SPECIAL COUNCIL MEETING

OPEN



KOUGA
local municipality
Good Governance through Service Excellence

DATE: 17 January 2025
TIME: 10:00
Virtual

KOUGA MUNICIPALITY (EC108)	UMASIPALA I-KOUGA (EC108)	MUNISIPALITEIT KOUGA (OK108)
NOTICE CONVENING A MEETING	**ISAZISO NGENTLANGANISO**	**KENNISGEWING VAN VERGADERING**
NOTICE IS HEREBY GIVEN that in terms of Section 19 of the Local Government: Municipal Systems Act, 2000 (Act No.32 of 2000) that a Special Council Meeting will be held virtually on	**ISAZISO** sikhutshiwe ukuba ngokweCandelo-19 uMthetho weeNkqubo zikaMasipala, (uMthetho 32 ka-2000), ukuba kubanjwe intlanganiso ekhethekileyo yesigqeba Ye khansile	**KENNIS GESKIED HIERMEE** dat ingevolge Artikel 19 van die Wet op Munisipale Stelsels, 2000 (Wet No.32 of 2000), dat 'n virtuele raadsvergadering gehou sal word op
DATE: 17 January 2025	**UMHLA: 17 EyoMqungu 2025**	**DATUM: 17 Januarie 2025**
TIME: 10:00	**IXESHA: 10:00**	**TYD: 10:00**
B.WILLIAMS **SPEAKER**	**B.WILLIAMS** **USOMLOMO**	**B.WILLIAMS** **SPEAKER**

Councillors are required to comply with the Standing Rules and Orders of Council and all its Committees By-law as promulgated in the Provincial Gazette on 22 October 2018 No.4134 and applicable to this meeting of Council. Any person who willfully contravenes any provision of these rules shall be guilty of an offence and which contravention shall be dealt with in accordance with the disciplinary procedures for Councillors.

A G E N D A

1. **NOTICE OF MEETING**
2. **OPENING AND WELCOME**
3. **ABSENT WITH LEAVE**
4. **ABSENT WITHOUT LEAVE**
5. **PRESENTATIONS**
6. **ACKNOWLEDGEMENTS, CONDOLENCES & CONGRATULATIONS**
7. **STATEMENTS OR COMMUNICATIONS BY THE SPEAKER**
8. **STATEMENTS OR COMMUNICATIONS BY THE EXECUTIVE MAYOR**

9. **DISCLOSURE OF INTEREST**

10. **STATUTORY MATTERS**

11. **MATTERS DEALT WITH IN TERMS OF DELEGATED AUTHORITY BY THE EXECUTIVE MAYOR**

(The reports by the Executive Mayor, in terms of the provisions of Section 63 of the Local Government Municipal Systems Act, 32 of 2000, on matters dealt with by the Executive Mayor in terms of delegated authority as detailed in the Minutes to be noted).

12. **REPORTS BY THE EXECUTIVE MAYOR**

12.1 **REPORTS BY THE PORTFOLIO CHAIRPERSON: FINANCE AND ECONOMIC DEVELOPMENT**

25/01/FED1 Report on the Development Bank of South Africa (DBSA) loan application and public participation process

Pages: 6 - 85

13. **CLOSURE**

Distribution list:

Executive Mayor
Executive Deputy Mayor
Speaker
All Councillors
Municipal Manager
All Directors
Relevant Managers
Committee Services

REPORTS BY THE EXECUTIVE MAYOR

KOUGA
local municipality
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REPORTS BY THE PORTFOLIO CHAIRPERSON: FINANCE AND ECONOMIC DEVELOPMENT

KOUGA
local municipality
Good Governance through Service Excellence

KOUGA local municipality
Good Governance through Service Excellence

KOUGA MUNICIPALITY (EC 108)
SPECIAL COUNCIL MEETING
FINANCE & ECONOMIC DEVELOPMENT
DATE: 17 JANUARY 2025
ITEM NO: 25/01/FED1

REPORT ON THE DEVELOPMENT BANK OF SOUTH AFRICA (DBSA) LOAN APPLICATION AND PUBLIC PARTICIPATION PROCESS

1. **Introduction**

In accordance with Section 46 of the Municipal Finance Management Act (MFMA), Act No. 56 of 2003, municipalities are required to engage in a public participation process when planning for any significant loans or financial transactions. This ensures transparency, accountability, and public involvement in financial matters of local government. The Kouga Local Municipality, in light of the intended loan or financial transaction, has embarked on a public participation process in line with the provisions of the aforementioned legislative provision. This report outlines the process, public and official comments, and recommendations for the approval of the loan.

2. **Background**

At an Ordinary Council meeting held on 27 October 2023 (Item No: 23/10/FED17), the Kouga Municipal Council resolved as follows:

That the formal processes of sourcing external loan funding be initiated with immediate effect, in line with section 17,19 & 46 of the MFMA, for an amount of R200 million to repair the roads within Kouga.

This formal process includes the application process for public participation as required in terms of Section 46(3) of the Local Government: Municipal Finance Management Act No. 56 of 2003 (MFMA), of the Kouga Local Municipality's intention to incur a long-term debt as described in the MFMA.

The public participation process for the proposed loan was implemented in a manner that complies with the MFMA's requirements. The key steps in the process included:

Advertising the loan proposal:

- The municipality placed advertisements in local newspapers, on the municipal website, and at various social media platforms to inform the public about the proposed loan, its purpose, and the process for submitting comments.
- Details of the loan proposal, including the terms, interest rates, and repayment schedules, were made available.

Written submissions:

- The public was invited to submit written comments or objections, either through email or via formal written letters to the municipality.

Submission of comments to Provincial and National Treasury:

- As per the MFMA guidelines, the municipality forwarded the loan proposal to both the Provincial and National Treasury for their review and comment, in line with Section 46 of the MFMA.
- These submissions were made with a deadline for feedback to ensure timely consideration.

Information Statement submitted to all Councillors:

- As required by Section 46(3)(b) of the MFMA, a copy of the information statement detailing the loan proposal was submitted to the councillors at least **21 days before the council meeting** where the loan would be considered.

Checklist Sec 46 (3)

	Detail	MFMA	Reference
1	Has at least 21 days prior to the meeting of the council at which approval of debt for the debt is considered, made public an information statement setting out particulars of the proposed debt, including the amount of the proposed debt, the purpose for which the debt is to be incurred, and particulars of any security provided	46(3)(a)(i)	Annexure A- published 21 November 2024
2	Invited the public, National Treasury and the relevant provincial treasury to submit written comments or representations to council in respect of the proposed debt	46(3)(a) (ii)	Annexure A- published 21 November 2024
3	Has submitted a copy of the information statement to the municipal council 21 days prior to the meeting of the council, together with particulars of - the essential repayment terms, including the anticipated debt repayment schedule - The anticipated total cost in connection with such debt over the repayment period	46(3)(b) (ii)and (ii)	Annexure E – published 26 November 2024

The publication notice was advertised on the 21 November 2024 for public comments with the closing date indicated as 12 December 2024.
Refer to **Annexure A.**

Covenants to be included in loan agreement

In addition to the standard loan terms and conditions, the following covenants and undertakings have been approved to be included as covenants in the loan agreement: These proposed covenants can be revised, or additional ones recommended (including margin ratchet provisions) following DBSA's assessment of the Full & Final Adjusted Budget for FY2024/25 and the FY2024 Audited Financial Statements:

- The disbursements will be aligned to the implementation plan for the financial years 2024/25 and 2025/26.

- The projected VAT refunds amounting to R26 million, should be utilized to repay the DBSA loan, or set aside to build the Debt Service Reserve Account (DSRA) as security. Should the Borrower elect to utilise the VAT refunds to build the DSRA, the DSRA balance will be maintained at least at 2 times the quarterly instalments.

- Gearing to be kept at 15% and 45% as measured by the debt service and total borrowings to discretionary revenue, respectively, and DBSA's consent to be required for any additional borrowings breaching the 10% and 35% level.

- The DSCR to be maintained 1.2x.

Payments will be made quarterly and not semi-annually as initially negotiated (**Annexure B**).

3. **Discussions**

Public comment:

Only one comment was received as follows -

Submission made by Mr. S Jordan on 28 November 2024:

"Please send full details of the above and include roads upgrades and transportation projects to be undertaken if loan is approved. Please specify which roads, no of kilometers to be upgraded and the full extent of the upgrade. Furthermore, which and what type of transportation project/s specified within the R200m loan (interest excluded) are to be included."

The above submission did not object to the approval of the loan but was merely requesting additional information on the project implementation. This information will be made public once concluded, as public participation on the implementation is key to the success of the project.

Provincial Treasury Comments:

The municipality has considered the comments from Provincial Treasury. The risks identified by Provincial Treasury will be mitigated by the covenants included in the DBSA Loan Agreement. Therefore, the ratios will be maintained and improved year on year subject to the Long-term Financial Plan being implemented. Refer to **Annexure F**.

National Treasury Comments:

No comment received as of 8 January 2025.

Refer to **Annexure C** – Communication to Provincial and National Treasury, including communication received for public comment.

4. **Financial Implications**

Completed by BTO -	
Project Description	Roads Infrastructure
Ukey no.	20240826060961
Budgeted Amount	R 173 913 043
Amount spent and committed to date	R0 KOUGA MUNICIPALITY 2025-01-09 BUDGET &TREASURY
Amount Available	R 173 913 043
Comment	Adjustment budget amount

5. **Applicable Legislation**

Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003, Sections 17(2), 19, 33 and 46 (MFMA).

6. **Legal Implications**

Should the Council approve the recommendations herein, the Accounting Officer will be authorized to enter into an appropriate Loan Agreement to give effect to the intended Loan Facility from DBSA. Once such agreement has been entered into, the Parties thereto shall be bound by the terms and conditions contained therein.

A draft Loan Agreement is attached for ease of reference, and as provided by the DBSA for the municipality's perusal and comment, subject to the approval of Council. Refer to **Annexure D**.

7. **Other Implications**

The Municipality will be required to fulfil all the conditions as per the Loan Agreement entered into with DBSA.

8. **Comments by Directorates:**

8.1 **Chief Financial Officer:**

Section 46 of the MFMA has been complied with and there were no objections on the approval of the loan emanating from the public participation process.

The Adjustment Budget has catered for the receipt of the loan, capital project expenditure and the repayments within the current and outer financial year. The Municipality is therefore able to fulfil all the conditions of the loan as per the Agreement.

The approval of the loan is therefore supported.

8.2 **Director: Planning & Development**

Supported

8.3 **Acting Director: Civil & Water Services**

The loan application is fully supported. The conditions of the roads in Kouga Municipality are in desperate need of urgent attention. The said loan will provide the means to repair and extend the life span of the roads as well as to address the storm water systems.

8.4 **Acting Director: Electro-Mechanical Services**

Supported.

8.5 **Director: Community Services**

Supported.

8.6 **Deputy Municipal Manager**

Supported.

8.7 **Municipal Manager**

The approval of the loan is supported.

9. **Delegated Authority**

Council

10. **Recommendations**

10.1 That the content on public participation process and comments received be noted as set out in **Annexure A and C**.

10.2 That the Council approve the proposed loan in line with the agreed capital and interest amounts as set out in **Annexure B.**

10.3 That the Council approves Option 1 on the information statement i.e. the 12-year payment term.

10.4 That the Municipal Manager, as the Accounting Officer, be authorized to enter into a Loan Agreement with DBSA to give effect to the loan facility applied for and approved, and incorporate the financial information as set out in **Annexure B.**

10.5 That the municipality continues to assess its debt servicing capacity annually to ensure that future repayments of the loan facility do not negatively impact on the Municipality's ability to deliver essential services.

Item prepared by the: Manager Assets & Investments 

Item approved by the: Chief Financial Officer: 

Item endorsed by the Municipal Manager: 

Item noted by the Portfolio Councillor: 

Annexure A :

Kouga Local Municipality: Loan Application of R200 Million in Compliance with Section 46 of the MFMA

NOTICE NO. 237 / 2024

This Notice serves as a publication of the information statement required in terms Section **46(3) of the Local Government: Municipal Finance Management Act No. 56 of 2003 (MFMA)**, of the Kouga Local Municipality's intention to incur a long-term debt as described in the MFMA. The monetary value of the long-term debt is in the amount of **R200 million**, and from the financial institution known and herein described as the **Development Bank of South Africa (DBSA).**

Loan Particulars:

Lender	Development Bank of South Africa (DBSA)
Amount	R 200 000 000
Interest Rate Type	Fixed
Capital and Interest Repayment	Equally Quarterly Instalments (Capital and Interest)
Tenure	12 years
Benchmark /Reference Rate	SWAP
Base Rate – November 2024	8.32%
All-in Margin	2.69%
All In Rate	**11.01%**
Estimated Capital Repayments	R 200,000,000.00
Estimated Interest Repayments	R 160,946,618.22
Estimated Total Repayments	R 360,946,618.22

NOTE to Table Above:

The interest rates quoted above are based on the SWAP Curve 40 of November 2024. The quoted rates are indicative and subject to changes in the underlying 41 capital markets (SWAP Curve). The final interest rate will be determined and fixed based on the close-out rate of the SWAP fixed two days prior to each disbursement plus the all-in margin 43 indicated in the table above

The purpose for which the long-term debt is to be incurred is to finance the following key capital infrastructure and development projects aimed at improving service delivery and enhancing the quality of life for our residents and to achieve the objectives of local government as set out in Section 152 of the Constitution.

Capital Project/s:

- Road upgrades and transport infrastructure

This long-term debt application will be submitted for consideration for approval to the **Kouga Municipal Council** and will be submitted to both the **Provincial Treasury** and **National Treasury** as contemplated in the MFMA.

The long-term debt will be repaid over a period that aligns with the municipality's financial capacity and growth projections, ensuring that the long-term debt does not negatively impact the municipality's long-term financial stability.

The public is hereby invited to submit written comments or representations regarding this loan application to the Municipality.

Kindly note that the closing date for written comments and/or representations is 12 December 2024. All comments and/or representations must be communicated to:

The Municipal Manager Mr C Du Plessis
Kouga Local Municipality
Tel: 042 200 2200
Email: registry@kouga.gov.za (Reference: R200million loan)

Kouga Local Municipality values your input and looks forward to your continued engagement as we work towards achieving a better, more prosperous future for all our residents.



MR. C DU PLESSIS
MUNICIPAL MANAGER
P O Box 21
JEFFREYS BAY
6330

For publication:
Kouga Express
Notice Boards
Kouga Website
Kouga FB Page

Annexure B :

DBSA
DEVELOPMENT BANK OF SOUTHERN AFRICA
Building Africa's Prosperity

15 November 2024

The Municipal Manager
Kouga Local Municipality
33 Da Gama Road
PO Box 21
Jeffreys Bay
6330

Dear Mr C du Plessis.

