



Business Centre
Tzaneen

To the Municipal Manager

Date 02 July 2012.

Subject: Drawdown of the term loan facility in respect of term funding for Council's Vehicles and re-gravelling plant.

We confirm that the drawdown for the funding of Council's Fleet and re-gravelling plant was processed on 30 June 2012 instead of 29 June 2012 as per signed Term Loan agreements due to system related problems. The relevant agreements are for 5 and 7 years for term funding of R13,281,874.54 and R21,011,252.12 respectively.

Should you require further clarity and/or additional information, please contact the undersigned.

Yours truly

A handwritten signature in black ink, appearing to read "Joseph Khoza".

Joseph Khoza

Account Executive.

16 Morgan Street Tzaneen 0850
PO Box 37 Tzaneen 0850 SWIFT address: SBZA ZA JJ www.standardbank.co.za
Tel: 015 307 9700 Fax: 015 307 4006

The Standard Bank of South Africa Limited (Reg. No. 1962/000738/06) An authorised financial services and registered credit provider (NCRCP15).

Directors: T M F Phaswana (Chairman), S K Tshabalala* (Chief Executive), D D B Band, R M W Dunne*, T S Gcabashe, S E Jonah KBE**, Sir Paul Judge*, K P Kalyan, S J Macozoma, J H Maree*, Adv K D Moroka, A C Nissen, M C Ramaphosa, S P Ridley*, M J D Ruck, Lord Smith of Kelvin, Kt*, E M Woods
Secretary: L Wulfsohn *Executive Director #British **Ghanaian 04/02/2011

Yours sincerely

r ke

For: GREATER TZANEEN MUNICIPALITY

Full name of signatory: FATIMA MASHIANDICE

Capacity of signatory: Acting MP

Date of authorising resolution: 29 JUNE 2012



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TERM LOAN AGREEMENT

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APPENDIX

ANNEXURE A

DRAW DOWN NOTICE

Tzaneen Municipality MTL#2 (R21m) (2002012).docx

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as part payment of the Loan Facility;

- 2.1.8 "FAIS" means the Financial Advisory and Intermediary Services Act 37 of 2002 including all schedules and regulations thereto;
- 2.1.9 "FICA" means Financial Intelligence Centre Act 38 of 2001 including all schedules and regulations thereto;
- 2.1.10 "Group" means the Bank, its affiliates, associates, subsidiaries and divisions together with its holding company and the affiliates, associates, subsidiaries and divisions of its holding company;
- 2.1.11 "Indebtedness" means the total balance outstanding on the Loan Facility plus any interest, fees and costs in respect of the Loan Facility which are owed by the Borrower to the Bank from time to time;
- 2.1.12 "Loan Facility" means the long term loan facility referred to in this Agreement (which is in the form of a medium term loan, a lending product of the Personal and Business Banking Division of the Bank);
- 2.1.13 "Material Adverse Effect" means a change in the circumstances existing as at the Signature Date which in the reasonable opinion of the Bank may have a material adverse effect on:-
 - 2.1.13.1 the assets, operation, property or financial condition of the Borrower;
 - 2.1.13.2 the ability of the Borrower to perform its obligations in terms of the Loan Facility; or
 - 2.1.13.3 the validity or enforceability of one or more of the agreements under which the Loan Facility is drawn down or availed and the collateral provided to the Bank (if applicable) or the rights or remedies of the Bank thereunder;
- 2.1.14 "MFMA" means the Local Government: Municipal Finance Management Act 56 of 2003 including all schedules and regulations thereto;
- 2.1.16 "Parties" means the Bank and the Borrower, and "Party" means any one of them as the context may indicate;

P
 F
 F.F.



contained in this clause, effect shall be given thereto as if such provision were a substantive provision in the body of the Agreement.

2.6 When any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day.

2.7 Any reference in this Agreement which requires that the Bank exercise its discretion in respect of any matter stated herein shall mean that the exercise thereof shall be as determined by the Bank in its reasonable discretion.

