

102040.2

AGREEMENT

in respect of

WITZENBERG MUNICIPAL INFRASTRUCTURE 2005/06 – LOAN 2

entered into by and between

WITZENBERG MUNICIPALITY

and

THE DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED

bw
ABJ
gh
RB

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MEMORANDUM OF LOAN

CLAUSE

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SUMMARY

1. LOAN AMOUNT : R1 460 000
2. LOAN PERIOD : 7 years
3. INTEREST RATE
- 3.1 FIXED INTEREST RATE : 7 year Government bond Rate plus 150 basis points per annum, effective on signature date of the loan agreement
4. CAPITAL GRACE PERIOD : 1 year
5. CAPITAL REPAYMENT : 12 equal six-monthly instalments, commencing on the last day of the 3rd Half-year after the Half-year during which the first disbursement was advanced to the Borrower
6. PROJECT FILE NO. : WC102040.2

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1. INTERPRETATIONS

1.1 In this Agreement, unless the contrary appears from the context, the following words have the meanings as stated:-

- 1.1.1 "Borrower" Witzenberg Municipality;
- 1.1.2 "the DBSA" the Development Bank of Southern Africa Limited, reconstituted and incorporated in terms of Section 2 of the Development Bank of Southern Africa Act No. 13 of 1997;
- 1.1.3 "Business Day" means any day other than a Saturday, Sunday and a Public Holiday;
- 1.1.4 "Parties" the Borrower and the DBSA;
- 1.1.5 "Project" Witzenberg Municipal Infrastructure 2005/06., as described in more detail in Annexure A attached hereto;
- 1.1.6 "Loan" the financing granted to the Borrower in terms of clause 2;
- 1.1.7 "Interest Payment Date" the last Business Day of each Interest Period;
- 1.1.8 "Interest Period" each period of 6 (six) months commencing on 1 April or 1 October of each calendar year. The first Interest Period shall begin to run from the date of the first disbursement to 31 March or 30 September, whichever immediately follows disbursement. Each Interest Period thereafter shall begin to run from the date of expiry of the preceding Interest Period, even if the first day of this Interest Period is not a Business Day. Notwithstanding the foregoing, any period less than six months running from the date of a

disbursement to the date of 31 March or 30 September immediately following this disbursement shall be deemed an Interest Period;

- 1.1.9 "Project Agent" a person nominated in writing by the Borrower to act on its behalf in respect of the Project;
- 1.1.10 "On-lending" the transfer, by the Borrower, of any amount(s) to any third parties, from the proceeds of the Loan, excluding payments for the procurements of goods and services;
- 1.1.11 "Half-year" from the first day of April to the 30th day of September and/or from the first day of October to the 31st day of March during the next calendar year;
- 1.1.12 "Reset Date" the first Business Day of April and October of each calendar year or such other dates as may be agreed to in writing by the Parties;
- 1.1.13 "Reset Period" a period of 6 (six) months commencing from each Reset Date;
- 1.1.14 "Fixed Rate Loan" the amount of Loan disbursed and outstanding from time to time in respect of which the Fixed Interest Rate as determined in clause 3.1 shall apply;
- 1.1.15 "this Agreement" means this Agreement together with any Annexures thereto;
- 1.1.16 "DBSA Base Rate" shall mean the DBSA fixed interest rate for Fixed Rate Loans ruling at the time of exercising of a Conversion Option;
- 1.1.17 "Reference Banks" means four major Banks in the Johannesburg Interbank market selected by the DBSA;

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- 1.1.18 "Operating Cost Margin" shall mean a margin for operating expenses as shall reasonably be determined by the DBSA from time to time;
- 1.1.19 "Funding Cost Margin" shall mean a margin representing an average cost of borrowing to the DBSA as shall reasonably be determined by the DBSA from time to time.
- 1.1.20 "Breakage Costs" shall mean the net present value of the amount (if any) by which:
- the interest, which the DBSA would have received for the period commencing on the date of receipt of such prepaid principal amount to that Interest Payment Date;
- exceeds
- the interest which the DBSA would be able to obtain by placing an amount equal to the prepaid principal received by it, on deposit with a leading bank in the relevant Interbank Market for a period commencing on the date of receipt of such principal and ending on that Interest Payment Date.
- 1.1.21 "Unwinding Costs" shall mean any and all actual 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 Loan.