"KOUGA LOCAL MUNICIPALITY'S EXTERNAL LOAN APPLICATION: R200 000 000.00 – ROADS REHABILITATION CAPITAL EXPENDITURE PROGRAMME AS PER FY2024/25 TO FY2025/26 CAPITAL BUDGETS"

We refer to Kouga Local Municipality's external loan application requesting loan funding to the amount of R200 million to finance the implementation of certain road rehabilitation projects as per approved FY2024/25 and FY2025/26 Capital Expenditure Budget.

The DBSA takes pleasure in offering a loan facility to the maximum of R 200 000 000.00 (**TWO HUNDRED MILLION RAND**) which will be disbursed in two tranches at R100 million for FY2024/25 and R100 million for FY2025/26 in line with your application.

The details of the DBSA Loan Offer are as follows:

1. LOAN SPECIFICATION

The DBSA Loan Offer entails two Fixed Interest rate options, for a 12-year tenor as per your application and a 15-year tenor option that the municipality may consider.

A summary of the details of the DBSA Loan Offer are as follows:

1.1. **Fixed Interest Rate Option: 12-year tenor and 15-year tenor**

Options: Fixed Interest Rate	1. Roads Rehabilitation	2. Roads Rehabilitation
Amount (ZAR)	R200,000,000.00	R200,000,000.00
Interest Rate Type	Fixed	Fixed
Capital and Interest Repayment	Equal Quartrerly Capital Instalments	
Tenure	12 years	15 years
Benchmark/Reference Rate	SWAP	SWAP
Base Rate - November 2024	8.32%	8.67%
All-In Margin	2.69%	2.82%
All In Rate	**11.01%**	**11.49%**

NOTE to Table Above: The interest rates quoted in 1.1 above are based on the SWAP Curve of November 2024. The quoted rates are **indicative** and subject to changes in the underlying capital markets (SWAP Curve). The final interest rate will be determined and fixed based on

E Rasool (Board Chairman),
M Janse van Rensburg (Deputy Board Chairman)
B Mosako* (Chief Executive), K Brown, B Hore, D Lerutla, MP Magi,
Z Mbele*, D Moephuli, J Muthige, C Naidoo, P Nitshitenzhe, B Nqwababa,
P Nqeto, E Pieterse
*Executive
Bathobile Sowazi (Company Secretary)

1258 Lever Rd,
Headway Hill,
Midrand,
1685
011 313 3911
011 313 3500
www.dbsa.org

the close-out rate of the SWAP fixed two days prior to each disbursement plus the all-in margin indicated in the table above.

2. KEY CONDITIONS PRECIDENT FOR DISBURSEMENTS

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 accompanying this offer letter, and, in particular, the DBSA shall have received them, all to the satisfaction of the DBSA.

3. GENERAL TERMS AND CONDITIONS

3.1. The Borrower will supply the DBSA with a disbursement schedule within the availability period. If the Borrower draws down on the Loan in accordance with the Disbursement Schedule, no Commitment Fee shall be payable.

3.2. The interest rate will be a fixed rate as per above options in 1.1, payable quarterly each year by the Kouga Local Municipality.

3.3. The loan offer has been approved by DBSA's Investment Committee (IC) on 6 & 15 November 2024.

3.4. To enable the DBSA to disburse the first R100m before or latest by end March 2025 Kouga Local Municipality should be in compliance of all Conditions Precedent (CP) before or on 28 February 2025.

4. GENERAL

Attached please find the following:

4.1. Amortising tables (2) based on the indicative rates as of November 2024. Please note this is based on equal quarterly capital instalments with interest instalments calculated on the outstanding balance, amortising, and is quoted in terms of NACQ.

You are welcome to contact Bheki Zwane, the responsible Investment Officer by telephone at 011 313 3143/084 491 0239 or by email at bhekiz@dbsa.org or Nico Jooste, the responsible Deal Originator, by telephone at 082 909 6094 or by email at nicoj@dbsa.org, if additional information is required or to clarify any matters under consideration.

Yours faithfully

MB Mokheseng

Ben Mokheseng
Head: Transacting Municipalities and Water Boards

E Prinsloo (Board Chairman)
M Jansa van Rensburg (Deputy Board Chairman)

B Masako* (Chief Executive), K Brown, B Hara, D Lekubu, MP Moti,
Z Mbele*, D Moolpuli, J Mulhega, C Naidoo, J Neishtmaihe, B Ngwevela,
P Ngozo, E Pienaar

*Executive
Bathobile Sowazi (Company Secretary)

1258 Lever Rd,
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011 313 3911
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www.dbsa.org

Development Bank of SA

12 year amortised loan - Quarterly (Fixed)

Kouga Local Municipality
Amortised Repayment

Loan Amount:			R 200,000,000.00		
Fixed Interest rate: NACQ			11.010%		
Loan Period: Years			12		
Capital Grace Period: Years			0		
Interest Grace Period: Years			0		
Number of Loan Repayments: Quarterly			48		
Disbursements			**Capital Instalment:** No. of instalments		
	31-Mar-25	100,000,000.00	R 2,083,333.33	48.00	
	31-Mar-26	100,000,000.00	R 2,272,727.27	44.00	

Payment	Date	No of days	Draw	Interest	Capital	Repayment	Balance / Capital balance
	31-Mar-25		100,000,000				100,000,000.00
1	30-Jun-25	91		2,744,958.90	2,083,333.33	4,828,292.24	97,916,666.67
2	30-Sep-25	92		2,717,308.22	2,083,333.33	4,800,641.55	95,833,333.33
3	31-Dec-25	92		2,659,493.15	2,083,333.33	4,742,826.48	93,750,000.00
4	31-Mar-26	90	100,000,000	2,545,119.86	2,083,333.33	4,628,453.20	191,666,666.67
5	30-Jun-26	91		5,261,171.23	4,356,060.61	9,617,231.84	187,310,606.06
6	30-Sep-26	92		5,198,100.25	4,356,060.61	9,554,160.86	182,954,545.45
7	31-Dec-26	92		5,077,214.20	4,356,060.61	9,433,274.80	178,598,484.85
8	31-Mar-27	90		4,848,581.88	4,356,060.61	9,204,642.49	174,242,424.24
9	30-Jun-27	91		4,782,882.94	4,356,060.61	9,138,943.55	169,886,363.64
10	30-Sep-27	92		4,714,556.04	4,356,060.61	9,070,616.65	165,530,303.03
11	31-Dec-27	92		4,593,669.99	4,356,060.61	8,949,730.59	161,174,242.42
12	31-Mar-28	91		4,424,166.72	4,356,060.61	8,780,227.32	156,818,181.82
13	30-Jun-28	91		4,304,594.65	4,356,060.61	8,660,655.25	152,462,121.21
14	30-Sep-28	92		4,231,011.83	4,356,060.61	8,587,072.44	148,106,060.61
15	31-Dec-28	92		4,110,125.78	4,356,060.61	8,466,186.38	143,750,000.00
16	31-Mar-29	90		3,902,517.12	4,356,060.61	8,258,577.73	139,393,939.39
17	30-Jun-29	91		3,826,306.35	4,356,060.61	8,182,366.96	135,037,878.79
18	30-Sep-29	92		3,747,467.62	4,356,060.61	8,103,528.23	130,681,818.18
19	31-Dec-29	92		3,626,581.57	4,356,060.61	7,982,642.18	126,325,757.58
20	31-Mar-30	90		3,429,484.74	4,356,060.61	7,785,545.35	121,969,696.97
21	30-Jun-30	91		3,348,018.06	4,356,060.61	7,704,078.66	117,613,636.36
22	30-Sep-30	92		3,263,923.41	4,356,060.61	7,619,984.02	113,257,575.76
23	31-Dec-30	92		3,143,037.36	4,356,060.61	7,499,097.97	108,901,515.15
24	31-Mar-31	90		2,956,452.37	4,356,060.61	7,312,512.97	104,545,454.55
25	30-Jun-31	91		2,869,729.76	4,356,060.61	7,225,790.37	100,189,393.94
26	30-Sep-31	92		2,780,379.20	4,356,060.61	7,136,439.81	95,833,333.33
27	31-Dec-31	92		2,659,493.15	4,356,060.61	7,015,553.76	91,477,272.73
28	31-Mar-32	91		2,511,013.54	4,356,060.61	6,867,074.15	87,121,212.12
29	30-Jun-32	91		2,391,441.47	4,356,060.61	6,747,502.08	82,765,151.52
30	30-Sep-32	92		2,296,834.99	4,356,060.61	6,652,895.60	78,409,090.91
31	31-Dec-32	92		2,175,948.94	4,356,060.61	6,532,009.55	74,053,030.30
32	31-Mar-33	90		2,010,387.61	4,356,060.61	6,366,448.22	69,696,969.70
33	30-Jun-33	91		1,913,153.18	4,356,060.61	6,269,213.78	65,340,909.09
34	30-Sep-33	92		1,813,290.78	4,356,060.61	6,169,351.39	60,984,848.48
35	31-Dec-33	92		1,692,404.73	4,356,060.61	6,048,465.34	56,628,787.88
36	31-Mar-34	90		1,537,355.23	4,356,060.61	5,893,415.84	52,272,727.27
37	30-Jun-34	91		1,434,864.88	4,356,060.61	5,790,925.49	47,916,666.67
38	30-Sep-34	92		1,329,746.58	4,356,060.61	5,685,807.18	43,560,606.06
39	31-Dec-34	92		1,208,860.52	4,356,060.61	5,564,921.13	39,204,545.45
40	31-Mar-35	90		1,064,322.85	4,356,060.61	5,420,383.46	34,848,484.85
41	30-Jun-35	91		956,576.59	4,356,060.61	5,312,637.19	30,492,424.24
42	30-Sep-35	92		846,202.37	4,356,060.61	5,202,262.97	26,136,363.64
43	31-Dec-35	92		725,316.31	4,356,060.61	5,081,376.92	21,780,303.03
44	31-Mar-36	91		597,860.37	4,356,060.61	4,953,920.97	17,424,242.42
45	30-Jun-36	91		478,288.29	4,356,060.61	4,834,348.90	13,068,181.82
46	30-Sep-36	92		362,658.16	4,356,060.61	4,718,718.76	8,712,121.21
47	31-Dec-36	92		241,772.10	4,356,060.61	4,597,832.71	4,356,060.61
48	31-Mar-37	90		118,258.09	4,356,060.61	4,474,318.70	0.00
			200,000,000	**129,472,904**	**200,000,000**	**329,472,904**	

Annexure C :

Neville Swarts

From: Monwabisi Ngwadla <Monwabisi.Ngwadla@ectreasury.gov.za>
Sent: Tuesday, November 26, 2024 8:10 AM
To: Neville Swarts
Cc: Gillian Hammond; Siphokazi Thompson
Subject: RE: Sec 46 of MFMA -Long term borrowing

Dear Mr Swarts,

I hereby acknowledge the receipt of your email. I will have a look and revert in due course.

Regards,

From: Neville Swarts <nswarts@kouga.gov.za>
Sent: Monday, November 25, 2024 3:32 PM
To: Monwabisi Ngwadla <Monwabisi.Ngwadla@ectreasury.gov.za>
Subject: Fw: Sec 46 of MFMA -Long term borrowing

From: Neville Swarts <nswarts@kouga.gov.za>
Sent: Monday, November 25, 2024 3:30 PM
To: P5Submissions@ectreasury.gov.za <P5Submissions@ectreasury.gov.za>
Cc: Riaaz Lorgat <Rlorgat@kouga.gov.za>; Gillian Hammond <Gillian.Hammond@ectreasury.gov.za>; Khaya Mvandaba <Khaya.Mvandaba@ectreasury.gov.za>
Subject: Fw: Sec 46 of MFMA -Long term borrowing

fya

From: Neville Swarts
Sent: Thursday, November 21, 2024 9:41 AM
To: P5Submissions@ectreasury.gov.za <P5Submissions@ectreasury.gov.za>
Cc: Riaaz Lorgat <Rlorgat@kouga.gov.za>; Gillian Hammond <Gillian.Hammond@ectreasury.gov.za>; Khaya.Mvandaba@ectreasury.gov.za <Khaya.Mvandaba@ectreasury.gov.za>
Subject: Sec 46 of MFMA -Long term borrowing

Good morning Ms N Tungata

Trust that you are well.

Please find attached Sec 46 notification from Kouga Local Municipality for your comment.

Regards

KOUGA
local municipality
Good Governance through Service Excellence

Cape St Francis
Hankey
Humansdorp
Jeffreys Bay
Loerie
Oyster Bay
Patensie
St Francis Bay
Thornhill

Postal: PO Box 21, Jeffreys Bay, 6330
Tel: 042 200 2200 / 042 200 8300
Fax: 042 200 8606
Email: registry@kouga.gov.za
Website: www.kouga.gov.za

19 November 2024

Section 46 Letter to Provincial Treasury

Ms N Tungata
MFMA oordinator
Phalo Avenue
Bhisho Central
Bhisho
5605

SUBJECT: NOTIFICATION OF LOAN APPLICATION TO THE DEVELOPMENT BANK OF SOUTH AFRICA (DBSA) *IN COMPLIANCE WITH SECTION 46 OF THE MFMA*

Dear Sir/Madam,

RE: LOAN APPLICATION TO THE DEVELOPMENT BANK OF SOUTH AFRICA (DBSA) – COMPLIANCE WITH SECTION 46 OF THE MFMA

We, **Kouga Local Municipality**, are writing to inform you of our intention to approve a loan from the **Development Bank of South Africa (DBSA)** for the financing of the rehabilitation of roads.

In compliance with Section 46 of the **Municipal Finance Management Act (MFMA)**, we are submitting this letter to notify the Provincial Treasury of the loan application process and to provide relevant details regarding the financial arrangements. The loan will support the municipal objectives and is in line with its IDP.