2.8 The terms and conditions of this Agreement having been negotiated by the Parties, no provision herein shall be construed against or interpreted to the disadvantage of any Party by reason of such Party having or being deemed to have structured, drafted or introduced such provision.

3 LOAN FACILITY

The Bank is agreeable to granting the Borrower the Loan Facility, upon and subject to the terms and conditions hereinafter set out.

4 RANKING OF LOAN FACILITY

The Loan Facility comprises senior debt and ranks equally with all other senior debt in terms of servicing, repayment and collateral rights.

5 LOAN AMOUNT

5.1 The aggregate amount to be advanced to the Borrower under the Loan Facility is R 21,011,252.12 (twenty one million eleven thousand two hundred and fifty two and twelve cents) ("Loan Amount").

5.2 The amount of the Indebtedness to the Bank under the Loan Facility shall not at any one time exceed the Loan Amount. To the extent that a draw down under the Loan Facility would cause the Loan Amount to be exceeded, the Borrower shall not be entitled make such a draw down.

6 AVAILMENT AND PURPOSE

6.1 The Loan Facility may be utilised upon fulfilment and/or waiver of the conditions

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8.3.1 in terms of the amortisation schedule to be prepared by the Bank upon receipt of the draw down notice referred to in clause 6.1 above and shall be posted to the Borrower by the Bank at the following address:-

Attention: Mrs Faith Mashanoka

Acting Municipal Manager

Agatha Street

Tzaneen

0850

Telephone number: (015) 307 8002

Telefax Number: (015) 307 8049;

8.3.2 in permanent reduction of the Loan Facility; and

8.4 by means of direct electronic fund transfers by the Borrower to the Bank into the Borrower's Current Account. The Bank reserves the right, in its sole discretion, to accept payment made in any other manner.

9 EARLY REPAYMENT

9.1 Early permanent repayment of the Loan Facility in full may be made by the Borrower on not less than 90 (ninety) days' written notice (or such shorter notice period as the Bank may agree to in writing) of the Borrower's Intention to make such early permanent repayment, subject to the provisions of clause 9.3 below.

9.2 In the event of an early permanent repayment as contemplated in clause 9.2 above, the Borrower shall be liable for all breakage costs the Bank may incur and/or sustain as a result thereof, being all costs, losses and/or reduced receipts which the Bank may sustain and/or incur in relation to the termination or modification of any arrangements the Bank may have made on account of or in respect of funds borrowed, contracted for or utilized to fund any amount payable or advanced under the Loan Facility.

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provide the Loan Facility;

- 10.1.2 that the Borrower provides the Bank with a copy of this Agreement, signed by the accounting officer of the Borrower and accepting the terms and conditions stipulated herein, in form and substance acceptable to the Bank;
- 10.1.3 that the Borrower has undergone the Bank's Know Your Customer ("KYC") process pursuant to the provisions of FICA;
- 10.1.4 that the Borrower has furnished the Bank with proof, in form and substance acceptable to the Bank, that the provisions of the MFMA as well as any regulations thereto have been complied with in relation to the Loan Facility;
- 10.1.5 that the Borrower has provided the Bank with a written confirmation that the purpose of the Loan Facility is to re-finance existing long-term debt as contemplated in section 46(1)(b) of the MFMA, in form and substance acceptable to the Bank;
- 10.1.6 if applicable, that the Borrower has provided the Bank with a certified copy of the adjustments budget tabled in terms of the MFMA and that the Bank is satisfied as to the manner in which the Loan Facility has been dealt with in such adjustment budget;
- 10.1.7 that the Borrower has provided the Bank with the following, in form and substance acceptable to the Bank:-
 - 10.1.7.1 audited financial statements for the preceding 3 (three) financial years, together with an indication whether the audit deadline referred to in Section 126 of the MFMA has been met;
 - 10.1.7.2 approved annual budget;
 - 10.1.7.3 the integrated development plan or multi-year business plan referred to in section 87(5)(d) of the MFMA, if applicable; and
 - 10.1.7.4 repayment schedules pertaining to its existing short-term and long-term debt; and
- 10.1.8 that, in the Bank's opinion, there has been no material deterioration of any

