

**10.  
RAISING OF NEW EXTERNAL LOANS**

5/15/1/2/1

B King

17 May 2019

(028) 3138154

Corporate Head Office

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**1. Executive Summary**

Report on the tabling and approval of the loan agreement for the raising of external loans amounting to R162 000 000.

**2. Service Delivery and Budget Implementation Plan - IGNITE**

Directorate: Finance

Department: Accounting Services

**3. Compliance with Strategic Priorities**

Provision of democratic, accountable and ethical governance

Provision and maintenance of municipal services

**4. Delegated Authority**

None

**5. Legal Requirements**

No. 56 of 2003: Local Government: Municipal Finance Management Act, 2003

**6. Background/Discussion/Evaluation/Conclusion**

Council has budgeted for capital projects on the approved multi-year capital budget for the 2018/2019 MTREF. Council approved the funding of a portion of the capital budget relating to services infrastructure with external loan financing amounting to R162 000 000 for 2018/2019, 2019/2020 & 2020/2021 financial years. Proposals were called for from prospective lenders in terms of section 3 & 4 of the Municipal Regulations on Debt Disclosure. As part of the Infrastructure Investment Programme for South Africa (IIPSA), the financing tabled also includes a direct capital grant facility to the amount of R19 900 000, accompanied by an agreement stipulating the requirements for utilising the facility (Annexure C)

The information statement, setting out the particulars of the proposed debt, was circulated to councillors on 18 April 2019 (Annexure A).

## 7. Financial Implications

Repayment of external loan interest and redemption: Finance costs (interest) are included in the approved 2018/2019 MTREF, including the indicative outer years. Redemption will be repaid from cash flows generated by operations, according to the cash flow budget.

### Source of Funding eg. Operating Budget Provision

Vote/Work Code	: Various Departments
Vote/Work Code Description	: Interest on external loans
Budget Provision 2018/2019	: R 47 834 480.00
Spent to Date/Committed	: R 45 499 997.18
Balance Available	: R 2 334 482.82
Funds Required *This report)	: R 426 150.00

### Source of Funding eg. Operating Budget Provision

Vote/Work Code	: Various Departments
Vote/Work Code Description	: Interest on external loans
Budget Provision 2019/2020	: R 51 548 815.00
Spent to Date/Committed	: R 42 269 068.91
Balance Available	: R 9 279 746.09
Funds Required *This report)	: R 6 312 731.68

### Source of Funding eg. Operating Budget Provision

Vote/Work Code	: Various Departments
Vote/Work Code Description	: Interest on external loans
Budget Provision 2020/2021	: R 54 249 245.00
Spent to Date/Committed	: R 38 245 254.75
Balance Available	: R 16 003 990.25
Funds Required *This report)	: R 11 000 060.80

## 8. Staff Implications

None

## 9. Comments from other Departments, Divisions and Administrations

None

## 10. Annexures

- Annexure A: Copy of Information statement relating to proposed debt.
- Annexure B: Draft loan agreement
- Annexure C: Draft direct capital grant facility agreement

**RECOMMENDATION TO THE COUNCIL:**

1. that the loan agreement for the raising of the total external loans amounting to R162 000 000 (R54 000 000 per year) for the 2018/2019, 2019/2020 and 2020/2021 financial years, as well as the direct capital grant facility agreement to the amount of R19 900 000 **be approved**; and
2. that the Municipal Manager be authorised to sign the necessary agreements and documents for the above external loans and direct capital grant facility agreement.

**RESPONSIBLE OFFICIAL:****B A KING****TARGET DATE FOR IMPLEMENTATION :****1 JUNE 2019**



**OVERSTRAND MUNICIPALITY: LONG TERM DEBT**

Notice in terms of section 46(3)(b) of the Local Government: Municipal Finance Management Act, 2003: (Act no. 56 of 2003).

Issued on behalf of Mr. CC Groenewald, Municipal Manger.

A handwritten signature in black ink, appearing to be "SC Madikane", written over a horizontal line.

**SC MADIKANE**  
**ACTING MUNICIPAL MANAGER**

Office of the  
Municipal Manager

## MEMORANDUM

Kantoor van die  
Munisipale Bestuurder

e-mail: [cgroenewald@overstrand.gov.za](mailto:cgroenewald@overstrand.gov.za)

Tel: 028 – 313 8003

Fax: 086 568 9726

The Executive Mayor

### APPOINTMENT OF ACTING MUNICIPAL MANAGER

Section 56(1)(a)(ii) of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) as amended by section 3 of the Local Government: Municipal Systems Amendment Act, 2011 (Act 7 of 2011) with effect from 5 July 2011, provides as follows:

*"A municipal council, after consultation with the municipal manager, must appoint-*

- (i) .....
- (ii) *an acting manager directly accountable to the municipal manager under circumstances and for a period as prescribed."*

Council resolved on 1 June 2011 *inter alia* as follows:

*"Item 7: DELEGATED POWERS TO EXECUTIVE MAYOR*

*RESOLVED (UNANIMOUSLY)*

1. *that the Principles and Conditions of Delegation, pages 30-36 to item 7 which served before Council on 1 June 2011, be re-confirmed; and*
2. *that all powers not reserved by law for full council, be delegated to the executive mayor."*

The Municipal Manager will be out of the office from 8 April 2019 to 3 May 2019. It is recommended that you appoint Mr Solomzi Madikane as Acting Municipal Manager for the period 8 to 18 April 2019 and Ms Santie Reyneke-Naudé from 23 April 2019 to 3 May 2019, in terms of your Delegated Powers referred to above.

  
C GROENEWALD  
MUNICIPAL MANAGER

4 / 4 /2019

Recommendation approved / not approved / approved with the following amendments:

  
ALD DUDLEY COETZEE  
EXECUTIVE MAYOR

4 / 04 /2019

PO Box 20  
HERMANUS  
7200

Posbus 20  
HERMANUS  
7200



**INFORMATION STATEMENT / INLIGTINGSVERKLARING / UKONGZELELWA NGENIALI MBOLEKO**

Notice is hereby given in terms of section 46(3)(a)(i) and (ii) of the Local Government: Municipal Finance Management Act (Act no. 56 of 2003), read in conjunction with section 21A of the Municipal Systems Act (No. 32 of 2000), that the Overstrand Municipality hereby make public an information statement setting out particulars of proposed long-term debt to the total amount of R162 million, as per the approved budget for 2018/2019 and indicative years 2019/2020 and 2020/2021.

**Purpose (Facility 1):** R120 000 000 - Overstrand Infrastructure relating to Electricity, Water and Sewage projects. The drawdown on the facility is intended to be in three tranches of R40 000 000 per annum for 2018/2019, 2019/2020 and 2020/2021 respectively.

**Purpose (Facility 2):** R42 000 000 - Overstrand Infrastructure master plan implementation relating to Water and Sewage projects. The drawdown on the facility is intended to be in three tranches of R14 000 000 per annum for 2018/2019, 2019/2020 and 2020/2021 respectively.

**Term and Cost:** 10 years at a fixed rate with total cost calculated at date of drawdown.

The debt will be unsecured.

**Invitation for Comments:** Written comments or representations, if any, must reach the under mentioned on or before 9 May 2019. Persons who are unable to write will be assisted during office hours at the various municipal offices, to transcribe their comments or representations. Further details are obtainable from Mr BA King (028 313 8154) at the Municipal offices – Hermanus during office hours.

C C Groenewald  
MUNICIPAL MANAGER

Overstrand Municipality  
PO Box 20  
HERMANUS  
7200

Notice no. 62/2019

Kennis geskied hiermee ingevolge artikel 46(3)(a)(i) en (ii) van die Wet op Plaaslike Regering: Munisipale Finansiële Bestuur (Wet Nr. 56 van 2003), saamgelees met artikel 21A van die Munisipale Stelselswet (Wet Nr. 32 van 2000), dat Munisipaliteit Overstrand hiermee 'n inligtingsverklaring bekend maak met besonderhede van beoogde lantermynskuld ten bedrae van R162 000 000, ingevolge die goedgekeurde begroting vir 2018/2019 en onderskeie jare 2019/2020 en 2020/2021.

**Fasiliteit 1:** R120 000 000 - Overstrand infrastruktuur ten opsigte van Elektrisiteit, Water, Riepoojprojekte. Die opneem van die fasiliteit is bedoel om in drie trekkings van R40 000 000 per jaar onderskeidelik vir 2018/2019, 2019/2020 en 2020/2021 te geskied.

**Fasiliteit 2:** R42 000 000 - Implementering van die oorhoofse infrastruktuurplan ten opsigte van Water- en Riepoojprojekte. Die opneem van die fasiliteit is bedoel om in drie trekkings R14 000 000 per jaar onderskeidelik vir 2018/2019, 2019/2020 en 2020/2021 te geskied.

**Uitnodiging vir kommentaar:** Skriftelike kommentare of aanbiedings, indien enige, moet die ondergemelde bereik voor of op 9 Mei 2019. Persone wat nie kan skryf nie, sal gedurende kantoorure by die onderskeie Munisipale kantore gehelp word om hul kommentare of voorstelle op skrif te stel. Verdere besonderhede is verkrygbaar by Mnr BA King (028 313 8154), Munisipale kantore te Hermanus, gedurende kantoorure.

C C Groenewald  
MUNISIPALE BESTUURDER

Munisipaliteit Overstrand  
Posbus 20  
HERMANUS  
7200

Kennisgewing nr. 62/2019

Izaiso zinikezeiwa ngokwemigaoo yecandelo 46 (3) (a) (i) kunye (ii) noRhulumente weNgingqi: umthetho woLawulo weMali kaMasipala (umthetho wama-56 ka-2003), ufutwele ngokuhambisana necandelo 21A leeNkqubo zikaMasipala Umthetho (uNombo 32 ka-2000), ukuba uMasipala wase-Overstrand wazisa umphakathi ngolwazi oluchaza iinkcazo zexesha elide elioetywayo kwi-R162 yezigidi, njengoko kubanjethi evunywayo ye-2018/2019 kunye neminyaka ebonisa u-2019 / 2020 no 2020/2021.

**Injongo (Isibonelelo 1):** i-R120 000 000 - i-Overstrand izibonelelo eziphathelele kwiprojekthi zo-Mbane, aManzi kunye nenkqubo yokufuthwa kwamanzi. Ukughekezwa kweso sikhungo kuhloswe ukuba ku-R40 000 000 ngonyaka we-2018/2019, 2019/2020 kunye ne-2020/2021

**Injongo (Isibonelelo 2):** i-R42 000 000 - i-Overstrand yezixhobo zokuphunyezwa kweprojekthi ngokuphathelele kwiprojekthi zamanzi kunye nenkqubo yokufuthwa kwamanzi. Ukughekezwa kweziko kuhloswe ukuba ku-R14 000 000 ngonyaka we-2018/2019, 2019/2020 kunye ne-2020/2021

**Ixesha kunye neNtleko:** iminyaka eyi-10 kwizinga elimisweyo kunye neendleko ezipheleleyo ezibalwe ngomhla wokuchithwa / ukutsalwa.

Ityala liya kuba linga khuselekanga

**Isimemo sezimvo:** Amazwi abhaliweyo okanye izimvo, ukuba zikhona, kufuneka zifikelele phantsi apha ngasentla ngomhla we-9 kuMeyi 2019. Abantu abangakwazi ukubhala baya kuncediswa ngexesha lee-ofisi kwifofisi zikaMasipala ezahlukeneyo, ukubhala izimvo zabo okanye izicelo zabo. Iinkcukacha ezongezeleliweyo zifumaneka kuMnu BA King (028 313 8154) kwifofisi zikaMasipala - eHermanus ngexesha lee-ofisi.

