

**AFD AGREEMENT No. CZA 1101 03 P**

---

**GRANT AGREEMENT**

**dated January 22<sup>nd</sup>, 2014**

**between**

**AGENCE FRANÇAISE DE DEVELOPPEMENT**

**AFD**

**and**

**CITY OF CAPE TOWN MUNICIPALITY**

**The Recipient**

---

  

## TABLE OF CONTENTS

|     |                                                          |    |
|-----|----------------------------------------------------------|----|
| 1.  | DEFINITIONS AND INTERPRETATIONS .....                    | 4  |
| 2.  | AMOUNT, PURPOSE AND CONDITIONS OF UTILIZATION .....      | 4  |
| 3.  | DRAWDOWN OF FUNDS .....                                  | 5  |
| 4.  | POSTPONEMENT OR REJECTION OF DRAWDOWN REQUESTS.....      | 7  |
| 5.  | REPRESENTATIONS AND WARRANTIES .....                     | 8  |
| 6.  | UNDERTAKINGS.....                                        | 9  |
| 7.  | INFORMATION UNDERTAKINGS .....                           | 12 |
| 8.  | INCIDENTAL EXPENSES - REGISTRATION .....                 | 13 |
| 9.  | MISCELLANEOUS .....                                      | 13 |
| 10. | NOTICES .....                                            | 14 |
| 11. | EFFECTIVENESS – TERM – TERMINATION .....                 | 15 |
| 12. | GOVERNING LAW, JURISDICTION AND CHOICE OF RESIDENCE..... | 16 |
|     | SCHEDULE 1A-DEFINITIONS .....                            | 18 |
|     | SCHEDULE 1B-INTERPRETATION .....                         | 21 |
|     | SCHEDULE 2- PROJECT DESCRIPTION .....                    | 22 |
|     | SCHEDULE 3- FINANCING PLAN .....                         | 24 |
|     | SCHEDULE 4- CONDITIONS PRECEDENT .....                   | 25 |

## FINANCING AGREEMENT

### BETWEEN:

**CITY OF CAPE TOWN**, established as a Category A Municipality in terms of Section 155 of the Constitution of the Republic of South Africa, duly established by notice in the Provincial Notice 479/2000 dated 22<sup>nd</sup> September 2000, of the Western Cape, 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: Civic Centre, 12 Hertzog Boulevard, Cape Town 8001, South Africa, represented by Achmat EBRAHIM, in his capacity as City Manager, duly authorized to sign this agreement,

(hereinafter, the “**City**” or the “**Recipient**”);

### OF THE ONE PART

### AND

**AGENCE FRANCAISE DE DEVELOPPEMENT**, a French public entity, (*établissement public à caractère industriel et commercial*) incorporated under the laws of the Republic of France with registered office at 5, Rue Roland Barthes, 75598 PARIS Cedex 12 – France, registered with the Paris Trade and Companies Register under number 775 665 599 represented by Jean-Michel DEBRAT in his capacity as Director of Johannesburg French Development Agency duly authorized to sign this Agreement,

(hereinafter, “**AFD**”);

### OF THE SECOND PART

(hereinafter jointly referred to as the “**Parties**” and individually as a “**Party**”)

### WHEREAS,

- (A) The City has established a sustainable development programme (the Integrated Development Plan or the “**Programme**”) aimed at improving or developing, among others, urban transports, water and sanitation, urban regeneration and housing, and the environment.
- (B) AFD supports the South African municipal sector focusing on projects promoting sustainable development. Its objective is to maximise social and environmental impacts through municipal public services including urban transport, water and waste water projects.
- (C) In this context, on February 18th, 2013, AFD and the City have entered into a credit facility agreement CZA 1101 01 M (the “**Credit Agreement**”) whereby AFD has agreed to make available to the City a credit facility in a maximum aggregate principal amount of Rand 2 384 420 000 (ZAR Two billion Three Hundred and Eighty Four million and Four Hundred and Twenty thousand) to finance partially its costs in relation to its approved 2011-2014 capital budget resulting from the Integrated Development Plan dated 31 March 2012.
- (D) Furthermore, the Recipient intends to implement, within the framework of its 2012-2017 Integrated Development Plan, a technical cooperation that will focus on public urban transport and will support the “Early Childhood Development” programme launched by the City (the “**Project**”).

