

This is an Agreement between the National Treasury of South Africa, and the Municipality whereby the National Treasury agrees to the funding of Technical Assistance and/or Capital Grant Funding, as the case may be and as defined in the Schedules attached to this Agreement for the Neighbourhood Development Partnership Grant Project procured by the Municipality.

It is hereby agreed as follows:

1 DEFINITIONS AND HEADINGS

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

- Accounting Officer means, in relation to a Municipality, the Municipal Manager, or the duly authorised representative who may be the Project Manager for the Project, in terms of the Schedule
- Agreement means this Agreement and any Schedules and annexures thereto
- Capital Grant means Funds allocated and transferred by the National Treasury to a Municipality for the payment of Contractors, providing such Funds are allocated and agreed by the National Treasury, in accordance with its approval of the business case for the Project, upon receipt of draw-down requests for transfers, quarterly and in advance from the Accounting Officer, in accordance with the Milestone Payment Schedule
- Consultant any company, contractor or consultant appointed by the Municipality to plan and/or implement the Project which is funded through the Technical Assistance Fund and/or any other funding sources
- Contractor means any contractor appointed by the Municipality to construct a portion or portions or all of the capital works for the Project which is funded through the Capital Grant and/or any other funding sources
- Funds means the financing granted in terms of this Agreement and refers to the Technical Assistance and/or Capital Grant Funds
- Head: NDP Unit means the designated head of the NDP Unit of the National Treasury
- MFMA means the Municipal Finance Management Act, 2003 (Act No. 56 of 2003)
- Milestone Payment Schedule means the Schedule attached hereto that outlines the Milestones as set out by the Municipality with its associated payment schedule
- Municipality means the Municipality, be it a metropolitan municipality, a local municipality or a district municipality, which is responsible for the Project and is party to this Agreement

All Parties to initial Agreement here

| Municipality | | | National Treasury | | |
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| Municipality | Witness 1 | Witness 2 | National Treasury | Witness 3 | Witness 4 |
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| National Treasury | means the National Treasury of National Government and party to this Agreement |
| NDP Unit | means the Neighbourhood Development Programme Unit of the National Treasury and the administrator of the NDPG |
| NDPG | means the Neighbourhood Development Partnership Grant provided by the National Treasury |
| Parties | means the Municipality and the National Treasury |
| PDF | means the Project Development Facility, a trading entity of the National Treasury in terms of Treasury Regulation 19 represented by the head of the PDF and administered by the PPP Unit |
| PFMA | means the Public Finance Management Act, Act 1 of 1999 |
| PPP Unit | means the Public Private Partnership Unit of the National Treasury |
| Project | means the proposed NDPG Project as further described in the Schedules |
| Project Completion | means the date on which the last of any conditions precedent in the Agreement are fulfilled, or waived, as the case may be and generally coincides with Project completion |
| Project Manager | means the person identified by the Accounting Officer to manage the Project from its inception to completion, also known as the Project Officer |
| Schedule | means any and/or all of the Schedules appended to this Agreement |
| Suspensive Conditions | means the Suspensive Conditions set out in Clause 3 of this Agreement |
| Technical Assistance | means Funds allocated by the National Treasury to a Municipality for the payment of Consultants, providing such Funds are allocated and agreed by the National Treasury, and are to be paid, from the PDF, directly to Consultants appointed by the Municipality, upon receipt of invoices for progress payments verified by the Accounting Officer, in accordance with the Milestone Payment Schedule |
| Toolkit | means the NDPG Toolkit issued since July 2006, with subsequent updates, by the National Treasury (available on www.treasury.gov.za/ndp) to assist the Municipality in relation to Projects |
| Treasury Approval | means any National Treasury approval required in terms of the administration of the NDPG |
| Treasury Regulations | means the Treasury Regulations for Departments, Trading Entities, Constitutional Municipalities and Public Entities; issued in terms of the Public Finance Management Act, and any other relevant legislation |

