

DBSA



IMPLEMENTATION

Loan Agreement

9588

LOAN AGREEMENT

in respect of

JOUBERTON ELECTRICAL RETICULATION

Entered into by and between

KLERKSDORP MUNICIPALITY

and

THE DEVELOPMENT BANK OF SOUTHERN AFRICA

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S U M M A R Y

1. LOAN AMOUNT : R25 987 575
2. LOAN PERIOD : 20 years
3. INTEREST RATE : 12 per centum per annum
4. GRACE PERIOD FOR
CAPITAL REPAYMENT : 2 years
5. CAPITALIZATION OF INTEREST : 2 years
6. CAPITAL REPAYMENT AND PAYMENT
OF INTEREST : 36 equal six-monthly
instalments, commencing
on the last day of the
5th Half-year after the
Half-year during which
the first disbursement
was advanced to the
Borrower.
7. PROJECT FILE NO: : JBC09588
(S254)

MEMORANDUM OF LOAN AGREEMENT

in respect of

JOUBERTON ELECTRICAL RETICULATION

Entered into by and between

KLERKSDORP MUNICIPALITY

and

THE DEVELOPMENT BANK OF SOUTHERN AFRICA

In fulfilment of the rôle of the Development Bank of Southern Africa to support Participating Governments and their Development Agencies in development in Southern Africa, it is hereby agreed as follows:

1. DEFINITIONS AND HEADINGS

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

- | | | |
|-------|---------------|---|
| 1.1.1 | "Borrower" | Klerksdorp
Municipality; |
| 1.1.2 | "DBSA" | the Development Bank of
Southern Africa,
established in terms of
an agreement
(hereinafter referred
to as the
"Establishment
Agreement") signed at
Cape Town on
30 June 1983 on behalf
of the Governments of
the Republics of South
Africa, Transkei,
Bophuthatswana, Venda
and Ciskei; |
| 1.1.3 | "The Parties" | the Borrower and DBSA; |
| 1.1.4 | "The Project" | Jouberton Electrical
Reticulation, as
described in more
detail in Annexure A
attached hereto; |
| 1.1.5 | "The Loan" | the financing granted
to the Borrower in
terms of clause 3; |
| 1.1.6 | "On-Lending" | the transfer of any
amounts by the Borrower |

to third parties out of the proceeds of the Loan, excluding payments for the procurement of goods and services;

1.1.7 "Project Agent" a person nominated in writing by the Borrower to act on its behalf in respect of the Project;

1.1.8 "Half-year" from the first day of April to the 30th day of September and/or from the first day of October to the 31st day of March during the next calendar year.

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

2. PROJECT CO-OPERATION

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

2.1.1 periodically and at the request of either Party:

2.1.1.1 exchange views with regard to the progress of the Project, the benefits derived therefrom, and the performance of their respective obligations under this

agreement as well as other matters relating to the purposes of the Loan; and

- 2.1.1.2 furnish each other with all such information as may be reasonably requested with regard to the progress of the Project, the benefits derived therefrom and the general status of the Loan;
- 2.1.2 promptly inform each other of any fact which interferes with, or threatens to interfere with, the progress of the Project, the accomplishment of the purposes of the Loan, any related matter, and in particular the performance by either Party of its obligations under this agreement;
- 2.1.3 jointly determine the technical, financial and organizational requirements in respect of planning, management and control of the Project in order to ensure the efficient and effective execution and maintenance of the Project and related matters;
- 2.1.4 jointly determine the criteria to be taken into consideration when awarding contracts for items and services to be financed by the Loan, bearing in mind that preference shall be given to the involvement of natural persons and bodies corporate respectively resident and registered in the region included within DBSA's membership as described in Article 1(a) of the Establishment Agreement.

