



LOAN AGREEMENT

made and entered into by and between

THE DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED

and

UMZINYATHI DISTRICT MUNICIPALITY

in respect of funding of the

WATER AND SANITATION DEVELOPMENT INFRASTRUCTURE PROGRAMME

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1.9 "Borrower's Account" means the primary bank account with the following details:

Name of Account	:	UMzinyathi District Municipality
Bank Name	:	FNB
Account Number	:	62358106279
Branch Name	:	Dundee
Branch Code	:	250655
Type of Account	:	Current account

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

1.11 "Breakage Costs" means any direct and properly evidenced costs and losses incurred by the DBSA pursuant to the premature termination, unwinding, closing out or modification of:




- a. any underlying funding instrument raised by the DBSA to raise any funds to advance the Capital (or any portion thereof); and/or
- b. the derivative transactions entered into by DBSA in order to hedge any interest rate exposure which it may have assumed by concluding this Agreement; and/or
- c. the amount (if any) determined by the DBSA by which:
 - (i) the interest, which the DBSA would have received for the period commencing on the date of such prepaid principal amount to the next Interest Payment Date, exceeds;
 - (ii) the interest which the DBSA would have obtained by placing an amount equal to the prepaid principal received by it, on deposit with a leading bank in the relevant Interbank Market for the period commencing on the date of receipt of such principal amount and ending on the next Interest Payment Date;

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- 1.21 "**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;
- 1.22 "**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;
- 1.23 "**Default Interest**" means any interest which accrues at the Default Rate in terms of this Agreement;
- 1.24 "**Default Rate**" means the Interest Rate plus 200 (two hundred) basis points;
- 1.25 "**Disbursement**" means any amount drawn down by the Borrower, and disbursed by the DBSA under and in terms of a Disbursement Request;
- 1.26 "**Disbursement Date**" means the date on which a Disbursement is stipulated to be made or actually made by the DBSA to the Borrower;
- 1.27 "**Disbursement Request**" means a notice substantially in the form of **Annexure A**;
- 1.28 "**Disbursement Schedule**" means the schedule to be provided by the Borrower to the DBSA which sets out the amount to be disbursed by the DBSA to the Borrower and dates on which such amounts will be disbursed to the Borrower under this Agreement;
- 1.29 "**Economic Failure**" means any adverse change, determined in the sole discretion of the DBSA, in the South African or international capital markets or in South African or international monetary, financial, political or economic conditions which renders it unlawful or impossible for the DBSA to advance any portion or the Capital on any Disbursement Date or which adversely affect the DBSA's access to the relevant local or international capital markets;
- 1.30 "**Event of Default**" means any event of default as envisaged in clause 21 (*Events of Default*) below;
- 1.31 "**FICA**" means the Financial Intelligence Centre Act No. 38 of 2001, as amended from time to time;
- 1.32 "**Finance Documents**" means all the Finance Agreements including completely without limitation:



 

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- 1.40 "**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;
- 1.41 "**Loan Period**" means not later than 30 June 2015;
- 1.42 "**Margin**" means 155 basis points, expressed as a percentage rate, per annum;
- 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:
- 1.43.1 the business, operations, property, condition (financial or otherwise) or prospects of the Borrower; or
 - 1.43.2 the ability of the Borrower to perform its obligations in terms of this Agreement; or
 - 1.43.3 the validity or enforceability of this Agreement or the rights or remedies of the DBSA hereunder; or
 - 1.43.4 the right or remedies of DBSA in terms of and pursuant to this Agreement;
- 1.44 "**MFMA**" means the Municipal Finance Management Act No. 56 of 2003, as amended from time to time;
- 1.45 "**MIG**" means the Municipal Infrastructure Grant allocated by National Treasury from time to time to the Borrower;;
- 1.46 "**MTREF**" means the Medium Term Revenue Expenditure Framework as prescribed by National Treasury;
- 1.47 "**MISA**" means the Municipal Infrastructure Support Agent established as a national government component in terms of the Public Service Act 103 of 1994
- 1.48 "**Parties**" means the DBSA and the Borrower, and "**Party**" shall as the context requires, be a reference to either one of them;
- 1.49 "**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;



