

Execution Version

LONG TERM LOAN AGREEMENT

made and entered into by and between

DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED

and

CITY OF EKURHULENI METROPOLITAN MUNICIPALITY

in respect of funding the

2020/21 Capital Expenditure Programme



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SUMMARY

1	LOAN AMOUNT	:	R1 976 000 000.00 (one billion nine hundred and seventy six million Rand).
2	LOAN PERIOD	:	10 (ten) Years
3	FIXED INTEREST RATE	:	R186 Government Bond Rate published two days prior to each Disbursement as quoted by the Johannesburg Stock Exchange (JSE) plus 290 basis points.
	INTEREST GRACE PERIOD	:	Nil
4	CAPITAL REPAYMENT	:	See clause 8
5	INTEREST REPAYMENT	:	See clause 6
6	PROGRAMME FILE NO.	:	12008333

1. DEFINITIONS AND INTERPRETATION

- 1.1. In this Agreement, unless inconsistent with or otherwise indicated by the context:
- 1.1.1. **"Accounting Officer"** shall have the meaning ascribed thereto in the MFMA;
- 1.1.2. **"Agreement"** means the agreement as set out in this document together with the Annexures hereto;
- 1.1.3. **"Authorisation"** means any authorisation, consent, registration, filing, agreement, notarisation, certificate, licence, approval, resolution, permit and/or authority or any exemption from any of the aforesaid, by or with any Authority;
- 1.1.4. **"Authority"** means the Government of South Africa and any province or municipality therein and any organ of state as contemplated in Section 239 of the Constitution of the Republic of South Africa Act, 1996, including without limitation, any ministry, department, board, agency, court, tribunal, commission, entity or any other authority, subdivision or instrumentality of the Government of South Africa, or of any province or municipality therein;
- 1.1.5. **"Availability Period"** means a period from the CP Fulfilment Date until 30 June 2021;
- 1.1.6. **"Base Rate"** means R186 Government Bond rate published two Business Days prior to each Disbursement as quoted by the Johannesburg Stock Exchange;
- 1.1.7. **"Borrower"** means the City of Ekurhuleni Metropolitan Municipality, a municipality established or deemed to be established under Government Notice no. 3585 of 2005 as published in the Gauteng Provincial Gazette Extraordinary No. 394 of 16 September 2005, in terms of Section 12 of the Local Government: Municipal Structures Act 117 of 1998, as amended from time to time;
- 1.1.8. **"Borrower's Account"** means the bank account with the following details:
- | | |
|-----------------|--|
| Account Holder: | City of Ekurhuleni Metropolitan Municipality |
| Bank: | Nedbank Limited |
| Account Number: | 1119114764 |
| Branch: | Nedbank Corporate Investment Banking |
| Branch Code: | 169745; |
- 1.1.9. **"Breakage Costs"** means the amount (if any) determined by the DBSA by which:

1.1.9.1. the interest (but excluding the Margin) which the DBSA would have received for the period from the date of receipt of an amount repaid or prepaid in respect of a Loan to the last day of the applicable Interest Period for that Loan, if the principal received had been paid on the last day of that Interest Period,

exceeds:

1.1.9.2. the amount which the DBSA would be able to obtain by placing an amount equal to the amount received by it on deposit with a leading bank in the Johannesburg interbank market for a period starting on the Business Day following receipt and ending on the last day of the applicable Interest Period;

1.1.10. "**Business Day**" means any day (other than a Saturday, Sunday or officially recognised public holiday) on which day banks generally are open for business in Johannesburg, South Africa;

1.1.11. "**Cancellation Fee**" means an amount equal to 0,5% (nought comma five percent) of the Capital or a portion of the cancelled Capital;

1.1.12. "**Capital**" means an amount of up to R1 976 000 000.00 (one billion nine hundred and seventy six million Rand);

1.1.13. "**Change in Law**" means any implementation, introduction, abolition, withdrawal or variation of any applicable laws and/or regulations (including ordinances), published practice concession, official directive, ruling, request, notice, announcement (including but not limited to any budget speech) guideline by any government entity (whether or not having the force of law) or any change in the interpretation, or any new or different or the introduction or making of any new or further interpretation or any new or different competent authority or compliance with any new or different request or direction (in either case whether or not having the force of law) from any government entity;

1.1.14. "**Commitment Fee**" means an amount equal to 0,35% (nought comma thirty five percent) per annum;

1.1.15. "**Conditions Precedent**" means the conditions precedent contained in clause 5 (*Conditions Precedent*) of this Agreement;

1.1.16. "**Cost of Funding**" means the cost that the DBSA incurs in acquiring its requisite liquidity and is quoted above the R186 RSA Government Bond;

- 1.1.17. "Court" means any court of law having jurisdiction;
- 1.1.18. "CP Fulfilment Date" means the date on which the DBSA receives all the Conditions Precedent in form and substance satisfactory to it;
- 1.1.19. "Cumulative Debt Service Cover Ratio" means cash available to service all of the Borrower's outstanding borrowings (including finance leases), determined from cash generated from operating activities and unencumbered cash reserves at the beginning of the Financial Year, before taking into account the interest or any financing costs and excluding cash receipt from capital grants, divided by Debt Service;
- 1.1.20. "DBSA" means the Development Bank of Southern Africa Limited, a development funding institution reconstituted and incorporated in terms of the Development Bank of Southern Africa Act, No. 13 of 1997;
- 1.1.21. "Debt Service" means the Borrower's gross interest incurred on borrowings (including finance leases) plus the capital portion of debt repayable in that Financial Year;
- 1.1.22. "Default Interest" means any interest which accrues at the Default Rate in terms of this Agreement;
- 1.1.23. "Default Rate" means the Interest Rate plus 200 (two hundred) basis points;
- 1.1.24. "Development Result Report" means a detailed development result report to be delivered by the Borrower to the DBSA, substantially in the electronic format to be provided by the DBSA to the Borrower on or about the Signature Date, in terms of which the Borrower shall outline, in relation to the 2020/21 MTREF, information on the expected developmental outcomes under the 2020/21 Capital Expenditure Programme;
- 1.1.25. "Disbursement" means any amount drawn down by the Borrower, and disbursed by the DBSA under and in terms of a Disbursement Request;
- 1.1.26. "Disbursement Date" means the date on which a Disbursement is stipulated to be made or actually made by the DBSA to the Borrower;
- 1.1.27. "Disbursement Request" means a notice substantially in the form annexed hereto marked "Annexure A" (*Form of Request for Disbursement*);
- 1.1.28. "Disbursement Schedule" means the Disbursement schedule annexed hereto marked "Annexure B" (*Disbursement Schedule*);