- (E) The Recipient has requested AFD to make available a grant for the purpose of financing the Project.
- (F) Pursuant to the decision n° C20130011 dated 6 February 2013, of its authorized committee, AFD has agreed to make available the Grant to the Recipient subject to the terms and conditions hereunder.

**ON THE BASIS OF THE FOREGOING, IT IS HEREBY AGREED AS FOLLOWS:**

**1. DEFINITIONS AND INTERPRETATIONS**

**1.1 Definitions**

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

**1.2 Interpretation**

Terms used in this Agreement shall be construed pursuant to the provisions of Schedule 1B (*Interpretation*), except as otherwise provided herein.

**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 South African legislation applicable to the Recipient by virtue of its status as municipality and organ of state.

**2. AMOUNT, PURPOSE AND CONDITIONS OF UTILIZATION**

**2.1 Amount**

AFD undertakes to make available to the Recipient, upon request and subject to the terms and conditions provided herein, in particular the provisions set forth in Clause 2.3 (*Conditions of utilization*) hereinafter, a Grant in a maximum aggregate amount of Euros three hundred thousand (EUR 300,000).

**2.2 Purpose**

The Recipient shall apply all funds from this Grant exclusively to finance the Project, excluding taxes, duties and levies of any kind, in accordance with the Project's description set forth in Schedule 2 (*Project Description*) and the Financing Plan set forth in Schedule 3 (*Financing Plan*).

**2.3 Conditions of Utilization**

AFD shall make available to the Recipient the requested drawdown only if on the drawdown request date and on the contemplated drawdown date:

- (a) none of the events listed in Clause 4 (*Postponement or rejection of drawdown requests*) has occurred or is continuing; and
- (b) all conditions precedent listed in Schedule 4 (*Conditions Precedent*) have been fulfilled to the satisfaction of AFD.

In the event that fulfilment of all or part of the conditions precedent set forth in Schedule 4 (*Conditions Precedent*) consists in the delivery of documents:

- the final versions of such documents, which drafts have been previously provided to AFD and agreed upon by AFD, shall not reveal differences and/or inconsistencies with such drafts likely to affect the Project or an essential feature of the Project; and
- all documents, other than those mentioned in subparagraph above, shall be in form and substance satisfactory to AFD.

### 3. DRAWDOWN OF FUNDS

#### 3.1 Drawdown Request

Subject to conditions set forth in Clause 2.3 (*Conditions of utilization*), funds from the Grant shall be made available to the Recipient, in one or more drawdowns, upon delivery by the Recipient of a duly completed drawdown request.

In the drawdown request, the Recipient may request that the Euros amount of the drawdown be converted in Rand. In this event, AFD will convert the requested amount from Euros to Rand two (2) days prior to the drawdown date by using a spot market exchange rate reference prevailing at this date.

Each drawdown request shall be sent by the Recipient represented by its Authorized Signatory(ies), to the attention of the Head of AFD regional office, at the following address: PO Box 786555, Bryanston, Johannesburg 2146, Gauteng, South Africa.

Each drawdown request shall be considered duly submitted only if all documents and supporting attachments are attached to the drawdown request, as provided for in Clause 3.2 (*Payment Mechanics*).

Provided that all of the conditions set forth herein are fulfilled, AFD shall make available the requested drawdown to the Recipient.

#### 3.2 Payment Mechanics

##### 3.2.1 Drawdown in the Form of Advances

The funds shall be paid directly to the Recipient pursuant to the provisions set forth in this Clause 3.2 (*Payment Mechanics*) in the form of two advances (the “**Advance(s)**”), to finance expenses incurred by the Recipient in relation to the Project.

##### (a) First Advance

The first Advance, which shall amount to fifty percent (50%) of the Grant, shall be disbursed to the Recipient subject to the fulfilment of all conditions set forth in Clause 2.3 (*Conditions of Utilization*), Clause 3.1 (*Drawdown Request*), and Part II of Schedule 4 (*Conditions Precedent*)

##### (b) Second Advance

- (i) The second Advance, which shall amount to fifty percent (50%) of the Grant, shall be disbursed to the Recipient subject to the fulfilment of all conditions set forth in Clause 2.3 (*Conditions of Utilization*) and Clause 3.2 (*Drawdown Request*), and upon receipt by AFD of the following documents:

Handwritten signatures and initials in black ink, including a large stylized signature and the initials 'HAB' and 'EB'.

