

**MEMORANDUM OF AGREEMENT**

made and entered into between

The Government of the Republic of South Africa  
(represented by the Department of Energy)

And

(Mantsopa Municipality FS 173)

in respect of the

Funding and implementation of the Electrification Program

over this period

1 April 2011 to 31 March 2012

X *JG*

RJ

22

X *an*

WHEREAS the Government of the Republic of South Africa, through the Department of Energy is responsible for the Integrated National Electrification Programme, and through this programme, to promote -

- a Socio-economic development of previously disadvantaged communities, through household and institutional electrification and the electrification of associated community value-adding facilities;
- b Broad Based Empowerment at all levels of the electrification industry;

AND WHEREAS to facilitate this programme, the Department of Energy has allocated a budget for the capital requirements of the programme, for transfer to the relevant municipalities in order to meet the target on electrification shortfalls in the targeted communities;

NOW, THEREFORE THE PARTIES HEREBY AGREE to enter into an Agreement for the funding and implementation of the programme, subject to the following terms and conditions.

#### INTERPRETATION

In this Agreement unless the context otherwise indicates:

- 1.1. Clause headings have been provided for convenience only and will be ignored in the interpretation of this Agreement;
- 1.2. Reference to the singular shall include the plural, the masculine, the feminine, and vice versa;
- 1.3. Words and expressions used shall bear the meaning as assigned to them, unless differently provided for in the Electricity Regulation Module and Public Finance Management Act 01 of 1999.

X J. M. R. P. K. M.

- 1.4. References to any enactment (including any subordinate legislation) are to be construed as references to that enactment for the time being as amended; and
- 1.5. Any reference to a public organisation shall include a reference to any permitted successor to such public organisation or any organisation or entity which has taken over any or all of the functions, the responsibilities and the property and assets of such public organization.

## 2. DEFINITIONS

For the purposes of this Agreement, the following terms shall have the same meanings specified hereunder, unless the context otherwise indicates:

- 2.1. "Agreement" means this Agreement together with all the annexure and schedules referred to herein, read together with the various pieces of legislation referred to.
- 2.2. "Accounting Officer" means The Director General of a National Department or The Municipal Manager for the Municipality.
- 2.3. "BBBEE" means Broad Based Black Economic Empowerment
- 2.4. "EPWP" means Extended Public works Programme.
- 2.5. "Cost per connection" means the capital spent on the project divided by the number of electricity supply connections made in the project excluding top-up funding.

✓ ✓ ✓ ✓

R.P. - 10

- 2.6. "Top-up Funding" means monetary contribution from the Municipality
- 2.7. "Connection" means a complete electricity supply connection, which can be used by the customer and for which a Certificate of Compliance has been issued.
- 2.8. "Day" means a calendar day.
- 2.9. "Department / DOE" means the Department of Energy.
- 2.10. "DoRA" means the Division of Revenue Act of 2011
- 2.11. "EDI" means the Electricity Distribution Industry.
- 2.12. "Effective Date" means 1<sup>st</sup> April 2011.
- 2.13. "IDP" means the Integrated Development Plan of the Municipality.
- 2.14. "Installation" means an installation for supply of electricity to a customer within the grid electricity system.
- 2.15. "INEP" means the Integrated National Electrification Program
- 2.16. "MFMA" means the Municipal Finance Management Act, 2003 (Act NO. 56 of 2003).
- 2.17. "Month" means a calendar month.