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2 INTERPRETATION

- 2.1 Headings to the Clauses of this agreement are for reference purposes only and do not form a part of this Agreement.
- 2.2 Reference to 'the/this agreement' shall include the agreement and its annexures and schedules, as amended, added to, varied, novated or substituted in writing from time to time.
- 2.3 Words importing the singular shall include the plural and visa versa, and words importing either gender or the neuter shall include both genders and the neuter, and 'person' shall include both corporeal and incorporeal entities.
- 2.4 References to the provisions of any law shall include such provisions as amended, re-enacted or consolidated from time to time in so far as such amendment, re-enactment or consolidation applies or is capable of applying to transaction entered into under this agreement.
- 2.5 References to "Parties" shall include the Parties' respective successors-in-title and, if permitted in this Agreement, their respective cessionaries and assignees.
- 2.6 References to "Clauses", "sub-Clauses" and "Schedules" are references to the Clauses, sub-Clauses and schedules of this Agreement.
- 2.7 The headings of Clauses, sub-Clauses and Schedules are included for convenience only and shall not affect the interpretation of this Agreement.
- 2.8 The Schedules to this Agreement are an integral part of this Agreement and references to this Agreement shall include the Schedules.
- 2.9 The Parties acknowledge that each of them has had the opportunity to take legal advice concerning this Agreement, and agree that no provision or word used in this Agreement shall be interpreted to the disadvantage of either Party because that Party was responsible for or participated in the preparation or drafting of this Agreement or any part of it .
- 2.10 General words preceded or followed by words such as "other" or "including" or "particularly" shall not be given a restrictive meaning because they are preceded or followed by particular examples intended to fall within the meaning of the general words.

3 SUSPENSIVE CONDITIONS APPLICABLE TO THE AGREEMENT

- 3.1 The obligations and rights that arise from this agreement are suspended until the following conditions are fulfilled:
 - 3.1.1 The Accounting Officer of the Municipality has obtained the required approval from the National Treasury for the Project as defined in this Agreement.
 - 3.1.2 The Accounting Officer has confirmed in writing any funding of Consultant costs by the Municipality as required by the National Treasury, if applicable.
 - 3.1.3 The Accounting Officer has informed the National Treasury in writing of any changes to the Consultant and/or Contractor to the Project and such changes have been accepted in writing by the National Treasury.

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- 3.1.4 Payment will only be made on the proof of agreed-upon deliverables being presented to the National Treasury. If deliverables are not met further payments will not be made.
- 3.2 Notwithstanding Clause 3.1, the provisions of this clause shall come into full force and effect on the signature date.
 - 3.2.1 **Waiver:** By written agreement, the Parties may waive or defer any suspensive condition, and in such event may attach to such deferral or waiver such requirements or conditions as the other Party may reasonably require.
 - 3.2.2 **Reasonable Endeavours:** The Municipality shall use its best endeavours to procure the satisfaction of the suspensive conditions within its control as soon as is reasonably practicable after the Signature Date.
 - 3.2.3 **Notice of Fulfillment:** The Municipality shall promptly notify the National Treasury when it is satisfied that the suspensive conditions which were inserted solely for their benefit have been fulfilled, deferred or waived (as the case may be) and such suspensive conditions shall only be deemed to have been fulfilled, deferred or waived (as the case may be) when such notice is given.
 - 3.2.4 **Failure to Fulfill:** If any of the suspensive conditions are not fulfilled or duly waived by agreement between the Parties, within 14 days following the Signature Date, or such later date as the Parties may have agreed in writing, or the conditions attaching to any waiver or deferral are not met in accordance with its terms, this Agreement will not come into effect, all negotiations relating to this Agreement shall be terminated and no Party will have any claim against the other as a result of the suspensive conditions not having been fulfilled or duly waived save for any claim arising from a breach of Clause 3.2.2.

4 OBLIGATIONS OF THE PARTIES

- 4.1 The National Treasury shall:
 - 4.1.1 Disburse the Funds as set out in the Schedules as payment to the Municipality and/or its Consultant upon written confirmation by the Accounting Officer of the Municipality that such disbursement is due and payable.
 - 4.1.2 In the case of Technical Assistance, the National Treasury shall pay the Consultant in terms of this Agreement for the amount of each invoice including VAT, for progress as outlined in the deliverables agreed to in the said Schedule.
 - 4.1.3 In the case of the Capital Grant Funding, the National Treasury shall transfer to the Municipality in tranches each quarter preceding the quarter in which the capital is to be expended, in terms of this Agreement, the amount of each draw-down request, including VAT, as per the deliverables agreed to in the said Schedule.
 - 4.1.4 Maintain a financial management system that is in compliance with Generally Accepted Accounting Practice for reporting on Project development.
 - 4.1.5 Report on all payments made in the required reports of National Treasury.