C C Groenewald  
UMPHATHI MASIPALA

Overstrand Municipality  
PO Box 20  
HERMANUS  
7200

Isaziso no. 62/2019

ANNEXURE A3 | 5

**REPAYMENT TERMS AND ANTICIPATED TOTAL COST****LOAN ASSUMPTIONS:**

Loan Amount:	R162 million
Term of Loan:	10 Years
Indicative Interest Rate	9.47%
Fixed or Variable Interest	Fixed Interest Rate
Loan Repayments:	Semi-annual (December & June)
Drawdown	Three tranches of R54m p.a. in respect of the 20018/2019, 2019/2020 and 2020/2021 financial years

**ANTICIPATED TOTAL COST:**

Semi-annual Payments	Year 1 (2 Installments)	R4 236 273.21
	Year 2 (2 Installments)	R8 760 618.58
	Year 3 to 10 (16 Installments)	R13 649 654.27
Financing Costs		R82 388 251.90
		R244 388 251.96
Total Costs		



REPAYMENT SCHEDULE AND SUMMARY OF ANTICIPATED TOTAL COST

TRANSCHE 1 (2018/2019)

Period	Interest Rate	Balance	Payment	Interest	Capital
12/19	9.47%	54 000 000.00	(4 236 273.21)	(2 556 900.00)	(1 679 373.21)
06/20	9.47%	52 320 626.79	(4 236 273.21)	(2 477 381.68)	(1 758 891.53)
12/20	9.47%	50 581 735.26	(4 236 273.21)	(2 394 098.16)	(1 842 175.04)
06/21	9.47%	48 719 580.22	(4 236 273.21)	(2 306 871.18)	(1 929 402.03)
12/21	9.47%	46 790 158.19	(4 236 273.21)	(2 215 513.99)	(2 020 759.22)
06/22	9.47%	44 789 398.98	(4 236 273.21)	(2 119 831.04)	(2 116 442.17)
12/22	9.47%	42 652 966.81	(4 236 273.21)	(2 019 617.50)	(2 216 655.70)
06/23	9.47%	40 436 301.11	(4 236 273.21)	(1 914 658.86)	(2 321 614.35)
12/23	9.47%	38 114 686.76	(4 236 273.21)	(1 804 730.42)	(2 431 542.79)
06/24	9.47%	35 683 143.97	(4 236 273.21)	(1 689 586.87)	(2 546 676.34)
12/24	9.47%	33 136 467.63	(4 236 273.21)	(1 569 011.74)	(2 667 261.46)
06/25	9.47%	30 469 206.16	(4 236 273.21)	(1 442 716.91)	(2 793 556.30)
12/25	9.47%	27 675 649.87	(4 236 273.21)	(1 310 442.02)	(2 925 831.19)
06/26	9.47%	24 749 818.68	(4 236 273.21)	(1 171 903.91)	(3 064 369.29)
12/26	9.47%	21 685 449.39	(4 236 273.21)	(1 026 806.03)	(3 209 467.18)
06/27	9.47%	18 475 982.21	(4 236 273.21)	(874 837.76)	(3 361 435.45)
12/27	9.47%	15 114 546.76	(4 236 273.21)	(715 673.79)	(3 520 599.42)
06/28	9.47%	11 593 947.35	(4 236 273.21)	(548 973.41)	(3 687 299.80)
12/28	9.47%	7 906 647.55	(4 236 273.21)	(374 379.76)	(3 861 893.45)
06/29	9.47%	4 044 754.10	(4 236 273.21)	(191 519.11)	(4 044 754.10)

TRANSCHE 2 (2019/2020)

Balance	Scheduled Payment	Interest Portion	Principal Portion
54 000 000.00	(4 524 345.38)	(2 556 900.00)	(1 967 445.38)
52 032 554.62	(4 524 345.38)	(2 463 741.46)	(2 060 603.92)
49 971 950.71	(4 524 345.38)	(2 368 171.87)	(2 158 173.51)
47 813 777.20	(4 524 345.38)	(2 263 982.35)	(2 260 363.03)
45 553 414.17	(4 524 345.38)	(2 156 954.16)	(2 367 391.22)
43 186 022.96	(4 524 345.38)	(2 044 858.19)	(2 479 487.19)
40 706 535.77	(4 524 345.38)	(1 927 454.47)	(2 596 890.91)
38 109 644.86	(4 524 345.38)	(1 804 491.68)	(2 719 853.69)
35 389 791.17	(4 524 345.38)	(1 675 706.61)	(2 848 638.76)
32 541 152.40	(4 524 345.38)	(1 540 823.57)	(2 983 521.81)
29 557 630.59	(4 524 345.38)	(1 399 553.81)	(3 124 791.57)
26 432 839.52	(4 524 345.38)	(1 251 594.93)	(3 272 750.45)
23 160 088.57	(4 524 345.38)	(1 096 630.19)	(3 427 715.18)
19 732 373.39	(4 524 345.38)	(934 327.88)	(3 590 017.50)
16 142 355.89	(4 524 345.38)	(764 340.55)	(3 760 004.83)
12 382 351.07	(4 524 345.38)	(586 304.32)	(3 938 041.05)
8 444 310.02	(4 524 345.38)	(399 838.08)	(4 124 507.30)
4 319 802.72	(4 524 345.38)	(204 542.66)	(4 319 802.72)

TRANSCHE 3 (2020/2021)

Balance	Scheduled Payment	Interest Portion	Principal Portion
54 000 000.00	(4 889 035.69)	(2 556 900.00)	(2 332 135.69)
51 667 864.31	(4 889 035.69)	(2 446 473.38)	(2 442 582.31)
49 225 302.00	(4 889 035.69)	(2 330 818.05)	(2 558 217.64)
46 667 084.37	(4 889 035.69)	(2 209 666.44)	(2 679 349.24)
43 987 735.12	(4 889 035.69)	(2 082 819.26)	(2 806 216.43)
41 181 518.70	(4 889 035.69)	(1 949 944.91)	(2 939 090.78)
38 242 427.92	(4 889 035.69)	(1 810 778.96)	(3 078 256.72)
35 164 171.19	(4 889 035.69)	(1 665 023.51)	(3 224 012.18)
31 940 159.01	(4 889 035.69)	(1 512 366.53)	(3 376 689.16)
28 563 469.86	(4 889 035.69)	(1 352 481.24)	(3 536 554.44)
25 026 935.42	(4 889 035.69)	(1 185 025.39)	(3 704 010.29)
21 322 925.12	(4 889 035.69)	(1 009 640.50)	(3 879 395.18)
17 443 529.94	(4 889 035.69)	(825 951.14)	(4 063 084.54)
13 380 445.39	(4 889 035.69)	(633 564.09)	(4 255 471.60)
9 124 973.80	(4 889 035.69)	(432 067.51)	(4 456 968.18)
4 668 005.62	(4 889 035.69)	(221 030.07)	(4 668 005.62)

SUMMARY OF ANTICIPATED TOTAL COST

Period	Interest Rate	Balance	Payment	Interest	Capital
12/19	9.47%	54 000 000.00	(4 236 273.21)	(2 556 900.00)	(1 679 373.21)
06/20	9.47%	52 320 626.79	(4 236 273.21)	(2 477 381.68)	(1 758 891.53)
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12/24	9.47%	33 136 467.63	(4 236 273.21)	(1 569 011.74)	(2 667 261.46)
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12/25	9.47%	27 675 649.87	(4 236 273.21)	(1 310 442.02)	(2 925 831.19)
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12/28	9.47%	7 906 647.55	(4 236 273.21)	(374 379.76)	(3 861 893.45)
06/29	9.47%	4 044 754.10	(4 236 273.21)	(191 519.11)	(4 044 754.10)
<b>TOTALS:</b>					<b>(244 388 251.96) (82 388 251.90) (162 000 000.00)</b>



## **LOAN AGREEMENT**

made and entered into by and between

**DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED**

and

**OVERSTRAND LOCAL MUNICIPALITY**

in respect of funding the

**Capital Programme 2018/19, 2019/20, 2020/21**



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**SUMMARY**

1	LOAN AMOUNT	:	R162 000 000 (one hundred and sixty two million Rand)
2	LOAN PERIOD	:	10 years
3	FIXED INTEREST RATE	:	See Clause 6
4	INTEREST GRACE PERIOD	:	Nil
5	CAPITAL REPAYMENT	:	20 Half-Yearly instalments, commencing on the last day of the half-year following the half year during which first disbursement was made.
6	INTEREST REPAYMENT	:	20 Half-Yearly instalments, commencing on the last day of the Half-year following the half year during which first disbursement was made.
7	PROGRAMME FILE NO.	:	12008161

## 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. **"Availability Period"** means from the CP Fulfilment Date up until June 2021;

1.1.5. **"Base Rate"** means R2023 Government Bond rate;

1.1.6. **"Borrower"** means the Overstrand Local Municipality, a municipality established or deemed to be established in terms of Section 12 of the Local Government: Municipal Structures Act 117 of 1998, as amended from time to time;

1.1.7. **"Borrower's Account"** means the bank account with the following details:

Account Holder: Overstrand Municipality

Bank: ABSA Bank

Account Number: 3220 000 035

Branch: ABSA PBLCS W/C

Branch Code: 334812

1.1.8. **"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;

1.1.9. **"Breakage Costs"** means the amount (if any) determined by the DBSA by which:

1.1.9.1. the interest (but excluding the Fixed Lending 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. "**Cancellation Fee**" means an amount equal to 0.5% (nought comma five percent) of the Capital or a portion of the cancelled Capital;
- 1.1.11. "**Capital**" means an amount of R162 000 000 (one hundred and sixty two million Rand);
- 1.1.12. "**Change in Law**" means any implementation, introduction, abolition, withdrawal or variation of any applicable laws and/or regulations;
- 1.1.13. "**Commitment Fee**" means an amount equal to 0.5% (nought comma five percent) per annum;
- 1.1.14. "**Cost of Funding Margin**" means the costs that the DBSA incurs in acquiring its requisite liquidity and is quoted above the Base Rate and as determined and fixed 2 days prior to each Disbursement;
- 1.1.15. "**Conditions Precedent**" means the conditions precedent contained in clause 5 of this Agreement;
- 1.1.16. "**Court**" means any court of law having jurisdiction;
- 1.1.17. "**CP Fulfilment Date**" means the date on which the DBSA notifies the Borrower pursuant to clause 5.1 (*First Disbursement*) that it has received all the documents and evidence listed therein in form and substance satisfactory to it;
- 1.1.18. "**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;
- 1.1.19. "**DBSA Safeguards**" means the DBSA safeguards found on <https://www.dbsa.org/EN/InvestorRelations/Environmental%20Appraisal%20Documents/DBSA%20Environmental%20and%20Social%20Safeguard%20Standards%20Report.pdf>;

- 1.1.20. **"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;
- 1.1.21. **"Default Interest"** means any interest which accrues at the Default Rate in terms of this Agreement;
- 1.1.22. **"Default Rate"** means the Interest Rate plus 200 (two hundred) basis points;
- 1.1.23. **"Disbursement"** means any amount drawn down by the Borrower, and disbursed by the DBSA under and in terms of a Disbursement Request;
- 1.1.24. **"Disbursement Date"** means the date on which a Disbursement is stipulated to be made or actually made by the DBSA to the Borrower;
- 1.1.25. **"Disbursement Request"** means a notice substantially in the form annexed hereto marked "Annexure A" (*Form of Request for Disbursement*);
- 1.1.26. **"Disbursement Schedule"** means the Disbursement schedule annexed hereto marked "Annexure B" (*Disbursement Schedule*);
- 1.1.27. **"Discretionary Revenue"** means the total revenue minus:
- 1.1.27.1. conditional fiscal transfers;
  - 1.1.27.2. restricted fiscal transfers;
  - 1.1.27.3. accounting gains,
- as reflected in the Statement of Financial Performance.
- 1.1.28. **"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;

- 1.1.29. "**Event of Default**" means any event of default as envisaged in clause 17 (*Events of Default*) below;
- 1.1.30. "**Facility**" means the loan facility made available under this Agreement as described in clause 2.2;
- 1.1.31. "**FICA**" means the Financial Intelligence Centre Act No. 38 of 2001, as amended from time to time;
- 1.1.32. "**Finance Documents**" means all the finance documents, including completely without limitation:
- 1.1.32.1. this Agreement;
  - 1.1.32.2. the Disbursement Request(s);
  - 1.1.32.3. all material documents in respect of the Programme, as identified by the DBSA, in its sole discretion, as a Finance Document;
- 1.1.33. "**Financial Year**" means the financial year of the Borrower ending on 30 June of each year;
- 1.1.34. "**First Capital and Interest Payment Date**" means 31 December 2019;
- 1.1.35. "**Fixed Lending Margin**" means 46 (forty six) basis points, expressed as a percentage rate, per annum;
- 1.1.36. "**Half-Yearly**" means from the 1<sup>st</sup> day of January to the 30<sup>th</sup> day of June and/or from the 1<sup>st</sup> day of July to the 31<sup>st</sup> day of December during the same calendar year;
- 1.1.37. "**Interest Payment Date**" means the last Business Day of each Interest Period;
- 1.1.38. "**Interest Period**" means each period of 6 (six) Months commencing on 1 January or 1 July of each calendar year, except that, in respect of the first Interest Period, Interest Period shall mean the period beginning on the date of first Disbursement, , ending on the First Capital and Interest Payment Date;
- 1.1.39. "**Interest Rate**" means the interest rate determined in terms of clause 6.2 of this Agreement;
- 1.1.40. "**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;



- 1.1.41. **“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;
- 1.1.42. **“Loan Period”** means a period of 10 (ten) years from the CP Fulfilment Date and such date to be confirmed in writing by the DBSA;
- 1.1.43. **“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:
- 1.1.43.1. the business, operations, property, condition (financial or otherwise) or prospects of the Borrower; or
  - 1.1.43.2. the ability of the Borrower to perform its obligations in terms of this Agreement; or
  - 1.1.43.3. the validity or enforceability of this Agreement or the rights or remedies of the DBSA hereunder; or
  - 1.1.43.4. the right or remedies of DBSA in terms of and pursuant to this Agreement; or
  - 1.1.43.5. South African or international monetary, financial, political, or economic conditions or the DBSA’s access to the relevant local or international capital markets;
- 1.1.44. **“Mayor”** means in relation to:
- 1.1.44.1. 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
  - 1.1.44.2. a municipality with an executive committee, means the councillor elected as the mayor of the municipality in terms of section 48 of the Municipal Structures Act.
- 1.1.45. **“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:
- 1.1.45.1. 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 directly preceding Business Day; and

1.1.45.2. 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;