- 1.1.29. **"Economic Failure"** means any adverse change in the South African or international capital markets or in South African or international monetary, financial, political or economic conditions which adversely affect the DBSA's access to the relevant local capital markets or which renders it unlawful or impossible for the DBSA to advance any portion of the Capital on any Disbursement Date. In the case of the Borrower, Economic Failure means any adverse change in the South African or international capital markets or in South African or international monetary, financial, political or economic conditions which renders it impossible for the Borrower to request a Disbursement as it shall be financially unsustainable and shall have a severe impact on the sustainability of the Borrower;
- 1.1.30. **"Event of Default"** means any event of default as envisaged in clause 17 (*Events of Default*) below;
- 1.1.31. **"Facility"** means the loan facility made available under this Agreement as described in clause 2.2;
- 1.1.32. **"FICA"** means the Financial Intelligence Centre Act No. 38 of 2001, as amended from time to time;
- 1.1.33. **"Final Maturity Date"** means 31 December 2031;
- 1.1.34. **"Finance Documents"** means the following finance documents:
- 1.1.34.1. this Agreement;
 - 1.1.34.2. each Disbursement Request;
 - 1.1.34.3. all material documents in respect of the Programme as identified by the DBSA in its sole discretion as a Finance Document;
- 1.1.35. **"Financial Year"** means the financial year of the Borrower ending on 30 June of each year;
- 1.1.36. **"First Capital and Interest Payment Date"** means 31 December 2021;
- 1.1.37. **"Half-Yearly"** means from the 1st day of January to the 30th day of June and/or from the 1st day of July to the 31st day of December during the same calendar year and **"Half-Year"** shall have a corresponding meaning;
- 1.1.38. **"Interest Payment Date"** means the last Business Day of each Interest Period;

- 1.1.39. **"Interest Period"** means each period of 6 (six) months commencing on 1 January or 1 July of each calendar year, except that the first Interest Period in respect of each Loan, Interest Period shall mean the period beginning on the date of first Disbursement Date and ending on the First Capital and Interest Payment Date;
- 1.1.40. **"Interest Rate"** means interest rate determined in terms of clause 6.1 of this Agreement;
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- 1.1.41. **"Loan"** means any loan made under this Agreement, or as the context may require, the principal amount outstanding for the time being of that loan;
- 1.1.42. **"Loan Outstandings"** means at any time the aggregate of all amounts of principal, accrued and unpaid interest and all and any other amounts payable to the DBSA in terms of this Agreement;
- 1.1.43. **"Loan Period"** means a period of 10 (ten) years from the first Disbursement Date until the Final Maturity Date;
- 1.1.44. **"Margin"** means 290 basis points, expressed as a percentage rate, per annum;
- 1.1.45. **"Material Adverse Effect"** means an event, circumstance or matter (or combination of events, circumstances or matters) which has or is likely to have a material adverse effect on:
- 1.1.45.1. the business, operations, property, condition (financial or otherwise) or prospects of the Borrower; or
 - 1.1.45.2. the ability of the Borrower to perform its obligations in terms of this Agreement; or
 - 1.1.45.3. the validity or enforceability of this Agreement or the rights or remedies of the DBSA hereunder; or
 - 1.1.45.4. the right or remedies of the DBSA in terms of and pursuant to this Agreement; or
 - 1.1.45.5. South African or international monetary, financial, political, or economic conditions or the DBSA's access to the relevant local or international capital markets;
- 1.1.46. **"Mayor"** means in relation to:

- 1.1.46.1. a municipality with an executive mayor, means the councillor elected as the executive mayor of the municipality in terms of section 55 of the Municipal Structures Act; or
- 1.1.46.2. a municipality with an executive committee, means the councillor elected as the mayor of the municipality in terms of section 48 of the Municipal Structures Act;
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- 1.1.47. "**Month**" means a reference to a period starting on one day in a calendar month and ending on the numerically corresponding day but one in the next calendar month, except that:
- 1.1.47.1. if the numerically corresponding day is not a Business Day, that period will end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the preceding Business Day; and
- 1.1.47.2. if there is no numerically corresponding day in the calendar month in which that period is to end, that period will end on the last Business Day in that calendar month;
- 1.1.48. "**MTREF**" means the Medium Term Revenue Expenditure Framework as prescribed by National Treasury;
- 1.1.49. "**MFMA**" means the Municipal Finance Management Act No. 56 of 2003, as amended from time to time;
- 1.1.50. "**Parties**" means the DBSA and the Borrower, and "**Party**" shall as the context requires, be a reference to either one of them;
- 1.1.51. "**Potential Event of Default**" means any event, envisaged in clause 17 (*Events of Default*) which will become an Event of Default:
- 1.1.51.1. after the expiry of the applicable cure period set out in respect of such event in clause 17 (*Events of Default*); or
- 1.1.51.2. if notice to remedy is given as envisaged in clause 17 (*Events of Default*) and such event is not remedied within the applicable notice period set out in clause 17 (*Events of Default*);
- 1.1.52. "**Programme**" means the Capital Expenditure Projects approved by the Municipal Council of the Borrower for 2021/21 Financial Year as summarised per service delivery sector in "Annexure C" (*Project List*);

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- 1.1.53. "**Rand**" and "**R**" means the lawful currency of the Republic of South Africa;
- 1.1.54. "**Signature Date**" means the date on which this Agreement is signed by the last Party signing it in time;
- 1.1.55. "**Taxes**" shall mean all taxes (including VAT), charges, imposts, levies, deductions, withholdings or fees of any kind whatsoever, or any amount or payment on account of or as security for any of the foregoing by whomsoever and on whomsoever imposed, levied, collected, withheld or assessed, together with any penalties, additions, fines, surcharges or interest relating thereto, and "**Tax**" and "**Taxation**" shall be construed accordingly;
- 1.1.56. "**Total Debt**" means the total amount of all interest bearing obligations including finance lease and current portion of long term borrowing less sinking fund;
- 1.1.57. "**Total Income**" means the total amount of operational income plus non-conditional grants. Operational income includes rates, electricity, water, sanitation, refuse, rental income, fines, licences and permits, interest received and other income;
- 1.1.58. "**Unwinding Costs**" means any and all actual costs, expenses and disbursements incurred by the DBSA in taking out a new hedge position, closing out, settling or unwinding any hedge transaction deposits or funding transactions that may have been entered into by the DBSA or reacquiring any negotiable instruments that have been issued by the DBSA, in respect of funding any part or all of the Loan; and
- 1.1.59. "**VAT**" means value added tax payable in terms of the Value-Added Tax Act, 1991, as amended from time to time.
- 1.2. A **clause** is, subject to any contrary indication, construed as a reference to a clause of this Agreement.
- 1.3. **Law** is construed as any law including common law, statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order or any other measure of any government, local government, statutory or regulatory body or court having the force of law.
- 1.4. **Person** is construed as a reference to any natural or juristic person, firm, company, corporation, government, state, agency or organ of a state, association, trust or partnership (whether or not having separate legal personality).
- 1.5. Any reference to the singular includes the plural and *vice versa*;

