

Final: 23.07.2009

LOAN AGREEMENT

in respect of

**NELSON MANDELA BAY MUNICIPALITY CAPITAL PROGRAMME FOR THE 2008/2009
FINANCIAL YEAR**

made and entered into by and between

NELSON MANDELA BAY MUNICIPALITY (NMBM)

and

THE DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED



DBSA
Development Bank
of Southern Africa






- 6. CAPITAL REPAYMENT : 38 (thirty eight) Six-monthly instalments, commencing on the last day of the 3rd (third) Half-year after the Half-year during which the first disbursement was advanced to the Borrower.

- 7. INTEREST REPAYMENT : Payment shall commence on the last day of the Half-year during which the first disbursement was advanced to the Borrower.

- 8. PROJECT FILE NO. : EC 103330.



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1. INTERPRETATIONS

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

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

1.1.2 "Availability Period" means the period from and including the conditions precedent fulfillment date to and including a date not later than 30 November 2009;

1.1.3 "Borrower" means Nelson Mandela Bay Metropolitan Municipality;

1.1.4 "Breakage Costs" means the net present value of the amount (if any) by which:

the interest, which the DBSA would have received for the period commencing on the date of receipt of such prepaid principal amount to that Interest Payment Date;

exceeds

the interest which the DBSA would be able to obtain by placing an amount equal to the prepaid principal received by it, on deposit with a leading bank in the relevant Interbank Market for a period commencing on the date of receipt of such principal and ending on that Interest Payment Date;

1.1.5 "Business Day" means any day between 08h00 and 16h30 other than a Saturday, Sunday and a Public Holiday;

- 1.1.6 "Change in Law" means any implementation, introduction, abolition, withdrawal or variation of any applicable laws (including ordinances), regulation, published practice concession or official directive, ruling, request, notice, announcement (including but not limited to any budget speech), guideline by any government entity (whether or not having the force of law) or any change in any interpretation, or the introduction or making of any new or further interpretation, or any new or different competent authority or compliance with any new or different request or direction (in either case whether or not having the force of law) from any government entity;
- 1.1.7 "Conversion Option" means the option in terms of which the Borrower may convert from a Floating Rate Loan to a Fixed Rate Loan and not vice versa;
- 1.1.8 "the DBSA" means the Development Bank of Southern Africa Limited, a juristic person reconstituted and incorporated in terms of section 2 of the Development Bank of Southern Africa Act 13 of 1997;
- 1.1.9 "Disbursement" means any amount drawn down by the Borrower, and disbursed by the DBSA under and in terms of a Disbursement Request;
- 1.1.10 "Disbursement Date" means the date on which the amount requested in terms of the Disbursement Schedule are disbursed;

- 1.1.11 "Disbursement Request" means a notice substantially in the form of Annexure D;
- 1.1.12 "Economic Failure" means any adverse change, determined in the sole discretion of the DBSA, in the South African or international capital markets or in the South African or international monetary, financial, political or economic conditions which adversely affect the DBSA's access to the relevant local or international capital markets or which renders it unlawful or impossible for the DBSA to advance any portion of the Capital on any Disbursement Date;
- 1.1.13 "Event of Default" means any event of default as envisaged in clause 12 below;
- 1.1.14 "Fixed Rate Loan" means the amount of Loan disbursed and outstanding from time to time in respect of which the Fixed Interest Rate as determined in clause 3.1 shall apply;
- 1.1.15 "Floating Rate Loan" means the amount of Loan disbursed and outstanding from time to time in respect of which the Floating Interest Rate as determined in clause 3.2 shall apply;
- 1.1.16 "Half-year" or "Six-monthly" means from the first day of April to the 30th day of September and/or from the first day of October to the 31st day of March during the next calendar year;

- 1.1.17 "Interest Determination Period" means the day 2 (two) Business Days prior to each Interest Payment Date;
- 1.1.18 "Interest Payment Date" means the last day of each Interest Period;
- 1.1.19 "Interest Period" means each period of 6 (six) months commencing on 1 April or 1 October of each calendar year. The first Interest Period shall begin to run from the date of the first disbursement to 31 March or 30 September, whichever immediately follows disbursement. Each Interest Period thereafter shall begin to run from the date of expiry of the preceding Interest Period, even if the first day of this Interest Period is not a Business Day. Notwithstanding the foregoing, any period less than six months running from the date of a disbursement to the date of 31 March or 30 September immediately following this disbursement shall be deemed an Interest Period;
- 1.1.20 "Loan" means the financing granted to the Borrower in terms of clause 2;
- 1.1.21 "Loan Outstanding" 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;
- 1.1.22 "Material Adverse Effect" means an event, circumstance or matter (or combination of events, circumstances or matters)