- 1.2 Headings to the clauses of this Agreement, the table of contents and summary are for reference purposes only and are not intended to affect the interpretation thereof.

- 1.3 Any reference to the singular shall include the plural and vice versa.
- 1.4 Any reference to a natural person shall include an artificial or corporate person and vice versa.
- 1.5 Any reference to one gender shall include the other.
- 1.6 Any reference to ZAR-JIBAR and/or ZAR-JIBAR-Reference Banks Rate shall include any other substitute rate, calculated in the same manner as either of these two rates whether such substitute rate appears on the Reuters screen safety page or on some other screen page.
- 1.7 This Agreement shall bind the Borrower and its successors-in-title.

2. THE LOAN

- 2.1 The Loan shall be:-
- 2.1.1 an amount not exceeding, in aggregate, R1 460 000 (one million four hundred and sixty thousand Rand); and
- 2.1.2 utilised exclusively for the Project and the Borrower, hereby, undertakes that it shall comply with all provisions of this Agreement.
- 2.2 The Loan proceeds shall be paid by the DBSA to, and on the order of, the Borrower in such disbursements and in accordance with all provisions contained in this Agreement.
- 2.3 No On-Lending shall be effected unless provided for in this Agreement.

3. INTEREST

The Loan shall bear interest on the amount from time to time outstanding at a Fixed or Floating Rate, as the case may be at the election of the Borrower as follows:

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3.1 FIXED INTEREST RATE

- 3.1.1 The Capital shall bear interest on the amount from time to time outstanding at a nominal fixed rate per annum.
- 3.1.2 Interest on the amount from time to time outstanding shall be compounded six-monthly and shall be due and payable on the last day of each Half-year. If payment of interest falls on a day other than a Business Day, such interest shall be payable on the next succeeding Business Day.
- 3.1.3 Payment shall commence on the last day of the Half-year during which the first disbursement was advanced to the Borrower.

4. REPAYMENT OF LOAN AND PAYMENT OF INTEREST

- 4.1 The capital amount of the Loan shall be repaid in 12 (twelve) equal six-monthly instalments, commencing on the last day of the 3rd (third) Half-year following the Half-year during which the first disbursement was made to the Borrower from the proceeds of the Loan; and thereafter at the end of each succeeding Half-year until the Loan together with interest thereon shall be fully repaid; provided that subject to the provisions of clause 7, the Borrower may, with 30 (thirty) days written notice to the DBSA, make repayments in excess of the abovementioned or repay the full amount outstanding, provided further that the Borrower shall not be entitled to make any repayments prior to the date on which the first instalment shall fall due in terms of this Agreement; provided further that this shall not jeopardise the proper completion of the Project.
- 4.2 An instalment shall be a fixed amount, determined as at the outset of the 3rd (third) Half-year following the Half-year during which the first disbursement was made to the Borrower from the proceeds of the Loan; calculated as being sufficient to amortise the outstanding amount, plus interest at the rate set out in clause 3.1 above, in 12 (twelve) equal six-monthly payments. Should, at the outset of the said 3rd (third) Half-year, part of the Loan still not be drawn by the Borrower, the amount of instalments shall be adjusted as and when drawings take place, in order to achieve amortisation over the original period of the Loan.

BW
ABJ
[Signature]
[Signature]
PB

5. COMMITMENT FEE

5.1 The DBSA shall be entitled, in respect of the Fixed Rate Loan, to charge a commitment fee of 0,5% (nought comma five per centum) per annum on all the undisbursed portion of the Loan as follows:

5.1.1 in case where the Borrower has elected a fixed interest rate option, the DBSA shall be entitled to charge such a commitment fee effective 3 (three) months from the date of conclusion of this Agreement;

5.1.2 in case where the Borrower has exercised the Conversion Option, the DBSA shall be entitled to charge such a commitment fee effective 3 (three) months from the date of the exercise of the Conversion Option by the Borrower.

5.2 Payment of the commitment fee shall be made on the same terms and conditions as the other amounts due in terms of this Agreement.

6. LATE PAYMENT

6.1 The Borrower shall be liable to the DBSA for the payment of penalty interest on all amounts payable, yet unpaid, in terms of this Agreement should the Borrower:-

6.1.1 fail to pay on the due date any amount owing or which may become owing to the DBSA in terms of this Agreement; or

6.1.2 with the DBSA's written consent defer the payment of any amount so owing.

