

10/30.8

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Building Foundations
for Development

Development Bank
of Southern Africa

Date: 13 AUGUST 1998

Our ref: WC 13 324

The Town Clerk
Velldrif Municipality
P O Box 29
VELDDRIF
7365



Attention: MR BREDENHAM

REGISTERED MAIL

Dear Sir

VELDDRIF BULK AND LINK SEWERAGE INFRASTRUCTURE

Loan amount: R 1 000 000

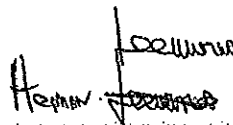
Attached please find a duplicate original of the signed Agreement regarding the abovementioned project for your records.

Please acknowledge receipt by signing the attached copy of this letter and returning it to us at the above address.

Yours faithfully


ROBERT B DLAMINI
LEGAL SERVICES

REG.	LEER + 5/5/3 17/8/2
VEREENSKOOP	SK
INSTANSIE	
Kopie van oorspronklike Bel	



LOAN AGREEMENT

in respect of

VELDDRIF BULK AND LINK SEWERAGE INFRASTRUCTURE

entered into by and between

VELDDRIF MUNICIPALITY

and

THE DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED

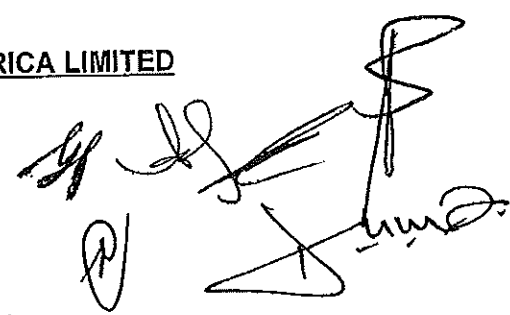
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SUMMARY

- 1. LOAN AMOUNT : R1 000 000-00
- 2. LOAN PERIOD : 20 years
- 3. INTEREST RATE (*) : 16,5% nominal, per annum
- 4. GRACE PERIOD FOR CAPITAL REPAYMENT : Nil
- 5. CAPITAL REPAYMENT : 40 equal six-monthly instalments, commencing on the last day of the 1st Half-year after the Half-year during which the first disbursement was advanced to the Borrower.
- 6. PROJECT FILE NO. : WC13324

* The interest rate, at present, is indicative and will be fixed upon the date of signature of the Agreement and the prevailing DBSA rate, at that time, will be applicable.

1. INTERPRETATION

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

- 1.1.1 "the Borrower" Velddrif Municipality;
- 1.1.2 "the DBSA" the Development Bank of Southern Africa Limited, reconstituted and incorporated in terms of Section 2 of the Development Bank of Southern Africa Act No. 13 of 1997;
- 1.1.3 "the Parties" the Borrower and the DBSA;
- 1.1.4 "the Project" Velddrif Bulk & Link Sewerage Infrastructure, as described in more detail in Annexure A, attached hereto;
- 1.1.5 "the Loan" the financing granted to the Borrower in terms of Clause 2;
- 1.1.6 "the Project Agent" a person nominated, in writing, by the Borrower, to act on its behalf, in respect of the Project;
- 1.1.7 "On-lending" the transfer, by the Borrower, of any amount to any third parties, from the proceeds of the Loan, excluding payments for the procurements of goods and services;
- 1.1.8 "Half-year" from the first day of January to the 30th day of June and/or from the first day of July to the 31st day of December during the same calendar year;
- 1.1.9 "the/this Agreement" this Agreement, together with any Annexures hereto.

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 hereof.

1.3 Any reference to:-

- 1.3.1 the singular shall include the plural and vice versa;
- 1.3.2 a natural person shall include an artificial or corporate person and vice versa;
- 1.3.3 one gender shall include the other.

1.4 This Agreement shall bind the Borrower and its successors-in-title and/or successors-in-law.

2. THE LOAN

2.1 The Loan shall be:-

2.1.1 an amount not exceeding, in aggregate, R1 000 000-00 (one 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 by the Borrower, unless provided for in this Agreement.