- a certificate from a duly representative of the Recipient certifying the use of at least eighty percent (80%) of the funds of the first Advance; and
- all Documentary Evidence regarding the payment of corresponding costs and expenses incurred by the Recipient.

Any portion of an Advance which, in the reasonable opinion of AFD is not justified or is insufficiently justified may be deducted from the second Advance.

(ii) Within a six-month (6) period following the date of the last Advance payment, the Recipient undertakes to provide AFD with:

- all Documentary Evidence corresponding to the use of the amount of the first Advance not justified at the time of the request for the second Advance, and the use of 100% of the second Advance; and
- an audit report from the Recipient's Auditors. The audit shall control, in particular, that any amount of the Grant paid to the Recipient has been used to finance expenses incurred by the Recipient in relation to the Project.

#### (c) Unjustified Use of Advances

AFD shall be entitled to request the Recipient to reimburse any amount which, according to the Audit Report, is undocumented or insufficiently documented. The Recipient shall reimburse such amount within twenty (20) days from the date of AFD's written request.

#### (d) Record-Keeping

Documentary Evidence may be submitted in the form of a photocopy or a duplicate in both cases certified true by the authorized representative of the Recipient.

The Recipient undertakes not to dispose of the originals of the Documentary Evidence for a period of five (5) years starting from the drawdown of the second Advance and to make them available to AFD within five (5) Business Days upon notice from AFD.

### 3.3 Deadline for Drawdown

The deadline for drawdown of the Grant shall be the 15<sup>th</sup> January 2016. No more funds shall be made available after said deadline.

The last drawdown request must be received by AFD no later than fifteen (15) calendar days prior to such deadline. Drawdown requests made within the month preceding the deadline for drawdown shall be sent to AFD by recorded delivery with acknowledgment of receipt.

Any portion of the Grant not drawn on the deadline shall be automatically cancelled.

### 3.4 Closing Place

It is agreed that the Advances shall be transferred by AFD into the Recipient's bank account, which details are the followings:

|                      |                             |
|----------------------|-----------------------------|
| Bank:                | ABSA Bank Ltd               |
| Branch:              | Public Sector –Western Cape |
| Branch code:         | 632005                      |
| Bank account Number: | 40 5658 4470                |

Handwritten signature and initials, including the number 6, are present in the bottom right corner of the page.

Name of Account Holder: City of Cape Town

Swift code: ABSAZAJCCT

The amounts of the Grant shall be transferred to the Recipient's bank account in any other financial institution located in South Africa, upon the Recipient's written request. All payments shall be made to a bank account denominated in Rands and any reimbursements and/or repayments shall be made in Rands. This amount is not indexed to, or affected by, fluctuations in the value of Rand against the Euro or any other foreign currency.

#### 4. POSTPONEMENT OR REJECTION OF DRAWDOWN REQUESTS

AFD reserves the right to postpone or permanently reject any drawdown request if any of the following events occurs:

(a) Undertakings

The Recipient fails to comply with any provision of this Agreement, including, but not limited to, its undertakings made under Clause 6 (*Undertakings*) and Clause 7 (*Information Undertakings*) of this Agreement.

(b) Misrepresentation

Any representation or statement made by the Recipient pursuant to this Agreement and in particular in respect of Clause 5 (*Representations*) or in any other document provided by or on behalf of the Recipient pursuant or relating to this Agreement, is inaccurate or misleading or was so at the time it was made or is deemed to have been made.

(c) Illegality

It is or becomes illegal, unlawful or impossible for the Recipient to perform any of its obligations under this Agreement.

It becomes illegal or unlawful for AFD, pursuant to any applicable regulation, to perform any of its obligations as contemplated in this Agreement or maintain its participation in the Grant.

(d) Material Adverse Effect

An event (including a change in the political situation in the Recipient's country) or a measure likely to have a Material Adverse Effect has occurred or is likely to occur.

(e) Withdrawal from, or Suspension of, the Project

One of the following events occurs:

- suspension or postponement of the implementation of the Project for a period of time exceeding six (6) months; or
- the Project has not been completed by the Technical Completion Date; or
- the Recipient withdraws from the Project or ceases from participating in the Project.