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- 1.49 **"Primary Account"** means the account of the Borrower held with First National Bank under account number: 62358106279 in terms of Section 8 of the Municipal Finance Management Act 56 of 2003;
- 1.50 **"Programme"** means the Municipality's Water and Sanitation Development Infrastructure Programme, as more fully described in **Annexure B (Programme Description)** and **"Project"** shall mean any project within the Programme;
- 1.51 **"Quarterly"** means a period between 1 January to 30 March, 1 April to 30 June, 1 July to 30 September and 1 October to 31 December;
- 1.52 **"Reset Date"** means the last day of March, July and November of each calendar year or such other dates as may be agreed to in writing by the Parties;
- 1.53 **"Reset Period"** means a period of 4 (four) months commencing from each Reset Date;
- 1.54 **"Secondary Account"** means the account to be opened by the Borrower, for the Loan Outstandings, which shall be ceded to the DBSA;
- 1.55 **"Security"** means the security created by or pursuant to the Security Documents, or such other security as the Parties may agree, to secure all amounts owing by the Borrower to the DBSA under this Agreement;
- 1.56 **"Security Documents"** means all the Security Documents including without limitation:
- 1.56.1 Cession/Pledge of the Secondary Account;
 - 1.56.2 Account Bank Agreement; and
 - 1.56.3 Interests, title and rights to and/or under any Security Document.
- 1.57 **"Signature Date"** means the date on which this Agreement is signed by the last Party signing it;
- 1.58 **"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;



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- 1.72 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.
- 1.73 Unless stated otherwise, all fees referred to in this Agreement are exclusive of VAT.
- 1.74 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.
- 1.75 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.
- 1.76 This Agreement shall be governed by, construed and interpreted in accordance with the law of the Republic of South Africa.
- 1.77 This Agreement shall bind the Parties successors-in-title and/or in Law.

2. RECORDAL

- 2.1 The Borrower is undertaking the Programme and seeks funding in respect thereof.
- 2.2 The DBSA has, after performing the necessary appraisal of the Borrower, approved the Borrower's application for a loan of R303, 500,000.00 (three hundred and three million five hundred thousand 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; and




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For the avoidance of doubt, the Finance Agreements shall never become of any force and effect if the Borrower does not comply with both clauses 4.1 and 4.2.

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 the loan agreement, and, in particular, the DBSA shall have received the following, all to the satisfaction of the DBSA:

- 5.1.1 a copy of the latest approved MTREF budget reflecting that money for the Programme has been appropriated in the capital budget and approving the Programme and the total cost thereof. In this regard the Borrower's Accounting Officer or his/her delegate shall in writing confirm to the DBSA the authentication of the copies of the budget;
- 5.1.2 a certified copy of a resolution of the Council of the Borrower in terms of section 46 and 48 of the MFMA:
 - 5.1.2.1 approving the terms of the loan agreement and the pledging of the MIG transfers; and
 - 5.1.2.2 authorising the Accounting Officer to execute the loan agreement and/or any Security document 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, advertised the Borrower's intention to incur long-term debt;
- 5.1.4 proof that the Provincial and/or National Treasury has been advised of the loan/Project;
- 5.1.5 the Borrower shall provide the DBSA with proof that Provincial COGTA have been notified of the loan.
- 5.1.6 the Borrower shall provide the DBSA with a copy of the approval from National Treasury in terms of section 8 (5) of the latest Division of Revenue Act read with section 74 of the MFMA



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

6 INTEREST

- 6.1 From the first Disbursement Date the Loan shall bear interest at the Interest Rate.
- 6.2 Interest on the Loan under this Agreement shall:
- 6.2.1 subject to clause 6.3, accrue from day to day;
- 6.2.2 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;
- 6.2.3 be calculated on a nominal annual compounded Quarterly basis;
- 6.2.4 accrue and be payable on each Interest Payment Date, save that the first Interest Period shall commence on the date of first disbursement and end on the immediately succeeding Interest Payment Date and each subsequent Interest Period shall commence on the expiry of the preceding Interest period.
- 6.3 Default Interest:
- 6.3.1 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.