3. INTEREST

FIXED INTEREST RATE

3.1 The Loan shall bear interest on the amount outstanding, from time to time, at a nominal fixed rate of 16,5% (sixteen comma five per centum), per annum.

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

OR

FLOATING INTEREST RATE

3.3 ~~The floating rate shall be a nominal rate and shall be the Three Month Bank Bill rate quoted by the South African Futures Exchange (SAFEX) on a nominal percentage, per annum, basis at approximately 11H00 Johannesburg time, converted to a yield rate and rounded upwards to the nearest 0,1%, plus/minus (.....) basis points. Should such rate, for any reason, not be quoted, the applicable rate shall be determined as the arithmetic mean of the Three Month Bank Bill rate, as quoted by four leading reference banks, converted to a yield rate rounded upwards to 3 decimal places. Interest shall be~~

compounded quarterly (three monthly), based on the actual number of days elapsed and payable in arrears on the last business day of each quarter.

The Three Month Bank Bill shall be converted to a yield rate, as follows:

Three Month Bank Bill rate

1- (Three Month Bank Bill rate X91/365)

4. REPAYMENT OF LOAN AND PAYMENT OF INTEREST

4.1 The capital amount of the Loan shall be repaid in 40 (forty) equal six-monthly instalments, commencing on the last day of the 1st (first) Half-year following the Half-year during which the first disbursement was made to the Borrower from the proceeds of the Loan, and, thereafter, at the end of each succeeding Half-year, until the Loan, together with interest thereon, shall have been fully repaid. Provided that, subject to the provisions of Clause 7, the Borrower may, with 1 (one) month's written notice to the DBSA, make repayments in excess of the abovementioned or repay the full amount outstanding, provided, further, that this shall not jeopardise the proper completion of the Project.

4.2 An instalment shall be:-

4.2.1 a fixed amount, determined as at the outset of the 1st (first) Half-year following the Half-year during which the first disbursement was made to the Borrower from the proceeds of the Loan;

4.2.2 calculated as being sufficient to amortise the outstanding amount, plus interest at the rate set out in clause 3, above, in 40 (forty) equal six-monthly payments.

4.3 Should, at the outset of the said 1st (first) Half-year, part of the Loan still not be drawn by the Borrower, the amount of instalments shall be adjusted, as and when drawings take place, in order to achieve amortisation over the original period of the Loan.

5. COMMITMENT FEE

The DBSA shall be entitled to charge a commitment fee of 0,5% (nought comma five per centum), per annum, on all the undisbursed portions of the Loan, effective 3 (three) months from the date of the last signature of this Agreement. Payment shall be made on the same terms and conditions as any other amounts due, in terms of this Agreement.

6. LATE PAYMENT

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

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

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

6.2 Penalty interest shall be calculated with regard to the actual period during which the amount payable remained unpaid, at the ruling prime overdraft rate, charged by The Standard Corporate and Merchant Bank, Sandton, South Africa, on its overdraft accounts, from time to time. Penalty interest shall be compounded six-monthly and shall be payable, on demand.

7. EARLY REPAYMENT

7.1 The Borrower may prepay all, or part of, the Loan on payment dates and subject to prior written notice of, at least, 1 (one) month. The amount prepaid shall be equal to a full payment of any instalment of the Loan. In such case:

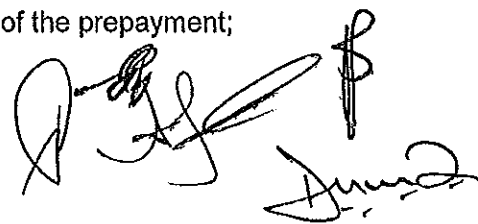
7.1.1 where the interest rate of the Loan is less than, or equal to, the reinvestment rate, defined below, no prepayment fee shall be payable;

7.1.2 where the interest rate of the Loan is greater than the reinvestment rate, defined below, each prepayment shall give rise to payment, by the Borrower to the DBSA, of a prepayment fee, equal to the difference calculated, on a present value basis, to the DBSA's prejudice, between the interest which the Loan would have produced, had there been no prepayment, and the interest which would be produced by a reinvestment of the same amount, having the same amortisation schedule, as the prepaid portion of the Loan.

