

PAGES 17 + 18

LOAN AGREEMENT

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in respect of

HARRISMITH TRANSITIONAL LOCAL COUNCIL SUPPORT PROGRAMME

Entered into by and between

HARRISMITH TRANSITIONAL LOCAL COUNCIL

and

THE DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED

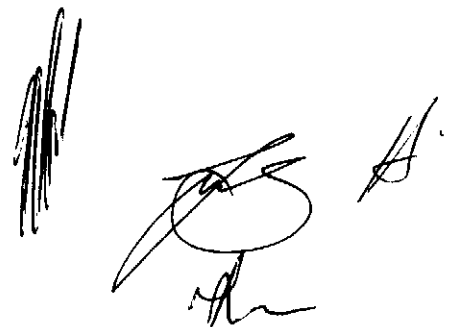
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SUMMARY

- | | | | |
|----|---|---|--|
| 1. | LOAN AMOUNT | : | R13 000 000 |
| 2. | PROGRAMME LOAN FACILITY
PERIOD | : | 18 years |
| 3. | INTEREST RATE | : | 15 per centum nominal per annum |
| 4. | GRACE PERIOD FOR
CAPITAL REPAYMENT IN
RESPECT OF EACH PROJECT
(EXCEPT FOR PROJECT
NO.11084) | : | 1 year |
| 5. | CAPITALISATION OF INTEREST | : | Nil |
| 6. | CAPITAL REPAYMENT | : | In respect of each loan (except for loan in respect of project No. 11084), 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. |
| 7. | PAYMENT OF INTEREST | : | Interest on the amount outstanding shall be compounded six-monthly and payable at the end of each Half-year. |
| 8. | PROJECT FILE NO. | : | FS11014 |

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1

MEMORANDUM OF LOAN AGREEMENT

in respect of

HARRISMITH TRANSITIONAL LOCAL COUNCIL SUPPORT PROGRAMME

Entered into by and between

HARRISMITH TRANSITIONAL LOCAL COUNCIL

and

THE DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED

In fulfillment of the role of the Development Bank of Southern Africa Limited to support development in Southern Africa, it is hereby agreed as follows:

1. DEFINITIONS AND HEADINGS

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

- | | | |
|-------|---------------------------|--|
| 1.1.1 | "Borrower" | Harrismith Transitional Local Council; |
| 1.1.2 | "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 | "Parties" | the Borrower and DBSA; |
| 1.1.4 | "Programme" | Harrismith Transitional Local Council Support Programme, as described in more detail in Annexure A attached hereto; |
| 1.1.5 | "Project" | individual projects listed in clause 3.1 of Annexure A hereto; |
| 1.1.6 | "Programme Loan Facility" | the financing granted to the Borrower in terms of clause 3; |
| 1.1.7 | "Loan" | individual loan amounts in respect of each project as reflected in clause 3.1 of Annexure A attached hereto; |
| 1.1.8 | "Amount outstanding" | in respect of each loan, means the capital amount (including interest and other charges) owed by the Borrower from time to time; |
| 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 "Half-year" from the first day of July to the 31st December and/or from the first day of January to the 30th day of June during the next calendar year.

1.1.11 "This agreement" means this loan agreement including individual project agreements contemplated in section 5.4 of Annexure A hereto.

1.2 Headings to the clauses of this agreement, the table of contents and summary are for , reference purposes only and do not form part of this agreement.

2. PROJECT CO-OPERATION

2.1 To ensure that the purposes of the Loan are accomplished the Parties shall:

2.1.1 periodically and at the request of either Party:

2.1.1.1 exchange views with regard to the progress of the Project, the benefits derived therefrom and the performance of their respective obligations under this agreement as well as other matters relating to the purposes of the Loan; and

2.1.1.2 furnish each other with all such information as may be reasonably requested with regard to the progress of the Project, the benefits derived therefrom and the general status of the Loan;

2.1.2 promptly inform each other of any fact which interferes with, or threatens to interfere with, the progress of the Project, the accomplishment of the purposes of the Loan, any related matter, and in particular the performance by either Party of its obligations under this agreement;

2.1.3 jointly determine the technical, financial and organisational requirements in respect of planning, management and control of the Project in order to ensure the efficient and effective execution and maintenance of the Project and related matters; and

- 2.1.4 jointly determine the criteria to be taken into consideration when awarding contracts for items and services to be financed by the Loan, bearing in mind that preference shall be given to the involvement of natural persons and bodies corporate respectively resident and registered in South Africa.

2.2 The Borrower shall:

- 2.2.1 grant representatives of DBSA the opportunities reasonably necessary to visit any relevant area for purposes related to the Loan;
- 2.2.2 in addition to the amount made available in terms of this agreement, be responsible for the provision of all other funds necessary for the successful execution of the Project as set out in Annexure B, including funds to be supplied by third parties as reflected in that Annexure;
- 2.2.3 with regard to the procurement of goods and services for the Project, follow the following procedures in respect of tenders and quotations:
- 2.2.3.1 tender documents or invitations for quotations shall be drawn up in consultation with DBSA's project team and ratified by DBSA;
- 2.2.3.2 the tender and quotations shall be invited through the Borrowers tender procedures for non-departmental construction;
- 2.2.3.3 open tenders shall be open to all interested parties and it shall not necessarily be a pre-requisite that the tenderer be a member of any particular association;
- 2.2.3.4 after consultation with and formal ratification by DBSA, the evaluation and recommendation for appointment of a tenderer shall be submitted to the Borrower's Tender Board or other responsible body by the Project Agent. If this recommendation, in part or whole is not acceptable to the Borrower's Tender Board or other responsible body, that Board or body may make amendments, but such amendments may be implemented only after ratification by DBSA; and

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- 2.2.3.5 strict tender procedures shall be adhered to. Where deemed necessary advice and support on possible improvements will be forthcoming from DBSA;
- 2.2.6 ensure that contractors to whom contracts are awarded are insured and remain insured in terms of contractors-all-risk-insurance policies acceptable to DBSA;
- 2.2.7 insure and keep insured at the replacement value thereof, such of its interests in the Project against such risks as may be agreed upon by the Parties;
- 2.2.8 maintain or cause to be maintained records adequate to identify the operations carried out by means of the Loan and furnish DBSA with all such information (e.g. progress reports) concerning the implementation of the Project;
- 2.2.9 submit a statement reasonably acceptable to DBSA, certified on behalf of the Borrower, reflecting the expenditure incurred against goods and services financed in respect of the Project, within 6 (six) months after the end of each financial year of the Borrower during which a drawing is made on the Loan;
- 2.2.10 apply the Loan in accordance with Annexure B to this agreement;
- 2.2.11 require each contractor to whom a contract is awarded to furnish a performance guarantee acceptable to DBSA, in terms whereof the completion of such contract is guaranteed; and
- 2.2.11 preserve all documents and accounting records pertaining to the Project up to the expiry of a period of 3 (three) years after completion of the Project, and shall allow DBSA at DBSA's cost at any reasonable time to have such documents and records audited by a person or persons nominated by DBSA.
- 2.3 Where the Parties agree that the further appointment of consultants or the revision of the brief of appointed consultants is necessary, the following procedures shall be followed unless otherwise agreed to by the Parties:

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2.3.1 Before the formal appointment of any consultant for the Project it will be necessary for the Borrower, in the person of the Project Agent and his/her supporting staff, and with the approval of DBSA, to formulate the terms of reference required for such consultant. Particular attention should be given to the following:

- a precise statement of the objectives for the assignment;
- the scope and timing of the required services;
- the inputs to be provided by the Borrower;
- particulars of the outputs (that is reports, drawings, etc.) required of the consultants; and
- identification of a specific person who will be responsible, in the case where the consultant is a firm or a company.

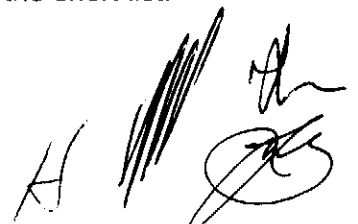
2.3.2 The Borrower will then prepare a short list of capable consultants to be approved by DBSA, utilising the following criteria:

- past experience with similar projects;
- knowledge of local conditions;
- abilities and qualifications;
- membership of professional institutions;
- curriculum vitae of key personnel in the local office in the territory of the Borrower or other office of the consultant from where the work will be carried out.

2.3.3 DBSA's information on capable consultants will be made available to the Borrower for this purpose.

2.3.4 The short list shall include a cost estimate of the services to be provided.

2.3.5 The Borrower will then appoint one of the consultants from the short list.

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3. THE LOAN

- 3.1 DBSA shall lend to the Borrower on the terms and conditions set forth in this agreement an amount not exceeding in aggregate R13 000 000 (thirteen million Rand) at the rate of interest set forth in clause 4 hereunder.
- 3.2 The Loan shall be utilised exclusively for the purpose of the Project as set out in Annexure A, and the Borrower shall ensure that any provisions contained in Annexure A (Project Description) to the individual Project agreements are complied with.
- 3.3 DBSA shall, in respect of each project, pay the Loan proceeds to and on the order of the Borrower in such disbursements and on such terms and conditions as set forth in Annexure B attached hereto and after an agreement in respect of the Project concerned has been concluded as contemplated in section 5.4 to Annexure A hereto.
- 3.4 The Borrower shall furnish DBSA with particulars regarding officials authorised to apply for withdrawals on its behalf.
- 3.5 The capital amount of the Loan disbursed in respect of each Project, (excluding loan in respect of project No. 11084 whose repayment shall commence on the last day of the first Half-year following the Half-year of first disbursement) shall be repaid in six-monthly instalments commencing, in each case, at the end of the 3rd (third) Half-year after the Half-year during which the first advance in respect of any particular Project 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 the Borrower may, with 1 (one) month written notice to DBSA, make repayments in excess of the abovementioned or repay the full amount outstanding. An instalment shall be a fixed amount, determined as at the outset of the 3rd (third) Half-year after the Half-year during which the first advance 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 4.1 hereof, in 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.

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- 3.6 The Borrower may by notice to DBSA cancel any undrawn portion(s) 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 3.5 supra shall be reduced pro rata.
- 3.7 If DBSA reasonably concludes, after consultation with the Borrower, that any portion(s) of the Loan will not be required to finance the Project, DBSA may by notice to the Borrower terminate the right of the Borrower to make drawings in respect of such undrawn portion(s); it being understood that upon giving of such notice the instalments , referred to in clause 3.5 supra shall be reduced pro rata.
- 3.8 If DBSA has not received a last claim for an advance under the Loan from the Borrower at the end of the 3rd (third) Half-year after the Half-year during which the first advance in respect of each Project, was made to the Borrower, then DBSA may terminate further disbursements to the Borrower on 30 (thirty) days written notice to the Borrower unless DBSA, after consideration of the reasons for the delay, has determined a later date for the purposes of this sub-clause. DBSA shall only consider an extension on receipt of a written request from the Borrower and shall notify the Borrower of its decision. A claim shall not be regarded as having been received if it is defective to such an extent that DBSA would not be obliged to make an advance in terms thereof.