2.2 The Borrower shall:

- 2.2.1 grant representatives of DBSA the opportunities reasonably necessary to visit any relevant area for purposes related to the Loan;
- 2.2.2 in addition to the amount made available in terms of this agreement, be responsible for the provision of all other funds necessary for the successful execution of the Project as set out in Annexure B, including funds to be supplied by third parties as reflected in that Annexure;
- 2.2.3 be responsible for the management and maintenance of work carried out within the context of the Project, provided that DBSA shall be consulted in this regard when reasonably necessary;
- 2.2.4 with regard to the procurement of goods and services for the Project, in consultation with DBSA, invite participation in tender or quotation procedures on equal terms from natural persons and bodies corporate respectively resident and registered in the region included within DBSA's membership as described in Article 1(a) of the Establishment Agreement, unless otherwise agreed to by the Parties;
- 2.2.5 follow the following procedures in respect of tenders and quotations:
- 2.2.5.1 tender documents or invitations for quotations shall be drawn up in consultation with DBSA's

project team and ratified by DBSA;

2.2.5.2 the tenders and quotations shall be invited and, after completion of the steps described in clause 2.2.5.4, adjudicated by the Tender Board, or other responsible body, of the Borrower;

2.2.5.3 open tenders shall be open to all interested parties falling within the description contained in clause 2.2.4, and it shall not necessarily be a pre-requisite that the tenderer be a member of any particular association;

2.2.5.4 after consultation with and formal ratification by DBSA, the evaluation and recommendation for appointment of a tenderer shall be submitted to the Borrower's Tender Board or other responsible body by the Project Agent. If this recommendation, in part or whole is not acceptable to the Borrower's Tender Board or other responsible body, that Board or body may make amendments, but such amendments may be implemented only after ratification by DBSA;

2.2.5.5 strict tender procedures shall be adhered to. Where deemed necessary advice and support on

possible improvements will be forthcoming from DBSA;

- 2.2.6 ensure that contractors to whom contracts are awarded are insured and remain insured in terms of contractors-all-risk-insurance policies acceptable to DBSA;
- 2.2.7 insure and keep insured at the replacement value thereof, such of its interests in the Project against such risks as may be agreed upon by the Parties;
- 2.2.8 maintain or cause to be maintained records adequate to identify the operations carried out by means of the Loan and furnish DBSA with all such information (e.g. progress reports) concerning the implementation of the Project;
- 2.2.9 submit a statement reasonably acceptable to DBSA, certified on behalf of the Borrower, reflecting the expenditure incurred against goods and services financed in respect of the Project, within 6 (six) months after the end of each financial year of the Borrower during which a drawing is made on the Loan;
- 2.2.10 apply the Loan in accordance with Annexure B;
- 2.2.11 require each contractor to whom a contract is awarded to furnish a performance guarantee acceptable to DBSA, in terms whereof the completion of such contract is guaranteed;

2.2.12 preserve all documents and accounting records pertaining to the Project up to the expiry of a period of 3 (three) years after completion of the Project, and shall allow DBSA at DBSA's cost at any reasonable time to have such documents and records audited by a person or persons nominated by DBSA.

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

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

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

- a precise statement of the objectives for the assignment;
- the scope and timing of the required services;
- the inputs to be provided by the Borrower;
- particulars of the outputs (that is reports, drawings, etc.) required of the consultants;

- identification of a specific person who will be responsible, in the case where the consultant is a firm or a company.

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

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

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

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

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

2.4.6 Should arrangements be made to the effect that DBSA will provide funds to remunerate any consultant, such consultant shall not

be appointed without the prior written consent of DBSA.

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

3. THE LOAN

3.1 DBSA shall lend to the Borrower on the terms and conditions set forth in this agreement an amount not exceeding in aggregate R25 987 575 (twenty five million nine hundred and eighty seven thousand five hundred and seventy five Rand) at the rate of interest set forth in clause 4 hereunder.

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

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

3.4 The Borrower shall furnish DBSA with particulars regarding officials authorized to apply for withdrawals on behalf of the Borrower.

3.5 The capital amount of the Loan, which shall include the interest capitalized in terms of clause 4.2 hereunder, shall be repaid, and further interest shall be paid, in 36 (thirty six) equal six-monthly

instalments, commencing at the end of the 5th (fifth) Half-year after the Half-year during which the first advance was made to the Borrower from the proceeds of the Loan, and thereafter at the end of each succeeding Half-year until the Loan together with interest thereon shall be fully repaid; provided that the Borrower may, with 1 (one) month written notice to DBSA, make repayments in excess of the abovementioned or repay the full amount outstanding. An instalment shall be a fixed amount, determined as at the outset of the 5th (fifth) Half-year after the Half-year during which the first advance was made to the Borrower from the proceeds of the Loan, calculated as being sufficient to amortise the outstanding amount, plus interest at the rate set out in clause 4.1 hereof, in 36 (thirty six) equal six-monthly payments. Should, at the outset of the said 5th (fifth) Half-year, part of the Loan still not be drawn by the Borrower, the amount of instalments shall be adjusted as and when drawings take place, in order to achieve amortisation over the original period of the Loan.