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which has or is likely to have a material adverse effect on:

- 1.1.22.1 the business, operations, property, condition (financial or otherwise) or prospects of the Borrower; or
- 1.1.22.2 the ability of the Borrower to perform its obligations in terms of this Agreement; or
- 1.1.22.3 the validity or enforceability of this Agreement or the rights or remedies of the DBSA hereunder; or
- 1.1.22.4 the right or remedies of DBSA in terms of and pursuant to this Agreement; or
- 1.1.22.5 South African or international capital markets, financial, political, or economic conditions or the DBSA's access to the relevant local or international capital markets;

1.1.23 "On-lending" means the transfer, by the Borrower, of any amount(s) to any third parties, from the proceeds of the Loan, excluding payments for the procurements of goods and services;

1.1.24 "Parties" means collectively, the Borrower and the DBSA;

1.1.25 "Potential Event of Default" means any event, envisaged in clause 12 below, which will become an Event of Default:



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- 1.1.25.1 after the expiry of the applicable cure period set out in respect of such event in clause 12; or
- 1.1.25.2 if notice to remedy is given as envisaged in clause 12 and such event is not remedied within the applicable notice period set out in clause 12;
- 1.1.26 "Project Agent" means a person nominated in writing by the Borrower to act on its behalf in respect of the Project;
- 1.1.27 "Project" means Nelson Mandela Bay Municipality Finance Facility for capital projects for the 2008/2009 financial year, as described in more detail in Annexure "A" attached hereto;
- 1.1.28 "Reference Banks" means four major Banks in the Johannesburg Interbank market selected by the DBSA;
- 1.1.29 "Reset Date" means the first day of April and October of each calendar year or such other dates as may be agreed to in writing by the Parties;
- 1.1.30 "Reset Period" means a period of 6 (six) months commencing from each Reset Date;
- 1.1.31 "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;

1.1.32 "ZAR-JIBAR- Reference Banks Rate"


In relation to each Interest Period for Floating Rate Loan, shall mean the yield rate determined on the basis of the mid-market deposit rate for South African Rand for a six month period quoted by the Reference Banks at or about 11:00 am, Johannesburg time, two Business Days prior to the commencement of the relevant Interest Period; and

1.1.33 "ZAR-JIBAR-SAFEX"

In relation to each Interest Period for Floating Rate Loan, shall mean the mid-market yield rate (rounded upwards, if necessary, to the nearest one thousandth of a percentage point) for deposits in South African Rand for a six month period which appears on the Reuters Screen SAFEX Page as of 11:00 am, Johannesburg time, two Business Days prior to the commencement of the relevant Interest Period.

- 1.2 Headings to the clauses of this Agreement, the table of contents and summary are for reference purposes only and are not intended to affect the interpretation thereof.
- 1.3 Any reference to the singular shall include the plural and vice versa.
- 1.4 Any reference to a natural person shall include an artificial or corporate person and vice versa.
- 1.5 Any reference to one gender shall include the other.
- 1.6 Any reference to ZAR-JIBAR and/or ZAR-JIBAR-Reference Banks Rate shall include any other substitute rate, calculated in the same manner as either of these


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two rates whether such substitute rate appears on the Reuters screen safety page or on some other screen page.

1.7 Interest rate to be fixed at date of conversion will be the applicable swap rate equivalent to the remaining Loan Period at the time of exercising the conversion option plus 287 (two hundred and eighty seven) basis points

1.8 This Agreement shall bind the Parties and their successors-in-title or law.

2. THE LOAN

2.1 The Loan shall be:-

2.1.1 an amount not exceeding, in aggregate, R420 000 000.00 (four hundred and twenty million Rand); and

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

2.2 The Loan proceeds shall be paid by the DBSA to, and on the order of, the Borrower in such disbursements and in accordance with all provisions contained in this Agreement.

2.3 No On-Lending shall be effected unless provided for in this Agreement.

3. INTEREST

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

3.1 FIXED INTEREST RATE

3.1.1 The capital shall bear interest on the amount from time to time outstanding at a nominal fixed rate of 20 year amortising Swap Rate plus 287 (two hundred and eighty seven) basis points (final rate to be two days prior to the date of signing of this agreement by the Borrower).

3.1.2 Interest on the amount from time to time outstanding shall be compounded Six-monthly and shall be due and payable on the last day of each Half-year. If payment of interest falls on a day other than a Business Day, such interest shall be payable on the next succeeding Business Day.

3.1.3 The interest rate for each Interest Period shall be compounded Six-monthly based on the actual number of days elapsed and a 365-day year (irrespective of whether it is a leap year) and shall be payable in arrears on each Interest Payment Date.

3.1.4 Payment shall commence on the last day of the Half-year during which the first disbursement was advanced to the Borrower.