Loan Details:

Lender	Development Bank of South Africa (DBSA)
Amount	R 200 000 000
Interest Rate Type	Fixed
Capital and Interest Repayment	Equally Quarterly Instalments (Capital and Interest)
Tenure	12 years
Benchmark /Reference Rate	SWAP
Base Rate – November 2024	8.32%
All-in Margin	2.69%
All In Rate	**11.01%**
Estimated Capital Repayments	R 200,000,000.00
Estimated Interest Repayments	R 160,946,618.22
Estimated Total Repayments	R 360,946,618.22

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***NOTE to Table Above**: The interest rates quoted above are based on the SWAP Curve 40 of November 2024. The quoted rates are indicative and subject to changes in the underlying 41 capital markets (SWAP Curve). The final interest rate will be determined and fixed based on the close-out rate of the SWAP fixed two days prior to each disbursement plus the all-in margin 43 indicated in the table above.*

The purpose of the loan is to finance the following key infrastructure and development projects aimed at improving service delivery and enhancing the quality of life for our residents:

- **Road upgrades and transport infrastructure**

To ensure compliance with all applicable laws and regulations, we have undertaken the necessary steps, and the following documents are included for your review:

	Details	MFMA
1	A copy of the *information statement* required by section 46(3), containing particulars of the proposed borrowing (debt) instrument. **Annexure A**	46(3)(a)(i)
2	If not already incorporated in the *information statement*, please ensure the following information is provided separately (note QBMR = Quarterly Borrowing Monitoring Return to NT, see over page for further information): • amount of debt to be raised through borrowing or other means • purposes for which the borrowing (debt) is to be incurred • interest rate(s) applicable (state whether fixed or variable etc) • planned start and end date (term of instrument) • detailed repayment schedule for the duration of the borrowing (debt) (showing dates and all payments of principal and interest, etc) • total estimated cost of the borrowing (debt) over the repayment period • type of instrument (select from QBMR) • security to be provided (select from QBMR) and provide details	46(3)(b)(i) and (ii)

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	• source of loan funds (select from QBMR) **Not applicable information is included in the information statement**	
3	A schedule of consultation undertaken, including: • date(s) when the *information statement* was made public • details of meetings, media adverts and other methods used to consult on the proposed long-term borrowing (debt) **Invitation for public comments will be made available on the 21 November 2024 - Annexure B**	46(3)(a)(i), (ii)
4	A copy of the approved budget, and relevant documentation supporting the budget, highlighting the asset(s) to be funded by the proposed borrowing (debt) and the revenue to be received. It must be demonstrated that the proposed borrowing (debt) is consistent with the IDP, the capital budget and the revenue is shown accordingly. **See attached annexure C (special adjustment budget)**	46(6) 17(2) 19
5	If the borrowing (debt) is for the purpose of refinancing existing long-term borrowing (debt), the following information: • description of the asset(s) for which the original loan was required • the useful remaining life of the asset(s) • the net present value of the asset(s), including the discount rate used and any assumptions in the calculations • the net present value of projected future payments before refinancing, including the discount rate and assumptions used. • the net present value of projected future payments after refinancing, including the discount rate and assumptions used. **Not Applicable**	46(5)
6	What source of funding will be used to repay the loan? Please specify the revenue stream(s) and whether this is existing revenue, or new revenue. **Existing Service charges: Sanitation; Electricity; Water; Property rates**	19(1)(d)

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Website: www.kouga.gov.za

7	Schedule of all long-term borrowing (debt) obligations in the format of the QBMR showing principal and interest payments for the life of all loans and any associated investments set up as sinking funds etc. **See attached annexure D**	
8	In the case of a municipal entity, details of any guarantee or other forms of security to be issued by the parent municipality(s) in respect to the entity's proposed borrowing (debt). **Not Applicable**	50
9	Please note: a copy of the council/board of directors' resolution approving the borrowing (debt) instrument should be forwarded once approved. **Resolution to be submitted once approval received from council**	
10	Please specify the projects to be funded by the loan **Annexure E**	
11	A copy of the latest credit rating. **Annexure F**	

We respectfully request the National Treasury's consideration of our loan application, and we are happy to provide any additional information, or documents should they be required.

Thank you for your attention to this matter. We look forward to your guidance and support as we move forward with this important initiative.

Yours faithfully,

MR. C DU PLESSIS
MUNICIPAL MANAGER

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Website: www.kouga.gov.za

Certification for long-term borrowing (debt)

Name of municipality / entity: Kouga Local Municipality

Proposed borrowing (debt): R 200 000 000.00

We hereby certify that the proposed long-term borrowing (debt), as specified in the attached *information statement* and supplementary pages complies with sections 17(2), 19, 46 and 108 of the MFMA and will be used for the purposes of capital expenditure on property, plant or equipment:

- for the purpose of achieving the objects of local government as set out in section 152 of the Constitution;
- capital expenditure is appropriated in an approved multi-year capital budget;
- repayments for the duration of the loan are affordable and will be appropriated in future budgets; and
- if the loan is required to refinance existing long-term borrowing (debt), that the original borrowing (debt) was lawfully incurred and the refinancing does not extend the term of the borrowing (debt) beyond the life of the asset for which the money was originally borrowed.

A copy of the council/board of director's resolution approving the loan will be forwarded to the National Treasury and relevant provincial treasury within 7 days of approval.

Signatures:

Accounting Officer

Name: Mr. C. Du Plessis

Date: 19 November 2024

Mayor/Chairperson of the Board

Name:

Date:

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19 November 2024

Section 46 Letter to National Treasury

Mr Wayne McComans
The National Treasury
MFMA implementation
Private Bag X115
Pretoria
0001

SUBJECT: NOTIFICATION OF LOAN APPLICATION TO THE DEVELOPMENT BANK OF SOUTH AFRICA (DBSA) IN COMPLIANCE WITH SECTION 46 OF THE MFMA

Dear Sir/Madam,

RE: LOAN APPLICATION TO THE DEVELOPMENT BANK OF SOUTH AFRICA (DBSA) – COMPLIANCE WITH SECTION 46 OF THE MFMA

We, **Kouga Local Municipality**, are writing to inform you of our intention to approve a loan from the **Development Bank of South Africa (DBSA)** for the financing of the rehabilitation of roads.

In compliance with Section 46 of the **Municipal Finance Management Act (MFMA)**, we are submitting this letter to notify the National Treasury of the loan application process and to provide relevant details regarding the financial arrangements. The loan will support the municipal objectives and is in line with its IDP.

Loan Details:

Lender	Development Bank of South Africa (DBSA)
Amount	R 200 000 000
Interest Rate Type	Fixed
Capital and Interest Repayment	Equally Quarterly Instalments (Capital and Interest)
Tenure	12 years
Benchmark /Reference Rate	SWAP
Base Rate – November 2024	8.32%
All-in Margin	2.69%
All In Rate	**11.01%**
Estimated Capital Repayments	R 200,000,000.00
Estimated Interest Repayments	R 160,946,618.22
Estimated Total Repayments	R 360,946,618.22

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***NOTE to Table Above**: The interest rates quoted above are based on the SWAP Curve 40 of November 2024. The quoted rates are indicative and subject to changes in the underlying 41 capital markets (SWAP Curve). The final interest rate will be determined and fixed based on the close-out rate of the SWAP fixed two days prior to each disbursement plus the all-in margin 43 indicated in the table above.*

The purpose of the loan is to finance the following key infrastructure and development projects aimed at improving service delivery and enhancing the quality of life for our residents:

- **Road upgrades and transport infrastructure**

To ensure compliance with all applicable laws and regulations, we have undertaken the necessary steps, and the following documents are included for your review:

	Details	MFMA
1	A copy of the *information statement* required by section 46(3), containing particulars of the proposed borrowing (debt) instrument. **Annexure A**	46(3)(a)(i)
2	If not already incorporated in the *information statement*, please ensure the following information is provided separately (note QBMR = Quarterly Borrowing Monitoring Return to NT, see over page for further information): • amount of debt to be raised through borrowing or other means • purposes for which the borrowing (debt) is to be incurred • interest rate(s) applicable (state whether fixed or variable etc) • planned start and end date (term of instrument) • detailed repayment schedule for the duration of the borrowing (debt) (showing dates and all payments of principal and interest, etc) • total estimated cost of the borrowing (debt) over the repayment period • type of instrument (select from QBMR) • security to be provided (select from QBMR) and provide details	46(3)(b)(i) and (ii)

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	• source of loan funds (select from QBMR) **Not applicable information is included in the information statement**	
3	A schedule of consultation undertaken, including: • date(s) when the *information statement* was made public • details of meetings, media adverts and other methods used to consult on the proposed long-term borrowing (debt) **Invitation for public comments will be made available on the 21 November 2024 - Annexure B**	46(3)(a)(i), (ii)
4	A copy of the approved budget, and relevant documentation supporting the budget, highlighting the asset(s) to be funded by the proposed borrowing (debt) and the revenue to be received. It must be demonstrated that the proposed borrowing (debt) is consistent with the IDP, the capital budget and the revenue is shown accordingly. **See attached annexure C (special adjustment budget)**	46(6) 17(2) 19
5	If the borrowing (debt) is for the purpose of refinancing existing long-term borrowing (debt), the following information: • description of the asset(s) for which the original loan was required • the useful remaining life of the asset(s) • the net present value of the asset(s), including the discount rate used and any assumptions in the calculations • the net present value of projected future payments before refinancing, including the discount rate and assumptions used. • the net present value of projected future payments after refinancing, including the discount rate and assumptions used. **Not Applicable**	46(5)
6	What source of funding will be used to repay the loan? Please specify the revenue stream(s) and whether this is existing revenue, or new revenue. **Existing Service charges: Sanitation; Electricity; Water; Property rates**	19(1)(d)

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7	Schedule of <u>all</u> long-term borrowing (debt) obligations in the format of the QBMR showing principal and interest payments for the life of <u>all loans</u> and any associated investments set up as sinking funds etc. **See attached annexure D**	
8	In the case of a municipal entity, details of any guarantee or other forms of security to be issued by the parent municipality(s) in respect to the entity's proposed borrowing (debt). **Not Applicable**	50
9	Please note: a copy of the council/board of directors' resolution approving the borrowing (debt) instrument should be forwarded once approved. **Resolution to be submitted once approval received from council**	
10	Please specify the projects to be funded by the loan **Annexure E**	
11	A copy of the latest credit rating. **Annexure F**	

We respectfully request the National Treasury's consideration of our loan application, and we are happy to provide any additional information, or documents should they be required.

Thank you for your attention to this matter. We look forward to your guidance and support as we move forward with this important initiative.

Yours faithfully,

MR. C DU PLESSIS
MUNICIPAL MANAGER

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Certification for long-term borrowing (debt)

Name of municipality / entity: Kouga Local Municipality

Proposed borrowing (debt): R 200 000 000.00

We hereby certify that the proposed long-term borrowing (debt), as specified in the attached *information statement* and supplementary pages complies with sections 17(2), 19, 46 and 108 of the MFMA and will be used for the purposes of capital expenditure on property, plant or equipment:

- for the purpose of achieving the objects of local government as set out in section 152 of the Constitution;
- capital expenditure is appropriated in an approved multi-year capital budget;
- repayments for the duration of the loan are affordable and will be appropriated in future budgets; and
- if the loan is required to refinance existing long-term borrowing (debt), that the original borrowing (debt) was lawfully incurred and the refinancing does not extend the term of the borrowing (debt) beyond the life of the asset for which the money was originally borrowed.

A copy of the council/board of director's resolution approving the loan will be forwarded to the National Treasury and relevant provincial treasury within 7 days of approval.

Signatures:

Accounting Officer

Name: Mr. C. Du Plessis

Date: 19 November 2024

Mayor/Chairperson of the Board

Name:

Date:

Neville Swarts

From: Registry
Sent: Wednesday, December 11, 2024 3:31 PM
To: Neville Swarts
Cc: Monique Julius
Subject: Fw: REF:- R200M LOAN / ROAD UPGRADES & TRANSPORTATION PROJECTS
Attachments: IMG-20241128-WA0059.jpg

Good day Mr. Swarts,

Kindly see below email for attention.

Kind Regards,



From: Simon Jordan <simon.tileandbrick@gmail.com>
Sent: Thursday, November 28, 2024 07:18 PM
To: Registry <registry@kouga.gov.za>
Cc: trevoralanwright1953 <trevoralanwright1953@gmail.com>
Subject: REF:- R200M LOAN / ROAD UPGRADES & TRANSPORTATION PROJECTS

You don't often get email from simon.tileandbrick@gmail.com. Learn why this is important
Good Evening,

Please send full details of the above and include road upgrades and transportation projects to be undertaken if loan is approved.
Please specify which roads, no of kilometres to be upgraded and the full extent of the upgrade.
Furthermore which and what type of transportation project/s specified within the R200m loan [interest excluded] are to be included.

Annexure D:

DBSA
DEVELOPMENT BANK OF SOUTHERN AFRICA
Building Africa's Prosperity

LOAN AGREEMENT

made and entered into by and between

DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED

and

KOUGA LOCAL MUNICIPALITY

in respect of funding the

FY2024/25 ROADS INFRASTRUCTURE REHABILITATION PROGRAMME

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SUMMARY

1	LOAN AMOUNT	:	R200 000 000 (Two Hundred Million Rand).
2	PRODUCT TYPE	:	Senior Loan
3	MAXIMUM GEARING	:	45%
4	AVAILABILITY PERIOD	:	24 Months from CP Fulfilment Date
5	LOAN PERIOD FIXED	:	12 (twelve) to 15 (fifteen) years.
6	INTEREST RATE	:	See clause 6.
7	INTEREST GRACE PERIOD	:	Nil.
8	CAPITAL REPAYMENT	:	Quarterly instalments, commencing on 31 March 2025.
9	INTEREST REPAYMENT	:	Quarterly instalments, commencing on the 1st (first) day of the month following the first disbursement.
10	PROGRAMME FILE NO.	:	120110082

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1. **DEFINITIONS AND INTERPRETATION**

1.1. In this Agreement, unless inconsistent with or otherwise indicated by the context:

1.1.1. "**Accounting Officer**" shall have the meaning ascribed thereto in the MFMA;

1.1.2. "**Agreement**" means the agreement as set out in this document together with the Annexures hereto;

1.1.3. "**Authorisation**" means any authorisation, consent, registration, filing, agreement, notarisation, certificate, licence, approval, resolution, permit and/or authority or any exemption from any of the aforesaid, by or with any Authority;

1.1.4. "**Authority**" means the Government of South Africa and any province or municipality therein and any organ of state as contemplated in section 239 of the Constitution of the Republic of South Africa, 1996, including without limitation, any ministry, department, board, agency, court, tribunal, commission, entity or any other authority, subdivision or instrumentality of the Government of South Africa, or of any province or municipality therein;

1.1.5. "**Availability Period**" means a period 24 (twenty-four) Months from the CP Fulfilment Date;

1.1.6. "**Base Rate**" means the SWAP Curve rate, as applicable;

1.1.7. "**Borrower**" means the Kouga Local Municipality, a municipality established or deemed to be established in terms of Section 12 of the Local Government: Municipal Structures Act 117 of 1998, as amended from time to time;

1.1.8. "**Borrower's Account**" means the bank account with the following details:

Account Holder:	Kouga Local Municipality
Bank:	**ABSA**
Account Number:	[•]
Branch:	[•]
Branch Code:	[•]

1.1.9. "**Breakage Costs**" means the amount (if any) determined by the DBSA by which:

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1.1.9.1. the interest (but excluding the Margin) which the DBSA would have received for the period from the date of receipt of an amount repaid or prepaid in respect of a Loan to the last day of the applicable Interest Period for that Loan, if the principal received had been paid on the last day of that Interest Period, exceeds the amount which the DBSA would be able to obtain by placing an amount equal to the amount received by it on deposit with a leading bank in the Johannesburg interbank market for a period starting on the Business Day following receipt and ending on the last day of the applicable Interest Period;;"**Budget**" means the approved budget in respect of the Financial Year of the Borrower;

1.1.10. "**Business Day**" means any day which is not a Saturday, Sunday, or gazetted South African Public Holiday;

1.1.11. **"Cancellation Fee"** means an amount equal to 0,5% (nought comma five percent) of the Capital or a portion of the cancelled Capital;

1.1.12. "**Capital**" means the total monetary amount of R200 000 000 (two hundred million Rand);