3.6 The Borrower may by notice to DBSA cancel any undrawn portion(s) of the Loan provided that such cancellation shall not jeopardize the proper completion of the Project; it being understood that upon the giving of such notice the instalments referred to in clause 3.5 supra shall be reduced pro rata.

3.7 If DBSA reasonably concludes, after consultation with the Borrower, that any portion(s) of the Loan will not be required to finance the Project, DBSA may by notice to the Borrower terminate the right of the Borrower to make drawings in respect of such undrawn portion(s); it being understood that upon giving of such notice the instalments referred to in clause 3.5 supra shall be reduced pro rata.

4. INTEREST

- 4.1 The Loan shall bear interest on the amount from time to time outstanding at a rate of 12% (twelve per centum) per annum.
- 4.2 Interest on the amount from time to time outstanding shall be calculated at the end of each Half-year, and shall on such dates be capitalized against the Loan up to the end of the 4th (fourth) Half-year after the Half-year during which the first disbursement was advanced to the Borrower from the proceeds of the Loan, which capitalized interest shall be regarded as part of the capital amount. Thereafter interest shall continue to be calculated at the end of each Half-year, and debited to the account of the Borrower.

5. PAYMENTS

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

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

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

6. ON-LENDING

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

7. ACCELERATION OF MATURITY AND IMPROBABILITY OF PERFORMANCE

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

8. SUSPENSION AND TERMINATION

8.1 DBSA shall be entitled to suspend withdrawals from the Loan or to terminate this agreement, in the event and for so long as the Borrower fails to comply with any provision of this agreement after having given the Borrower 30 (thirty) days written notice to

comply with any provision of this agreement and the Borrower thereafter continuing thus to remain in default, in which latter event the full amount owing will become payable.

- 8.2 The Borrower shall be entitled to terminate this agreement after having given DBSA 30 (thirty) days written notice to comply with any provision of this agreement and DBSA thereafter continuing to remain in default, in which event repayments shall be effected over the same period and at the same interest rate as referred to in clauses 3.5 and 4.1 above respectively, in instalments reduced to the extent that the Loan amount has not been taken up in full but subject to the Borrower's rights to make payments in excess of such instalments or to repay the full amount outstanding as provided for in clause 3.5.
- 8.3 If any suspensive condition contained herein has not been fulfilled on expiry of the last day of the fifth month after the month during which the agreement has been concluded, then this agreement and all obligations of the Parties shall terminate, unless DBSA, after consideration of the reasons for the delay, has determined a later date for the purposes of this sub-clause. DBSA shall only consider an extension on receipt of a written request from the Borrower and shall notify the Borrower of its decision.
- 8.4 If DBSA has not received a first claim for an advance under the Loan from the Borrower on expiry of the last day of the fifth month after the month during which this agreement has been concluded, then this agreement and all obligations of the Parties shall terminate, unless DBSA, after consideration of the reasons for the delay, has determined a later date for the purposes of this sub-clause. DBSA shall only

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

9. VALIDITY OF LOAN AGREEMENT; ARBITRATION

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

9.2 Any dispute, controversy or claim arising out of or relating to this agreement, or the breach or termination thereof, which is not resolved amicably through consultations or negotiations, shall be settled by arbitration.

9.3 In case of arbitration an arbitral tribunal shall be composed of three arbitrators who shall be appointed and whose remuneration shall be determined as follows: The Party instituting proceedings shall communicate the name of an arbitrator and his scale of remuneration to the other Party which, in turn, within a period of 20 (twenty) days following such notification, shall communicate the name of the second arbitrator, failing which the Party instituting proceedings shall be entitled to request the Chairman of the Association of Arbitrators to appoint the second arbitrator. Within a period of 20 (twenty) days following the appointment of the second arbitrator, the two appointed arbitrators shall appoint a third arbitrator, who shall be an advocate practising as such in the region included within DBSA's membership as described in Article 1(a) of the Establishment Agreement, or a retired Judge. If the

first and second arbitrator cannot agree on the appointment of the third arbitrator within the said period of 20 (twenty) days, the Chairman of the Association of Arbitrators shall be requested to appoint the third arbitrator, who shall be an advocate practising as such in the region included within DBSA's membership as described in Article 1(a) of the Establishment Agreement, or a retired Judge. The third arbitrator shall preside over the tribunal, and each arbitrator shall have the right to vote.

