

AFD AGREEMENT N° CZA1114 01 S

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CREDIT FACILITY AGREEMENT

dated as of May 13<sup>th</sup>, 2015

between

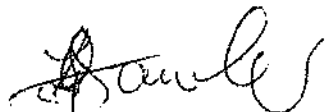
AGENCE FRANÇAISE DE DEVELOPPEMENT

The Lender

and

CITY OF JOHANNESBURG, METROPOLITAN MUNICIPALITY

The Borrower



En accord entre les parties, les présentes reliées par ASSEMBLACT empêchant toute substitution ou addition. sont seulement signées à la dernière page.

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## CREDIT FACILITY AGREEMENT

### BETWEEN:

- (1) **CITY OF JOHANNESBURG, METROPOLITAN MUNICIPALITY**, a category A Municipality in term of Section 155 of the Constitution of the Republic of South Africa, duly established in terms of Notice No. 6766 as published in Provincial Gazette Extraordinary of 1 October 2000, pursuant to Section 12(1) and Section 14(2) of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998) as amended, registered at the address of 158 Civic Boulevard, Braamfontein, South Africa,

("City" or the "Borrower");

### AND

- (2) **AGENCE FRANCAISE DE DEVELOPPEMENT**, a French public entity (*établissement public*) governed by French law, with registered office at 5, Rue Roland Barthes, 75598 Paris Cedex 12, France, registered with the Trade and Companies Register of Paris under number 775 665 599,

("AFD" or the "Lender");

(hereinafter jointly referred to as the "**Parties**" and each a "**Party**");

NT

### WHEREAS:

- (A) The Borrower is implementing its 2014-2017 Medium Term Budget including in particular two initiatives, the Inner City Roadmap and the Corridors of Freedom, which aims at reducing poverty and reducing the carbon footprint (the "**Programme**"), as described further in Schedule 2A (*Programme Description*).
- (B) The Lender supports the South African municipal sector focusing on projects promoting sustainable development where the objective is to maximise social and environmental impacts through municipal public services.
- (C) The Borrower has requested the Lender to make available the Credit Facility for the purposes of partially financing the capital expenditure of the Programme resulting from the approved Medium Term Budget.
- (D) Pursuant to a Board resolution n° 20140653 dated 18 December 2014, the Lender has agreed to make the Facility available to the Borrower pursuant to the terms and conditions of this Agreement.

**IT IS AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION AND GOVERNING LAW**

**1.1 Definitions**

Capitalised words and expressions used in this Agreement (including those appearing in the recitals above and in the Schedules) shall have the meaning given to them in Schedule 1A (*Definitions*), except as otherwise provided in this Agreement.

**1.2 Interpretation**

Words and expressions used in this Agreement shall be construed pursuant to the provisions of Schedule 1B (*Construction*), unless the contrary intention appears.

**1.3 Governing Law**

This Agreement is governed by and construed in accordance with French law.

For the avoidance of doubt, the application of French Law to this Agreement, as provided in this Clause 1.3 (*Governing Law*), shall not exclude the operation of any public policy South African legislation applicable to the Borrower by virtue of its status as municipality and organ of state.

**2. FACILITY, PURPOSE AND CONDITIONS OF UTILISATION**

**2.1 Facility**

Subject to the terms and conditions of the Agreement, the Lender makes available to the Borrower a Facility in a maximum aggregate amount of one billion five hundred fifty-five million four hundred forty thousand Rand (ZAR 1,555,440,000).

**2.2 Purpose**

The Borrower shall apply all amounts borrowed by it under this Facility exclusively towards financing capital expenditures of the Programme, excluding Taxes and duties, in accordance with the Programme's description as set out in Schedule 2A (*Programme Description*) and the Financing Plan set out in Schedule 3 (*Financing Plan*).

**2.3 Monitoring**

The Lender is not bound to monitor or verify the application of any amount borrowed pursuant to this Agreement and cannot be held responsible for the use of any amount borrowed which is not in accordance with the provisions of this Agreement.

**2.4 Conditions precedent**

- (a) No later than the Signing Date, the Borrower shall provide to the Lender all of the documents set out in Part I of Schedule 4 (*Conditions Precedent*) in form and substance satisfactory to the Lender.
- (b) A Drawdown Request may not be delivered to the Lender unless:
  - (i) in the case of the first Drawdown, the Lender has received all of the documents as listed in Part II of Schedule 4 (*Conditions Precedent*) in form and substance satisfactory to the Lender and has notified the Borrower upon being so satisfied;

- (ii) in the case of any subsequent Drawdown, the Lender has received all of the documents set out in Part III of Schedule 4 (*Conditions Precedent*) in form and substance satisfactory to the Lender and has notified the Borrower upon being so satisfied; and
- (iii) on the date of the relevant Drawdown Request and on the proposed Drawdown Date for the relevant Drawdown, no Payment Systems Disruption Event has occurred and the conditions set out in this Agreement have been fulfilled, including:
  - (1) no Event of Default is continuing or would result from the proposed Drawdown;
  - (2) the Drawdown Request has been made in accordance with the terms of Clause 3.2 (*Drawdown request*);
  - (3) each representation given by the Borrower in relation to Clause 10 (*Representations and Warranties*) is true.

### 3. DRAWDOWN OF FUNDS

#### 3.1 Drawdown amounts

The Facility will be made available to the Borrower during the Availability Period, in three (3) Drawdowns, as follows:

- the first Drawdown of five hundred fifty-five million four hundred forty thousand Rand (ZAR 555,440,000);
- the second Drawdown of five hundred million Rand (ZAR 500,000,000); and
- the third Drawdown of five hundred million Rand (ZAR 500,000,000).

#### 3.2 Drawdown request

Provided that the conditions set out in Clause 2.4 (b) (*Conditions Precedent*) are satisfied, the Borrower may draw on the Facility by delivery to the Lender of a duly completed Drawdown Request. Each Drawdown Request shall be delivered by the Borrower to the Head of the AFD Agency at the address specified in Clause 16.1 (*In Writing and Address*).

Each Drawdown Request is irrevocable and will be regarded as having been duly completed if:

- (a) the Drawdown Request is substantially in the form set out in Schedule 5A (*Form of Drawdown Request*);
- (b) the Drawdown Request is received by the Lender at the latest fifteen (15) Business Days prior to the Deadline for Drawdown;
- (c) the proposed Drawdown Date is a Business Day falling within the Availability Period;
- (d) the amount of the Drawdown complies with Clause 3.1 (*Drawdown Amounts*); and
- (e) all of the documents set out in Part III and Part IV of Schedule 4 (*Conditions Precedent*) for the purposes of the Drawdown are attached to the Drawdown Request,

comply with the abovementioned Schedule, and are in form and substance satisfactory to the Lender.

3.3 Payment completion

Subject to Clause 14.6 (*Payment Systems Disruption*), if each of the conditions set out in Clause 2.4 (b) (*Conditions Precedent*) of this Agreement has been met, the Lender shall make a requested Drawdown available to the Borrower not later than the Drawdown Date.

The Lender shall provide the Borrower with a letter of Drawdown confirmation substantially in the form set out in Schedule 5B (*Form of confirmation of Drawdown and rate*).

4. **INTEREST**

4.1 Interest Rate

The Interest Rate applicable to each Drawdown shall be the Fixed Rate plus the Margin.

The Interest Rate, determined in accordance with this Clause 4.1 (Interest Rate), shall not:

- exceed fifteen point thirty one percent (15.31 %) per annum; nor
- be less than zero point twenty five percent (0.25%) per annum.

The Borrower may specify a maximum amount for the fixed Interest Rate in respect of each Drawdown in the Drawdown Request. If the fixed Interest Rate as calculated on the Rate Setting Date exceeds the maximum amount for the fixed Interest Rate specified in the relevant Drawdown Request, such Drawdown Request shall be automatically cancelled and the amount of the requested Drawdown specified in the cancelled Drawdown Request shall be credited to the Available Credit.

4.2 Calculation and payment of interest

The Borrower shall pay accrued interest on each Payment Date.

The amount of interest payable by the Borrower on a relevant Payment Date and for a relevant Interest Period shall be equal to the sum of any interest owed by the Borrower on the amount of the Outstanding Principal in respect of each Drawdown. Interest owed by the Borrower in respect of each Drawdown shall be calculated on the basis of:

- (i) the Outstanding Principal owed by the Borrower in respect of the relevant Drawdown as at the immediately preceding Payment Date or, in the case of the first Interest Period, on the corresponding Drawdown Date;
- (ii) the exact number of days which have accrued during the relevant Interest Period on the basis of a three hundred and sixty (365) day year; and
- (iii) the applicable Interest Rate determined in accordance with the provisions of Clause 4.1 (*Interest Rate*).

4.3 Late payment and default interest

(a) Late payment and default interest on all amounts due and unpaid (except for interest)

If the Borrower fails to pay any amount payable by it to the Lender under the Agreement (whether a payment of principal, a Prepayment Indemnity, any fees or incidental expenses of

any kind except for any unpaid overdue interest) on its due date, interest shall accrue on the overdue amount, to the extent permitted by law, from the due date up to the date of actual payment (both before and after an arbitral award, if any) at the Interest Rate applicable to the current Interest Period (default interest) increased by three point five per cent (3.5%) (late-payment interest). No formal prior notice from the Lender shall be necessary.

(b) **Late payment and default interest on unpaid overdue interest**

Interest which has not been paid on its due date shall bear interest, to the extent permitted by law, at the Interest Rate applicable to the on-going Interest Period (default interest) increased by three point five per cent. (3.5%) (late-payment interest), to the extent that such Interest has been due and payable for at least one (1) year. No formal prior notice from the Lender shall be necessary.

The Borrower shall pay any outstanding interest under this Clause 4.3 (*Late payment and default interest*) immediately on demand by the Lender or on each Payment Date following the due date for the outstanding payment.

- (c) Receipt of any payment of late payment interest or default interest by the Lender shall neither imply the grant of any payment extension to the Borrower, nor operate as a waiver of any of the Lender's rights hereunder.

**4.4 Communication of Interest Rates**

The Lender shall promptly notify the Borrower of the determination of each Interest Rate in accordance with this Agreement.

**4.5 Effective global rate (*taux effectif global*)**

In order to comply with Articles L. 313-1, L.313-2 and R.313-1 *et seq.* of the French Consumer Code and L. 313-4 of the French Monetary and Financial Code, the Lender represents to the Borrower, and the Borrower acknowledges, that the effective global rate (*taux effectif global*) applicable to the Facility may be calculated at an annual rate of nine point forty two per cent (9.42%) on the basis of a three hundred and sixty-five (365) day year, and for an Interest Period of six (6) months at a period rate of four point seventy one per cent (4.71%), subject to the following:

- (a) the above rates are given for information purposes only;
- (b) the above rates are calculated on the basis that:
  - (i) drawdown of the Facility is in full on the Signing Date;
  - (ii) no Drawdown made available to the Borrower will bear interest on the floating rate; and
  - (iii) the fixed rate for the duration of the facility should be equal to nine point zero seven per cent (9.07%); and
- (c) the above rates take into account the commissions and costs payable by the Borrower under this Agreement, assuming that such commissions and costs will remain fixed and will apply until the expiry of the term of this Agreement.

## **5. MARKET DISRUPTION**

- (a) If a market disruption event affects the interbank market in South Africa such that it is impossible to determine the Fixed Rate on a Rate Setting Date for a requested Drawdown, the Lender shall inform the Borrower without delay.
- (b) Upon the occurrence of the event described in paragraph (a) above, the Drawdown request shall be automatically cancelled and the amount of the requested Drawdown specified in the cancelled Drawdown Request shall be credited to the Available Credit.

## **6. FEES**

### **6.1 Cancellation fee**

If the Facility is cancelled in full or in part in accordance with the terms of Clauses 8.3 (*Cancellation by the Borrower*) and/or 8.4 (*Cancellation by the Lender*), the Borrower shall pay a cancellation fee computed at two point five percent (2.5%) on the cancelled amount of the Facility.

