

# **MEMORANDUM OF UNDERSTANDING (MOU)**

in respect of

## **SUSTAINABLE MUNICIPAL INFRASTRUCTURE OPERATIONS AND MAINTENANCE PROGRAMME**

entered into between



**DBSA DEVELOPMENT FUND (DBSA-DF)**

and

**KANNALAND LOCAL MUNICIPALITY**

(Hereinafter referred to as "The Municipality")

Represented herein by Mr M. Hoogbaard  
in his capacity as Acting Municipal Manager  
who is duly authorised to enter into this Agreement

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## 1. PREAMBLE

- 1.1. The Development Bank of Southern Africa Limited (hereinafter referred to as the "DBSA") was established in terms of the DBSA Act No 13 of 1997 to accelerate sustainable socio-economic development by funding physical, social and economic infrastructure. The DBSA acts as financier, advisor, partner, implementer and integrator to mobilize finance and expertise for development projects in Southern Africa and the SADC region. The DBSA is a public entity wholly owned by the South African government.

The DBSA DF is a Section 21 company within DBSA aimed at promoting economic development and growth, human resources development, institutional capacity building and the support of development projects and programmes in South Africa and the SADC region

- 1.2 The DBSA, through the DBSA DF, intends to implement the "Sustainable Municipal Infrastructure Operations and Maintenance Programme". The objective of the Programme is to support municipalities to improve the condition of their infrastructure by the provision of capacity to plan and execute infrastructure maintenance using resources locally mobilized in the municipal environment, including municipal labourers, small contractors and community based works cooperatives. The Programme will focus on operation and maintenance of municipal infrastructure in the water, sanitation, roads, electricity and solid waste management service sectors
- 1.3 The Kannaland Local Municipality is a Local Municipality formed under the Local Government Act is situated in Western Cape Province. The mandate of the Municipality includes the provision of services in the water, sanitation, roads, electricity and solid waste management service sectors. This includes the planning, provision, operation and maintenance of these services.
- 1.4 The Parties to this MOU, namely, the DBSA DF and the Municipality, share the vision of a need for sustainable municipal infrastructure operations and maintenance, the development of a strong operations and maintenance culture within the Municipality and the improvement of service delivery.

The programme focus areas are aligned with government's priority areas including improved service delivery, employment generation and poverty eradication.

- 1.5 The Parties wish to enter into this MOU to work together in the implementation of the O&M Programme in the Municipal jurisdiction area.

## 2 INTERPRETATION AND PRELIMINARY

The headings of the clauses in this MOU are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this MOU nor any clause hereof. Unless a contrary intention clearly appears:

### 2.1 Words importing:

2.1.1 any one gender include the other gender;

2.1.2 the singular include the plural and *vice versa*; and

2.1.3 natural persons include created entities (corporate or unincorporated) and the state and *vice versa*.

2.2 The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:

2.2.1 **"Business Day"** means any day other than a Saturday, Sunday and a Public Holiday;

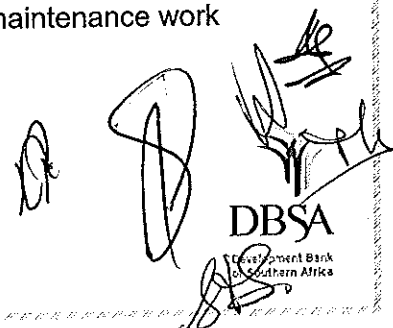
2.2.2 **"DBSA"** means the Development Bank of Southern Africa Limited incorporated and reconstituted in terms of the Development Bank of Southern Africa Act No. 13 of 1997;

2.2.3 **"DBSA DF"** means the DBSA Development Fund, a Division of DBSA and a Section 21 Company, (Reg. No. 2001/030153/08) incorporated and registered as such in terms of the Companies Act of 1973, with a core mandate to provide grant

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funding for capacity building, facilitation, address human, institutional and financial constraints and mobilize partnerships;

