or

30.3.2. if transmitted by facsimile be deemed to have been received by the addressee on the day following the date of dispatch, unless the contrary is proved.

30.4. Notwithstanding anything to the contrary contained or implied in this Agreement, a written notice or communication actually received by one of the parties from another including by way of facsimile transmission will be adequate written notice or communication to such Party.

31. RELAXATION

No latitude, extension of time or other indulgence which may be given or allowed by any Party to the other Party in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of any party arising from this Agreement. No single or partial exercise of any right by any party under this Agreement, will in any circumstances be construed to be an implied consent or election by such party or operate as a waiver or a novation of or otherwise affect any of the party's rights in terms of or arising from this Agreement or estop or preclude any such party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

32. VARIATION

No addition to or variation, consensual cancellation or novation of this Agreement and no waiver of any rights arising from this Agreement or its breach or termination will be of any force or effect unless reduced to writing and signed by all the Parties or their duly authorised representatives.

The bottom of the page features several handwritten signatures in black ink. To the right of the signatures is a small, circular official stamp with some illegible text inside. The signatures appear to be from multiple parties, likely representing the 'all the Parties' mentioned in the text above.

33. WHOLE AGREEMENT

This Agreement constitutes the whole agreement between the Parties as to the subject matter hereof and no agreements, representations or warranties between the Parties regarding the subject matter hereof other than those set out herein are binding on the Parties.

Handwritten signatures and initials, including a large stylized signature, a signature with a vertical line through it, a signature with a small 'Y' above it, and several other initials and marks.

For: **THE DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED**

Signature: Burhango
who warrants that he / she is duly authorised thereto

Name: CHUCHEKA MHCONGO

Date: 30/3/2016.

Place: MIDRAND

Witness: [Signature]

Witness: [Signature]

For: **OVERSTRAND LOCAL MUNICIPALITY**

Signature: [Signature]
in his/her capacity as Accounting Officer

Name: C.C. GROENEWALD

Date: 23 MARCH 2016

Place: HERMANUS

Witness: [Signature]

Witness: [Signature]

Annexure A

Form of Request for Disbursement of the Facility

[To be placed on the Borrower's letterhead]

[insert date]

To: The Manager: (*name and address of the DBSA*)

Dear [insert]

Disbursement Request No. [•]

Project No. [•]

1. Please refer to the Facility Agreement dated [insert date] between the [•] Municipality (the "**Borrower**") and the Development Bank of Southern Africa Limited ("**the DBSA**"). Terms defined in the Facility Agreement have their defined meanings whenever used in this request.
2. The Borrower irrevocably requests the Disbursement on or before [insert date] (or as soon as practicable thereafter) of the aggregate amount of [insert numerals] [insert words] under the Facility (the "**Disbursement**"). You are kindly requested to pay such amount to the account of the Borrower, Account No. [•] Branch Code [•].
3. The Borrower further certifies to the best of its knowledge (after due enquiry) as follows:
 - 3.1 the representation and warranties made in the Facility Agreement are true on the date of this request and will be true on the date of Disbursement with the same effect as if such representations and warranties had been made on and as of each such date except as set forth on the certificate accompanying this request;
 - 3.2 the Borrower is not aware (after due enquiry) that any Potential Event of Default or Event of Default has occurred, is continuing or about to occur;
 - 3.3 since the date of the Facility Agreement no changes in the Projects or in the financial condition of the Borrower has occurred and no other circumstance has arisen which has or is reasonably likely to have a Material Adverse Effect;
 - 3.4 the proceeds of the Disbursement are at the date of this request required by the Borrower exclusively for the purposes of the Projects;
 - 3.5 after receipt of the Disbursement the Borrower will not be in violation of:

3.5.1 any provision contained in any document to which the Borrower is a Party or by which the Borrower is bound; or

3.5.2 any law, rule or regulation, directly or indirectly limiting or otherwise restricting the Borrower's borrowing power or authority or its ability to borrow.

4. The above certifications are effective as at the date of this Disbursement Request and will continue to be effective as of the date of the Disbursement. If any of these certifications is no longer valid as of or prior to the date of the requested Disbursement, the Borrower undertakes to promptly notify the DBSA unless it is not aware of the same (after due enquiry).

Yours faithfully

Accounting Officer

Name: _____

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Annexure B

PROGRAMME / PROJECT DESCRIPTION

The Programme entails funding of individual projects, related to electrical, water and sanitation services, which is included in Overstrand Local Municipality's 2015/16, 2016/17 and 2017/18 Capital Expenditure Budget.

The Projects to be funded through this term loan Facility are as follows:

Description	Total	2015/16	2016/17	2017/18
Electricity				
- Franskraal, Kleinbaai & Birkenhead MV/LV	2,600,000	2,600,000		
- Gansbaai Minisub & MV/LV upgrade	8,700,000	2,700,000	3,000,000	3,000,000
- Blompark Low voltage upgrade	1,000,000	1,000,000		
- Stanford MV Upgrade	1,200,000	1,200,000		
- Electrification of low cost housing	4,000,000			4,000,000
- Hermanus LV Upgrade/Replacement	4,000,000		4,000,000	
- Kleinmond MV/LV Network upgrade	3,000,000		1,500,000	1,500,000
- Hawston LV Upgrade/replacement	3,000,000		1,500,000	1,500,000
- Transformer /Capital replacement	1,500,000	1,500,000		
	29,000,000	9,000,000	10,000,000	10,000,000
Water				
- Replacement of pipes (Overstrand)	13,652,800	9,652,800	-	4,000,000
- Upgrading of The Oog Pumpstation	500,000		500,000	
- New bulk reservoir (Sandbaai)	6,000,000			6,000,000
- Upgrading of Franskraal-Kleinbaai-gansbaai pipe	9,500,000		9,500,000	
- Pearly Beach WTW Pre-treatment	900,000	900,000		
- Refurbishment Buffels River Dam Bridge & Tower	2,000,000	2,000,000		
- Water pumps (Contingency)	200,000	200,000		
	32,752,800	12,752,800	10,000,000	10,000,000
Sewerage				
- Upgrading of pumpstations	8,047,200	3,547,200	4,500,000	
- Stanford Sewer Network ext	8,500,000	3,000,000	5,500,000	
- Sewage pumps (Contingency)	300,000	300,000		
- Kleinmond Sewer Networks Ext	4,000,000			4,000,000
- Gansbaai CBD Sewer Network Ext	6,000,000			6,000,000
- Upgrade of Kidbrooke Pipeline	1,400,000	1,400,000		
	28,247,200	8,247,200	10,000,000	10,000,000
Total	90,000,000	30,000,000	30,000,000	30,000,000

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Annexure C

DISBURSEMENT SCHEDULE

Disbursement shall be made in three tranches:

- the first tranche of R30 000 000 (thirty million Rand) as soon as possible after the signing of the loan agreement;
- the second tranche of R30 000 000 (thirty million Rand) on 28 February 2017; and
- the third tranche of R30 000 000 (thirty million Rand) on 28 February 2018.

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