4. INTEREST

- 4.1 The Loan shall bear interest on the amount from time to time outstanding at a fixed nominal rate of 15% (fifteen per centum) per annum.
- 4.2 Interest on the amount from time to time outstanding shall be compounded six-monthly and shall be payable at the end of each Half-year, commencing on the last day of the Half-year after the Half-year during which the first disbursement was advanced to the Borrower.

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5. PAYMENTS

- 5.1 All payments to or by the Parties under this agreement shall be effected in South African Rands.
- 5.2 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.
- 5.3 All payments under this agreement to DBSA shall be effected to the credit of such banking account(s) of DBSA as DBSA may from time to time direct, in writing.
- 5.4 Payments in terms of this agreement shall be effected without deduction for and free from any taxes, charges, fees or other costs whatsoever.
- 5.5 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.

6. ON-LENDING

No On-Lending shall be effected unless provided for in Annexure A.

7. ACCELERATION OF MATURITY AND IMPROBABILITY OF PERFORMANCE

Should DBSA, after investigation, be able to show that the Borrower will probably not be in a position to perform its financial obligations in terms of this agreement, then DBSA may, after giving the Borrower 30 (thirty) days notice of its intention to do so, demand immediate repayment of all amounts owing by the Borrower in terms of this agreement.

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8. SUSPENSION AND TERMINATION

- 8.1 DBSA shall be entitled to suspend withdrawals from the Loan or to terminate this agreement, in the event and for so long as the Borrower fails to comply with any provision of this agreement after having given the Borrower 30 (thirty) days written notice to comply with any provision of this agreement and the Borrower thereafter continuing thus to remain in default, in which latter event the full amount owing will become payable.
- 8.2 The Borrower shall be entitled to terminate this agreement after having given DBSA 30 (thirty) days written notice to comply with any provision of this agreement and DBSA thereafter continuing to remain in default, in which event repayments shall be effected over the same period and at the same interest rate as referred to in clauses 3.5 and 4.1 above respectively, in instalments reduced to the extent that the Loan amount has not been taken up in full but subject to the Borrower's rights to make payments in excess of such instalments or to repay the full amount outstanding as provided for in clause 3.5.
- 8.3 If DBSA has not received a first claim, in respect of each loan, for an advance under the Loan from the Borrower on expiry of the last day of the fifth month after the month during which this agreement has been concluded, then this agreement and all obligations of the Parties shall terminate, unless DBSA, after consideration of the reasons for the delay, has determined a later date for the purposes of this sub-clause. DBSA shall only consider an extension on receipt of a written request from the Borrower and shall notify the Borrower of its decision. A claim shall not be regarded as having been received if it is defective to such an extent that DBSA would not be obliged to make an advance in terms thereof.

9. ARBITRATION

- 9.1 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 may, subject to the other provisions of this clause, 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 DBSA for the repayment of any monies due under the loan 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.



- 9.2 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.
- 9.3 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.
- 9.4 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, without furnishing reasons unless otherwise agreed by the Parties in writing.
- 9.5 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.

10. GENERAL

- 10.1 Any notice or request to be given or made in terms of this agreement shall be in writing and shall be deemed to have been duly given or made when in the case of DBSA, addressed to the Executive Manager and received at:



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

Postal address: P O Box 1234
HALFWAY HOUSE
1685

Telefax number: 011-3133086

and in the case of the Borrower, when addressed to the Borrower and received at the following address:

Postal address: P O Box 43
HARRISMITH
9880

Telefax number: 05861-30923

Either of the Parties shall be entitled to change the abovementioned addresses by giving notice to such effect by registered post.

- 10.2 No amendment of, 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, with the understanding that Annexures A, B and C hereto can be changed by agreement reached through correspondence.
- 10.3 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.
- 10.4 This contains 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.



11. FURTHER TERMS AND CONDITIONS

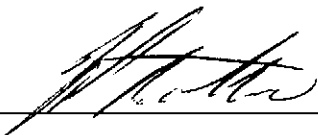
- 11.1 The Borrower agrees and undertakes not to apply or utilise surpluses at maturity of its existing investment portfolio, over which DBSA has registered a cession, without written consent of the DBSA . The Borrower further agrees that the cession referred to herein and which was signed by the parties on 1st July 1997 shall be a continuing covering security in respect of the Borrower's indebtedness to DBSA, including the Borrower's indebtedness in terms of this agreement.
- 11.2 The Borrower undertakes to comply with all the relevant legislation with respect to the closure and establishment of landfill sites.
- 11.3 The Borrower agrees and undertakes to furnish the DBSA with its Multi-year Business Plan on an annual basis, together with a status report on the operating budget up to and including 31 January of every year, within 3 months after the financial year-end.

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THUS DONE AND SIGNED AT HARRISMITH ON THE 28 DAY OF OCTOBER 1997.



AS WITNESSES:


1. 
 2. 


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

THUS DONE AND SIGNED AT HARRISMITH ON THE 28 DAY OF OCTOBER 1997.

AS WITNESSES:

1. 
 2. 


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

PROGRAMME DESCRIPTION

1. DEVELOPMENT OBJECTIVE

To support the socio-economic development of the Borrower's area of jurisdiction through investment in electricity and water infrastructure, rehabilitation of transport infrastructure, closure of old sites and establishment of a new landfill site. (Domestic refuse site).

2. PROGRAMME PRINCIPLES

Individual projects will be appraised in accordance with the following principles:

2.1. ECONOMIC PRINCIPLES

- (i) Economic and spatial integration will be pursued.
- (ii) Projects will be demand driven.
- (iii) Economic benefits should exceed the economic costs of each project.

2.2. TECHNICAL PRINCIPLES

The following matters must be addressed in a technical report on each of the projects prior to DBSA appraising the project:

- (i) **STATEMENT OF PROBLEM:** Provide a short description of the existing (unfavourable) situation that the project will improve.
- (ii) **DEMAND FOR SERVICES:** The demand for new services is usually derived from projected population figures based on assumed growth. Provide detail on the future demand.
- (iii) **ALTERNATIVE OPTIONS:** Provide detail of alternative options that were considered and analysis of how the preferred option was selected, e.g. Cost-Benefit Analysis or Least Cost Options.
- (iv) **DESIGN STANDARDS:** Rational engineering design standards should be followed. Refer to the design standards and/or code of practice according to which the technical designs of the project were prepared.
- (v) **RESOURCE MATRIX:** Describe the resource available or to be obtained for the implementation/construction of the project(s) e.g. departmentally or by public tender/contract. If departmentally constructed, provide detail of costing procedures.
- (vi) **MAINTENANCE AND OPERATION REQUIREMENTS:** Maintenance and operational requirements. Any special staff requirements that will arise from the implementation of the projects in the programme.
- (vii) **LABOUR INTENSIVE CONSTRUCTION:** The design and implementation of projects to achieve labour intensive construction.

- (viii) **SMALL CONTRACTOR INVOLVEMENT:** Design to provide opportunities for the involvement of small contractors.

2.3. INSTITUTIONAL PRINCIPLES

- (i) Design of institutional frameworks and capacity building will provide for participatory approaches.
- (ii) Projects will be planned within financial and institutional capacities.
- (iii) Tender documents will be prepared to enable local small contractors to tender where financially feasible and manageable.

2.4. FINANCIAL PRINCIPLES

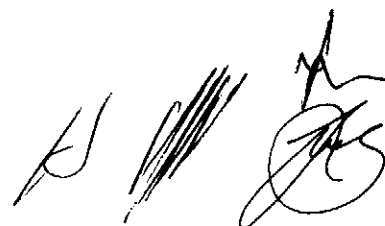
- (i) Only projects that appear on the annual Borrower's budget will be implemented under this programme.
- (ii) The principle of cost recovery will be implemented within a structured financial system.
- (iii) Level of expenditure will be in line with income generating ability (direct or secondary) of the Borrower.
- (iv) Project item and function on Borrower's budget will be linked to project description.
- (v) Incremental cash-flow impact and income base will be used to determine affordability to the Borrower.

2.5. ENVIRONMENTAL PRINCIPLES

- (i) Borrower to comply with legislation in terms of the minimum requirements of the Water Act 54 of 1956 and the Environment Conservation Act 73 of 1989.
- (ii) Technical design to be environmentally sustainable.

2.6. SOCIAL PRINCIPLES

- (i) Community participation will be ensured during the project life cycle.
- (ii) Community input in project prioritisation will be facilitated.



3. DEVELOPMENT PROGRAMME

3.1. PROGRAMME PERSPECTIVE

The projects provided for in this programme are as follows :

PROJECTS	DBSA AMOUNT Rand 1997/98	DBSA AMOUNT Rand 1998/99	TOTAL
Electricity Infrastructure (Project No.11019)	1 356 342	680 000	2 036 342
Upgrading of Road Infrastructure (Project No.11020)	925 000	-	925 000
Water Infrastructure (Project No.11021)	340 158	-	340 158
Establishment of Landfill Site (Project No.11023)	1 100 000	-	1 100 000
Extension to Wilger river Water Purification Plant, Water Meters and Pump Station (Project No.11076)		3 100 000	3 100 000
Rehabilitation of Roads (Project No.11077)		1 498 500	1 498 500
Refinancing of existing Water and Electricity Infrastructure (Project No.11084)	4 000 000		4 000 000
TOTAL	7 721 500	5 278 500	13 000 000

3.2. PROGRAMME DESCRIPTION

The programme consists of electricity, road, water and sanitation infrastructure as well as the refinancing of recently implemented electricity and water infrastructure projects listed below to a total value of R14 402 500. The National Energy Regulator (NER) will contribute R1 402 500 towards electricity infrastructure and R13 000 000 will be contributed by the DBSA. The projects will be implemented over the financial years 1997/98 and 1998/99.

3.2.1. ELECTRICITY INFRASTRUCTURE (PROJECT NO.11019):

The project consists of three elements:

- The internal reticulation for 825 houses in Tshiame B at cost of R2 758 842 of which the NER contributes R1 402 500.
- The provision of street lights in Intabazwe at a cost of R300 000 and;

- the strengthening of the medium and low voltage reticulation to the Platberg stadium at a cost of R380 000.

The total estimated cost of the project is R3 438 842 of which the NER granted R1 402 500 and the balance of R2 036 342 will be funded by the DBSA.

3.2.2. HARRISMITH: UPGRADING OF ROADS AND BUS SHELTERS (PROJECT 11020)

This project will provide for:

- The rehabilitation of Bertha Frame Road (\pm 1 km); the main road in Intabazwe (\pm 3km) and the main road in Tshiame (\pm 2km) to an asphalt surface.
- The erection of three bus shelters, one each in Intabazwe, Tshiame and Wilgepark.

