

LOAN AGREEMENT

in respect of

PORTERVILLE WATER SUPPLY PROJECT

Entered into by and between

PORTERVILLE TLC

and

THE DEVELOPMENT BANK OF SOUTHERN AFRICA

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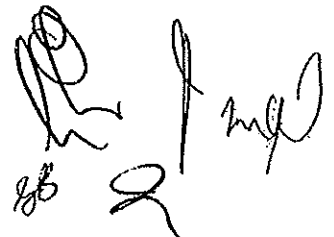
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SUMMARY

1. LOAN AMOUNT : R2 700 000
2. LOAN PERIOD : 20 years
3. INTEREST RATE : 13 per centum per annum
4. GRACE PERIOD FOR
CAPITAL REPAYMENT : 1 year
5. CAPITALISATION OF INTEREST: 1 year
6. CAPITAL REPAYMENT AND
PAYMENT OF INTEREST : 38 equal six-monthly instalments, commencing on
the last day of the 3rd Half-year after the Half-year
during which the first disbursement was advanced
to the Borrower.
7. PROJECT FILE NO. : LS10374

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MEMORANDUM OF LOAN AGREEMENT

in respect of

PORTERVILLE WATER SUPPLY PROJECT

Entered into by and between

PORTERVILLE TLC

and

THE DEVELOPMENT BANK OF SOUTHERN AFRICA

In fulfillment of the role of the Development Bank of Southern Africa to support development in Southern Africa, it is hereby agreed as follows:

Handwritten signatures in black ink, appearing to be initials and a full name, located in the bottom right corner of the page.

1. DEFINITIONS AND HEADINGS

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

- 1.1.1 "Borrower" Porterville TLC;
- 1.1.2 "DBSA" the Development Bank of Southern Africa, established in terms of an agreement (hereinafter referred to as the "Establishment Agreement") signed at Cape Town on 30 June 1983;
- 1.1.3 "Parties" the Borrower and DBSA;
- 1.1.4 "Project" Porterville Water Supply Project, as described in more detail in Annexure A attached hereto;
- 1.1.5 "Loan" the financing granted to the Borrower in terms of clause 3;
- 1.1.6 "On-Lending" the transfer of any amounts by the Borrower to third parties out of the proceeds of the Loan, excluding payments for the procurement of goods and services;
- 1.1.7 "Project Agent" a person nominated in writing by the Borrower to act on its behalf in respect of the Project;
- 1.1.8 "Half-year" 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.

1.2 Headings to the clauses of this agreement, the table of contents and summary are for reference purposes only and do not form part of this agreement.

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2. PROJECT CO-OPERATION

2.1 To ensure that the purposes of the Loan are accomplished the Parties shall:

2.1.1 periodically and at the request of either Party:

2.1.1.1 exchange views with regard to the progress of the Project, the benefits derived therefrom and the performance of their respective obligations under this agreement as well as other matters relating to the purposes of the Loan; and

2.1.1.2 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;

2.1.2 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 under this agreement;

2.1.3 jointly determine the technical, financial and organisational requirements in respect of planning, management and control of the Project in order to ensure the efficient and effective execution and maintenance of the Project and related matters; and

2.1.4 jointly determine the criteria to be taken into consideration when awarding contracts for items and services to be financed by the Loan, bearing in mind that preference shall be given to the involvement of natural persons and bodies corporate respectively resident and registered in South Africa.

2.2 The Borrower shall:

2.2.1 grant representatives of DBSA the opportunities reasonably necessary to visit any relevant area for purposes related to the Loan;

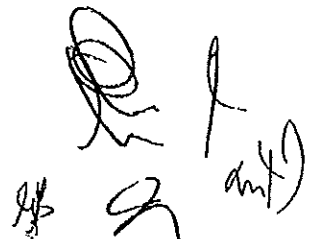
- 2.2.2 in addition to the amount made available in terms of this agreement, be responsible for the provision of all other funds necessary for the successful execution of the Project as set out in Annexure B, including funds to be supplied by third parties as reflected in that Annexure;
- 2.2.3 be responsible for the management and maintenance of work carried out within the context of the Project, provided that DBSA shall be consulted in this regard when reasonably necessary;
- 2.2.4 with regard to the procurement of goods and services for the Project, in consultation with DBSA, invite participation in tender or quotation procedures on equal terms from natural persons and bodies corporate respectively resident and registered in South Africa and, unless otherwise agreed to by the Parties, follow the following procedures in respect of tenders and quotations:
- 2.2.4.1 tender documents or invitations for quotations shall be drawn up in consultation with DBSA's project team and ratified by DBSA;
- 2.2.4.2 the tenders and quotations shall be invited and, after completion of the steps described in clause 2.2.4.4, adjudicated by the Tender Board, or other responsible body, of the Borrower;
- 2.2.4.3 open tenders shall be open to all interested parties falling within the description contained in clause 2.2.4, and it shall not necessarily be a pre-requisite that the tenderer be a member of any particular association;
- 2.2.4.4 after consultation with and formal ratification by DBSA, the evaluation and recommendation for appointment of a tenderer shall be submitted to the Borrower's Tender Board or other responsible body by the Project Agent. If this recommendation, in part or whole is not acceptable to the Borrower's Tender Board or other responsible body, that Board or body may make amendments, but such amendments may be implemented only after ratification by DBSA; and