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8.2 The Borrower shall pay to the DBSA a Commitment Fee on the Capital which from time to time has not been disbursed or cancelled in the event that the Borrower deviates (on both amount and date) from the draw-down schedule. 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-rata 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

8.3 be payable Quarterly in arrears on each Interest Payment Date, the first such payment to be due on the first Interest Payment Date.

9 CONVERSION OPTION FROM A FLOATING RATE TO A FIXED RATE

The Borrower may, on any Reset Date convert the Loan Interest Rate from a floating Interest Rate to a fixed Interest Rate 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, the amount outstanding from the date on which the Borrower exercises the Conversion Option shall bear a fixed Interest Rate. The Borrower shall be notified in writing of the DBSA applicable fixed base rate and margin at the time of such conversion.

10 REPAYMENT

10.1 Capital Repayments

10.1.1 Capital will be repaid in accordance with clause 6 of the Account Bank Agreement on each Capital Payment Date;

10.1.2 The DBSA will invoice the Borrower no less than seven (7) days prior to each Capital Payment Date, the capital amount that is due on that Capital Payment Date.

10.1.3 The Borrower shall receive its MIG transfers into the Primary Account on each Capital Payment Date, upon which the Borrower shall transfer the relevant amount invoiced by DBSA into the Secondary Account within 3 (days) days from that Capital Payment Date.




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- 11.6 Any prepayment shall be:
- 11.6.1 applied to the Loans being prepaid in inverse order of maturity;
 - 11.6.2 made together with accrued interest on the amount prepaid (together with other amounts than due to DBSA); and
 - 11.6.3 subject to Breakage Costs and/or Unwinding Costs.
- 11.7 The Borrower shall not prepay all or any of the Loan Outstanding except at the times and in the manner expressly provided in this Agreement.
- 11.8 If any prepayment of all or any part of the Loan outstanding 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.

12 PAYMENT COVENANTS

- 12.2 All payments to be made by the Borrower in terms of this Agreement shall be made in Rand into such bank account as the DBSA may from time to time direct in writing.
- 12.3 The Borrower shall not be entitled to:
- 12.3.1 defer, withhold or adjust any payment due to the DBSA arising out of this Agreement;
 - 12.3.2 obtain deferment or any judgment for or any such payment or part thereof;
 - 12.3.3 obtain deferment of any execution of any judgment, by reason of any set-off or counterclaim of any nature whatsoever and howsoever arising.
- 12.4 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.
- 12.5 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:

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13.3 By the Borrower

- 13.3.1 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.
- 13.3.2 The Borrower may at any time upon 30 (thirty) days' written notice to the DBSA, request the DBSA to reduce the unused Capital.
- 13.3.3 Notice received in accordance with clauses 13.3.1 and 13.2.2 above, will be subject to:
- 13.3.4 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);
- 13.3.5 no event of default has occurred and is continuing;
- 13.3.6 12.2.3.3 Cancellation Fee of 0.5% of the cancelled and/or reduced Capital shall be paid in the event of such cancellation.
- 13.3.7 Any such reduction shall be made pro rata across the Capital.

13.4 Reinstatement

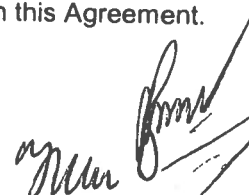

Unless otherwise provided in this Agreement, no amount of the Capital cancelled under this Agreement may be reinstated.

13.5 Cancellation Fee

Should the Borrower cancel the facility or fail to request advances on the facility once the Loan Agreement has been signed by both parties, 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.