Each cancellation fee is payable on the Payment Date immediately following a cancellation of all or part of the Facility.

## **7. REPAYMENT**

Following expiry of the Grace Period, the Borrower shall repay the Lender the principal amount of the Facility in twenty six (26) equal semi-annual instalments, due and payable on each Payment Date.

The first instalment shall be due and payable on May 20<sup>th</sup>, 2017 and the last instalment shall be due and payable on November 20<sup>th</sup>, 2029.

At the end of the Drawdown Period, the Lender shall deliver to the Borrower an amortisation schedule in respect of the Facility taking into account, if applicable, any potential cancellation of the Facility pursuant to 8.3 (*Cancellation by the Borrower*) and/or 8.4 (*Cancellation by the Lender*).

## **8. PREPAYMENT AND CANCELLATION**

### **8.1 Voluntary prepayment**

No prepayment of the whole or any part of the Facility shall be allowed prior to the expiration date of a seven year and six month time period starting on the Signing Date.

As from the date referred to in the previous paragraph, the Borrower may prepay the whole or any part of the Facility, subject to the following conditions:

- (a) the Borrower shall notify the Lender of its intention to prepay by not less than thirty (30) Business Days' written and irrevocable notice prior to the contemplated prepayment date;
- (b) the amount to be prepaid shall be equal to one or several instalment(s) in principal;
- (c) the contemplated prepayment date shall be a Payment Date;

- (d) all prepayments shall be made together with the payment of accrued interest, any fees, indemnities and related costs in connection with the prepaid amount as provided under this Agreement;
- (e) there is no outstanding amount.

No later than the Payment Date on which the prepayment is made, the Borrower shall pay the full amount of the Prepayment Indemnities due and payable pursuant to Clause 9.2 (*Prepayment Indemnity*).

The Borrower may not re-borrow the whole or any part of the Facility which has been prepaid or cancelled.

## 8.2 Mandatory prepayment

The Borrower shall prepay the whole or part of the Facility within thirty (30) calendar days (except if the Parties agree otherwise) upon receipt of a notice from the Lender informing the Borrower or mentioning the occurrence, as the case may be, of any of the following events:

- (a) Illegality: it becomes unlawful for the Lender pursuant to its applicable law to perform any of its obligations as contemplated by this Agreement or to fund or maintain the Facility;
- (b) Additional Costs: the amount of any Additional Costs referred to in Clause 9.4 (*Additional Costs*) is significant and likely to adversely affect the Borrower's financial situation and the Borrower has refused to pay such Additional Costs;
- (c) Change in Prevailing Circumstances: the Parties hereby acknowledge that this Agreement has been entered into on the basis of (i) the economic, political, financial, fiscal and monetary circumstances prevailing in South Africa and France at the Signing Date, and (ii) the economic, financial, fiscal and monetary circumstances prevailing internationally (all these circumstances being collectively referred to in this Clause 8.2 (c) (*Change in Prevailing Circumstances*) as the "**Prevailing Circumstances**") at the Signing Date. Therefore, the Parties agree that if it becomes unlawful or impossible for a Party (the "**Affected Party**") to perform any of its obligations under this Agreement due to a material change in the Prevailing Circumstances, the following procedure shall be followed:
  - the Affected Party shall immediately notify the other Party in writing of the existence of such material change. The availability of the Credit Facility to the Borrower shall be suspended from the date of such written notice;
  - following delivery of the above mentioned written notice, the Parties shall attempt to negotiate a mutually acceptable means of continuing this Agreement; and
  - if no agreement is reached between the Parties within ninety (90) calendar days following receipt of the written notice referred to in the first subparagraph of paragraph (c) above, the Lender shall notify the Borrower of the termination of this Agreement and the Borrower shall pay to the Lender all amounts payable by it as provided for in Clause 8.2 (*Mandatory Prepayment*) at the latest on the tenth (10<sup>th</sup>) calendar day following the notification of termination.
- (d) Failure to justify use of funds: the Borrower fails to provide the Lender at the latest within three (3) months from the Technical Completion Date with a list of the capital expenditure financed with external funds for an amount at least equal to the Facility

from the Signing Date up to the Technical Completion Date. In this case the amount to be prepaid by the Borrower shall be the difference between the total amount of funds withdrawn under the Facility and the amount of capital expenditure financed with external debt.

(e) Withdrawal or suspension of the Programme:

- (i) the implementation of the Programme is suspended or postponed for a period exceeding six (6) months; or
- (ii) the Borrower withdraws from, or ceases to participate in, the Programme.

(f) Default: the Lender declares an Event of Default in accordance with Clause 13 (*Events of Defaults*);

In the events referred to under Clauses (a), (b) and (c) above, the Lender shall attach to the notification of the above mentioned early termination event, a legal opinion from an international law firm having an office in Paris or Johannesburg, as the case may be, chosen by the Lender among the five law firms listed in Schedule 9 (*List of Agreed International Law Firm*) certifying the occurrence of the early termination event according to the applicable Law.

In the case of each of the events specified in paragraphs Clauses (a) to (e) above, the Lender reserves the right, after having notified the Borrower in writing, to exercise its rights as a creditor in the manner specified in paragraph (b) of Clause 13.2 (*Acceleration*).

8.3 Cancellation by the Borrower

Prior to the Deadline for Drawdown, the Borrower may cancel the whole or any part of the Available Credit by giving the Lender a three (3) Business Days' prior notice.

Upon receipt of such notice of cancellation, the Lender shall cancel the amount notified by the Borrower.

8.4 Cancellation by the Lender

The Available Credit shall be immediately cancelled upon delivery of a notice to the Borrower which shall be immediately effective, if:

- (a) the Available Credit is not equal to zero on the Deadline for Drawdown;
- (b) an Event of Default has occurred and is continuing; or
- (c) an event referred to in Clause 8.2 (*Mandatory prepayment*) has occurred,

except where, in the case of paragraph (a) of this Clause 8.4 (*Cancellation by the Lender*), the Lender has proposed to postpone the Deadline for Drawdown or the deadline for the first Drawdown on the basis of new financial conditions which will apply to any Drawdowns under the Available Credit and the Borrower has agreed on the proposition.

8.5 Restrictions

- (a) Any notice of prepayment or cancellation given by a Party pursuant to this Clause 8 (*Prepayment and Cancellation*) shall be irrevocable, and, unless otherwise provided in this Agreement, any such notice shall specify the date or dates on which the relevant

prepayment or cancellation is to be made and the amount of that prepayment or cancellation.

- (b) The Borrower shall not prepay or cancel all or any part of the Facility except at the times and in the manner expressly provided for in this Agreement.
- (c) Any prepayment under this Agreement shall be made together with payment of (i) accrued interest on the prepaid amount, (ii) outstanding fees, and (iii) the Prepayment Indemnity referred to in Clause 9.2 (*Prepayment Indemnity*) below.
- (d) Any prepayment amount will be applied against the remaining instalments in inverse order of maturity.

## 9. ADDITIONAL PAYMENT OBLIGATIONS

### 9.1 Costs and expenses

- 9.1.1 If an amendment to the Agreement is required, the Borrower shall reimburse to the Lender all costs (including legal fees), if any, reasonably incurred in responding to, evaluating, negotiating or complying with that requirement.
- 9.1.2 The Borrower shall reimburse to the Lender all costs and expenses (including legal fees) incurred by it in connection with the enforcement or preservation of any of its rights under the Agreement.
- 9.1.3 The Borrower shall pay directly or, if applicable, reimburse the Lender in case of an advance made by the Lender, the amount of all costs and expenses in connection with the transfer of funds to, or for the account of, the Borrower from Paris to any other place agreed with the Lender, as well as any transfer fees and expenses in connection with the payment of all sums due under the Facility.

### 9.2 Prepayment Indemnity

On account of any losses suffered by the Lender on its refinancing as a result of the prepayment of the whole or any part of the Facility in accordance with Clauses 8.1 (Voluntary Prepayment) and 8.2 (Mandatory Prepayment) the Borrower shall pay to the Lender an indemnity calculated on the prepaid portion of the Credit Facility and the corresponding prepaid Drawdown(s) as follows:

- in the event the Fixed Rate applicable to each prepaid Drawdown increased by two hundred (200) basis points is less than or equal to the Reinvestment Rate, no indemnity shall be due; and
- in the event the Fixed Rate applicable to each prepaid Drawdown increased by two hundred (200) basis points (the "**Increased Rate**") is greater than the Reinvestment Rate, the Borrower shall pay to the Lender an amount equal to the discounted difference calculated on the basis of the Lender's loss as valued at the date of prepayment, between (i) the interest at the Increased Rate which the prepaid Drawdown would have produced with no prepayment, and (ii) the interest which would be produced by a reinvestment of an amount equivalent to the corresponding prepaid Drawdown and having the same amortisation schedule.

For the purposes of the present value calculation, the Parties agree that (i) the discount rate shall be equal to the Reinvestment Rate and that the calculation date shall be the prepayment date.

### 9.3 Taxes and Duties

#### 9.3.1 Registration costs

The Borrower shall pay directly or, if applicable, reimburse the Lender in case of an advance made by the Lender, the costs of all stamp duty, registration and other similar taxes payable in respect of the Agreement and any potential amendment to the Agreement.

#### 9.3.2 Withholding Tax

The Borrower undertakes that all payments made to the Lender under this Agreement shall be free of any Withholding Tax.

If a Withholding Tax is required by law, the Borrower undertakes to gross-up the amount of any such payment to such amount which leaves the Lender with an amount equal to the payment which would have been due if no payment of Withholding Tax had been required.

The Borrower shall reimburse to the Lender all expenses, and/or Taxes for the Borrower's account which have been paid by the Lender (if applicable), with the exception of any Taxes due in France.

### 9.4 Additional Costs

The Borrower shall pay to the Lender, within ten (10) Business Days of the Lender's request, all Additional Costs incurred by the Lender as a result of: (i) the coming into force of any new law or regulation, or any amendment to, or any change in the interpretation or application of any existing law or regulation; or (ii) compliance with any law or regulation made after the Signing Date.

In this Clause, "Additional Costs" means:

- (i) any reduction in the rate of return from the Facility or on the Lender's overall capital;
- (ii) any additional or increased cost; or
- (iii) any reduction of any amount due and payable under the Agreement,

which is incurred or suffered by the Lender to the extent that it is attributable to the Lender having entered into the Agreement or funding or performing its obligations under any of the Agreement.

### 9.5 Currency indemnity

If any sum due by the Borrower under the Agreement, or any order, judgment or award given or made in relation to such a sum, has to be converted from the currency in which that sum is payable into another currency, for the purpose of:

- (i) making or filing a claim or proof against the Borrower; or
- (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

the Borrower shall indemnify the Lender against and, within three (3) Business Days of the Lender's request and as permitted by law, pay to the Lender, the amount of any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between: (A) the exchange rate used to convert the relevant sum from the first currency to the second currency; and (B) the exchange rate or rate(s) available to the Lender at the time of its receipt of that sum. This obligation to indemnify the Lender is independent of any other obligation of the Borrower under the Agreement.

The Borrower waives any right it may have in any jurisdiction to pay any amount due under the Agreement in a currency or currency unit other than that in which it is expressed to be payable.

#### 9.6 Due dates

Any indemnity or reimbursement payable by the Borrower to the Lender under this Clause 9 (*Additional Payment Obligations*) is due and payable on the Payment Date immediately following the circumstances which have given rise to the relevant indemnity or reimbursement.

Notwithstanding the above, any indemnity to be paid in connection with a prepayment pursuant to Clause 9.2 (*Prepayment Indemnity*) is due and payable on the date of the relevant prepayment.