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12 ONGOING CONDITIONS

While the Loan Facility remains available or any amount or commitment remains outstanding to the Bank the following conditions shall apply:-

12.1 the Borrower shall:-

12.1.1 comply with the MFMA, in relation to the Loan Facility to the satisfaction of the Bank;

12.1.2 provide the Bank with information relating to its draft budgets, approved budgets, adjustment budgets as well as a copy of the quarterly report required in terms of Section 52(d) of the MFMA within 30 (thirty) days of such information being due in terms of the MFMA for a particular period;

12.1.3 Inform the Bank, as soon as possible after identification of any financial problems facing the municipality, including any emerging or impending financial problems in terms of the provisions of Section 54 of the MFMA that could reasonably be expected to affect the Borrower's ability to repay any amounts outstanding under the Loan Facility; and

12.1.4 confirm that the terms of the Loan Facility, including the Loan Amount, of the Borrower may be changed only by a resolution of the Municipal Council, subject to the provisions of clause 17.10.2 below.

12.2 The Bank reserves the right to reassess and to renegotiate the Loan Facility in the event of there being:-

12.2.1 any change in the:-

12.2.1.1 management and/or legislated governance of the local authority;

12.2.1.2 overall structure of the local authority;

12.2.1.3 structure of revenue streams; or

12.2.2 any deterioration in the Borrower's financial position.

12.3 Any reference in this Agreement to a specific requirement under the MFMA shall not derogate from or exclude the application of any provisions not specifically

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- 14.1 An event of default will occur-
 - 14.1.1 should the Borrower fail to make payment by the due date of any amount due in terms of the Loan Facility or any other facilities that the Bank has accorded the Borrower or may offer to the Borrower; or
 - 14.1.2 should the Borrower breach any term or condition of this Agreement or any other facility that the Bank may grant to the Borrower or any other facility between the Borrower and any member of the Group and the Borrower fails to remedy the breach within 7 (seven) days of receiving written notice to do so; or
 - 14.1.3 should any, representation, warranty or undertaking made (or deemed to have been made) in connection with this Agreement or any documentation supplied by the Borrower be, in the Bank's opinion, materially incorrect; or
 - 14.1.4 if the Borrower meets the conditions for a mandatory provincial intervention (as contemplated in Section 139 and 140 of the MFMA); or
 - 14.1.5 if an event occurs that adversely affects the validity or enforceability of this Agreement; or
 - 14.1.6 if an attachment, execution or other legal process is levied, enforced, issued or sued out on or against any assets of the Borrower or any unsatisfied judgement or order, including failure to pay a final judgement or court order, except insofar as reasonable court process is underway for the Borrower's indebtedness to the Bank, and is not discharged or stayed within 30 (thirty) days of service by the relevant officer of the court of such attachment, execution or other legal process; or
 - 14.1.7 should a writ of execution issued by any competent court attaching any assets belonging to the Borrower remain unsatisfied for more than 7 (seven) days after the date on which it is issued; or
 - 14.1.8 if the Loan Facility is not budgeted for in the Borrower's budget in any particular year; or
 - 14.1.9 if at any time there is a change in the demarcation of the geographic area



opinion has, or could in the future have, an adverse effect on the Borrower's ability to perform any of its obligations to the Bank in terms of this Agreement, or prejudice the Bank's position with respect to the Loan Facility in any other way; or

14.1.17 at any time, the amount outstanding under the Loan Facility exceeds the Loan Amount as stated in clause 5 above; or

14.1.18 the Borrower, is unable to pay its debts, suspends or threatens to suspend payment of all or a material part of (or of a particular type of) its indebtedness to any other creditors, commences negotiations or takes any other step with the view to the deferral, rescheduling or other re-adjustment of all of (or all of a particular type of) its indebtedness to creditors (or of any part of such indebtedness which it will or might otherwise be unable to pay when due), proposes or makes a general assignment or an arrangement or composition with or for the benefit of its creditors or a moratorium is agreed or declared in respect of or affecting all or a part of the indebtedness of the Borrower; or