1.1.13. "**Change in Law**" means any implementation, introduction, abolition, withdrawal or variation of any applicable laws and/or regulations;

1.1.14. "**Commitment Fee**" means an amount equal to 0.5% (zero-point five percent) per annum payable in accordance with clause 7 (*Commitment Fees*) below;

1.1.15. "**Compliance Certificate**" means a certificate substantially in the form set out in **Annexure B** (*Form of Compliance Certificate*) or otherwise in the agreed form;

1.1.16. "**Conditions Precedent**" means the conditions precedent contained in clause 5 (*Conditions Precedent*) of this Agreement;

1.1.17. "**Court**" means any court of law with competent jurisdiction;

1.1.18. "**CP Fulfilment Date**" means the date on which the DBSA issues a written confirmation to the Borrower that it has received all the Conditions Precedent in form and substance satisfactory to it;

1.1.19. "**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;

DRAFT

1.1.20. "**Debt Service**" means the Borrower's gross interest incurred on borrowings plus the capital portion of debt repayable in a Financial Year;

1.1.21. "**DSCR**" means the debt service cover ratio, which will be calculated as cash available to service all of the Borrower's outstanding borrowings (including finance leases), determined from cash generated from operating activities in the Financial Year, before taking into account the interest or any financing costs and excluding cash receipt from capital grants, divided by Debt Service;

1.1.22. "**Default Interest**" means any interest which accrues at the Default Rate in terms of this Agreement;

1.1.23. "**Default Rate**" means the Interest Rate, as determined from time to time, plus 200 (two hundred) basis points;

1.1.24. "**Development Result Report**" means a detailed development result report to be delivered by the Borrower to the DBSA, substantially in the electronic format to be provided by the DBSA to the Borrower within 30 days from the Signature Date, in terms of which the Borrower shall outline, in relation to the 2024/25 MTREF, information on the expected developmental outcomes under the Programme;

1.1.25. "**Disbursement**" means any amount drawn down by the Borrower, and disbursed by the DBSA under the Facility and in terms of a Disbursement Request;

1.1.26. "**Disbursement Date**" means the date on which a Disbursement is stipulated to be made or actually made by the DBSA to the Borrower, provided that the first Disbursement Date shall be no later than 30 June 2025

1.1.27. "**Disbursement Request**" means a notice substantially in the form annexed hereto marked "**Annexure A**" (*Form of Disbursement Request*);

1.1.28. "**Disbursement Schedule**" means the disbursement schedule to be delivered by the Borrower to the DBSA in terms of clause 5 (*Conditions Precedent*);

1.1.29. "**Economic Failure**" means any adverse change in the South African or international capital markets or in South African or international monetary, financial, political, or economic conditions which adversely affect the DBSA's access to the relevant local capital markets, or which renders it unlawful or impossible for the DBSA to advance any portion of the Capital on any

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Disbursement Date. In the case of the Borrower, Economic Failure means any adverse change in the South African or international capital markets or in South African or international monetary, financial, political or economic conditions which renders it impossible for the Borrower to request a Disbursement as it shall be financially unsustainable and shall have a severe impact on the sustainability of the Borrower;

1.1.30. "**Event of Default**" means any event of default as envisaged in clause 19 (*Events of Default*) below;

1.1.31. "**Facility**" means the loan facility made available under this Agreement as described in clause 2.2;

1.1.32. "**FICA**" means the Financial Intelligence Centre Act No. 38 of 2001, as amended from time to time;

1.1.33. "**Finance Documents**" means all or any one of the following documents:

1.1.33.1. this Agreement;

1.1.33.2. each Disbursement Request;

1.1.33.3. the Disbursement Schedule;

1.1.33.4. each Compliance Certificate;

1.1.33.5. all material documents in respect of the Programme as identified by the DBSA in its sole discretion as Finance Documents;

1.1.33.6. each other document designated as such in writing by the DBSA and the Borrower; and

1.1.33.7. each document amending or restating any Finance Document referred to above,

1.1.34. "**Financial Year**" means the financial year of the Borrower ending on the 30th (the thirtieth of June) each year;

1.1.35. "**Interest Payment Date**" means the last Business Day of each Interest Period;

1.1.36. "**Interest Period**" means each Quarterly period calculated from 1 January; except that, in respect of the first Interest Period, Interest Period shall mean the period beginning on the date of the first Disbursement, ending on the Interest

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Payment Date immediately following the first Disbursement. The last Interest Period in relation to a Loan shall commence on (and include) the Interest Payment Date immediately preceding the day on which that Loan is repaid and end on (and exclude) the day on which that Loan is repaid;

1.1.37. "**Interest Rate**" means a fixed rate determined in terms of clause 6 *(Interest)*;

1.1.38. "**Loan**" means any loan made under this Agreement, or as the context may require, the principal amount outstanding for the time being of that loan;

1.1.39. "**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;

1.1.40. "**Loan Period**" means a period of 12 (twelve) or 15 (fifteen) years from the First Disbursement Date ;

1.1.41. "**Margin**" means 269 / 282 (two hundred and sixty-nine / two hundred and eighty-two basis points, expressed as a percentage rate per annum;

1.1.42. "**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:

1.1.42.1. the business, operations, property, condition (financial or otherwise), performance or prospects of the Borrower; or

1.1.42.2. the ability of the Borrower to perform its obligations in terms of this Agreement; or

1.1.42.3. the legality, validity or enforceability of the Finance Documents or the rights or remedies of the DBSA hereunder; or

1.1.42.4. the right or remedies of the DBSA in terms of and pursuant to this Agreement; or

1.1.42.5. South African or international monetary, financial, political, or economic conditions or the DBSA's access to the relevant local or international capital markets;

1.1.43. "**Mayor**" means in relation to:

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1.1.43.1. a municipality with an executive mayor, means the councillor elected as the executive mayor of the municipality in terms of section 55 of the Municipal Structures Act; or

1.1.43.2. a municipality with an executive committee, means the councillor elected as the mayor of the municipality in terms of section 48 of the Municipal Structures Act;

1.1.44. **"Municipal Adjustment Budget**" means the revised approved annual budget as contemplated in Section 28 of the Local Government: Municipal Finance Management Act No.56 of 2003, incorporating the debt service impact of taking the Loan;~~the cost savings anticipated post the rehabilitation of the municipal roads as well as the cost saving anticipated from the vehicle finance leases funding structure~~

1.1.45. "**Month**" means a reference to a period starting on one day in a calendar month and ending on the numerically corresponding day but one in the next calendar month, except that:

1.1.45.1. if the numerically corresponding day is not a Business Day, that period will end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the directly preceding Business Day; and

1.1.45.2. if there is no numerically corresponding day in the calendar month in which that period is to end, that period will end on the last Business Day in that calendar month;

1.1.46. "**MFMA**" means the Municipal Finance Management Act No. 56 of 2003 as amended from time to time;

1.1.47. "**MTREF**" means the Medium-Term Revenue Expenditure Framework as prescribed by National Treasury;

1.1.48. "**Municipal Structures Act**" means the Local Government: Municipal Structures Act No. 117 of 1998, as amended from time to time;

1.1.49. "**Municipal Systems Act**" means the Local Government: Municipal Systems Act No. 32 of 2000, as amended from time to time;

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1.1.50. "**Parties**" means the DBSA and the Borrower, and "**Party**" shall as the context requires, be a reference to either one of them;

1.1.51. "**Personal Information**" shall have the meaning ascribed to it in Chapter 1 of POPIA;

1.1.52. "**POPIA**" means the Protection of Personal Information Act, No. 4 of 2013, as amended from time to time, including any regulations and/or code of conduct made under the Act;

1.1.53. "**Potential Event of Default**" means any event, envisaged in clause 19 (*Events of Default)* which will become an Event of Default:

1.1.53.1. after the expiry of the applicable cure period set out in respect of such event in clause 19 (*Events of Default)*; or

1.1.53.2. if notice to remedy is given as envisaged in clause 19 (*Events of Default)* and such event is not remedied within the applicable notice period set out in clause 19 (*Events of Default)*;

1.1.54. "**Process**", "**Processed**" or "**Processing**" shall have the meaning ascribed to it in Chapter 1 of POPI;

1.1.55. "**Programme**" means the capital expenditure projects approved by the municipal council of the Borrower for the 2024/25 Financial Year;

1.1.56. "**Quarterly**" means the period (i) from the 1st (first) day of January to the 31st (thirty-first) day of March and, (ii) from the 1st (first) day of April to the 30th (thirtieth) day of June and, (iii) from the 1st (first) day of July to the 30th (thirtieth) day of September and (iv) finally, from the 1st (first) day of October to the 31st (thirty-first) day of December during the same calendar year and "**Annual Quarter"** or **"Quarter"** shall have a corresponding meaning;

1.1.57. "**Quotation Day**" means, in relation to any period for which an interest rate is to be determined, the first day of that period;

1.1.58. "**Rand**" and "**R**" means the lawful currency of the Republic of South Africa;

1.1.59. "**Record**" shall have the meaning ascribed to it in Chapter 1 of POPIA;

1.1.60. "**Signature Date**" means the date on which this Agreement is signed by the last Party signing it in time;

1.1.61. "**Swap Curve**" means the market determined graphic line chart, table or otherwise that shows interest rates at a specific point for all securities having equal risks, but different maturity dates. In South Africa, the data points used to derive the interest rates swap curve represents the yield in the interbank market with differing maturity values with a notional profile such that interest is serviced over predetermined term of the security with full capital redemption at the end of this term;

1.1.62. "**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;

1.1.63. "**Total Debt**" means the total amount of all interest-bearing obligations including finance leases and the current portion of long-term borrowing;

1.1.64. "**Total Income**" means the total amount of operational income plus equitable share. Operational income includes income generated from sales of electricity and water, rendering of sanitation and refuse removal services and property rates levied but excludes capital grants receipts;

1.1.65. "**Unwinding Costs**" means any and all actual costs, expenses and disbursements incurred by the DBSA in taking out a new hedge position, closing out, settling or unwinding any hedge transaction deposits or funding transactions that may have been entered into by the DBSA or reacquiring any negotiable instruments that have been issued by the DBSA, in respect of funding any part or all of the Loan; and

1.1.66. "**VAT**" means value added tax payable in terms of the Value-Added Tax Act, 1991, as amended from time to time.

1.2. A **clause** is, subject to any contrary indication, construed as a reference to a clause of this Agreement.

1.3. **Law** is construed as any law including common law, statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order or any other measure of any government, local government, statutory or regulatory body or court having the force of law.

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1.4. **Person** is construed as a reference to any natural or juristic person, firm, company, corporation, government, state, agency or organ of a state, association, trust or partnership (whether or not having separate legal personality).

1.5. Any reference to the singular includes the plural and *vice versa*;

1.6. The clause headings in this Agreement have been inserted for convenience only and shall not be taken into account in its interpretation.

1.7. Words and expressions defined in any sub-clause shall, for the purpose of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.

1.8. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, effect shall be given to it as if it were a substantive clause in the body of the Agreement, notwithstanding that it is only contained in the interpretation clause.

1.9. Unless otherwise provided in this Agreement, if any period is referred to in this Agreement by way of reference to a number of days, the days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which case the day shall be the next succeeding Business Day.

1.10. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.

1.11. Appendices, schedules or annexures to this Agreement shall be deemed to be incorporated in and form part of this Agreement.

1.12. A reference to a person includes such person's permitted successors, assignees, transferees or substitutes.

1.13. Any reference to a document is a reference to that document as amended, novated, ceded or supplemented.

1.14. Any reference to legislation is to that legislation as at the Signature Date, as amended or replaced from time to time.

1.15. 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.

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1.16. Unless stated otherwise, all fees referred to in this Agreement are exclusive of VAT.

1.17. 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.

1.18. 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.

1.19. This Agreement shall be governed by, construed and interpreted in accordance with the law of the Republic of South Africa.

1.20. This Agreement shall bind the Parties' successors-in-title or in law.

2. RECORDAL

2.1. The Borrower seeks funding in respect the Programme.

2.2. The DBSA has, after performing the necessary appraisal of the Borrower, approved the Borrower's application for a loan facility equal to the Capital, subject to the terms and conditions set out in this Agreement.

2.3. The Parties agree as set out below.

3. THE FACILITY AND SECURITY

3.1. A Loan under the Facility shall be:

3.1.1. an amount not exceeding, in aggregate, the Capital;

3.1.2. disbursed in accordance with the Disbursement Schedule; and

3.1.3. utilised exclusively for the Programme, with the First Disbursement utilised in respect of roads that mostly require overlays and/or slurry seals. However,

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notwithstanding anything contained herein, the DBSA shall be under no obligation to monitor or verify the application of any amount borrowed hereunder.

3.2. The Loan(s) shall be disbursed by the DBSA to the Borrower in accordance with the provisions of this Agreement.

3.3. **Disbursement Procedure**

3.3.1. The Borrower shall, subject to clause 5 (*Conditions Precedent*), request a Disbursement by delivering to the DBSA the Disbursement Request at least 10 (ten) Business Days (or such shorter time as may be acceptable to the DBSA for the purpose of the relevant Disbursement) prior to the applicable Disbursement Date.

3.3.2. The Disbursement Request shall be irrevocable and shall create an obligation on the Borrower to borrow in accordance with such Disbursement Request.

3.3.3. The DBSA shall make the Disbursements to the Borrower only (and to no third party) in Rand to the credit of the Borrower's Account as specified by the Borrower in the Disbursement Request.

3.4. **Security**

3.4.1. The Borrower shall not be required to provide collateral in respect of the Facility. However, the Borrower hereby pledges and undertakes to timeously apply claimable Input Vat Refunds towards the prepayment of any Loan Outstandings at the date or time when the claimable Input Vat Refunds are received by the Borrower. The Borrower shall timeously provide satisfactory proof to the DBSA, of the claimable Input Refunds receipts and application of those claimable Input Vat Refunds towards prepayment of the Loan Outstandings.

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4. **FACILITY LAPSE DATE**

4.1. Unless otherwise agreed between the DBSA and the Borrower, the Facility will lapse in its entirety and the Finance Documents shall never become of any force and effect if:

4.1.1. the Borrower does not duly execute the Agreement by 30 June 2025; or

4.1.2. the CP Fulfilment Date is not reached on or before 28 February 2025

4.2. Borrower shall, within 30 days from date of signature, provide the DBSA with a Development Result Report, in terms of which the Borrower outlines, in relation to the 2024/25 MTREF, information on the expected developmental outcomes under the 2024/25 Capital Programme in a format and substance satisfactory to the DBSA. The DBSA shall be entitled to engage the representatives of the Borrower and/or any of its stakeholders as regards the developmental outcomes provided for in the Development Result Report.