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4.2 The Municipality shall:

4.2.1 Engage with the National Treasury throughout the stages of the Project and ensure that the National Treasury is fully apprised of all aspects of the Project. All communication in respect of the Project, between the Municipality and the National Treasury, will be made through the NDP Unit.

4.2.2 Provide and adhere to the detailed urban development Project documents at the relevant Project stage, which include:

- Total Project cost
- A total funding plan
- Project timelines (such as Bar or Gantt Charts)
- Milestones payment schedules
- Cash flow requirements
- Viability studies
- Risk management mitigation measures
- Business plan
- Any other details as requested by the National Treasury necessary to build the business case for the award of a Capital Grant

All Project documents are to be submitted to the National Treasury as requested and/or included in this Agreement and described in the Schedule.

4.2.3 Construct the Project in accordance with agreed Project details.

4.2.4 Align any contract strategy to the milestone payment mechanisms to ensure that costs are contained within the allocated and approved cash flow budget presented in the Schedules.

4.2.5 In the event that the projected cost is greater than the approved budget the Municipality must demonstrate how the additional funding is to be sourced and managed and must inform the National Treasury immediately, and if additional funding from the National Treasury is requested, such request must be approved by the National Treasury before the Municipality continues with the Project.

4.2.6 Adhere to agreed Project milestones and agreed cash-flow budgets as set out in the Schedule and the agreed Project plan for the transfer of Funds from the National Treasury.

4.2.7 Record all assets created on the Municipality’s asset register, where appropriate.

4.2.8 Engage the Auditor General to perform a financial audit on any transferred Funds on an annual basis, in line with MFMA requirements.

4.2.9 Budget sufficient funds to safely operate and maintain any municipal assets created in terms of the Project after completion, in accordance with the business plan for the Project.

4.2.10 Deposit the Capital Grant Funds from the National Treasury in the Municipality’s primary bank account.

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- 4.2.11 Ensure the financial records of the Municipality reflects all contributions made by the National Treasury, whether in kind, being generally the Technical Assistance Fund, or in funds received, being generally the Capital Grant Fund, by ring-fencing the Funds per Project, in the municipal budget by providing a line item each for:
 - (i) Operational expenditure being generally the Technical Assistance Grant Fund; and
 - (ii) Capital expenditure being generally the Capital Grant Fund.
- 4.2.12 Ensure that all interest accrued is deposited into the ring fenced NDPG line items.
- 4.2.13 Provide information to the National Treasury on all funding per funding source secured, in terms of the Project, whether these are cash and/or in-kind contributions and whether the funds are used for Project planning purposes and/or capital expenditure in terms of the Project and where these amounts are expended by parties the Municipality.
- 4.2.14 Provide information to the National Treasury on all funding per funding source secured and/or to be secured, in terms of the Project, whether these are cash and/or in-kind contributions and whether the funds are used for project planning purposes and/or capital expenditure in terms of the Project, but where these amounts are expended by parties other than the Municipality, and are directly attributable to the Project.
- 4.2.15 Account for the progress in any preparation and/or construction of the Project against agreed milestones on a monthly basis by submitting a progress report to the National Treasury no later than 10 days after the month end in the format specified. The report must project the cash flow requirements for the Funding.
- 4.2.16 Account for the transferred Funds and expenditure of the transferred Funds on a monthly basis by submitting a financial reconciliation no later than 10 days after the month end.
- 4.2.17 Support the financial reconciliation with correctly certified and accurate Milestone Payment Schedules.
- 4.2.18 Not use the Funds for any purpose other than the Project.
- 4.2.19 In addition to the any amounts made available from the National Treasury in terms of this Agreement, be responsible for the provision of the co-financing necessary for the successful execution of the Project, as agreed with the National Treasury, including funds to be supplied by third parties as reflected in the Schedules.
- 4.2.20 Enter into all contracts with the Consultant and/or Contractor as required to complete the Project, and shall be responsible for the management of the performance of the Consultant and/or Contractor in accordance with the contract and for the management of the Project as a whole in accordance with all applicable National Treasury Regulations and related National Treasury Guidelines and municipal supply chain management legislation and policy.
- 4.2.21 Maintain an appointed Project Manager at all times.