X  
A  
\* go on  
22 R.P. \* M

- 4
- 2.18."NERSA" means the National Energy Regulator of South Africa established in terms of the National Energy Regulator Act No 40 of 2004.
- 2.19."Project" means an electrification projects.
- 2.20."Project Area" means where the project occurs.
- 2.21."Programme" means the combination of various electrification projects to be completed in a period of 12 months, from the effective date as agreed between DCE and the Municipality, presently as stipulated in Annexure A and B, hereto.
- 2.22."VAT" means the value-added tax in terms of the Value Added Tax Act, 1991 (Act No. 89 of 1991).
- 2.23."ESI" means Electricity Supply Industry.
- 2.24."MAP" means municipal assistance programme
- 2.25."BBBEE" means Broad Based Black Economic Empowerment
- 2.26."BWO" mean Black Women Owned companies
- 2.27."SMME" means Small Medium Micro Enterprise
- 2.28."PFMA" means Public Finance Management Act

✓ ✓

✓ ✓

✓

✓ ✓

- 5
- 3. OBJECTIVES AND INTEGRAL PARTS OF THIS AGREEMENT**
- 3.1. The objectives of this Agreement are to regulate and set conditions that are applicable in meeting the electrification programme and for the Parties to-
- 3.1.1. meet their mandates in terms of this Agreement and ensure that they facilitate the expansion and rehabilitation of the electricity grid;
- 3.1.2. enhance the electrification programme on long term national energy requirements that shall be met through clearly established national electrification principles;
- 3.1.3. ensure that resource allocation contributes to sustainable community development and enhance empowerment to communities through job creation and learnership.
- 3.1.4. consult relevant communities in terms of the prescribed Integrated Development Planning (IDP) Process;
- 3.1.5. proceed in a structured and orderly fashion and within a pre-determined time frame;
- 3.1.6. Provide for the electrification of households to unelectrified households;
- 3.1.7. ensure that the allocated funds are accounted for separately and ringfenced from the normal municipal business;
- 3.1.8. ensure that benefits deriving from the subsidy are passed on to electrification end users;

L. *[Signature]* L. M. *[Signature]*  
L. *[Signature]* R.P. *[Signature]*  
x *[Signature]*

- 3.1.9. ensure that funds are not utilized for any purpose other than approved electrification infrastructure projects.
- 3.1.10. ensure that financial, technical and staff capabilities are available to distribute electricity and to expand the network;
- 3.1.11. ensure that the Municipality is in possession of a valid license to distribute electricity in the project area, as summarized in the attached Annexure A and B; except where there is an existing written arrangement between the Department and a licensed Authority.
- 3.1.12. ensure that the Department is indemnified from all issues related to poor design, construction, project management, property ownership or disputes with contractors and suppliers; and
- 3.1.13. ensure that any of the interest accrued is reported to DOE and is spent for the benefit of the project. The spending thereof shall be reported to DOE.
- 3.2. The following Annexure shall form, be read and construed as an integrated part of the Agreement:-
- 3.2.1. Annexure A: Households electrification project details
  - 3.2.2. Annexure B: Schools electrification project details
  - 3.2.3. Annexure C: Monthly reporting format
  - 3.2.4. Annexure D: Confirmation of cash flow transfer report
  - 3.2.5. Annexure E: Municipality information details
- K  
JL  
AP

#### **4. DURATION**

- 4.1. This Agreement shall commence on, and subsist from the 1<sup>st</sup> April 2011 to the 31<sup>st</sup> March 2012;
- 4.2. Notwithstanding sub-clause 4.1, the Department may in consultation with the Municipalities, annually alter the terms of the programme details.

#### **5. OBLIGATIONS OF THE DEPARTMENT**

The Department shall ensure the following:-

- 5.1. grant and transfer the funds, not exceeding R810,000.00 for the project of Platberg for 101 connections in accordance with the cash flow schedules of Annexure A, B and D being a cash flow Budget and a program target statement attached hereto;
- 5.2. ensure macro-control over the programme; and
- 5.3. Execute the programme in accordance with Sec 12 of the DoRA (duties of the receiving office in respect of schedule 6).
- 5.4. provide subsidy per connection in both urban and rural electrification at a cost not exceeding the following:
  - 5.4.1. Urban R7,300.00 (seven thousand three hundred rands only)
  - 5.4.2. Rural R8,000.00 (eight thousand rands only)
- 5.5. Implement the MAP to ensure proper and effective implementation of electrification programme.