3.2 FLOATING INTEREST RATE





3.2.1 The rate of interest applicable to the Floating Rate Loan disbursed and outstanding from time to time (expressed as a percentage rate per annum) shall be a:

3 (three) months ZAR-JIBAR-SAFEX plus 287 (two hundred and eighty seven) basis points (final rate to be two days prior to the date of signing of this agreement by the Borrower);

3.2.2 The DBSA shall request the principal Johannesburg office of each of the Reference Banks to provide a quotation of its rates. If at least 2 (two) quotations are provided, the rate will be the arithmetic mean (rounded upwards, if necessary, to the nearest thousandth of a percentage point) of the quotations.

3.2.3 The interest rate for each Interest Period shall be compounded Six-monthly based on the actual number of days elapsed and a 365-day year (irrespective of whether it is a leap year) and shall be payable in arrears on each Interest Payment Date.


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3.2.4 Interest on the amount from time to time outstanding shall be compounded Six-monthly and shall be due and payable on the last day of each Half-year. If payment of interest falls on a day other than a Business Day, such interest shall be payable on the next Business Day. Payment shall commence on the last day of the Half-year during which the first disbursement was advanced to the Borrower.

3.3 CONVERSION FROM FLOATING RATE TO FIXED RATE

The Borrower may, on any Reset Date convert all of the Floating Rate Loan into a Fixed Rate Loan provided that the Borrower shall give DBSA no less than 30 (thirty) business days notice of its intention to do so. Upon the exercising of the Conversion Option by the Borrower as contemplated herein, the amount outstanding from the date on which the Borrower shall exercise the Conversion Option shall bear a fixed interest rate as determined in terms of clause 1.7 above. The Borrower shall be notified in writing of the rate applicable at the time. Interest rate shall for the purpose of this sub-clause, be calculated on the same basis as indicated in sub-clause 3.1.2 above.

4. REPAYMENT OF LOAN AND PAYMENT OF INTEREST

4.1 The capital amount of the Loan shall be repaid in 38 (thirtyeight) Six-monthly instalments, commencing on the last day of the 3rd (third) Half-year following the Half-year during which the first disbursement was made to the Borrower from the proceeds of the Loan; and thereafter at the end of each succeeding Half-year until the Loan together with interest thereon shall be fully repaid; provided that subject to the provisions of clause 7, the Borrower may, with 30 (thirty) days written notice to the DBSA, make repayments in excess of the abovementioned or repay the full amount outstanding, provided further that the Borrower shall not be entitled to make any repayments prior to the date on which the first instalment shall fall due in terms of this Agreement; provided further that this shall not jeopardise the proper completion of the Project.

4.2 An instalment shall be a fixed amount, determined as at the outset of the 3rd (third) Half-year following the Half-year during which the first disbursement was made to the Borrower from the proceeds of the Loan; calculated as being sufficient to

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amortise the outstanding amount, plus interest at the rate set out in clause 3.1. Should, at the outset of the said 3rd (third) Half-year, part of the Loan still not be drawn by the Borrower, the amount of instalments shall be adjusted as and when drawings take place, in order to achieve amortisation over the original period of the Loan.

5. COMMITMENT FEE

No commitment fee will be levied if the Borrower does not deviate materially from the disbursement schedule which will be negotiated and finalized by the Parties within 14 days from the date of the conclusion of the loan agreement. Should there be any material deviation of this disbursement schedule a commitment fee of 0.5% per annum will be levied on this loan effective from the date of such deviation.

6. LATE PAYMENT

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

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

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

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

7. EARLY REPAYMENT

7.1 FLOATING RATE LOANS

7.1.1 The Borrower shall, subject to thirty (30) days written notice to the DBSA, be entitled to prepay any portion or the entire principal amount of the DBSA

Loan. However, the Borrower shall be liable to pay Breakage Costs on the principal amount being prepaid otherwise than on the Interest Payment Date and any Unwinding costs.

7.2 FIXED RATE LOANS

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

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

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

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

7.2.3 The discount rate used shall be equal to the Reinvestment Rate.

8. PAYMENT(S)

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

9. SUSPENSION/CANCELLATION OF DISBURSEMENTS**9.1 By the DBSA**

- 9.1.1 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 or a Material Adverse Event has occurred.
- 9.1.2 Such suspension shall continue until the DBSA notifies the Borrower that it may again submit a Disbursement Request.

9.1.3 The DBSA may suspend or cancel the right of the Borrower to Disbursements if an Event of Default or Potential Event of Default has occurred or is continuing, in which case 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 9 (*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.

9.1.4 Any amount of capital undrawn at the end of the Availability Period shall be automatically cancelled.

9.2 Cancellation by the Borrower

9.2.1 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.