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- 4.2.22 Ensure that all provisions in the Consultant and/or Contractor contracts are in line with this Agreement.
- 4.2.23 Ensure that the all Consultants and/or Contractors carry and maintain insurance appropriate to the activities to be conducted, and remain so insured throughout the duration of the contract.
- 4.2.24 In the case of Technical Assistance, request regular disbursement of Funds based on the Consultant's progress payments in the form of invoices from said Consultants in the format requested by National Treasury, and shall certify that those invoices are consistent with the Milestone Payment Schedule of deliverables and milestones and corresponding payments called for in the contracts between the Municipality and the Consultant. The Municipality will then collate and catalogue all invoices for audit purposes.
- 4.2.25 In the case of the Capital Grant, submit to the National Treasury, in accordance with the agreed Schedules a quarterly request to transfer Funds to the Municipality in respect of the Capital Grant in the format requested by National Treasury, based on the projected cash flow for the next quarterly period.
- 4.2.26 Maintain and preserve all documents and accounting records pertaining to the Project up to the expiry of a period of 3 (three) years after completion of the Project, and allow the National Treasury, at the National Treasury's cost, to have such documents and records audited by a person or persons nominated by the National Treasury, upon request.
- 4.2.27 Use its best endeavours to procure Consultants and/or Contractor s to ensure that the Project is completed within the planned time frames.
- 4.2.28 Comply with all the statutory requirements of the MFMA and all legislation applicable for municipalities.
- 4.3 The Parties shall periodically and at the request of either Party:
 - 4.3.1 Exchange views with regard to the progress of the Project, and the performance of their respective obligations under this Agreement as well as other matters relating to the purposes of the granting of Funds;
 - 4.3.2 Furnish each other with all such information as may be reasonably requested with regard to the progress of the Project and the general status of the Funds; and
 - 4.3.3 Promptly inform each other of any fact which interferes with, or threatens to interfere with, the progress of the Project, the accomplishment of the purposes of the Funds, any related matter, and in particular the performance by either Party of its obligations under this Agreement.

5 FUNDING OF PROJECT COSTS

- 5.1 The National Treasury shall allocate to this Project, on the terms and conditions set forth in this Agreement, amounts for Technical Assistance and/or Capital Grant Funds, not exceeding the amounts stipulated in the Schedules, and/or as may be revised and agreed to in writing by the National Treasury.
- 5.2 All amounts shall include VAT, any disbursements, escalation and all costs as agreed in the Schedules.

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- 5.3 These Funds shall be disbursed at the times set out in the Milestone Payment Schedule and shall not exceed the maximum amounts set out in the Schedules and shall be paid to the Consultant in respect of Technical Assistance, and to the Municipality in the case of the Capital Grant, unless otherwise stipulated by the National Treasury.
- 5.4 The Municipality shall provide the funding set out in the Schedule by paying such amounts to the Contractors as well as all any additional funding be needed to complete the Project.
- 5.5 Should less funding from the National Treasury be needed to complete the work anticipated in this agreement, the Municipality may apply to the National Treasury for approval of disbursement of the Funds for the furtherment of other aspects of the Project provided that any such change in funding required shall be agreed in writing between the Municipality and the National Treasury.
- 5.6 The Municipality shall, in respect of Technical Assistance Fund, furnish the National Treasury with particulars of the persons certifying payment of any Consultant’s invoices, the full banking details of the Consultant to facilitate electronic transfer of disbursed Funds, and a copy of the letter of appointment of the Consultant, and any other information that the National Treasury may reasonably require.
- 5.7 The Municipality shall, in respect of the Capital Grant Fund, furnish the National Treasury with particulars of the persons requesting draw-downs of any request for capital transfers, the full banking details of the Municipality to facilitate electronic transfer of disbursed Funds, and a copy of the letter of appointment of the Contractor, and any other information that the National Treasury may reasonably require.
- 5.8 The Municipality may by written notice to the National Treasury cancel any undrawn portion of the Funding as set out in the Schedules provided that such cancellation shall not jeopardise the proper completion of the Project.
- 5.9 Should the Municipality not provide progress reports, financial reconciliation reports, bank statements and updated cash flow projections on a monthly basis, as required by the National Treasury, and should the Municipality submit for payment an invoice of the Consultant in respect of Technical Assistance Funding, or request a drawn-down in terms of the Capital Grant transfer to the Municipality, more than one calendar month from the date of such invoice or request for draw-down, projected by the most recent Milestone Payment Schedule, the National Treasury shall be entitled to withhold payment of further transfers until such time as all required reports are submitted. All costs arising from such delayed payments shall be for the account of the Municipality.
- 5.10 Should the Municipality not meet the agreed milestones on a monthly basis, as required for Technical Assistance or quarterly, as required for the Capital Grant, the National Treasury shall be entitled to withhold or delay payment of further invoices and/or transfers, in whole or in part, until such time as milestones are met. All costs arising from such delayed payments and/or transfers shall be for the account of the Municipality.