- 1.6. The clause headings in this Agreement have been inserted for convenience only and shall not be taken into account in its interpretation.
- 1.7. Words and expressions defined in any sub-clause shall, for the purpose of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.
- 1.8. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, effect shall be given to it as if it were a substantive clause in the body of the Agreement, notwithstanding that it is only contained in this clause 1 (*Definitions and Interpretation*).
- 1.9. Unless otherwise provided in this Agreement, if any period is referred to in this Agreement by way of reference to a number of days, the days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which case the day shall be the next succeeding Business Day.
- 1.10. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 1.11. Appendices, schedules or annexures to this Agreement shall be deemed to be incorporated in and form part of this Agreement.
- 1.12. A reference to a person includes such person's permitted successors, assignees, transferees or substitutes.
- 1.13. Any reference to a document is a reference to that document as amended, novated, ceded or supplemented.
- 1.14. Any reference to legislation is to that legislation as at the Signature Date, as amended or replaced from time to time.
- 1.15. Expressions defined in this Agreement shall bear the same meanings in appendices, schedules or annexures to this Agreement which do not themselves contain their own definitions.
- 1.16. Unless stated otherwise, all fees referred to in this Agreement are exclusive of VAT.
- 1.17. The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

- 1.18. Where the day on or by which a payment is due to be made or an obligation is to be performed is not a Business Day, such payment shall be made or that obligation done on or by, in the case of a payment due or thing to be done, on the next succeeding Business Day. Interest, fees and charges (if any) shall continue to accrue for the period from the due date which is not a Business Day.
- 1.19. This Agreement shall be governed by, construed and interpreted in accordance with the law of the Republic of South Africa.
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- 1.20. This Agreement shall bind the Parties' successors-in-title or in law.

2. RECORDAL

- 2.1. The Borrower is undertaking the Programme and the seeks funding thereof.
- 2.2. The DBSA has, after performing the necessary appraisal of the Borrower, approved the Borrower's application for a loan of up to R1 976 000 000.00 (one billion nine hundred and seventy six million Rand) subject to the terms and conditions set out in this Agreement.
- 2.3. The Parties agree as set out below.

3. THE LOAN

- 3.1. The Loan shall be:
- 3.1.1. unsecured;
 - 3.1.2. an amount not exceeding, in aggregate, the Capital;
 - 3.1.3. disbursed in accordance with the Disbursement Schedule; and
 - 3.1.4. utilised exclusively for the projects under the Programme, but notwithstanding anything contained herein, the DBSA shall be under no obligation to monitor or verify the application of any amount borrowed hereunder.
- 3.2. The Loan proceeds shall be disbursed by the DBSA to the Borrower in accordance with the provisions of this Agreement.
- 3.3. **Disbursement Procedure**
- 3.3.1. The Borrower shall, subject to clause 5 (*Conditions Precedent*), request a Disbursement by delivering to the DBSA the Disbursement Request at least 10 (ten) Business Days (or such shorter time as may be acceptable to the DBSA

for the purpose of the relevant Disbursement) prior to the applicable Disbursement Date.

- 3.3.2. The Disbursement Request shall be irrevocable and shall create an obligation on the Borrower to borrow in accordance with such Disbursement Request.
- 3.3.3. The DBSA shall make the Disbursements to the Borrower only (and to no third party) in Rand to the credit of the Borrower's Account as specified by the Borrower in the Disbursement Request.

4. FACILITY LAPSE DATE

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

- 4.1. The Borrower does not procure the fulfilment of all the Conditions Precedent on or before 30 June 2021.
- 4.2. For the avoidance of doubt, the Finance Documents shall never become of any force and effect if the Borrower does not comply with clause 4.1 above.

5. CONDITIONS PRECEDENT

5.1. First Disbursement

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

- 5.1.1. an original (or electronic copy) of this Agreement;
- 5.1.2. a certified copy (or an electronic copy of a certified copy) of the Council resolution of the Borrower approving the 2020/21 MTREF budget of the Borrower;
- 5.1.3. a certified copy (or an electronic copy of a certified copy) of a resolution of the Council of the Borrower in terms of section 46 of the MFMA:
- 5.1.3.1. signed by the Mayor;
- 5.1.3.2. approving the terms of this Agreement; and
- 5.1.3.3. authorising the Accounting Officer to execute this Agreement or any other document which creates or acknowledges the Loan on its behalf;

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5.1.4. proof from the Accounting Officer that the Borrower has complied with the provisions of section 46 (3) of the MFMA, which include evidence and confirmation that the Accounting Officer:

5.1.4.1. has, in accordance with section 21A of the Municipal Systems Act (i) at least 21 days prior to the meeting of the Council at which to pass the resolution referred to in clause 5.1.3 above, made public an information statement setting out particulars of each of the proposed Loans, including the Loan amounts, the purpose of each Loan to be incurred; and (ii) invited the public, the National Treasury and the relevant provincial treasury to submit written comments or representations to the Council in respect of the proposed Loan; and

5.1.4.2. has submitted a copy of the information statement to the municipal Council at least 21 days prior to the meeting of the Council referred to in clause 5.1.3 above, together with particulars of (i) the essential Loan repayment terms, including the anticipated Loan repayment schedule; and (ii) the anticipated total cost in connection with each Loan over the Loan Period;

5.1.5. proof that the Provincial or National Treasury has been advised of the Loan and the projects to be funded by the DBSA under the Programme;

5.1.6. all FICA documents from the Borrower as required by legislation; and

5.1.7. a Disbursement Request from the Borrower, which shall have been received during the Availability Period. The DBSA may, after consideration of the reasons for the Borrower's delay to request the first Disbursement, determine to extend the Availability Period. The DBSA shall only consider an extension on receipt of a written request from the Borrower and shall notify the Borrower of its decision in writing.