X  
an  
\* JG  
67  
R.P. \* P.D.

- 5.6. place engineering interns at municipalities if departmental funds are available for stipend.

#### 6. OBLIGATIONS OF THE MUNICIPALITY

The Municipality shall ensure the following:-

- 6.1. compliance with all statutory requirements as stipulated on the DoRA, compliance with the DoRA framework conditions for bulk infrastructure, household and farm worker house connections, schools and network rehabilitation respectively.
- 6.2. manage the program as well as the design and the implementation of those electrification projects that form the object of this agreement and are set out in Annexure A and B, attached hereto.
- 6.3. all the design and engineering work is completed before or by the end of June 2011. If consultant will be doing the design they must be appointed before the end of May and the first payment be done from July.
- 6.4. complete the transfer payment report attached as annexure D to this contract on a monthly basis starting in July, in order to enable the Department to transfer funds to the Municipality.
- 6.5. that construction work commences before the month of September to avoid funds reallocation.
- 6.6. spend and disburse such funds in accordance with Section 217 of the Constitution of the Republic of South Africa, 1996 (Act no.108

X CW  
RJ: LWT  
CJ  
BB  
12

9

of 1996) and subject to it meeting the projected connection targets, as set out in Annexure A attached hereto.

- 6.7. indicate through the monthly reporting that they spend a minimum 50% of INEP funds on BBBEE, BWO, SMME and entities owned by disabled people so as to address the government's objectives including ASGISA.
- 6.8. exercise control over the original documentation, which are to be retained for audit purposes. The process shall be in accordance with an acceptable capital investment process.
- 6.9. undertakes to take reasonable steps it deems necessary, to ensure the program is implemented effectively and efficiently;
- 6.10. retain ownership and responsibility of all infrastructure development; assets, including the expansion of the electricity grid, as implemented in terms of the Integrated National Electrification Program as well as any income accruing from any customers connected to the electricity grid.
- 6.11. that any savings (monetary value or other) from the INEP allocation as stipulated in clause 5.1 of this agreement shall be reported to the Department.
- 6.12. submit a monthly expenditure report.
- 6.13. that the programme is executed in line with the approved 2011 INEP policies and guidelines posed on the department internet.
- 6.14. that houses are already built and occupied before electrification project can commence, unless the Municipality provided a letter

X  
J.W.  
RP - 2/11

10  
confirming that earlier electrification commenced and the Municipality will accept liability therefore..

- 6.15. Cooperate with the Department to ensure that technical audits are conducted by the Department on all completed projects and the following information must be provided:
    - 6.15.2. As-built drawings/Plans
    - 6.15.3. List of beneficiaries
    - 6.15.4. Copies of the certificate of compliance.
    - 6.15.5. Tender documents and specifications.
  - 6.16. ownership of documents and designs and from the consultants for all projects funded through INEP funds.
  - 6.17. provide Electrical engineering training for the engineering interns in accordance with the requirement of training institutions and provide all necessary protective clothing to the interns as and when required.

## **7. FUNDING**

- 7.1. The Department shall on request from the Municipality, monthly in advance, on or before the seventh (7<sup>th</sup>) day of each month, transfer funds to the Municipality, equivalent to the appropriate monthly payment due in terms of the Cash Flow Schedules of Annexure D attached hereto limited to the amount in Annexure A. The Municipality shall utilize said funds, to meet the projected electrification targets, more fully set out in Annexure A attached hereto.

11

7.2. The Municipality shall implement effective, efficient and transparent financial management and internal control systems as contemplated in the MFMA 56 of 2003. By applying its signature to this contract the Municipality confirms and gives assurance that it's Financial Systems comply with the conditions as contemplated in the MFMA 56 of 2003.

7.3. The Municipality shall, in compliance with DoRA include the funds allocated for projects as contemplated in Annexure A hereto in its current year budget so as to prevent delays in the implementation of the said projects.