6 PAYMENTS

- 6.1 All payments to or by the Parties under this Agreement shall be effected in South African Rands.
- 6.2 All payments and/or transfers under this Agreement to any stipulated Consultant and/or the Municipality shall be effected as electronic fund transfers.

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6.3 Payments by the National Treasury in terms of the Agreement shall be effected in the amount agreed between the National Treasury and the Municipality without deduction including any taxes, charges, fees, or other costs within the stipulated timeframes and in accordance with the Schedule.

7 SUSPENSION AND TERMINATION

7.1 The National Treasury shall be entitled to suspend the operation of this Agreement by not disbursing Funds or to terminate this Agreement, in the event, and for so long as, the Municipality fails to comply with any provision of this Agreement after having given the Municipality 14 (fourteen) days written notice to comply, and the Municipality thereafter continuing to remain in default, in which latter event the full amount previously paid by the National Treasury shall be due, owing, and payable to the National Treasury by the Municipality, and the National Treasury reserves the right not to make further payments to Consultants and/or transfers of grant Funds to the Municipality. and the National Treasury reserves the right not to make further payments to Consultants and/or transfers of grant Funds to the Municipality.

8 DISCLAIMER

8.1 The National Treasury is not liable for claims, losses, or damages, whether willful or negligent arising out of any contracts between the Municipality and any Consultant and/or Contractor.

9 DISPUTE RESOLUTION

9.1 Should any dispute between the Parties with regard to the interpretation, the carrying into effect and implementation of any one or more of the provisions of this Agreement, any of the rights and obligations or either Party arising from the Agreement, the termination or purported termination of, or arising from the termination of, or the rectification or proposed rectification of the Agreement, or pursuant to this Agreement, or any other matter which in terms of this Agreement requires agreement by the parties, the parties shall, in the first instance, attempt to come to an agreement in relation to any such dispute by consultation and negotiation in good faith.

9.2 In the event that the parties, after consultation and negotiation, are unable to come to an agreement, then either party may give written notice to the other party of its intention to cancel the agreement.

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| Municipality | | | National Treasury | | |
| Municipality | Witness 1 | Witness 2 | National Treasury | Witness 3 | Witness 4 |
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10 GENERAL

10.1 Any notice or request to be given or made in terms of this Agreement shall be in writing, and shall be deemed to have been duly given or made when in the case of the National Treasury, addressed to the Head of the NDP Unit, and received at:

Physical address:

| |
|---|
| Room 1449 240 Vermeulen Street Pretoria, 0002 |
|---|

Postal Address

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|------------------------------------|
| Private Bag X115 Pretoria, 0001 |
|------------------------------------|

Fax Number

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|----------------|
| (012) 315 5779 |
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And in the case of the Municipality, when addressed to the Municipality and received at the following address:

Municipality Name:

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Physical address:

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Postal Address

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The Parties may change the above-mentioned addresses by giving written notice to such effect to the Parties to the Agreement.

10.2 No amendment of, or addition to this Agreement shall be valid unless the same has been reduced to writing and signed by or on behalf of the Parties.

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

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

10.5 Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this Agreement shall survive any termination or expiration of this Agreement and continue in full force and effect.

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| Municipality | | | National Treasury | | |
| Municipality | Witness 1 | Witness 2 | National Treasury | Witness 3 | Witness 4 |
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Thus done and signed at _____ on the _____ day of _____ 200__.

As witnesses:

| | | |
|------------|-------------|--|
| Witness 1: | | |
| | (Signature) | (Name in full) |
| Witness 2: | | |
| | (Signature) | (Name in full) |
| | | |
| | | (Signature) |
| | | For and on behalf of the Municipality, duly authorised in terms of the Schedules attached hereto |

Thus done and signed at _____ on the _____ day of _____ 200__.

As witnesses:

| | | |
|------------|-------------|---|
| Witness 3: | | |
| | (Signature) | (Name in full) |
| Witness 4: | | |
| | (Signature) | (Name in full) |
| | | |
| | | (Signature) |
| | | For and on behalf of the National Treasury, duly authorised thereto |