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

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 that is reasonably satisfactory to it, of the conditions specified in this Agreement, and, in particular, the DBSA shall have received the following, all to the satisfaction of the DBSA:

5.1.1. a certified copy of the resolution of the municipal council of the Borrower approving the 2024/25 MTREF budget and a copy of the approved 2023/24 MTREF budget and Adjustment Budget (if any was approved post the 2024/25 MTREF budget) and the municipal council resolution related to the Adjustment Budget;

5.1.2. a certified copy of a resolution of the municipal council of the Borrower in terms of section 46 of the MFMA:

5.1.2.1. signed by the Mayor;

5.1.2.2. approving the terms of this Agreement; and

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5.1.2.3. authorising the Accounting Officer to execute this Agreement or any other document which creates or acknowledges the Loan 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; which include evidence and confirmation that the Accounting Officer:

5.1.3.1. has, in accordance with section 21A of the Municipal Systems Act (i) at least 21 (twenty one) days prior to the meeting of the municipal council of the Borrower at which to pass the resolution referred to in clause 5.1.2 above, made public an information statement setting out particulars of each of the proposed Loans, including the Loan amounts, the purpose of each Loan to be incurred; and (ii) invited the public, the National Treasury and the relevant provincial treasury to submit written comments or representations to the municipal council in respect of the proposed Loan; and

5.1.3.2. has submitted a copy of the information statement to the municipal council of the Borrower at least 21 (twenty one) days prior to the meeting of the Council referred to in clause 5.1.3.1 above, together with particulars of (i) the essential Loan(s) repayment terms, including the anticipated Loan(s) repayment schedule; and (ii) the anticipated total cost in connection with each Loan over the Loan Period;

5.1.4. proof that the Provincial or National Treasury has been advised of the Facility and the projects to be funded by the DBSA under the Programme;

5.1.5. written confirmation from the Accounting Officer that the entering into this Agreement by Borrower shall not contravene the Municipal Supply Chain Regulations (as published under GN 868 in GG 27636 dated 30 May 2005) and/or any procurement or supply chain policies of the Borrower;

5.1.6. project implementation and maintenance plan, to the reasonable satisfaction of the DBSA.

5.1.7. proof to the reasonable satisfaction of the DBSA, that the service provider(s) with requisite capacity has been contracted to implement the projects that are ready for construction utilising the First Disbursement;

5.1.8. all FICA documents from the Borrower as required by legislation and requested by the DBSA in order for the DBSA to carry out and be satisfied that it has

complied with all necessary "*know your customer*" or similar identification procedures under applicable laws and regulations (including FICA) pursuant to the transactions contemplated in the Finance Documents;

5.1.9. the Disbursement Schedule from the Borrower in terms of which all the proposed Disbursements should be within the Availability Period;

5.1.10. a Disbursement Request from the Borrower, which shall have been received by the DBSA during the Availability Period. The DBSA may, after consideration of the reasons for the Borrower's delay to request the first Disbursement, determine to extend the Availability Period. The DBSA shall only consider an extension on receipt of a written request from the Borrower and shall notify the Borrower of its decision in writing;

5.1.11. confirmation from the DBSA that the Borrower has satisfactorily conducted itself in respect of its repayment obligations under other DBSA existing or previous borrowings; and

5.1.12. evidence of the Borrower's good governance practices and internal controls, satisfactory financial performance and that its balance sheet is able to meet its repayments obligations under this Agreement and still meet the covenanted gearing levels and future cashflows reflecting maintenance of adequate DSCR.

5.2. **Second Disbursement**

The obligation of the DBSA to make the Second Disbursement shall also be subject to the fulfilment, in form and substance satisfactory to the DBSA, of the condition that on the date of the Borrower's application for such Disbursement and on the Disbursement Date:

5.2.1. all designs required for the roads that require geotechnical laboratory testing and CBR testing on the *in-situ* subgrade and load layers have been received by the DBSA;

5.2.2. an implementation progress report related to the application of the First Disbursement has been received by; and to the reasonable satisfaction of the DBSA; and

5.2.3. proof to the reasonable satisfaction of the DBSA, of appointment of additional service provider(s) with requisite capacity to ensure that there is adequate capacity to implement the roads reconstruction identified for full rehabilitation.

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5.3. **All Disbursements**

The obligation of the DBSA to make any Disbursement shall also be subject to the fulfilment, in form and substance satisfactory to the DBSA, of the conditions that on the date of the Borrower's application for such Disbursement and on the Disbursement Date:

5.3.1. proof of environmental compliance (where applicable) has been received by, and to the reasonable satisfaction of, the DBSA;

5.3.2. The Project Steering Committee constituted and maintained by representatives of DBSA, the Borrower and the appointed service provider(s) shall be established prior to any Disbursement made.

5.3.3. the DBSA will have received all such agreements, documents, statements and instruments as the Borrower is bound to deliver in terms of this Agreement and/or reasonably requested by the DBSA;

5.3.4. the DBSA is satisfied that no Economic Failure and/or Material Adverse Effect has occurred and is continuing;

5.3.5. the representations and warranties made or confirmed by the Borrower, in this Agreement, will be true on and as of such dates with the same effect as though such representations and warranties had been made on and as of such dates;

5.3.6. the Borrower will certify that no Potential Event of Default or Event of Default has occurred and is continuing and that the proceeds of the Disbursement are needed by the Borrower for the purposes of the Programme;

5.3.7. the Borrower will certify that to the best of its knowledge (after due enquiry) after receipt of that Disbursement, the Borrower would not be in violation of:

5.3.7.1. any provision contained in the Finance Documents; or

5.3.7.2. any law, rule or regulation directly or indirectly limiting or otherwise restricting the Borrower's borrowing power or authority or its ability to borrow;

5.3.8. the Borrower will provide the DBSA with the Disbursement Request(s) within the Availability Period; and

5.3.9. all fees, charges and expenses due and payable to the DBSA under the Finance Documents or in relation to the Programme will have been paid in full (if applicable).

6. INTEREST

6.1. From the first Disbursement Date the Loan shall bear interest at the Interest Rate.

6.2. The Interest Rate will be determined 2 (two) days before the first Disbursement and will consist of the appropriate Base Rate plus the Margin.

6.3. Default Interest, to the extent applicable, will be determined in accordance with clause 6.5 (*Default Interest*).

6.4. Interest on the Loan under this Agreement shall:

6.4.1. subject to clause 6.5 (*Default Interest*), accrue from day to day;

6.4.2. 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;

6.4.3. be calculated and payable on an Interest Payment Date;

6.4.4. be calculated on a nominal annual compounded Half-Yearly basis;

6.4.5. Interest payment(s) shall commence on the last day of the first Half-Year during which the first Disbursement was made; and

6.4.6. Accrue from date of the first Disbursement.

6.5. Default Interest:

6.5.1. 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.

6.5.2. Default Interest due in a particular Interest Period shall be calculated in accordance with the following formula:

$$D1 = \frac{OM \times DR \times d}{365}$$

Where:

D1	=	the Default Interest amount;
OM	=	the Overdue Amount;
DR	=	the Default Rate:
d	=	the number of days from the due date of an Overdue Amount to the date of actual receipt of payment by DBSA of such Overdue Amount.

6.5.3. Default Interest shall be payable on demand, or if not demanded, on the first Interest Payment Date, after such failure to pay.

6.5.4. The provisions of this clause 6.5 (*Default Interest*) are without prejudice to any other rights which the DBSA may have as a result of the failure by the Borrower to pay amounts whether of stated maturity or upon pre-maturity by acceleration or otherwise and if not so specified, as notified by the DBSA to the Borrower.

7. COMMITMENT FEES

7.1. If the Borrower draws down the Facility in accordance with the Disbursement Schedule, no Commitment Fee shall be payable.

7.2. In the event that the Borrower deviates (on the amount and/or the date) from the Disbursement Schedule, the Borrower shall pay to the DBSA a Commitment Fee on the Capital which from time to time has not been disbursed nor cancelled. The Commitment Fee shall:

7.2.1. commence to accrue from the Signature Date until the end of the Availability Period;

7.2.2. be pro-rated 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

7.2.3. be payable Half-Yearly, in arrears, on each Interest Payment Date.

8. REPAYMENT

8.1. The Borrower shall, subject to clause 9 (*Early Payment*):

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8.1.1. repay Capital in Quarterly instalments, commencing on the last day of the Quarter during which the first Disbursement was advanced to the Borrower; and

8.1.2. pay Interest in Quarterly instalments, commencing on the last day of the Quarter during which the first Disbursement was advanced to the Borrower.

8.2. The Loan Outstandings shall be repaid in full by no later than the last day of the Loan Period.

9. **EARLY PAYMENT**

9.1. At any time, the Borrower may, by giving DBSA not less than 30 (thirty) days prior written notice to that effect, prepay the whole or any part of the Loan Outstandings on any Interest Payment Date.

9.2. Any notice of prepayment pursuant to clause 9.1 shall:

9.2.1. be irrevocable;

9.2.2. specify a date (the "**Prepayment Date**") upon which prepayment is to be made;

9.2.3. specify the amount of the Loan Outstandings to be prepaid; and

9.2.4. oblige the Borrower to make such prepayment on the Prepayment Date.

9.3. The Borrower shall not be entitled to make more than 1 (one) prepayment in any calendar Month.

9.4. The Borrower shall not be entitled to re-borrow any of the Loan Outstandings prepaid.

9.5. Any prepayment shall be:

9.5.1. applied to the Loans being prepaid in inverse order of maturity, where applicable;

9.5.2. made together with accrued interest on the amount prepaid (together with other amounts than due to DBSA); and

10. subject to Breakage Costs and Unwinding Costs, where applicable, it being agreed that this sub-clause does not refer to the periodic prepayment of Loan Outstandings from Input Vat Refunds as contemplated in sub-clause 3.4.1, but instead, this sub-clause refers to an instance when the entire Loan Outstanding is repaid before term or final maturity date .The Borrower shall not prepay all or any of the Loan Outstandings except at the times and in the manner expressly provided in this Agreement.

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11. Unless an alternative prepayment arrangement has been provided for in this Agreement, if any prepayment of all or any part of the Loan Outstandings is made otherwise than on an Interest Payment Date, then the Borrower shall pay DBSA within fifteen (15) ~~30 days~~ Business Days of demand by DBSA a sum equal to the Breakage Costs applicable thereto.

12. **PAYMENT COVENANTS**

12.1. All payments to be made by the Borrower in terms of this Agreement shall be made in Rand, in same day funds, free of exchange and bank commission and without deduction or set-off into such bank account as the DBSA may nominate from time to time.

12.2. The Borrower shall not be entitled to defer, withhold or adjust any payment due to the DBSA arising out of this Agreement.

12.3. 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.

12.4. 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:

12.4.1. firstly, in or towards payment or satisfaction of all costs, charges, expenses and liabilities, incurred and payments made by the DBSA, under or pursuant to this Agreement, including without limitation, legal expenses on an attorney and own client scale, reinstatement costs and any costs incurred in enforcing the provisions of this Agreement;

12.4.2. secondly, in or towards payment of any accumulated and accrued interest in respect of the Loan; and

12.4.3. thirdly, in or towards repayment of the Loan.

12.5. The DBSA may set off any obligation due under this Agreement from the Borrower against any obligation owed by DBSA to the Borrower.

12.6. The Borrower shall not set off any obligation due under this Agreement from the DBSA against any obligation owed by the Borrower to DBSA.

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13. SUSPENSION/CANCELLATION OR REDUCTION OF DISBURSEMENTS

13.1. By the DBSA

13.1.1. The DBSA may, by notice to the Borrower at any time after the receipt of a Disbursement Request but prior to the Disbursement Date, in whole or in part suspend the making of the Disbursement if an Economic Failure has occurred.

13.1.2. Such suspension shall continue until the DBSA notifies the Borrower that it may again submit a Disbursement Request.

13.1.3. The DBSA may suspend or cancel the right of the Borrower to Disbursements if an Event of Default or Potential Event of Default has occurred or is continuing.

13.1.4. Upon the happening of an Event of Default or Potential Event of Default the right of the Borrower to any further Disbursement shall be suspended or cancelled, as the case may be. The exercise by the DBSA of its right of suspension shall not preclude the DBSA from exercising its right of cancellation, as provided for in this clause 13 (*Suspension/Cancellation of Disbursements*), either for the same or any other reason, and shall not limit any other rights of the DBSA under this Agreement or in law.

13.1.5. Any amount of Capital undrawn at the end of the Availability Period shall be automatically cancelled, and interests shall be recalculated so to only affect the capital amount actually drawn down by the Borrower.

13.2. Cancellation by the Borrower

13.2.1. The Borrower may at any time upon 30 (thirty) days' written notice to the DBSA, request the DBSA to cancel all or a portion of the undisbursed portion of the Capital on the date specified in such request.

13.2.2. The ~~Borrower may, by notice to DBSA at any time after the receipt of a Disbursement Request but prior to the Disbursement Date, in whole or in part suspend the implementation of the Disbursement Schedule if an Economic Failure has occurred~~.

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13.2.3.

13.2.4. If, after having received a notice in accordance with clause 13.2.1 above, 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); then the DBSA shall, by notice to the Borrower, cancel the requested amount of the undisbursed portion of the Capital effective as of such specified date.

13.2.5. Should the Borrower cancel the Facility, any portion thereof or undisbursed portion of the Capital in terms of this clause 13 (*Suspension/Cancellation of Disbursements*), or otherwise in terms of this Agreement, 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.

13.3. **Reinstatement**

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

13.4. **Other requirements**

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

13.4.2. A notice of prepayment and/or cancellation under this Agreement is irrevocable and must specify the relevant date or dates on which the proposed cancellation or prepayment is to be made, and the amount of the proposed cancellation or prepayment.

13.4.3. The DBSA may agree a shorter notice period for a voluntary prepayment or a voluntary cancellation.

13.4.4. A prepayment by the Borrower of the Loan Outstandings in full under this Agreement must be made with accrued (but unpaid) interest on the amount prepaid. No premium or penalty is payable in respect of any prepayment, except for Breakage Costs and Unwinding Costs (if applicable).

14. **INCREASED COSTS AND DECREASED COSTS**

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14.1. **Increased Costs**

Except as provided in clause 14.3 (*Exceptions*) below, the Borrower must pay to the DBSA the amount of any increased cost incurred by the DBSA as a result of:

14.1.1. a Change in Law;

14.1.2. compliance with any law or regulation made after the Signature Date;

14.1.3. the introduction of a new law or requirement by any statutory or tax authority which obliges the Borrower to make any Tax deduction in respect of any amounts which the Borrower must pay to the DBSA in respect of the Loan; and/or

14.1.4. any other event, which did not exist at the Signature Date, attributable to a statutory or tax authority in the Republic of South Africa which is beyond the control of DBSA, with the result that DBSA is subject to any VAT, duty or other charge in respects of any payment received or receivable (or deemed to be received or receivable) in terms of this Agreement.

14.2. **Economic Failure**

14.2.1. If an Economic Failure and/or Material Adverse Effect occurs, which in the opinion of the DBSA may reduce the rate of return which the DBSA may receive on the Capital under any Finance Documents then, at the DBSA's sole discretion:

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

14.2.1.2. 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.

14.2.2. In the event that such revised funding terms referred to in clause 14.2.1.2, in the reasonable opinion of the Borrower, shall have an adverse impact on the financial sustainability of the Borrower, the Borrower shall have the right to

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reject such revised terms and cancel the Facility, within the Availability Period, without incurring a Cancellation Fee.