### 10. **REPRESENTATIONS AND WARRANTIES**

All the representations and warranties set out in this Clause 10 (*Representations and Warranties*) are made by the Borrower for the benefit of the Lender on the Signing Date. All the representations and warranties in this Clause 10 (*Representations and Warranties*) are also deemed to be made by the Borrower on the date on which all of the conditions precedent listed in Part II of Schedule 4 (*Conditions Precedent*) are satisfied, on the date of each Drawdown Request, on each Drawdown Date and on each Payment Date, except that:

- (a) the repeating representations contained in Clause 10.10 (*No misleading information*) are deemed to be made by the Borrower in relation to the information provided by the Borrower since the date on which the representation was last made; and
- (b) the repeating representations contained in Clause 10.11 (*Initial Financial Statements and Financial Forecasts*) are deemed to be made on the basis of the latest Annual Report and approved budget provided to the Lender under Clause 12.1 (*Financial Information*).

#### 10.1 Binding Obligations

On fulfilment of the Conditions Precedent in Schedule 4 and signature of this Agreement, the Borrower's obligations under the Agreement constitute valid and binding obligations of the Borrower under South African law, enforceable in accordance with their terms. They may be enforced by a court of law or by means of arbitration in accordance with the arbitration procedure provided for under Clause 17.1 (*Arbitration*).

#### 10.2 Power and authority

The Borrower has the power to enter into, perform and deliver the Agreement and to perform all contemplated obligations. The Borrower has taken all necessary action to authorise its entry into, performance and delivery of the Agreement and the transactions contemplated by those Agreement.

The Borrower has complied with all procedures and notice periods binding upon it in terms of the MFMA applicable to the negotiation and signing of this Agreement.

10.3 Validity and admissibility in evidence

All Authorisations required:

- (a) to enable the Borrower to lawfully enter into, and exercise its rights and comply with its obligations under, the Agreement; and
- (b) to make the Agreement admissible in evidence in the courts of the jurisdiction of incorporation of the Borrower or in arbitration proceedings,

have been obtained and are in full force and effect and no circumstances exist which could result in the revocation, non-renewal or modification, in whole or in part, of any such Authorisations.

10.4 Registration Costs and Stamp Duties

Under the laws of South Africa, it is not necessary that the Agreement be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar taxes or fees be paid on or in relation to the Agreement or the transactions contemplated therein.

10.5 Binding obligations

The obligations expressed to be assumed by the Borrower under the Agreement comply with all laws and regulations applicable to the Borrower in South Africa and are legal, valid, binding and enforceable obligations which are effective in accordance with their written terms.

10.6 Free transfer of funds

The Borrower has been granted all necessary control approvals and consents by the South African Reserve Bank in terms of the applicable Exchange Control Regulations, to transfer freely to France all amounts due by the Borrower to the Lender under the Agreement.

10.7 No conflict with other obligations

The entry into, and performance by the Borrower of, and the transactions contemplated by, the Agreement do not conflict with any applicable South African laws and/or regulations, its constitutional documents (or any similar documents) or any agreement or instrument binding upon the Borrower or affecting any of its assets.

10.8 Governing law and enforcement

The choice of French law as the governing law of this Agreement will be recognised and enforced by the courts and arbitration tribunals in South Africa.

Any judgment obtained in relation to this Agreement in a French court or any award by an arbitration tribunal will be recognised and enforced in South Africa.

10.9 No default

No Event of Default is continuing or is reasonably likely to occur.

No breach of the Borrower is continuing in relation to any other agreement binding upon it, or affecting any of its assets, which has, or is reasonably likely to have, a Material Adverse Effect.

**10.10 No misleading information**

All information and documents supplied by the Borrower to the Lender were true, accurate and up-to-date as at the date they were provided or, if appropriate, as at the date at which they are stated to be given and have not been varied, revoked, cancelled or renewed on revised terms, and are not misleading in any material respect as a result of an omission, the occurrence of new circumstances or the disclosure or non-disclosure of any information.

**10.11 Initial Financial Statements and Financial Forecasts**

The Borrower's Initial Financial Statements were prepared in accordance with the Applicable Accounting Principles and give a true and fair view of the Borrower's financial condition and results of operations for the relevant financial year.

In relation to the Initial Financial Statements, there has been no Material Adverse Effect since 1<sup>st</sup> of July 2014.

The Financial Forecasts were prepared by the Borrower in accordance with the Applicable Accounting Principles and give a true and fair view of the Borrower's projected financial condition and projected results of operations.

**10.12 Procurement**

N/A

**10.13 Pari passu ranking**

The Borrower's payment obligations under the Agreement rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors.

**10.14 Origin of funds, Acts of Corruption, Fraud and Anti-Competitive Practices**

The Borrower represents and warrants that:

- (i) the Borrower's funds, other than those coming from its own budget, invested in the Programme are not of Illicit Origin; and
- (ii) the Programme (in particular, the negotiation, award and performance of any contracts financed with the Facility) has not given rise to any Act of Corruption, Fraud or Anti-Competitive Practices.

**10.15 No Material Adverse Effect**

The Borrower represents and warrants that no event or circumstance which is likely to have a Material Adverse Effect has occurred or is likely to occur.

**11. UNDERTAKINGS**

The undertakings in this Clause 11 (*Undertakings*) take effect on the Signing Date and remain in full force and effect for as long as any amount is outstanding under the Agreement.

11.1 Use of the Credit Facility

The Borrower undertakes to use the Credit Facility pursuant to the provisions of Clause 2.2 (*Purpose*).

11.2 Compliance with laws and regulations

The Borrower shall:

- (a) comply in all respects with all laws and regulations to which it and/or the Programme is subject, particularly in relation to all applicable environmental protection, safety and labour laws;
- (b) comply with all of its obligations under the documents relating to the Programme;
- (c) file all of its tax returns and pay and discharge all Taxes within the time period allowed, unless and only to the extent that such payment is being contested by the Borrower in good faith and provision is made and maintained for those Taxes and is disclosed in the Borrower's Financial Statements; and
- (d) obtain, maintain in full force and effect and comply in all material respects with, all provisions, conditions and restrictions (if any) set out in any authorisation, approval or decision of any administration, public authority or tribunal, and do all that is necessary under any applicable law or regulation to ensure that it performs its obligations pursuant to any such authorisation, approval or decision.

11.3 Borrower's Budget

The Borrower undertakes to allocate each year, as mandatory expenses in its budget, the amount of money required for the payment of the debt service (principal, interest, fees and expenses) due by the Borrower under this Agreement.

11.4 Authorisations

The Borrower shall promptly obtain, comply with and do all that is necessary to maintain in full force and effect any Authorisation required under any applicable law or regulation to enable it to perform its obligations under the Agreement and to ensure the legality, validity, enforceability and admissibility in evidence of the Agreement or document relating to the Programme.

11.5 Activities of the Borrower

The Borrower shall implement the Programme in accordance with the generally accepted principles as far as care and business practices are concerned and in accordance with the technical standards in force.

11.6 Preservation of assets

The Borrower shall (i) maintain the assets of the Programme in accordance with all applicable laws and regulations and in good operating and maintenance conditions; and (ii) use such assets in compliance with their purpose and all applicable laws and regulations.

#### 11.7 Procurement

In relation to the procurement, award and performance of contracts entered into in connection with the implementation of the Programme, the Borrower undertakes to comply with, and implement, applicable South African laws relating to public procurement.

#### 11.8 Environmental and social responsibility

In order to promote sustainable development, the Parties agree that it is necessary to promote compliance with internationally recognised environmental and labour standards, including conventions of the International Labour Organization ("ILO") and the international environmental laws and regulations applicable in the Borrower's jurisdiction of incorporation. For such purpose, the Borrower shall:

- (a) with respects to its activities:
- (b) comply with international standards for the protection of the environment and labour laws, including the fundamental conventions of the ILO and the international environmental conventions, in accordance with the applicable laws and regulations of the country in which the Programme is being implemented.

#### 11.9 Financial ratios

The Borrower undertakes to comply with the following Financial Ratios:

- (a) the Debt to Operating Cash Flow Ratio shall be lower than six (6); and
- (b) the Debt Service Coverage Ratio shall be higher than one point three (1.3).

#### 11.10 Rendez-vous Clause

If the Financial Ratio Certificate shows that Borrower does not comply with one or more Financial Ratios, the Parties shall meet within ten (10) Business Days from the date of receipt by the Lender of the Financial Ratio Certificate to analyse the Borrower's financial situation and attempt to negotiate an acceptable remedy to the breach.

If no agreement is reached between the Parties within sixty (60) calendar days following their first meeting, the Lender shall notify the Borrower of the termination of this Agreement and the Borrower shall immediately pay to the Lender all amounts due and payable by it, as provided for in Clause 8.2 (*Mandatory Prepayment*).

#### 11.11 Pari passu ranking

The Borrower undertakes (i) to ensure that its payment obligations under this Agreement rank at all times at least *pari passu* with its other present and future unsecured and unsubordinated payment obligations; (ii) not to grant prior ranking or guarantees to any other lenders except if the same ranking or guarantees are granted by the Borrower in favour of the Lender, if so requested by the Lender.

#### 11.12 Inspections

The Borrower hereby authorizes the Lender and its representatives to carry out inspections, the purpose of which will be to assess the implementation of the Programme and the impact and fulfilment of the Programme's objectives, as well as the accounting and financial position of the Borrower, its Financial Statements, management organisation and information systems.

The Borrower shall (i) co-operate and provide all reasonable assistance and information to the Lender and its representatives when carrying out such inspections, the timing and format of which shall be determined by the Lender following consultation with the Borrower; and (ii) provide the Lender and its representatives with access to its financial records, premises and any other location where the Programme is or will be implemented.

The Borrower shall retain, and make available for inspection by the Lender, all documents relating to the use of funds of the Facility for a period of ten (10) years from the Deadline for Drawdown.

#### 11.13 Programme Evaluation

The Borrower acknowledges that the Lender may carry out, or procure that a third party carries out on its behalf, an evaluation of the Programme. This evaluation will be used to produce a performance report containing information on the Programme, such as total amount and duration of the Facility, objectives of the Programme, the expected and actual performance of the Programme, assessment of its relevance, efficiency, impact and viability/sustainability.

#### 11.14 Business Relationships

The Borrower undertakes:

- (i) not knowingly to enter into a Business Relationship with any person or entity which appear on any Financial Sanctions List; and
- (ii) not to purchase or supply any equipment or to perform any activity in any sector which is subject to an Embargo by the United Nations, the European Union or France.

#### 11.15 Origin of funds, no Acts of Corruption, Fraud or Anti-Competitive Practices

The Borrower undertakes:

- (i) to ensure that its funds invested in the Programme, other than those coming from its own budget and the Credit Facility, will not be of Illicit Origin;
- (ii) to ensure that the Programme (in particular during the negotiation, award and performance of the contracts financed with the Facility) shall not give rise to any Act of Corruption, Fraud or Anti-Competitive Practice;
- (iii) as soon as it becomes aware of, or suspects, any Act of Corruption, Fraud or Anti-Competitive Practice, to inform the Lender without any delay;
- (iv) in the event referred to in paragraph (iii) above, or at the Lender's request if the Lender suspects that the acts or practices referred to in paragraph (iii) have occurred, to take all necessary actions to remedy the situation in a manner satisfactory to the Lender and within the time period determined by the Lender;
- (v) to notify the Lender without any delay if it has knowledge of any information which leads it to suspect the Illicit Origin of its equity and quasi equity or any funds invested in the Programme; and
- (vi) to inform the Lender of any change to its statutes which publication is prescribed by law.

#### 11.16 Notice on Default

The Borrower undertakes to immediately inform the National Treasury of South Africa and the Provincial Treasury of the Gauteng Province after becoming aware of (i) any event which is likely to affect the Borrower's ability to meet its repayment obligations under this Agreement and (ii) any failure to meet its repayment obligations under this Agreement.

The Borrower undertakes to inform the National Treasury of South Africa of its failure to meet any of its obligations under this Agreement that constitutes an Event of Default within four (4) Business Days of the occurrence of that Event of Default.

### **12. INFORMATION UNDERTAKINGS**

The undertakings in this Clause 12 (*Information Undertakings*) take effect on the Signing Date and remain in full force and effect for as long as any amount is outstanding under this Agreement.