The total estimated cost is R925 000 and will be constructed departmentally by the Borrower.

3.2.3. HARRISMITH/TSHIAME: WATER AND SANITATION PROJECT (PROJECT 11021)

This project will provide for :

- The provision of water and sewerage services to 300 erven in the informal settlement of Tshiame C;
- Increasing the main water pipe line capacity to the industrial area.

The total estimated cost will be R340,158.

3.2.4. HARRISMITH: ESTABLISHMENT OF LANDFILL SITE (PROJECT 11023)

This project will enable the Borrower to establish a new landfill site according to environmentally sound principles and Department of Water Affairs and Forestry (DWAF) requirements at a total estimated cost of R800 000 and the closure and rehabilitation of existing sites at a cost of R300 000. The total project cost is R1 100 000.

3.2.5. HARRISMITH: EXTENSIONS TO WILGE RIVER WATER PURIFICATION PLANT, WATER METERS AND PUMP STATION (PROJECT 11076)

This project includes the extension and upgrading of water supply infrastructure that will be provided for in the 1998/99 Harrismith TLC budget. The total estimated cost is R3.1 million.

3.2.6 HARRISMITH: REHABILITATION OF ROADS (PROJECT 11077)

This project will provide for the rehabilitation of certain road sections in Harrismith which will be provided for in the 1998/99 Harrismith TLC budget. The total estimated cost is R1 498 500.

3.2.7 HARRISMITH RE-FINANCING OF EXISTING WATER AND ELECTRICITY INFRASTRUCTURE (PROJECT NO.11084)

This project entails refinancing of recently implemented infrastructure which was incorrectly financed through short-term loans. The project's provided for include upgrading of electricity networks, R1 180 700) and a rising water main to Intabazwe with pump station (R2 819 300). Total project cost amounts to R4 000 000.

4. INSTITUTIONAL ARRANGEMENTS AND RESPONSIBILITIES

4.1 BORROWER

As Borrower, Harrismith Transitional Local Council agrees and undertakes to:

- Establish and maintain the required institutional arrangements for the implementation of the programme.
- Ensure capacity for preparation, implementation, operation, maintenance and eventually surveillance throughout the life cycle of the projects.
- Maintain its communication strategy and mechanisms to the community.
- Assume responsibility for prioritisation and implementation of the Development Programme.
- Be responsible for the preparation and submission to the DBSA of individual project descriptions within the programme and within the agreed-upon design principles.
- Establish a Project Steering Committee(s) (PSC) to oversee programme and project implementation.
- Furnish the DBSA with permits and monitoring reports.
- Provide the DBSA, as funder, access to all programme related processes and documentation.

4.2 PROGRAMME STEERING COMMITTEE (PSC)

The Borrower shall ensure that a PSC is established, with full representation of the relevant role players. The PSC shall at least be constituted as follows:

- Harrismith Transitional Local Council
- Community/beneficiary representation
- Other stakeholders to be co-opted where required
- Eastern Free State District Council

The responsibilities of the PSC shall include the following:

- Identifying investment needs.
- Formulating proposals and project descriptions within design principles outlined under section 2 above, subject to Council approval.
- Obtaining written approval of project description from the DBSA prior to implementation of projects.
- Monitoring implementation of the programme.
- Applying the normal Harrismith Transitional Local Council tender procedures.
- Approve and submit claims to the DBSA.

4.3 DEVELOPMENT BANK OF SOUTHERN AFRICA

The DBSA will:

- Approve individual projects under this programme prior to implementation.
- Appraise and approve individual project proposals on a monthly basis or at such intervals that may be agreed upon.
- Monitor the implementation of the projects and ensure compliance with the Loan Agreement.

5. PREPARATION, APPROVAL AND IMPLEMENTATION OF THE PROGRAMME

- 5.1 The projects provided for under this programme will be subject to an assessment of affordability to the Transitional Local Council, based on an incremental cash-flow impact assessment per project prior to implementation thereof.
- 5.2 The parties agree that the Borrower applies the design principles as per Section 2 during preparation of each project. Project information will be submitted to the DBSA in the format described under 5.3 below.
- 5.3 Project proposals submitted by the PSC to the Council should provide the following information:
- (i) Objective/purpose of the project.
 - (ii) Needs that the project addresses/location.
 - (iii) Design standards used.
 - (iv) Project costing
 - (a) Capital
 - (b) Operational and Maintenance cost.
 - (v) Contracting/tendering/implementation procedures and time-frames.
 - (vi) Estimated cash-flows.
 - (vii) Incremental financial impact on Transitional Local Council.
 - (viii) Budget provision in terms of item and function codes of the Harrismith TLC.

5.4 IMPLEMENTATION OF THE PROGRAMME

The Parties agree that the Borrower will apply the design principles outlined in Section 2 hereto during preparation of each project. The Borrower further agrees to implement individual projects as outlined in Section 3 hereto, only after the approval by DBSA of individual Project Descriptions, such agreement to be reflected through the signature by the Borrower of a letter of acceptance of, and agreement by the Parties to, a Project Description and a Source and Application of Funds Statement, which acceptance shall be deemed a binding agreement in respect of the project concerned.

- 5.5 The Borrower undertakes to submit a 3 year revolving business plan to the DBSA within 3 months after financial year end. A once off support will be rendered by the DBSA through a trial run of the Combined Services Mode.

file 11 018

LOAN AGREEMENT

in respect of

HARRISMITH TRANSITIONAL LOCAL COUNCIL REFINANCING OF EXISTING
INFRASTRUCTURE

Entered into by and between

HARRISMITH TRANSITIONAL LOCAL COUNCIL

and

THE DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED

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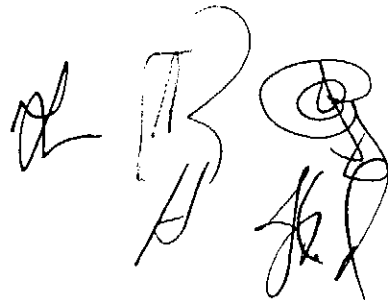
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S U M M A R Y

1. LOAN AMOUNT : R7 000 000
2. LOAN PERIOD : 15 years
3. INTEREST RATE : 15% (fifteen per centum) nominal rate per annum
4. GRACE PERIOD FOR CAPITAL REPAYMENT : 6 months
5. CAPITAL REPAYMENT AND PAYMENT OF INTEREST : 29 (twenty nine) equal six-monthly capital and interest repayments commencing on the last day of the 2nd (second) Half-year after the Half-year during which the 1st (first) disbursement was advanced to the Borrower.
6. INTEREST PAYMENT : 1 (One) initial payment commencing on the last day of the 1st (first) Half-year after the Half-year during which the 1st (first) disbursement was advanced to the Borrower.
7. PROJECT FILE NO. : FS11018

Handwritten signatures and initials in black ink, located at the bottom right of the page. There are three distinct signatures/initials, some appearing to be in a stylized or cursive script.

MEMORANDUM OF LOAN AGREEMENT

in respect of

**HARRISMITH TRANSITIONAL LOCAL COUNCIL REFINANCING OF EXISTING
INFRASTRUCTURE**

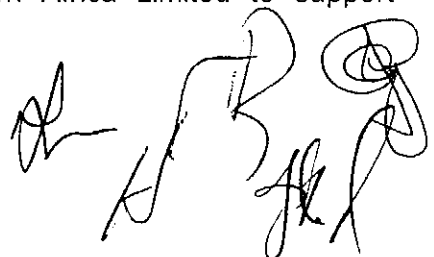
Entered into by and between

HARRISMITH TRANSITIONAL LOCAL COUNCIL

and

THE DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED

In fulfillment of the role of the Development Bank of Southern Africa Limited to support development in Southern Africa, it is hereby agreed as follows:



1. DEFINITIONS AND HEADINGS

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

- | | | |
|-------|-----------------|---|
| 1.1.1 | "Borrower" | Harrismith Transitional Local Council; |
| 1.1.2 | "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 | "Parties" | the Borrower and DBSA; |
| 1.1.4 | "Project" | Harrismith Transitional Local Council Refinancing of Existing Infrastructure, as described in more detail in Annexure A attached hereto; |
| 1.1.5 | "Loan" | the financing granted to the Borrower in terms of clause 3; |
| 1.1.6 | "On-Lending" | the transfer of any amounts by the Borrower to third parties out of the proceeds of the Loan, excluding payments for the procurement of goods and services; |
| 1.1.7 | "Project Agent" | a person nominated in writing by the Borrower to act on its behalf in respect of the Project; |
| 1.1.8 | "Half-year" | from the 1 st (first) day of July to the 31 st (thirty-first) day of December and/or from the 1 st (first) day of January to the 30 th (thirtieth) day of June during the next calendar year. |

1.2 Headings to the clauses of this agreement, the table of contents and summary are for reference purposes only and do not form part of this agreement.

2. PROJECT CO-OPERATION

2.1 To ensure that the purposes of the Loan are accomplished the Parties shall:

2.1.1 periodically and at the request of either Party furnish each other with all such information as may be reasonably requested with regard to the operation and maintenance of the Projects, the benefits derived therefrom and the general status of the Loan;

2.1.2 promptly inform each other of any fact which interferes with, or threatens to interfere with, the progress of the Project, the accomplishment of the purposes of the Loan, any related matter, and in particular the performance by either Party of its obligations under this agreement.

2.2 The Borrower shall:

2.2.1 grant representatives of DBSA the opportunities reasonably necessary to visit any relevant area for purposes related to the Loan;

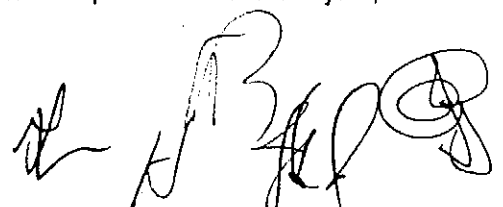
2.2.2 in addition to the amount made available in terms of this agreement, be responsible for the provision of all other funds necessary for the successful execution of the Project as set out in Annexure B.

2.2.3 insure and keep insured at the replacement value thereof, such of its interests in the Project against such risks as may be agreed upon by the Parties;

2.2.4 maintain or cause to be maintained records adequate to identify the operations carried out by means of the Loan and furnish DBSA with all such information (e.g. progress reports) concerning the implementation of the Project;

2.2.5 apply the Loan in accordance with Annexure B;

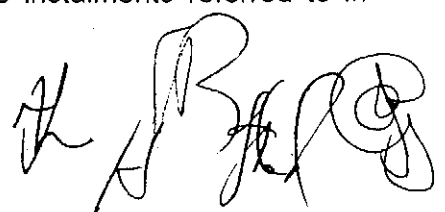
2.2.6 preserve all documents and accounting records pertaining to the Project up to the expiry of a period of 3 (three) years after completion of the Project, and



shall allow DBSA at DBSA's cost at any reasonable time to have such documents and records audited by a person or persons nominated by DBSA.