7.2 For the purposes of this Clause:-

7.2.1 the reinvestment rate shall be the rate at which the DBSA lends out funds to Borrowers, at the date of such prepayment;

7.2.2 the discount rate shall be equal to the reinvestment rate, used above. The date used for the present value calculation shall be that of the prepayment;



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

8. PAYMENTS/REPAYMENTS

8.1 All payments, in terms of this Agreement:-

8.1.1 to, or by, the Parties shall be effected in South African Rands;

8.1.2 to the Borrower, shall be effected to the credit of such banking account of the Borrower, as the Borrower may, from time to time, direct, in writing;

8.1.3 to the DBSA, shall be effected to the credit of such banking account of the DBSA, as the DBSA may, from time to time, direct, in writing;

8.1.4 to the DBSA, shall be effected without deduction and free from any taxes, charges, fees or other costs, whatsoever.

8.2 The Borrower shall furnish the DBSA, in writing, with all the necessary information regarding its officials, who are authorised to apply for drawdowns, on the Borrower's behalf.

8.3 Whenever any payment falls due on a Saturday, Sunday or Public Holiday under the laws to which either of the Parties are subject, such payment shall be made on the next succeeding business day.

9. CANCELLATION/TERMINATION OF DRAWDOWNS

9.1 The Borrower may, by giving 30 (thirty) days' written notice to the DBSA, cancel any undrawn portion of the Loan, provided that such cancellation shall not jeopardise the proper completion of the Project, it being understood that, upon the giving of such notice, the instalments referred to in clause 4.1, above, shall be reduced pro rata.

9.2 If the DBSA, after consultation with the Borrower, reasonably concludes that any portion of the Loan will not be required to finance the Project, the DBSA may, by written notice to the Borrower, terminate the right of the Borrower to make drawdowns in respect of such undrawn portion, it being understood that, upon giving of such notice, the instalments referred to in clause 4.1, above, shall be reduced pro rata.

9.3 If the DBSA has not received a final application for a drawdown under the Loan from the Borrower at the end of the 1st (first) Half-year following the Half-year during which the first disbursement was made to the Borrower from the proceeds of the Loan, the DBSA may terminate further disbursements to the Borrower on 30 (thirty) days' written notice to

the Borrower, unless the DBSA, after consideration of the reasons for the delay, has determined a later date for the purposes of this Clause. The DBSA shall only consider an extension on receipt of a written request from the Borrower and shall notify the Borrower of its decision.

10. BREACH

10.1 The DBSA shall be entitled, after giving the Borrower 30 (thirty) days' written notice, to suspend drawdowns from the Loan, or to terminate this Agreement, and to claim, from the Borrower, immediate payment of all the outstanding amounts, should the Borrower commit any breach of this Agreement, provided that the DBSA may, at its entire discretion, dispense with the giving of the 30 (thirty) days' notice.

10.2 Without derogating from the generality of the foregoing, the DBSA shall be entitled to exercise its rights in terms of clause 10.1, above, upon the happening of any of the following events:

10.2.1 the Borrower failing to repay the capital amount and to pay interest in terms hereof, and failing to remedy such breach within the notice period referred to in 10.1, above, requiring it to do so;

10.2.2 any attachment being made, or any execution being levied, against the Borrower;

10.2.3 the Borrower failing to repay any of the DBSA's loans or breaching any agreement entered into between the Borrower and the DBSA;

10.2.4 should the DBSA, after consultation with the Borrower, reasonably conclude that the Borrower would probably not be in a position to perform its financial obligations in terms of this Agreement.