14.2.3. 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 and demand repayment of advances made prior to occurrence of the Economic Failure within 30 days of its demand or such longer period as may be agreed in writing by the Parties.

14.3. **Exceptions**

The Borrower need not make any payment for an increased cost to the extent that the increased cost is:

14.3.1. attributable to a Tax deduction required by law to be made by the Borrower;

14.3.2. compensated for under clause 12.3; or

14.3.3. attributable to the DBSA failing to comply with any law or regulation.

15. OTHER INDEMNITIES AND BREAKAGE COSTS

15.1. **Indemnities**

The Borrower will, within 30 days Business Days of demand, indemnify the DBSA against any cost, loss or liability which the DBSA directly or indirectly incurred as a result of:

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

15.1.2. investigating or taking any other action in connection with any event that it reasonably believes is an Event of Default;

15.1.3. acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;

15.1.4. the information produced or approved by the Borrower under or in connection with the Finance Documents being misleading and/or deceptive in any respect;

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15.1.5. any enquiry, investigation, subpoena (or similar order) or litigation with respect to the Borrower or with respect to the Programme contemplated or financed under this Agreement;

15.1.6. a failure by the Borrower to pay any amount due under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result thereof;

15.1.7. funding, or making arrangements to fund a Loan requested by the Borrower in a Disbursement Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by the DBSA);

15.1.8. a Loan (or part of a Loan) not being prepaid in accordance with this Agreement;

15.1.9. investigating any event which the DBSA reasonably believes to be a Potential Event of Default or an Event of Default; or

15.1.10. acting or relying on any notice, request or instruction from the Borrower which the DBSA reasonably believes and which on the face thereof appears to be genuine, correct and appropriately authorised.

15.2. The Borrower's liability in each case includes any loss or expense on account of funds borrowed, contracted for or utilised to fund any amount payable under Finance Document or any Loan.

16. COVENANTS - POSITIVE AND NEGATIVE UNDERTAKINGS

16.1. In addition to any other undertakings given by the Borrower to the DBSA pursuant to this Agreement, the Borrower gives the undertakings contained in this clause 16.3 (*Positive Undertakings*).

16.2. Each undertaking is a continuous undertaking, and the Borrower shall comply with each undertaking for the entire period which commences on the Signature Date and which terminates when the Loan Outstandings are repaid in full.

16.3. **Positive Undertakings/Warranties**

16.3.1. The Borrower warrants that it has obtained and in future will or endevour to obtain from the relevant government authorities any Authorisations which are

or may be required in terms of the relevant legislation including environmental and/or water legislation. The Borrower agrees to provide the DBSA with copies of any such Authorisations as received.

16.3.2. The Borrower will 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.

16.3.3. The Borrower will ensure proper maintenance of the assets created through this Facility in line with National Treasury MFMA Circular number 55 and 66.

16.3.4. The Borrower undertakes to the implement its approved supply chain management policies in accordance with the MFMA to promote the utilisation of local labour, small local contractor participation and gender equity.

16.3.5. The Borrower undertakes to cover any cost overruns (if any) in order to complete the projects funded by the DBSA.

16.3.6. The Borrower undertakes to notify DBSA as soon as possible should they decide or intend to suspend any of the projects under the Programme funded through this Facility.

16.3.7. The Borrower will ensure that all construction work will be as per standards: SABS 1200; National Building Regulations and Occupational Health and Safety Act. All building materials used are to be SANS approved.

16.3.8. The Borrower will make adequate provision(s) for the Loan repayments.

16.3.9. The Borrower will also ensure that all engineering services comply with the guidelines for the provision of engineering services and amenities (“Red Book”) and guidelines of the Engineering Council of South Africa (“ECSA”).

16.3.10. The Borrower will arrange suitable insurance to cover any possible damage and such insurance will be in line with section 13 of the MFMA.

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16.4. **The Borrower and the Programme**

The Borrower shall:

16.4.1. comply with all law applicable to it;

16.4.2. fully and punctually comply with all the terms of this Agreement and any other agreement to which it is a party that is material in the context of the Programme and take all necessary action or enforce prompt and proper performance and discharge by the other parties of their respective obligations under this Agreement and such agreements in a manner consistent with the Borrower's obligations under this Agreement;

16.4.3. permit representatives or nominees of the DBSA, at reasonable times, access to the Programme site, subject to compliance with normal safety procedures, and to have access to its books of account and records (the DBSA shall use reasonable efforts to give prior notice to and co-ordinate such visits and to minimise any disruption to the business and operations of the Borrower);

16.4.4. as soon as may reasonably be possible after receipt of a written request from the DBSA, institute an environmental review/audit in respect of the Programme to be recorded in a written report and forthwith deliver such report to the DBSA and implement any recommendations contained in such report;

16.4.5. within 10 (ten) Business Days 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;

16.4.6. use the Loan exclusively for the Programme; and

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

16.4.8. The Borrower undertakes to provide the DBSA with a semi-annual report on the following items:

16.4.8.1. debtor's recovery strategies; and

16.4.8.2. water demand management strategies and progress on water loss reduction initiatives.

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16.5. **Financial Statements**

The Borrower shall deliver its audited annual financial statements to the DBSA within 275 (two hundred and seventy-five) days of the last day of each Financial Year.

16.6. **Financial Covenant**

16.6.1. The Borrower will ~~endevour~~ maintain the following financial position, which shall be measured annually:

16.6.1.1. Total external debt, including finance lease/maximum gearing, relative to discretionary income: 45% (forty-five percent); and

16.6.1.2. Debt-Service Cover Ratio: 1.2 times (one point two times).

16.6.2. Further, the Borrower shall require the DBSA's prior written consent before it may exceed the gearing levels provided for in clause 16.6.1.1

16.7. **Provisions and contents of Compliance Certificate**

16.7.1. The Borrower shall supply to the DBSA, with each set of financial statements delivered pursuant to Clause 16.5 (*Financial Statements*), a Compliance Certificate setting out (in reasonable detail) computations as to compliance with Clause 16.6 (*Financial Covenant*) as at the date as at which those financial statements were drawn up.

16.7.2. Each Compliance Certificate shall be signed by the Accounting Officer of the Borrower.

17. **REPRESENTATIONS AND WARRANTIES**

17.1. In addition to any representation and warranties given elsewhere in the Agreement by the Borrower to the DBSA, the Borrower gives the representations and warranties contained in this clause 17 (*Representations and Warranties*) to the DBSA. Each such warranty:

17.1.1. is a separate and distinct warranty;

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

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17.1.3. has induced the DBSA to enter into this Agreement; and

17.1.4. 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 when the Loan Outstandings are repaid in full.

17.2. **The Borrower**

The Borrower represents and warrants that:

17.2.1. it is a legal entity duly established and validly existing under the laws of South Africa;

17.2.2. it has full power to execute, deliver and perform its obligations under this Agreement and that all necessary action has been taken to authorise the execution, delivery and performance of the same, and no limit on the powers of the Borrower to borrow or to create security will be exceeded as a result of borrowings under this Agreement;

17.2.3. the execution, delivery and performance of the obligations of the Borrower under, and compliance with the provisions of, this Agreement by the Borrower does not and will not violate or conflict with, or result in any breach of, any law or court order or judgment or any contractual obligations binding on the Borrower or affecting the Borrower or any of the Borrower's assets;

17.2.4. any factual information contained in or provided by the Borrower was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated;

17.2.5. the Borrower is not presently involved in any litigation, arbitration or administrative proceeding which exceeds 3% of the Borrower’s total revenue and, to the knowledge of the Borrower, no litigation, arbitration or administrative proceeding is pending or threatened against it or any of its assets which if adversely determined, would have a Material Adverse Effect;

17.2.6. the rights of the DBSA under this Agreement shall rank at least *pari passu* with all of the Borrower’s unsecured obligations;

17.2.7. the Programme conforms in all material respects with the detailed descriptions as forwarded to the DBSA from time to time;

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17.2.8. to the best of the Borrower's knowledge, the Borrower has, all Authorisations required in connection with the Programme and is in compliance with such Authorisations;

17.2.9. the Borrower is not aware of any facts or circumstances which could lead to the revocation, suspension or variation of the terms of any Authorisation in connection with the Programme;

17.2.10. to the best of the Borrower's knowledge and belief (having made due enquiry) no Potential Event of Default or Event of Default has occurred and/or is continuing and no such event will occur as a result of its entering into performing its obligations under this Agreement;

17.2.11. 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;

17.2.12. the Borrower is not in default of any of its obligations in respect of other borrowed monies;

17.2.13. from the Signature Date and for so long as any moneys are owing under this Agreement, it will:

17.2.13.1. ensure that the Programme is undertaken and completed in a good and skilful 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;

17.2.13.2. 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;

17.2.13.3. comply with all relevant laws of the national government and/or the applicable provincial government and/or regulations made there under 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; and

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17.2.13.4. the Borrower is carrying out the Programme and its operations in compliance with the laws of the Republic of South Africa.

17.3. **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.

18. **RIGHTS AND REMEDIES**

The rights and remedies of the DBSA in relation to any misrepresentations or breach of warranty on the part of the Borrower are not prejudiced:

16.1 by any investigation by or on behalf of the DBSA into the affairs of the Borrower; or

16.2 by any other act or thing which may be done by or on behalf of the DBSA in connection with this Agreement and which might, apart from this clause 18 (*Rights and Remedies*), prejudice such rights or remedies.

19. **EVENTS OF DEFAULT**

19.1. An Event of Default shall occur if any one of the following events occur:

19.1.1. the Programme is cancelled, or materially altered in a manner that is not acceptable to the DBSA ~~or the Borrower,~~ in its reasonably exercised discretion;

19.1.2. Cross-default;

19.1.3. the Borrower fails to pay to the DBSA any amount due pursuant to this Agreement and/or any other agreement it has entered into with the DBSA strictly on due date and fails to remedy such failure within 10 (ten) Business Days after its due date, or DBSA fails, without cause or valid reason,to make timeous payments of a Disbursement in line with the disbursement schedule

19.1.4. the Borrower breaches **any** of the undertakings, representations and/or warranties 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 30 (thirty) days of receipt of written demand from the DBSA;

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19.1.5. the Borrower allows a Court judgment for an amount in excess of R100 000 (one hundred thousand Rand) to be entered against it and fails to pay the amount of such Court judgment within the time frame stipulated in the final judgment (in the sense that the Borrower has exhausted all avenues for appeal or review open to it);

19.1.6. If any of the following events occur and the event is capable of being remedied and the Borrower fails to remedy the event within 30 (thirty) days of receipt of written notice from the DBSA:

19.1.6.1. 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;

19.1.6.2. 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;

19.1.6.3. 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;

19.1.6.4. the Borrower abandons any project funded under the Programme or suspends the operation of any project funded under the Programme for a period of more than 3 (three) Months or such longer period as may be agreed by the DBSA in writing; and

19.1.6.5. an event occurs which the DBSA reasonably determines to have a Material Adverse Effect.

19.2. If an Event of Default occurs, the DBSA shall, in addition to and without prejudice to any other rights which it may have in terms of this Agreement or in law, be entitled without further notice to, at its discretion:

19.2.1. accelerate or place on demand payment of all amounts owing by the Borrower to the DBSA (whether in respect of principal, interest or otherwise) and all such amounts shall immediately become due and payable; and/or

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19.2.2. cancel any undrawn amount of the Capital; and/or

19.2.3. require the Borrower to indemnify the DBSA in respect of any loss, claim expense or similar costs incurred as a result of the Event of Default; and/or

19.2.4. charge Default Interest.

20. ILLEGALITY OF THE LOAN

If, after the Signature Date, there is any Change in Law that makes it unlawful for either Party to continue to maintain or to fund the Loan then the Borrower shall, upon request by the DBSA, repay the disbursed portion of the Capital and interest in terms of this Agreement or in terms of any relevant, law, regulation or applicable directive in full. In addition, upon receipt of such notification from the DBSA, the Borrower shall have no further right to Disbursement of the undisbursed portion of the Capital.

21. PROTECTION OF PERSONAL INFORMATION

21.1. The Parties acknowledge their respective obligations under POPI. Where either Party receives any Personal Information from the other Party (the "**Disclosing Party**") it shall -

21.1.1. process such Personal Information only with the knowledge and authorisation of the Disclosing Party;

21.1.2. not disclose Personal Information to any third parties without the written consent of the Disclosing Party unless required by law;

21.1.3. have due regard to generally accepted information security practices and procedures which may apply generally or be required in terms of specific industry or professional rules and regulations;

21.1.4. notify the Disclosing Party immediately where there are reasonable grounds to believe that Personal Information has been accessed or acquired by any unauthorised person;

21.1.5. establish and maintain security measures to secure the integrity and confidentiality of Personal Information in its possession or under its control by taking appropriate, reasonable technical and organisational measures to prevent loss of, damage to, or unauthorised destruction of Personal Information and unlawful access to, or processing of, Personal Information and shall take reasonable measures to:

21.1.5.1. identify all reasonably foreseeable internal and external risks to Personal Information in its possession or under its control;

21.1.5.2. establish and maintain appropriate safeguards against the risks identified;

21.1.5.3. regularly verify that the safeguards are effectively implemented; and

21.1.5.4. ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards.

21.2. The Recipient expressly acknowledges, agrees and consents that the DBSA holds and Processes its Personal Information for compliance and business-related purposes including but not limited to FICA, procurement, tax, payment and sanction compliance checks and Record keeping related to the procurement process, service delivery, payment and/or project implementation Records.

21.3. The Recipient warrants that were it has supplied the DBSA with third party Personal Information, including information of any shareholder, director, employee, agent or sub-contractor that it has the necessary authorisations to do so.

21.4. The Recipient's failure to comply with this clause shall constitute a material breach of this Agreement. In such event, the DBSA may terminate this Agreement, effective immediately, upon written notice to the Recipient, without further liability, or obligation, to the Recipient.

21.5. Notwithstanding any other provision in this Agreement, the Recipient indemnifies the DBSA against any losses, damages, liabilities, deficiencies, actions, judgments, interests, awards, penalties, fines, costs or expenses, of whatever kind, incurred or suffered by the DBSA, its employees, representatives and/or agents, as a result of the Recipient's warranties in this clause or its failure to comply with its statutory obligations contained in POPI.

22. **SEVERABILITY**

The Parties agree that each and every provision of this Agreement is severable from the remaining provisions of this Agreement and should any provision of this Agreement be in conflict with any applicable law, or be held to be unenforceable or invalid for any reason whatsoever,

such provision should be treated as *pro non scripto* and shall be severable from the remaining provisions of this Agreement which shall continue to be of full force and effect.

23. CESSION AND DELEGATION

23.1. The Borrower shall not be entitled to cede, assign, delegate or otherwise transfer any of its rights or obligations under this Agreement to any third party.