3. THE LOAN

- 3.1 DBSA shall lend to the Borrower on the terms and conditions set forth in this agreement an amount not exceeding in aggregate R7 000 000 (seven million Rand) at the rate of interest set forth in clause 4 hereunder.
- 3.2 The Loan shall be utilised exclusively for the purpose of the Project as set out in Annexure A, and the Borrower shall ensure that any provisions contained in Annexure A are complied with.
- 3.3 DBSA shall pay the Loan proceeds to and on the order of the Borrower in such disbursements and on such terms and conditions as set forth in Annexure B attached hereto.
- 3.4 The Borrower shall furnish DBSA with particulars regarding officials authorised to apply for withdrawals on its behalf.
- 3.5 The capital amount of the Loan, including further interest, shall be repaid in 29 (twenty nine) equal six-monthly instalments, commencing at the end of the 2nd (second) Half-year after the Half-year during which the first advance 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 the Borrower may, with 1 (one) month written notice to DBSA, make repayments in excess of the abovementioned or repay the full amount outstanding. An instalment shall be a fixed amount, determined as at the outset of the 2nd (second) Half-year after the Half-year during which the first advance 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 4.1 hereof, in 29 (twenty nine) equal six-monthly payments.
- 3.6 The Borrower may by notice to DBSA cancel any undrawn portion(s) 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 3.5 supra shall be reduced pro rata.

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3.7 If DBSA reasonably concludes, after consultation with the Borrower, that any portion(s) of the Loan will not be required to finance the Project, DBSA may by notice to the Borrower terminate the right of the Borrower to make drawings in respect of such undrawn portion(s); it being understood that upon giving of such notice the instalments referred to in clause 3.5 supra shall be reduced pro rata.

3.8 If DBSA has not received a last claim for an advance under the Loan from the Borrower at the end of the 2nd (second) Half-year after the Half-year during which the first advance was made to the Borrower, DBSA may terminate further disbursements to the Borrower on 30 (thirty) days written notice to the Borrower unless DBSA, after consideration of the reasons for the delay, has determined a later date for the purposes of this sub-clause. DBSA shall only consider an extension on receipt of a written request from the Borrower and shall notify the Borrower of its decision. A claim shall not be regarded as having been received if it is defective to such an extent that DBSA would not be obliged to make an advance in terms thereof.

4. INTEREST

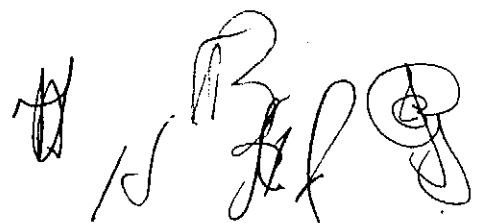
4.1 The Loan shall, subject to clause 12.1 hereunder, bear interest on the amount from time to time outstanding at a nominal rate of 15% (fifteen per centum) per annum.

4.2 Interest on the amount from time to time outstanding shall be calculated at the end of each Half-year. Payment shall commence at the end of the first Half-year after the Half-year during which the first disbursement was advanced to the Borrower from the proceeds of the Loan.

5. PAYMENTS

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

5.2 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.

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- 5.3 All payments under this agreement to DBSA shall be effected to the credit of such banking account(s) of DBSA as DBSA may from time to time direct, in writing.
- 5.4 Payments in terms of this agreement shall be effected without deduction for and free from any taxes, charges, fees or other costs whatsoever.
- 5.5 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.
- 5.6 For purposes of the calculation of interest and repayments, any disbursement for technical assistance, previously approved and forming part of the Loan, paid out before signature of this agreement, shall be deemed to have been paid out on the same date as the first disbursement after signature hereof.

6. ON-LENDING

No On-Lending shall be effected unless provided for in Annexure A.

7. ACCELERATION OF MATURITY AND IMPROBABILITY OF PERFORMANCE

Should DBSA, after consultation with the Borrower, be able to show that the Borrower will probably not be in a position to perform its financial obligations in terms of this agreement, then DBSA may, after giving the Borrower 30 (thirty) days notice of its intention to do so, demand immediate repayment of all amounts owing by the Borrower in terms of this agreement.

8. SUSPENSION AND TERMINATION

- 8.1 DBSA shall be entitled to suspend withdrawals from the Loan or to terminate this agreement, in the event and for so long as the Borrower fails to comply with any provision of this agreement after having given the Borrower 30 (thirty) days written notice to comply with any provision of this agreement and the Borrower thereafter continuing thus to remain in default, in which latter event the full amount owing will become payable.



- 8.2 The Borrower shall be entitled to terminate this agreement after having given DBSA 30 (thirty) days written notice to comply with any provision of this agreement and DBSA thereafter continuing to remain in default, in which event repayments shall be effected over the same period and at the same interest rate as referred to in clauses 3.5 and 4.1 above respectively, in instalments reduced to the extent that the Loan amount has not been taken up in full but subject to the Borrower's rights to make payments in excess of such instalments or to repay the full amount outstanding as provided for in clause 3.5.
- 8.3 If any suspensive condition contained herein has not been fulfilled on expiry of the last day of the fifth month after the month during which the agreement has been concluded, then this agreement and all obligations of the Parties shall terminate, unless DBSA after consideration of the reasons for the delay, has determined a later date for the purposes of this sub-clause. DBSA shall only consider an extension on receipt of a written request from the Borrower and shall notify the Borrower of its decision.
- 8.4 If DBSA has not received a first claim for an advance under the Loan from the Borrower on expiry of the last day of the fifth month after the month during which this agreement has been concluded, then this agreement and all obligations of the Parties shall terminate, unless DBSA, after consideration of the reasons for the delay, has determined a later date for the purposes of this sub-clause. DBSA shall only consider an extension on receipt of a written request from the Borrower and shall notify the Borrower of its decision. A claim shall not be regarded as having been received if it is defective to such an extent that DBSA would not be obliged to make an advance in terms thereof.

9. ARBITRATION

- 9.1 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 clause, 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 DBSA for the repayment of any monies due under the loan 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.

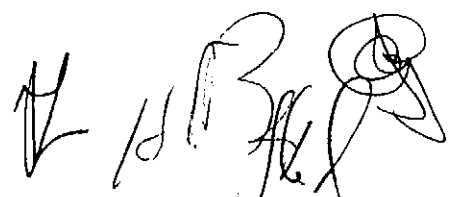
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- 9.2 In case of arbitration a tribunal shall be composed of one arbitrator who shall be appointed by the Parties by agreement or failing such agreement, by the chairperson of the association of Arbitrators, who shall, in appointing such arbitrator, 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.
- 9.3 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.
- 9.4 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, without furnishing reasons unless otherwise agreed by the Parties in writing.
- 9.5 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.

10. GENERAL

- 10.1 Any notice or request to be given or made in terms of this agreement shall be in writing and shall be deemed to have been duly given or made when in the case of DBSA, addressed to the Executive Manager and received at:

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



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

Telex number: 4-25546
SOUTH AFRICA

Telefax number: 011-3133086

and in the case of the Borrower, when addressed to the Borrower and received at the following address:

Postal address: P O Box 43
HARRISMITH
9880

Telefax number: 05861-30923

Either of the Parties shall be entitled to change the abovementioned addresses by giving notice to such effect by registered post.

- 10.2 No amendment of, 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, with the understanding that Annexures A, B, C and D hereto can be changed by agreement reached through correspondence.
- 10.3 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.
- 10.4 This contains 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.



11. SUSPENSIVE CONDITION

The operation of this Agreement is subject to:

the Borrower and the DBSA concluding a cession agreement in respect of the Borrower's unencumbered investment policies to the current value of R9 288 712,89 (nine million two hundred and eighty eight thousand seven hundred and twelve Rand and eighty nine cents).

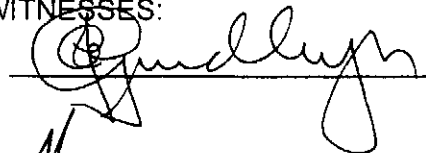
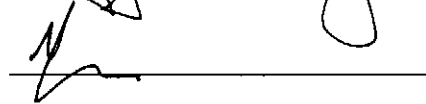
12. FURTHER TERMS AND CONDITIONS

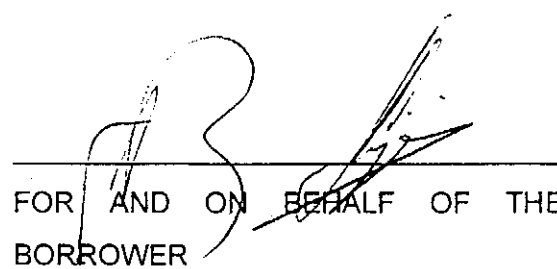
- 12.1 The Borrower agrees and undertakes to enter into a further loan agreement for an amount of R13 000 000 (thirteen million Rand) in respect of the Harrismith Transitional Local Council Investment Programme before 30 September 1997. The Borrower agrees further that should such agreement not be concluded by the said date, then the interest rate referred to in clause 4.1 herein shall increase to a nominal rate of 16% per annum with effect from date of disbursement in terms of this Agreement.
- 12.2 The Borrower shall submit its annual business plan to DBSA within three months after the end of each financial year.

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THUS DONE AND SIGNED AT MIDRAND ON THE 15th DAY OF JULY 1997

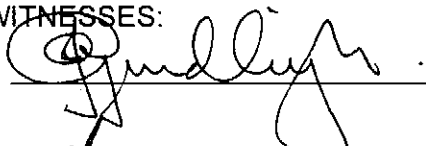
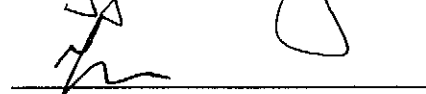
AS WITNESSES:


1. 
 2. 


 FOR AND ON BEHALF OF THE
 BORROWER

THUS DONE AND SIGNED AT MIDRAND ON THE 15th DAY OF JULY 1997

AS WITNESSES:

1. 
 2. 


 FOR AND ON BEHALF OF THE DBSA,
 DULY AUTHORISED THERETO IN
 TERMS OF ANNEXURE C ATTACHED
 HERETO

PROJECT DESCRIPTION**1. PROJECT OBJECTIVE**

To support the socio-economic development of the Borrower's area of jurisdiction through refinancing part of its existing infrastructure portfolio, and investment in electricity and water infrastructure, rehabilitation of transport infrastructure and establishment of a new landfill site.