6.2 Penalty interest shall be calculated with regard to the actual period during which the amount payable remained unpaid, at the Fixed Rate/interest rate of the Loan plus 2% (two per centum). Penalty interest shall be compounded six-monthly / three-monthly and payable on demand.

7.1. EARLY REPAYMENT [FOR FLOATING RATE] LOANS

7.1.1 The Borrower shall, subject to thirty (30) days written notice to the DBSA, be entitled to prepay any portion or the entire principal amount of the DBSA Loan. However, the Borrower shall be liable to pay Breakage Costs on the principal

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amount being prepaid otherwise than on the Interest Payment Date and any Unwinding costs.

7.2 EARLY REPAYMENT [FOR FIXED RATE] LOANS

7.2.1 The Borrower shall, subject to thirty (30) days written notice to the DBSA, be entitled to prepay any portion or the entire principal amount of the DBSA Loan, subject to the payment of a prepayment fee on the principal amount being prepaid. The prepayment fee shall be determined or calculated as follows:

7.2.1.1 where the interest rate of the Loan is less than or equal to the Reinvestment Rate (defined herein below), the Borrower shall be liable to pay Unwinding Costs only (if any) on the prepaid amount;

7.2.1.2 where the interest rate of the Loan is greater than the Reinvestment Rate, the Borrower shall pay to the DBSA an amount equal to the difference (calculated on a present value basis to the DBSA's prejudice) between the interest which the prepaid principal amount would have produced had there been no prepayment and the interest which would be produced by a reinvestment of the same amount having the same repayment schedule as the prepaid principal amount of the Loan as well as any Unwinding Costs.

7.2.2 The Reinvestment Rate shall be the rate at which the DBSA can invest the funds in the relevant Interbank Market, for the period equal to the remaining Loan Period as determined at the relevant Interest Payment Date of such prepaid principal amount.

7.2.3 The discount rate used shall be equal to the discount rate forecast by the Zero Curve published on Reuters. The date used for the present value calculation shall be that of the prepayment.

8. PAYMENT(S)

8.1 All payments to or by the Parties under this Agreement shall be effected in South African Rands.

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 [Signature]
 PB

- 8.2 All payments under this Agreement to the Borrower shall be effected to the credit of such banking account(s) of the Borrower as the Borrower may from time to time direct, in writing.
- 8.3 The Borrower shall furnish the DBSA with all the necessary information regarding its officials who are authorised to apply for drawdowns on the Borrower's behalf.
- 8.4 All payments under this Agreement to the DBSA shall be effected to the credit of such banking account(s) of the DBSA as the DBSA may from time to time direct, in writing.
- 8.5 Payments to the DBSA in terms of this Agreement shall be effected without deduction and free from any taxes, charges, fees or other costs whatsoever.
- 8.6 Whenever any payment falls due on a Saturday, Sunday or Public Holiday under the laws to which either of the Parties are subject, such payment shall be made on the next succeeding business day.

9. CANCELLATION/TERMINATION OF DRAWDOWNS

- 9.1 The Borrower may, by giving 30 (thirty) days written notice to the DBSA, cancel any undrawn portion of the Loan provided that such cancellation shall not jeopardise the proper completion of the Project; it being understood that upon the giving of such notice the instalments referred to in clause 4.1 supra shall be reduced pro rata.
- 9.2 If the DBSA reasonably concludes, after consultation with the Borrower, that any portion(s) of the Loan will not be required to finance the Project, the DBSA may by notice to the Borrower terminate the right of the Borrower to make drawdowns in respect of such undrawn portion; it being understood that upon giving of such notice the instalments referred to in clause 4.1 supra shall be reduced pro rata.
- 9.3 If the DBSA has not received a final application for a drawdown under the Loan from the Borrower at the end of the 1st (first) Half-year following the Half-year during which the first disbursement was made to the Borrower from the proceeds of the Loan, the DBSA may terminate further disbursements to the Borrower on 30 (thirty) days written notice to the Borrower unless the DBSA, after consideration of the reasons for the delay, has determined a later date for the purposes of this sub-clause. The DBSA shall only consider an extension on receipt of a written request from the Borrower and shall notify the Borrower of its decision.