5.2. If the Borrower has delivered electronic copies of any of the Conditions Precedent, the Borrower shall deliver the original or original certified copies (as applicable) of such Conditions Precedent within 30 days from the CP Fulfilment Date.

5.3. All Disbursements

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

- 5.3.1. the DBSA will have received all such agreements, documents, statements and instruments as the Borrower is bound to deliver in terms of this Agreement and/or reasonably requested by the DBSA;
- 5.3.2. the DBSA is satisfied that no Economic Failure and/or Material Adverse Effect has occurred and is continuing;
- 5.3.3. the representations and warranties made or confirmed by the Borrower, in this Agreement, will be true on and as of such dates with the same effect as though such representations and warranties had been made on and as of such dates;
- 5.3.4. the Borrower will certify that no Potential Event of Default or Event of Default has occurred and is continuing and that the proceeds of the Disbursement are needed by the Borrower for the purposes of the Programme;
- 5.3.5. the Borrower will certify that to the best of its knowledge (after due enquiry) after receipt of that Disbursement, the Borrower would not be in violation of:
 - 5.3.5.1. any provision contained in the Finance Documents; or
 - 5.3.5.2. any law, rule or regulation directly or indirectly limiting or otherwise restricting the Borrower's borrowing power or authority or its ability to borrow;
- 5.3.6. the Borrower will provide the DBSA with the Disbursement Request(s) within the Availability Period; and
- 5.3.7. all fees, charges and expenses due and payable to the DBSA under the Finance Documents or in relation to the Programme will have been paid in full (if applicable).

6. INTEREST

- 6.1. Subject to clause 6.2 below, the Interest Rate for each Disbursement will be determined two days before each Disbursement and will consist of the Base Rate plus the Margin.
- 6.2. If on a Disbursement Date, the Cost of Funding has increased, and shall result in the reduction of the rate of return that the DBSA would have received in relation to that Disbursement, the DBSA shall be entitled to increase the Margin by such percentage as shall be necessary to compensate the DBSA for such reduction in the rate of return.
- 6.3. Interest on the Loan under this Agreement shall:

- 6.3.1. subject to clause 6.4 (*Default Interest*), accrue from day to day;
 - 6.3.2. be calculated on the amount of the Loan Outstandings from time to time on the basis of the actual number of days elapsed and a 365 day year;
 - 6.3.3. be calculated and payable on an Interest Payment Date;
 - 6.3.4. be calculated on a nominal Half-Yearly compounded basis;
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- 6.3.5. Interest payment(s) shall commence on the First Capital and Interest Payment Date; and
 - 6.3.6. accrue from the date of first Disbursement.

6.4. Default Interest:

- 6.4.1. If the Borrower fails to pay an amount payable by it in terms of this Agreement on its due date (any such amount being an Overdue Amount), interest shall accrue on the Overdue Amount from the due date up to the date of actual payment of such Overdue Amount (both before and after judgment (if any) at the Default Rate.
- 6.4.2. Default Interest due in a particular Interest Period shall be calculated in accordance with the following formula:

$$D1 = \frac{OM \times DR \times d}{365}$$

Where:

- D1 = the Default Interest amount;
- OM = the Overdue Amount;
- DR = the Default Rate;
- d = the number of days from the due date of an Overdue Amount to the date of actual payment of such Overdue Amount.

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

whether of stated maturity or upon pre-maturity by acceleration or otherwise and if not so specified, as notified by the DBSA to the Borrower.

7. COMMITMENT FEES

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

8. REPAYMENT

- 8.1. The Borrower shall, subject to clause 9 (*Early Payment*) repay the Capital and interest in 20 (twenty) Half-Yearly instalments, commencing on the First Capital and Interest Payment Date.
- 8.2. The Loan Outstandings shall be repaid in full by no later than the last day of the Loan Period.
- 8.3. The Borrower shall not be entitled to re-borrow any of the Loan Outstandings that have been repaid.
- 8.4. Repayments shall be:
- 8.4.1. applied to the Loan in inverse order of maturity; and
 - 8.4.2. made together with accrued interest on the amount paid (together with other amounts due to DBSA).

9. EARLY PAYMENT

- 9.1. At any time the Borrower may, by giving the DBSA not less than 30 (thirty) days prior written notice to that effect, prepay the whole or any part of the Loan Outstandings on any Interest Payment Date.
- 9.2. Any notice of prepayment pursuant to clause 9.1 shall:
- 9.2.1. be irrevocable;
 - 9.2.2. specify a date (the "Prepayment Date") upon which prepayment is to be made;
 - 9.2.3. specify the amount of the Loan Outstandings to be prepaid; and
 - 9.2.4. oblige the Borrower to make such prepayment on the Prepayment Date.
- 9.3. The Borrower shall not be entitled to make more than 1 (one) prepayment in any calendar Month.
- 9.4. The Borrower shall not be entitled to re-borrow any of the Loan Outstandings prepaid.
- 9.5. Any prepayment shall be:
- 9.5.1. applied to the Loans being prepaid in inverse order of maturity;
 - 9.5.2. made together with accrued interest on the amount prepaid (together with other amounts than due to the DBSA); and
 - 9.5.3. subject to Breakage Costs and Unwinding Costs.
- 9.6. The Borrower shall not prepay all or any of the Loan Outstandings except at the times and in the manner expressly provided in this Agreement.
- 9.7. If any prepayment of all or any part of the Loan Outstandings is made otherwise than on an Interest Payment Date, then the Borrower shall pay the DBSA within 30 (thirty) Business Days of demand by the DBSA a sum equal to the Breakage Costs applicable thereto.

10. PAYMENT COVENANTS

- 10.1. All payments to be made by the Borrower in terms of this Agreement shall be made in Rand, in same day funds, free of exchange and bank commission and without deduction or set-off into such bank account as the DBSA may nominate from time to time.
- 10.2. The Borrower shall not be entitled to defer, withhold or adjust any payment due to the DBSA arising out of this Agreement.