Handwritten signatures and initials in black ink, including a large stylized signature, the initials 'HD', and the letters 'EB'.

(f) Authorizations

Any Authorization required for the Recipient to perform or comply with its obligations under this Agreement or other material obligations set forth in any Project Document, or which is required in the ordinary course of the Project is not obtained on time, is cancelled, becomes invalid or ceases to be in full force and effect.

**5. REPRESENTATIONS AND WARRANTIES**

The Recipient makes the representations and gives to AFD the warranties set forth in this Clause 5 (*Representations and Warranties*).

5.1 Power and Authority

The Recipient has the legal authority to execute and perform this Agreement and the Project Documents, and to perform the obligations arising thereof, to perform the Project activities financed by the Grant, and has completed all required formalities in this respect.

5.2 Binding Obligations

The Recipient's obligations under this Agreement are in compliance with the laws and regulations of the Recipient's jurisdiction and constitute valid and binding obligations of the Recipient, enforceable in accordance with their terms. They may be enforced in court.

5.3 Non-conflict with other Recipient's Obligations

The execution of this Agreement by the Recipient and the performance of the obligations arising thereof do not conflict with any applicable domestic or foreign law, regulation or provision, or any agreement or instrument binding upon the Recipient or affecting any of its assets.

5.4 Validity and Admissibility in Evidence

All Authorizations required:

- (a) to enable the Recipient to execute this Agreement and Project Documents and to exercise its rights and fulfil its obligations thereof; and
- (b) to make this Agreement and the Project Documents admissible as evidence in the courts of the Recipient's jurisdiction;

have been obtained and are in full force and effect, and no circumstance exists that could result in the withdrawal, non-renewal or modification, in whole or in part, of any such Authorizations.

5.5 Project Authorizations

All Project Authorizations have been obtained and are in full force and effect and there are no circumstances of any kind that could result in the withdrawal, non-renewal, or modification, in whole or in part, of any such Project Authorizations.

5.6 Licit Origin of the Funds

The Recipient's funds, other than those coming from its own budget, invested in the Project are not of illicit origin under:

- (a) French law and in particular (without limitation) are not linked to drug trafficking, fraud against the financial interests of the European Communities, Corruption, organised criminal activities or the financing of terrorism; and/or
- (b) South African law

5.7 No Corruption

The Recipient represents that the Project (in particular the negotiation, award and performance of contracts financed through the Grant) has not given rise to any Corruption.

**6. UNDERTAKINGS**

The undertakings in this Clause 6 (*Undertakings*) shall remain in force from the Signing Date and during the entire term of this Agreement.

6.1 Authorizations

The Recipient undertakes to promptly obtain, comply with, and do all that is necessary to maintain in full force and effect any Authorization required by applicable law or regulation to enable the performance of its obligations under this Agreement and to ensure the legality, validity, enforceability or admissibility as evidence thereof.

6.2 Project Documents

The Recipient undertakes to submit to AFD, for information, any change in the Project Documents and to request AFD's prior approval of any material change in the Project Documents.

6.3 Compliance with Laws and Regulations

The Recipient undertakes to comply with all laws and regulations applicable to the Recipient and to the Project, including those relating to environmental protection, safety and labour issues. The Recipient shall comply in all respects with all of its obligations under the Project Documents to which it is a party.

6.4 Audit

The Recipient authorizes AFD to carry out or arrange for monitoring and audit missions with respect to the conditions of the Project's performance and operation, as well as for the purpose of assessing the Project's impacts and the achievement of the Project's objectives.

Accordingly, the Recipient undertakes to allow such monitoring and audit missions of documents or on-site, which shall take place, with a frequency and in a manner to be determined by AFD, following consultations with the Recipient.

6.5 Procurement

For the procurement and award of contracts relating to the implementation of the Project, the Recipient undertakes:

- (a) to comply with the principles of competition and transparency, in accordance with standards internationally recognized and recommended by the OECD and by the United Nations' convention against corruption for the award and procurement of contracts, in particular concerning the information and pre-selection of suppliers, the content and publication of tender documents, the evaluation of bids and award of contracts.