13.6 Other requirements

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



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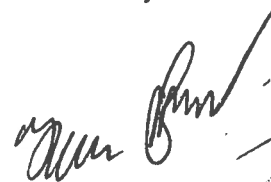

14.2 Tax indemnity

- 14.2.1 Except as provided below, the Borrower indemnifies the DBSA against any direct loss, liability or cost which will be or has been directly or indirectly suffered by the DBSA for or on account of Tax in relation to a payment received or receivable (or any payment deemed to be received or receivable) under this Agreement.
- 14.2.2 Clause 14.2.1 above does not apply:
- 14.2.2.1 to any Tax assessed on the DBSA if that Tax is imposed on or calculated by reference to the net income received or receivable by the DBSA. However, any payment deemed to be received or receivable, including any amount treated as income but not actually received by the DBSA, such as a Tax Deduction, will not be treated as net income received or receivable for this purpose; or
- 14.2.2.2 to the extent a loss, liability or cost is compensated for by an increased payment under clause 14.1.3.
- 14.2.3 If the DBSA makes, or intends to make, a claim under clause 14.2.1 above, it must promptly notify the Borrower of the event which will give, or has given, rise to the claim, and provide reasonable details regarding the manner and basis upon which the amount claimed was calculated.

14.3 Tax credit

- 14.3.1 In this Clause, Tax Credit means a credit against any Tax or any relief or remission for Tax (or its repayment).
- 14.3.2 If the Borrower makes a Tax Payment and the DBSA (acting reasonably) determines that:
- 14.3.2.1 a Tax Credit is attributable to that Tax Payment; and
- 14.3.2.2 it has finally obtained, used and retained that Tax Credit,

the DBSA must pay an amount to the Borrower which will leave it (after that payment) in the same after-tax position as it would have been if the Tax Payment had not been required to be made by the Borrower.



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15.2.1.2 the DBSA shall be entitled to increase the Margin by such percentage as shall be necessary to compensate the DBSA for such reduction in return. The increase in Margin shall take effect from the date specified in a written notice delivered by the DBSA to the Borrower but in any event not less than 30 (thirty) days after the date of such written notice.

15.2.2 If an Economic Failure occurs that in the opinion of the DBSA affects 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.

15.3 Exceptions

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

- 15.3.1 attributable to a Tax Deduction required by law to be made by the Borrower;
- 15.3.2 compensated for under clause 14.2 (Tax indemnity) (or would have been but was not so compensated solely because any of the exclusions in clause 14.2 (Tax indemnity) applied); or
- 15.3.3 attributable to the DBSA failing to comply with any law or regulation.

16 OTHER INDEMNITIES AND BREAKAGE COSTS

16.1 Indemnities

16.1.1 The Borrower indemnifies the DBSA against any direct cost, loss or liability (including legal fees on an attorney and own client scale) which the DBSA directly or indirectly incurs as a result of:

- 16.1.1.1 the occurrence of any Event of Default, including legal fees on an attorney and own client scale;

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17.2 In the Finance Documents, the Borrower will furnish customary covenants (subject to customary qualifications and exceptions, including materiality qualifications) for this type of transaction, and deemed to be repeated on each date on which funds are advanced and on each Interest Payment Date, including but not limited to the following:

a. Positive Undertakings and Warranties

- 17.2.1 The Borrower warrants that it has obtained and in future will or cause to be obtained from the relevant government authorities any Authorisation(s) and/or permit(s)/licences which are or may be required in terms of the relevant environmental and/or water legislation. The Borrower agrees to provide the DBSA with copies of any such authorisation(s) and/or license(s) as received.
- 17.2.2 The Borrower shall 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.
- 17.2.3 The Borrower shall ensure that the loan proceeds are used solely for the funding of this Programme. Should the loan be used for any other purpose other than to finance the Programme, then the pledge of any future conditional transfer as security for the loan shall be null and void and the Borrower shall repay the loan from its own resources.
- 17.2.4 The Borrower shall ensure proper maintenance of the assets created through this loan by including it in the maintenance plan which must be part of an asset management plan. The Borrower shall increase its repairs and maintenance budget to at least 10% of operating expenditure or at least 8% of asset value. The Borrower shall, on request from the DBSA, provide details of how they have budgeted for repairs and maintenance. Should the Borrower fail to increase its repairs and maintenance budget as provided for above, the Borrower must provide a detailed explanation and assurance that the budgeted amounts for repairs and maintenance is adequate to secure the ongoing health of the Borrower's infrastructure supported by reference to its asset management plan.