#### 8. REPORTING AND ACCOUNTABILITY

8.1. The Municipality shall comply with the provisions of the MFMA and accordingly, proper financial statements shall be maintained and made available for inspection and/or audit by the Department, and/or its authorised representatives, regularly in terms of MFMA 56 of 2003.

8.2. The Department shall supply such information as may be required in terms of Section 10 of DoRA to the National Treasury, when required. The Department shall certify to the National Treasury such information as is required in terms of Section 10 (1) of DoRA and, as described in terms MFMA 56 of 2003, such information having been provided to the Department by the Municipality within 10 days after the end of each month in accordance with Section 12 (2) (a) and (6) of DoRA as set out in Annexure C.

8.3. The Municipality hereby confirms that they comply with the BBBEE, and EPWP requirements stipulated in the Guideline for the implementations of INEP for 2011/12 financial year as part of Annexure C.

B  
RJ

- 8.4. The Municipality shall supply any information related to the program as and when requested in writing by the DOE, or its authorized representatives. The Department or its representative shall at all times have access to all documents, information, project sites and installations subject thereto that it gives the Municipality at least 7 (SEVEN) days notice of such an intended visit.
- 8.5. The Department may, in order to fulfill its obligation to exercise macro-control in terms of the PFMA and in accordance with this agreement over the implementation of the electrification program, appoint a person, to impose such controls as the Department may deem necessary after written notification is given to the Municipality 7 (SEVEN) days in advance. Such controls shall include, but shall not be limited to the following:
  - 8.5.1. Audit of the electrification asset creation process;
  - 8.5.2. Independent random inspection of any installation or connection;
  - 8.5.3. Introduction and implementation of such monthly and quarterly controls as the Department may deem necessary; and
  - 8.5.4. Recommendations on shortcomings of the Municipality's micro-control measures.
  - 8.5.5. Report from Municipality to the Department on a monthly basis, should be inclusive of employees ID numbers on the extent to which the funds allocated for INEP have been allocated for Broad Based Black Economic Empowerment, using Annexure C attached to the contract.

*[Handwritten signatures and initials follow, including "A", "J.", "R.J.", and "M.J."]*

8.6. Any changes related to Annexure E attached should be reported to the Department within 30 days <sup>13</sup>

## 9. CONDITIONS FOR TRANSFER

- 9.1. The Department will not transfer funds to municipalities with outstanding/incomplete projects
- 9.2. The Municipality shall not execute any projects or change projects without prior approval from The Department
- 9.3. The Municipality shall not spend funds on Eskom area of supply unless prior arrangements are made and approved by the department.

## 10. TERMINATION

- 10.1. This Agreement shall terminate either at the expiry of the period upon the Municipality's being unable to perform all the required functions and responsibilities, as shall be determined by the Department.
- 10.2. Notwithstanding termination of this Agreement, the projects or other activities that are part of the overall programme, already implemented and which are current, shall be completed and implementation thereof shall be finalized as part and parcel of the programme. The funding thereof shall be provided in terms of the funding set out in terms of this Agreement and the Municipality shall submit the required reports.

AB  
cv  
12

AB

AB

AB

- 10.3. The expiration or termination of this Agreement shall not affect those provisions of this agreement, which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly so provide.

## 11. BREACH

- 11.1. Should any party to this Agreement-

- (a) commit a breach or fail to comply with any of the terms of this Agreement, and fail to remedy such breach within a period of 14 (FOURTEEN) days of receipt of a written notice of such breach; or
- (b) Consistently breach of any of the terms of this Agreement for more than 3 (THREE) times during any 12 (TWELVE) months period, in such a manner as to reasonably justify the other party in holding that party's conduct as inconsistent with its intention or ability to carry out the terms of this Agreement, or
- (c) fail, without reasonable cause, to make payment, provide any report or any information required and persist in such default despite a 14 (FOURTEEN) days written notice of such default; then the party not in breach shall without prejudice to any rights that it may have been entitled to
  - (i) cancel this Agreement forthwith; or
  - (ii) demand and enforce compliance with all the terms of this Agreement; and