- (b) to award contracts for the execution of works and the provision of services necessary for the implementation of the Project to companies offering sufficient qualifications in all respects with regard to their capacity to successfully perform such works or services. No exception relating to awarded contracts may be raised or enforced against AFD.
- (c) to use its best efforts to include, in tender documents related to the Project's implementation, provisions aiming at encouraging the recruiting of local workforce to undertake tasks requiring no particular academic, professional, or technical qualifications.
- (d) (i) to submit to AFD's prior no-objection a Procurement Plan in accordance with the template provided by AFD or its equivalent, (ii) to update the Procurement Plan on, at least, an annual basis according to the Project's development and to provide AFD with such update, and (iii) to implement the Procurement Plan pursuant to the conditions approved by AFD.
- (e) to ascertain that requests for expression of interest and procurement notices are widely advertised. The publication of such invitations shall be done through press and appropriate websites including, except as otherwise expressly notified by AFD, at least one publication on AFD's website.
- (f) to submit, unless otherwise expressly notified by AFD in the framework of the Procurement Plan's no-objection, for each procurement to be financed by the Grant, to AFD's written no-objection:
  - (i) pre-qualification documents (if any), including the pre-qualification notice and the proposed evaluation method;
  - (ii) the list (if any) of proposed pre-qualified prospective bidders or the short list as well as the corresponding evaluation report;
  - (iii) the request for proposal or the bidding document;
  - (iv) the recommendation of contract award (to that effect, the Recipient shall deliver a detailed bid evaluation report together with the recommendation for award and a copy of the bid submitted by the preferred bidder, provided that AFD shall be entitled to request a copy of all bids received).

In the event the bid evaluation method is carried out in two stages (one for the technical proposals and the other for the financial proposals), the Recipient shall obtain AFD's no-objection first on the result of the technical evaluation and subsequently, on the financial evaluation together with the recommendation for award.

If so requested by AFD, the Recipient undertakes to invite AFD, as an observer, to the bid opening ceremony and to send to AFD the related minutes.

- (g) to submit, unless otherwise expressly notified by AFD in the framework of the Procurement Plan's no-objection, to AFD's written no-objection, prior to their execution, any purchase letters, contracts or amendments thereto in connection with the implementation of the Project.

In the event that the works or services are executed by the Recipient itself, the Recipient undertakes to submit to AFD the plans and estimates regarding the works or services for AFD's prior written no-objection.

- (h) to insert in all contracts financed by AFD a clause pursuant to which the contracting

company represents that *"it has not engaged in any practice likely to influence the Project's implementation process to the Recipient's detriment, and that there was not and will not be Collusion."*

6.6 Additional Financing

The Recipient undertakes to submit any change in the Financing Plan to AFD's prior approval and, in the event of additional costs, to organize the financing to cover all additional cost on terms and conditions satisfactory to AFD.

6.7 Implementation of the Project

The Recipient undertakes not to enter into a business relationship with any person, group or entity which is listed on any Financial Sanctions List (including in particular any list relating to the fight against the financing of terrorism).

The Recipient undertakes not to enter into an agreement to purchase or supply any equipment or to perform any activity in any sector which is subject to an embargo by any of the following entities:

- the United Nations;
- the European Union; or
- France.

6.8 Licit Origin of the Funds

The Recipient undertakes to ensure that:

- (a) funds invested in the Project, other than those coming from its own budget and the Grant, are not of illicit origin under French law, and in particular are not linked to drug trafficking, fraud against the financial interests of the European Communities, Corruption, organised criminal activities or the financing of terrorism, without limitation; and
- (b) funds referred to in paragraph (a) above are not of illicit origin under South African law.

6.9 No Corruption

The Recipient undertakes to ensure that the Project (including the negotiation, award and performance of contracts financed with the Grant) shall not give rise to any Corruption.

6.10 Environmental and Social Liability

To that effect, the Recipient undertakes:

In its business operation:

- a. to comply with South African environmental legislation and national standards and regulations relating to environmental protection and labour law.

In connection with the Project:

- b. to insert in procurement contracts and, where applicable, in tender specifications, a clause requiring companies to undertake to comply with South African environmental

legislation and national standards and regulations relating to environmental protection and labour law. This undertaking shall apply to the Recipient's sub-contractors, if any. AFD reserves the right to request a report from the Recipient on the environmental and social aspects of the Project's implementation;

## 7. INFORMATION UNDERTAKINGS

The undertakings in this Clause 7 (*Information Undertakings*) shall remain in force from the signing date of this Agreement and during the entire term of this Agreement.