2. PROJECT PRINCIPLES**2.1. ECONOMIC PRINCIPLES**

Funds released through this project will be invested in infrastructure projects supportive to socio-economic development.

2.2. TECHNICAL PRINCIPLES

This project is subject to a post-implementation appraisal of those projects financed under short-term loans.

Capacity of existing infrastructure projects, socio-economic needs that it addresses, levels of utilisation, physical condition and functional adequacy will be considered.

2.3. INSTITUTIONAL PRINCIPLES

Multi-year financial programming to be included in Business Plan.

Maintenance capacity for existing infrastructure projects to be in place.

Systems for cost recovery to be effective.

2.4. ENVIRONMENTAL PRINCIPLES

Projects to be sustainable in terms of natural and social environment.

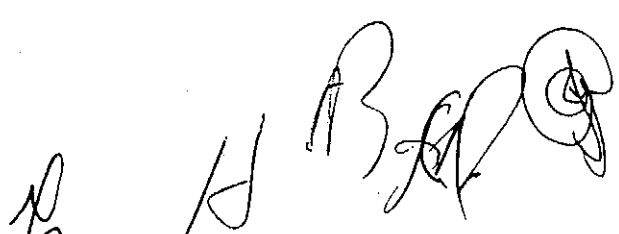
Compliance with legal requirements to be proved.

2.5. PROJECT FIANCIAL PRINCIPLES

An incremental cashflow approach will be used to guide affordability decisions, including capital expenditure and operating cashflow.

Annual budgetary requirements will be made for loan redemption, maintenance and operational expenditure.

Annual assessment of tariff structures and impact of projects on cost of tariffs will be conducted.

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3. PROJECT DESCRIPTION

3.1. PROJECT BACKGROUND

The Borrower, which includes Intabazwe, Tshiame A and Tshiame B (hereafter referred to as Harrismith TLC) became one authority during 1994 after having been administered as three separate towns by separate authorities, i.e. Harrismith Municipality, 42nd Hill Town Council (Intabazwe) and Tshiame, which was administered by the former Free State Provincial Administration. These authorities all applied different norms and standards with regard to service provision and cost recovery. Within the above institutional framework various projects are in different stages of implementation e.g. electrification in Intabazwe, water care works in Tshiame and internal roads.

The rapid growth experienced by the Borrower resulted in an increased demand for services from the Borrower. This programme will finance the infrastructure projects required to respond to the demand. Furthermore, inappropriate short term financing for infrastructure investment dictates refinancing to resolve cash flow constraints.

3.2. PROJECT OUTPUT

This project comprises the restructuring of the Borrower's current debt portfolio by providing new loans to refinance existing loan debt at appropriate financial terms and conditions, improving the cash-flow of the Borrower will enable the TLC to address the urgent socio-economic needs of its constituents, especially amongst the lower income groups. The refiancing of existing infrastructure will include projects worth R7 193 213 currently financed under short term loans, of which the DBSA will fund R7 000 000, which includes:

- (i) Upgrading of the water scheme for Intabazwe which included the construction of a reservoir and pumping main from the Wilge River purification plant to the value of R200 000;
- (ii) Upgrading of the water-borne sewage to 163 erven in Intabazwe in order to facilitate a housing project. The toilets were constructed in the dwellings which required a sewer connection to be provided to each erf with a total value of R374 942;
- (iii) Upgrading of the Wilge River Purification works with the construction of a new sand filter and other minor works, to the value of R70 135;
- (iv) Rehabilitation of existing streets in Intabazwe completed to the value of R547 136; and
- (v) The three phases of upgrading of the medium voltage reticulation network, upgrading of existing substations and the installation of minor street lighting reticulation to the value of R6 001 000.

4. INSTITUTIONAL ARRANGEMENTS

- 4.1. The projects described in 3.2 above, will be addressed according to the project principles in 2. Above.
- 4.2. The claim for the project will be submitted by the Borrower in the format as set out in the Application and Source of Funds Statement (Annexure B).

- 4.3. The Borrower will furnish the DBSA with a quarterly status report on its total loan portfolio, including the DBSA loan component.
- 4.4. The Borrower will operate and maintain the projects refinanced under this project.
- 4.5. The Borrower will allow DBSA access to all project related processes and documentation on request.
- 4.6. The Borrower will arrange a business planning workshop inter alia using the Combined Services Model for future developments.

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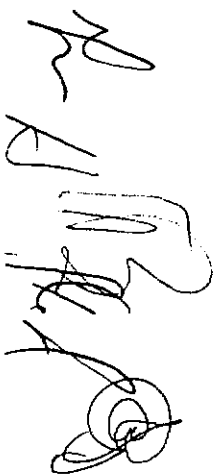
ANNEXURE B

APPLICATION AND SOURCE OF FUNDS STATEMENT.

REFINANCING OF EXISTING INFRASTRUCTURE IN HARRISMITH


(11018/1/1)

Description	Total (R)	DBSA (R)	%	Borrower (R)	%	Other (R)	%
UPGRADE WATER SCHEME INTABAZWE	200,000	200,000	100.0	0	0.0	0	0.0
UPGRADE SEWAGE INTABAZWE	374,942	374,942	100.0	0	0.0	0	0.0
UPGRADE WATER PURIFICATION I/S	70,135	70,135	100.0	0	0.0	0	0.0
REHABILITATION ROADS INTABAZWE	547,136	547,136	100.0	0	0.0	0	0.0
UPGRADE ELECTRICITY NETWORK	6,001,000	5,807,787	96.8	193,213	3.2	0	0.0
Totals	7,193,213	7,000,000	97.3	193,213	2.7	0	0.0



II. TERMS AND CONDITIONS OF DISBURSEMENT

Disbursement of the claim will be submitted in the format as set out in the Application and Source of Funds Statement (Annexure B), read together with the Project Description (Annexure A) to the maximum amount of R7 000 000 (seven million Rand). Disbursement is subject to certification of the claim by the Borrower alternatively by the Borrower's authorised representative. The amount of R7 000 000 (seven million Rand) will be disbursed as soon as possible upon the signing of the Loan Agreement by both parties.

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HARRISMITH

MUNISIPALITEIT

Navrae/Enquiries

JP CRONJÉ

U Verwysing
Your Reference



MUNICIPALITY

(05861) 2-1061

Fax (05861) 3-0923

43

Harrismith, 9880

Ons Verwysing 4/8/3/2/(4)
Our Reference

WE HEREBY CONFIRM THAT ANY ONE OF

1. JOHANNES PETRUS BOTHA.....TOWN CLERK

or

2. FRANCOIS DANIEL BEUKES.....DIRECTOR ADMINISTRATION AND LEGAL
SERVICES

or

3. JOHANNES PETRUS CRONJÉ.....TOWN TREASURER

or

4. ANDRIES PETRUS VAN WYK.....DEPUTY TOWN TREASURER

are empowered to sign as the Authorised Representative in terms of the Agreement entered into between ourselves and the Development Bank of Southern Africa. (Project Number: 11018)

SPECIMEN SIGNATURES ARE AS FOLLOWS:

1.

3.

2.

4.

Further to the above, we herewith request that all disbursements according to the Disbursement Clause contained in Annexure B of the said Agreement be made directly to our account number 7000027111.

LODGED AT FIRST NATIONAL BANK, HARRISMITH BRANCH, HARRISMITH.

TESVORMS

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AUTHORISATIONDEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED**IAN ANDREW GOLDIN**

in his capacity as Chief Executive of the Development Bank of Southern Africa Limited, in terms of authority delegated to the incumbent of his post by the Board of Directors of the Development Bank of Southern Africa on 19 September 1985, determined on 25 September 1996 that:

IAN ANDREW GOLDIN

in his capacity as Chief Executive

OR

JACOB HENRY DE VILLIERS BOTHA

OR

MANDLA SIZWE GANTSHO

OR

KHOTSO MOLEFE NTSEARE

in their capacity as Executive Managers

OR

PULE LESAILANE MOKHOBLO

in his capacity as Manager: Legal Services

OR

DAVID FERREIRA

OR

CHRISTINA JOANNA GOLINO

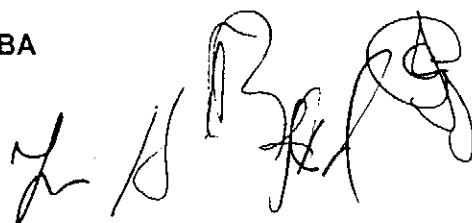
OR

CHRISTIAAN STEPHANUS HEYMANS

OR

BANE MOEKETSI MALEKE

OR

MAGARE LUTHER MASHABA

18

OR

FAZAL MEHMOOD SAIB

OR

JENNIFER DAPHNE TYOBEKA

OR

DENNIS MDUDUZI ZIMU

in their capacity as Managers: Business Units (DSP Related)

be authorised for and on behalf of the Development Bank of Southern Africa Limited to enter into agreements in terms whereof money is:-

1. lent, or
2. granted for the purpose of technical assistance,

and to perform all acts and sign all documents that may be necessary for the purpose

DATE

LEGAL SERVICES BUSINESS UNIT

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CESSION AGREEMENT

ENTERED INTO BY AND BETWEEN

HARRISMITH TRANSITIONAL LOCAL COUNCIL

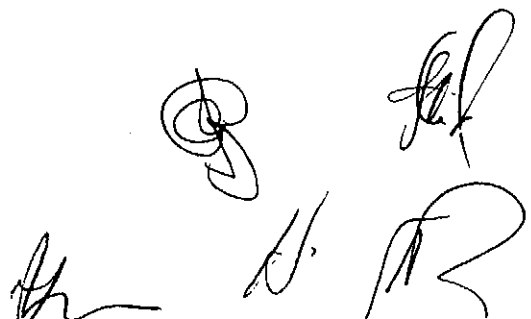
AND

DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED

PREAMBLE

WHEREAS the Cessionary and the Cedent entered or are about to enter into a loan agreement for an amount of R7 000 000 (seven million Rand) in respect of the Harrismith Transitional Local Council Refinancing of Existing Infrastructure Project.

WHEREAS the Harrismith Transitional Local Council has agreed to cede its unencumbered investment policies (referred to in Schedule "A" attached hereto) to the current value of R9 288 712,89 (nine million two hundred and eighty eight thousand seven hundred and twelve Rand and eighty nine cents) as security for the loan.

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DEFINITIONS

"Cessionary"	means the Development Bank of Southern Africa Limited (DBSA);
"Cedent"	means Harrismith Transitional Local Council (HTLC);
"Loan"	means the amount of R7 000 000 (seven million Rand) lent or to be lent to the Cessionary in terms of the Loan Agreement between the Cedent and the Cessionary in respect of the project;
"Project"	means the Harrismith Transitional Local Council Refinancing of Existing Infrastructure;
"Amount outstanding"	means the full amount (including interest) owing by the Cedent in terms of the Loan Agreement from time to time;
"Policy issuer"	means the insurance companies reflected in the schedule attached hereto marked "A".
"Loan Agreement"	means the Loan Agreement for an amount of R7 000 000 (seven million Rand) in respect of the Harrismith Transitional Local Council Refinancing of Existing Infrastructure entered into or to be entered into by the Parties.
"Parties"	means the DBSA and the HTLC.