#### 12.1 Financial Information

12.1.1 The Borrower shall supply to the Lender on an annual basis:

- (a) no later than thirty (30) Business Days the relevant approval by the Municipal Council and the Mayor pursuant to the MFMA, the total budget of the Borrower in respect of each financial year, including the Financial Forecasts;
- (b) no later than thirty (30) Business Days after the date of the Municipal Council which has approved the Annual Report, with the relevant certified Annual Report, including the Auditors' report and the Financial Statements;

12.1.2 The Borrower shall supply to the Lender on a semi yearly basis (i) no later than thirty (30) Business Days after the date of the Municipal Council which has approved the Annual Report and (ii) six (6) months after the delivery of the previous one, a Ratio Certificate signed by a duly authorized representative of the Borrower setting out each financial ratio specified in Clause 11.9 (*Financial Ratios*) at the same time as it supplies the Financial Statements to the Lender in accordance with this Clause 12.1 (*Financial Information*)

#### 12.2 Credit Rating

The Borrower shall provide the Lender with all reports and information in relation to any change to its Rating as determined by the Borrower's Rating Agency within thirty (30) calendar days after any such change has occurred.

#### 12.3 Progress Report

Until the Technical Completion Date, the Borrower shall supply to the Lender:

- (i) on a yearly basis, a list of the capital expenditure financed with external funds;
- (ii) on a yearly basis, a performance report based on the policy indicators set out in Schedule 2B (Policy Matrix) and any relevant information regarding the steps taken by the Borrower for the implementation of the Program;
- (iii) Within three (3) months after the Technical Completion Date, the aggregate list of capital expenditure financed with external funds from the Signing Date of the Agreement up to the Technical Completion Date.

Within three (3) months after the Technical Completion Date, the Borrower shall supply to the Lender a general progress report in relation to the implementation of the Programme.

12.4 Information - Miscellaneous

The Borrower shall supply to the Lender:

- (a) immediately upon becoming aware of them, details of any event or circumstance which is or may be an Event of Default or which has or may have a Material Adverse Effect, the nature of such an event and all the actions taken or to be taken to remedy it (if any);
- (b) promptly upon becoming aware of them, detailed information regarding any litigation, arbitration or administrative proceedings which are current, threatened or pending against the Borrower and which might, if adversely determined, have a Material Adverse Effect;
- (c) promptly upon becoming aware of them, details of any incident or accident directly related to the implementation of the Programme which might have a significant impact on the Programme site, the working conditions of its employees or any contractors' employees, the nature of such incident or accident, together with details of any action taken or proposed to be taken, as applicable, by the Borrower to remedy it;
- (d) promptly, details of any decision or event which might affect the organisation, completion or operation of the Programme;
- (e) promptly, any further information regarding its financial condition, assets and operations or any documents or other communications given or received by it under any Programme Document that the Lender may reasonably request.

13. **EVENTS OF DEFAULTS**

13.1 Events of Default

Each of the events or circumstances set out in this Clause 13.1 (*Events of Default*) is an Event of Default.

(a) **Payment Default**

The Borrower does not pay on the due date any amount payable by it under this Agreement in the manner required under this Agreement. However, without prejudice to Clause 4.3 (*Late Payment and Default Interest*), no Event of Default will occur under this paragraph (a) if such payment is made in full by the Borrower within ten (10) Business Days of the due date.

(b) **Agreement**

The Agreement, or any of the rights and obligations set out therein, ceases to be in full force and effect, or its validity, legality or enforceability is challenged.

No Event of Default will occur pursuant to this paragraph (b) if (i) the challenge or notice of termination is withdrawn within thirty (30) calendar days after the date on which the Lender informed the Borrower of such challenge or notice or the Borrower became aware of such challenge or notice; and (ii), according to the opinion of the

Lender, such dispute or request has not had a Material Adverse Effect during such thirty (30) day period.

**(c) Undertakings and Obligations**

The Borrower does not comply with any term of the Agreement, including, without limitation, any of the undertakings it has given pursuant to Clause 11 (*Undertakings*) and Clause 12 (*Information Undertakings*).

Save for the undertakings given pursuant to Clauses 11.14 (*Business Relationships*), 11.15 (*Origin of funds, no Acts of Corruption, Fraud or Anticompetitive Practices*), and 11.8 (*Environmental and Social Responsibility*) in respect of which no grace period is permitted, no Event of Default will occur under this paragraph (c) if the non-compliance is capable of remedy and is remedied within ten (10) Business Days of the earlier of (A) the date of the Lender's notice of failure to the Borrower; and (B) the Borrower becoming aware of the breach or within the time limit determined by the Lender in the case referred to in subparagraph (iv) of 11.15 (*Origin of funds, no Acts of Corruption, Fraud or Anticompetitive Practices*).

**(d) Misrepresentation**

A representation or warranty made by the Borrower in the Agreement, including under Clause 10 (*Representations and Warranties*), or in any document delivered by or on behalf of the Borrower under or in relation to the Agreement, is incorrect or misleading when made or deemed to be made.

**(e) Cross default**

- (i) Subject to paragraph (ii), any financial indebtedness of the Borrower is not paid on its due date or, if applicable, within any grace period granted pursuant to the relevant documentation.
- (ii) A creditor has cancelled or suspended its commitment towards the Borrower pursuant to any financial indebtedness, or has declared the financial indebtedness due and payable prior to its specified maturity, or requested prepayment in full of the financial indebtedness, in each case, as a result of an event of default or any provision having a similar effect (howsoever described) pursuant to the relevant documentation.
- (iii) No Event of Default will occur under this Clause 13.1 (e) if the relevant amount of financial indebtedness or the commitment for Financial Indebtedness falling within paragraphs (i) and (ii) above is less than fifty million Rand (ZAR 50,000,000) (or its equivalent in any other currency(ies)).
- (iv) If either the relevant amount of financial indebtedness or the commitment for Financial Indebtedness falling within paragraphs (i) and (ii) above is equal or higher than fifty million Rand (ZAR 50,000,000) (or its equivalent in any other currency(ies)), or in the event referred in paragraph (ii) above the Borrower has filed a claim the relevant creditor, the Parties shall meet within ten (10) Business Days from the date of receipt by the Borrower of the Lender's notification and attempt to negotiate an agreement to remedy the Event of Default.

If the Event of Default cannot be remedied or if no agreement is reached between the Parties within thirty (30) calendar days following their first meeting, the Lender will be entitled to declare the Event of Default.

**(f) Insolvency**

The Borrower is unable, or admits its inability, to pay its debts as they fall due, suspends making payments of any of its debts or, by reason of actual or anticipated financial difficulties, begins negotiations with one or more of its creditors for the rescheduling or restructuring of any of its indebtedness.

**(g) Provincial Intervention, Debt Relief and Restructuring**

The Member of Executive Council of the Provincial Treasury of the Gauteng province intervenes for financial problems in accordance with Chapter 13 of the MFMA.

The Borrower makes an application to the High Court for debt relief or restructuring because it is unable to meet its financial commitments as contemplated in Chapter 13 of the MFMA.

**(h) Material adverse change**

Any event (including a change in the political situation in South Africa or a suspension of currency convertibility and free transfers) or any measure which is likely, according to the Lender's opinion, to have a Material Adverse Effect occurs or is likely to occur.

**(i) Intervention by an Authority**

An Authority:

- (i) decides to close, seize or expropriate several of the Borrower's assets which are required to continue its activities; or
- (ii) takes possession or control of any of the Borrower's assets which are required to continue its activities; or
- (iii) takes any other measure that would prevent the Borrower from continuing all or part of its activities or operations.

**(j) Judgments, rulings or decisions having a Material Adverse Effect**

Any judgment or arbitral award or any judicial or administrative decision affecting the Borrower has or is reasonably likely to have a Material Adverse Effect or one or more steps or proceedings is/are commenced which has/have or is/are reasonably likely, according to the opinion of the Lender, to have a Material Adverse Effect or makes/make it unlikely that the Borrower will be able to perform any of its obligations under the Agreement.

**(k) Audit**

The Auditors refuse to certify or issue an opinion regarding the Financial Statements of the Borrower.

**(l) Rating**

The Borrower no longer has a Rating, and the Parties fail to agree on an alternative solution within twenty (20) Business Days.

### **13.2 Acceleration**

On and at any time after the occurrence of an Event of Default, the Lender may, without providing any formal demand or commencing any judicial or extra-judicial proceedings, by written notice to the Borrower:

- (a) cancel the Available Credit; and/or
- (b) declare that all or part of the Facility, together with any accrued or outstanding interest and all other amounts outstanding under this Agreement, are immediately due and payable.

Without prejudice to the above, in the event that an Event of Default occurs as set out in Clause 13.1 (*Events of Default*), the Lender reserves the right to, upon written notice to the Borrower, (i) suspend or postpone any Drawdowns under the Facility; and/or (ii) suspend the finalisation of any agreements relating to other possible financial offers which have been notified by the Lender to the Borrower; and/or (iii) suspend or postpone any drawdown under any loan agreement entered into between the Borrower and the Lender.

### **13.3 Notification of an Event of Default**

In accordance with Clause 12.4 (*Information - Miscellaneous*), the Borrower shall promptly notify the Lender upon becoming aware of any event which is or is likely to be an Event of Default and inform the Lender of all the measures contemplated by the Borrower to remedy it.

## **14. ADMINISTRATION OF THE FACILITY**

### **14.1 Payments**

All payments received by the Lender under this Agreement shall be applied towards the payment of expenses, fees, interest, principal amounts or any other sum due under this Agreement in the following order:

1. incidental costs and expenses;
2. fees;
3. late-payment interest and default interest;
4. accrued interest;
5. principal repayments.

Any payments received from the Borrower shall be applied first in or towards payment of any sums due and payable under the Facility or under other loans extended by the Lender to the Borrower, should it be in the Lender's interest to apply these sums to such other loans, in the order set out above.

### **14.2 Business Days**

If a payment is due on a day which is not a Business Day, the due date for that payment shall be the next Business Day if the next Business Day is in the same calendar month or the preceding Business Day if the next Business Day is not in the same calendar month.

During any extension of the Payment Date for a principal or unpaid amount under this Agreement, interest shall be payable on that amount during the extension period at the rate applicable on the original Payment Date.

14.3 Currency of payment

The currency of each amount payable under this Agreement is Rand (ZAR).

14.4 Day count convention

Any interest, fee or expense accruing under this Agreement will be calculated on the basis of the actual number of days elapsed and a year of three hundred and sixty (365) days in accordance with South African interbank Market practice.

14.5 Place of payment

(a) Any funds to be transferred by the Lender to the Borrower under the Facility will be paid to the bank account specifically designated for such purpose by the Borrower, provided that the Lender has given its prior consent on the selected bank. Payment shall be made in Rands to a bank account denominated in Rands.

(b) Any payment to be made by the Borrower to the Lender shall be paid on the due date by no later than 11:00 am (Paris time) to the following bank account:

RIB Code: 00828 00018002763 03

IBAN Code: FR76 3000 4008 2800 0180 0276

Banque de France SWIFT code (BIC): BNPAFRPPAC

opened by the Lender at BNP PARIBAS PARIS AGENCE CENTRALE in Paris or any other account notified by the Lender to the Borrower.

(c) The Borrower shall request from the bank responsible for transferring any amounts to the Lender that it provides the following information in any wire transfer messages in a comprehensive manner and in the order set out below:

- Principal: name, address, bank account number
- Principal's bank: name and address
- Reference: name of the Borrower, name of the Project, reference number of the Agreement

(d) All payments made by the Borrower shall comply with this Clause 14.5 (*Place of Payment*) in order for the relevant payment obligation to be deemed as discharged in full.

14.6 Payment Systems Disruption

If the Lender determines (in its discretion) that a Payment Systems Disruption has occurred or the Borrower notifies the Lender that a Payment Systems Disruption has occurred, the Lender:

(a) may, and shall if requested by the Borrower, enter into discussions with the Borrower with a view to agreeing any changes to the operation and administration of the Facility as the Lender may deem necessary in the circumstances; and

- (h) shall not be liable for any cost, loss or liability arising as a result of its taking, or failing to take, any actions pursuant to this Clause 14.6 (*Payment Systems Disruption*), irrespective of whether such act or omission was negligent, grossly negligent or amounted to wilful misconduct or for any other liability, with the exception of fraud.