9.2.2 If, after having received a notice in accordance with clause 9.2.1 above, the DBSA is satisfied that the Borrower has sufficient long-term funding available on terms satisfactory to the DBSA, to complete the Project (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.

9.2.3 Upon cancellation of an undisbursed portion of the capital in terms of this clause 9, the Borrower shall pay to the DBSA a cancellation fee of 1% (one percent) on the cancelled portion of the capital.

9.3 Re-borrowing and reinstatement

Any prepayment of the Loan under clause 7, above, may not be re-borrowed on the terms of this Agreement. Unless otherwise provided in this Agreement, no amount of the commitment cancelled under this Agreement may be reinstated.



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9.4 Other requirements

9.4.1 Unless otherwise agreed by the DBSA, the Borrower may not repay or prepay all or any part of the Loans or cancel all or any part of the commitments, except at the times and in the manner expressly provided for in this Agreement.

9.4.2 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, the affected Loan and commitments and the amount of the proposed cancellation or prepayment.

9.4.3 The DBSA may agree to a shorter notice period for a voluntary prepayment or a voluntary cancellation and such notice period shall not be unreasonably withheld.

10. MARKET DISRUPTION

10.1 Failure of a Reference Bank to supply a rate

Subject to clause 10.2 (*Market disruption*), if JIBAR is to be calculated by reference to the Reference Banks but a Reference Bank does not supply a rate by 11h00 on a Rate Fixing Day, the applicable JIBAR will, subject as provided below, be calculated on the basis of the rates of the remaining Reference Banks.

10.2 Market disruption

10.2.1 In this clause, if:

10.2.1.1 JIBAR is to be calculated by reference to the Reference Banks but no, or only one, Reference Bank supplies a rate by 11h00 on the Rate Fixing Day; or

10.2.1.2 by close of business on the Rate Fixing Day, the DBSA receives notification that the cost to it of raising finance in the money market is in excess of the spread on the Interest Determination

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Date relative to the cost as at the immediately presiding Interest Determination Date,

a Market Disruption Event shall be deemed to have occurred.

10.2.2 If a Market Disruption Event occurs in relation to a Loan, the DBSA must promptly notify the Borrower.

10.2.3 After notification under clause 10.2.2 above, the rate of interest on the Loan for the relevant Interest Period will be the aggregate of the applicable:

10.2.3.1 rate notified by the DBSA to the Borrower as soon as practicable, and in any event not later than 5 (five) Business Days after the relevant Rate Fixing Day, to be that which expresses as a percentage rate per annum the cost to DBSA of funding the Loan from whatever source it may reasonably select; and

10.2.3.2 the margin.

10.3 Alternative basis

If a Market Disruption Event occurs and the Borrower so requires, the Borrower and the DBSA must enter into negotiations for a period of not more than 14 (fourteen) Business days with a view to agreeing on an alternative basis for determining the rate of interest and/or funding for the affected Loan. Any alternative basis so agreed will be binding on all the Parties, failing which the Borrower shall repay the Loan Outstanding within 10 (ten) Business Days.

11. INCREASED COSTS AND DECREASED COSTS

11.1 Increased Costs for Change in Law

Except as provided in clause 11.3 below, the Borrower must pay to the DBSA the amount of any Increased Cost incurred by the DBSA as a result of:

11.1.1 the introduction of, or any change in, or any change in the interpretation, administration or application of, any law or regulation applies generally to banks operating in South Africa; or

11.1.2 compliance with any law or regulation made after the date of this Agreement, but only to the extent that such law or regulation applies generally to banks operating in South Africa.

11.2 Increased Costs for Economic Failure and Material Adverse Event

If an Economic Failure and/or Material Adverse Change occurs which in the reasonable opinion of the DBSA:

11.2.1 may reduce the rate of return which the DBSA may receive on its capital under the Loan, at the DBSA's sole discretion acting reasonably:

11.2.1.1 the DBSA may demand in writing that the Borrower shall pay to the DBSA an additional amount as will be sufficient to compensate DBSA for such reduction in return; or

11.2.1.2 the DBSA shall be entitled to increase the Interest Rate of its Loan by such percentage as shall be necessary to compensate the DBSA for such reduction in return. The increase in the Relevant Rate pursuant to this clause 11 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) Business days after the date of such written notice, or

11.2.1.3 effects the DBSA's ability to make any advance or to maintain any funding previously advanced, including, for the avoidance of doubt, the DBSA being unable to obtain matched funding in the market for its obligations under this Agreement, the DBSA shall be entitled to withhold such advance (including, without limitation, be entitled to cancel any available commitment),

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in each event subject to the Parties having entered into negotiations for a period of 30 (thirty) days to restructure this Agreement and/or amend the terms of this Agreement to avoid such effect, failing which the Borrower shall repay the Loan Outstanding to the DBSA within 10 (ten) Business Day.

