

LOAN AGREEMENT

in respect of

THEMBALIHLE SEWERAGE NETWORK

Entered into by and between

VREDE/THEMBALIHLE TRANSITIONAL LOCAL COUNCIL

and

THE DEVELOPMENT BANK OF SOUTHERN AFRICA

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SUMMARY

1. LOAN AMOUNT : R499 872
2. LOAN PERIOD : 20 years
3. INTEREST RATE : 12 per centum per annum
4. GRACE PERIOD FOR
CAPITAL REPAYMENT : 6 months
5. CAPITALISATION OF INTEREST: 6 months
6. CAPITAL REPAYMENT AND
PAYMENT OF INTEREST : 39 equal six-monthly instalments, commencing on
the last day of the 2nd Half-year after the Half-year
during which the first disbursement was advanced to
the Borrower.
7. PROJECT FILE NO. : LC10349

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MEMORANDUM OF LOAN AGREEMENT

in respect of

THEMBALIHLE SEWERAGE NETWORK

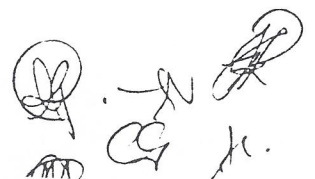
Entered into by and between

VREDE/THEMBALIHLE TRANSITIONAL LOCAL COUNCIL

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:



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" Vrede/Thembalihle Transitional Local Council;
- 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" Thembalihle Sewerage Network, 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.

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

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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 R499 872 (four hundred ninety nine thousand and eight hundred and seventy two Rand) at the rate of interest set forth in clause 4 hereunder.

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- 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 39 (thirty nine) equal six-monthly instalments, commencing at the end of the 2nd (second) 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 2nd (second) 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 39 (thirty nine) equal six-monthly payments. Should, at the outset of the said 2nd (second) 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

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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 2nd (second) 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. 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 12% (twelve 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 1st (first) 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.

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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.



- 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:

- 11.1 *on* the Borrower submitting written proof that the Government of the Province of the Free State has been fully informed of the Project and the funding arrangements with regard thereto.
- 11.2 *on* the Borrower submitting written confirmation that the Borrower and the Vrede/Thembalihle Local Development Forum have reached an agreement with the residents of Vrede/Thembalihle for the phased reintroduction of payment for services provided in Thembalihle.
- 11.3 *on* the Borrower approves its budget for 1995/96 and that sufficient provision be made in the tariffs structures contained in the budget for the repayment of the DBSA loan made available for this project.
- 11.4 *on* the Vrede Farmer's Trust provides a financial guarantee for the loan acceptable to DBSA.

- 11.5 the Borrower confirms in writing that the financial contribution to be made by the Free State Housing Board towards the project is available and committed and that Free State Housing Board has made available a bridging facility sufficient to cover the contribution of the FSHB to the project and the DWAF subsidy.

12. FURTHER TERMS AND CONDITIONS ✓

- 12.1 Should the additional 125 subsidies presently under consideration by FSHB not be approved, DBSA's loan would be reduced to an amount of R391,016. ✓
- 12.2 Should the amount of R60 333 (sixty thousand three hundred and thirty three Rand), being the subsidy from Department of Water Affairs and Forestry be paid to the Borrower on completion of the project, the amount of such subsidy shall be paid immediately by the Borrower to DBSA and the amount of instalments referred to in 3.5 above shall be reduced accordingly.

Any subsidy amounts received by the Borrower from the Department of Water affairs and Forestry shall immediately be paid by the Borrower to DBSA, which amount shall be utilised towards the reduction of DBSA loan. Should the Borrower receive such subsidy amounts on or after completion of the Project and/or after the DBSA loan has been disbursed to the Borrower in full, the Borrower shall immediately pay such amounts to DBSA and the loan amount and/or the number of instalments referred to in 3.5 above shall be reduced accordingly.

CS - AV 
 

THUS DONE AND SIGNED AT YREDE ON THE 1st DAY OF FEBRUARY 1996

AS WITNESSES:

1. [Signature]

2. [Signature]

Abe [Signature]

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

THUS DONE AND SIGNED AT MIDRANO ON THE 13th DAY OF February 1996

AS WITNESSES:

1. [Signature]

2. _____

[Signature]

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

PROJECT DESCRIPTION

1. PROJECT OBJECTIVE

To provide acceptable and sustainable sanitation to the low income residential area of Thembalihle Ext. 1, in order to enable the construction of adequate shelter, thereby together improving the quality of life of beneficiaries.

2. PROJECT PERSPECTIVE

Thembalihle is an existing area that is supplied with electricity, water, a bucket sanitation system and basic streets within which essentially informal houses have been constructed by residents. The bucket sanitation system which is expensive to operate and unacceptable to the community. The Free State Housing Board has made subsidies available for the construction of the 574 houses and to make a contribution towards the cost of the waterborne sewerage system. The installation of waterborne sewerage will enable the construction of toilets within the proposed houses.

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25
449

3. PHYSICAL DESCRIPTION

The Project involves the detail design, construction and supervision of:

A sewerage reticulation network with manholes and individual stand connections.

A sewerage pump station and pumpline for 60 stands to drain the south eastern corner of Thembalihle Ext. 1.

4. INSTITUTIONAL AND FINANCIAL ARRANGEMENTS

The Project will be implemented by the Borrower who have employed consulting engineers to design and supervise the construction of the sewerage reticulation network.

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M A

4.1 PROJECT COST

DETAIL ESTIMATES FOR PROJECT DESCRIPTION
 TOTAL PROJECT COST FOR THEMBALIHLE SEWERAGE
 NETWORK

Civil Works	R625,912
Electrical Connection	R50,000
Escalation	R15,628
Professional fees	R80,000
Contingencies	R30,000
Total	R801,540

5. MATTERS AGREED UPON

- 5.1 That the Borrower establishes a representative Project Steering Committee (PSC) which will during implementation co-ordinate all aspects to the effective implementation of the Project and ensure that the development impact of the investment in the region as well as community involvement is maximised. The PSC shall serve as a forum where authorities, relevant stakeholders, consultants and development institutions can interact with representatives of the community to enhance mutual understanding of the issues that affect the Project.
- 5.2 the Borrower undertakes to raise community awareness of the correct use of waterborne sewerage systems to promote health and hygiene and the protection of the environment.

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APPLICATION AND SOURCE OF FUNDS STATEMENT (103-49/1/1)
THEMBALILIE SEWERAGE NETWORK

Description	Total (R)	DBSA (R)	%	Borrower (R)	%	Other (R)	%
FIXED ASSETS							
CIVIL CONSTRUCTION	675,912	421,526	62.4	254,386	37.6	0	0.0
ESCALATION	15,628	9,746	62.4	5,882	37.6	0	0.0
PROFESSIONAL FEES	80,000	49,891	62.4	30,109	37.6	0	0.0
CONTINGENCIES	30,000	18,709	62.4	11,291	37.6	0	0.0
Totals	801,540	499,872	62.4	301,668	37.6	0	0.0

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II. TERMS AND CONDITIONS OF DISBURSEMENT

Disbursement of each progress claim in respect of the amount financed by DBSA is to be effected as a ratio of actual cost of each item (for each phase) in accordance with the Application and Source of Funds Statement (Annexure BI), read together with the Project Description (Annexure A), to the maximum amount of R499 872. This is subject to submission to DBSA of fully documented proof of payment(s) by the Borrower to supplier(s), consultant(s) and/or contractor(s), of actual claims (or in-house expenses incurred), as approved by the Borrower or its authorised representative. Each progress claim is to be in the itemised format as depicted in Annexure B1.

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