## 15. MISCELLANEOUS

### 15.1 Language

The language of this Agreement is English. If this Agreement is translated into another language, the English version shall prevail in the event of any conflicting interpretation or in the event of a dispute between the Parties.

All notices given or documents provided under, or in connection with, this Agreement shall be in English.

The Lender may request that a notice or document provided under, or in connection with, this Agreement which is not in English is accompanied by a certified English translation, in which case, the English translation shall prevail unless the document is a statutory document of a company, legal text or other official document.

### 15.2 Certifications and determinations

In any litigation or arbitration arising out of or in connection with this Agreement, entries made in the accounts maintained by the Lender are *prima facie* evidence of the matters to which they relate.

Any certification or determination by the Lender of a rate or amount under this Agreement will be, in the absence of manifest error, conclusive evidence of the matters to which it relates.

### 15.3 Partial invalidity

If, at any time, a term of this Agreement is or becomes illegal, invalid or unenforceable, neither the validity, legality or enforceability of the remaining provisions of this Agreement will in any way be affected or impaired.

### 15.4 No Waiver

Failure to exercise or a delay in exercising, on the part of the Lender, of any right under the Agreement shall not operate as a waiver of that right.

Partial exercise of any right shall not prevent any further exercise of such right or the exercise of any other right or remedy under the applicable law.

The rights and remedies of the Lender under this Agreement are cumulative and not exclusive of any rights and remedies under the applicable law.

### 15.5 Assignment

The Borrower may not assign or transfer, in any manner whatsoever, all or any of its rights and obligations under this Agreement without the prior written consent of the Lender.

The Lender may assign or transfer any of its rights or obligations under this Agreement to any other third party and may enter into any sub-participation agreement relating thereto and shall advise the Borrower in writing, of any such assignment, delegation or transfer within a reasonable period of such assignment, delegation or transfer.

15.6 Legal effect

The Schedules annexed hereto and the recitals hereof form part of this Agreement and have the same legal effect.

15.7 Entire agreement

As of the Signing Date, this Agreement represents the entire agreement between the Parties in relation to the matters set out herein, and supersedes and replaces all previous documents, agreements or understandings which may have been exchanged or communicated as part of the negotiations in connection with this Agreement.

15.8 Amendments

No amendment may be made to this Agreement unless expressly agreed in writing between the Parties.

15.9 Confidentiality - Disclosure of information

(a) Notwithstanding any existing confidentiality agreement, the Lender may disclose any information or documents in relation to the Programme to: (i) its auditors, rating agencies, legal advisers or supervisory bodies; (ii) any person or entity to whom the Lender may assign or transfer all or part of its rights or obligations under the Agreement; and (iii) any person or entity for the purpose of taking any protective measures or preserving the rights of the Lender under the Agreement.

(b) Furthermore, the Borrower hereby expressly authorizes the Lender:

(i) to exchange with the French Republic for publication on the French government website pursuant to any request from International Aid Transparency Initiative; and

(ii) to publish on the Lender's Website;

information relating to the Programme and its financing as listed in Schedule 8 (*Information that may be published on the French Government Website and the Lender's Website*).

15.10 Limitation

The statute of limitations of any claims under this Agreement shall be ten (10) years, except for any claim of interest due under this Agreement.

16. **NOTICES**

16.1 In writing and addresses

Any notice, request or other communication to be given or made under or in connection with this Agreement shall be given or made in writing and, unless otherwise stated, may be given or made by hand delivery with signed receipt or electronic mail to the address and number of the relevant Party set out below:

For the Borrower:

**CITY OF JOHANNESBURG, METROPOLITAN MUNICIPALITY**

Address: 158 Civic Boulevard, Braamfontein, 2001

Telephone: +27 11 407 73 00/09

Attention: Chief Financial Officer

For the Lender:

**AFD – JOHANNESBURG REGIONAL OFFICE**

Address: Ballywoods Office Park, 1<sup>st</sup> Floor, Ironwood, 29 Ballyclare Drive Bryanston  
PO Box 786555, Bryanston, Johannesburg 2146, Gauteng, South Africa

Telephone: + 27 11 540 7100

Attention: Head of the regional office.

Email address: afdjohannesbourg@afd.fr

With a copy to:

**AFD – PARIS HEAD OFFICE**

Address: 5, rue Roland Barthes – 75598 Paris Cedex 12, France

Telephone: + 33 1 53 44 31 31

Attention: Director of Africa Department

Email address: \_afdirection@afd.fr

or such other address, fax number, department or officer as one Party notifies to the other Party.

**16.2 Delivery**

Any notice, request or communication given or made or any document sent by a Party to the other Party in connection with this Agreement will only be effective if by hand delivery, with signed receipt, when delivered to the correct address, and, where a particular person or a department is specified as part of the address details provided under Clause 16.1 (*In writing and Addresses*), if such notice, request or communication has been addressed to that person or department.

**16.3 Electronic communications**

- (a) Any communication made by one person to another under or in connection with this Agreement may be made by electronic mail or other electronic means if the Parties:
- (i) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
  - (ii) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
  - (iii) notify each other of any change to their address or any other such information supplied by them.

- (b) Any electronic communication made between the Parties will be effective only when actually received in a readable form.

## **17. ARBITRATION, ENFORCEMENT AND SERVICE OF PROCESS**

### **17.1 Arbitration**

Any dispute arising out of or in connection with this Agreement shall be referred to and finally settled by arbitration under the Rules of Conciliation and Arbitration of the International Chamber of Commerce applicable on the date of commencement of arbitration proceedings by one or more arbitrators to be appointed in accordance with such Rules.

The seat of arbitration shall be Paris and the language of arbitration shall be English.

This arbitration clause shall remain in full force and effect if this Agreement is declared void or is terminated or cancelled and following expiry of this Agreement. The Parties' contractual obligations under this Agreement are not suspended if a Party initiates legal proceedings against the other Party.

The Parties expressly agree that, by signing this Agreement, the Borrower irrevocably waives all rights of immunity in respect of jurisdiction or performance on which it could otherwise rely.

### **17.2 Service of process**

Without prejudice to any applicable law, the Borrower irrevocably chooses its registered office as at the date of this Agreement at the address set out in Clause 16 (*Notices*) for service of process and the Lender chooses the address set out in Clause 16 (*Notices*) for service of process.

## **18. DURATION**

This Agreement comes into force on the Signing Date and remains in full force and effect for so long as any amount is outstanding under the Agreement.

Notwithstanding the above, the obligations under Clauses 12.4 (e) (*Information - Miscellaneous*) and 15.9 (*Confidentiality - Disclosure of Information*) will remain in full force and effect for a period of five (5) years after the last Payment Date.

Executed in two (2) originals, in Johannesburg, on May 13<sup>th</sup>, 2015.

**BORROWER**

**THE CITY OF JOHANNESBURG, METROPOLITAN MUNICIPALITY**



Represented by:

**Name:** Trevor FOWLER  
**Capacity:** City Manager

En accord entre les parties, les présentes reliées par ASSEMBLACT empêchant toute substitution ou addition, sont seulement signées à la dernière page.

**LENDER**

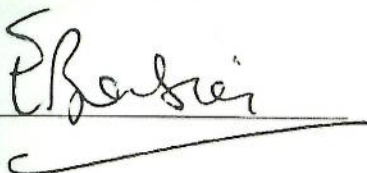
**AGENCE FRANÇAISE DE DÉVELOPPEMENT**

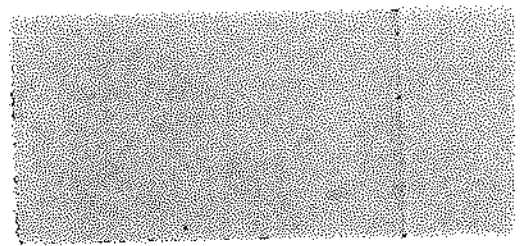


Represented by:

**Name:** Anne PAUGAM  
**Capacity:** Managing Director of Agence Française de Développement

In the presence of the French ambassador, her Excellency Elisabeth BARBIER





## SCHEDULE 1A - DEFINITIONS

<b>Act of Corruption</b>	<p>means any of the following:</p> <ul style="list-style-type: none"> <li>(a) the act of promising, offering or giving, directly or indirectly, to a Public Official or to any person who directs or works, in any capacity, for a private sector entity, an undue advantage of any nature, for the relevant person himself or herself or for another person or entity, in order that this person acts or refrains from acting in breach of his or her legal, contractual or professional obligations and, having for effect to influence his or her own actions or those of another person or entity; or</li> <li>(b) the act of a Public Official or any person who directs or works, in any capacity, for a private sector entity, soliciting or accepting, directly or indirectly, an undue advantage of any nature, for the relevant person himself or herself or for another person or entity, in order that this person acts or refrains from acting in breach of his or her legal, contractual or professional obligations and, having for effect to influence his or her own actions or those of another person or entity.</li> </ul>
<b>Agreement</b>	means this credit facility agreement, including its recitals, Schedules and, if applicable, any amendments made in writing thereto.
<b>Anti-Competitive Practices</b>	<p>means:</p> <ul style="list-style-type: none"> <li>(a) any concerted or implicit action having as its object and/or as its effects to impede, restrict or distort fair competition in a market, including without limitation when it tends to (i) limit market access or free exercise of competition by other companies; (ii) prevent price setting by the free play of markets by artificially favouring the increase or decrease of such prices; (iii) limit or control any production, markets, investment or technical progress; or (iv) share out markets or sources of supply;</li> <li>(b) any abuse by a company or group of companies of a dominant position within a domestic market or in a substantial part thereof; or</li> <li>(c) any bid offer or predatory pricing having, as its object and/ or its effect, to eliminate from a market, or to prevent a company or one of its products from accessing the market.</li> </ul>
<b>Annual Report</b>	means for any given financial year, the Borrower's annual report including its audited consolidated Financial Statements for the period ending on the last day of the said financial year.
<b>Applicable Accounting Principles</b>	means the accounting principles in terms of Section 122 of the MFMA, including the accounting practice prescribed in terms of

	section 91(1)(b) of the Public Finance Management Act (PFMA).
<b>Auditors</b>	means the Borrower's auditors. On the Signing Date, the Auditors are the Auditor General of South Africa. .
<b>Authorisation(s)</b>	means any authorisation, consent, approval, resolution, permit, licence, exemption, filing, notarisation or registration, or any exemptions in respect thereof, obtained from or provided by an Authority, whether granted by means of an act, or deemed granted if no answer is received within a defined time limit, as well as any approval and consent given by the Borrower's creditors.
<b>Authority(ies)</b>	means any government or any body, department or commission exercising a public prerogative, or any administration, court, agency or state or any governmental, administrative, tax or judicial entity.
<b>Availability Period</b>	means the period from the Signing Date up to and including the Deadline for Drawdown.
<b>Available Credit</b>	means, at any given time, the maximum principal amount specified in Clause 2.1 ( <i>Facility</i> ) less (i) the aggregate amount of any Drawdowns drawn by the Borrower; (ii) the amount of any Drawdowns to be made pursuant to any pending Drawdown Request; and (iii) any portion of the Facility which has been cancelled pursuant to Clauses 8.3 ( <i>Cancellation by the Borrower</i> ) and/or 8.4 ( <i>Cancellation by the Lender</i> ).
<b>Average Residual Term</b>	means the average, expressed as a number of calendar days, of terms remaining for each instalment, weighted by the corresponding instalments.
<b>Business Day</b>	means a day (other than a Saturday or Sunday) on which banks are open for general business in Paris (France) and/or in Johannesburg (South Africa).
<b>Business Relationship</b>	means any professional or business relationship of a contractual nature entered into between a third party and the Borrower in connection with the Borrower's ordinary course of trading.
<b>Certified</b>	except if otherwise specified, means for any copy, photocopy or other duplicate of an original document, the certification by a legal representative of the Borrower, or any other duly authorised person, as to the conformity of the copy, photocopy or duplicate with the original document.
<b>Deadline for Drawdown</b>	means June 24 <sup>th</sup> , 2015, date after which no further Drawdown may occur.
<b>Debt Service Coverage Ratio (DSCR)</b>	means the ratio as defined in Schedule 6 (Financial Ratio).