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- 17.2.15 The Borrower shall arrange suitable insurance to cover any possible damage and such insurance shall be in line with the MFMA.
- 17.2.16 The Borrower shall, in consultation with COGTA, develop a handover implementation plan with set milestones to ensure that the Borrower is well capacitated
- 17.2.17 The Borrower shall invite the DBSA to all site meetings and monthly progress meetings related to the Programme.
- 17.2.18 The Borrower shall provide the DBSA with quarterly progress reports on how they are resolving the issues raised by the AG.
- 17.2.19 The Borrower shall increase its human resources capacity in the Project Management Unit to enable it to implement this Programme.
- 17.2.20 The Borrower will develop and provide the DBSA with an institutional strengthening plan, including a Programme Monitoring Plan, which reflects that there will be capacity within the UDM to manage and maintain the assets to be created through this Loan. The Programme Monitoring Plan will kick off as soon as the Loan Agreement has been signed and monitoring will be conducted on a quarterly basis.
- 17.2.21 Failure to comply with the provisions of clauses 17.2.19 and 17.2.20 above will entitle DBSA to suspend or withhold any disbursements in terms of this Agreement.
- 17.2.22 The Borrower shall increase its operational and maintenance budget to 8% (eight).
- 17.2.23 The Borrower shall co-operate with the DBSA in relation to Post Finance Support services and shall, in the event of any funding being required for any other projects and/programmes which may emanate from such Post Finance Support, provide DBSA with the right of first refusal.
- 17.2.24 The Borrower shall increase its operation and maintenance capacity through the recruitment of additional resources as outlined in the table below. The Borrower shall provide the DBSA with quarterly progress reports indicating quarterly achieved capacity building milestones as outlined in the table below.



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17.3.1.5 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;

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

17.3.1.7 ensure that no materials containing asbestos are used in the construction of the Programme/Projects;

17.4 Financial Statements

The Borrower shall deliver its audited annual financial statements to the DBSA within 180 (one hundred and eighty) days of the last day of the Financial Year or after Council approval.

17.5 Taxes

The Borrower shall pay all and any Taxes of any nature whatsoever which may become due and payable by it, strictly on due date for payment.

18 REPRESENTATIONS AND WARRANTIES

18.1 In addition to any representation and warranties give elsewhere in the Agreement by the Borrower to the DBSA, the Borrower gives the warranties contained in this clause 18 (*Representations and Warranties*) to the DBSA. Each such warranty:

18.1.1 is a separate and distinct warranty;

18.1.2 is material and does not omit any matter, the omission of which makes any such warranty and representation misleading;

18.1.3 has induced the DBSA to enter into this Agreement;

18.1.4 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 on the Loan Discharge Date.




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- 18.2.10 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;
- 18.2.11 the Borrower is not in default of any of its obligations in respect of other borrowed monies;
- 18.2.12 from the Signature Date and for so long as any moneys are owing under this Agreement, it will:
- 18.2.12.1 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;
 - 18.2.12.2 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;
 - 18.2.12.3 comply with all relevant laws of the national government and/or the applicable Provincial government and/or regulations made thereunder 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;
- 18.2.13 the Borrower is carrying out the Programme and its operations in compliance with the laws of the Republic of South Africa.

18.3 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.