1.1.46. "**MTREF**" means the Medium Term Revenue Expenditure Framework as prescribed by National Treasury;

1.1.47. "**MFMA**" means the Municipal Finance Management Act No. 56 of 2003, as amended from time to time;

1.1.48. "**Parties**" means the DBSA and the Borrower, and "**Party**" shall as the context requires, be a reference to either one of them;

1.1.49. "**Post-Financing Support**" means services and products to be provided by the DBSA to the Borrower from the Signature Date (as agreed between the Parties) to support projects implementation and post-investment monitoring which may, *inter alia*, include the following;

1.1.49.1. Pre-investment support:

1.1.49.1.1. advisory services on pre-implementation planning;

1.1.49.1.2. compliance with technical and regulatory matters;

1.1.49.1.3. compliance with Conditions Precedent as provided for under clause 5 of this Agreement; and

1.1.49.1.4. review of technical documentation to ensure norms and standards are met;

1.1.49.2. Implementation support:

1.1.49.2.1. oversight on implementation of projects, including those funded by fiscal transfers;

1.1.49.2.2. projects progress monitoring (quality, time, cost);

1.1.49.2.3. review and quality assurance of progress reports to National Treasury and Co-operative Governance and Traditional Affairs;

1.1.49.2.4. preparation and /or review of projects claims;

- 1.1.49.2.5. guidance and/or assistance with the formulation of operations and maintenance strategy for the new infrastructure; and
- 1.1.49.2.6. any other solutions, which may assist the Borrower, in conjunction with other stakeholders (Municipal Infrastructure Support Agency, South African Local Government Association etc) in reaching projects milestones in a timeous and efficient manner and to improve service delivery in general;
- 1.1.50. **"Potential Event of Default"** means any event, envisaged in clause 17 (*Events of Default*) which will become an Event of Default:
- 1.1.50.1. after the expiry of the applicable cure period set out in respect of such event in clause 17 (*Events of Default*); or
- 1.1.50.2. 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*);
- 1.1.51. **"Programme"** means the Capital Expenditure Projects approved by the Municipal Council of the Borrower on which the MTREF budget] for 2018/19, 2019/20 and 2020/21 financial years was approved, as more fully described in "Annexure C" (*Project List*);
- 1.1.52. **"Rand"** and **"R"** means the lawful currency of the Republic of South Africa;
- 1.1.53. **"Signature Date"** means the date on which this Agreement is signed by the last Party signing it in time;
- 1.1.54. **"Statement of Financial Performance"** means the Borrower's accounting summary which details its revenues, expenses and net income.
- 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. **"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
- 1.1.57. **"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 the interpretation clause.
- 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.
- 1.20. This Agreement shall bind the Parties' successors-in-title or in law.

## 2. RECORDAL

- 2.1. The Borrower seeks funding in respect the Programme.
- 2.2. The DBSA has, after performing the necessary appraisal of the Borrower, approved the Borrower's application for a loan for a maximum sum of R162 000 000 (one hundred

and sixty two 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. an amount not exceeding, in aggregate, the Capital;

3.1.2. disbursed in accordance with the Disbursement Schedule; and

3.1.3. utilised exclusively for the Programme, but notwithstanding anything contained herein, the DBSA shall be under no obligation to monitor or verify the application of any amount borrowed hereunder.

3.2. The 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 within 6 (six) Months from the Signature Date.

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. a certified copy of the Council resolution of the Borrower approving the 2018/19 MTREF budget;
- 5.1.2. a certified copy of a resolution of the Council of the Borrower in terms of section 46 of the MFMA:
  - 5.1.2.1. signed by the Mayor;
  - 5.1.2.2. approving the terms of the Finance Documents; and
  - 5.1.2.3. authorising the Accounting Officer to execute the Finance Documents or any other document which creates or acknowledges the Loan on its behalf;
- 5.1.3. proof from the Accounting Officer that the Borrower has complied with the provisions of section 46 (3) of the MFMA;
- 5.1.4. proof that the Provincial or National Treasury has been advised of the Loan and the projects to be funded by the DBSA under the Programme;
- 5.1.5. all FICA documents from the Borrower as required by legislation;
- 5.1.6. a Disbursement Request from the Borrower, which shall have been received during the Availability Period; and
- 5.1.7. an approved 3 (three) year Disbursement Schedule signed by the Accounting Officer.



**5.2. All Disbursements**

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

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

**6. INTEREST**

- 6.1. Interest will be capitalised for each Disbursement made by the DBSA to the Borrower pursuant to a Disbursement Request, on the Interest Payment Date and in terms of this clause 6.
- 6.2. The Interest Rate for each Disbursement will be determined 2 (two) days before Disbursement of each draw and will consist of the appropriate Base Rate plus the Cost of Funding Margin and the Fixed Lending Margin.

- 6.3. Default Interest, to the extent applicable, will be determined in accordance with clause 6.5 (*Default Interest*).
- 6.4. Interest on the Loan under this Agreement shall:
- 6.4.1. subject to clause 6.5 (*Default Interest*), accrue from day to day;
  - 6.4.2. be calculated on the amount of the Loan Outstanding from time to time on the basis of the actual number of days elapsed and a 365 day year;
  - 6.4.3. be calculated and payable on an Interest Payment Date;
  - 6.4.4. be calculated on a nominal annual compounded Half-Yearly basis;
  - 6.4.5. Interest repayment(s) shall commence on the First Capital and Interest Payment Date; and
  - 6.4.6. accrue from date of first Disbursement.
- 6.5. **Default Interest:**
- 6.5.1. If the Borrower fails to pay an amount payable by it in terms of this Agreement on an Interest Payment Date (any such amount being an Overdue Amount), interest shall accrue on the Overdue Amount from the due date up to the date of actual payment of such Overdue Amount (both before and after judgment (if any) at the Default Rate.
  - 6.5.2. 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.
  - 6.5.3. Default Interest shall be payable on demand, or if not demanded, on the first Interest Payment Date, after such failure to pay.

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- 6.5.4. The provisions of this clause 6.5 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:
- 8.1.1. the Capital in Half-Yearly instalments, commencing on the First Capital and Interest Payment Date.
- 8.1.2. the Interest in 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.

## 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 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 DBSA within 3 (three) Business Days of demand by 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.
- 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 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 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 DBSA to the Borrower.
- 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 DBSA.

## 11. SUSPENSION/CANCELLATION OR REDUCTION OF DISBURSEMENTS

### 11.1. 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 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, 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.

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- 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 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:

- 12.2.1.1. 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
- 12.2.1.2. the DBSA shall be entitled to increase the Fixed Lending Margin by such percentage as shall be necessary to compensate the DBSA for such reduction in return. The increase in Fixed Lending



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.

12.2.2. In the event that such revised funding terms referred to in clause 12.2.1.2, in the reasonable opinion of the Borrower, shall have an adverse impact on the financial sustainability of the Borrower, the Borrower shall have the right to reject such revised terms and cancel the Facility, within the Availability Period, without incurring a Cancellation Fee.

12.2.3. If an Economic Failure occurs that in the opinion of the DBSA effects the DBSA's ability to make any advance or to maintain any funding previously advanced, including, but not limited to the DBSA being unable to obtain matched funding in the market for its obligations under this Agreement, the DBSA shall be entitled to withhold further Disbursements and demand repayment of advances made prior to occurrence of the Economic Failure.

### 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 3 (three) 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 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 warrants that it has obtained and in future will or cause to be obtained from the relevant government authorities all applicable Authorisations (including all Authorisations which are or may be required in terms of the relevant environmental and/or water legislations). The Borrower agrees to provide the DBSA with copies of any such Authorisations as received.
- 14.3.2. 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.
- 14.3.3. The Borrower will submit an Initial Safeguard Report in line with DBSA Safeguards. The Safeguards Report will include a Commitment Plan to address any gaps, as agreed with DBSA Investment Officer. The DBSA team environmental analyst will assist the Borrower with the Safeguard Report.
- 14.3.4. The Borrower will identify targets and indicators, for all key environmental objectives of the projects falling under this Programme. These targets and indicators will be aligned with the Sustainable Development Goals and DBSA Development Results Reporting needs which will be agreed upon with DBSA Investment Officer and relevant team members. The targets will address socially and environmentally net positive outcomes for the Programme as a whole.
- 14.3.5. The Borrower will submit an Annual Safeguard Report which will be undertaken by a suitably qualified professional, or use in-house resources who will provide an independent review of all activities during the year in accordance with DBSA Safeguards and global good practice standards (the International Finance Corporation (IFC) Global Good Practice Industry Sector Standards can be found on the IFC website. The Safeguard Report will document the action plan and budget to speedily address any deviations or outstanding gaps, as approved by the Borrower and DBSA Investment Officer.
- 14.3.6. 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.

- 14.3.7. The Borrower undertakes to 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.
- 14.3.8. The Borrower undertakes to cover any cost overruns (if any) and/or secure additional funding in order to complete the projects funded by the DBSA.
- 14.3.9. The Borrower undertakes to notify DBSA as soon as possible should they decide or intend to suspend any of the projects under the Programme funded through this Facility.
- 14.3.10. 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.
- 14.3.11. The Borrower will make adequate provision(s) for the Loan repayments.
- 14.3.12. 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.
- 14.3.13. The Borrower will arrange suitable insurance to cover any possible damage and such insurance will be in line with section 13 of the MFMA.
- 14.3.14. The Borrower shall request the DBSA's written approval before taking up any additional debt.

#### 14.4. **The Borrower and the Programme**

The Borrower shall:

- 14.4.1. comply with all laws applicable to it;
- 14.4.2. 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 to 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;
- 14.4.3. permit representatives or nominees of the DBSA, at reasonable times, access to the Programme site, 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);

- 14.4.4. 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;
- 14.4.5. 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;
- 14.4.6. use the Loan exclusively for the Programme; and
- 14.4.7. maintain separate records for the use of the proceeds of the Loan and make such records, as the DBSA may request, available.

#### 14.5. Financial Statements

The Borrower shall deliver its audited annual financial statements to the DBSA within 210 (two hundred and ten) calendar days of the last day of each Financial Year.

#### 14.6. Financial Covenant

- 14.6.1. The Borrower hereby undertakes that it shall ensure that at any time during its MTREF period, its total Debt Service shall not exceed 15% of Discretionary Revenue.
- 14.6.2. Notwithstanding the foregoing, in the event that the Borrower reasonably foresees at any time during an MTREF period, that its total Debt Service may exceed 15% of its Discretionary Revenue, the Borrower undertakes to notify the DBSA accordingly and the Parties shall discuss, in good faith the Borrower's ability to honour its obligations under this Agreement, provided that any such discussions shall not prejudice any rights and entitlements the DBSA has in terms of this Agreement.

### 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 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;
- 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



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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 5 (five) Business 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 it has entered into with the DBSA, if such representation and/or warranty is capable of being remedied, fails to remedy it within 10 (ten) 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 28 (twenty eight) 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 funded under the Programme or suspends the operation of any project funded under the Programme for a period of more than 3 (three) Months;
  - 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. POST-FINANCING SUPPORT

- 18.1 Over and above the DBSA's role as the DBSA, the DBSA is committed to ensure that the Borrower has the required support needed for the implementation of the various projects under the Programme. To this end, the DBSA will make Post-Financing Support available to the Borrower, at no additional cost, to ensure that the Borrower successfully achieves the objectives of the funded projects under the Programme.

- 18.2 DBSA's Post-Financing Support, as defined, will focus on assisting the Borrower and providing guidance in the implementation planning including matters of regulatory compliance, in progress monitoring and oversight, in quality, time and cost management, in preparation and/or review of projects claims, in projects reporting processes and in the formulation of operations and maintenance strategy for the new infrastructure.
- 18.3 For the avoidance of doubt, the Post-Financing Support shall be provided by the DBSA at no additional cost to the Borrower. However, should the Borrower require additional services outside the scope of Post-Financing Support (as defined) as agreed by the Parties, such services shall be provided or facilitated by the DBSA at a fee to be agreed between the Parties.

## 19. 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.

## 20. 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.

## 21. 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, 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.

**22. 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.

**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 High Court of South Africa, Gauteng Division, 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 herefrom.

**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 shall pay to the DBSA within 14 (fourteen) days from written demand, the amount of all costs and expenses (including legal fees) reasonably incurred by the DBSA in connection with the negotiation, preparation, printing, execution, filing and registration of:

27.1.1 this Agreement and any other documents referred to in this Agreement; and

27.1.2 any other Finance Documents executed after the Signature Date.

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 and email addresses shall be as follows:

### 28.2.1 DBSA:

Physical: 1258 Lever Road

Headway Hill

Halfway House

Midrand

Postal: PO Box 1234,

Halfway House

1685

Telephone: (011) 313 3990

Facsimile: (011) 313 3086

E-mail: [claimadmin@dbsa.org](mailto:claimadmin@dbsa.org)

Attention: The Group Executive, SA Ops; and

28.2.2 **Borrower:** Overstrand Municipality

Physical: 1 Harmony Avenue, Hermanus 7201

Postal: P.O Box 20  
Hermanus  
7200

Telephone: (028) 313 8000

Facsimile: (028) 312 1894

E-mail: [enquiries@overstrand.ov.za](mailto:enquiries@overstrand.ov.za)

Attention: Municipal Manager - Mr CC Groenewald

or at such other address or email 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;

28.3.3 if sent by email during business hours, be presumed to have been received on the date of successful transmission of the email. Any email sent after business hours or on a day which is not a business day will be presumed to have been received on the following business day.