THEREFORE the parties agree as follows:

1. CESSION

- 1.1 The Cedent, as security for the Loan advanced or to be advanced in terms of the Loan Agreement, hereby cedes, assigns and transfers unto and in favour of the DBSA all its rights, title, interests and claim (hereinafter the "rights") in respect of the policies as set out in the schedule annexed hereto (marked "A")

up to the maximum of R9 288 712,89 (nine million two hundred and eighty eight thousand seven hundred and twelve Rand and eighty nine cents).

1.2 The Cessionary shall be entitled at any time -

1.2.1 to demand delivery to the Cessionary of all documents pertaining to this Cession;

1.2.2 for the purpose of exercising its rights herein or under the Loan Agreement, to give notice of the cession to any policy issuer without further notification to the Cedent.

1.3 In the event of the failure of the Cedent to comply with any of its obligations in terms of the Loan Agreement, the Cessionary shall, after giving 30 days notice to the Cedent, be entitled :-

1.3.1 to receive, collect and recover any amount due and payable under the Loan Agreement;

1.3.2 to take action in its own name or in the name of the Cedent in any court of competent jurisdiction, and to proceed to execution thereunder against the Cedent or any policy issuer;

1.3.3 to exercise the Cedent's rights under any of its policies contained in the attached schedule;

1.3.4 to sign or endorse any document or negotiable instrument for itself or for any third party and to make such endorsement in the name of the Cedent or in its own name and further to do all such things as may be necessary to exercise the rights ceded in terms hereof.

1.4 The Cedent agrees and undertakes:

1.4.1 to deliver to the Cessionary any certificate or document relating to the rights of the Cedent herein and to do everything upon being requested to do so, including the signing of any document to enable the Cessionary to enforce its rights in terms hereof;

1.4.2 to register or cause this cession to be registered in the books of the policy issuers; provided that the Cessionary shall reserve the right to do everything necessary to ensure registration of same should the Cedent fail to do so.

1.5 The Cessionary shall, in exercising its rights in terms hereof, irrevocably be absolved from any liability whatsoever should the Cedent, in the reasonable and bona fide exercise of the rights by the Cessionary as aforesaid, suffer any damages arising from or relating to the exercise of the rights contained herein.

1.6 The Cedent warrants that it has not, prior to the signature of this cession executed a cession of the rights ceded in terms hereof.

1.7 Upon due repayment by the Cedent of all amounts outstanding in terms of the Loan Agreement, this cession shall be of no further force and effect.

2. DOMICILIUM CITANDI ET EXECUTANDI

The parties hereby choose their domicilium citandi et executandi as follows:

in the case of the Cedent :-

2 Andries Pretorius Street
HARRISMITH
9880

and in the case of the Cessionary :-

Lever Road
Headway Hill
Midrand
1685

in each case as its domicilium citandi et executandi for all purposes of this agreement, including the service of all notices and processes in connection herewith.

3. TERMINATION/VARIATION

No termination or variation of this Agreement will be of any force and effect unless it is recorded in writing and signed by both parties.


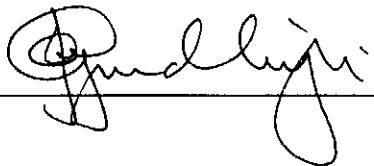
4. DURATION OF AGREEMENT

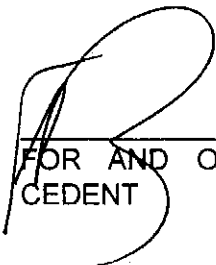
This Cession agreement shall remain in force for as long as the Loan Agreement is in force; provided that the parties may terminate it at any time by mutual agreement. The cession will be released/reduced proportionally to the outstanding amount owing to the DBSA at the time of the proposed release date/s.

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THUS DONE AND SIGNED AT ON THE 1st DAY OF JULY 1997


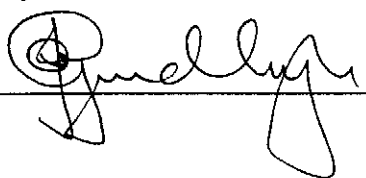
AS WITNESSES:

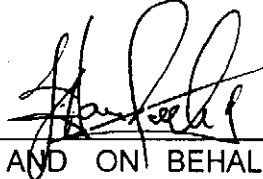
1. 
2. 


FOR AND ON BEHALF OF THE
CEDENT

THUS DONE AND SIGNED AT ON THE 1st DAY OF JULY 1997

AS WITNESSES:

1. 
2. 


FOR AND ON BEHALF OF THE
CESSIONARY

SCHEDULE "A"

LIST OF POLICIES TO BE CEDED BY THE HARRISMITH TLC AS SECURITY FOR THE LOAN

Policy number	Company	Redemption date	Value
8010224	Old Mutual	2006/07	332,008.92
7481893	Old Mutual	2006/10	575,211.11
7974326	Old Mutual	2007/07	390,931.61
7974337	Old Mutual	1999/07	233,807.81
8467772	Old Mutual	2003/07	499,929.53
8010223	Old Mutual	2005/07	299,311.28
7560376	Old Mutual	2006/12	1,146,082.07
8010226	Old Mutual	2007/07	515,521.08
8477284	Old Mutual	2008/07	1,609,795.48
087570447	Momentum	2008/07	546,529.00
087756867	Momentum	2009/02	1,229,591.00
087887109	Momentum	2009/05	558,091.00
088126418	Momentum	2009/07	823,742.00
12367812x0	Sanlam	2001/10	341,644.00
11690236x2	Sanlam	2005/12	87,825.00
12105250x0	Sanlam	2006/07	37,819.00
12547517x8	Sanlam	2007/05	60,873.00
			9,288,712.89

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13768 1/2/3

LOAN AGREEMENT

in respect of

HARRISMITH UPGRADING OF WATER TREATMENT WORKS, DISTRIBUTION AND WASTE
WATER DISPOSAL

entered into by and between

HARRISMITH TRANSITIONAL LOCAL COUNCIL

and

THE DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED

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TABLE OF CONTENTS**PAGE****MEMORANDUM OF LOAN****CLAUSE**

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ANNEXURE A PROJECT DESCRIPTION**ANNEXURE B APPLICATION AND SOURCE OF FUNDS STATEMENT****ANNEXURE C PROJECT CO-OPERATION****ANNEXURE D AUTHORISATION - BORROWER****ANNEXURE E AUTHORISATION - DBSA**

S U M M A R Y

- | | | | |
|----|------------------------------------|---|--|
| 1. | LOAN AMOUNT | : | R4 120 000 |
| 2. | LOAN PERIOD | : | 20 years |
| 3. | INTEREST RATE | : | 15,632% nominal fixed payable six monthly |
| 4. | GRACE PERIOD FOR CAPITAL REPAYMENT | : | Nil |
| 5. | CAPITAL REPAYMENT | : | 40 equal six-monthly instalments, commencing on the last day of the 1st Half-year after the Half-year during which the first disbursement was advanced to the Borrower |
| 6. | PROJECT FILE NO. | : | FS 13768 |



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" | Harrismith Transitional Local Council; |
| 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" | Harrismith Upgrading of Water Treatment Works, Distribution and Waste Water Disposal 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 | "Project Agent" | a person nominated in writing by the Borrower to act on its behalf in respect of the Project; |
| 1.1.8 | "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; |
| 1.1.9 | "Half-year" | from the first day of January to the 30th day of June and/or from the first day of July to the 31st day of December; |

1.1.10 "this Agreement" means this Agreement together with any Annexures thereto;

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 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, R4 120 000 (four million one hundred and twenty thousand Rand); and

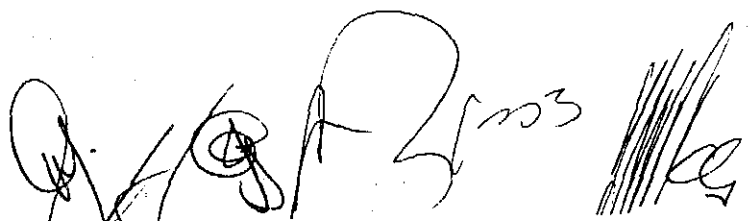
2.1.2 utilised exclusively for the Project and the Borrower, hereby, undertakes that it shall comply with all provisions of this Agreement.

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

3.1 The Loan shall bear interest on the amount from time to time outstanding at a nominal fixed rate of 15,632% (fifteen comma six three two per centum) per annum.

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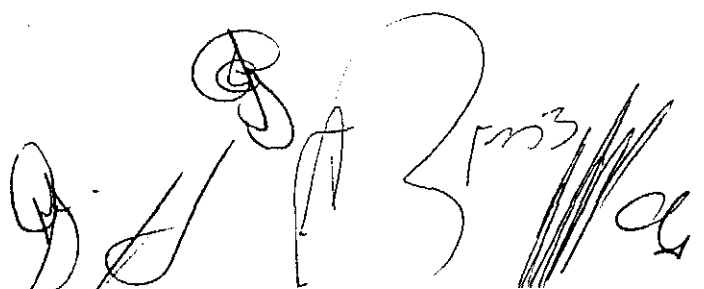
- 3.2 Interest on the amount from time to time outstanding shall be compounded six-monthly and payable on the last day of each Half-year. Payment shall commence on the last day of the Half-year following the Half-year during which the first disbursement was advanced to the Borrower from the proceeds of the Loan.

4. REPAYMENT OF LOAN AND PAYMENT OF INTEREST

- 4.1 The capital amount of the Loan and interest shall be repaid in 40 (forty) equal six-monthly instalments, commencing on the last day 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; 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 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 1st (first) 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 40 (forty) equal six-monthly payments. Should, at the outset of the said 1st (first) 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.

5. COMMITMENT FEE

- 5.1 The DBSA shall be entitled to charge a commitment fee of 0,5% (nought comma five per centum) per annum on all the undisbursed portion of the Loan effective 3 (three) months from the date of conclusion of this Agreement.
- 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 ruling prime rate charged by the Standard Corporate and Merchant Bank, Sandton, South Africa on its overdraft accounts from time to time. Penalty interest shall be compounded six-monthly and payable on demand.

7. EARLY REPAYMENT

7.1 The Borrower may prepay all or part of the Loan on payment dates and subject to prior notice of at least 30 (thirty) days. The amount prepaid shall be equal to a full payment of any instalments of the Loan.