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10. EVENTS OF DEFAULT

- 10.1 The DBSA shall be entitled, after giving the Borrower 30 (thirty) days written notice, to suspend drawdowns from the Loan or to terminate this Agreement and to claim from the Borrower immediate payment of all the outstanding amounts should the Borrower commit any breach of this Agreement, provided that the DBSA may, at its entire discretion, dispense with the giving of the 30 (thirty) days notice.
- 10.2 Without derogating from the generality of the foregoing, the DBSA shall be entitled to exercise its rights in terms of clause 10.1 above, upon the happening of any of the following events:-
- 10.2.1 the Borrower failing to repay the capital amount and to pay interest in terms hereof, and failing to remedy such breach within the notice period referred to in 10.1 above requiring it to do so;
- 10.2.2 any attachment being made or any execution being levied against the Borrower;
- 10.2.3 any failure to repay any of the DBSA's loans or breach of any agreement entered into between the Borrower and the DBSA and/or with any other lender/creditor;
- 10.2.4 any fact or circumstance shall have occurred which in the opinion of the DBSA may affect the ability or willingness of the Borrower to comply with all or any of its obligations under this Agreement;
- 10.2.5 the Borrower proposing any rescheduling, reorganisation or rearrangement of the whole or part of its indebtedness with the DBSA or any of its creditors;
- 10.2.6 the Borrower's business operations or any significant part thereof, being interrupted for a continuous period of at least 3 (three) months;
- 10.2.7 any approval, licence, authorisation or other requirement necessary to enable the Borrower to comply with any of its obligations in terms of this Agreement is modified, revoked or withdrawn whilst this Agreement is still in force;

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- 10.2.8 any order is made or resolution passed or other action taken for the dissolution or termination of the existence of the Borrower;
- 10.2.9 any representation, warranty or statement made in, or in connection with, this Agreement or any opinion delivered by or on behalf of the Borrower under this Agreement is found to be incorrect.
- 10.3 The exercise of the rights by the DBSA in terms hereof shall be without prejudice and/or in addition to any other rights which the DBSA may then have against the Borrower in law, including the right to demand specific performance by the Borrower of its obligations in terms of this Agreement.

11. CONDITIONS PRECEDENT

The operation of this Agreement is subject to the Borrower:

- 11.1 submitting a certified copy of its Council's resolution, authorizing the Borrower to conclude the Agreement, in respect of the Project, and approval of the funding arrangements thereof;
- 11.2 providing security in the form of a session of R4 million over debtors (Loan 1, Loan 2 and Loan 3)

12. FURTHER TERMS AND CONDITIONS

- 12.1 In the event that funding for the Projects, as set out in the Project Description, is secured from other sources of funding, amounts so received shall be utilized towards the Loan Agreement, which shall be reduced pro-rata. In the event of such funds being received prior to the final disbursements of the Loan, to the Borrower, the provisions of Clause 7 of the Loan Agreement shall become applicable.
- 12.2 The Borrower, hereby, undertakes that reasonable budgetary contributions will be made to the Bad Debt Provision to cover amounts outstanding for 120 days and more.
- 12.3 The Borrower, hereby, undertakes to ensure the strict application of its existing Credit Control Policy.

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13. ARBITRATION

- 13.1 Any dispute arising out of or relating to this Agreement concerning the interpretation of the terms and conditions of this Agreement or of compliance by any Party with the terms/conditions of this Agreement which is not resolved amicably through consultations or negotiations shall, subject to the other provisions of this Agreement, be settled by arbitration in terms of the Arbitration Act No. 42 of 1965, as amended from time to time; provided that a claim by the DBSA for the repayment of any monies due under this Agreement shall not be regarded as a dispute for the purpose of this clause and neither Party shall therefore be obliged to refer such a claim to arbitration.
- 13.2 In case of arbitration a tribunal shall be composed of one arbitrator who shall be appointed by the Parties by agreement or failing such agreement, by the chairperson of the Association of Arbitrators, who shall, in appointing such arbitrator, have regard to the qualifications and experience of the appointee in relation to the nature of the dispute over which he/she has to adjudicate. In case the arbitrator resigns or becomes unable to act, a successor shall be appointed in the same manner as herein prescribed for the appointment of the original arbitrator and the successor shall have all the powers and duties of his/her predecessor.
- 13.3 The arbitration shall be held at the place and in accordance with whatever procedures the arbitrator considers appropriate. In particular, the arbitrator, may, if he/she deems appropriate, conduct the arbitration in an informal and summary manner and without requiring pleadings or discovery of documents and without observing the rules of evidence. The proceedings shall be confidential and neither the Parties nor the arbitrator shall disclose to third parties any information regarding the proceedings, the award, or settlement terms unless the parties otherwise agree in writing.
- 13.4 After the institution of arbitration proceedings the tribunal may proceed with the arbitration notwithstanding any failure, neglect or refusal of either Party to comply with the provisions hereof or to take part or to continue to take part in the arbitration proceedings. The arbitrator shall within 30 (thirty) days of the termination of the proceedings render a final and binding written award including interest and costs, and furnish the Parties with written reasons for his/her judgment.