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 or email 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.

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**SIGNATURES**

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

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

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Place: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

For: **OVERSTRAND LOCAL MUNICIPALITY**

Signature: \_\_\_\_\_  
in his/her capacity as Accounting Officer

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Place: \_\_\_\_\_

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*] between the Overstrand Local 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 date of the Loan Agreement 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

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- 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: \_\_\_\_\_

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**ANNEXURE B: DISBURSEMENT SCHEDULE**

**[To be inserted once CP 5.1.7 is received.]**

ANNEXURE C: PROJECT LIST

CAPITAL BUDGET 2018/19 - 2020/21 (EXTERNAL LOAN FUNDING)

Area		Local Area	Ward	Project Description	Project Manager	Funding Source	2018/19 BUDGET	2019/20 BUDGET	2020/21 BUDGET
							COUNCIL FUNDED	COUNCIL FUNDED	COUNCIL FUNDED
<b>ELECTRICITY</b>									
Gauteng	Franshoek	Ward 01	FRANSKRAAL, KLEINEMAN & BIRKENHEAD: MV LV & MINISUB UPGRADE D Maree	EL19/20		14 580 000	13 000 000	15 000 000	
Gauteng	Gansbaai	Ward 01 & 02	KRKAAL, KBAAI & BHEAD: NEW 66/11KV SUBSTATION	D Maree		2 500 000	2 500 000	15 000 000	
Stardord	Stardord	Ward 11	STANFORD MV UPGRADE	D Maree		1 000 000	750 000		
Hermanus	Hermanus	Ward 03	HERMANUS MV & LV UPGRADE/REPLACEMENT	K J Plassis		8 500 000	5 000 000		
Kleinmond	Kleinmond	Ward 09	KLEINMOND: MV & LV NETWORK UPGRADE	K J Plassis		1 750 000	2 000 000		
Hawston	Hawston	Ward 08	HAWSTON: MV & LV UPGRADE/REPLACEMENT	K J Plassis		1 750 000	2 000 000		
Overstrand	Overstrand	Overstrand	ELECTRICITY TRANSFORMERS(CAPITAL REPLACEMENT CONTINGENCY)	EL 19/20		1 000 000	1 000 000		
<b>WATER</b>									
Overstrand	Overstrand	Overstrand	WATER MASTER PLAN IMPLEMENTATION	H Bignaud	EL-INFRA LEVY	23 300 000	26 600 000	25 000 000	
Hermanus	Hermanus	Ward 03	DIRECT WASTE WATER RE-USE PLANT	H Bignaud	EL21	10 000 000	10 000 000	10 000 000	
Gansbaai	Buffelsbaai	Ward 11	WATER TREATMENT PLANT FOR BUFFELJAGSBAAI	H Bignaud	EL20		2 000 000		
Overstrand	Overstrand	Overstrand	REFURBISHMENT OF BULK WATER PIPELINES	H Bignaud	EL21			900 000	
Overstrand	Overstrand	Overstrand	FENCING AT WATER INSTALLATIONS	H Bignaud	EL19/20/21	800 000	700 000	700 000	
Overstrand	Overstrand	Overstrand	REPLACEMENT OF OVERSTRAND WATER PIPES	H Bignaud	EL20		2 800 000		
H&M	Multi-area H&M	Multi-area	BUFFELS RIVER AND DE BOS DAM INTAKE STRUCTURES AND EQUIPMENT	H Bignaud	EL19/20	1 200 000	1 300 000	400 000	
Overstrand	Overstrand	Overstrand	WATER FACILITIES (CONTINGENCY )	H Bignaud	EL19/20/21	200 000	300 000		
Hermanus	Hermanus	Ward 04	UPGRADE HERMANUS WELL FIELDS PHASE 1	H Bignaud	EL 19/20	7 000 000	4 000 000		
Stardord	Stardord	Ward 11	WATER STABILIZATION PLANT FOR STANFORD	H Bignaud	EL 19/20	1 500 000	1 000 000		
Stardord	Pringle Bay	Ward 10	NEW RESERVOIR FOR PRINGLE BAY	EL 19		2 600 000		2 000 000	
Kleinmond	KM & B&Sbaai	Ward 10	REFURBISHMENT OF KLEINMOND & BUFFELS RIVER WTW	EL20/21			2 400 000		
Kleinmond	Kleinmond	Ward 09	KLEINMOND PALMIET PUMP STATION AND BULK PIPELINE REFURBISH	H Bignaud	EL20		2 000 000		
<b>SEWERAGE</b>									
Overstrand	Overstrand	Overstrand	SEWERAGE FACILITIES (CONTINGENCY)	H Bignaud	EL19/20	16 200 000	14 400 000	14 000 000	
Kleinmond	Kleinmond	Ward 09	KLEINMOND - SEWER NETWORK EXTENSION	H Bignaud	EL19/20/21	500 000	600 000		
Hermanus	Onus	Ward 13	UPGRADING OF KIDBROOKE PIPELINE	H Bignaud	EL 19	4 000 000	5 000 000	5 000 000	
Kleinmond	Kleinmond	Ward 11	WWTW UPGRADE - STANFORD	H Bignaud	EL 19	1 800 000			
Kleinmond	Kleinmond	Ward 10	KLEINMOND WWTW REFURBISH & UPGRADE	H Bignaud	EL21	4 850 000		2 500 000	
Kleinmond	Kleinmond	Ward 09	REHABILITATE MAIN BULK SEWER TO WWTW PH1	H Bignaud	EL20/21		4 000 000	2 000 000	
Overstrand	Overstrand	Overstrand	FENCING AT SEWERAGE INSTALLATIONS	H Bignaud	EL19/20	800 000	800 000	4 000 000	
Overstrand	Overstrand	Overstrand	SEWERAGE NETWORK EXTENSION AND REPLACEMENT	H Bignaud	EL-INFRA LEVY	4 000 000	4 000 000	4 000 000	
Overstrand	Overstrand	Overstrand	UPGRADING OF PUMPSTATIONS & RISING MAINS	H Bignaud	EL21			500 000	
Hermanus	Hermanus	Ward 03	EXTENSION OF SEWER LINE 12th STREET YOELKUP	H Bignaud	EL19	250 000			
<b>GRAND TOTAL</b>							<b>54 000 000</b>	<b>54 000 000</b>	<b>54 000 000</b>

<b>FUNDING:</b>		<b>54 000 000</b>	<b>54 000 000</b>	<b>54 000 000</b>
EXTERNAL LOAN 19/20/21 (GENERAL CAPITAL)		40 000 000	40 000 000	40 000 000
EXTERNAL LOAN (INFRA LEVY 2)		14 000 000	14 000 000	14 000 000
		<b>54 000 000</b>	<b>54 000 000</b>	<b>54 000 000</b>

**INFRASTRUCTURE INVESTMENT PROGRAMME FOR SOUTH  
AFRICA (IIPSA)**

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ANNEXURE C1/45 DBSA  
Development Bank  
of Southern Africa

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**DIRECT CAPITAL GRANT FACILITY AGREEMENT**

**ZAR 19 900 000**

for

**OVERSTRAND LOCAL MUNICIPALITY**

as Recipient

and

**THE EUROPEAN UNION AND THE GOVERNMENT OF SOUTH AFRICA**  
acting jointly as the primary sponsors of the Infrastructure Investment Programme for  
**South Africa**

acting through its representative

**DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED**

as Grantor



**INFRASTRUCTURE INVESTMENT PROGRAMME FOR SOUTH  
AFRICA (IIPSA)**



ANNEXURE C2/45



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**INFRASTRUCTURE INVESTMENT PROGRAMME FOR SOUTH  
AFRICA (IIPSA)**

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ANNEXURE C3/45



This Agreement is made between:

**Overstrand Local Municipality (Recipient);**

and

**The European Union and the Government of South Africa acting jointly as the primary sponsors of the Infrastructure Investment Programme for South Africa duly represented by their agent the Development Bank of Southern Africa Limited (Grantor).**

It is agreed as follows

**1. DEFINITIONS AND INTERPRETATION**

1.1. Definitions

In this Agreement:

- 1.1.1. **"AFD"** means Agence Française de Développement, a French industrial and commercial public entity ((etablissement Public a caractere Industrial et Commercial) whose registered office is at 5, Rue Roland Barthes, 75598 PARIS Cedex 12 – France, registered with the Paris Trade and Companies Register under number: 775 663 599;
- 1.1.2. **"Affiliate"** means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company;
- 1.1.3. **"Agreement"** means this Direct Capital Grant Facility Agreement and together with any Schedules annexed hereto, as amended from time to time in accordance with its terms;
- 1.1.4. **"Application"** means the application duly completed by the Recipient, attaching all the relevant schedules and documentation as prescribed, and submitted to the DBSA by the Recipient, dated [Insert];
- 1.1.5. **"Auditor"** means the Auditor General of South Africa;
- 1.1.6. **"Authorisation"** means an authorisation, consent, approval, resolution, licence, permit, filing, notarisation, directive lodgement or registration or any exemption from any of the aforesaid, by or with any Authority;



**INFRASTRUCTURE INVESTMENT PROGRAMME FOR SOUTH  
AFRICA (IIPSA)**

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ANNEXURE C4/45



- 1.1.7. **“Authority”** means any government or governmental, administrative, fiscal, monetary, central bank, judicial, regulatory or self-regulatory authority or body, department, commission, tribunal, agency or entity or any state owned or controlled authority, body, department, commission, tribunal, agency or entity which principally performs governmental or regulatory functions to whose jurisdiction any party to the this Agreement may be subject;
- 1.1.8. **“Availability Period”** means the period from and including the Signature Date up to and including 15 October 2020 provided the First Drawdown condition is met;
- 1.1.9. **“Business Day”** means a day (other than a Saturday, a Sunday or official public holiday) on which banks are open for general business in Johannesburg;
- 1.1.10. **“Certified Financial Statements”** means the audited consolidated financial statements of the Recipient for the financial year ended 30 June 2018;
- 1.1.11. **“Confidential Information”** means all information relating to the Recipient, or the Facility of which the Grantor becomes aware in its capacity as, or for the purpose of becoming the Grantor or which is received by the Grantor in relation to, or for the purpose of becoming a Grantor under this Agreement or the Facility from:
- 1.1.11.1. the Recipient; or
- 1.1.11.2. the Grantor, if the information was obtained by the Grantor directly or indirectly from any of its advisers,
- in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:
- 1.1.11.3. is or becomes public information other than as a direct or indirect result of any breach by that the Grantor of Clause 24 (Confidentiality); or





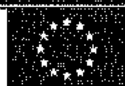
**INFRASTRUCTURE INVESTMENT PROGRAMME FOR SOUTH  
AFRICA (IIPSA)**

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ANNEXURE C5/45

- 1.1.11.4. is known by that the Grantor before the date the information is disclosed to it in accordance with Clauses 1.1.11.1 or 1.1.11.2 above or is lawfully obtained by the Grantor after that date, from a source which is, as far as the Grantor is aware, is unconnected with the Recipient and which, in either case, as far as the Grantor is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality;
- 1.1.12. **“DBSA”** means Development Bank of Southern Africa Limited (registration number 16/00157/00), a development financial institution reconstituted and incorporated in terms of section 2 of the Development Bank of Southern Africa Act, 1997, acting herein as representative of the Grantor;
- 1.1.13. **“Default”** means an Event of Default or any event or circumstance specified in Clause 18 (**Events of Default**) which would (with the expiry of any applicable grace period, the giving of notice, the making of any determination under this Agreement or any combination of any of the foregoing) be an Event of Default;
- 1.1.14. **“Development Result”** means the development results achieved in the Project in respect of each reporting period as provided for in clause 15.2;
- 1.1.15. **“DFI”** means a development finance institution;
- 1.1.16. **“Economically Viable”** measures the long term economic, environmental and social sustainability of a project, beyond narrow financial considerations. It considers the composite effects of a project on society at large, together with the optimal and efficient application of resources among competing uses to provide evidence that the recipients has assessed the economic viability of a potential investment by weighing up the negative and positive impacts of the project on the welfare of the society;
- 1.1.17. **“EIB”** means the European Investment Bank having its seat at 100 boulevard Kopnrud Adenauer, Luxembourg, Grand Duchy of Luxembourg;



**INFRASTRUCTURE INVESTMENT PROGRAMME FOR SOUTH  
AFRICA (IIPSA)**

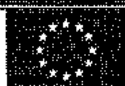
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ANNEXURE C6/45 DBSA