✓ 22  
JL R.P. ✓

- (iii) in addition to its rights set out above, claim any damages that it may have suffered as a result of the breach.
- (iv) withhold of future transfers.
- (v) stop of funds and re-allocate to other municipalities.
- 11.2. Notwithstanding the provisions of clause 11.1, the Department may for a period of 30 (THIRTY) days delay a transfer payment to the Municipality in terms of Section 16 of the DoRA if-
- 11.2.1. Conditions attached to the transfer or grant have not been complied with; or
  - 11.2.2. Expenditure on previous transfers reflects significant under spending for which no satisfactory explanation is provided.
  - 11.2.3. The Municipality does not give a reasonable explanation on its under spending on the funds allocated by the Department.
- 11.3. The Department shall report any breach contemplated in clause 11.1 or non-compliance with any provisions of this agreement to National Treasury and with concurrence of the National Treasury withhold a transfer payment to a Municipality in terms of section 16 of the DoRA.
- 11.4. Notwithstanding clause 11.1 the Department may stop the subsidy if there is persistent and material non-compliance in terms of Sec. 17 of the DoRA.
- RJH  
RJH

11.5. Notwithstanding anything contained in this agreement,<sup>16</sup> the Department in consultation with National Treasury may re-allocate the allocation to another Municipality in accordance with Sec 18 of the DoRA.

## 12. FORCE MAJEURE

12.1. Either party shall be excused from the non-performance of any of its obligations under this Agreement if caused by any factor outside the control of that party, such factor including (without limitation) fire, storm damage, inclement weather, power failures, riots, breakdown of machinery or equipment, unavailability of materials, strikes, lock-outs, sanctions, embargoes and actions of the legislative, or the executive, or the military authorities.

12.2. The affected party shall bear the onus of proving that an event of *force majeure* has occurred, and will keep the other party informed in writing of the circumstances, which the affected party claims to amount to *force majeure*.

12.3. If *force majeure* persists for a continuous period of more than (THREE) consecutive months, either party may terminate this Agreement in respect of such operating entity affected thereby with immediate effect on 14 (FOURTEEN) days written notice to the other party.

## 13. GENERAL

13.1. This document constitutes the entire agreement between the parties and neither of them shall be bound by any undertakings,

cc  
B  
Jan 12  
R.P. M

- 17
- representations, warranties, promises and the like not recorded herein.
- 13.2. No alteration, variation or cancellation by agreement or, addition or amendment to, or deletion from this agreement shall be of any force or effect unless in writing and signed by or on behalf of all the parties hereto.

#### 14. APPLICABLE LAW

This Agreement shall be interpreted in accordance with the laws of the Republic of South Africa.

#### 15. CESSION

- 15.1. Neither party shall cede, assign, transfer, make over or delegate any right or obligation acquired in terms of this Agreement without the prior written consent of the other party.
- 15.2. Notwithstanding clause 15.1 above, neither party shall be entitled to prevent the transfer or cession of rights and obligations to a new legal entity which is formed as a result of any restructuring of the EDI.

#### 16. DISPUTES

- 16.1. Any dispute in terms of this Agreement shall be referred to the Accounting Officer of the Municipality and the Director-General of the Department and they shall endeavor to settle the matter of such referral, failing which either party may refer the matter to arbitration in terms of the rules of the Arbitration Foundation of South Africa..
- ✓* *✓*  
*R.F.* *M.*

- 16.2. Notwithstanding the foregoing, each party shall be entitled to apply for interim relief from a court of law having the required jurisdiction.

#### 17. COSTS

- Each party will bear its own legal and other costs incidental to the drafting, negotiating and conclusion of this Agreement.