14.1.19 the existence of a Material Adverse Effect on the operations, performance, assets or prospects and financial conditions of the Borrower; or

14.1.20 the existence of an adverse effect on the Borrower's ability to perform any of its obligations to the Bank in terms of this Loan Facility, or prejudice the Bank's position with respect to the Loan Facility in any other way; or

14.1.21 the Borrower generally does or omits to do anything which may cause the Bank to suffer any loss or damage, including any reputational loss or damage; or

14.1.22 the Bank become aware, at any time, of a fact or circumstance (whether same was present at or before the time of acceptance of the Loan Facility by the Borrower or arose thereafter), which causes the Bank to know or suspect that:-

14.1.22.1 the Borrower's account is being used fraudulently, negligently, for illegal or terrorist activities, or for any purpose that does not comply

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Facility;

- 15.1.4 its annual budget as well as its approved annual budget contains all of the information referred to in section 17 of the MFMA;
- 15.1.5 the Loan Facility has been provided for in an approved budget, are properly approved by the Municipal Council and that payment of the amount of Loan Facility will not result in the total amount of the budget being exceeded. These requirements will be met in future as well;
- 15.1.6 that the persons who negotiated the Agreement on behalf the Borrower, as well as the person who signed the Agreement on behalf of the Borrower, have made diligent investigations in order to ascertain all relevant information and that all such information has been disclosed to the Bank, in writing;
- 15.1.7 It will not utilise savings with regards to an unrelated expenditure in a budget to defray any excess expenditure that may be required for satisfying a claim under a loan agreement;
- 15.1.8 there are no circumstances resulting in a Material Adverse Effect on the financial condition, operations or assets of the Borrower, presently pending or threatened, and in the reasonably exercised opinion of the Borrower no such circumstances are likely to arise;
- 15.1.9 the Borrower is not in breach of any law applicable to the Borrower, nor in breach of any material contract by which the Borrower is bound, and/or to which the Borrower is a party, and in the reasonably exercised opinion of the Borrower, no such breach is likely to occur and/or arise;
- 15.1.10 the Borrower warrants and represents to the Bank that it is in full compliance with all applicable laws, regulations and practices relating to the protection of the environment applicable to it in each jurisdiction in which the Borrower conducts business (its "Environmental Responsibility") and hereby undertakes to continue to do so for so long as the Borrower is indebted to or owes any obligations to the Bank under or in terms of this Agreement;

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The Bank requires the Borrower to furnish it with signed copies of the audited financial statements of the Borrower annually within a period of 120 (one hundred and twenty) days from the date that they are due in terms of the MFMA and any other information as the Bank may reasonably require.

17.3 Matters requiring the Bank's consent

The Borrower may not without the Bank's prior written consent, which will not be unreasonably withheld:-

17.3.1 become surety, guarantor for or give any indemnity on behalf of any third party whomsoever or render itself liable in any way whatsoever for the debts or engagements of any other party, other than encumbrances as agreed to by the Bank;

17.3.2 pledge, cede, mortgage, hypothecate or otherwise encumber or further encumber any of its movable or immovable assets to secure any liability of any nature;

17.3.3 sell or otherwise dispose of or attempt to sell or dispose of any of its assets except in the ordinary course of its operations;

17.3.4 advance credit to third parties other than in the ordinary course of its operations; or

17.3.5 utilise its savings with regards to unrelated expenditure in a budget to defray any excess expenditure that may be required to satisfy a claim under a loan agreement.

17.4 Annual Review

17.4.1 The Loan Facility is subject to annual review by the Bank on or before 5 September 2013 in light of the following information:-

17.4.1.1 audited annual financial statements;

17.4.1.2 approved annual budget;

17.4.1.3 annual revised integrated development plan; and

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Should the Borrower be in default as set out in clause 14.1 above and the Bank exercise its rights in terms of the provisions of clause 14.2 above, the Bank may in addition to any rights the Bank has:-

17.8.1 set-off any credit balances held in any other account which the Borrower has with the Bank that are due and payable, against the indebtedness; and/or

17.8.2 realise any collateral held by the Bank and use the proceeds in payment of the indebtedness,

under written notice to the Borrower.