Development Bank  
of Southern Africa

- 1.1.18. **“Environment”** means humans, animals, plants and all other living organisms including the ecological systems of which they form part and the following media:
- 1.1.18.1. air (including, without limitation, air within natural or man-made structures, whether above or below ground);
  - 1.1.18.2. water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers); and
  - 1.1.18.3. land (including, without limitation, land under water);
- 1.1.19. **“Environmental Claim”** means any claim, proceeding, formal notice or investigation by any person in respect of any Environmental Law;
- 1.1.20. **“Environmental Law”** means any applicable law or regulation, that the Recipient is required to comply with, which relates to:
- 1.1.20.1. the pollution or protection of the Environment;
  - 1.1.20.2. harm to or the protection of human health;
  - 1.1.20.3. the conditions of the workplace; or
  - 1.1.20.4. the generation, handling, storage, use, release, emission or spillage of any substance which, alone or in combination with any other, is capable of causing harm to the Environment, including, without limitation, any waste;
- 1.1.21. **“Environmental Permits”** means any permit and other Authorisation and the filing of any notification, report or assessment required under any Environmental Law for the operation of the business of the Recipient conducted on or from the properties owned or used by the Recipient;
- 1.1.22. **“Event of Default”** means any event or circumstance specified as such in Clause 18 (**Events of Default**);



**INFRASTRUCTURE INVESTMENT PROGRAMME FOR SOUTH  
AFRICA (IIPSA)**



ANNEXURE G/45 DBSA  
Development Bank  
of Southern Africa

- 1.1.23. **“European Union”** means the political union of 28 European countries for the purpose of achieving political and economic integration, created on 1 November 1993 with the coming into force of the Maastricht Treaty;
- 1.1.24. **“EU Portion”** means the portion of the Facility funded by the European Union, being ZAR 19 900,000;
- 1.1.25. **“Facility”** means the Funding made available under this Agreement as described in Clause 3 (**The Facility**);
- 1.1.26. **“First Drawdown”** means the date at which first draw is made from the facility, which should be within 6 (six) months of Signature Date;
- 1.1.27. **“Funding”** means funding made or to be made under the Facility or the principal amount outstanding for the time being of that funding;
- 1.1.28. **“Grantor”** means the European Union and the Government of South Africa acting jointly as the primary sponsors of the Infrastructure Investment Programme for South Africa acting through its representative DBSA;
- 1.1.29. **“Holding Company”** means, in relation to a person, any other person in respect of which it is a Subsidiary;
- 1.1.30. **“Implementation Phase”** means the time during the Availability Period during which the Recipient is required to begin implementation of the Projects in accordance with the Project List;
- 1.1.31. **“IIPSA Financing Agreement”** means Direct Capital Grant;
- 1.1.32. **“IIPSA Participating DFI”** means DBSA, KfW, AFD & EIB;
- 1.1.33. **“KfW”** means a public law institution (*Anstalt des öffentlichen rechts*) duly established and existing under German Law;
- 1.1.34. **“Material Adverse Effect”** means in the reasonable opinion of the Grantor a material adverse effect on:
- 1.1.34.1. the business, operations, property, condition (financial or otherwise) or prospects of the Recipient; or



**INFRASTRUCTURE INVESTMENT PROGRAMME FOR SOUTH  
AFRICA (IIPSA)**



ANNEXURE C8/45



- 1.1.34.2. the ability of the Recipient to perform any of its obligations under this Agreement;
- 1.1.35. **"MFMA"** means the Municipal Finance Management Act, 56 of 2003, as amended from time to time;
- 1.1.36. **"Month"** means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:
- 1.1.36.1. if the numerically corresponding day is not a Business Day, that period shall 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 immediately preceding Business Day; and
- 1.1.36.2. if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month;
- provided that the above rules will only apply to the last Month of any period;
- 1.1.37. **"Participating DFI"** means DBSA, KfW, AFD and EIB;
- 1.1.38. **"Parties"** means the parties to this Agreement and **"Party"** means either the Grantor or the Recipient as the context may require;
- 1.1.39. **"Procurement"** means procurement in terms of the Recipient's SCM policies accepted by the Grantor to procure Project Advisors;
- 1.1.40. **"Project"** means the Overstrand Local Municipality Electricity, Water and Waste Water Projects;
- 1.1.41. **"Project Advisors"** means the service providers appointed by the Recipient to implement the Projects during the Implementation Phase;
- 1.1.42. **"Project List"** means the details relating to the Funds set out in Schedule 4 (Project List);



**INFRASTRUCTURE INVESTMENT PROGRAMME FOR SOUTH  
AFRICA (IIPSA)**



ANNEXURE C9/45



- 1.1.43. **“Project Developer”** means the company appointed by the Recipient to implement the Project;
- 1.1.44. **“Recipient”** means Overstrand Local Municipality;
- 1.1.45. **“Related Funds”** means any fund or investment vehicle of any nature in which Development Bank of Southern Africa Limited or any of its Affiliates has any interest in whether as Grantor, manager, investor, partner or in any other capacity;
- 1.1.46. **“Relevant Jurisdiction”** means, in relation to the Recipient:
- 1.1.46.1. its Original Jurisdiction; and
- 1.1.46.2. any jurisdiction where it conducts its business;
- 1.1.47. **“Repeating Representations”** means each of the representations set out in Clauses 14.2, 14.3, 14.4, 14.5, 14.6, 14.7, 14.8, 14.9, 14.10, 14.11, 14.12, 14.13, and 14.15;
- 1.1.48. **“Representative”** means any delegate, agent, manager, administrator, nominee, attorney, trustee or custodian appointed by the Grantor;
- 1.1.49. **“Sanctioned Country”** means a country which is subject to general sanctions by a Sanctioning Body;
- 1.1.50. **“Sanctioned Entity”** means:
- 1.1.50.1. a person, country or territory which is listed on a Sanctions List or is subject to Sanctions;
- 1.1.50.2. a natural person which is ordinarily resident in a country or territory which is listed on a Sanctions List or is subject to Sanctions;
- 1.1.51. **“Sanctioning Body”** means:
- 1.1.51.1. the African Union;
- 1.1.51.2. the United Nations;

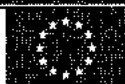


**INFRASTRUCTURE INVESTMENT PROGRAMME FOR SOUTH  
AFRICA (IIPSA)**



ANNEXURE C10/45

- each as amended, supplemented or substituted from time to time and any of their designated nationals or designated persons or entities (or equivalent), including, without limitation, the U.S Office of Foreign Assets Control of the U.S Department of the Treasury;
- 1.1.52. **“Sanctions”** means sanctions imposed from time to time by a Sanctioning Body;
- 1.1.53. **“Sanctions List”** means any of the lists of specifically designated nationals or designated persons or entities (or equivalent) held by a Sanctioning Body, each as amended, supplemented or substituted from time to time, or any other list of blocked persons in accordance with terrorism including the SDN List;
- 1.1.54. **“SCM”** means supply chain management;
- 1.1.55. **“SDN List”** means the Specially Designated Nationals and Blocked Persons List, as published by the United States Department of the Treasury Office of Foreign Asset Control from time to time, and available on the world-wide internet at the following website - <http://www.treas.gov/offices/enforcement/ofac/sdn/index.html> or any official successor website, which identifies terrorist organisations, individual terrorists and states which sponsor terrorism that are, in each instance, restricted from doing business with the United States of America and/or American companies and/or Americans;
- 1.1.56. **“Signature Date”** means the date of the signature of the Party last signing this Agreement;
- 1.1.57. **“South Africa”** means the Republic of South Africa;
- 1.1.58. **“Specified Time”** means a day or time determined by the Parties;
- 1.1.59. **“Subsidiary”** means a “subsidiary” as defined in the *Companies Act, 2008* and shall include any person who would, but for not being a “company” under the *Companies Act 2008*, qualify as a “subsidiary” as defined in the *Companies Act 2008*;



**INFRASTRUCTURE INVESTMENT PROGRAMME FOR SOUTH  
AFRICA (IIPSA)**



ANNEXURE C11/45



- 1.1.60. **"Taxes"** means all taxes (including value added tax), 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"
- 1.1.61. **"Utilisation"** means a utilisation of the Facility;
- 1.1.62. **"Utilisation Date"** means the date of a Utilisation, being the date on which the relevant Funding is to be made, pursuant to the Utilisation Notice;
- 1.1.63. **"Utilisation Notice"** means the notice given by the Recipient to the Grantor 15 Business Days before the date that it intends to utilise the Facility which date shall be the Utilisation Date;
- 1.1.64. **"Utilisation Request"** means a notice substantially in the form set out in Schedule 2 (**Requests**); and
- 1.1.65. **"ZAR"** and **"Rand"** each mean the lawful currency of South Africa.

**2. CONSTRUCTION**

- 2.1. Unless a contrary indication appears, any reference in this Agreement to:
- 2.1.1. the **Grantor**, the **Recipient** , or any other person shall be construed so as to include its successors in title, permitted cessionaries and permitted transferees to, or of, its rights and/or obligations under this Agreement;
- 2.1.2. **authority** includes any court or any governmental, intergovernmental or supranational body, agency, department or any regulatory, self-regulatory or other authority;
- 2.1.3. the use of the word **including** followed by specific examples will not be construed as limiting the meaning of the general wording preceding it, and the *eiusdem generis* rule must not be applied in the interpretation of such general wording or such specific examples;



**INFRASTRUCTURE INVESTMENT PROGRAMME FOR SOUTH  
AFRICA (IIPSA)**

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ANNEXURE C 12/45 DBSA  
Development Bank  
of Southern Africa

- 2.1.4. a **person** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
- 2.1.5. a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
- 2.1.6. a provision of law is a reference to that provision as amended or re-enacted; and
- 2.1.7. a time of day is a reference to Johannesburg time.
- 2.2. Section, Clause and Schedule headings are for ease of reference only.
- 2.3. A Default (other than an Event of Default) is **continuing** if it has not been remedied or waived and an Event of Default is **continuing** if it has not been remedied or waived.
- 2.4. Unless inconsistent with the context, an expression herein which denotes the singular includes the plural and vice versa.
- 2.5. The Schedules to this Agreement form an integral part hereof and a reference to a **Clause** or a **Schedule** is a reference to a clause of, or a Schedule to, this Agreement.
- 2.6. The rule of construction that, in the event of ambiguity, a contract shall be interpreted against the Party responsible for the drafting thereof, shall not apply in the interpretation of this Agreement.
- 2.7. This Agreement shall to the extent permitted by applicable law be binding on and enforceable by the administrators, trustees, permitted cessionaries, business rescue practitioners or liquidators of the Parties as fully and effectually as if they had signed this Agreement in the first instance and reference to any Party shall be deemed to include such Party's administrators, trustees, permitted cessionaries, business rescue practitioners or liquidators, as the case may be.





**INFRASTRUCTURE INVESTMENT PROGRAMME FOR SOUTH  
AFRICA (IIPSA)**

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ANNEXURE C13/15



- 2.8. Where figures are referred to in numerals and in words herein, if there is any conflict between the two, the words shall prevail.
- 2.9. Unless a contrary indication appears, where any number of days is to be calculated from a particular day, such number shall be calculated as including that particular day and excluding the last day of such period.

**3. THE FACILITY**

- 3.1. Subject to the terms of this Agreement, the Grantor makes available to the Recipient a ZAR 19 900,000 (nineteen million and nine hundred thousand Rands only) Facility.
- 3.2. The Facility is conditional on the Recipient sourcing a portion of the debt funding from an IIPSA Participating DFI, subject to meeting MFMA requirements by ensuring that the debt funding is procured on competitive terms.

**4. DURATION AND PURPOSE**

**4.1. Duration**

The Parties hereby agree that this Agreement shall commence on the Signature Date and shall:

- 4.1.1. continue for a period of 3 (three) years or such other period as may be agreed by the Parties in writing, subject to:
- 4.1.1.1. the fulfilment or waiver, as the case may be of the conditions precedent set out in Schedule 1 (*Conditions Precedent and Conditions Precedent to initial Utilisation*) hereto; and
- 4.1.1.2. there being not Event of Default; or
- 4.1.2. be terminated by the Grantor in accordance with its terms by giving the Recipient 30 (thirty) days' written notice.

**4.2. Purpose**

The Recipient shall apply all amounts advanced to it under the Facility towards the proven capital cost of the Projects or the interest cost of the funds raised to implement the Projects.



**INFRASTRUCTURE INVESTMENT PROGRAMME FOR SOUTH  
AFRICA (IIPSA)**

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ANNEXURE C 14/45 DBSA  
Development Bank  
of Southern Africa

**5. MONITORING**

The Grantor is entitled but is not bound to monitor or verify the application of any amount advanced pursuant to this Agreement.

**6. COST OVERRUNS AND OTHER FUNDING**

The Recipient shall be fully and solely responsible for the provision of all other funds necessary, for the successful execution of the Projects and any cost overruns related to the Projects.

**7. FINANCING OF THE PROJECTS**

7.1. Notwithstanding anything to the contrary provided herein, the Participating DFIs acknowledge and agree that the Recipient may be obliged to comply with statutory requirements and policies pertaining to the fair, equitable, competitive and transparent Procurement of goods and services, in particular the MFMA.

7.2. To the extent that the Recipient is subject to compliance with regulatory/statutory requirements, any assessment and appointment of preferred financiers shall be undertaken by the Recipient in accordance with and in compliance with applicable statutory requirements and policies.

7.3. Subject to compliance to the Recipient's regulatory requirements and obtaining prior Authorisation from the relevant authority, where applicable, and in relation to the debt to be acquired for the Projects the Recipient is required to source part of the debt funding from an IIPSA Participating DFI as per the IIPSA Financing Agreement and in accordance with clause 3.2 above.