In case any arbitrator shall resign or become unable to act, a successor shall be appointed in the same manner and within the same period, calculated from the date of his resignation or inability to act, as herein prescribed for the appointment of the original arbitrator and such successor shall have all the powers and duties of his predecessor.

9.4 The Parties shall forthwith consult with each other as to which state's law should be applied by the tribunal. Should agreement not be reached the Parties shall within 15 (fifteen) days after the date of appointment of the tribunal deliver representations to the said tribunal, motivating which state's law should be applied, whereupon the tribunal shall decide which law shall be applied in terms of South African law. Should South African law be silent on the point, regard shall be had to English law. The Tribunal shall notify the Parties which law shall be applicable and shall also, after consultation with the Parties, notify them where the tribunal shall have its headquarters where the arbitration proceedings shall be conducted.

9.5 For the purpose of clause 9 the following words and/or expressions have the meanings as stated:

- 9.5.1 "day" means any day other than
a Saturday, or
a Sunday, or
a day which is a public holiday of a State
-
- which is a Party to the arbitration
proceedings, or
- in whose territory the main business
of a Party to the proceedings is
situated;
- 9.5.2 "plaintiff" means the Party to the
arbitration who claims relief against the
other Party, provided that if each Party
claims relief against the other "plaintiff"
shall mean the Party who first referred the
dispute to arbitration;
- 9.5.3 "defendant" means the Party to the
arbitration other than the plaintiff;
- 9.5.4 "relevant document" means, in relation to
each Party, any document of whatsoever
nature in his possession or under his
control, whether an original or a copy,
relating to the dispute which has been
referred to arbitration, including all
plans, diagrams and photographs, but
excluding documents which are privileged
and other documents which, in the opinion
of the tribunal, a Party should not be
obliged to produce at the arbitration;
- 9.5.5 "tribunal" means the arbitral tribunal
appointed in terms of clause 9.3;

9.5.6 where appropriate, words importing the singular shall include the plural and words importing the masculine shall include the feminine and the neuter.

9.6 Not later than 45 (forty five) days after the tribunal has notified the Parties of the law to be applied in terms of clause 9.4, the plaintiff shall deliver to the tribunal and the defendant details of:-

9.6.1 each dispute on which arbitration is sought;

9.6.2 the relief claimed; and

9.6.3 all the facts and the contentions of law necessary to constitute the cause of action of the plaintiff;

together with true copies of all relevant documents, all of which details and copies are hereinafter referred to as the "statement of case".

9.7 Not later than 45 (forty five) days after the receipt by the defendant of the statement of case, the defendant shall deliver to the tribunal and to the plaintiff details of -

9.7.1 his defence stating which contentions of fact or law in the statement of case are admitted and which are denied;

9.7.2 the grounds for every denial or objection; and

9.7.3 all the facts and contentions of law necessary to constitute the defendant's defence and, if applicable, counter-claim;

together with true copies of all relevant documents other than those delivered in terms of clause 9.6, all of which details and copies are hereinafter referred to as the "statement of defence".

9.8 Simultaneously with the delivery of the statement of defence, the defendant may deliver counter-claims, alleged to fall within matters subject to arbitration, to the tribunal and to the plaintiff, setting forth mutatis mutandis details of the matters referred to in terms of clause 9.6, together with true copies of all relevant documents other than those delivered in terms of clauses 9.6 and 9.7, all of which details and copies are hereinafter referred to as the "defendant's counter-claim".

9.9 Not later than 45 (forty five) days after the receipt by the plaintiff of the defendant's counter-claim, the plaintiff shall deliver to the tribunal and to the defendant details of -

9.9.1 his reply stating which contentions of fact or law in the defendant's counter-claim are admitted and which are denied;

9.9.2 the grounds for every denial or objection;
and

9.9.3 all the facts and contentions of law forming part of the plaintiff's reply;

together with true copies of all relevant documents other than those delivered in

terms of clauses 9.6 to 9.8, all of which details and copies are hereinafter referred to as the "plaintiff's reply".