11.3 Exceptions

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

- 11.3.1 attributable to a tax deduction required by law to be made by the Borrower; and
- 11.3.2 attributable to the DBSA failing to comply with any law or regulation.

11.4 Decrease in costs

If any event detailed in clause 11.1.1 or 11.1.2 occurs and, as a direct result, the DBSA benefits from and realises:

- 11.4.1 a reduction or decrease in costs;
- 11.4.2 an increase of any amount receivable under this Agreement; or
- 11.4.3 an increase in the rate of return from this Agreement or on the DBSA's overall capital, (a Decreased Cost) then, to the extent that such Decreased Cost is attributable to the DBSA having entered into this Agreement or funding or performing its obligations under this Agreement, the DBSA (acting in good faith) must within 10 (ten) days pay the amount of such Decreased Cost to the Borrower.

- 11.5 The Borrower must notify the DBSA of any claim in respect a Decreased Cost to which it is entitled under this clause 0 (Decreased Costs) within [365] days from the date on which the event detailed in clause 11.1.1 or 11.1.2 which gave rise to that Decreased Cost occurred, failing which such claim shall lapse.

12. EVENTS OF DEFAULT

12.1 The DBSA shall be entitled, after giving the Borrower 30 (thirty) days written notice, to suspend drawdowns from the Loan or to terminate this Agreement and to claim from the Borrower immediate payment of all the outstanding amounts should the Borrower commit any breach of this Agreement.

12.2 Without derogating from the generality of the foregoing, the DBSA shall be entitled to exercise its rights in terms of clause 12.1 above, upon the happening of any of the following events:-

12.2.1 the Borrower failing to repay the capital amount and to pay interest in terms hereof, and failing to remedy such breach within the notice period referred to in 12.1 above requiring it to do so;

12.2.2 any attachment in excess of R300k being made or any execution being levied against the Borrower;

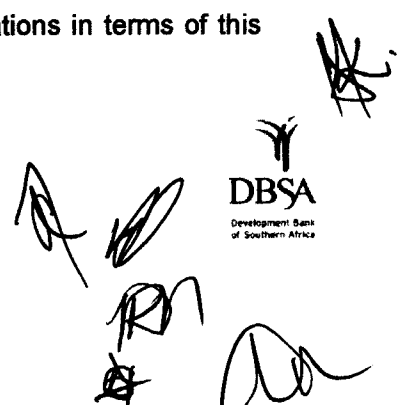
12.2.3 any failure to repay any of the DBSA's loans or breach of any agreement entered into between the Borrower and the DBSA and/or with any other lender/creditor in excess of R300k;

12.2.4 any fact or circumstance shall have occurred which in the reasonable opinion of the DBSA may affect the ability or willingness of the Borrower to comply with all or any of its obligations under this Agreement;

12.2.5 the Borrower proposing any rescheduling, reorganisation or rearrangement of the whole or part of its indebtedness with the DBSA or any of its creditors;

12.2.6 the Borrower's business operations or any significant part thereof, being interrupted for a continuous period of at least 3 (three) months;

12.2.7 any approval, licence, authorisation or other requirement necessary to enable the Borrower to comply with any of its obligations in terms of this



Agreement is modified, revoked or withdrawn whilst this Agreement is still in force;

12.2.8 any order is made or resolution passed or other action taken for the dissolution or termination of the existence of the Borrower; and

12.2.9 any representation, warranty or statement made in, or in connection with, this Agreement or any opinion delivered by or on behalf of the Borrower under this Agreement is found to be incorrect.

12.3 The exercise of the rights by the DBSA in terms hereof shall be without prejudice and/or in addition to any other rights which the DBSA may then have against the Borrower in law, including the right to demand specific performance by the Borrower of its obligations in terms of this Agreement.

13. CONDITIONS PRECEDENT

13.1 The Borrower shall submit to the DBSA a copy of the Council resolution authorizing it to enter into this Agreement.

13.2 The Borrower shall submit to the DBSA a letter from the Accounting Officer (Municipal Manager) that this loan offer was approved in accordance with the conditions as prescribed by section 46 of the Municipal Finance Management Act No. 56 of 2003.

13.3 The Borrower shall submit a detailed monthly cash flow projection, disclosing their strategy on the intended utilisation of this funding facility.

14. FURTHER TERMS AND CONDITIONS

14.1 The Borrower hereby, undertakes to provide the DBSA with its audited Financial Statements, within 6 (six) months from the end of its financial year.

14.2 The Borrower undertakes to cover any cost overruns and/or secure additional funding in order to complete the projects funded by the DBSA.