<b>Debt to Operating Cash Flow Ratio</b>	means the ratio as defined in Schedule 6 (Financial Ratio).
<b>Drawdown</b>	means the drawdown of all or part of the funds made available by the Lender to the Borrower in connection with the Facility pursuant to the terms and conditions set out in Clause 3 ( <i>Drawdown of Funds</i> ).
<b>Drawdown Date</b>	means the date on which a Drawdown is made available by the Lender.
<b>Drawdown Period</b>	means the period starting on the first Drawdown Date up to and including the date of the last Drawdown.
<b>Drawdown Request</b>	means a request substantially in the form set out in Schedule 5A ( <i>Form of Drawdown Request</i> ).
<b>Embargo</b>	means any economic sanction aiming at prohibiting any import and/or export (supply, sale or transfer) of one or several goods, products or services going to and/or coming from any country for a given period and as published and amended from time to time by the United Nations, the European Union or France.
<b>Euro(s) or EUR</b>	means the single currency of the member states of the European Economic and Monetary Union, including France, and having legal tender in such Member States.
<b>Event of Default</b>	means an event or circumstance set out in Clause 13.1 ( <i>Events of Default</i> ) or which may constitute an event or circumstance set out in Clause 13.1 ( <i>Events of Default</i> ).
<b>Facility</b>	means the credit facility made available by the Lender in accordance with this Agreement up to the maximum principal amount set out in Clause 2.1 ( <i>Facility</i> ).
<b>Financial Forecasts</b>	means the three (3) year financial projections of the Borrower as provided to the Lender.
<b>Financial Ratios(s)</b>	means the financial ratio(s) set forth under Clause 11.9 (Financial Ratios).
<b>Financial Sanctions List</b>	<p>means the list(s) of specially designated persons, groups or entities which are subject to financial sanctions by the United Nations, the European Union and/or France.</p> <p>For information purposes only and for the convenience of the Borrower, who may not rely on them, the following references or website addresses are provided:</p> <p><b>For the lists maintained by the United Nations</b>, the following website may be consulted:</p>

	<p><a href="http://www.un.org/sc/committees/list_compend.shtml">http://www.un.org/sc/committees/list_compend.shtml</a></p> <p>For the lists maintained by the European Union, the following website may be consulted:</p> <p><a href="http://eeas.europa.eu/cfsp/sanctions/consol-list_en.htm">http://eeas.europa.eu/cfsp/sanctions/consol-list_en.htm</a></p> <p>For the lists maintained by France, the following website may be consulted:</p> <p><a href="http://www.tresor.economie.gouv.fr/42-48_liste-nationale">http://www.tresor.economie.gouv.fr/42-48_liste-nationale</a></p>
<b>Financial Statements</b>	means, for any given financial year, the Borrower's annual consolidated and audited financial statements for the period ending on the year-end date for that financial year, including an income statement, a balance sheet and cash flows statement.
<b>Financing Plan</b>	means the financing plan of the Programme set out in Schedule 3 ( <i>Financing Plan</i> ).
<b>Fixed Rate</b>	<p>means the rate fixed against JIBAR which, if applied to a notional loan with the attributes below, would make the present value of all future interest payments and principal repayments (discounted using the zero coupon yield curve of the ZAR interest-rate swap market, as calculated on the Rate Setting Date based on the Reference Financial Institution quotations on or after 11 a.m. Paris time) equal to the amount of the said loan:</p> <ul style="list-style-type: none"> <li>- the loan's final maturity date is the last principal Payment Date of the Credit Facility, or part thereof, and</li> <li>- the loan is repayable in semi-annual instalments.</li> </ul>
<b>Fraud</b>	means any unfair practice (acts or omissions) deliberately intended to mislead others, to intentionally conceal elements there from, or to betray or vitiate his/her consent, to circumvent any legal or regulatory requirements and/or to violate internal rules and procedures of the Borrower or a third party in order to obtain an illegitimate benefit.
<b>Fraud against the Financial Interests of the European Community</b>	means any intentional action or omission intended to damage the European Union budget, and involving, (i) the use or presentation of false incorrect or incomplete statements or document, which has as effect the misappropriation or wrongful retention of funds or any illegal reduction in resources available pursuant to the general budget of the European Union; (ii) the non-disclosure of information with the same effect; and (iii) the misappropriation of such funds for purposes other than those for which such funds were originally granted.
<b>Grace Period</b>	means the period from the Signing Date up to and including November 20 <sup>th</sup> , 2017, during which no principal repayment under the Facility is due and payable.

<b>Illicit Origin</b>	<p>means any origin which is illicit or fraudulent, including, without limitation:</p> <ul style="list-style-type: none"> <li>(a) the commission of any predicate offence as designated in the FAFT 40 recommendations Glossary under "Designated categories of offences" (<a href="http://www.fatf-gafi.org/fr/pages/glossaire/a-c/">http://www.fatf-gafi.org/fr/pages/glossaire/a-c/</a>);</li> <li>(b) any Act of Corruption; or</li> <li>(c) any Fraud against the Financial Interests of the European Community, if or when applicable.</li> </ul>
<b>Initial Financial Statements</b>	means the Financial Statements of the Borrower for the financial year ending on June 30 <sup>th</sup> , 2013, as certified by the Auditors.
<b>Interest Period(s)</b>	means each period from a Payment Date (exclusive) up to the next Payment Date (inclusive). For each Drawdown under the Facility, the first interest period shall start on the Drawdown Date (exclusive) and end on the next successive Payment Date (inclusive).
<b>Interest Rate</b>	means the interest rate expressed as a percentage and determined in accordance with Clause 4.1 ( <i>Interest Rate</i> ).
<b>JIBAR</b>	means the interbank rate applicable to the Rand for the deposits in Rands with of three (3) months as determined by the SAFEX at 11 am, Johannesburg time, three (3) Business Days before the first day of either the Interests Period or the mid-term of the Interest Period, as the case may be.
<b>Margin</b>	means one hundred forty eight (148) basis points.
<b>Material Adverse Effect</b>	<p>means a material and adverse effect on:</p> <ul style="list-style-type: none"> <li>(d) the business, assets, financial condition of the Borrower or its ability to honour its obligations under the Agreement;</li> <li>(e) the validity or enforceability of the Agreement; or</li> <li>(f) any of the Lender's rights under the Agreement.</li> </ul>
<b>Mayor</b>	means the mayor of the Municipality.
<b>Medium Term Budget</b>	<p>means the revised 2014 – 2017 medium term budget of the Borrower approved by the municipal council on February 26<sup>th</sup>, 2015 and published on the Borrower's website:</p> <p><a href="http://www.joburg.org.za/images/stories/2014/June/CAT11646%20COJ%202014-15%20Budget%20Book.pdf">http://www.joburg.org.za/images/stories/2014/June/CAT11646%20COJ%202014-15%20Budget%20Book.pdf</a>.</p>

<b>MFMA</b>	means the Local Government, Municipal Finance Management Act, No. 56 of 2003, an act established under South African law.
<b>Outstanding Principal</b>	means, in respect of any Drawdown, the outstanding principal amount due in respect of such Drawdown, corresponding to the amount of the Drawdown paid by the Lender to the Borrower less the aggregate of instalments of principal repaid by the Borrower to the Lender in respect of such Drawdown.
<b>Payment Dates</b>	means May 20 <sup>th</sup> , and November 20 <sup>th</sup> of each year.
<b>Payment Systems Disruption</b>	<p>means either or both of:</p> <ul style="list-style-type: none"> <li>(a) a material disruption to the payment or communication systems or to the financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facility (or otherwise in order for the transactions contemplated by the Agreement to be carried out), provided that the disruption is not caused by, and is beyond the control of, any of the Parties; or</li> <li>(b) the occurrence of any other event which results in a disruption (of a technical or system-related nature) to the treasury or payment operations of a Party preventing that, or any other, Party: <ul style="list-style-type: none"> <li>(i) from performing its payment obligations under the Agreement; or</li> <li>(ii) from communicating with the other Parties in accordance with the terms of the Agreement,</li> </ul> </li> </ul> <p>and which (in either case) is not caused by, and is beyond the control of, either Party.</p>
<b>Programme</b>	means the Programme as described in Schedule ( <i>Programme Description</i> ) Schedule 2 ( <i>Programme Description</i> ), as amended and approved by council from time to time, the cost of which is as set out in Schedule 3 ( <i>Financing Plan</i> ).
<b>Public Official</b>	means any holder of legislative, executive, administrative or judicial office whether appointed or elected, serving on permanent basis or otherwise, paid or unpaid, regardless of rank or any other person defined as a public official under the domestic law of the Borrower's jurisdiction of incorporation, and any other person exercising a public function, including for a public agency or organisation, or providing a public service.
<b>Rand or ZAR</b>	means the South African Rand, the currency having legal tender in the Republic of South Africa.
<b>Rate Setting Date</b>	means the date on which the Lender determines the Interest Rate of

	each Drawdown. It shall be no later than 15 (fifteen) Business Day (or, if that is a public holiday in France the immediately following Business Day) following the date of receipt by the Lender of a Drawdown Request.
<b>Rating</b>	means the credit rating of the Borrower, as determined by the Rating Agencies.
<b>Rating Agency</b>	means Standard & Poor's, Moody's or Fitch Ratings.
<b>Ratio Certificate</b>	means a certificate substantially in the form set out in Schedule 7 ( <i>Form of Ratio Certificate</i> ).
<b>Reference Financial Institution</b>	means a financial institution chosen as a suitable reference financial institution by the Lender and which regularly publishes quotations of financial instruments on one of the international financial information networks according to the practices recognised by the banking industry.
<b>Reinvestment Rate</b>	means the yield rate of South African Government Bonds, whose maturity is the closest to the Credit Facility's Average Residual Term calculated at the prepayment date for the amount of the prepaid portion of the Credit Facility and the corresponding prepaid Drawdown(s). Such rate shall be the rate recorded as at 11:00 am (Paris time), five (5) Business Days before the date of prepayment, on the quotation pages of the Reference Financial Institution (initially, Reuters page ABAI, or if such page is not available, such alternative quotation page as selected by the Lender).
<b>Schedule(s)</b>	means any schedule or schedules to this Agreement.
<b>Signing Date</b>	means the date of execution of this Agreement by all the Parties.
<b>Tax(es)</b>	means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with a failure to pay or any delay in the payment of any such amounts).
<b>Technical Completion Date</b>	means the date for the technical completion of the Programme which is expected to be the 1 <sup>st</sup> of July 2017.
<b>Website</b>	means the website of AFD ( <a href="http://www.afd.fr/">http://www.afd.fr/</a> ) or any other such replacement website.
<b>Withholding Tax</b>	means any deduction or withholding in respect of a Tax on any payment made under or in connection with the Agreement.
<b>Working Capital Requirements</b>	means the inventory, work in progress, trade and other receivables (including, without limitation, accounts receivables, cash advances, deposits and deferred expenses) less all operating liabilities (including, without limitation, trade creditors, accruals, provisions,

	account payables, tax, deferred revenues, etc.).
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## SCHEDULE 1B - CONSTRUCTION

- (a) "assets" includes present and future properties, revenues and rights;
- (b) any reference to the "Borrower", a "Party" or a "Lender" includes its successors in title, permitted assigns and permitted transferees;
- (c) any reference to a the Agreement is a reference to this Agreement as amended, restated or supplemented and includes, if applicable, any document which replaces it through novation, in accordance with the Agreement;
- (d) a "guarantee" includes any *cautionnement*, *aval* and any *garantie* which is independent from the debt to which it relates;
- (e) "indebtedness" means any obligation of any person whatsoever (whether incurred as principal or as surety) for the payment or repayment of money, whether present, future, actual or contingent;
- (f) "merger" means a merger implemented in accordance with articles L.236-1 to L.236-24 of the Commercial Code;
- (g) a "person" includes any person, company, corporation, partnership, trust, government, state or state agency or any association, or group of two or more of the foregoing (whether or not having separate legal personality);
- (h) a "regulation" includes any legislation, regulation, rule, decree, official directive, instruction, request, advice, recommendation, decision or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, supervisory authority, regulatory authority, independent administrative authority, agency, department or any division of any other authority or organisation (including any regulation issued by an industrial or commercial public entity) having an effect on this Agreement or on the rights and obligations of a Party;
- (i) a provision of law is a reference to that provision as amended;
- (j) unless otherwise provided, a time of day is a reference to Paris time;
- (k) The Section, Clause and Schedule headings are for ease of reference only and do not affect the interpretation of this Agreement;
- (l) unless otherwise provided, words and expressions used in any other document relating to this Agreement or in any notice given in connection with this Agreement have the same meaning in that document or notice as in this Agreement;
- (m) an Event of Default is "continuing" if it has not been remedied or if the Lender has not waived any of its rights relating thereto;
- (n) a reference to a Clause or Schedule shall be a reference to a Clause or Schedule of this Agreement; and
- (o) words importing the plural shall include the singular and vice-versa.