- 2.2.4 "Municipality"** means the Kannaland Local Municipality as established under the Local Government Act.
- 2.2.5 "O&M Programme"** means the "Sustainable Infrastructure Operations and Maintenance Programme"
- 2.2.6 "Effective Date"** means 1<sup>st</sup> December 2010 notwithstanding the date of signature of this Agreement;
- 2.2.7 "MOU"** means the Memorandum of Understanding entered into and signed between the DBSA DF and the Municipality;
- 2.2.8 "Parties"** means the DBSA DF and the Municipality, individually or collectively, as the context may require;
- 2.2.9 "Committee/s"** means the Joint Working Committees established by the DBSA DF and the Municipality;
- 2.2.10 "Project Governance"** means project management in respect of this MOU by either the DBSA DF or Municipality, in accordance with the policies and procedures of the respective organizations;
- 2.2.11 "SMME Contractors"** means small medium contracting enterprises appointed by the Municipality in line with the Municipal Supply Chain Policy to execute infrastructure operation and maintenance work on a contract basis.



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**2.2.12 "Community Based Work Groups"**

means work teams drawn from the community appointed by the Municipality to deliver infrastructure maintenance work on a contract basis.

**2.2.13 "PSP"**

means Professional Service Provider(s) engaged by the DBSA-DF to carry out the required O&M workload assessment, prepare O&M work packages for implementation and any other requirements of the O&M Programme.

**2.2.13 "SCM"**

means the Supply Chain Management policy and procedures of the Municipality

**2.2.14 "Stakeholder(s)"**

means any other state, semi state or private organization with whom the DBSA-DF or Municipality has a separate MOU to collaborate with or to provide support on the O&M Programme

**3 THE AIM AND PURPOSE OF THE MOU**

The aim and purpose of the MOU is to:

- 3.1. Define the collaboration framework between the Parties in the implementation of the O&M programme;
- 3.2 Set out the roles and responsibilities of each Party in the aims and objectives of this MOU;
- 3.3 Provide for the promotion and capacity building of municipality for the execution of infrastructure operation and maintenance within the Municipality using locally mobilized resources;



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- 3.4 Provide for promotion and capacity building support of Small, Medium Construction Enterprise (Small Contractors) and Community Based Work Groups in the operations and maintenance of municipal infrastructure;
- 3.5 Agree an effective working structure, decision making process and funding protocol;


#### **4 DURATION**

This MOU shall commence on the Effective Date and shall terminate on the 31<sup>st</sup> December 2013.

#### **5 ROLES AND RESPONSIBILITIES OF THE PARTIES TO THE MOU**

##### **5.1 The Municipality shall**

- 5.1.1 Budget, secure and provide funding for the execution of the operation and maintenance projects.
- 5.1.2 Appoint or designate a senior municipal official to be the champion of the O&M Programme and liaise directly with the DBSA-DF.
- 5.1.3 Facilitate the workload assessment and implementation planning of the projects to be carried out by a PSP appointed and financed by the DBSA-DF including;
  - 5.1.3.1 Provision of all data and information available within the Municipality as required for the workload assessment and projects planning.
  - 5.1.3.2 Assisting the PSP in the prioritization and selection of the O&M work packages and ensuring that the O&M works selected for implementation matches funds budgeted.
  - 5.1.3.3 Supporting the formulation of O&M works contracts suited to



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the SMME contractors and Community Based Work Groups including the adoption of labour based construction, appropriate conditions of contract and right scale of contracts.

5.1.4 Facilitate capacity building and skills transfer within the Municipality by;

5.1.4.1 Providing office accommodation and welfare facilities for DBSA-DF staff deployed to the Municipality.

5.1.4.2 Designate and release required municipal staffs to undergo training and skills transfer for the operations and maintenance of infrastructure.