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- 14.3 The Borrower hereby, warrants that it has and/or will obtained, from all government, provincial and other authorities, the necessary licences, permits and other authorisations, required, in terms of environmental, health and safety legislation, for the construction, operation and maintenance of this programme.
- 14.4 The Borrower will provide the DBSA with the proof of comprehensive insurance for the project infrastructure funded under this facility. Such proof to be provided to the DBSA with each request for the payment by the Borrower.
- 14.5 The Borrower undertakes to follow the National Procurement Guidelines in conjunction with its own policies on procurement and will emphasise development impact imperatives such as legislative compliance, job creation, and skills development when awarding contracts.
- 14.6 The Borrower must ensure proper maintenance of the assets created through this loan by including it in a maintenance plan.
- 14.7 All construction work to be as per standards: SANS 1200; National Building Regulations and Occupational Health and Safety Act. All building materials used are to be SABS approved. All design work (when required) to be carried out by a registered professional engineer.
- 14.8 With consideration to project cost and efficiency, the Borrower must endeavour to utilise resources (in terms of labour, plant and materials) from within its jurisdictional area before such resources are sourced externally.

15. ARBITRATION

- 15.1 Any dispute arising out of or relating to this Agreement concerning the interpretation of the terms and conditions of this Agreement or of compliance by any Party with the terms/conditions of this Agreement which is not resolved amicably through consultations or negotiations shall, subject to the other provisions of this Agreement, be settled by arbitration in terms of the Arbitration Act No. 42 of 1965, as amended from time to time; provided that a claim by the DBSA for the repayment of any monies due under this Agreement shall not be regarded as a

dispute for the purpose of this clause and neither Party shall therefore be obliged to refer such a claim to arbitration.

- 15.2 In case of arbitration a tribunal shall be composed of one arbitrator who shall be appointed by the Parties by agreement or failing such agreement, by the chairperson of the Association of Arbitrators, who shall, in appointing such arbitrator, have regard to the qualifications and experience of the appointee in relation to the nature of the dispute over which he/she has to adjudicate. In case the arbitrator resigns or becomes unable to act, a successor shall be appointed in the same manner as herein prescribed for the appointment of the original arbitrator and the successor shall have all the powers and duties of his/her predecessor.
- 15.3 The arbitration shall be held at the place and in accordance with whatever procedures the arbitrator considers appropriate. In particular, the arbitrator, may, if he/she deems appropriate, conduct the arbitration in an informal and summary manner and without requiring pleadings or discovery of documents and without observing the rules of evidence. The proceedings shall be confidential and neither the Parties nor the arbitrator shall disclose to third parties any information regarding the proceedings, the award, or settlement terms unless the parties otherwise agree in writing.
- 15.4 After the institution of arbitration proceedings the tribunal may proceed with the arbitration notwithstanding any failure, neglect or refusal of either Party to comply with the provisions hereof or to take part or to continue to take part in the arbitration proceedings. The arbitrator shall within 30 (thirty) days of the termination of the proceedings render a final and binding written award including interest and costs, and furnish the Parties with written reasons for his/her judgment.
- 15.5 The provisions of this clause may be invoked by any Party by delivering to the other Party a demand, in writing, that an arbitrator be appointed to adjudicate in respect of a specified dispute.

16. GENERAL**16.1 PROJECT NOTICE BOARDS**

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

16.2 DOMICILIUM

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

(i) In case of the DBSA:-

Physical address: Development Bank of Southern Africa Limited
1258 Lever Road
Headway Hill
MIDRAND
SOUTH AFRICA; or

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

Telefax number: (011) 313 3086

(ii) In case of the Borrower:-

Physical address: Nelson Mandela Bay Municipality
c/o the Municipal Manager
1st Floor City Hall
Market Square
Govan Mbeki Avenue
PORT ELIZABETH
6001; or

Postal address: P O Box 116
PORT ELIZABETH
6001; or

Telefax number: (041) 506 3424

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

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

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

16.3 WHOLE AGREEMENT

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

16.4 NON-VARIATION

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

16.5 NON-ENFORCEMENT/INDULGENCE

The non-enforcement of any provision of this Agreement or any indulgence which either Party may grant to the other Party shall be without prejudice to the rights of such first-mentioned Party to insist upon strict compliance by such other Party with



DBSA
Development Bank
of Southern Africa

all the provisions of this Agreement or to enforce its right in respect of which such indulgence was granted.

16.6 TERMS AND CONDITIONS FOR DISBURSEMENT

16.6.1 The Borrower shall provide the DBSA with a letter with each request for payment indicating that the activities falling under that particular claim were implemented according to all relevant environmental, health and safety legal requirements.