### 7.1 Progress Report

Until the Technical Completion Date, the Recipient shall provide AFD at the end of each financial year with a technical and financial progress report relating to the implementation of the Project.

Within three (3) months after the Technical Completion Date, the Recipient shall deliver a Project completion report to AFD.

### 7.2 Miscellaneous Information

The Recipient shall notify AFD:

- (a) immediately after becoming aware thereof, of any event causing or likely to cause a Material Adverse Effect, the nature of such event and all actions taken, as the case may be, to remedy it;
- (b) as promptly as possible following its occurrence, any incident or accident directly related to the implementation of the Project which might have a significant effect on the environment or on the work conditions of its employees or its contracting parties working for the implementation of the Project, the nature of such incident or accident and all the actions taken or to be taken, as the case may be, by the Recipient to remedy it;
- (c) as promptly as possible, of any decision or event which might affect the organization, completion or continuance of the Project;
- (d) as promptly as possible, of any other information or evidence concerning the performance of the contracts and Project Documents which AFD may reasonably request;

### 7.3 Financial Information

The Recipient undertakes to:

- (i) provide AFD with its annual financial and budgetary documents – including any budget amendment related to the grant- as soon as they are approved by the Municipal Council, as well as all information AFD may reasonably request concerning the Recipient's financial position;
- (ii) provide AFD, upon request, with the auditors' reports and financial audit reports or any reports on performance and control of the Recipient's budget and finance.

## **8. INCIDENTAL EXPENSES - REGISTRATION**

Incidental expenses to be paid by the Recipient shall include all expenses and costs reasonably incurred in connection with the execution and performance of this Agreement, such as (i) lawyers' fees, if any, (ii) registration duties if registration is required by one of the Parties, and all similar taxes to which this Agreement may be subject, as well as, where applicable, (iii) fees and expenses for the transfer of funds from Paris to any other place as agreed with AFD.

Any incidental costs paid by AFD shall be considered part of the Grant and shall be charged against the Grant's available balance.

## **9. MISCELLANEOUS**

### **9.1 Language**

The language of this Agreement is English. If a translation is made thereof, only the English version shall be deemed authentic in the event of conflicting interpretations of this Agreement's provisions or disputes between the Parties.

All communication or document provided under or in connection with this Agreement shall be in English.

If such communication or document is not written in English and if AFD so requests, a certified English translation shall be attached and, in this event, the English translation shall prevail, except if the relevant document is a legal text or any other document having an official character.

### **9.2 Partial Invalidity**

If, at any time, any provision of this Agreement is or becomes invalid, the validity of the other provisions under this Agreement shall not be affected.

The invalidity of a provision under any law of a country shall not affect its validity under the law of another country.

### **9.3 No Waiver**

AFD shall not be considered to waive a right pursuant to this Agreement due to the fact that it did not exercise or postponed exercise of any of its rights hereunder.

The partial exercise of a right shall not be considered as an impediment to either its later exercise or more generally the exercise of rights and claims under statute.

The rights and claims set forth in this Agreement are cumulative and non exclusive of any rights and claims provided by law.

### **9.4 Assignment**

The Recipient may not assign, cede, delegate or transfer, in any manner whatsoever, all or part of its rights and/or obligations under this Agreement without the prior written consent of AFD.

### **9.5 Legal Value**

The Schedules hereto and the recitals hereof are part of the entire Agreement and have the same legal value.

9.6 Entire Agreement

From the Signing Date, this Agreement constitutes the entire agreement between the Parties relating to the purpose hereof, and supersedes and replaces all previous documents, agreements or understandings that could have been exchanged or communicated as part of the negotiation of this Agreement.

9.7 Amendment

No provision of this Agreement shall be amended, unless such amendment is expressly agreed in writing between the Parties.

9.8 Communication of Project Information

Notwithstanding any existing confidentiality agreement, AFD may disclose all information or document in relation to the Project (i) to its auditors, counsels, rating agencies, and (ii) to any person or entity for the purpose of taking any protective measures or protecting the rights of AFD under this Agreement.