5.1.5 Facilitate the development of SMME contractors and Community Based Work Group capacity building by;

5.1.5.1 Ensuring efficient and effective SCM processes that are supportive of the objectives of the O&M Programme.

5.1.5.2 Ensuring continuous supply of O&M work opportunities through the Municipality's SCM policy.

5.1.5.3 Ensure timely payment of the SMMEs/Community Work Groups in accordance with their contracts.

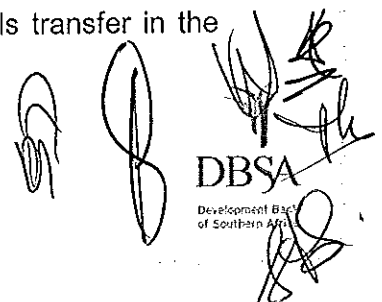
5.1.5.4 Co-operating with other Stakeholders involved in the O&M Programme in the capacity building of SMMEs.

5.1.5.5 Support the DBSA in the mobilization and leveraging of additional resources for the implementation of the O&M Programme.

5.2 The DBSA shall;

5.2.1 Appoint a Programme Manager for the O&M Programme who shall be reside in Eden District Municipality.

5.2.2 Be responsible for the capacity building and skills transfer in the Municipality by;

The bottom right corner of the page contains several handwritten signatures in black ink. Below the signatures is the official logo of the DBSA (Development Bank of Southern Africa), which includes the acronym 'DBSA' in a bold, sans-serif font, with the full name 'Development Bank of Southern Africa' written in smaller text underneath.

5.2.2.1 Recruiting and deploying experts, artisans and mentors to provide hands on support, mentorship of Artisans/Apprentices and transfer skills to municipal officials.

5.2.2.2 Providing classroom and on-job training for municipal staff engaged in the Programme as identified during the course of the O&M Programme implementation.

5.2.3 Be responsible for the direct payment of;

5.3.1.1 All costs (recruitment, remuneration and expenses) of experts, artisans and mentors deployed to the Municipality

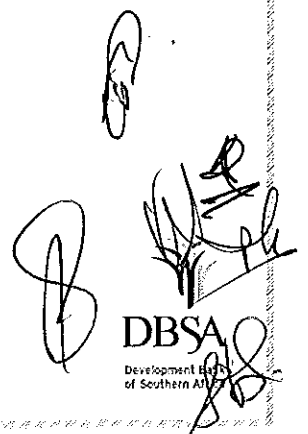
5.3.1.2 The PSPs engaged to carry out the workload assessment, O&M projects planning and the preparation of works packages for implementation.

5.2.4 Support the development of SMME contractors and Community Based Work Groups by;

5.2.4.1 Providing the required mentoring support and training to the SMMES supervisors and work-teams..

5.2.4.2 Leveraging other stakeholders who will endeavor to provide or facilitate the provision of

- Financial support.
- Business support and training.
- Equipment support.



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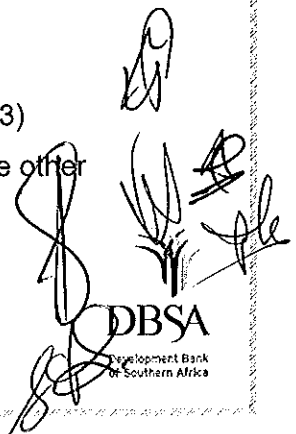
## 6.0 ESTABLISHMENT OF JOINT WORKING COMMITTEES

### 6.1 Steering Committee

- 6.1.1 A Steering Committee constituted by six (6) representatives, three (3) from the DBSA DF and three (3) from the Municipality, as nominated by the parties, shall be established by the parties and shall function on an on-going basis until it is terminated in terms of this MOU.
- 6.1.2 The DBSA DF delegation will be led by its Chief Executive Officer, or any person designated in writing in advance by him while the Municipality shall be led by its Municipal Manager, or any person designated in writing by her/him.
- 6.1.3 The Steering Committee shall meet at least on an annual basis (or at such intervals as is necessary) to appraise the collaboration between the Parties as governed by this MOU.
- 6.1.4 The Steering Committee will, decide on its Terms of Reference and determine the meeting procedures and frequency thereof.
- 6.1.5 The Steering Committee will be responsible to monitor all agreements between the parties.
- 6.1.6 The Steering Committee shall jointly monitor and evaluate the progress and impact of the implementation of the MOU.
- 6.1.7 The Steering Committee shall receive and consider reports emanating from the Programme Working Committee.