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- 10.3. All payments made in terms of this Agreement shall be made free and clear of any Taxes and, to the extent that Taxes are payable, the amount to be paid will be increased to the extent necessary such that, after deduction or withholding of Taxes, the DBSA receives the amount that it would have received, but for the Taxes.
- 10.4. If the DBSA at any time receives less than the full amount then due and payable to it under this Agreement, the DBSA may allocate and apply such payment as follows notwithstanding any instruction from the Borrower:
- 10.4.1. firstly, in or towards payment or satisfaction of all properly evidenced costs, charges, expenses and liabilities, incurred and payments made by the DBSA, under or pursuant to this Agreement, including without limitation, legal expenses on an attorney and own client scale, reinstatement costs and any costs incurred in enforcing its rights under the provisions of this Agreement;
- 10.4.2. secondly, in or towards payment of any accumulated and accrued interest in respect of the Loan; and
- 10.4.3. thirdly, in or towards repayment of the Loan.
- 10.5. The DBSA may set off any obligation due under this Agreement from the Borrower against any obligation owed by the DBSA to the Borrower, and the DBSA shall inform the Borrower of such obligation that is due under this Agreement and any set off that has been applied in respect of such obligation.
- 10.6. The Borrower shall not set off any obligation due under this Agreement from the DBSA against any obligation owed by the Borrower to the DBSA.

11. SUSPENSION/CANCELLATION OF DISBURSEMENTS

11.1. Suspension/cancellation by the DBSA

- 11.1.1. The DBSA may, by notice to the Borrower at any time after the receipt of a Disbursement Request but prior to the Disbursement Date, in whole or in part suspend the making of the Disbursement if an Economic Failure has occurred. Such suspension shall continue until the DBSA notifies the Borrower that it may again submit a Disbursement Request.
- 11.1.2. The DBSA may suspend or cancel the right of the Borrower to Disbursements if an Event of Default or Potential Event of Default has occurred or is continuing.
- 11.1.3. Upon the happening of an Event of Default or Potential Event of Default the right of the Borrower to any further Disbursement shall be suspended or cancelled, as the case may be. The exercise by the DBSA of its right of

suspension shall not preclude the DBSA from exercising its right of cancellation, as provided for in this clause 11 (*Suspension/Cancellation of Disbursements*), either for the same or any other reason, and shall not limit any other rights of the DBSA under this Agreement or in law.

- 11.1.4. Any amount of the Capital undrawn at the end of the Availability Period shall be automatically cancelled.

11.2. Cancellation by the Borrower

- 11.2.1. The Borrower may at any time upon 30 (thirty) days' written notice to the DBSA, request the DBSA to cancel all or a portion of the undisbursed portion of the Capital on the date specified in such request.

- 11.2.2. If, after having received a notice in accordance with clause 11.2.1 above, the DBSA is satisfied that the Borrower has sufficient funding available, on terms satisfactory to the DBSA, to complete the Programme (whilst complying with the provisions of this Agreement); then the DBSA shall, by notice to the Borrower, cancel the requested amount of the undisbursed portion of the Capital effective as of such specified date.

- 11.2.3. Should the Borrower cancel the Facility, any portion thereof or undisbursed portion of the Capital in terms of this clause 11 (*Suspension/Cancellation of Disbursements*), or otherwise in terms of this Agreement, a Cancellation Fee shall be payable by the Borrower to the DBSA within 30 (thirty) days from the earlier of the date of written notice of cancellation of the Facility by the Borrower or the expiry of the Availability Period.

11.3. Reinstatement

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

11.4. Other requirements

- 11.4.1. Unless otherwise agreed by the DBSA, the Borrower may not repay or prepay all or any part of the Loan Outstandings or cancel all or any part of the Capital, except at the times and in the manner expressly provided for in this Agreement.

- 11.4.2. A notice of prepayment and/or cancellation under this Agreement is irrevocable and must specify the relevant date or dates on which the proposed cancellation or prepayment is to be made, and the amount of the proposed cancellation or prepayment.

- 11.4.3. The DBSA may agree a shorter notice period for a voluntary prepayment or a voluntary cancellation.
- 11.4.4. A prepayment by the Borrower of the Loan Outstandings in full under this Agreement must be made with accrued (but unpaid) interest on the amount prepaid. No premium or penalty is payable in respect of any prepayment, except for Breakage Costs and Unwinding Costs (if applicable).

12. INCREASED COSTS AND DECREASED COSTS

12.1. Increased Costs

Except as provided in clause 12.3 below, the Borrower must pay to the DBSA the amount of any increased cost incurred by the DBSA as a result of:

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

12.2. Economic Failure

- 12.2.1. If an Economic Failure occurs that in the opinion of the DBSA affects the DBSA's ability to make any Disbursement, including, but not limited to the DBSA being unable to obtain matched funding in the market for its obligations under this Agreement, the DBSA shall be entitled to withhold further Disbursements. Should the Borrower still require the funding and request the further Disbursements, then the DBSA shall advise the Borrower of the impact this will have on the Margin. The DBSA shall, in its discretion, determine if the revised Margin will not have the adverse impact on the financial sustainability of the Borrower before making Disbursements.
- 12.2.2. If an Economic Failure and/or Material Adverse Effect occurs, which in the opinion of the DBSA may reduce the rate of return which the DBSA may receive

on the Capital under any Finance Documents then, at the DBSA's sole discretion:

- 12.2.2.1. the DBSA may demand in writing that the Borrower shall pay to the DBSA an additional amount as will be sufficient to compensate the DBSA for such reduction in return; or
- 12.2.3. the DBSA shall be entitled to increase the Margin by such percentage as shall be necessary to compensate the DBSA for such reduction in return. The increase in Margin shall take effect from the date specified in a written notice delivered by the DBSA to the Borrower but in any event not less than 30 (thirty) days after the date of such written notice. In the event that such revised funding terms referred to in clause 12.2.1 and 6.2, in the reasonable opinion of the Borrower, shall have an adverse impact on the financial sustainability of the Borrower and/or is contravention with the provisions of the MFMA, the Borrower shall have the right to reject such revised terms and cancel the Facility, within the Availability Period, without incurring a Cancellation Fee.

12.3. Exceptions

The Borrower need not make any payment for an increased cost to the extent that the increased cost is:

- 12.3.1. attributable to a Tax deduction required by law to be made by the Borrower;
- 12.3.2. compensated for under clause 10.3; or
- 12.3.3. attributable to the DBSA failing to comply with any law or regulation.