- 2.2.4.5 strict tender procedures shall be adhered to. Where deemed necessary advice and support on possible improvements will be forthcoming from DBSA;
- 2.2.5 ensure that contractors to whom contracts are awarded are insured and remain insured in terms of contractors-all-risk-insurance policies acceptable to DBSA;
- 2.2.6 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;
- 2.2.7 maintain or cause to be maintained records adequate to identify the operations carried out by means of the Loan and furnish DBSA with all such information (e.g. progress reports) concerning the implementation of the Project;
- 2.2.8 submit a statement reasonably acceptable to DBSA, certified on behalf of the Borrower, reflecting the expenditure incurred against goods and services financed in respect of the Project, within 6 (six) months after the end of each financial year of the Borrower during which a drawing is made on the Loan;
- 2.2.9 apply the Loan in accordance with Annexure B;
- 2.2.10 require each contractor to whom a contract is awarded to furnish a performance guarantee acceptable to DBSA, in terms whereof the completion of such contract is guaranteed; and
- 2.2.11 preserve all documents and accounting records pertaining to the Project up to the expiry of a period of 3 (three) years after completion of the Project, and shall allow DBSA at DBSA's cost at any reasonable time to have such documents and records audited by a person or persons nominated by DBSA.

2.3

It is hereby placed on record that the consultants and contractors mentioned in Annexure C hereto have been appointed by the Borrower in respect of the Project, and are acceptable to DBSA.



2.4 Where the Parties agree that the further appointment of consultants or the revision of the brief of appointed consultants is necessary, the following procedures shall be followed unless otherwise agreed to by the Parties:

2.4.1 Before the formal appointment of any consultant for the Project it will be necessary for the Borrower, in the person of the Project Agent and his/her supporting staff, and with the approval of DBSA, to formulate the terms of reference required for such consultant. Particular attention should be given to the following:

- a precise statement of the objectives for the assignment;
- the scope and timing of the required services;
- the inputs to be provided by the Borrower;
- particulars of the outputs (that is reports, drawings, etc.) required of the consultants; and
- identification of a specific person who will be responsible, in the case where the consultant is a firm or a company.

2.4.2 The Borrower will then prepare a short list of capable consultants to be approved by DBSA, utilising the following criteria:

- past experience with similar projects;
- knowledge of local conditions;
- abilities and qualifications;
- membership of professional institutions;
- curriculum vitae of key personnel in the local office in the territory of the Borrower or other office of the consultant from where the work will be carried out.



2.4.3 DBSA's information on capable consultants will be made available to the Borrower for this purpose.

2.4.4 The short list shall include a cost estimate of the services to be provided.

2.4.5 The Borrower will then appoint one of the consultants from the short list, subject to the approval of DBSA.

2.4.6 Should arrangements be made to the effect that DBSA will provide funds to remunerate any consultant, such consultant shall not be appointed without the prior written consent of DBSA.

2.5 DBSA shall use its best endeavours to make technical assistance available to the Borrower within the limits of its resources and upon such terms and conditions as agreed to by the Parties when and if the need for such assistance is identified by the Parties in terms of the provisions of clause 2.1.3 supra.

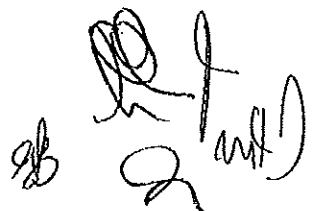
3. THE LOAN

3.1 DBSA shall lend to the Borrower on the terms and conditions set forth in this agreement an amount not exceeding in aggregate R2 700 000 (two million and seven hundred thousand Rand) at the rate of interest set forth in clause 4 hereunder.