#### 18. NOTICES AND ADDRESSES

- 18.1. The parties choose the following as physical addresses at which notices contemplated in this Agreement and legal documents relating to it or to any dispute or other matter incidental to it, may be delivered or served:

##### 18.1.1. MUNICIPALITY

Physical Address:

38 Joubert Street  
Ladybrand  
9745

Postal Address:

Box 64  
Ladybrand  
9745

Fax:

051 924 0020

Tel:

051 924 0654

Contact Person:

R. Chatale

f

cm

BR

RJ R

## 18.1.2. DEPARTMENT

Physical Address: Cnr. Schoeman and Meintjes Street  
Sunnyside  
0002

Postal Address: Private Bag X19  
Acadia  
0007

Fax: 012 444 4500/ (086) 604 1637

Tel: (012) 444 4120

Contact Person Lindiwe Cebekulu

18.2. Where a party changes its address or other communication details as set out above, notice will be given in writing to the party within 14 (FOURTEEN) days of the change, to be effective from the 15<sup>th</sup> day of such notice.

\* J.M. R.P. M

SIGNED AND DATED AT THE PLACE AND ON THE DATES NOMINATED  
HEREUNDER.

20

For the MUNICIPALITY

Duly authorised thereto in terms of  
Council Resolution

Date: 03 June 2010

Name: C.M. Rampai

Capacity: Municipal Manager

Date: 11-04-2011

Place: LaoyBlaao

For the DEPARTMENT

Duly authorised thereto

As Witnesses:

Name: W.A. Barnard

Capacity: Exec Manager: TNEP

Date: 21/4/2011

Place: Pletoria

**ANNEXURE A**  
**APPROVED INTEGRATED NATIONAL ELECTRIFICATION**  
**HOUSEHOLD PROGRAMME: PROJECT AND CASH FLOW DETAILS**  
**FOR THE 2011/12 FINANCIAL YEAR**

**Project Details**

Province Name:	FREE STATE	Municipality Name:	Mantsopha
Project Number:	Platherg	Municipality No.:	FS173
Project Part of IEP:	No	Number of Connections Per Month:	101
Type of Connection:	New Connection	House Density:	Urban
Efficiency:	Yes	Connections Per Capacity:	60 Amp
Supply Type:	0.75	ADM Factor:	1.5

**Approved Connections and Capital Details**

Authorising Officer:	R 810,000.00	Approved Connections:	101
Date Authorised:	R 8,019.80	Date Subsidy Approved:	20A

**Detailed Cash Flow and Connections Per Month**

**Cash Flow**

	May:	June:	Jul:	Aug:	Sept:	
Initial	R 0.00	R 0.00	R 405,000.00	R 405,000.00	R 0.00	
Subsidy	R 0.00	R 0.00	R 0.00	R 0.00	R 0.00	
Total	R 0.00	R 0.00	R 0.00	R 0.00	R 0.00	
						Total Cash Flow:
						R 810,000.00

**Connections**

	May:	June:	Jul:	Aug:	Sep:	
Initial	0	0	51	50	0	
Subsidy	0	0	0	0	0	
Total	0	0	51	50	0	
						Total Connections:
						101

B  
N  
LJ  
C  
D  
22

**Annexure D**  
**Confirmation Of Cashflow Transfer Report!**  
**2011/12 Financial Year**

Province Name:	FREE STATE	Municipality Name:	Mantsoko
Municipality Number:	FS173	Total Amount Allocated:	R 810,000.00
Project Name:			
<b>Total Cash Flow</b>			
Month:			
Amount Scheduled: R		Amount Required: R	
Reason for difference between scheduled and amount required:			
Amount Scheduled (YTD): R		Amount Transferred (YTD): R	
Name of contact person that confirmed cashflow transfer:		Signature:	
		Date:	

X De

B AB

LL

R.P. CH

204 11/12 球根花卉栽培

三

四百一

16

Digitized

卷之三

MORNING

二  
七

114

47

8

5-10

104

2

• 6

- 2 -

- 6 -

4

2

27

2

2011/12 ELECTRIFICATION REPORTING TERM DATE 1