9.10 Each of the Parties may amend the statements referred to in clauses 9.6 to 9.9 or deliver additional statements by giving the other Party and the tribunal notice of its intention in this regard. Should the other party not object to the amendment or the additional statement within 15 (fifteen) days, the amendment or additional statement will be regarded as accepted. Any objection in this regard shall be considered by and decided upon by the tribunal.

9.11 Each Party shall on written notice from the other Party allow the other Party to inspect and, at his own expense, to make copies of all relevant documents whether delivered in terms of clauses 9.6 to 9.9 or otherwise.

9.12 The time limits stated in clause 9 shall not be extended except by leave of the tribunal.

9.13 Prior to the commencement of the hearing the tribunal shall in collaboration with the Parties determine, and thereafter inform the Parties of:

9.13.1 the date of the hearing;

9.13.2 the times and duration of the sessions;
and

9.13.3 the manner and extent of recording evidence.

9.14 The tribunal shall also in collaboration with the Parties determine and thereafter inform the Parties of a date for a pre-hearing conference with the

object of reaching agreement on possible ways of curtailing the duration of the hearing and in particular on all or any of the following matters:

- 9.14.1 the possibility of obtaining admissions of fact and of the correctness of the contents of documents;
- 9.14.2 the holding of any inspection or examination;
- 9.14.3 the making of any discovery of documents;
- 9.14.4 the exchange between Parties of the reports of experts;
- 9.14.5 the giving of any further particulars reasonably required for the purpose of the hearing;
- 9.14.6 the plans, diagrams, photographs, models and the like to be used at the hearing;
- 9.14.7 the quantum of damages; and
- 9.14.8 the preparation and handing in at the hearing of copies of correspondence and other documents in the form of a paginated bundle with copies for the tribunal and both Parties.

At the conclusion of such conference the Parties shall draw up and sign a minute of matters on which they have agreed and this shall be handed in at the commencement of the hearing.

9.15 After the institution of arbitration proceedings the tribunal may proceed with the arbitration,

notwithstanding any failure, neglect or refusal of either Party to comply with these provisions or to take part or further part in the arbitration.

9.16 Where the Parties so agree and notify the tribunal in writing, the tribunal may make its award without an oral hearing after consideration of the statement of case, the statement of defence, the defendant's counter-claim and the plaintiff's reply, or such of these documents as had been delivered.

9.17 The hearing of the arbitration shall be held in camera.

9.18 Any document delivered in terms of clauses 9.6 to 9.9 shall be admitted as evidence without the necessity for its identification or verification by any witness but either Party shall be entitled to dispute the validity of such document and to lead evidence on the origin, accuracy, meaning or relevance of the document.

9.19 Any dispute about the meaning or effect of the provisions of this clause 9 shall be determined by the tribunal who shall further have power to give directions, not inconsistent with the provisions of this clause, on the manner and time in which the provisions of this clause shall be carried into effect.

9.20 Should all three arbitrators differ the award of the arbitrator who presides over the tribunal shall prevail and shall be regarded as the award of the tribunal.

9.21 The tribunal shall deliver its award in writing to the Parties within a reasonable time after the conclusion of the hearing.

9.22 The award of the tribunal, which can be made an order of Court in the countries of the Parties to the proceedings, shall be final and binding on the Parties and shall be complied with without delay. The tribunal shall interpret the award at the request of one of the Parties.

9.23 Unless the tribunal determines otherwise because of the particular circumstances of the case, the costs of the arbitration proceedings, including the remuneration of the arbitrators, shall be borne by the Party against whom the award is made. The first and second arbitrators shall be remunerated on equal basis, while the remuneration of the third arbitrator shall be at a 50% (fifty per centum) higher rate.

9.24 No portion of any relevant document or of evidence or of any ruling or award by the tribunal shall be published except with the written consent of both Parties or to the extent necessary for proceedings in any court relating to the arbitration.

9.25 The proceedings of the tribunal shall be conducted in English.

9.26 Notwithstanding anything herein contained, the tribunal shall be entitled, on good cause shown, to condone any unintentional failure by any of the Parties to comply with the provisions contained in this clause 9.