13. OTHER INDEMNITIES AND BREAKAGE COSTS

13.1. Indemnities

The Borrower will, within 30 (thirty) Business Days of demand, indemnify the DBSA against any cost, loss or liability which the DBSA directly or indirectly incurred as a result of:

- 13.1.1. the occurrence of any Event of Default, including legal fees on an attorney and own client scale;
- 13.1.2. investigating or taking any other action in connection with any event that it reasonably believes is an Event of Default;

- 13.1.3. acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
 - 13.1.4. the information produced or approved by the Borrower under or in connection with the Finance Documents being misleading and/or deceptive in any respect;
 - 13.1.5. any enquiry, investigation, subpoena (or similar order) or litigation with respect to the Borrower or with respect to any project under the Programme contemplated or financed under this Agreement;
 - 13.1.6. a failure by the Borrower to pay any amount due under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result thereof;
 - 13.1.7. funding, or making arrangements to fund a Loan requested by the Borrower in a Disbursement Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by the DBSA);
 - 13.1.8. a Loan (or part of a Loan) not being prepaid in accordance with this Agreement;
 - 13.1.9. investigating any event which the DBSA reasonably believes to be a Potential Event of Default or an Event of Default; or
 - 13.1.10. acting or relying on any notice, request or instruction from the Borrower which the DBSA reasonably believes and which on the face thereof appears to be genuine, correct and appropriately authorised.
- 13.2. The Borrower's liability in each case includes any loss or expense on account of funds borrowed, contracted for or utilised to fund any amount payable under Finance Document or any Loan.

14. COVENANTS - POSITIVE AND NEGATIVE UNDERTAKINGS

- 14.1. In addition to any other undertakings given by the Borrower to the DBSA pursuant to this Agreement, the Borrower gives the undertakings contained in this clause 14.3 (*Positive Undertakings*).
- 14.2. Each undertaking is a continuous undertaking and the Borrower shall comply with each undertaking for the entire period which commences on the Signature Date and which terminates when the Loan Outstandings are repaid in full.
- 14.3. **Positive Undertakings/Warranties**

- 14.3.1. The Borrower undertakes and warrants that in the event that a project under the Programme is abandoned or suspended for any reason whatsoever, it shall promptly submit to the DBSA a copy of the report submitted to the Municipal Council in respect of such suspended or abandoned project.
- 14.3.2. The Borrower warrants that it has obtained and in future will or cause to be obtained from the relevant government Authorities any Authorisation(s) and/or any permit(s)/licences, which are or may be required in terms of the relevant environmental, waste and/or water legislation. The Borrower agrees to provide the DBSA with copies of any such Authorisation(s) and/or license(s) as received.
- 14.3.3. The Borrower will comply with acceptable environmental management principles as contained in the National Environmental Management Act, No. 107 of 1998 and to ensure that an agreed upon system is in place, which adheres to environmental requirements throughout the lifetime of the Programme, and to ensure compliance with all environmental legal requirements and water use licence requirements.
- 14.3.4. The Borrower will ensure proper maintenance of the assets created through this Facility in line with National Treasury Municipal Finance Management Act Circular number 55 and 66.
- 14.3.5. The Borrower undertakes to the implement its approved supply chain management policies in accordance with the MFMA to promote the utilisation of local labour, small local contractor participation and gender equity.
- 14.3.6. The Borrower undertakes to cover any cost overruns (if any) and/or secure additional funding in order to complete the projects under the Programme that are funded by the DBSA.
- 14.3.7. The Borrower will ensure that all construction work to be as per standards: SABS 1200, the National Building Regulations and Occupational Health and Safety Act. All building materials used are to be SANS approved.
- 14.3.8. The Borrower will make adequate provision(s) for the Loan repayments.
- 14.3.9. The Borrower will also ensure that all engineering services comply with the guidelines for the provision of engineering services and amenities ("Red Book") and that all Eskom and NERSA standards for the provision of bulk electricity and electrical reticulation are complied with.

- 14.3.10. The Borrower will arrange suitable insurance to cover any possible damage and such insurance will be in line with section 13 of the MFMA.
- 14.3.11. The Borrower shall, within 3 (three) months from the Signature Date, provide the DBSA with a Development Result Report, in terms of which the Borrower outlines, in relation to the 2020/21 MTREF, information on the expected developmental outcomes under the 2020/21 Capital Programme and the substance satisfactory to the DBSA. The DBSA shall be entitled, subject to 14.3.5 above, to engage the representatives of the Borrower and/or any of its stakeholders as regards the developmental outcomes provided for in the Development Result Report.

14.4. Financial Covenants

- 14.4.1. The Borrower shall ensure that the Total Debt to Total Income does not exceed 55% (fifty five percent).
- 14.4.2. If at any time during the term of this Agreement, the Borrower wishes to incur additional debt and the incurrence of such debt will result in the Borrower's Total Debt to Total Income exceeding 55% (fifty five percent), the Borrower undertakes to request the DBSA's written consent (which consent shall not be unreasonably withheld or delayed) before taking up any additional debt.
- 14.4.3. The Borrower undertakes to maintain the following Cumulative Debt Service Cover Ratio:
- 14.4.3.1. 1.5 times from the Signature Date until 30 June 2021;
- 14.4.3.2. 1.7 times from 01 July 2021 until 30 June 2022; and
- 14.4.3.3. 2.0 times from 01 July 2022 until the Final Maturity Date,
- and at each Interest Payment Date, the Borrower undertakes to submit to the DBSA a certificate confirming the Cumulative Debt Service Cover Ratio as set out in this clause 14.4.3 (a "**Financial Ratio Certificate**").
- 14.4.4. If at time during the term of this Agreement the Borrower notifies the DBSA, or without any such notification, the DBSA becomes aware that the Borrower has breached the undertaking set out in clause 14.4.3 above (the "**Notification Date**"), the Parties undertake to within 10 (ten) Business Days from the Notification Date meet to analyse the Borrower's financial situation and attempt negotiate an acceptable remedy to the breach.

14.5. If no agreement is reached between the Parties within 30 (thirty) days following the Notification Date, the DBSA shall notify the Borrower of the termination of this Agreement and the provisions of clause 17 below shall immediately apply.

14.6. The Borrower and the Programme

The Borrower undertakes to:

14.6.1. ~~comply with all laws applicable to it;~~

14.6.2. fully and punctually comply with all the terms of this Agreement and any other agreement to which it is a party that is material in the context of the Programme and take all necessary action or enforce prompt and proper performance and discharge by the other parties of their respective obligations under this Agreement and such agreements in a manner consistent with the Borrower's obligations under this Agreement;

14.6.3. permit representatives or nominees of the DBSA, at reasonable times, access to the site of any project under Programme, subject to compliance with normal safety procedures, and to have access to its books of account and records (the DBSA shall use reasonable efforts to give prior notice to and co-ordinate such visits and to minimise any disruption to the business and operations of the Borrower);

14.6.4. provide the DBSA, when requested, with the reports detailing the progress of the Programme;

14.6.5. as soon as may reasonably be possible after receipt of a written request from the DBSA, institute an environmental review/audit in respect of the Programme to be recorded in a written report and forthwith deliver such report to the DBSA and implement any recommendations contained in such report;

14.6.6. promptly upon becoming aware thereof inform the DBSA of any occurrence which might have a Material Adverse Effect and/or of any Potential Event of Default and/or Event of Default;

14.6.7. use the Loan exclusively for the Programme; and

14.6.8. maintain separate records for the use of the proceeds of the Loan and make such records, as the DBSA may request, available.