In such case:-

7.1.1 where the Loan interest rate is less than or equal to the reinvestment rate defined hereinbelow, no prepayment fee shall be payable;

7.1.2 where the interest rate of the Loan is greater than the reinvestment rate, defined hereinafter, each prepayment shall give rise to payment by the Borrower to the DBSA of a prepayment fee equal to the difference calculated on a present value basis to the DBSA's prejudice, between the interest which the Loan 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 amortisation schedule as the prepaid portion of the Loan.

7.3 The reinvestment rate shall be the rate at which the DBSA lends out funds to Borrowers at the date of such prepayment.

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7.4 The discount rate shall be equal to the reinvestment rate used hereinabove. The date used for the present value calculation shall be that of the prepayment.

7.5 Payment of the prepayment and prepayment fee shall take place for value on the payment date.

8. PAYMENT(S)

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

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.

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- 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.

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;
- 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**
- None.
- 12. FURTHER TERMS AND CONDITIONS**
- 12.1 The Borrower undertakes to inform the DBSA in writing, should it consider entering into any further debt obligations.



- 12.2 The Borrower undertakes to provide the DBSA with its audited financial statements within six (6) months from the end of its financial year.
- 12.3 The Borrower warrants that it will obtain or cause to be obtained from the relevant government authorities any approval (s) and/or License(s) which are or may be required in terms of the relevant environmental legislation prior to any disbursements by the DBSA on this Project and that it shall comply or ensure compliance with same. The Borrower agrees to furnish the DBSA with copies of any such approval(s) and/or License(s) upon request.
- 12.4 The Borrower undertakes to demarcate the area within the Harrismith Botanical Gardens wherein the Contractors' and other vehicles may be used during construction and furthermore will put the necessary steps in operation to ensure that no vehicle is allowed beyond the demarcated area.
- 12.5 Before any disbursement against the Project as fully described in Annexures A shall take place, it should be included in the Borrower's approved capital budget(s).
- 12.6 The Borrower undertakes to systematically increase the provision for maintenance of all its assets over the next three financial years (starting on 1 July 2001) to a level equivalent to 6-8% of its annual operating income. Should the combined budgets (FS 194) vary from this percentage the parties agree they will renegotiate this term.
- 12.7 The Borrower undertakes to provide the DBSA within 3 months of signing this Agreement with:
- 12.7.1 A report indicating the level of payment for services.
- 12.7.2 A plan of action to improve the level of payment for services to at least 90% within 6 (six) months, should the report in 12.7.1 indicate a lower payment level. It is further recorded that the DBSA is prepared to assist the Borrower with technical assistance in this regard.
- 12.8 The Borrower will notify the DBSA immediately should the agreement between the Borrower and Rand Water be cancelled and / or amended, in which event the DBSA reserves the right to reconsider the terms and conditions of the Loan.

- 12.9 The Borrower agrees and undertakes not to apply or utilise surpluses at maturity of its existing investment portfolio, over which DBSA has registered a cession, without written consent of the DBSA. The Borrower further agrees that the cession referred to herein and which was signed by the Parties on 1st July 1997 shall be a continuing covering security in respect of the Borrower's indebtedness to DBSA, including the Borrower's indebtedness in terms of this Agreement.

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.

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- 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.
- 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: Harrismith Transitional Local Council
Andries Pretorius Street
HARRISMITH
9880; or

Postal address: P O Box 43
HARRISMITH
9880; or

Telefax number: (058) 623 0923

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.

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 R4 120 000. 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.

THUS DONE AND SIGNED AT H/SMITH ON THE 20th DAY OF NOV 2000.

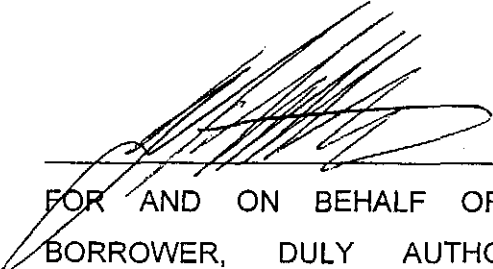
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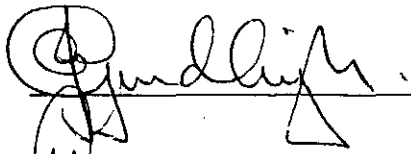



FOR AND ON BEHALF OF THE
BORROWER, DULY AUTHORISED
THERETO IN TERMS OF ANNEXURE D
ATTACHED HERETO

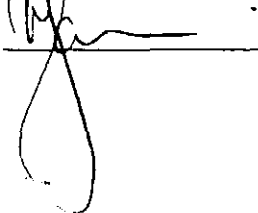
THUS DONE AND SIGNED AT KIDRONO ON THE 6th DAY OF December 2000.


AS WITNESSES:

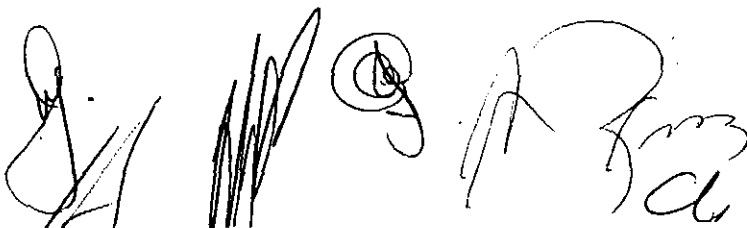
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2.




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



ANNEXURE A**PROJECT DESCRIPTION****1. PROJECT OBJECTIVE**

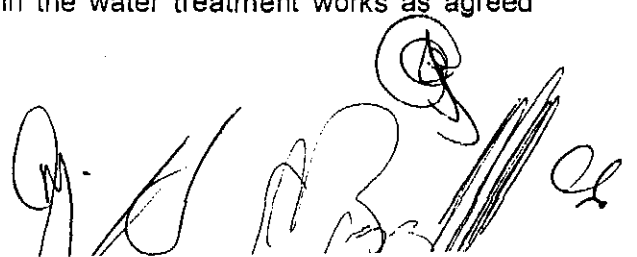
To support the socio economic development of the Borrower's area of jurisdiction as follows:

- 1.1 by providing an improved assured water supply to Harrismith and to enable the most efficient operation thereof;
- 1.2 maintaining the quality and assuring the quantity of supply of potable water to Bergsig and other suburbs of Harrismith;
- 1.3 providing adequate and acceptable level of sanitation services and to protect the Wilgeriver system from sewer pollution;
- 1.4 creating opportunities for employment, skills development and other training; and
- 1.5 improving the level of payment for services through efficient credit management, as well as the communication between the Department of Works and The Town Treasurer.

2. PHYSICAL DESCRIPTION

This Project comprises the following three elements:

- i) Element I: The Wilge River Treatment Works includes the following:
 - Improving the efficiency of the flocculation system by extending the flow time in the existing channels;
 - Continuing the upgrading of the technology in additional sand filters;
 - Upgrading the existing dosing equipment;
 - Expanding the telemetry system to include some of the critical elements inside the water treatment works;
 - Upgrading the clear water pump station pumps and electricity supply or alternatively other elements of similar cost for upgrading in the water treatment works as agreed with the DBSA.



The cost is estimated to be R1,230 million (VAT Excluded).

ii) Element II: The Bergsig Water Supply and Treatment Works includes the following:

- Replacement of 2100 meters of water pipeline;
- Upgrading the dosing system to add a flocculation process and to treat the water with lime and carbon dioxide;
- Rehabilitation such as renewing the filters and some of the mechanical equipment.
- The cost is estimated to be R1,330 million (VAT Excluded).

iii) Element III: The Harrismith Sewer Pumpstation and Rising Main includes the following:

- Upgrading of 800 meters of the rising main to not more than a 400mm-diameter pipe;
- Upgrading the sewer pumpstation including pipe work and provision of two or three new pumps;
- Provision of an emergency overflow pond:

The estimated cost is R1,560 million (VAT Excluded).

2.1 LOCAL RESOURCE UTILISATION

The Borrower and implementing agents are committed to the principle of maximum utilisation of local resources as contained in the RDP. Only local labor will be utilized. Provision is made for training, and where-ever possible SMMEs are involved. Currently the practices utilised by the Borrower to incorporate local resources are rather exclusive and prescriptive while newer practices, such as Targeted Procurement, are more coherent and enable more thorough performance. Discussions are underway between the Borrower and DBSA to facilitate the demonstration of these newer approaches in at least one of these elements. A preliminary estimate of the employment opportunities for this Project is approximately 1 100 person months or about 8,0% (R 0,330 million) of the total project cost of R 4,120 million (VAT excluded). Approximately 5,0% of the total Loan will be used for local contractors.

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2.2 COST ESTIMATE

The cost estimate for the total Project (3 elements), which is to be entirely funded by the DBSA is as follows:

Element Name (No.)	Proff Costs R	Construction R	Contingencies R	Escalation R	Total R
Wilge River WTC (Phase 2) 1	156 600 (13%)	986 400	87 000	00	1 230 000
Bersig Supply & WTC (2)	190 000 (14%)	1 035 000	105 000	00	1 330 000
Harrismith Sewer PS & RM (3)	220 000 (14%)	1 340 000	0	00	1 560 000
Total Project (ex VAT)	566 600 (14%)	192 000	192 000	00	4 120 000
VAT					576 800
Total Project Cost (incl. VAT)					4 696 800

2.3 DESIGN PRINCIPLES AND PARAMETERS

The design of the infrastructure for elements one and two follows the applicable SABS Design Codes and Specifications and conforms to other technical guidelines. The design of element three is conservative and is to be revisited before that element is to be implemented.

2.4 PROJECT RESOURCE MATRIX

The elements are to be designed and supervised by consultants and be issued to at least 3 prime contracts for public tendering by contractors. The latter will be evaluated and awarded in accordance with the Borrower's regulations.

3. INSTITUTIONAL ARRANGEMENTS FOR OPERATION AND MAINTENANCE OF THE PROJECT

3.1 The Borrower agrees and undertakes to:

- Establish and/or maintain the required institutional arrangements for the implementation of the Project, inclusive of Project costing.

- Ensure capacity for preparation, implementation, operation, maintenance and eventually surveillance throughout the life cycle of the Project.
- Maintain its communication strategy and mechanisms to the community.
- Establish a Project Steering Committee to oversee Project implementation.

3.2 PROJECT STEERING COMMITTEE (PSC)

The PSC shall at least be constituted as follows:

- The Borrower;
- Community/beneficiary representation;
- Contactors;
- Consulting Engineers;
- The DBSA (observer); and
- Other stakeholders to be co-opted where required.

The PSC will:

- Oversee and monitor all activities related to this Project;
- Oversee in particular the activities of the Project Liaison Officers (PLO's) and training and administration co-ordinators;
- Oversee in particular the activities of the training sub-committee;
- Assist with identification of local labour and small contractors and with the training there-of as appropriate; and
- Assist with community interaction where necessary in addition to the activities of the above.