17.9 Renunciation of benefits

The Borrower hereby renounces the benefits of the following legal defences to any claim brought by the Bank:-

17.9.1 the Borrower has received no value for its obligations to the Bank;

17.9.2 no money has been paid to the Borrower;

17.9.3 there is no underlying cause for the Borrower's obligation to the Bank; and

17.9.4 the Bank made an error in calculating the indebtedness to the Bank. The Bank will revise its accounts in respect of the indebtedness if they are incorrect.

17.10 Whole Agreement, Variation of Terms

17.10.1 The agreement created upon signature of this Agreement by the Borrower and the Bank shall constitute the whole agreement between the Bank and the Borrower relating to the subject matter hereof.

17.10.2 No addition to, variation, or amendment, or consensual cancellation of any of the terms contained in this Agreement, shall be of any force or effect unless it is recorded in writing and is signed on behalf of the Bank by one of its authorised officials and accepted by the Borrower.

17.11 Indemnity

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or delivered to the Parties.

17.15.2 For the purpose of serving legal notices in terms of this Agreement the Parties' *domicilium citandi et executandi* is:-

17.15.2.1 as regards the Bank:-

Attention: Joseph Khoza

The Standard Bank of South Africa Limited

16 Morgan Street

Tzaneen

0850

Telephone Number: (015) 307 9717

Telefax Number: 085 624 1465

CC: Group Legal Division

Attention: Director Group Legal

9th Floor, Reception 5

Standard Bank Centre

5 Simmonds Street

Johannesburg, 2001

Telephone Number: (011) 636-0944

Telefax Number: (011) 636-1767

17.15.2.2 as regards the Borrower:-

Attention: Mrs Faith Mashianoke

Agatha Street

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- 17.15.4 Any notice given in terms of this Agreement shall be in writing and shall:-
- 17.15.4.1 if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;
- 17.15.4.2 if delivered by a recognised international courier service, be deemed to have been received by the addressee on the first Business Day following the date of such delivery by the courier service concerned;
- 17.15.4.3 if posted by prepaid registered post will be deemed to have been received by the addressee on the 8th (eighth) Business Day following the date of such posting; or
- 17.15.4.4 if transmitted by facsimile be deemed to have been received by the addressee 1 (one) Business Day after despatch.
- 17.15.5 Notwithstanding anything to the contrary contained in this Agreement, a written notice or communication actually received by a Party at its chosen address set out above, shall be an adequate written notice of communication to such Party.
- 17.16 **Counterparts**
- This Agreement may be signed by the signatories hereto in counterparts and each signed copy shall together constitute one document.
- 17.17 **Cession**
- 17.17.1 The Borrower shall not be entitled to cede or assign its rights and/or obligations in terms of this Agreement to any Party without the prior written consent of the Bank.
- 17.17.2 The Bank shall, upon written notification to the Borrower, be entitled at any time to cede any or all of its rights and/or delegate any or all of its obligations under or in terms of this Agreement to any Party.
- 17.17.3 To the extent that any cession, assignment or transfer by the Bank of its rights and/or obligations under or in terms of this Agreement to any Party results (whether directly or indirectly) in a splitting of claims against the



require access to any Personal Information to carry out their services;

17.18.3 the Bank shall at all times remain responsible for determining the purpose of and means for processing the Borrower's Personal Information;

17.18.4 the Bank is required by various laws, including FICA and FAIS, to collect some of the Borrower's Personal Information; and

17.18.5 without the Borrower's Personal Information, the Bank may be unable to offer or continue to offer services to the Borrower.

17.19 Availability of Funds

The Bank shall not be liable for any failure to perform its obligations hereunder resulting directly or indirectly from the action or inaction of any government or local authority or any strike, boycott, blockade act of god, civil disturbance or for any other act which is beyond the control of the Bank.

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