16.6.2 Disbursements will be based on actual expenditure incurred on a monthly basis with regard to the individual project infrastructure funded under this facility.



The bottom right corner of the page contains several handwritten signatures in black ink. To the right of these signatures is the logo for the Development Bank of Southern Africa (DBSA), which consists of a stylized bird-like icon above the text 'DBSA' and 'Development Bank of Southern Africa'.

THIS DONE AND SIGNED AT Paul Oyesehin ON THE 27 DAY OF July 2009.

AS WITNESSES:

1. [Signature]

2. [Signature]

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

THIS DONE AND SIGNED AT Muse AND ON THE 11 DAY OF August 2009.

AS WITNESSES:

1. [Signature]

2. [Signature]

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

PROJECT DESCRIPTION

1. PROJECT OBJECTIVE

The objective of this project is to provide a comprehensive finance facility to the Nelson Mandela Bay Municipality to ensure that sufficient funding is available for the implementation of the Municipalities capital expenditure programme for the 2008/09 financial year.

2. PROJECT DESCRIPTION

The DBSA is offering a finance facility of R420 million, to the NMBM, to ensure adequate investment funding for the implementation of the Municipalities capital expenditure programme for the 2008/09 financial year.

The finance facility is aimed at enhancing the delivery service delivery and socio-economic infrastructure in the NMBM area and caters for the implementation of the following infrastructure sectors:

Project	Amount (R)
Roads	168,083,800
Sports and Recreation	17,462,800
Electrification and street lightning	88,487,900
Refuse Collection/Bins	5,340,000
Buildings	23,337,230
Water and Sanitation	37,379,800
Stormwater	25,782,850
Sewer	54,125,620
Total	420,000,000

3. IMPLEMENTATION ARRANGEMENTS


- 3.1 The NMBM shall comply with the provisions of the MFMA supply chain guidelines in the implementation of the projects;
- 3.2 Quality environmental management, at the relevant levels of authority, is to be maintained; and
- 3.3 The implementation of the projects will be in accordance with the NMBM's existing implementation arrangements.



 DBSA
 Development Bank
 of Southern Africa

SOURCE AND APPLICATION OF FUNDS STATEMENT

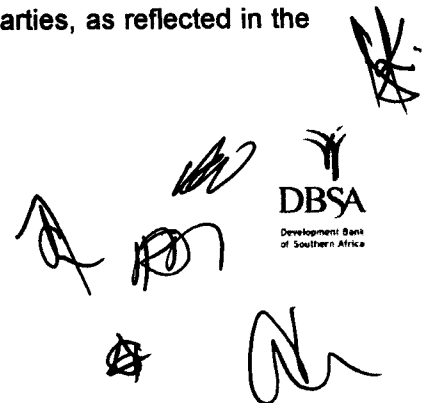
Infrastructure Sector	Total (R)	DBSA Contribution	NMBM
Roads	559,463,000	168,083,800	391,379,200
Sports and Recreation	69,000,000	17,462,800	51,537,200
Electrification and street lightning	164,211,000	88,487,900	75,723,100
Refuse Collection/Bins/Waste	18,182,760	5,340,000	12,842,760
Housing and Buildings	310,000,000	23,337,230	286,662,770
Water and Sanitation	143,100,000	37,379,800	105,720,200
Stormwater	52,000,000	25,782,850	26,217,150
Sewer	63,000,000	54,125,620	8,874,380
Total	1,378,956,760	420,000,000	958,956,760



 DBSA
 Development Bank
 of Southern Africa

PROJECT CO-OPERATION

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



Handwritten signatures and the logo of the Development Bank of Southern Africa (DBSA). The logo consists of the letters 'DBSA' in a bold, sans-serif font, with 'Development Bank of Southern Africa' written in a smaller font below it. There are several handwritten signatures in black ink around the logo, including one that appears to be 'K.' and another that looks like 'N'.

- 2.3 be responsible for the management and maintenance of work carried out, within the context of the Project;
- 2.4 ensure that contractors, to whom contracts are awarded, are insured, and remain insured, in terms of contractors-all-risk-insurance policies, in a manner reasonably acceptable to the DBSA;
- 2.5 insure, and keep insured at the replacement value thereof, such of its interests in the Project, against such risks, as may be agreed upon by the Parties;
- 2.6 maintain, or cause to be maintained, records, adequate to identify the operations carried out by means of the Loan, and furnish the DBSA with all such information (e.g. progress reports), concerning the implementation of the Project;
- 2.7 apply the Loan, in accordance with Annexure B;
- 2.8 require each contractor, to whom a contract is awarded, to furnish a performance guarantee acceptable to the DBSA, in terms whereof the completion of such contract is guaranteed; and
- 2.9 preserve all documents and accounting records, relating to the Project, up to the expiry of a period of 9 (nine) years, after signature of this Agreement, and shall allow the DBSA, at the DBSA's cost, at any reasonable time, to have such documents and records audited by a person, nominated by the DBSA.
3. Where the Parties agree that the further appointment of consultants, or the revision of the brief of appointed consultants, is necessary, the following criteria shall obtain:-
- promotion and/or support of the SMME sector;
 - past experience with similar projects;
 - knowledge of local conditions;
 - abilities and qualifications;
 - membership of professional institutions.