**8. TAXES**

Any and all taxes arising out of or in connection with this Facility shall be funded by the Facility unless the Recipient is able to reclaim the amounts paid. The Recipient and the Grantor will endeavour to engage ways and means within South African tax law to optimise the utilisation of the Facility.



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**9. CONDITIONS OF UTILISATION**

- 9.1. For the sake of clarity, this Agreement shall not take effect until signed by the Recipient and shall lapse if not signed by the Recipient within [3 (three)] calendar months after approval by Council.
- 9.2. The Recipient may not deliver an Utilisation Request unless the Grantor has received all of the documents and other evidence listed in Schedule 1 (**Conditions Precedent**) in form and substance satisfactory to the Grantor within 6 (six) calendar months after the Signature Date. The Grantor shall notify the Recipient upon being so satisfied.
- 9.3. The conditions precedent listed in Schedule 1 (**Conditions Precedent**) are expressed solely for the benefit of the Grantor, who may, waive fulfilment of any of the conditions precedent listed in Schedule 1 (**Conditions Precedent**) or postpone the date for fulfilment thereof.
- 9.4. In waiving or postponing the conditions precedent listed in Schedule 1 (**Conditions Precedent**) pursuant to the provisions of 9.3, the Grantor shall be entitled to impose any alternative conditions on written notice to the Recipient.

**10. UTILISATION**

**10.1. Delivery of a Utilisation Request**

The Recipient may utilise the Facility:

- 10.1.1. upon the achievement of each relevant milestone as per the Project Implementation Plan; or
- 10.1.2. as agreed by the Grantor in its sole and absolute discretion upon the request of the Recipient,

by delivery to the Grantor of a duly completed Utilisation Request, attaching thereto any relevant documents, information and invoices evidencing the expenses incurred for the purposes of that Utilisation no later than 14 (fourteen) days prior to the expiry of the Utilisation Date.



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**10.2. Completion of a Utilisation Request**

Each Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:

- 10.2.1. the proposed Utilisation Date is a Business Day within the Availability Period; and
- 10.2.2. the currency and amount of the Utilisation comply with Clause 10.3 (Currency and amount).

**10.3. Currency and amount**

- 10.3.1. The currency specified in an Utilisation Request must be **ZAR**.
- 10.3.2. The amount of the proposed Funding must be an amount which is not more than the Facility.
- 10.3.3. The Grantor shall not be responsible for late payment interest and penalties.

**10.4. Grantor's participation**

If the conditions set out in this Agreement have been met, the Grantor shall make the Funding available by the Utilisation Date.

**10.5. Cancellation of Funding**

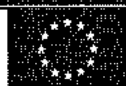
Any Funding which is unutilised shall be immediately cancelled at the end of the Availability Period.

**11. REPAYMENT**

The EU Portion is not repayable irrespective of whether the Projects proves to be Economically Viable or not.

**12. CANCELLATION**

**12.1. Fraud**



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If the Recipient is found guilty of the offense of fraud, the Grantor or DBSA shall be entitled to cancel the funding with immediate effect and the Recipient shall repay the total amount advanced under the Facility from the due date of payment until paid and shall pay any other amounts due under this Agreement.

**12.2. Illegality**

If it becomes unlawful, in any applicable jurisdiction, for a Grantor or DBSA to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in the Funding or it becomes unlawful for any Affiliate of the Grantor or DBSA to do so:

- 12.2.1. the Grantor or DBSA shall promptly notify the Recipient upon becoming aware of that event; and
- 12.2.2. upon the Grantor or DBSA notifying the Recipient, the Facility will be immediately cancelled; and
- 12.2.3. the Recipient shall repay that portion of the funding received but not yet committed or utilised within 60 days of the notice referred to in clause 12.2.2.

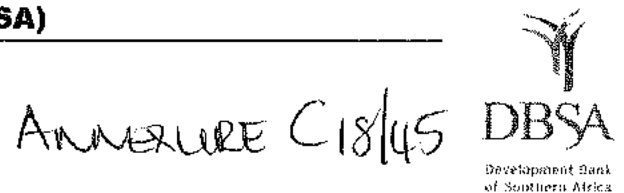
**13. INDEMNITY TO THE GRANTOR**

- 13.1. The Recipient hereby indemnifies the Grantor and every Representative appointed by the Grantor against and shall pay to the Grantor and each such Representative any cost, loss or liability incurred by the Grantor, or Representative as a result of:
  - 13.1.1. acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
  - 13.1.2. the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Grantor and each Representative appointed by the Grantor or by this Agreement or by law; or
  - 13.1.3. instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement.



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**14. REPRESENTATIONS**

14.1. The Recipient makes the representations and warranties set out in this Clause 14 (**Representations**) to the Grantor on the Signature Date.

**14.2. Status**

14.2.1. It is a municipality, duly constituted in terms of the provisions of the Local Government: Municipal Structures Act, No. 17 of 1998.

**14.3. Power and authority**

14.3.1. It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into this Agreement.

**14.4. Validity and admissibility In evidence**

14.4.1. All Authorisations necessary for the conducting its statutory functions and obligations have been obtained or effected and are in full force and effect.

**14.5. Financial Distress**

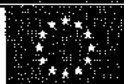
The Recipient is meeting its financial commitments and has not encountered any serious financial problems nor does it anticipate that it will have any problems in meeting its financial commitments.

**14.6. No misleading information**

14.6.1. Any factual information provided by the Recipient for the purposes of obtaining this Facility 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.

14.6.2. The financial projections contained in the Application provided by the Recipient and subsequent due diligence have been prepared on the basis of recent historical information and on the basis of reasonable assumptions.

14.6.3. Nothing has occurred or been omitted from the Application and subsequent due diligence and no information has been given or withheld that results in



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the information contained in the Application being untrue or misleading in any material respect.

14.6.4. All other written information provided by the Recipient (including its advisers) to the Grantor is true, complete and accurate in all material respects as at the date it was provided and is not misleading in any respect.

**14.7. No proceedings pending or threatened**

No litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which, if adversely determined, might reasonably be expected to have a Material Adverse Effect has or have (to the best of its knowledge and belief) been started or threatened against it.

**14.8. No breach of laws**

14.8.1. It has not breached any law or regulation which breach has or is reasonably likely to have a Material Adverse Effect.

14.8.2. No labour disputes are current or, to the best of its knowledge and belief (having made due and careful enquiry), is threatened against it which have or are reasonably likely to have a Material Adverse Effect.

**14.9. Environmental Laws**

14.9.1. It is in compliance with Clause 16.3 (**Environmental compliance**) and to the best of its knowledge and belief (having made due and careful enquiry) no circumstances have occurred which would prevent such compliance in a manner or to an extent which has or is reasonably likely to have a Material Adverse Effect.

14.9.2. No Environmental Claim has been commenced or (to the best of its knowledge and belief (having made due and careful enquiry)) is threatened against it where that claim has or is reasonably likely, if determined against it, to have a Material Adverse Effect.



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**14.10. Authorised Signatures**

Any person specified as its authorised signatory under Schedule 1 (**Conditions precedent**) or Clause 0 (**Information: miscellaneous**) is authorised to sign Utilisation Requests and other notices on its behalf.

**14.11. No immunity**

In any proceedings taken in South Africa or in any other jurisdiction, it will not be entitled to claim for itself or any of its assets immunity from suit, execution, attachment or other legal process in relation to this Agreement.

**14.12. Private and commercial acts**

Its execution of this Agreement constitutes, and its exercise of its rights and performance of its obligations hereunder will constitute, public and commercial acts done and performed for public and commercial purposes.

**14.13. Taxation**

14.13.1. It is not materially overdue in the filing of any Tax returns and it is not overdue in the payment of any amount in respect of Tax of ZAR 100,000 (one hundred thousand Rand only) (or its equivalent in any other currency) or more.

14.13.2. No claims or investigations are being, or are reasonably likely to be, made or conducted against it (or any of its Subsidiaries) with respect to Taxes such that a liability of, or claim against, it of ZAR 100,000 (one hundred thousand Rand only) (or its equivalent in any other currency) or more is reasonably likely to arise.

14.13.3. It is resident for Tax purposes only in its Original Jurisdiction.

**14.14. Anti-corruption law**

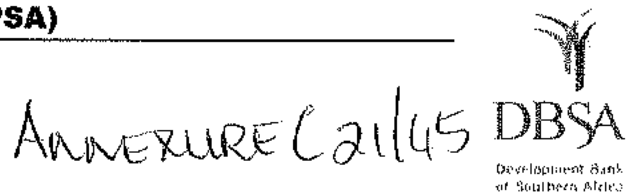
It has conducted its businesses in compliance with applicable anti-corruption laws and has instituted and maintains as at the Signature Date policies and procedures designed to promote and achieve compliance with such laws.





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**14.15. Public procurement rules**

14.15.1. All public procurement rules in its jurisdiction of incorporation which are applicable to its entry into and the exercise of its rights and performance of its obligations under this Agreement to which it is a party have been complied with or have been irrevocably and unconditionally waived by the relevant authorities in that jurisdiction.

14.15.2. With regard to the procurement of goods and services for the Projects, procurement shall be carried out according to the Recipients SCM policies, as approved by the Grantor.

**14.16. Repetition**

The Repeating Representations are deemed to be made by the Recipient by reference to the facts and circumstances then existing on the date of each Utilisation Request.

**15. INFORMATION UNDERTAKINGS**

15.1. The undertakings in this Clause 15 (**Information Undertakings**) remain in force from the Signature Date for so long as any amount is outstanding under this Agreement.

**15.2. Development Results**

The Recipient shall prepare and deliver to the Grantor the Development Results every 6 months during the Implementation Phase, and thereafter every year for the duration of this Agreement in accordance with Schedule 3. Each Development Result shall be delivered by the Recipient as soon as practicable and, in any event, within 10 Business Days of the end of each reporting period.

**15.3. Information: miscellaneous**



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The Recipient shall supply to the Grantor promptly upon becoming aware of them, the details of any litigation, arbitration, administrative proceedings, liquidation applications, winding up applications or business rescue applications, or any equivalent proceedings in any Relevant Jurisdiction, which are current, threatened or pending against it, and which might, if adversely determined, have a Material Adverse Effect.

**15.4. "Know your client" checks**

15.4.1. If:

15.4.2. the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the Signature Date; or

15.4.3. any change in the status of the Recipient after the Signature Date;

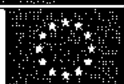
obliges the Grantor to comply with "know your customer" or similar identification procedures (whether in terms of the *Financial Intelligence Centre Act, 2001* or any other applicable legislation) in circumstances where the necessary information is not already available to it, the Recipient shall promptly upon the request of the Grantor supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Grantor.

15.4.4. The Recipient shall promptly upon the request of the Grantor supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Grantor in order for the Grantor to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in this Agreement.

**16. GENERAL UNDERTAKINGS**

**16.1. Authorisations**

The Recipient shall promptly:



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- 16.1.1. obtain, comply with and do all that is necessary to maintain in full force and effect; and
- 16.1.2. supply certified copies to the Grantor of, any Authorisation required under any law or regulation of a Relevant Jurisdiction to:
  - 16.1.2.1. enable it to perform its obligations under this Agreement;
  - 16.1.2.2. ensure the legality, validity, enforceability or admissibility in evidence of this Agreement; and
  - 16.1.2.3. carry on its business where failure to do so has or is reasonably likely to have a Material Adverse Effect.

**16.2. Compliance with laws**

The Recipient shall comply in all respects with all laws to which it may be subject.

**16.3. Environmental compliance**

The Recipient shall:

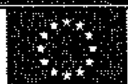
- 16.3.1. comply with all Environmental Law;
- 16.3.2. obtain, maintain and ensure compliance with all requisite Environmental Permits; and
- 16.3.3. implement procedures to monitor compliance with and to prevent liability under any Environmental Law,

where failure to do so has or is reasonably likely to have a Material Adverse Effect.

**16.4. Environmental Claims**

The Recipient shall, promptly upon becoming aware of the same, inform the Grantor in writing of:

- 16.4.1. any Environmental Claim against it which is current, pending or threatened; and



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16.4.2. any facts or circumstances which are reasonably likely to result in any Environmental Claim being commenced or threatened the Recipient,

where the claim, if determined against it, has or is reasonably likely to have a Material Adverse Effect.

**16.5. Anti-corruption law**

16.5.1. The Recipient shall not directly or indirectly use the proceeds of the Facility for any purpose which would breach the *Prevention and Combatting of Corrupt Activities Act, 2004*, *Bribery Act, 2010*, the *United States Foreign Corrupt Practices Act, 1977* or other similar legislation in other jurisdictions.

16.5.2. The Recipient shall:

16.5.2.1. conduct its businesses in compliance with applicable anti-corruption laws; and

16.5.2.2. maintain policies and procedures designed to promote and achieve compliance with such laws.