### 6.2 Project Working Committee

- 6.2.1 A Programme Working Committee (PWC) constituted by three (3) representatives of each Party respectively, and where applicable other stakeholders, shall be established and function on an on-going



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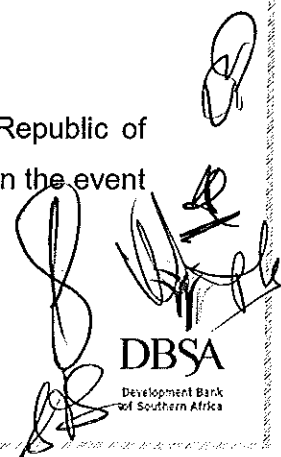
basis until it is terminated in terms of this MOU.

6.2.2 The functions of The PWC shall include but not be limited to:

- 6.2.2.1 Meet at least every two months, or more often as is necessary;
- 6.2.2.2 Determine the meeting procedures and the frequency thereof;
- 6.2.2.3 Within one month of the Effective Date agree the Key Performance Indicators (KPIs) and Outputs for the O&M Programme.
- 6.2.2.4 Monitor progress against the agreed KPIs for the duration of the Programme
- 6.2.2.5 Facilitate the submission, approval and signing of programme plans;
- 6.2.2.6 Do all the work necessary to support the Steering Committee;
- 6.2.2.7 Ensure the management and facilitation, cooperation and consultation in respect of the matters relating to O&M Programme;
- 6.2.2.8 Develop, prepare and recommend programmes and implementation plans for adoption by the Steering Committee;
- 6.2.2.9 Keep records of all projects, agreements and all other relevant programme documentation.

## 7. STATUS OF THE MOU

- 7.1 The conclusion of this MOU between the Parties hereto shall not be interpreted in any way whatsoever that will have the effect of making either party the agent of the other and having the authority to represent the other and create obligations on its behalf, unless such mandate is reduced to writing and signed by the duly authorized person.
- 7.2 The validity of this MOU is subject to all the existing laws of the Republic of South Africa and the policies of the Municipalities and the DBSA DF. In the event



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that it transpires that this MOU is in contravention of any such law or policy, such contravention will be notified to the other party and this MOU will, if possible, be amended accordingly.

7.3 No amendment of this MOU, variation, waiver, relaxation or suspension of any of the provisions thereof shall have any force or effect, unless reduced to in writing and signed by both parties.

7.4 The parties agree that this MOU, the contents thereof and matters arising therefrom shall remain confidential.

## 8. REVIEW OF OPERATIONS

8.1 The MoU, its implementation and effectiveness will be reviewed on a bi-annual basis by the Steering Committee, or their nominees.

8.2 The Project Working Committee will undertake quarterly reviews focusing on operational matters and challenges of the relationship.

8.3 A full half-yearly progress report to be prepared by the PWC will be made available to the Municipal Manager and the CEO DBSA DF respectively.

## 9. REPRESENTATIVES

9.1 The Parties designate the following individuals who will have the authority to administer this Agreement on behalf of the Parties and who will be responsible for the communication between them:

9.1.1 for the **DBSA DF**: Dr Paul Kibuuka  
MANAGING DIRECTOR  
Chief Executive Officer  
DBSA Development Fund

9.1.2 for the **Municipality**: Mr. Morne Hoogbaard  
Acting Municipal Manager  
Kannaland Local Municipality



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9.2 The Municipality's representative shall have complete authority to receive instructions from and give information to the DBSA DF.

9.3 The DBSA's representative will have complete authority in giving instructions to and receiving communications from the Municipality on behalf of the DBSA DF.