3.2 The Loan shall be utilised exclusively for the purpose of the Project as set out in Annexure A, and the Borrower shall ensure that any provisions contained in Annexure A are complied with.

3.3 DBSA shall pay the Loan proceeds to and on the order of the Borrower in such disbursements and on such terms and conditions as set forth in Annexure B attached hereto.

3.4 The Borrower shall furnish DBSA with particulars regarding officials authorised to apply for withdrawals on its behalf.



- 3.5 The capital amount of the Loan, which shall include the interest capitalised in terms of clause 4.2 hereunder, shall be repaid, and further interest shall be paid, in 38 (thirty eight) equal six-monthly instalments, commencing at the end of the 3rd (third) Half-year after the Half-year during which the first advance 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 the Borrower may, with 1 (one) month written notice to DBSA, make repayments in excess of the abovementioned or repay the full amount outstanding. An instalment shall be a fixed amount, determined as at the outset of the 3rd (third) Half-year after the Half-year during which the first advance was made to the Borrower from the proceeds of the Loan, calculated as being sufficient to amortise the outstanding amount, plus interest at the rate set out in clause 4.1 hereof, in 38 (thirty eight) equal six-monthly payments. 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.
- 3.6 The Borrower may by notice to DBSA cancel any undrawn portion(s) 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 3.5 supra shall be reduced pro rata.
- 3.7 If DBSA reasonably concludes, after consultation with the Borrower, that any portion(s) of the Loan will not be required to finance the Project, DBSA may by notice to the Borrower terminate the right of the Borrower to make drawings in respect of such undrawn portion(s); it being understood that upon giving of such notice the instalments referred to in clause 3.5 supra shall be reduced pro rata.
- 3.8 If DBSA has not received a last claim for an advance under the Loan from the Borrower at the end of the 3rd (third) half year after the half year during which the first advance was made to the Borrower, DBSA may terminate further disbursements to the Borrower on 30 (thirty) days written notice to the Borrower unless DBSA, after consideration of the reasons for the delay, has determined a later date for the purposes of this sub-clause.

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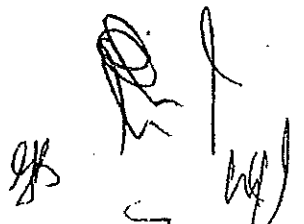
DBSA shall only consider an extension on receipt of a written request from the Borrower and shall notify the Borrower of its decision. A claim shall not be regarded as having been received if it is defective to such an extent that DBSA would not be obliged to make an advance in terms thereof.

4. INTEREST

- 4.1 The Loan shall bear interest on the amount from time to time outstanding at a rate of 13% (thirteen per centum) per annum.
- 4.2 Interest on the amount from time to time outstanding shall be calculated at the end of each Half-year, and shall on such dates be capitalised against the Loan up to the end of the 2nd (second) Half-year after the Half-year during which the first disbursement was advanced to the Borrower from the proceeds of the Loan, which capitalised interest shall be regarded as part of the capital amount. Thereafter interest shall continue to be calculated at the end of each Half-year, and debited to the account of the Borrower.

5. PAYMENTS

- 5.1 All payments to or by the Parties under this agreement shall be effected in South African rands.
- 5.2 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.
- 5.3 All payments under this agreement to DBSA shall be effected to the credit of such banking account(s) of DBSA as DBSA may from time to time direct, in writing.
- 5.4 Payments in terms of this agreement shall be effected without deduction for and free from any taxes, charges, fees or other costs whatsoever.



5.5 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.

5.6 For purposes of the calculation of interest and repayments, any disbursement for technical assistance, previously approved and forming part of the Loan, paid out before signature of this agreement, shall be deemed to have been paid out on the same date as the first disbursement after signature hereof.

6. ON-LENDING

6.1 No On-Lending shall be effected unless provided for in Annexure A.

7. ACCELERATION OF MATURITY AND IMPROBABILITY OF PERFORMANCE

Should DBSA, after consultation with the Borrower, be able to show that the Borrower will probably not be in a position to perform its financial obligations in terms of this agreement, then DBSA may, after giving the Borrower 30 (thirty) days notice of its intention to do so, demand immediate repayment of all amounts owing by the Borrower in terms of this agreement.

8. SUSPENSION AND TERMINATION

8.1 DBSA shall be entitled to suspend withdrawals from the Loan or to terminate this agreement, in the event and for so long as the Borrower fails to comply with any provision of this agreement after having given the Borrower 30 (thirty) days written notice to comply with any provision of this agreement and the Borrower thereafter continuing thus to remain in default, in which latter event the full amount owing will become payable.