10. GENERAL

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

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

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

Telex number: 4-25546
SOUTH AFRICA

Telefax number: 011-3133086

and in the case of the Borrower, when addressed to
the Town Clerk and received at:

Physical address:

Postal address: P O Box 99
KLERKSDORP
2570

Telefax number:

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

10.2 No amendment of, or addition to this agreement shall
be valid unless the same has been reduced to writing
and signed by or on behalf of the Parties, with the
understanding that Annexures A, B and C hereto can be
changed by agreement reached through correspondence.

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

right in respect of which such indulgence was granted.

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

11. SUSPENSIVE CONDITIONS

The operation of this agreement is subject to:

11.1 DBSA obtaining the approval for the funding arrangements of this Project by the South African Government;

11.2 the Borrower furnishing proof that the legal and institutional arrangements with Jouberton are in place to enable it to implement the Project; and

11.3 the Borrower obtaining confirmation from the Transvaal Provincial Administration that it does not object to the implementation of the Project.

THUS DONE AND SIGNED AT KLERKSDORP ON THE
16th DAY OF MARCH 19 94

AS WITNESSES:

- 1. [Signature]
- 2. [Signature]

[Signature]

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

THUS DONE AND SIGNED AT KLERKSDORP ON THE
16th DAY OF MARCH 19 94

AS WITNESSES:

- 1. [Signature]
- 2. [Signature]

[Signature]

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

PROJECT DESCRIPTION**1. PROJECT OBJECTIVE:**

To support the economic development of the Greater Klerksdorp-Jouberton urban area through the provision of electricity thereby improving the quality of life.

2. PHYSICAL DESCRIPTION:**2.1 GENERAL:**

As in accordance with the proposed master plan dated July 1992, the electrification plan for Jouberton is as follows:

Three switching stations substations will be fed from the Jouberton main substation (20MVA, 132/11kV), namely:

- Jouberton East switching substation;
- Jouberton West switching substation; and
- Jouberton South switching substation.

The total area to be electrified is thus divided into four main areas of supply, namely MAIN, EAST, WEST and SOUTH, in which secondary medium voltage will be supplied in different rings.

2.2 PRIMARY MEDIUM VOLTAGE (11kV):

The three switching substations (East, West and South) will each be fed via 2X 300mm² XPLE Al cables.

Extension 13, (which is part of the old Extension 12) will be the only development in the southern area at this point in time. A temporary 11kV "Mink" line will therefore feed Extension 13 until such time as more development justifies the erection of the southern switching substation.

2.3 SECONDARY MEDIUM VOLTAGE (11kV):

A combination of overhead "Mink" and underground 70mm² cable will be used. Underground cable exist in some areas and can be utilized to save on the cost of secondary medium voltage reticulation.

2.4 MEDIUM/LOW VOLTAGE TRANSFORMATION:

A combination of new 100kVA pole mounted transformers and existing minisubs will be used for medium/low voltage transformation.

The existing equipment can be overloaded to 160kVA during peak times. This type of transformer is being used throughout the country by ESKOM in similar conditions.

2.5 PRIMARY LOW VOLTAGE:

Reticulation in primary low voltage will be done in 70mm² and 35mm² ABC. Midblock routes will be followed where the service (poles) is shared with TELKOM SA (Ltd).

2.6 SECONDARY LOW VOLTAGE:

Service connections will be made via 10mm² airdac from a distribution box at the distribution pole. Each connection will be protected with a circuit breaker at the connection point, graded with a 60A circuit breaker in the distribution box. Each new house connection will be supplied with a prepaid meter and "Ready Board".

3. ESTIMATED PROJECT COST:

DESCRIPTION	ESTIMATED COST (EXCL. VAT)
Preliminary planning and feasibility	100,000
Supply and installation of infrastructure, including escalation and contingencies.	R28,068,428
Professional fees, disbursements, site supervision and project management	R 1,800,700
SUB-TOTAL	R29,969,128
VAT @ 14%	R 4,195,678
TOTAL	R34,164,806

4. MATTERS AGREED UPON:

- 4.1 The Technical Working Group formed with full representation of the community will continue to monitor the implementation of the Project and ensure community liaison on all Project matters.
- 4.2 The Borrower supports and employs local small contractors and labourers to perform as much as possible of the construction work.
- 4.3 The Borrower will negotiate a labour based contract with Messrs Sunflower for the maximum employment of local labour and the training of contracting and trade skills of small contractors.
- 4.4 The Borrower will initiate and maintain an energy awareness programme to inform and train prospective consumers on the efficient and safe use of electrical energy.
- 4.5 The Borrower shall ensure that all the groups and institutions which represent the community affected by the Project accept the proposed metering system.