## 10. WARRANTIES

The Parties warrant that:

10.1 this MOU has been duly authorised and executed and constitutes a formal relationship and binding between the Parties; and

10.2 the execution of this MOU does not violate any legislation, judgment, order, regulation, regulatory provision, right or obligation, or rule of any court or other authority applicable in relation to them.

## 11. BREACH

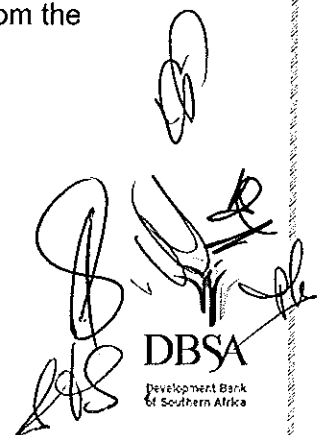
Should either Party ("the defaulting party") commit a breach of any of the provisions of this MOU and fail to remedy such breach within 30 (thirty) days of written demand from the other Party ("the aggrieved party"), or, where the breach cannot be remedied within 30 (thirty) days, fails, within such period to initiate such steps towards remedying such breach as shall be reasonable in the circumstances and fails to proceed to remedy such breach as expeditiously as is reasonably possible thereafter, or where the breach is incapable of being remedied at all, then and in any of such events the aggrieved party may, in addition to any other rights and remedies that it may have in terms of this MOU or in law:

11.1 claim the immediate performance and/or specific performance by the defaulting party of all its obligations then outstanding hereunder; or

11.2 terminate this MOU, and recover damages for breach of contract, from the defaulting Party.

## 12. REASONS FOR TERMINATION

The termination of this MOU may occur:



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- 11.1 at the expiry of the term of the MOU;
- 11.2 if the Parties agree thereto in writing;
- 11.3 if the O&M Programme ceases to exist.
- 11.4 if either Party commit a breach

### 13. AGREEMENT BINDING ON SUCCESSOR-IN-TITLE

This MOU shall be binding on any successor in title of the Parties.

### 14. DOMICILIUM CITANDI ET EXECUTANDI

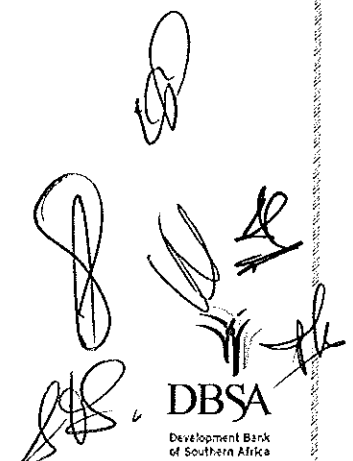
14.1 The Parties choose as their *domicilia citandi et executandi* for all purposes under this MOU, whether in respect of court process, notices or other documents or communications of whatsoever nature, the following addresses:

#### 14.1.1 DBSA DF:

Physical: 1258 Lever Road  
Headway Hill  
Midrand  
1685  
Postal: P.O. Box 1234  
Halfway House  
1685  
Telefax: (011) 206 3086

#### 14.1.2 Kannaland Local Municipality:

Physical: 32 Church Street



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Ladismith 6655

Postal: P. O Box 30

Ladismith

6655

Telefax: (028) 551 1766

14.2 Any notice or communication required or permitted to be given in terms of this MOU shall be valid and effective only if in writing but it shall be competent to give notice by email.

14.3 Either Party may by notice to the other Party change the physical address chosen as its *domicilium citandi et executandi* to another physical address where postal delivery occurs in Gauteng or its telefax number, provided that the change shall become effective on the 3<sup>rd</sup> (third) Business Day from the deemed receipt of the notice by the other Party.