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- 13.5 The provisions of this clause may be invoked by any Party by delivering to the other Party a demand, in writing, that an arbitrator be appointed to adjudicate in respect of a specified dispute.

14. GENERAL

14.1 PROJECT NOTICE BOARDS

The Borrower shall, at its own cost, ensure that, immediately upon commencement of construction/building operations, contemplated by this Agreement, if it is decided to erect a Project notice board, the said board shall clearly advertise the fact that such construction/building operations, have been financed or co-financed, as the case may be, by the DBSA.

14.2 DOMICILIUM

- 14.2.1 The Parties choose domicilium citandi et executandi ("domicilium") for all purposes arising from or pursuant to this Agreement, as follows:-

- (i) In case of the DBSA:-

Physical address: Development Bank of Southern Africa Limited
Headway Hill
MIDRAND
SOUTH AFRICA; or

Postal address: P O Box 1234
HALFWAY HOUSE
1685; or

Telefax number: (011) 313 3086

- (ii) In case of the Borrower

Physical address: Witzenberg Municipality
50 Voortrekker Street
Ceres
6835; or

Postal address: P O Box 44
Ceres
6835; or

Telefax number: (023) 316 1877

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14.2.2 Each of the Parties shall be entitled from time to time, by written notice to the other, to vary its domicilium to any other address which is not a Post Office or Poste Restante.

14.2.3 All notices made by either Party to the other ("the addressee") which:-

- (i) is delivered by hand during the normal business hours of the addressee at the addressee's domicilium for the time being shall be presumed to have been received by the addressee at the time of delivery;
- (ii) is posted by prepaid registered post to the addressee at the addressee's domicilium for the time being shall be presumed to have been received by the addressee on the seventh day after the date of posting; Provided that the Parties agree that all other forms of correspondence and/or requests may be done through fax and/or electronic mail (e-mail).

14.3 WHOLE AGREEMENT

This Agreement (including the Annexures) constitutes the entire Agreement between the Parties and no representations, warranties, undertakings or promises of whatever nature which may have been made by any of the Parties, their agents or employees, other than those herein contained, shall be binding or enforceable against them.

14.4 NON-VARIATION

No variation, amendment or addition to this Agreement shall be valid unless the same has been reduced to writing and signed by or on behalf of the Parties.

14.5 NON-ENFORCEMENT/INDULGENCE

The non-enforcement of any provision of this Agreement or any indulgence which either Party may grant to the other Party shall be without prejudice to the rights of such first-mentioned Party to insist upon strict compliance by such other Party with all the provisions of this Agreement or to enforce its right in respect of which such indulgence was granted.

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14.6 TERMS AND CONDITIONS OF DISBURSEMENT

Disbursement of each progress claim in respect of the amount financed by DBSA is to be effected as a ratio of actual cost of each item (for each phase) in accordance with the Application and Source of Funds Statement (Annexure B), read together with the Project Description (Annexure A), to the maximum amount of R1 460 000. This is subject to submission to the DBSA of fully documented proof of payment by the Borrower to supplier, consultant and/or contractor, of actual claims (or in-house expenses incurred), as approved by the Borrower or its authorised representative. Each progress claim is to be in the itemised format as depicted in Annexure B.

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THUS DONE AND SIGNED AT Ceres ON THE 5TH DAY OF September 2005.

AS WITNESSES:

- 1. [Signature]
- 2. [Signature]

[Signature]
 FOR AND ON BEHALF OF THE
 BORROWER, DULY AUTHORISED
 THERETO IN TERMS OF ANNEXURE D
 ATTACHED HERETO

THUS DONE AND SIGNED AT Nelspan ON THE 10 DAY OF 09 2005.

AS WITNESSES:

- 1. [Signature]
- 2. [Signature]

[Signature]
 FOR AND ON BEHALF OF THE DBSA,
 DULY AUTHORISED THERETO IN
 TERMS OF ANNEXURE E ATTACHED
 HERETO