14.7. Financial Statements

The Borrower shall deliver its audited annual financial statements to the DBSA within 30 (thirty) days after it has been tabled at Council as per the requirement of the MFMA.

15. REPRESENTATIONS AND WARRANTIES

15.1. In addition to any representation and warranties given elsewhere in this Agreement by the Borrower to the DBSA, the Borrower gives the representations and warranties contained in this clause 15 (*Representations and Warranties*) to the DBSA. Each such warranty:

- 15.1.1 is a separate and distinct warranty;
- 15.1.2 is material and does not omit any matter, the omission of which makes any such warranty and representation misleading;
- 15.1.3 has induced the DBSA to enter into this Agreement; and
- 15.1.4 is given, save where otherwise indicated, a continuing warranty in the sense that such warranty shall irrefutably be deemed to have been repeated by the Borrower on each day during the period which commences on the Signature Date and which terminates when the Loan Outstandings are repaid in full.

15.2. The Borrower

The Borrower represents and warrants that:

- 15.2.1 it is a legal entity duly established and validly existing under the laws of South Africa;
- 15.2.2 it has full power to execute, deliver and perform its obligations under this Agreement and that all necessary action has been taken to authorise the execution, delivery and performance of the same, and no limit on the powers of the Borrower to borrow or to create security will be exceeded as a result of borrowings under this Agreement;
- 15.2.3 the execution, delivery and performance of the obligations of the Borrower under, and compliance with the provisions of, this Agreement by the Borrower does not and will not violate or conflict with, or result in any breach of, any law or court order or judgment or any contractual obligations binding on the Borrower or affecting the Borrower or any of the Borrower's assets;

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- 15.2.4 any factual information contained in or provided by the Borrower was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated;
- 15.2.5 the Borrower is not presently involved in any litigation, arbitration or administrative proceeding and, to the knowledge of the Borrower, no litigation, arbitration or administrative proceeding is pending or threatened against it or any of its assets which if adversely determined, would have a Material Adverse Effect;
- 15.2.6 the rights of the DBSA under this Agreement shall rank at least *pari passu* with all of the Borrower's unsecured obligations;
- 15.2.7 the Programme conforms in all material respects with the detailed descriptions as forwarded to the DBSA from time to time;
- 15.2.8 the Borrower has, all Authorisations required in connection with the Programme and is in compliance with such Authorisations;
- 15.2.9 the Borrower is not aware of any facts or circumstances which could lead to the revocation, suspension or variation of the terms of any Authorisation in connection with the Programme;
- 15.2.10 to the best of the Borrower's knowledge and belief (having made due enquiry) no Potential Event of Default or Event of Default has occurred and/or is continuing and no such event will occur as a result of its entering into performing its obligations under this Agreement;
- 15.2.11 the Borrower is not party to any agreement that has or could reasonably be expected to have a Material Adverse Effect on the ability of the Borrower to comply with its obligations in terms of this Agreement;
- 15.2.12 the Borrower is not in default of any of its obligations in respect of other borrowed monies;
- 15.2.13 from the Signature Date and for so long as any moneys are owing under this Agreement, it will:
- 15.2.13.1 ensure that the Programme is undertaken and completed in a good and workmanlike manner with good and suitable materials, and in compliance with all applicable technical, safety and environmental regulations and all other relevant statutory or other regulatory requirements and/or consents and approvals;

- 15.2.13.2 obtain and maintain all further requisite planning consents, building regulation approvals and other matters to enable it to commence, continue with and complete the Programme;
- 15.2.13.3 comply with all relevant laws of the national government and/or the applicable provincial government and/or regulations made there under and all by-laws, regulations and codes of practice of any local or competent Authority in relation to the Programme and all deeds, agreements or other obligations binding upon the owner or occupier of the land upon which the Programme is situated and obtain all necessary consents in respect of the Programme upon reasonably satisfactory terms; and
- 15.2.13.4 the Borrower is carrying out the Programme and its operations in compliance with the laws of the Republic of South Africa.

15.3. Disclosure

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

16. RIGHTS AND REMEDIES

- 16.1. The rights and remedies of the DBSA in relation to any misrepresentations or breach of warranty on the part of the Borrower are not prejudiced:
- 16.2. by any investigation by or on behalf of the DBSA into the affairs of the Borrower; or
- 16.3. by any other act or thing which may be done by or on behalf of the DBSA in connection with this Agreement and which might, apart from this clause 16 (*Rights and Remedies*), prejudice such rights or remedies.

17. EVENTS OF DEFAULT

- 17.1 An Event of Default shall occur if any one of the following events occur:
 - 17.1.1 the Borrower fails to pay to the DBSA any amount due pursuant to this Agreement and/or any other agreement it has entered into with the DBSA strictly on due date and fails to remedy such failure within 30 (thirty) days after its due date;
 - 17.1.2 the Borrower breaches any of the undertakings, representations and/or warranties given by it pursuant to this Agreement and/or any other agreement

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it has entered into with the DBSA, if such representation and/or warranty is capable of being remedied, fails to remedy it within 30 (thirty) days of receipt of written demand from the DBSA;

17.1.3 the Borrower allows a Court judgment for an amount in excess of R100 000,00 (one hundred thousand rand) to be entered against it and fails to pay the amount of such Court judgment within the time frame stipulated in the final judgment (in the sense that the Borrower has exhausted all avenues for appeal or review open to it);

17.1.4 If any of the following events occur and the event is capable of being remedied and the Borrower fails to remedy the event within 30 (thirty) days of receipt of written notice from the DBSA:

17.1.4.1 Authorisations in respect of the Programme are modified in a manner unacceptable to the DBSA or are not granted or are revoked or terminated or expire and are not renewed or otherwise cease to be in full force and effect;

17.1.4.2 any third party loan, debt, guarantee or any other obligations constituting indebtedness of the Borrower, whether or not the DBSA is concerned therewith, becomes due and payable prior to its specified maturity by reason of default by the Borrower;

17.1.4.3 the Borrower is unable to pay its debts as and when they fall due for payment, threatens to stop or suspend payment thereof or commences negotiations with its creditors with a view to rescheduling or otherwise compromising its indebtedness;

17.1.4.4 the Borrower abandons any project under the Programme or suspends the operation of such project for a period of more than 3 (three) Months; and

17.1.4.5 an event occurs which the DBSA reasonably determines to have a Material Adverse Effect.