## SCHEDULE 2A - PROGRAMME DESCRIPTION

The Credit Facility will partially finance the revised 2014/15 to 2016/17 Medium Term Budget (MTB) as approved by the municipal council on February 26<sup>th</sup>, 2015.

### 1. Medium Term Budget

The 2014/15 Medium Term Budget continues to focus on ensuring financial sustainability while delivering on the programmes outlined in the Integrated Development Plan (IDP) and Growth and Development Strategy (GDS). It reaffirms the commitment towards the prudent management of the City's finances. In order to attain financial sustainability the City has a set of parameters within which financial planning should be aligned and this will require generation of an annual operating surplus, prudent borrowing, creating cash reserve to increase the level of infrastructure spending and reviewing activities for operational efficiencies. The 2014/15 Budget is premised on the following principles:

- Changing course, meaning changing the way we do things within limited resources
- Addressing the culture of abundance;
- Increasing productivity- doing more with less and managing human resources effectively;
- Inter- cluster approach to ensure coordination of programmes;
- Customer- centric approach; and
- Stabilising the revenue base of the City.

In particular, the MTB has identified spatial transformation as a critical challenge to improve the livelihood of the population, increase economic efficiency and decrease the environmental footprint. The main expected results are: a reduction in poverty, decreased investment costs per inhabitant and a lower carbon footprint.

### 2. The Program

The Programme aims at partially finance the implementation of the above-described MTB. In particular, the Program will support the implementation of the following initiatives : the Corridors of Freedom and the Inner City.

#### *Inner City Roadmap:*

On September 4th 2014, the Inner City Roadmap was formally adopted by City Council. It is the City's statement of intent for transforming the inner city of Johannesburg. It provides the framework for the City of Johannesburg in rolling out the Growth and Development Strategy 2040 in the inner city.

#### *Corridors of Freedom*

The "Corridors of Freedom" are one of the ways in which the City will transform entrenched settlement patterns that have kept many marginalised communities at the outskirts of the City, away from economic opportunities and access to jobs and growth.

The City has approved the strategic area framework of three corridors: Empire-Perth, Louis Botha and Turffontein.

### 3. AFD-CoJ technical dialogue

#### - *Policy Matrix*

The Credit Facility will be disbursed within three months of the signing of the agreement.

A policy matrix has been established to serve as a framework for the monitoring of the Programme; it is appended in Appendix 2B. It will serve as an instrument of accountability and as a support document for the dialogue between AFD and the City.

This policy matrix should be a living document, and could therefore be amended during the course of the Programme. It will be discussed on a regular basis between AFD and the City through bi-annual meetings and an annual report.

*Technical support*

The technical support will aim at ensuring that the policies implemented by the City result in higher social inclusion, and that CoJ can measure their impacts. Special attention will thus be given to the development of measurable indicators.

The technical assistance program is built around three components:

A - strategy: support to the elaboration of the SDF and climate change strategy;

B - implementation: maximizing the impacts of the spatial transformation policy;

C - monitoring: understanding the socio-economic dynamics of the spatial transformation policy, and measuring its CO2 impact.

In order to ensure the streamlining of the issues, actions enhancing coordination between the different departments and municipal entities will be prioritized.

## Schedule 2B Policy Matrix

Main Objective	Specific objectives	Output/ outcome	Indicators
<b>Supporting the spatial transformation of the City: maximising the social, economic and environmental impacts</b>			
<i>Perimeter area: Inner City &amp; Corridors of Freedom</i>			
<b>Strategy</b>			
	Developing strategies / planning documents	Finalization of SDF, integrating climate change Finalization of Orange Grove SDZ Finalization of CC framework Finalisation of CC strategy & action plan	
<b>Implementation</b>			
	Prioritising	Regular update of Capital Investment Management System (CIMS) hypotheses to ensure coherence with Priorisation of CoJ CAPEX investments in the perimeter area Priorisation of CoJ CAPEX investments in deprived precincts of the perimeter area	Notification of any update of CIMS % of investments of CoJ CAPEX budget in the perimeter area % of investments of [CoJ CAPEX] in deprived precincts of the perimeter area
	Investing	Delivery of CoJ investment programme Municipal Service delivery household index Focus on BRT Louis Botha	% of executed budget in perimeter area Implementation report
	Creating institutional arrangements	Focus on IC Rental Housing operation Exploration of mechanisms to capture land value	Implementation report on rental housing actions Feasibility study
	Integrated urban development	Finalization of project management framework for COF & Inner City	Document presenting the project management framework for COF
	Institutionalisation of climate change policy	GHG inventory is presented to all departments and MOEs CC strategy is presented to all departments and MOEs	Minutes of workshop on presentation to CoJ entities and MOEs of GHG inventory Minutes of workshop on presentation to CoJ entities and MOEs of CC strategy
<b>Fostering private investment in CoF and inner city</b>			
	Fostering private investment in CoF and inner city	Appropriate tools are elaborated to foster private investment in COF	Incentive package document
	Fostering employment	Implementation of Jari@Work in perimeter area	Report
<b>Monitoring the implementation of the strategy</b>			
		Annual reporting on implementation of CoF Annual reporting on implementation of Inner City Roadmap Annual reporting on implementation on climate change	Report presented to municipal council + publication on website on website Report presented to municipal council + publication on
<b>Achieving expected outcomes in spatial transformation perimeter</b>			
		Increase in population in CoF/perimeter area Increase in density in CoF Investment of private sector in COF & Inner City Balanced housing mix in CoF Increase quality of life Empowerment of women in CoF Reduction of CoJ carbon footprint Social Inclusivity and enhanced social cohesion	population density MZAR invested by the private sector in COF / Inner City % of social housing Poverty Index women GHG reduction Social cohesion barometer to be developed
<b>Achieving the expected outcomes in procurement</b>			
		Achieving a unqualified audit Improving procurement	% of awards following normal SCM procedures % of goods procured without inviting competitive bids

# SCHEDULE 3 - FINANCING PLAN

Revised Medium Capital Budget 2014/15 - 2016/17 as approved by the mayoral committee.

## CITY OF JOHANNESBURG MEDIUM CAPITAL BUDGET 2014/15 - 2016/17

DEPARTMENT VOTE	2014/15 BUDGET R 000	2014/15 - SOURCE OF FINANCE					2015/16 BUDGET R 000	2016/17 BUDGET R 000
		COJ Funding (Loans) R 000	CRR (Cash) R 000	Nat. Grant R 000	USDG R 000	Other R 000		
<b>CORE ADMINISTRATION:</b>								
Economic Development	42 389		42 389				15 470	13 466
Environment and Infrastructure	61 830		61 830				18 380	7 294
Transport	971 511		141 940	829 571			1 080 663	1 107 737
Community Development	110 036	77 662	9 084		23 300		105 435	91 775
Head Office	1 800	600	1 200				1 839	1 411
Libraries	26 206	22 651	255		3 300		29 173	25 448
Sport and Recreation	60 305	32 901	7 404		20 000		62 182	54 213
Arts, Culture and Heritage	21 725	21 500	225				12 241	10 703
<b>Health</b>	<b>85 026</b>		<b>25 026</b>		<b>60 000</b>		<b>22 926</b>	<b>19 956</b>
Social Development	20 200	5 061	15 139				14 400	12 534
Office of the Executive Mayor	112 960	2 200	110 760				113 380	133 620
Speaker: Legislative Arm of Council	30 920		30 920				70 970	844
Group Finance	3 199		3 199				3 499	3 047
Group Corporate and Shared Services	1 567 268	158 400	1 408 868				24 494	21 321
Housing	943 362		150 500		792 862		844 702	839 726
Development Planning	479 508	380 000	550	98 958			501 134	553 846
Public Safety	162 800	23 250	139 550				166 393	124 315
Emergency Management Services	102 588	23 250	79 438				99 741	66 285
Johannesburg Metropolitan Police Department	60 172		60 172				66 652	58 017
<b>TOTAL CORE ADMINISTRATION</b>	<b>4 591 009</b>	<b>646 563</b>	<b>2 139 755</b>	<b>928 529</b>	<b>876 162</b>		<b>2 981 846</b>	<b>2 929 481</b>
<b>MUNICIPAL ENTITIES:</b>								
City Power	2 221 762	891 030	760 667	31 000	90 000	449 065	2 704 776	2 328 075
Johannesburg Water	1 091 585	719 174	136 000		222 411	14 000	1 538 761	1 339 415
Water	1 091 585	719 174	136 000		222 411	14 000	1 538 761	1 339 415
Sewerage								
Pikitup	201 050	187 050			14 000		144 026	125 368
Johannesburg Roads Agency	1 297 210	100 460	847 723		349 027		2 318 975	2 015 315
Metrobuss	200 161	191 951	8 200				65 870	240 110
Johannesburg City Parks and Zoo	166 400	112 400			54 000		107 700	93 748
Johannesburg Development Agency	234 689		165 100		69 589		203 500	174 360
Johannesburg Property Company	124 500		124 500				241 200	141 266
Joburg Market	208 322	208 322					334 938	291 547
Johannesburg Social and Housing Company	530 172	210 750	299 422		20 000		791 403	688 877
Joburg City Theatres	8 300	8 300					6 200	5 397
<b>TOTAL ME's</b>	<b>6 284 141</b>	<b>2 629 437</b>	<b>2 341 612</b>	<b>31 000</b>	<b>819 027</b>	<b>463 065</b>	<b>8 457 349</b>	<b>7 443 478</b>
<b>TOTAL CITY OF JOHANNESBURG</b>	<b>10 875 150</b>	<b>3 276 000</b>	<b>4 481 367</b>	<b>959 529</b>	<b>1 695 189</b>	<b>463 065</b>	<b>11 439 195</b>	<b>10 372 959</b>

#### **SCHEDULE 4 - CONDITIONS PRECEDENT**

The following applies to all documents delivered by the Borrower as a condition precedent:

- if the document which is delivered is not an original but a photocopy, the original Certified photocopy shall be delivered to the Lender ;
- the final version of a document which draft was previously sent to, and agreed upon, by the Lender, shall not materially differ from the agreed draft ;
- documents not previously sent and agreed upon, shall be satisfactory to the Lender.