I. APPLICATION, PROGRAMMING AND SOURCE OF FUNDS STATEMENT (R'000)

TOTAL PROJECT RELATED COST	PROJECT EXPENDITURE BUDGET				PROJECT FUNDING BUDGET		
	BEFORE IMPLEMENTATION	DURING IMPLEMENTATION			TOTAL PROJECT COST	DBSA MAXIMUM AMOUNT	BORROWER AMOUNT
		1993/94	1994/95	1995/96			
CAPITAL COSTS:							
1. PREPARATION COST							
1.1 Preliminary Planning and Feasibility.	100,000	0	0	0	100,000	0	100,000
TOTAL PREPARATION COST	100,000	0	0	0	100,000	0	100,000
2. FIXED ASSETS							
2.1 Supply and installation of electrical infrastructure.	0	1,400,000	13,335,000	13,334,000	28,069,000	24,086,575	3,982,425
2.2 Prof. fees, disb & site supervision.	0	600,000	650,000	651,000	1,901,000	1,901,000	0
2.3 Contingencies	0	0	0	0	0	0	0
2.4 Escalation	0	0	0	0	0	0	0
TOTAL FIXED ASSETS	0	2,000,000	13,985,000	13,985,000	29,970,000	25,987,575	3,982,425
TOTAL CAPITAL COST	100,000	2,000,000	13,985,000	13,985,000	30,070,000	25,987,575	4,082,425
TOTAL PROJECT RELATED COST	100,000	2,000,000	13,985,000	13,985,000	30,070,000	25,987,575	4,082,425

II. TERMS AND CONDITIONS OF DISBURSEMENT

Disbursement of each progress claim of the amount financed by DBSA is to be effected to the extent of the actual cost of each item as indicated in the detailed Application, Programme and Source of Funds Statement (Annexure BI) read together with the Project Description (Annexure A), to the maximum amount of R25 987 575. This is subject to submission to DBSA of fully documented proof of payment(s) by the Borrower to supplier(s), consultant(s), contractor(s) of actual claims (or in-house expenses incurred), as approved by the Borrower or its authorized representative. Each progress claim is to be in the itemized format as depicted in the detailed Application, Programme and Source of Funds Statement.

LIST OF CONSULTANTS AND
CONTRACTORS ALREADY APPOINTED

AUTHORIZATION - BORROWER

AUTHORIZATION

DEVELOPMENT BANK OF SOUTHERN AFRICA

ANDRIES BENJAMIN LA GRANGE,

in his capacity as Chief Executive of the Development Bank of Southern Africa, in terms of authority delegated to the incumbent of his post by the Board of Directors of the Development Bank of Southern Africa on 19 September 1985, determined on 20 August 1993 that:

ANDRIES BENJAMIN LA GRANGE
in his capacity as Chief Executive

OR

JACOB HENRY DE VILLIERS BOTHA

OR

NICHOLAS THEODORO CHRISTODOULOU

OR

RICHARD GORDON KIRKLAND

OR

JOHAN KRUGER

OR

SOLOMON NORTJE

OR

ELIAS LIPHAPANG POTLOANE

OR

GIDEON JACOBUS RICHTER

OR

JOHN MOALUSI

in their capacity as General Managers

OR

JEAN JAQUES DE VILLIERS BASSON

OR

PAUL WERNER BEHRENS

OR

GERHARDUS JOHANNES DU TOIT

OR

SEAN PATRICK ELLIFFE

OR

BRIAN EDWIN HOLLINGWORTH

OR

DAVID MARK LYSTER

in their capacity as Divisional Managers

be authorized for and on behalf of the Development Bank of Southern Africa to enter into agreements in terms whereof money is -

1. lent, or

2. granted for the purpose of technical assistance,

and may perform all acts and sign all documents that may be necessary for the purpose.

DATE

LEGAL DIVISION