17.2 If an Event of Default occurs, the DBSA shall, in addition to and without prejudice to any other rights which it may have in terms of this Agreement or in law, be entitled without further notice to:

17.2.1 accelerate or place on demand payment of all amounts owing by the Borrower to the DBSA (whether in respect of principal, interest or otherwise) and all such amounts shall immediately become due and payable; and/or

- 17.2.2 cancel any undrawn amount of the Capital; and/or
- 17.2.3 require the Borrower to indemnify the DBSA in respect of any loss, claim expense or similar costs incurred as a result of the Event of Default; and/or
- 17.2.4 charge Default Interest.

18. ILLEGALITY OF THE LOAN

If, after the Signature Date, there is any Change in Law that makes it unlawful for either Party to continue to maintain or to fund the Loan then the Borrower shall, upon request by the DBSA, repay the disbursed portion of the Capital and interest in terms of this Agreement or in terms of any relevant, law, regulation or applicable directive in full. In addition, upon receipt of such notification from the DBSA, the Borrower shall have no further right to Disbursement of the undisbursed portion of the Capital.

19. SEVERABILITY

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

20. CESSION AND DELEGATION

- 21.1 The Borrower shall not be entitled to cede, assign, delegate or otherwise transfer any of its rights or obligations under this Agreement to any third party.
- 21.2 The DBSA shall be entitled, after notifying the Borrower but without the Borrower's consent, to cede, delegate or assign all or any of its rights, benefits and obligations or obligation only under this Agreement to any third party, either absolutely or as collateral security, and on any such cession, assignment and/or delegation taking place, the Borrower shall, if so required make all payments to any specified cessionary.

21. COUNTERPARTS

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

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22. DISPUTE RESOLUTION

In the event of a dispute between the Parties, the Municipal Manager of the Borrower and the Chief Executive Officer of the DBSA and their respective teams shall attempt, through a mediation process to resolve such dispute within ten (10) Business Days from the date on which the disputing Party informs the other Party of such dispute, and failing such resolution, such dispute shall be referred for resolution in terms of the Intergovernmental Relations Framework Act 13 of 2005, as amended.

23. GOVERNING LAW

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

24. JURISDICTION

The Parties hereby irrevocably and unconditionally consent to the non-exclusive jurisdiction of the Gauteng Division of the High Court of South Africa, Pretoria (or any successor to that division) in regard to all matters arising from this Agreement.

25. CERTIFICATE OF INDEBTEDNESS

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

26. REMEDIES AND WAIVERS

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

27. COSTS

- 27.1 The Borrower undertakes to pay to the DBSA within 14 (fourteen) days from written demand, the amount of all properly evidenced costs and expenses (including legal fees) reasonably incurred by the DBSA in connection with the negotiation and preparation of this Agreement and any other documents referred to in this Agreement.

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

28. NOTICES AND DOMICILIA

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

- 28.2 For purposes of this Agreement the Parties' respective addresses shall be as follows:

28.2.1 DBSA:

Physical: 1258 Lever Road
 Headway Hill
 Midrand
 Postal: PO Box 1234, Halfway House, 1685
 Facsimile: (011) 313 3086
 E-mail: claimadmin@dbsa.org
 Attention: Head: Transacting (Municipalities & Water Boards) and
 General Counsel;

28.2.2 Borrower:

Physical: Corner of Rose and Cross Streets, Germiston, 1400
 Postal: Private bag X69, Germiston, 1400
 E-mail: City.Manager@ekurhuleni.gov.za
 Attention: City Manager

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

28.3 Any notice given in terms of this Agreement shall be in writing and shall:

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

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

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

29. RELAXATION

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

30. VARIATION

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


31. WHOLE AGREEMENT

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

MMA
MBS

SIGNATURES

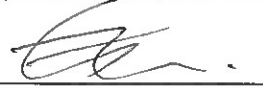
For: **DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED**

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

Name: MOTALE BEN MOKHEESENG

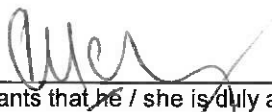
Date: 31 MARCH 2021

Place: FOURWAYS

Witness: 

Witness: TSHITOSI K.B.

For: **CITY OF EKURHULENI METROPOLITAN MUNICIPALITY**

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

Name: DR. M.F. MASHANE

Date: 31/03/2021

Place: GERMISTON

Witness: 

Witness: _____

ANNEXURE A: FORM OF DISBURSEMENT REQUEST

Borrower's letterhead

(Date)

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

Dear [*insert*]

Disbursement Request No. [●]

DBSA Programme No. [●]

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

- 3.5.2 any law, rule or regulation, directly or indirectly limiting or otherwise restricting the Borrower's borrowing power or authority or its ability to borrow.
4. The above certifications are effective as at the date of this Disbursement Request and shall continue to be effective as of the date of the Disbursement. If any of these certifications is no longer valid as of or prior to the date of the requested Disbursement, the Borrower undertakes to promptly notify the DBSA unless it is not aware of the same (after due enquiry).

Yours faithfully


Accounting Officer

Name: DR. M. F. MASHTANI

ANNEXURE B: DISBURSEMENT SCHEDULE

Disbursement amount:	Disbursement Date:
R1 000 000 000.00 (one billion Rand)	8 April 2021
R976 000 000.00 (nine hundred and seventy six million Rand) – Remainder	Between 15 May 2021 and 15 June 2021.

ANNEXURE C: PROJECT LIST

	Loan Funding	Total Service Sector Budget	% of Loan funding per Service Sector
	R'000	R'000	%
Administration infrastructure	193,863	341,823	56.7%
Economic Development	116,600	116,600	100.0%
Information & Communication Technology	592,620	655,240	90.4%
Energy	218,500	503,791	43.4%
Roads and Stormwater	163,614	452,248	36.2%
Transport Services	25,500	481,551	5.3%
Water and Sanitation	295,625	874,942	33.8%
Waste Management and Environmental Management	188,200	274,300	68.6%
Human Settlement	0	965,886	0.0%
Other Social Infrastructure *	181,518	263,597	68.9%
Total Loan Funding	1,976,039	4,929,978	40.1%

* include Disaster & Emergency and Security Services