23.2. The DSBSA shall be entitled to cede, assign, delegate or otherwise transfer any of its rights or obligations under this Agreement to any third party but subject to the following conditions:

23.2.1. the cession, assignment, delegation or transfer (as applicable) shall not result in a breach of the provisions of the Competition Act, 1998;

23.2.2. the cession, assignment, delegation or transfer (as applicable) shall not result in a breach of any applicable law; or

23.2.3. the terms of the Agreement shall not change as a result of such cession, assignment, delegation or transfer (as applicable), except that the Borrower shall be required make all payments to such other third party;

23.2.4. the proposed cessionary, assignee or transferee (as applicable) has furnished the DBSA with a statement that:

23.2.4.1. the proposed cessionary, assignee or transferee (as applicable) is not an employee in the service of the state;

23.2.4.2. (if such transferee is not a natural person), none of the proposed cessionary, assignee or transferee (as applicable)'s directors, managers or principal shareholders are persons in the service of the state;

23.2.4.3. the proposed cessionary, assignee or transferee (as applicable) is not an advisor or consultant contracted with the Borrower;

23.2.4.4. the proposed cessionary, assignee or transferee (as applicable) has its tax affairs in order;

23.2.4.5. if the proposed cessionary, assignee or transferee (as applicable) is in the service of the state, it shall make the disclosures required

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in terms of the Municipal Supply Chain Regulations as published under GN 868 in GG 27636 dated 30 May 2005).

23.2.5. For the purposes of clause 23.2.4, the words "in the service of the state" shall bear the same meaning ascribed to them in the Municipal Supply Chain Regulations referred to in clause 23.2.4.5.

24. **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 the same agreement as at the date of signature of the Party last signing one of the counterparts.

25. **GOVERNING LAW**

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

26. **JURISDICTION**

27. **The Parties agree that any dispute arising under or in connection with this Agreement shall be subject to the jurisdiction of South African courts. 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 Court 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 here from.

28. **REMEDIES AND WAIVERS**

Neither failure by either Party hereto to exercise, nor any delay by the aggrieved Party in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy prevent any further exercise thereof or the exercise of any other right or remedy. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.

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29. **ENFORCEMENT COSTS**

If in any legal proceedings relating to the enforcement by either Party of its rights in terms of this Agreement, a court awards costs to any Party, such costs shall be determined and recoverable on the scale as between an attorney and his own client and shall include collection charges, the costs incurred by such Party in endeavouring to enforce such rights prior to the institution of legal proceedings and the costs incurred in connection with the satisfaction or enforcement of any Court award or judgment awarded in favour of such Party in relation to its rights in terms of or arising out of this Agreement.

30. **NOTICES AND DOMICILIA**

30.1. The Parties choose as their *domicilia citandi et executandi* their respective addresses set out in this Agreement for all purposes arising out of or in connection with this Agreement at which addresses all processes and notices arising out of or in connection with this Agreement, its breach or termination may validly be served upon or delivered to the Parties.

30.2. For purposes of this Agreement the Parties' respective addresses shall be as follows:

27.2.1 **DBSA**:

Physical:	1258 Lever Road Headway Hill Halfway House Midrand
Postal:	PO Box 1234, Halfway House, 1685
Facsimile:	(011) 313 3086
E-mail:	claimadmin@dbsa.org
Attention:	Head: Transacting: Municipalities and Water Boards; and Head: Legal Investments (SA)

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27.2.2 **Borrower**:

Physical: 33 Da Gama Road
Jeffreys Bay
6330

Postal: P O Box 21
Jeffreys Bay
6330

Facsimile: [•]

E-mail: registry@kouga.gov.za

Attention: 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*.

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

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

27.3.2 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; or

27.3.3 if sent by email during business hours, be presumed to have been received on the date of successful transmission of the email. Any email sent after business hours or on a day which is not a Business Day will be presumed to have been received on the following Business Day.

30.4. 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.

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31. **RELAXATION**

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

32. **VARIATION**

No addition to or variation, consensual cancellation or novation of this Agreement and no waiver of any rights arising from this Agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by all the Parties or their duly authorised representatives.

33. **WHOLE AGREEMENT**

This Agreement constitutes the whole agreement between the Parties as to the subject matter hereof and no agreement, representations or warranties between the Parties regarding the subject matter hereof other than those set out herein are binding on the Parties.

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SIGNATURES

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

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

Name: _____

Date: _____

Place: _____

Witness: _____

Witness: _____

DRAFT

For: **KOUGA LOCAL MUNICIPALITY**

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

Name: _____

Date: _____

Place: _____

Witness: _____

Witness: _____

DRAFT

ANNEXURE A: FORM OF DISBURSEMENT REQUEST

Borrower's letterhead

(*Date*)

To: Head: Transacting (Municipalities and Water Boards): (***name and address of the DBSA***)

Dear [***insert***]

Disbursement Request No. [■]

DBSA Programme No. [■]

1. Please refer to the Loan Agreement dated [***insert date***] entered into between the Kouga Local Municipality (the "**Borrower**") and the Development Bank of Southern Africa Limited ("**DBSA**") (the "**Loan Agreement**"). 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 or in the financial condition of the Borrower has occurred and no other circumstance has arisen which has or is reasonably likely to have a Material Adverse Effect;

   3.4 the proceeds of the Disbursement are at the date of this request required by the Borrower exclusively for the purposes of the Programme;

Draft.
Confidential
For discussion purposes only

3.5 after receipt of the Disbursement the Borrower will not be in violation of:

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

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

4. 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.

Yours faithfully

_____

Accounting Officer

Name: _____

DRAFT

ANNEXURE B: FORM OF COMPLIANCE CERTIFICATE

Borrower's letterhead

(*Date*)

To: Head: Transacting (Municipalities and Water Boards): (***name and address of the DBSA***)

Dear [***insert***]

Disbursement Request No. [■]

DBSA Programme No. [■]

1. Please refer to the Loan Agreement dated [***insert date***] entered into between the Kouga Municipality (the "**Borrower**") and the Development Bank of Southern Africa Limited ("**DBSA**") (the "**Loan Agreement**"). Terms defined in the Loan Agreement have their defined meanings whenever used in this request.

2. This is a Compliance Certificate. Terms defined in the Loan Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.

3. We confirm that as at [●]:

    a. the total external debt, including finance lease/maximum gearing, relative to discretionary income: 45% (forty-five percent); and

    b. the Debt-Service Cover Ratio: 1.2 times (one point two times).

4. We confirm that no Default is continuing.

Yours faithfully

_____

Accounting Officer

Name: _____

DRAFT

KOUGA
local municipality
Good Governance through Service Excellence

Hankey
Humansdorp 75
Jeffreys Bay
Loerie
Oyster Bay
Patensie
St Francis Bay
Thornhill

Postal: PO Box 21, Jeffreys Bay, 6330
Tel: 042 200 2200 / 042 200 8300
Fax: 042 200 8606
Email: registry@kouga.gov.za
Website: www.kouga.gov.za

Annexure E:

26 November 2024

TO: COUNCIL OF KOUGA LOCAL MUNICIPALITY

Section 46 Information Statement For Approval of Loan

SUBJECT: INFORMATION STATEMENT OF LOAN APPLICATION TO THE DEVELOPMENT BANK OF SOUTH AFRICA (DBSA) IN COMPLIANCE WITH SECTION 46 OF THE MFMA

Dear Sir/Madam,

The purpose of the loan from the **Development Bank of South Africa (DBSA)** is for the financing of the rehabilitation of roads.

In compliance with Section 46 of the **Municipal Finance Management Act (MFMA)**, we are submitting this letter to notify the council of the loan application process and to provide relevant details regarding the financial arrangements. The loan will support the municipal objectives and is in line with its IDP.

Loan Details:

Lender	Development Bank of South Africa (DBSA)
Amount	R 200 000 000
Interest Rate Type	Fixed
Capital and Interest Repayment	Equally Quarterly Instalments (Capital and Interest)
Tenure	12 years
Benchmark /Reference Rate	SWAP
Base Rate – November 2024	8.32%
All-in Margin	2.69%
All In Rate	**11.01%**
Estimated Capital Repayments	R 200,000,000.00
Estimated Interest Repayments	R 160,946,618.22
Estimated Total Repayments	R 360,946,618.22

NOTE to Table Above: *The interest rates quoted above are based on the SWAP Curve 40 of November 2024. The quoted rates are indicative and subject to changes in the underlying 41 capital markets (SWAP Curve). The final interest rate will be determined and fixed based on the close-out rate of the SWAP fixed two days prior to each disbursement plus the all-in margin 43 indicated in the table above*

The purpose of the loan is to finance the following key infrastructure and development projects aimed at improving service delivery and enhancing the quality of life for our residents:

Postal: PO Box 21, Jeffreys Bay, 6330
Tel: 042 200 2200 / 042 200 8300
Fax: 042 200 8606
Email: registry@kouga.gov.za
Website: www.kouga.gov.za

- Road upgrades and transport infrastructure

To ensure compliance with all applicable laws and regulations, we have undertaken the necessary steps, and the following documents are included for your review:

	Details	**MFMA**
1	A copy of the *information statement* required by section 46(3), containing particulars of the proposed borrowing (debt) instrument. **Annexure A**	46(3)(b)(iand ii)

Please note that the section 46 process in progress where the public has been informed and communication to both National and Provincial Treasury has been submitted. Upon the conclusion of the public participation, a comprehensive report will be submitted to Council, at least 21 days after this notice, for Council to consider the final approval of the loan.

Yours faithfully,

MR. C. DU PLESSIS
MUNICIPAL MANAGER

DBSA
DEVELOPMENT BANK OF SOUTHERN AFRICA
Building Africa's Prosperity

15 November 2024

The Municipal Manager
Kouga Local Municipality
33 Da Gama Road
PO Box 21
Jeffreys Bay
6330

Dear Mr C du Plessis.

"KOUGA LOCAL MUNICIPALITY'S EXTERNAL LOAN APPLICATION: R200 000 000.00 – ROADS REHABILITATION CAPITAL EXPENDITURE PROGRAMME AS PER FY2024/25 TO FY2025/26 CAPITAL BUDGETS"

We refer to Kouga Local Municipality's external loan application requesting loan funding to the amount of R200 million to finance the implementation of certain road rehabilitation projects as per approved FY2024/25 and FY2025/26 Capital Expenditure Budget.

The DBSA takes pleasure in offering a loan facility to the maximum of R 200 000 000.00 (**TWO HUNDRED MILLION RAND**) which will be disbursed in two tranches at R100 million for FY2024/25 and R100 million for FY2025/26 in line with your application.

The details of the DBSA Loan Offer are as follows:

1. LOAN SPECIFICATION

The DBSA Loan Offer entails two Fixed Interest rate options, for a 12-year tenor as per your application and a 15-year tenor option that the municipality may consider.

A summary of the details of the DBSA Loan Offer are as follows:

1.1. Fixed Interest Rate Option: 12-year tenor and 15-year tenor

Options: Fixed Interest Rate	1. Roads Rehabilitation	2. Roads Rehabilitation
Amount (ZAR)	R200,000,000.00	R200,000,000.00
Interest Rate Type	Fixed	Fixed
Capital and Interest Repayment	Equal Quartrerly Capital Instalments	
Tenure	12 years	15 years
Benchmark/Reference Rate	SWAP	SWAP
Base Rate - November 2024	8.32%	8.67%
All-In Margin	2.69%	2.82%
All In Rate	**11.01%**	**11.49%**

NOTE to Table Above: The interest rates quoted in 1.1 above are based on the SWAP Curve of November 2024. The quoted rates are **indicative** and subject to changes in the underlying capital markets (SWAP Curve). The final interest rate will be determined and fixed based on

E Pouris (Board Chairman)
M Jinnah van Rensburg (Deputy Board Chairman)
G Masaka* (Chief Executive) F Brown S Hore D Lewis MP Mack
Z Mbele* D Motsohi J Mattison C Nesbitt J Nesbitt-Jones S Ntwasa
P Ngoro E Petersen
*Executive
Bonolo Silo Sowazi (Company Secretary)
P O Box 1234 Halfway House Midrand 1685
011 313 3911
011 313 3500
www.dbsa.org

the close-out rate of the SWAP fixed two days prior to each disbursement plus the all-in margin indicated in the table above.

2. KEY CONDITIONS PRECIDENT FOR DISBURSEMENTS

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 accompanying this offer letter, and, in particular, the DBSA shall have received them, all to the satisfaction of the DBSA.

3. GENERAL TERMS AND CONDITIONS

3.1. The Borrower will supply the DBSA with a disbursement schedule within the availability period. If the Borrower draws down on the Loan in accordance with the Disbursement Schedule, no Commitment Fee shall be payable.

3.2. The interest rate will be a fixed rate as per above options in 1.1, payable quarterly each year by the Kouga Local Municipality.

3.3. The loan offer has been approved by DBSA's Investment Committee (IC) on 6 & 15 November 2024.

3.4. To enable the DBSA to disburse the first R100m before or latest by end March 2025 Kouga Local Municipality should be in compliance of all Conditions Precedent (CP) before or on 28 February 2025.

4. GENERAL

Attached please find the following:

4.1. Amortising tables (2) based on the indicative rates as of November 2024. Please note this is based on equal quarterly capital instalments with interest instalments calculated on the outstanding balance, amortising, and is quoted in terms of NACQ.

You are welcome to contact Bheki Zwane, the responsible Investment Officer by telephone at 011 313 3143/084 491 0239 or by email at bhekiz@dbsa.org or Nico Jooste, the responsible Deal Originator, by telephone at 082 909 6094 or by email at nicoj@dbsa.org, if additional information is required or to clarify any matters under consideration.