14.4 Any notice to a Party:

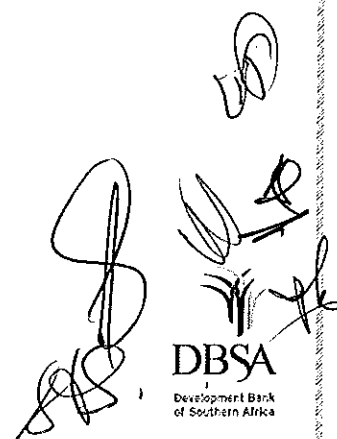
14.4.1 delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery; or

14.4.2 sent by email to its chosen email address, shall be deemed to have been received on the date of despatch.

14.4.3 notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

## 15. GOOD FAITH

The Parties shall in their dealings with each other display good faith.



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**16. GOVERNING LAW**

This MOU shall be governed by and interpreted in accordance with the substantive laws of the Republic of South Africa.

**17. CONFIDENTIALITY**

17.1 The parties agree that this MOU and the contents thereof shall remain confidential between the parties hereto, unless otherwise agreed by both parties.

17.2 The parties agree that this clause shall survive the termination of this MOU for whatever reason.

**18. LIABILITY**

18.1 The DBSA DF shall not be liable for any action, omission or commission by the Municipality or committees' representatives.

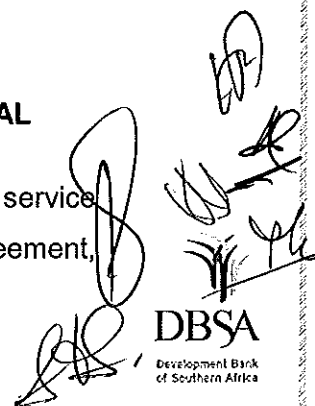
18.2 The Municipality shall not be liable for any action, omission or commission by the DBSA DF, its contracted service provider or representative executing any function related to this MOU.

**19. DISPUTES**

The parties commit to make every effort to amicably settle any dispute relating to the provisions of this MOU, which may arise between them, within fourteen (14) days. In the event of failure to resolve the dispute / If the Parties cannot settle a dispute themselves, any Party to the dispute may refer the dispute for resolution to an accredited dispute resolution institution.

**20. INTELLECTUAL PROPERTY RIGHTS AND OWNERSHIP OF MATERIAL**

All intellectual property rights relating to any work produced by any service provider in relation to this MOU shall belong to both parties to the agreement,



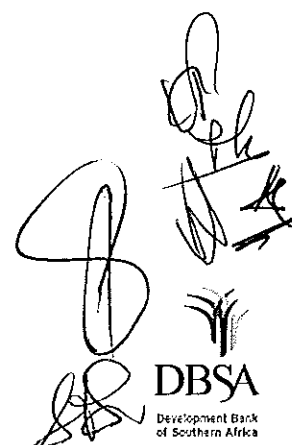
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namely DBSA DF and the Municipality. Both parties will provide every assistance in protecting such intellectual property rights. All material, in paper, electronic or any recorded format produced by any service provider on behalf of the contracting Party in the performance of this MOU shall remain joint property.

## 21. COMMUNICATION

21.1 All external communication regarding the implementation of this MOU shall be cleared by both parties in terms of content and branding. External communication, especially to the media shall be cleared through the Steering Committee which comprises of the Municipal Manager and the CEO DBSA-DF or their nominees.

22..2 All internal communication regarding the implementation of this MOU shall be cleared by both parties through the Project Working Committee and shall promote dual branding at all times.



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**FOR DBSA DF**

DULY EXECUTED AND SIGNED AT MIDRAND ON WEDNESDAY

THIS 23<sup>RD</sup> DAY OF FEBRUARY 2011.

**AS WITNESSES:**

1.

[Signature]

2.

[Signature]

[Signature]

**CHIEF EXECUTIVE OFFICER -  
MANAGING DIRECTOR**

**FOR MUNICIPALITY**

DULY EXECUTED AND SIGNED AT LADISMITH ON 1

THIS 02 DAY OF ..... 2011.

**AS WITNESSES:**

1.

[Signature]

2.

[Signature]

[Signature]

**MUNICIPAL MANAGER**