Further to the above, the following is agreed between the Borrower and the DBSA:

For all three elements:

- That a Project budget will be established with the DBSA, preferably in consultation with the nominated contractor, before construction commences including:
 - Costs broken down into construction costs (per contract), professional fees and supervision, etc., training budget allocation, contingencies and VAT.
 - Development indicators such as indicated hereafter.

- Training will be centralized and managed as part of the existing programme in close consultation with all those involved in implementing this Project.
- Monitoring requirements will largely focus on adequate progress reporting and ad-hoc/periodic site visits, if and when appropriate. The following aspects in particular need to be monitored and reported:
 - Costs and its allocation;
 - Time;
 - Quality assurance;
 - Development indicators including:
 - Employment opportunities; labour (person-months);
 - Employment opportunities; sub-contractors (No. and portion paid of total contract value);
 - Local economic development; (portion of contract value directly retained in Harrismith).
- That an appropriate monthly monitoring report, to augment site meeting minutes, will be compiled per element and be submitted together with each claim.

In addition, for Element 1: The Wilge River Treatment Works, the Borrower will confirm with the DBSA the specific work to be undertaken as part of this phase prior to it going out to tender.

For Element 3: The Harrismith Sewer Pumpstation and Rising Main, the following additional institutional arrangements are also required:

- The Borrower will measure the average daily flows into the pump-station to determine the amount of storm-water infiltration to motivate an appropriate management programme to reduce that to acceptable levels and to confirm the reasonable demand on the pump-station for design purposes.
- The Borrower will accordingly reconsider and optimize the design of the pump station.
- The requirement for an emergency overflow pond as part of this element will be established by the Borrower.
- The Borrower will, with technical support from the DBSA, consider this element as a candidate to demonstrate the application of targeted procurement.
- In order to do that, the Borrower's tender committee should be in agreement and the Project contract documentation needs to be suitably adapted.

APPLICATION AND SOURCE OF FUNDS STATEMENT

HARRISMITH: WATER TREATMENT WORKS

(13768/1/1)

Description	Total (R)	DBSA (R)	%	Borrower (R)	%	Other (R)	%
FIXED ASSETS							
1.1 CONSTRUCTION COSTS	986,400	986,400	100.0	0	0.0	0	0.0
1.2 CONTINGENCIES	87,000	87,000	100.0	0	0.0	0	0.0
1.3 PROF. FEES	156,600	156,600	100.0	0	0.0	0	0.0
Totals	1,230,000	1,230,000	100.0	0	0.0	0	0.0

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13768/2

APPLICATION AND SOURCE OF FUNDS STATEMENT

HARRISMITH: BERGSIG WATER TREATMENT WORKS

(13768/2/1)

Description	Total (R)	DBSA (R)	%	Borrower (R)	%	Other (R)	%
FIXED ASSETS							
1.1 CONSTRUCTION COSTS	1,035,000	1,035,000	100.0	0	0.0	0	0.0
1.2 CONTINGENCIES	105,000	105,000	100.0	0	0.0	0	0.0
1.3 PROF. FEES	190,000	190,000	100.0	0	0.0	0	0.0
Totals	1,330,000	1,330,000	100.0	0	0.0	0	0.0

1/12/2013
[Signature]

$$13768/3$$

(13768/3/1)

Description	Total (R)	DBSA (R)	%	Borrower (R)	%	Other (R)	%
FIXED ASSETS							
1.1 CONSTRUCTION COSTS	1,340,000	1,340,000	100.0	0	0.0	0	0.0
1.2 PROF. FEES	220,000	220,000	100.0	0	0.0	0	0.0
Totals	1,560,000	1,560,000	100.0	0	0.0	0	0.0

ANNEXURE C

PROJECT CO-OPERATION

1. To ensure that the purposes of the Loan are accomplished the Parties shall:-
 - 1.1 periodically and at the request of either Party:-
 - 1.1.1 exchange views with regard to the progress of the Project, the benefits derived therefrom and the performance of their respective obligations under this Agreement as well as other matters relating to the purposes of the Loan; and
 - 1.1.2 furnish each other with all such information as may be reasonably requested with regard to the progress of the Project, the benefits derived therefrom and the general status of the Loan;
 - 1.2 promptly inform each other of any fact which interferes with, or threatens to interfere with, the progress of the Project, the accomplishment of the purposes of the Loan, any related matter, and in particular the performance by either Party of its obligations under this Agreement;
 - 1.3 confirm that they have determined the technical, financial and organisational requirements in respect of planning, management and control of the Project in order to ensure the efficient and effective execution and maintenance of the Project and related matters; and
 - 1.4 jointly determine the criteria to be taken into consideration when awarding contracts for items and services to be financed by the Loan.
2. The Borrower shall:-
 - 2.1 grant representatives of the DBSA the opportunities reasonably necessary to visit any relevant area for purposes related to the Loan;
 - 2.2 in addition to the amount made available in terms of this Agreement, be responsible for the provision of all other funds necessary for the successful execution of the Project as set out in Annexure B, including funds to be supplied by third parties as reflected in that Annexure;

- 2.3 be responsible for the management and maintenance of work carried out within the context of the Project;
- 2.4 with regard to the procurement of goods and services for the Project, in consultation with the DBSA, invite participation in tender or quotation procedures on open bid basis from natural persons and bodies corporate respectively;
- 2.4.1 tender documents or invitations for quotations shall be drawn up in consultation with the DBSA's Project team and ratified by the DBSA;
- 2.5 ensure that contractors to whom contracts are awarded are insured and remain insured in terms of contractors-all-risk-insurance policies acceptable to the DBSA;
- 2.6 insure and keep insured at the replacement value thereof, such of its interests in the Project against such risks as may be agreed upon by the Parties;
- 2.7 maintain or cause to be maintained records adequate to identify the operations carried out by means of the Loan and furnish the DBSA with all such information (e.g. progress reports) concerning the implementation of the Project;
- 2.8 apply the Loan in accordance with Annexure B;
- 2.9 require each contractor to whom a contract is awarded to furnish a performance guarantee acceptable to the DBSA, in terms whereof the completion of such contract is guaranteed; and
- 2.10 preserve all documents and accounting records pertaining to the Project up to the expiry of a period of 3 (three) years after completion of the Project, and shall allow the DBSA at the DBSA's cost at any reasonable time to have such documents and records audited by a person or persons nominated by the DBSA.
3. Where the Parties agree that the further appointment of consultants or the revision of the brief of appointed consultants is necessary the following criteria shall be utilised:-
- promotion and/or support for the SMME sector;
 - past experience with similar Projects;
 - knowledge of local conditions;
 - abilities and qualifications;
 - membership of professional institutions.

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HARRISMITH

MUNISIPALITEIT

MUNICIPALITY

Navrac/Enquiries

JP CRONJÉ

U Verwysing
Your Reference



☎ (058) 6221061
☎ (058) 6230923

✉ 43

Harrismith 9880

Ons Verwysing
Our Reference
4/8/3/2/(4)

WE HEREBY CONFIRM THAT ANY ONE OF

1. JOHANNES PETRUS BOTHA.....TOWN CLERK

or

2. FRANCOIS DANIEL BEUKES.....DIRECTOR ADMINISTRATION AND
LEGAL

or

SERVICES

3. JOHANNES PETRUS CRONJÉ.....TOWN TREASURER

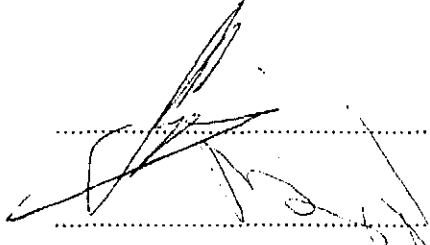
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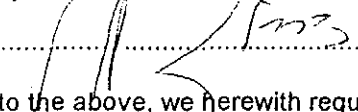
4. ANDRIES PETRUS VAN WYK.....DEPUTY TOWN TREASURER

are empowered to sign as the Authorised Representative in terms of the Agreement entered into between ourselves and the Development Bank of Southern Africa. (Project Number: 11084)

SPECIMEN SIGNATURES ARE AS FOLLOWS:

1. 

3. 

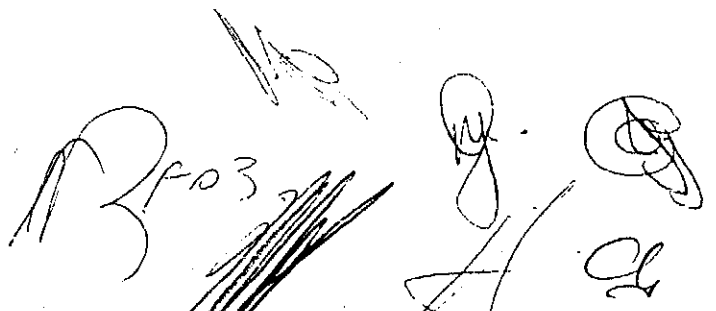
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4. 

Further to the above, we herewith request that all disbursements according to the Disbursement Clause contained in Annexure B of the said Agreement be made directly to our account number 7000027111.

LODGED AT FIRST NATIONAL BANK, HARRISMITH BRANCH, HARRISMITH.

Tesouievorms

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ANNEXURE D

AUTHORISATION - BORROWER

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ANNEXURE E

DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED**IAN ANDREW GOLDIN**

in his capacity as Chief Executive of the Development Bank of Southern Africa, in terms of authority delegated to the incumbent of his post by the Board of Directors of the Development Bank of Southern Africa on 19 September 1985, determined on 07 July 2000 that:

IAN ANDREW GOLDIN
in his capacity as Chief Executive

OR

JACOB HENRY DE VILLIERS BOTHA

OR

MAKAZIWE PHUMLA MANDELA

OR

NKOSEMNTU GLADMAN NIKA
in their capacity as Executive Managers

OR

PULE LESAILANE MOKHOBO
in his capacity as Manager: Legal Services

OR

TLADI PHILEMON DITSHEGO

OR

LANDIWE JACKIE MAHLANGU

OR

JOHN PATRICK BARTON-BRIDGES

OR

CHRISTINA JOANNA GOLINO

OR

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SNOWY JOYCE KHOZA

OR

BANE MOEKETSI MALEKE

OR

MAGARE LUTHER MASHABA

OR

JENNIFER DAPHNE TYOBEKA

OR

DENNIS MDUDUZI ZIMU

in their capacity as Managers: Business Units (DSP Related)

be authorised for and on behalf of the Development Bank of Southern Africa to enter into agreements in terms whereof money is:-

1. lent, or
2. granted for the purpose of technical assistance,

and to perform all acts and sign all documents that may be necessary for the purpose

6/12/2000
DATE


LEGAL SERVICES BUSINESS UNIT