8.2 The Borrower shall be entitled to terminate this agreement after having given DBSA 30 (thirty) days written notice to comply with any provision of this agreement and DBSA thereafter continuing to remain in default, in which event repayments shall be effected over the same period and at the same interest rate as referred to in clauses 3.5 and 4.1 above respectively, in instalments reduced to the extent that the Loan amount has not been taken up in full but subject to the Borrower's rights to make payments in excess of such instalments or to repay the full amount outstanding as provided for in clause 3.5.

8.3 If any suspensive condition contained herein has not been fulfilled on expiry of the last day of the fifth month after the month during which the agreement has been concluded, then this agreement and all obligations of the Parties shall terminate, unless DBSA after consideration of the reasons for the delay, has determined a later date for the purposes of this sub-clause. DBSA shall only consider an extension on receipt of a written request from the Borrower and shall notify the Borrower of its decision.

8.4 If DBSA has not received a first claim for an advance under the Loan from the Borrower on expiry of the last day of the fifth month after the month during which this agreement has been concluded, then this agreement and all obligations of the Parties shall terminate, unless DBSA, after consideration of the reasons for the delay, has determined a later date for the purposes of this sub-clause. DBSA shall only consider an extension on receipt of a written request from the Borrower and shall notify the Borrower of its decision. A claim shall not be regarded as having been received if it is defective to such an extent that DBSA would not be obliged to make an advance in terms thereof.

9. VALIDITY OF LOAN AGREEMENT; ARBITRATION

9.1 Neither DBSA nor the Borrower shall be entitled to assert that any provision of this agreement is invalid or unenforceable because of any provision of the Establishment Agreement.



- 9.2 Any dispute, controversy or claim arising out of or relating to this agreement, or the breach or termination thereof, which is not resolved amicably through consultations or negotiations, shall be settled by arbitration in accordance with the provisions of the Arbitration Act No. 42 of 1965.

10. GENERAL

- 10.1 Any notice or request to be given or made in terms of this agreement shall be in writing and shall be deemed to have been duly given or made when in the case of DBSA, addressed to the General Manager and received at:

Physical address: Development Bank of Southern Africa
Headway Hill
MIDRAND
SOUTH AFRICA; or

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

Telex number: 4-25546
SOUTH AFRICA

Telefax number: 011-3133086

and in the case of the Borrower, when addressed to the Borrower and received at the following address:

Physical address: Mark Street
PORTERVILLE
6810

Postal address: Private Bag X4
PORTERVILLE
6810

Either of the Parties shall be entitled to change the abovementioned addresses by giving notice to such effect by registered post.

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- 10.2 No amendment of, 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, with the understanding that Annexures A, B and C hereto can be changed by agreement reached through correspondence.
- 10.3 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 right in respect of which such indulgence was granted.
- 10.4 This contains 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.

11. SUSPENSIVE CONDITIONS

The operation of this agreement is subject to the Borrower confirming in writing that:

- 11.1 the Western Cape Provincial Government is fully informed of and supports the Project;
- 11.2 the Administrator, being a competent authority within the jurisdiction of the Western Cape Provincial Government designated by the Premier of the Province, is fully informed of and approves the Project and the funding arrangements with regard thereto; and
- 11.3 it has finalised co-funding arrangements with the Department of Water Affairs in respect of the Project.

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THUS DONE AND SIGNED AT Bakerville ON THE 31st DAY OF September 1995

AS WITNESSES:

1. [Signature]

2. [Signature]

[Signature]

FOR AND ON BEHALF OF THE BORROWER, DULY AUTHORISED THERETO IN TERMS OF ANNEXURE D ATTACHED HERETO

THUS DONE AND SIGNED AT MIDR AND ON THE 10TH DAY OF OCTOBER 1995

AS WITNESSES:

1. [Signature]

2. _____

[Signature]

FOR AND ON BEHALF OF THE DBSA, DULY AUTHORISED THERETO : IN TERMS OF ANNEXURE E ATTACHED HERETO

[Signature]

I hereby certify that the attached copy of the Agreement and annexures thereto, all pages whereof have been initialed by myself for identification purposes, are true copies of the originals thereof.

17/10/98

DATE



COMMISSIONER OF OATHS

MOTLOGELWA, IKE TLHOLWE

Commissioner of Oaths/Kommissaris van Ede
For Republic of S.A./vir Republiek van S.A.
Ex Officio Advocate of the Supreme Court of S.A.
C/o Development Bank of Southern Africa
PO Box 1234 Halfway House 1685 Halfway Hill Midrand

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