Yours faithfully

MB Mokheseng

Ben Mokheseng
Head: Transacting Municipalities and Water Boards

E Pasoli (Board Chairman)
M Jenne van Rensburg (Deputy Board Chairman)
S Mosako* (Chief Executive), K Brown, S Flore, D Lemila, MP Mots, Z Mbele*, D Mompoli, J Mothapo, C Nestoo, J Nieuwenhuizen, B Nuwabatie, P Ngoto, E Pieterse
*Executive
Bathabile Sowazi (Company Secretary)

1258 Lever Rd
Headway Hill
Midrand,
1685

011 313 3911
011 313 3500
www.dbsa.org

Development Bank of Southern Africa
Kouga Municipality: 12 Year Fixed Interest Rate: R200m
Indicative Amortization Table: Interest Rates to be Fixed Two Days Prior to **EACH** Drawdown

		1st Disbursement - March 2025	2nd Disbursement - March 2026
Loan Amount:	R 200,000,000.00	R 100,000,000.00	R 100,000,000.00
Fixed Interest rate: SWAP Curve- November 2024		11.22%	11.22%
Loan Period: Years		12	11
Capital Grace Period: Years		0	0
Interest Grace Period: Years		0	0
Number of Loan Repayments: Equal Semi-Annual		24	22
Equal Semi-Annual Payment		-R 7,683,068.69	-R 8,025,134.98

Number of Repayments	Date	Draw	Payment	Capital	Interest	Outstanding Balance
	31-Mar-25	R 100,000,000.00				R 100,000,000.00
1	30-Jun-25		-R 7,683,068.69	R 2,073,068.69	R 5,610,000.00	R 97,926,931.31
2	31-Dec-25		-R 7,683,068.69	R 2,189,367.85	R 5,493,700.85	R 95,737,563.46
	31-Mar-26	R 100,000,000.00				R 195,737,563.46
3	30-Jun-26		-R 15,708,203.67	R 4,727,326.36	R 10,980,877.31	R 191,010,237.09
4	31-Dec-26		-R 15,708,203.67	R 4,992,529.37	R 10,715,674.30	R 186,017,707.72
5	30-Jun-27		-R 15,708,203.67	R 5,272,610.27	R 10,435,593.40	R 180,745,097.45
6	31-Dec-27		-R 15,708,203.67	R 5,568,403.71	R 10,139,799.97	R 175,176,693.74
7	30-Jun-28		-R 15,708,203.67	R 5,880,791.15	R 9,827,412.52	R 169,295,902.59
8	31-Dec-28		-R 15,708,203.67	R 6,210,703.54	R 9,497,500.14	R 163,085,199.05
9	30-Jun-29		-R 15,708,203.67	R 6,559,124.01	R 9,149,079.67	R 156,526,075.04
10	31-Dec-29		-R 15,708,203.67	R 6,927,090.86	R 8,781,112.81	R 149,598,984.18
11	30-Jun-30		-R 15,708,203.67	R 7,315,700.66	R 8,392,503.01	R 142,283,283.52
12	31-Dec-30		-R 15,708,203.67	R 7,726,111.47	R 7,982,092.21	R 134,557,172.05
13	30-Jun-31		-R 15,708,203.67	R 8,159,546.32	R 7,548,657.35	R 126,397,625.73
14	31-Dec-31		-R 15,708,203.67	R 8,617,296.87	R 7,090,906.80	R 117,780,328.86
15	30-Jun-32		-R 15,708,203.67	R 9,100,727.23	R 6,607,476.45	R 108,679,601.63
16	31-Dec-32		-R 15,708,203.67	R 9,611,278.02	R 6,096,925.65	R 99,068,323.61
17	30-Jun-33		-R 15,708,203.67	R 10,150,470.72	R 5,557,732.95	R 88,917,852.89
18	31-Dec-33		-R 15,708,203.67	R 10,719,912.13	R 4,988,291.55	R 78,197,940.76
19	30-Jun-34		-R 15,708,203.67	R 11,321,299.20	R 4,386,904.48	R 66,876,641.56
20	31-Dec-34		-R 15,708,203.67	R 11,956,424.08	R 3,751,779.59	R 54,920,217.48
21	30-Jun-35		-R 15,708,203.67	R 12,627,179.47	R 3,081,024.20	R 42,293,038.01
22	31-Dec-35		-R 15,708,203.67	R 13,335,564.24	R 2,372,639.43	R 28,957,473.77
23	30-Jun-36		-R 15,708,203.67	R 14,083,689.40	R 1,624,514.28	R 14,873,784.37
24	31-Dec-36		-R 15,708,203.67	R 14,873,784.37	R 834,419.30	R 0.00
			-R 360,946,618.22	R 200,000,000.00	R 160,946,618.22	

Annexure F:

Province of the
EASTERN CAPE
PROVINCIAL TREASURY

PRIVATE BAG X0029. BHISHO. 5605 REPUBLIC OF SOUTH AFRICA
www.ectreasury.gov.za
Eastern Cape Provincial Treasury @ectreasury

Umhla: **Date:** **Datum:**	09 DECEMBER 2024	**Ifoni:** **Telephone:** **Telefoon:**	083 579 4143
Ireferensi **Ref No:** **Verwysings**	LONG TERM BORROWING: KOUGA LM	**Iposi:** **E-mail:** **E-pos:**	THEMBA.GWIJA@ectreasury.gov.za
Imibuzo: **Enquiries:** **Navrae:**	T GWIJA	**Amakhasi:** **Pages:** **Bladsye:**	6

THE MUNICIPAL MANAGER

Kouga Local Municipality

P.O Box 21

JEFFREYS BAY

6330

Dear Mr du Plessis

RE: LOAN APPLICATION TO THE DEVELOPMENT BANK OF SOUTH AFRICA (DBSA)

1. PURPOSE

To provide comments on the communication received from the municipality on the 20th November 2024, regarding their intention to enter into a long term loan agreement with the DBSA for R200 000 000 repayable quarterly over 12 years at an interest rate of 11.01% for the financing of the rehabilitation of roads in various wards.

2. LEGISLATIVE CONCIDERATIONS

Municipal Finance Management Act, 56 of 2003 section 46 stipulates that the a municiaplity may incur long term debt for capital expeniture and re-financing of existing long term debt subject to certain criteria. S46 (3) (a) (ii) states that the accounting officer of the municipality should invite the public, National Treasury and the relevant provincial treasury to submit written comments or representations to the council in respect of the proposed debt.

3. ASSESSMENT BASED ON INFORMATION RECIEVED

The loan details as received from the municipality will be as follows:

Loan Details:

Lender	Development Bank of South Africa (DBSA)
Amount	R 200 000 000
Interest Rate Type	Fixed
Capital and Interest Repayment	Equally Quarterly Instalments (Capital and Interest)
Tenure	12 years
Benchmark /Reference Rate	SWAP
Base Rate – November 2024	8.32%
All-in Margin	2.69%
All In Rate	**11.01%**
Estimated Capital Repayments	R 200,000,000.00
Estimated Interest Repayments	R 160,946,618.22
Estimated Total Repayments	R 360,946,618.22

The receipt of the loan amount will be in two equal tranches of R100 000 000 on 31 March 2025 and 2026 respectively. The funding will be spent over two financial years, R147 972 673 and R52 027 327 during the 2025/26 and 2026/27 financial years respectively.

3.1 FINANCIAL HEALTH OVERVIEW

Debtors' Management

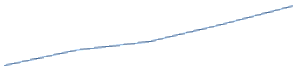
Ratio Analysis Report			Restated	Audited	Projected			
		Norm	2019	2020	2021	2022	2023	2024
Debtors Management								
1	Collection Rate	95%	94%	89%	93%	91%	78%	84%
3	Net Debtors Days	30 days	43 days	49 days	46 days	36 days	36 days	23 days

Collection rate: This ratio indicates the collection rate, i.e. level of payments. It measures increases or decreases in Debtors relative to annual billed revenue. In addition, to determine the real collection rate bad debts written-off is taken into consideration. The collection rate over the past five years has fluctuated, peaking at 93% during the 2020/21 financial year. However, in the 2023/24 financial year declining again to 84%, being below the national norm of above 95%. The Municipality should ensure that stringent measures are implemented in term of the debt collection policy.

Net Debtor days: This ratio reflects the collection period. Net Debtor Days refers to the average number of days required for a Municipality or Municipal Entity to receive payment from its Consumers for bills/invoices issued to them for services. The Ratio exclude balances for Debtors, which the Municipality or Municipal Entity has assessed as potentially irrecoverable, and is also a good

indication of the effectiveness of credit control procedures within the Municipality or Municipal Entity as well as the extent to which the Municipality or Municipal Entity has provided for Doubtful Debts.

When analyzing the Net Debtor days of the municipality it comes to 23 days, which is within the norm of 30 days. Looking at the graph below, the result of the ratio can be directly linked to the increase in the provision of doubtful debts. The municipality is urged to investigate how much of this provision should be written off as uncollectable thereby not inflating current assets artificially.

	2019/20	2020/21	2021/22	2022/23	2023/24	
Net Debtors	95 933 494.00	55 054 284.00	79 260 432.00	115 164 862.00	100 087 923.00	
Bad debt provision	153 014 817.00	229 610 004.00	269 198 216.00	357 833 435.00	455 672 099.00	

Liquidity management

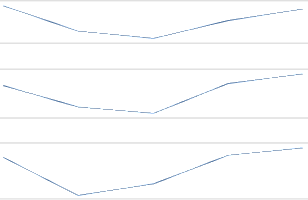
Ratio Analysis Report			Restated	Audited	Projected			
		Norm	2019	2020	2021	2022	2023	2024
Liquidity Management								
1	Cash / Cost Coverage Ratio (Excl. Unspent Conditional Grants)	1 - 3 Months	2 Month	2 Month	1 Month	0 Month	1 Month	1 Month
2	Current Ratio	1.5 - 2:1	1.44	1.26	1.07	0.92	0.91	0.91

Cash /Cost Coverage Ratio (Excluding Unspent Conditional Grants) - The norm ranges from 1 month to 3 months. The ratio indicates the Municipality's ability to meet at least its monthly fixed operating commitments from cash and short-term investment without collecting any additional revenue, during that month. The ratio result has been inconsistent, decreasing in the 2021/22 financial year, however again showing improvement in the latest two financial year, being within the lower end of the prescribed norm. The latest increase is as result of the increase in cash and cash equivalents. The municipality should continue to institute measures to increase its cash and cash coverage ratio as this will enable the municipality to meet its financial obligations as they come due and may not be able to withstand financial shocks should they occur.

Current Ratio - The norm ranges between 1.5 to 2:1. The ratio is used to assess the Municipality's ability to pay back its Short-term Liabilities (Debt and Payables) with its Short-term Assets (Cash, Inventory, Receivables). The ratio results for the past three financial years have been below the norm of 1.5 to 2.1. These results indicate that the municipality may potentially experience liquidity challenges if no intervention is actioned. Management is advised to continue to implement strategic financial sustainability measures.

KOUGA LONG TERM BORROWING – JAN 2025

	2019/20	2020/21	2021/22	2022/23	2023/24
Cash and Cash equivalent	19 482 227	12 904 551	18 047 732	21 600 746	26 246 501
Investments	122 294 823	40 489 896	9 802 828	83 334 265	117 412 305
	114 849 873	**47 195 791**	**27 850 560**	**75 941 180**	**104 867 920**
Unspent conditional grants	26 927 177.00	6 198 656.00	-	28 993 831.00	38 790 886.00
Trade creditors	143 343 072.00	88 392 836.00	105 579 188.00	146 630 488.00	158 677 344.00



The two liquidity ratios above should be read in conjunction with the information as depicted in the table above. As the cash and cash equivalents are increasing year on year, the same trend is seen in the Unspent conditional grants as well as the trade creditors. This is an indication that an increase in cash cannot be measured to be an increase in liquidity, as debts relating to these cashflow items also increase.

Liability management

Ratio Analysis Report			Restated	Audited	Projected			
		Norm	2019	2020	2021	2022	2023	2024
Liability Management								
1	Capital Cost(Interest Paid and Redemption) as a % of Total Operating Expenditure	6% - 8%	1%	1%	1%	0%	0%	0%
2	Debt (Total Borrowings) / Revenue	45%	3%	2%	1%	0%	3%	2%

Debt (Total Borrowing) /Total Operating Revenue - The norm is 45%

The municipality has settled its debt during the 2020/21 financial year therefore has not had any debt obligations during the past two financial years. It should however be noted that during the past three financial years, the municipality has entered into a number of long term lease agreements. This could put strain on the availability of cash.

Budget Implementation

Ratio Analysis Report			Restated	Audited	Projected			
		Norm	2019	2020	2021	2022	2023	2024
BUDGET IMPLEMENTATION								
1	Capital Expenditure Budget Implementation Indicator	95% - 100%	45%	71%	72%	138%	98%	71%

Capital Expenditure - The norm range between 95% and 100%

This ratio measures the extent to which Budgeted Capital Expenditure has been spent during the financial year, under review. Further, this ratio measures the municipality's ability to implement capital projects and monitor the risks associated with non-implementation. The ratio also assesses whether the municipality has effective controls in place to ensure that expenditure is incurred in accordance with an approved budget.

3.2 IMPACT ON BUDGET FUNDING ASSESSMENT

EC108 - Kouga	Table A8 Cash backed reserves/accumulated surplus reconciliation			CURRENT YEAR		
Description	2021/22	2022/23	2023/24	2024/25	2024/25	2024/25
R thousand	Audited Outcome	Audited Outcome	Audited Outcome	Original Budget	Adjusted Budget	Treasury Calculation
Cash and investments available						
Cash/cash equivalents at the year end	1 642 782	1 223 465	1 602 017	43 640	58 060	16 472
Other current investments > 90 days	(1 614 932)	(1 118 530)	(1 458 359)	–	–	(0)
Non current assets - Investments	–	–	–	–	–	–
Cash and investments available:	**27 851**	**104 935**	**143 659**	**43 640**	**58 060**	**16 472**
Application of cash and investments						
Unspent conditional transfers	–	28 994	38 791	–	–	–
Unspent borrowing	–	–	–	–	–	–
Statutory requirements	(50 443)	10 463	1 917	(45 445)	(45 445)	13 344
Other working capital requirements	30 328	85 775	86 757	17 658	17 995	114 296
Other provisions	51 074	45 735	54 427	48 355	48 355	1 000
Long term investments committed	–	–	–	–	–	–
Reserves to be backed by cash/investments	–	–	5 759	–	–	–
Total Application of cash and investments:	**30 960**	**170 967**	**187 651**	**20 568**	**20 905**	**128 640**
Surplus(shortfall) - Excl Non-Current Creditors Trf to Debt Relief Benefits	**(3 109)**	**(66 032)**	**(43 992)**	**23 073**	**37 155**	**(112 168)**
Creditors transferred to Debt Relief - Non-Current portion	–	–	–	–	–	–
Surplus(shortfall) - Incl Non-Current Creditors Trf to Debt Relief Benefits	**(3 109)**	**(66 032)**	**(43 992)**	**23 073**	**37 155**	**(112 168)**

The above analysis was done using the ADJ strings as submitted to the GoMuni portal at a projected collection rate of 85%.

The current strings as is, indicate that the ADJ budget is unfunded by an amount of R112 million. Factors contributing to this is as follows:

- The Receipt of the funding was not budgeted on the cashflow statement
- The full expenditure of R200 million is included in the current budget,

The municipality is advised to completely budget and include all relevant datastring during the next adjustment budget period to ensure that an accurate affordability estimation can be made.

4. CONCLUSION

The full impact on the budget funding could not be determined as all relevant strings aligned to the proposed loan were not included. It is therefore advised that the municipality submit a complete adjustment budget aligned to the loan agreement, this would allow Provincial Treasury to test the budget funding of the loan and to comment appropriately.

Furthermore, taking into consideration the current financial position of the municipality, with specific reference to the current ratio, which is already below the norm even before the proposed loan is included, the situation will certainly not be improved by taking on a new loan. The municipality is advised to remain prudent when entering into loan agreements, especially that the proposed infrastructure project will not have a direct impact on revenue enhancement for the municipality.

09 January 2025

MR. T. GWIJA **DATE:**

DISTRICT DIRECTOR: PT SARAH BAARTMAN DISTRICT

CC: DDG: MUNICIPAL FINANCIAL GOVERNANCE
CHIEF DIRECTOR: MUNICIPAL BUDGETS
CHIEF FINANCIAL OFFICER: KOUGA MUNICIPALITY