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, including the right to demand specific performance by the Borrower of its obligations in terms of this Agreement.

SUPPLEMENTARY TERMS AND CONDITIONS

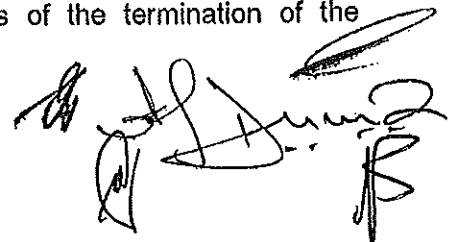
Supplementary Terms and Conditions are set out in Annexure F.

12. FURTHER TERMS AND CONDITIONS

The Further Terms and Conditions are set out in Annexure G.

13. ARBITRATION

- 13.1 Any dispute arising out of, or relating to, this Agreement, concerning the interpretation of the terms and conditions of this Agreement, or of compliance, by any Party, with any terms and conditions of this Agreement, which is not resolved amicably, through consultation or negotiation, shall, subject to the other provisions of this Clause, be settled by arbitration, in terms of the Arbitration Act No. 42 of 1965, as amended, from time to time. Provided that a claim by the DBSA for the repayment of any monies due, in terms of this Agreement, shall not be regarded as a dispute for the purpose of this Clause and neither Party shall, therefore, be obliged to refer such a claim to arbitration.
- 13.2 In the case of arbitration, a tribunal shall be comprised 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 has to adjudicate. In the event that the arbitrator resigns, or becomes unable to act, a successor shall be appointed in the same manner as prescribed, above, for the appointment of the original arbitrator and the successor shall have all the powers and duties of his predecessor.
- 13.3 The arbitration shall be held at the our place, and in accordance with whatever procedures, the arbitrator considers appropriate. In particular, the arbitrator, may, if he 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.
- 13.4 After the institution of arbitration proceedings, the tribunal may proceed with the arbitration, notwithstanding any failure, neglect or refusal of either Party to comply with the provisions hereof, or to take part, or to continue to take part, in the arbitration proceedings. The arbitrator shall, within 30 (thirty) days of the termination of the



proceedings, render a final and binding written award, including interest and costs, and furnish the Parties with written reasons for his judgment.

- 13.5 The provisions of this Clause may be invoked by any Party, by delivering, to the other Party, a demand, in writing, that an arbitrator be appointed, to adjudicate in respect of a specified dispute.

14 GENERAL

14.1 YEAR 2000 COMPLIANCE

The Borrower shall, by not later than 01 August 1999, submit written proof, acceptable to the DBSA, that its Information Technology is year 2000 compliant.

14.2. PROJECT NOTICE BOARDS

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

14.3. DOMICILIUM

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

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

In case of the Borrower:

Physical address: Velddrif Municipality
Voortrekker Road
Velddrif;
7365: or

Postal address: P O Box 29
Velddrif
7365; or

Telefax number: (02288) 3 1422

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

14.3.3 Any notice addressed by either Party to the other ("the addressee"), which:-

14.3.3.1 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;

14.3.3.2 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 may agree that all other forms of correspondence and/or requests may be effected, via telefax and/or electronic mail (e-mail).

14.4. WHOLE AGREEMENT

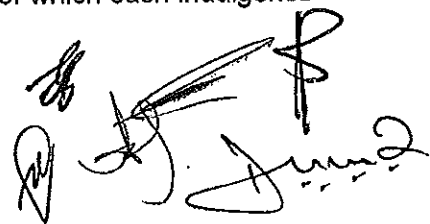
This Agreement constitutes the entire agreement between the Parties and no representations, warranties, undertakings or promises, of whatever nature, which may have been made by any of the Parties, their agents or employees, other than those hereincontained, shall be binding or enforceable against them.