The bottom right corner of the page contains several handwritten signatures in black ink. Below the signatures is the logo for the Development Bank of Southern Africa (DBSA), which consists of the letters 'DBSA' in a bold, sans-serif font, with the full name 'Development Bank of Southern Africa' written in a smaller font underneath.



tel: +27 (0) 41 506 5306, fax: +27 (0) 41 506 7290

PO Box 834, Port Elizabeth, 6000

Republic of South Africa

E-mail: sbaatjies@mandelametro.gov.za

24 July 2009

DBSA

1258 Lever Road

Headway Hill

Midrand

1685

Dear Mr P C Baloyi

REQUEST FOR LOAN DISBURSEMENT

Project No 103330

1. Please refer to the Loan Agreement dated 24 July 2009 between the Borrower and the Development Bank of South Africa Limited (DBSA). 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 31 July 2009 (or as soon as practicable thereafter) of the aggregate amount of 420 million under the Loan (the Disbursement). You are kindly requested to pay such amount to the account of the Borrower, Account No 080021271 Branch Code 050017.
3. For the purpose of clause 5 of the Loan Agreement, the Borrower further certifies to the best of its knowledge (after due enquiry) as follows:-
 - 3.1 The presentation 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 has occurred, is continuing or about to occur.

- 3.3 Since the date of the Loan Agreement no changes in the Project 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 Project;

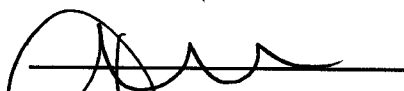
- 3.5 After receipt of the Disbursement the Borrower will not be in violation of:
 - 3.5.1 its Constitutional Documents;

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

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

The above certifications are effective as at the date of this Request for Disbursement and shall continue to be effective as of the date of Disbursement. If any of these certifications is no longer valid as 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


ADV J G RICHARDS

Name: 27/7/09



ANNEXURE E

AUTHORISATION

BORROWER

In terms of Section 46(2)(b) of the MFMA as well as the Council Resolution of 23 July 2009, the Municipal Manager is duly authorized to sign the R420m loan agreement with the Development Bank of Southern Africa

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**DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED: DELEGATIONS OF SIGNING
AUTHORITIES FOR INVESTMENT LOANS AND TECHNICAL ASSISTANCE**

PAUL CAMBO BALOYI

in his capacity as Chief Executive of the Development Bank of Southern Africa, in terms of authority delegated to the incumbent of this post by the Board of Directors of the Development Bank of Southern Africa Limited on 20 March 1997, as amended and read with section 5 of the Development Bank of Southern Africa Act No 13 of 1997, determined on 02 February 2009 that:

PAUL CAMBO BALOYI
in his capacity as Chief Executive Officer
and Managing Director

OR

HEINZ WEILERT
In his capacity as Chief Operating Officer

OR

LEONIE VAN LELYVELD
in her capacity as Chief Risk officer

OR

PIETER DE LA REY
In his capacity as Chief Financial Officer

OR

ADMASU YILMA TADESSE

OR

ERNEST ARTHUR DIETRICH

OR

LOYISO NDLOVU

OR

SNOWY JOYCE KHOZA

OR

RAVINDRA NAIDOO

OR

The bottom right corner of the page contains several handwritten signatures in black ink. To the right of these signatures is the logo for the Development Bank of Southern Africa (DBSA), which consists of a stylized bird-like symbol above the letters 'DBSA' and the full name 'Development Bank of Southern Africa' in smaller text below.

MAGARE LUTHER MASHABA
in their capacities as Executive Managers

OR

SAMUEL RAPULANE MOGOTOTOANE
in his capacity as Manager: Legal Services

OR

BANE MOEKETSI MALEKE

OR

PUMLA MANNYA

OR

CHUCHEKA BEN MHLONGO

OR

EMILE DU TOIT

OR

REMBULUWANI BETHUEL NETSHISWINZHE

OR

TSHOKOLO PETRUS NCHOCHO

OR

WILLIAM LUGEMWA

in their capacities as Managers: Business units in accordance with their delegated authorities

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

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

and to perform all acts and sign all contracts or any other documentation in connection therewith that may be necessary for the purpose.

26 August 2009
DATE


LEGAL SERVICES