#### **PART I - CONDITIONS PRECEDENT TO BE SATISFIED ON THE SIGNING DATE**

- (a) Delivery by the Borrower to the Lender of the following documents which, when the document is a copy of an original, shall be certified by a Commissioner of Oaths as a true copy and correct of the originals:
  - (i) a copy of the resolutions of the Municipal Council signed by the Mayor:
    - authorising the Borrower to enter into this Agreement
    - approving the terms and conditions of this Agreement
    - approving the execution of this Agreement
    - authorising the Accounting Officer to execute this Agreement on its behalf and
    - authorising a specified person or persons, on behalf of the Borrower, to sign any and all documents and notices (including any Drawdown Request) in relation to this Agreement.
  - (ii) an original certificate signed by the Mayor and the Accounting Officer, confirming that the resolutions contemplated in (i) above are in full force and effect as at the Signing Date;
  - (iii) a notarised specimen signature of the Accounting Officer and authorised signatories referred to in the resolutions contemplated in (i) above;
  - (iv) a copy of the information statement setting out the particulars of the Facility (including the amount of the debt and the purpose) published by the Accounting Officer, and all comments received from the public as a result of the publication of the information statement;
  - (v) an original written statement signed by the Mayor and the Accounting Officer confirming that all procedures and notice periods binding on the Borrower in respect of its entering into this Agreement, in terms of the MPMA and any Regulations thereto or otherwise have been complied with;

- (vi) a copy of any other consent necessary from governmental or other authorities and/or forums for the Borrower to validly enter into and execute this Agreement, and discharge its obligations in terms of this Agreement;
- (vii) a copy of the written notice from the Borrower to the National Treasury of South Africa informing the National Treasury of the Credit Facility, as well as a copy of the acknowledgement of receipt received from National Treasury and a copy of any comments received from the National Treasury;
- (viii) a copy of the written notice from the Borrower to the Provincial Treasury of South Africa informing the Provincial Treasury of the Credit Facility, as well as a copy of the acknowledgement of receipt received from Provincial Treasury and a copy of any comments received from the Provincial Treasury;
- (ix) written statement from the Mayor or municipal council stipulating that the Borrower will not be contravening any legislation, regulations or laws applicable to it by entering into this Agreement and any other relevant transaction agreement/s;
- (x) copies of its audited financial statements for the preceding three (3) financial years, its approved annual budget, its integrated development plan and the repayment schedules relating to its existing short-term and long-term debt;
- (xi) copy of the exchange control application (together with all annexures thereto, if any) submitted by the Borrower to the SARB in relation to the Credit Facility;
- (xii) copy of the SARB's approval to the Credit Facility and its consent in terms of Regulation 16(5) of the Exchange Control Regulations; and
- (xiii) a draft of legal opinion, satisfactory to the Lender, issued by an independent South African lawyer appointed by the Borrower, in relation to the Borrower's capacity and authority to enter into and execute this Agreement;

- (b) Delivery to the Lender by a reputable law firm established in the jurisdiction of the Borrower, chosen by the Lender, of a draft legal opinion, in form and substance satisfactory to the Lender in relation to the legality, the validity, the binding effect and the enforceability of this Agreement in South Africa.

## **PART II - CONDITIONS PRECEDENT TO THE FIRST DRAWDOWN**

- (a) Delivery by the Borrower to the Lender of a certified true copy of the version of the 2014/15 to 2016/2017 capital budget detailing the source of financing and relevant amount of external finance funding required financing the capital expenditures, approved by the mayoral committee.
- (b) Delivery by the Borrower to the Lender of a final and signed legal opinion, satisfactory to the Lender, issued by an independent South African lawyer appointed by the Borrower, in relation to the Borrower's capacity and authority to enter into and execute this Agreement;
- (c) Delivery to the Lender by a reputable law firm established in the jurisdiction of the Borrower, chosen by the Lender, of a final and signed legal opinion, in form and substance satisfactory to

the Lender in relation to the legality, the validity, the binding effect and the enforceability of this Agreement in South Africa;

- (d) Delivery by the Borrower to the Lender of a certificate from the Accounting Officer certifying that the SARB's consent is in full force and effect as at the date of Drawdown.

**PART III - CONDITIONS PRECEDENT FOR ALL DRAWDOWNS INCLUDING THE FIRST DISBURSEMENT**

No Event of Default has occurred, is likely to occur or is continuing.

## SCHEDULE 5A - FORM OF DRAWDOWN REQUEST

*[on the Borrower's letterhead]*

To: AGENCE FRANÇAISE DE DÉVELOPPEMENT  
Ballywoods Office Park, 1<sup>st</sup> Floor, Ironwood, 29 Ballyclare Drive Bryanston  
PO Box 786555, Bryanston, Johannesburg 2146, Gauteng, South Africa  
Attention: Head of the regional office

On: [date]

Re: The City Of Johannesburg, Metropolitan Municipality – Credit Facility Agreement n° CZA 1114 01 S dated [●]

**Drawdown Request n°[●]**

Dear Sirs,

1. We refer to the Credit Facility Agreement n° CZA 1114 01 S entered into between the Borrower and the Lender dated [●] (the "Agreement"). Capitalised words and expressions used but not defined herein have the meanings given to them in the Agreement.
2. This letter is a Drawdown Request.
3. We hereby irrevocably request the Lender to make Drawdown pursuant to the following terms:

### **First drawdown**

Amount: five hundred fifty-five million four hundred forty thousand Rand (ZAR 555,440,000)

Contemplated Drawdown Date:

### **Second Drawdown**

Amount: five hundred million Rand (ZAR 500,000,000)

Contemplated Drawdown Date: .

### **Third Drawdown**

Amount: five hundred million Rand (ZAR 500,000,000)

Contemplated Drawdown Date: .

4. The Interest Rate will be determined in accordance with Clause 4 (*Interest*) of the Agreement. The Interest Rate applicable to the requested Drawdown will be provided to us in writing and we accept this Interest Rate (subject to the paragraph below, if applicable).
5. We confirm that each condition specified in Clause 2.4 (*Conditions Precedent*) is satisfied on the date of this Drawdown Request and that no Event of Default is continuing or is likely to occur. We agree to notify the Lender immediately if any of the conditions referred to above is not satisfied on or before the Drawdown Date.
6. The proceeds of the Drawdown shall be credited to the Borrower's bank account mentioned in Clause 14.5 (Place of Payment) which is the following:

- (a) Name of the Borrower: THE CITY OF JOHANNESBURG,  
METROPOLITAN MUNICIPALITY
- (b) Address of the Borrower: 14<sup>th</sup> Floor, Jorissen Place, 66 Jorissen Street  
Braamfontein, 2001
- (c) IBAN Account Number: [●]
- (d) SWIFT Number: [●]
- (e) Bank and bank's address [of the [●]  
Borrower]:
- (f) correspondent bank and account [●]  
number of the Borrower's bank:
7. This Drawdown Request is irrevocable.
8. We have attached to this Drawdown Request all relevant supporting documents  
specified in Clause 2.4 (*Conditions Precedent*) of the Agreement:

*[List of supporting documents]*

Yours sincerely,

.....  
Authorised signatory of Borrower

## SCHEDULE 5B - FORM OF CONFIRMATION OF DRAWDOWN AND RATE

*[on Agence Française de Développement letterhead]*

To: THE CITY OF JOHANNESBURG, METROPOLITAN MUNICIPALITY  
14<sup>th</sup> Floor, Jorissen Place, 66 Jorissen Street  
Braamfontein, 2001  
Attention: Director: Treasury

Date: [●]

Ref: Drawdown Request dated [●]  
the City Of Johannesburg, Metropolitan Municipality – Credit Facility Agreement  
n°CZA1114 01 S dated [●]

### Drawdown Confirmation

Dear Sirs,

1. We refer to the Credit Facility Agreement n° CZA1114 01 S entered into between the Borrower and the Lender dated [●] (the "Agreement"). Capitalised words and expressions used but not defined herein have the meanings given to them in the Agreement.
2. By a Drawdown Request letter dated [●], the Borrower has requested that the Lender makes available three Drawdowns in the amount of:

First Drawdown	five hundred fifty-five million four hundred forty thousand Rand (ZAR 555,440,000)
Second Drawdown	five hundred million Rand (ZAR 500,000,000)
Third Drawdown	five hundred million Rand (ZAR 500,000,000)

,pursuant to the terms and conditions of the Agreement.

3. The Drawdowns which has been made available according to your Drawdown Request are as follows:

- Amount and Drawdown Date:

First Drawdown	five hundred fifty-five million four hundred forty thousand Rand (ZAR 555,440,000); [Insert date of Drawdown]
Second Drawdown	five hundred million Rand (ZAR 500,000,000); [Insert date of Drawdown]
Third Drawdown	five hundred million Rand (ZAR 500,000,000); [Insert date of Drawdown]

- Applicable interest rate: [●percentage in words] ([●]%) per annum
- Effective global rate (for a six (6) months period): [●percentage in words] ([●]%)

- Effective global rate (per annum): [percentage in words] ([]%)

For information purposes only:

- Rate Setting Date: []
- Fixed Rate: [percentage in words] ([]%) per annum

Yours sincerely,

.....

Authorised signatory of *Agence Française de Développement*

## SCHEDULE 6 - FINANCIAL RATIOS

All the items used herein to set the Financial Ratios refer to the terms used in the Initial Financial Statements

### **I-Debt to Operating Cash flow Ratio (objective : less than 6)**

Reference in the Initial Financial Statements pp.7,11

- Loans and borrowings (under Current Liabilities p.7)
  - (+) Finance Lease Obligations (under Current Liabilities p.7)
  - (+) Loans and borrowings (under Non-Current Liabilities p.7)
  - (+) Finance Lease Obligations (under Non-Current Liabilities p.7)
  - (+) Overdrafts (as defined by National Treasury)
- 

Net cash flows from operating activities (under Cash Flow From Operating Activities p.11)  
(-) Capital grants and subsidies ("on a cash flow basis" – to be reported in 2014/2015 Financial Statements)

### **II -Debt Service Coverage Ratio (objective: more than 1,3)**

Reference in the Initial Financial Statements pp.11

Net cash flows from operating activities (under Cash Flow From Operating Activities p.11)  
(-) Finance costs (under Cash flows from operating activities p.11)  
(-) Capital grants and subsidies ("on a cash flow basis" – to be reported in 2014/2015 Financial Statements)

- 
- Finance costs (under Cash flows from operating activities p.11)
  - (+) Repayment of borrowings (under Cash flows from financing activities p.11)
  - (+) Finance lease obligation (under Cash flows from financing activities p.11)

## SCHEDULE 7 - FORM OF RATIO CERTIFICATE

[on the Borrower's letterhead]

To: Agence Française de Développement as Lender

Date: [●]

Re: The City Of Johannesburg, Metropolitan Municipality – Credit Facility Agreement n° CZA1114 01 S dated [●] (the "Agreement")

Dear Sirs,

1. We refer to the Agreement. This is a Ratio Certificate. Capitalised words and expressions used but not defined herein have the meanings given to them in the Agreement.
2. We confirm that on the date of this Ratio Certificate [the Borrower] is in compliance with the ratios set out at Clause 11.9 (*Financial Ratios*) of the Agreement, i.e.:
  - (a) the Debt to Operating Cash Flow Ratio is equal to [ ];
  - (b) the Debt Service Coverage Ratio is equal to [ ]; and
3. We confirm that no Event of Default is continuing.

Yours sincerely,

.....

Authorised signatory of Borrower

**SCHEDULE 8 - INFORMATION THAT MAY BE PUBLISHED ON THE FRENCH  
GOVERNMENT WEBSITE AND THE LENDER'S WEBSITE**

**1. Information regarding the Programme**

- Number and name in AFD's book;
- Description;
- Operating sector ;
- Place of implementation ;
- Expected starting date ;
- Expected Technical Completion Date;
- Status of implementation updated on a semi-annual basis ;
- performance report referred to in Clause 12.3 (*Progress Report*)

**2. Information regarding the financing of the Programme**

- Kind of financing (loan, grant, co-financing, delegated funds) ;
- Principal amount of the Facility ;
- Amount of the Facility which has been drawn down (updated as the implementation of the Programme goes) ;

**3. Other information**

Transaction information notice and/or sheet presenting the transaction attached to this Schedule.

## **SCHEDULE 9 – LIST OF AGREED INTERNATIONAL LAW FIRMS**

1. Clifford Chance LLP, Paris Office
2. Allen & Overy LLP, Paris Office
4. Linklaters, Paris Office
5. DLA Cliffe Dekker, Hofmeyr, Johannesburg Office
6. ENS Africa, Johannesburg Office