14.5. NON-VARIATION

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

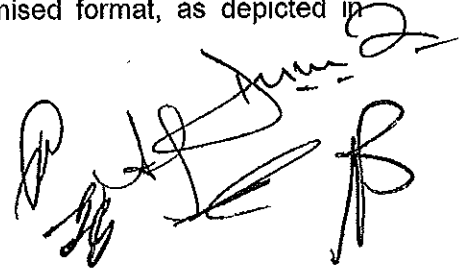
14.6. NON-ENFORCEMENT/INDULGENCE

The non-enforcement of any provision of this Agreement, or any indulgence which either Party may grant to the other Party, shall be without prejudice to the rights of such first-mentioned Party to insist upon strict compliance by such other Party with all the provisions of this Agreement, or to enforce its rights, in respect of which such indulgence was granted.



14.7 TERMS AND CONDITIONS OF DISBURSEMENT

Disbursement of each progress claim, in respect of the amount financed by the DBSA, is to be effected as a ratio of the actual cost of each item (for each phase), in accordance with the Application and Source of Funds Statement (Annexure B), read together with the Project Description (Annexure A), to the maximum amount of R1 000 000-00. This is subject to submission, by the Borrower, to the DBSA, of fully documented proof of payment by the Borrower to the supplier, consultant and/or contractor, of actual claims (or in-house expenses incurred), as approved by the Borrower, or its authorised representative. Each progress claim shall be in the itemised format, as depicted in Annexure B.

Handwritten signature and initials in black ink, appearing to be a signature followed by the initials 'J.M.' and 'R'.

SIGNED AT Veldhof ON THE 3 DAY OF August 1999.

AS WITNESSES:

1. [Signature]
2. [Signature]

[Signature]
FOR AND ON BEHALF OF THE BORROWER, DULY AUTHORISED THERETO, IN TERMS OF ANNEXURE D.

SIGNED AT Veldhof ON THE 3rd DAY OF August 1999.

AS WITNESSES:

1. [Signature]
2. [Signature]

[Signature]
FOR AND ON BEHALF OF THE DBSA, DULY AUTHORISED THERETO, IN TERMS OF ANNEXURE E.

PROJECT DESCRIPTION**1. PROJECT OBJECTIVE**

The project provides for the upgrading and extension of the presently insufficient sewage treatment works at Velddrif. The project will increase the capacity of the works from 200 m³ to 800 m³ daily average flow and will produce effluent, which will comply with the requirements of the Water Act. The project cost is R 1 654 923,44. The DBSA contribution will be an amount of R 1 000 000-00.

2. PROJECT OUTPUT

The project includes the following –

ELEMENT	COST (Rands)
Preliminary and General Items	233.002,45
Inlet Works	39.198,20
Anaerobic Pond	263.132,01
Bio-Filter Pump Station	165.828,21
Bio-Filter	379.542,09
Division and Valve Boxes	14.470,69
Changes to Existing Structures	52.356,41
Chlorine Application Plant	2.500,00
Interconnecting Pipe lines	81.718,52
SUB-TOTAL (Fixed Price Contract)	1.231.748,58
PLUS –	
Contingencies 10%	123.174,86
Professional Fees	300.000,00
TOTAL	1.654.923,44

3. IMPLEMENTATION AND PROJECT MANAGEMENT**3.1 INSTITUTIONAL ARRANGEMENTS****3.1.1 Programme Steering Committee**

A Programme Steering Committee must oversee and co-ordinate development actions, to ensure the implementation, operation, maintenance and delivery of services of the Project in a coherent manner. The committee must consist of representatives from the following institutions:

- ⇒ Local Authority;
- ⇒ Local community members (RDP Forums/Working Committees);
- ⇒ Consultants;
- ⇒ DBSA (observer).

The Programme Steering Committee (PSC) must perform the following functions:

- ⇒ make recommendations to the Borrower and DBSA, relating to implementation, operation, maintenance and delivery of services issues, in accordance with the general principles and design criteria, for their consideration and approval;
- ⇒ refer policy matters, via the appropriate forums, to the relevant institutions.