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- 21.1.2 the Borrower breaches any representation and/or warranty 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;
- 21.1.3 the Borrower breaches any of the undertakings given by it to the DBSA pursuant to this Agreement and/or any other agreement it has entered into with the DBSA, if such breach is capable of being remedied, fails to remedy such breach within 10 (ten) days of receipt of written demand from the DBSA;
- 21.1.4 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;
- 21.1.5 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;
- 21.1.6 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;
- 21.1.7 the Borrower allows judgment for an amount in excess of R10 000 000.00 (ten million Rand) to be entered against it and fails to pay the amount of such judgment within 5 (five) Business Days after the date on which the judgment becomes final (in the sense that the Borrower has exhausted all avenues for appeal or review open to it);
- 21.1.8 the Borrower abandons the Programme/Project or suspends the operation of the Programme/Project for a period of more than 3 (three) months;
- 21.1.9 an event occurs which the DBSA reasonably determines to have a Material Adverse Effect and the Borrower is unable, within 30 (thirty) days of receipt of written notice from the DBSA, to overcome such event.




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24.2 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.

25 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.

26 GOVERNING LAW

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

27 JURISDICTION

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

28 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 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.



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31.2.2 Borrower:

Physical: uMzinyathi District Municipality
39 Victoria Street
Dundee
KZN

Postal: PO Box 1965, Dundee, 300

Facsimile: (034) 218 1940

Attention: The Municipal Manager

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

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

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

31.3.2 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.

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

32 RELAXATION

No latitude, extension of time or other indulgence which may be given or allowed by any party to the other Parties 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.




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

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

Name: _____


Date: _____

Place: _____

Witness: _____

Witness: _____


For: **UMZINYATHI DISTRICT MUNICIPALITY**

Signature: 
in his capacity as Accounting Officer

Name: WJM MNGOMEZULU

Date: 02/07/2013

Place: DUNDÉE

Witness: 

Witness: 



Annexure A

Disbursement Request

Borrower's letterhead

(Date)

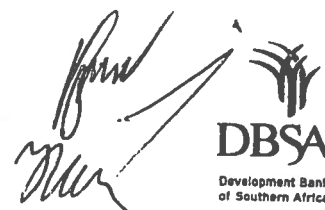
To: The Manager: (*name and address of the DBSA*)

Dear [*insert*]

Disbursement Request No. [•]

Programme No. [•]

1. Please refer to the Loan Agreement dated [*insert date*] between the [•]Municipality (the "**Borrower**") and the Development Bank of Southern 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 [*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/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;



The image shows a handwritten signature in black ink, which appears to be 'M. M. M.', written over a diagonal line. To the right of the signature is the logo of the Development Bank of Southern Africa (DBSA), which consists of a stylized tree icon above the letters 'DBSA' and the full name 'Development Bank of Southern Africa' below it.

Annexure B

Programme Description

The provision of Bulk Water Supply, Water Schemes and Sanitation Projects based on MTEF 2013/14 and 2014/15 MIG and RBIG allocations.

Bulk Water	Muden Regional Bulk Water(Keats), Mbono Regional Bulk Water, Muden Regional Bulk Water(Ndaya), Muden Regional Bulk Water(Muden), Sithembile housing Bulk Services, Dundee Bulk Water, Msinga Regional Bulk Water Supply, Greytown bulk water
Water Projects	Hlazakazi AFA, Ophathe AFA, Umzinyathi Rudimentary, Mthembu West – Extension, Msinga Top/ Othame Geohydrological, Ngubukazi Water Supply Phase 3, Makhabeleni Water Phase 6, Douglas Water Scheme, Ntinini Water Project, Hlimbithwa Makhabeleni Water, Makhabeleni water phase 4 and 5.
Sanitation	Sanitation Backlogs in Nquthu LM, Sanitation Backlogs in Umvoti LM, Othame sanitation, Muden Sanitation, Hlimbithwa Sanitation Project, KwaKopi/ Mhlangana VIP Sanitation.

- 3. 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: WJN MNGOMEZULU



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