**16.6. Sanctions**

Notwithstanding any other provision in this Agreement, the Recipient shall not:

16.6.1. use the proceeds of the Funding for the purpose of financing directly or indirectly (or otherwise make available) the activities of any person or entity which is currently listed on the Sanctions List or in a country which is currently subject to any Sanctions, to the extent such financing would currently be prohibited by Sanctions; and/or

16.6.2. contribute or otherwise make available the proceeds of the Funding to any other person or entity if the Recipient has actual knowledge that such party intends to use such proceeds for the purpose of financing the activities of any person or entity which is currently on the Sanctions List or in a country which is subject to any Sanctions, to the extent such financing would currently be prohibited by Sanctions.

**16.7. Audit**



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The Recipient shall procure an audit in each financial year by the Auditor General of South Africa.

**17. CO-OPERATION**

- 17.1. The Parties undertake at all times to do all such things, to perform all such acts and to take all such steps and procure the doing of all such things, the performance of such actions and the taking of all such steps as may be open to them and necessary for, or incidental to, the putting into effect or maintenance of the terms, conditions and import of this Agreement.
- 17.2. The Recipient shall grant Representatives of the Grantor the opportunities reasonably necessary, with reasonable notice, to visit any relevant site for purposes related to the Projects.
- 17.3. The Grantor may in its discretion and at its own cost organise an external evaluation of the Projects to assess the extent to which the purpose of the Facility has been achieved as well as an audit of records in connection with payments made from the proceeds of the Facility.
- 17.4. The Recipient agrees to co-operate in any such an external evaluation and/or audit, provided that the Grantor ensures that a confidentiality agreement with regard to the Projects is signed by the appointed entity to conduct such an external evaluation and / or audit.
- 17.5. The Recipient shall keep at its head office, originals of all documents evidencing its expenditure in terms of this Agreement and shall retain such documentation for a period of not less than three years after date of termination of this Agreement.
- 17.6. The Parties undertake to act towards one another in good faith in all respects relating to this Agreement.
- 17.7. Each of the Parties shall do all such things and take all such steps as may be reasonably necessary or desirable in order to reach Bankability.

**18. EVENTS OF DEFAULT**

**18.1. Misrepresentation**



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Any representation or statement made or deemed to be made by the Recipient in the Application or any other document delivered by the Recipient under or in connection with this Agreement is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.

**18.2. Litigation**

Any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened in relation to this Agreement or the transactions contemplated herein or against the Recipient or its assets which have or are reasonably likely to have a Material Adverse Effect.

**18.3. Material adverse change**

Any event or circumstance occurs which the Grantor reasonably believe has or is reasonably likely to have a Material Adverse Effect.

**18.4. Acceleration**

On and at any time after the occurrence of an Event of Default the Grantor may, by notice to the Recipient:

- 18.4.1. cancel all or any part of this Facility;
- 18.4.2. declare that all or part of the funding under this Facility, and all other amounts accrued or outstanding under this Agreement be immediately due and payable, whereupon they shall become immediately due and payable;
- 18.4.3. declare that all or part of the funding under this Facility be payable on demand, whereupon they shall immediately become payable on demand by the Grantor; and/or
- 18.4.4. exercise any or all of the rights, remedies, powers or discretions arising under this Agreement.

**19. CESSIONS AND DELEGATIONS BY THE RECIPIENT**

The Recipient may not cede any of its rights or delegate any of its obligations under this Agreement without written consent of the Grantor.



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**20. NOTICES**

**20.1. Communications in writing**

Any communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be made by fax or letter.

**Addresses**

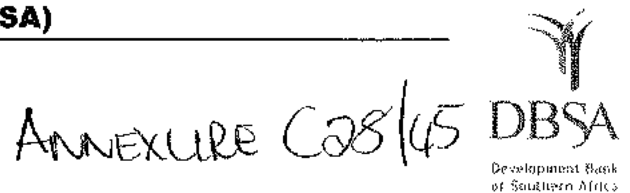
20.2. The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Agreement is:

- 20.2.1. **Recipient:** Overstrand Municipality
- Physical: 1 Harmony Avenue, Hermanus 7201
- Postal: P.O Box 20, Hermanus, 7200
- Facsimile: 028 – 312 1894
- E-mail: enquiries@overstrand.ov.za
- Marked for attention of: Municipal Manager: Mr CC Groenewald
- 20.2.2. **Grantor:** DBSA
- Physical address: 1258 Lever Road, Headway Hill, Midrand  
1685, Gauteng, South Africa
- Postal: 1258 Lever Road, Headway Hill, Midrand  
1685, Gauteng, South Africa
- Facsimile: +27 11 313 3086
- Email: ppfinfo@dbsa.org
- Marked for attention of: Group Executive: Project Preparation Division  
and General Counsel,



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or any substitute address or fax number or email address or department or officer as the Party may notify to the Grantor (or the Grantor may notify to the other Parties, if a change is made by the Grantor) by not less than five Business Days' notice.

**20.3. Domicilia**

20.3.1. Each of the Parties chooses its physical address provided under or in connection with Clause 20.2 (**Addresses**) as its *domicilium citandi et executandi* at which documents in legal proceedings in connection with this Agreement may be served.

20.3.2. Any Party may by written notice to the other Parties change its *domicilium* from time to time to another address, not being a post office box or a poste restante, in South Africa, provided that any such change shall only be effective on the fourteenth day after deemed receipt of the notice by the other Parties pursuant to Clause 20.4 (**Delivery**).

**20.4. Delivery**

20.4.1. Any communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective when received by the recipient and, unless the contrary is proved, shall be deemed to be received:

20.4.1.1. if by way of fax, be deemed to have been received on the first Business Day following the date of transmission provided that the fax is received in legible form;

20.4.1.2. if delivered by hand, be deemed to have been received at the time of delivery; and

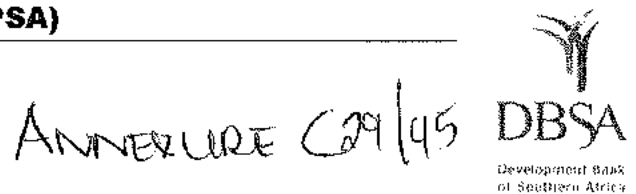
20.4.1.3. if by way of courier service, be deemed to have been received on the seventh Business Day following the date of such sending,

and if a particular department or officer is specified as part of its address details provided under Clause 20.2 (**Addresses**), if addressed to that department or officer.





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20.4.2. Any communication or document to be made or delivered to the Grantor will be effective only when actually received by the Grantor and then only if it is expressly marked for the attention of the department or officer identified with the Grantor's signature below (or any substitute department or officer as the Grantor shall specify for this purpose).

20.4.3. Any communication or document which becomes effective, in accordance with Clauses 20.4.1 to 20.4.2 above, after 5.00 pm in the place of receipt shall be deemed only to become effective on the following day.

**20.5. Notification of address and fax number**

Promptly upon receipt of notification of an address or fax number or change of address or fax number pursuant to Clause 20.2 (**Addresses**) or changing its own address or fax number, the Grantor shall notify the other Parties.

**20.6. Electronic communication**

20.6.1. Any communication to be made between any two Parties under or in connection with this Agreement may be made by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if those two Parties:

20.6.1.1. notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and

20.6.1.2. notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.

20.6.2. Any electronic communication as specified in Clause 20.6.1 above to be made between the Recipient and the Grantor may only be made in that way to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication.

20.6.3. Any electronic communication as specified in Clause 20.6.1 above made between any two Parties will be effective only when actually received (or made available) in readable form and in the case of any electronic



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communication made by a Party to the Grantor only if it is addressed in such a manner as the Grantor shall specify for this purpose.

- 20.6.4. Any electronic communication which becomes effective, in accordance with Clause 20.6.3 above, after 5pm. in the place in which the Party to whom the relevant communication is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.
- 20.6.5. Any reference in this Agreement to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 20.6.

**20.7. English language**

- 20.7.1. Any notice or other document given under or in connection with this Agreement must be in English.
- 20.7.2. All other documents provided under or in connection with this Agreement must be:
- 20.7.2.1. in English; or
- 20.7.2.2. if not in English, and if so required by the Grantor, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

**21. PARTIAL INVALIDITY**

If, at any time, any provision of this Agreement is or becomes illegal, invalid, unenforceable or inoperable in any respect under any law of any jurisdiction, neither the legality, validity, enforceability or operation of the remaining provisions nor the legality, validity, enforceability or operation of such provision under the law of any other jurisdiction will in any way be affected or impaired. The term "inoperable" in this Clause 21 (**Partial Invalidity**) shall include, without limitation, inoperable by way of suspension or cancellation.



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**22. REMEDIES AND WAIVERS**

No failure to exercise, nor any delay in exercising, on the part of the Grantor, any right or remedy under this Agreement or other Document or other indulgence shall operate as a waiver, nor shall any single or partial exercise of any such right or remedy otherwise affect any of that Party's rights in terms of or arising from this Agreement or estop such Party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision or term of this Agreement. No consent to any waiver or novation of a Party's rights in terms of or arising from this Agreement shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

**23. AMENDMENTS AND WAIVERS**

No amendment or waiver shall be of any force or effect unless in writing and signed by or on behalf of the relevant Parties.

**24. CONFIDENTIAL INFORMATION**

**24.1. Confidential Information**

The Grantor agrees to keep all Confidential Information confidential and not to disclose it to anyone and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

**24.2. Disclosure of Confidential Information**

24.2.1. The Grantor may disclose to any of its Affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, Auditor, partners and other Representatives such Confidential Information as the Grantor shall consider appropriate if any person to whom the Confidential Information is to be given is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise



**INFRASTRUCTURE INVESTMENT PROGRAMME FOR SOUTH  
AFRICA (IIPSA)**



ANNEXURE C32/45



bound by requirements of confidentiality in relation to the Confidential Information.

**24.3. Entire agreement**

This Clause 24 (**Confidentiality**) constitutes the entire agreement between the Parties in relation to the obligations of the Grantor to provide Funding.

**24.4. Inside Information**

The Grantor acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Grantor undertakes not to use any Confidential Information for any unlawful purpose.

**24.5. Notification of disclosure**

The Grantor agrees (to the extent permitted by law and regulation) to inform the Recipient:

24.5.1. of the circumstances of any disclosure of Confidential Information made pursuant to Clause 24.2 (**Disclosure of Confidential Information**) except where such disclosure is made to any of the persons referred to in that Clause during the ordinary course of its supervisory or regulatory function; and

24.5.2. upon becoming aware that Confidential Information has been disclosed in breach of this Clause 24 (**Confidentiality**).

**24.6. Continuing obligations**

24.6.1. The obligations in this Clause 24 (**Confidentiality**) are continuing and, in particular, shall survive and remain binding on the Grantor for a period of twelve Months from the earlier of:

24.6.1.1. the date on which all amounts payable by the Recipient under or in connection with this Agreement have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and



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24.6.1.2. the date on which the Grantor otherwise ceases to be a Grantor.

**25. RENUNCIATION OF BENEFITS**

The Recipient renounces, to the extent permitted under applicable law, the benefits of each of the legal exceptions of *excussio*, *divisio*, *revisio* of accounts, *no value received*, *errore calculi*, *non-causa debiti*, *non numeratae pecuniae* and cession of actions, and declares that it understands the meaning of each such legal exception and the effect of such renunciation.

**26. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

**27. GOVERNING LAW**

This Agreement and any non-contractual obligations arising out of or in connection with it is governed by South African law.

**28. DISPUTE RESOLUTION**

28.1. Any dispute between the Parties in regard to:

28.1.1. the interpretation of;

28.1.2. the effect of;

28.1.3. the Parties' respective rights and obligations under;

28.1.4. a breach of; or

28.1.5. any matter arising out of,

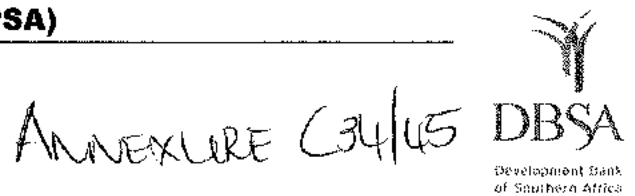
this Agreement shall be decided by arbitration in the manner set out in this clause.

28.2. Any dispute shall be finally resolved in accordance with provisions of the Rules of Arbitration Foundation of Southern Africa or its successors, by an arbitrator appointed as follows:

28.2.1. If the question in issue is:



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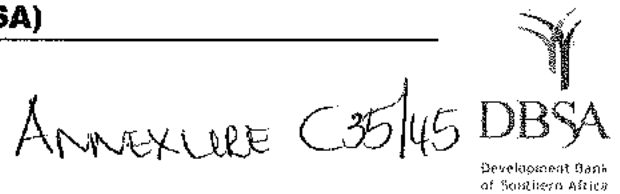


- 28.2.1.1. primarily an accounting matter, the arbitrator shall be an independent practising accountant of not less than 10 years standing;
- 28.2.1.2. primarily a legal matter, the arbitrator shall be a practising senior counsel or attorney of not less than 10 (ten) years standing; or
- 28.2.1.3. any other matter, the arbitrator shall be a suitably qualified independent person,
- 28.2.2. as agreed upon by the Parties or, failing such agreement within 3 (three) Business Days after the date on which the arbitration is demanded, as to:
- 28.2.2.1. whether the dispute is of primarily a legal, accounting or other nature, the dispute shall be deemed to be of a legal nature; or
- 28.2.2.2. the identity of the arbitrator, the arbitrator shall be appointed by the President of the Law Society of the Northern Provinces (or any successors to such society) who may be instructed by either of the Parties to make the nomination at any time after the expiry of the aforesaid three day period.
- 28.2.3. The Parties may demand that a dispute be referred to arbitration by giving written notice to that effect to the other Parties.
- 28.2.4. This Clause shall not preclude any of the Parties from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.
- 28.2.5. The arbitration referred to in Clause 28.1 shall be held at Johannesburg in the English language and immediately and with a view to it being completed within 21 (twenty one) Business Days after it is demanded.
- 28.2.6. The Parties irrevocably agree that the submission of any dispute to arbitration in terms of this Clause is subject to the Parties' rights of appeal. Any of the Parties may appeal the arbitration ruling by giving written notice to that effect to the other Parties within 20 (twenty) Business Days of the ruling being handed down. The appeal shall be dealt with in accordance



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with the Rules of the Arbitration Foundation of Southern Africa or its successors, or such other rules as may be agreed by the Parties, by a panel of three arbitrators appointed in accordance with the provisions of Clause 28.2.

28.2.7. The Parties irrevocably agree that upon expiry of the 20 (twenty) Business Day period for appeal or the handing down of the ruling of the appeal panel, as the case may be, the decision in arbitration proceedings:

28.2.7.1. shall be final and binding upon the Parties;

28.2.7.2. shall be carried into effect; and

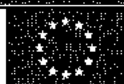
28.2.7.3. may be made an order of any court of competent jurisdiction.

28.2.8. The costs of any reference to arbitration will be borne by the unsuccessful Party, unless otherwise agreed by the Parties or determined by the arbitrator, irrespective of which Party referred the dispute to arbitration.

28.2.9. This Clause 28 is severable from the rest of this Agreement and shall remain valid and binding on the Parties notwithstanding any termination of this Agreement.

**29. JURISDICTION**

The Parties unconditionally consent and submit to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Local Division, Johannesburg in regard to all matters arising from this Agreement.



**INFRASTRUCTURE INVESTMENT PROGRAMME FOR SOUTH  
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ANNEXURE C36/15



**Schedule 1**

**Conditions precedent**

**Conditions Precedent to initial Utilisation**

**1 Recipient**

- 1.1 a certified copy of the Municipal Council's resolution, signed by the Accounting Officer (Municipal Manager) in terms of section 46 of the MFMA;
- (1) approving the terms of the direct capital grant facility agreement and resolving that it executes the direct capital grant facility agreement;
  - (2) authorising the Accounting Officer to sign the capital grant facility agreement on its behalf; and
  - (3) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request and Selection Notice) to be signed and/or despatched by it under or in connection with this Agreement.
- 1.2 the Recipient shall provide all documents as required in terms of the Financial Intelligence Centre Act, 38 of 2001 (**FICA**) and other applicable legislation;
- 1.3 A specimen of the signature of each person authorised by the resolution referred to in Clause 1.1 above.
- 1.4 A certificate of an authorised signatory of the Recipient certifying that each copy document relating to it specified in this Part I of Schedule 1 (**Conditions Precedent**) is correct, complete and in full force and effect as at a date no earlier than the Signature Date.

**2 Other documents and evidence**

- 2.1 A certified copy of any other Authorisation or other document, opinion or assurance which the Grantor considers to be necessary or desirable (if it has notified the Recipient accordingly) in connection with the entry into and performance of the transactions contemplated by any Transaction Document or for the validity and enforceability of any Transaction Document.
- 2.2 The Certified Financial Statements of the Recipient.






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**DBSA**  
Development Bank  
of Southern Africa

- 2.3 Proof of the Procurement process followed in line with the requirements of the Grantor.
- 2.4 Such documentation and other evidence as is reasonably requested by the Grantor (for itself or on behalf of any other) in order for the Grantor and each other to carry out and be satisfied it has complied with all necessary "know your customer" or similar identification procedures under applicable laws and regulations (including the *Financial Intelligence Centre Act, 2001*) pursuant to the transactions contemplated in this Agreement.



**INFRASTRUCTURE INVESTMENT PROGRAMME FOR SOUTH  
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ANNEXURE C38/45



**Schedule 2**

**Utilisation Request**

Project name: Electricity, Water and Waste Water Projects

From: Overstrand Local Municipality **[Recipient]**

To: The Development Bank of Southern Africa **[Grantor]**

Dated: xxx

Dear Sirs

**[Recipient]– [insert] Facility Agreement**

**dated [insert] (Agreement)**

1 We refer to the Agreement. This is a Utilisation Request. Terms defined in the Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.

2 We wish to request Funding on the following terms:

The following milestones have been met: **[INSERT]**

---

Proposed Utilisation Date: **[insert]** (or, if that is not a Business Day, the next Business Day)

---

Amount: **[insert currency] [insert]** or, if less, the Facility

---

3 We confirm that each condition specified in Schedule 1 (**Conditions Precedent**) is satisfied on the date of this Utilisation Request.

4 The proceeds of this Funding should be credited to **[account]**.

5 This Utilisation Request is irrevocable.



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ANNEXURE C39/45 **DBSA**  
Development Bank  
of Southern Africa

Yours faithfully

.....

authorised signatory for

**[Recipient]**

.....

authorised signatory for

**[Recipient]**



**INFRASTRUCTURE INVESTMENT PROGRAMME FOR SOUTH  
AFRICA (IIPSA)**



ANNEXURE C40/45



**Schedule 3 Development Results**

<b>MANDATORY INDICATORS</b>	<b>Anticipated Total Project Target</b>
<b>1. Employment opportunities created</b>	
1.1 Total No. of direct construction jobs created	
1.1.1 No. of women employed	
1.1.2 No. of youth employed	
1.2 Total No. of direct operational phase jobs created	
1.2.1 No. of women employed	
1.2.2 No. of youth employed	
<b>3. Broad Based Black Economic Empowerment (BBBEE) - Transaction Advisors</b>	
3.1 BBBEE ownership (%)	N/A
3.2 BBBEE women/youth (%)	N/A
<b>4. Broad Based Black Economic Empowerment (BBBEE) - Project Sponsors</b>	
4.2 BBBEE women/youth (%)	N/A
<b>5. Climate contribution (ref. DBSA Environmental Analyst)</b>	
5.1 Funding spent on climate mitigation activities (R)	N/A
5.2 Funding spent on climate adaptation activities (R)	N/A
<b>PROJECT-SPECIFIC INDICATORS</b>	<b>Anticipated Total Project Target</b>
<b>WATER:</b>	
Increase in water yield (Mm <sup>3</sup> /a)	
Additional capacity of bulk water mains (Ml/day)	
Increase in water storage capacity (Ml)	
Increased capacity of water treatment works (Ml/day)	
Number of new water connections (No.)	
Length of water mains installed (new/refurbished/replaced/upgraded) (km)	
Reduction in household water backlog (No.)	
Reduction in water losses (Mm <sup>3</sup> /a)	



**INFRASTRUCTURE INVESTMENT PROGRAMME FOR SOUTH  
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ANNEXURE C41/45



<b>MANDATORY INDICATORS</b>	<b>Anticipated Total Project Target</b>
<b>SANITATION:</b>	
Additional capacity of outfall sewers (Ml/day)	
Increased capacity of wastewater treatment works (Ml/day)	
Number of new sewer connections installed (No.)	
Reduction in household sanitation backlog (No.)	
Households connected to on-site sanitation (VIPs, septic tanks, etc.) (No.)	
Length of sewers installed (new/replaced/refurbished/upgraded)(km)	
Additional capacity of treated effluent (Ml/day)	
<b>ENERGY:</b>	
Number of new electricity connections (No.)	
Energy Generated (MVA)	
Reduction in household electricity backlog (No.)	
Length of power lines constructed/rehabilitated (km)	
Length of electricity network constructed/rehabilitated (km)	
Reduction in electricity losses p.a. (R)	
Renewable energy installed capacity (MW)	
Total energy savings (KWh)	
Energy production (MWh/annum)	
<b>TRANSPORT:</b>	
Length of tarred roads constructed, resurfaced or rehabilitated (km)	
Length of gravel roads surfaced (km)	
<b>EDUCATION:</b>	
Number of student residences constructed/rehabilitated (No.)	
Number of new on-campus student beds (No.)	
Transport cost savings to the university p.a. (R)	
<b>SOCIAL:</b>	
NQF credit-bearing training opportunities provided (No.)	
NQF credit-bearing training opportunities for women	
NQF credit-bearing training opportunities for youth	
Noncredit-bearing training opportunities provided (No.)	



**INFRASTRUCTURE INVESTMENT PROGRAMME FOR SOUTH  
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<b>MANDATORY INDICATORS</b>	<b>Anticipated Total Project Target</b>
Noncredit-bearing training opportunities for women	
Noncredit-bearing training opportunities for youth	
<b>ENVIRONMENTAL</b>	
GHG savings (tonnes CO <sub>2</sub> equiv. emissions saved, captured or displaced p.a.)	
Waste to landfill avoided (tonnes p.a.)	
Waste to landfill recycled (tonnes p.a.)	
Waste to landfill reused (tonnes p.a.)	
Improved ecosystem service value (total) (R)	
Improved ecosystem service value (water) (R)	
Improved ecosystem service value (biodiversity) (R)	
<b>CATALYSATION:</b>	
Funds catalysed per the Catalysing Working Group (R)	
<b>OTHER:</b>	
ICT	
ACCOMMODATION	
HEALTH	
TRANSPORTATION	
REVENUE ENHANCEMENT	



**INFRASTRUCTURE INVESTMENT PROGRAMME FOR SOUTH  
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ANNEXURE C43/45

**Schedule 4 Project list**

ELECTRICITY	18,150,000	13,000,000	0	5,000,000	15,000,000
FRANSKRAAL, KLEINBAAI & BIRKENHEAD: MV/LV & MINISUB UPGRADE	2,500,000	2,250,000			
STANFORD: MV UPGRADE	1,000,000	750,000			
HERMANUS: MV & LV UPGRADE/REPLACEMENT	10,150,000	5,000,000		5,000,000	9,000,000
KLEINMOND: MV & LV NETWORK UPGRADE	1,750,000	2,000,000			3,000,000
HAWSTON: MV & LV UPGRADE/REPLACEMENT	1,750,000	2,000,000			3,000,000
ELECTRICITY TRANSFORMERS (CAPITAL REPLACEMENT CONTINGENCY)	1,000,000	1,000,000			
WATER	26,562,505	17,300,000	11,100,000	1,000,000	1,000,000
WATER MASTER PLAN IMPLEMENTATION	10,000,000	10,000,000	10,000,000		
FENCING AT WATER INSTALLATIONS	800,000	700,000	700,000	600,000	500,000
BUFFELS RIVER AND DE BOS DAM INTAKE STRUCTURES AND EQUIPMENT	1,200,000	1,300,000			
WATER FACILITIES (CONTINGENCY)	200,000	300,000	400,000	400,000	500,000
UPGRADE HERMANUS WELL FIELDS PHASE 1	7,000,000	4,000,000			
WATER STABILIZATION PLANT FOR STANFORD	1,500,000	1,000,000			
NEW RESERVOIR FOR PRINGLE BAY	5,862,505				
SEWERAGE	29,213,218	10,400,000	9,000,000	5,000,000	5,000,000
SEWERAGE FACILITIES (CONTINGENCY)	500,000	600,000			
KLEINMOND - SEWER NETWORK EXTENSION	4,000,000	5,000,000	5,000,000	5,000,000	5,000,000
UPGRADING OF KIDBROOKE PIPELINE	1,800,000				
WWTW UPGRADE - STANFORD	14,602,218				
PROVISION OF BULK SEWER SUPPLY	3,261,000				
FENCING AT SEWERAGE INSTALLATIONS	800,000	800,000			
SEWERAGE NETWORK EXTENSION AND REPLACEMENT	4,000,000	4,000,000	4,000,000		
EXTENSION OF SEWER LINE 12th STREET VOËLKLIP	250,000				
GRAND TOTAL	73,925,723	40,700,000	20,100,000	11,000,000	21,000,000



**INFRASTRUCTURE INVESTMENT PROGRAMME FOR SOUTH AFRICA (IIPSA)**



ANNEXURE C44/05 DBSA  
Development Bank of Southern Africa

**Signatures**

**The Recipient**

SIGNED at \_\_\_\_\_ on this the \_\_\_\_\_ day of \_\_\_\_\_  
2019

For and on behalf of  
**OVERSTRAND LOCAL MUNICIPALITY**

\_\_\_\_\_  
Name:  
Capacity:  
Who warrants authority

**The Grantor**

SIGNED at \_\_\_\_\_ on this the \_\_\_\_\_ day of \_\_\_\_\_  
2019





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AFRICA (IIPSA)**

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ANNEXURE C45/45



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For and on behalf of

**DEVELOPMENT BANK OF SOUTHERN AFRICA**

**(in its capacity as representative of the**

**EUROPEAN UNION AND THE GOVERNMENT OF SOUTH AFRICA**

**acting jointly as the primary sponsors of the Infrastructure Investment Programme for  
South Africa)**

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Name:

Capacity:

Who warrants authority