- 9.9 The Parties shall at all times for the duration of this Agreement observe the principles of good faith towards one another in the performance of their obligations in terms of this Agreement.

**10. NOTICES**

10.1 Written Notices

Any notice, request or other communication to be given or made under this Agreement or relating to it shall be made in writing and, except anything to the contrary herein, any such communication may be delivered by facsimile or by letter to the Party's following address and number:

To the Recipient:

**CITY of CAPE TOWN**

Address: Civic Centre, PO Box 655, Cape Town 8000, South Africa,

Telephone: + 27 021 4005211

Facsimile: + 27 021 400 5401

Attention: Manager : Treasury

To AFD:

**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

Facsimile: + 27 11 540 71 17

Attention: Head of the regional office.

**With copy to:**

## **AFD – PARIS HEAD OFFICE**

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

Telephone: + 33 1 53 44 31 31

Facsimile: + 33 1 44 87 38 62

Attention: Director of Sub-Saharan Africa Department

or at such other address, facsimile or department or responsible person as a Party notifies to the other Party subject to notice of at least five (5) Business Days.

### **10.2 Receipt**

Any notice, request or communication made or any document send by a person to another under or relating to this Agreement shall be effective:

(i) for a facsimile, when it is received in a readable form; and

(ii) for letter when it is deposited at the correct address;

and, in the event a person or a department has been specified, on condition that the communication is addressed to the relevant person or department.

### **10.3 Electronic Communications**

(a) Any communication made under or in connection with this Agreement may be made by electronic mail or other electronic means if the Parties :

(i) agree on such communication, unless and until notified to the contrary;

(ii) inform each other in writing of their electronic mail address and /or provide any other contact information required to enable the information exchange by that mean; and

(iii) notify each other of any change to their address or any other contact information provided by them.

(b) Any electronic communication made between the Parties will be effective only upon receipt in a readable form.

## **11. EFFECTIVENESS – TERM – TERMINATION**

11.1 This Agreement shall become effective on its Signing Date provided that any formalities required by the laws and regulations of the Recipient's jurisdiction to ensure the validity of this Agreement have been fulfilled in a manner satisfactory to AFD and shall remain in full force and effect for a term of four (4) years from its signing date.

11.2 AFD reserves the right to terminate this Agreement on 7 (seven) days written notice to the City to rectify the default, in the event that the conditions precedent to drawdown have not been fulfilled within eighteen (18) months from the date the Grant was extended, i.e. the date of the AFD resolution referred to in paragraph (F) of the Preamble.

11.3 Furthermore, AFD reserves the right to terminate this Agreement if any of the events set forth in Clause 4 (*Postponement or rejection of requests for funds*) occurs.

The Recipient shall be notified by AFD thereof by recorded delivery and undertakes, if so requested by AFD, and by reason of the said breach (or breaches), to repay to AFD all or part of the funds received under the Grant.

## 12. GOVERNING LAW, JURISDICTION AND CHOICE OF RESIDENCE

### 12.1 Arbitration

All disputes arising from or relating to this Agreement shall be finally settled in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce (the “**ICC Rules**”) in effect on the starting date of the arbitration proceedings, by one or more arbitrators to be appointed in accordance with the ICC Rules.

Arbitration shall take place in Paris and the language of the arbitration proceedings shall be in English.

This arbitration clause shall remain in effect even in the event that this Agreement is void, terminated, cancelled or expires. The contractual obligations arising from this Agreement shall not be suspended by the fact that a Party initiates legal proceedings against the other Party.

The Parties expressly agree that, by signing this Agreement, the Recipient irrevocably waives any jurisdictional immunity, including but not limited to reliance on the defence of *forum non conveniens* in respect of the arbitral jurisdiction provided for in this Clause 12.1 (*Arbitration*), or immunity from execution on which it could rely.

### 12.2 Choice of Domicile

For the purpose of service of judicial and extrajudicial documents relating to the aforementioned actions or proceedings, without prejudice to any applicable legal provision, the Recipient irrevocably chooses as domicile its address indicated in Clause 10.1 (*Written Notices*) and AFD chooses as residence its address indicated as “AFD – Paris Head Office” in Clause 10.1 (*Written Notices*).

Executed in four original copies (two for AFD), in Cape Town, on January 22<sup>nd</sup>, 2014.

**THE RECIPIENT**

**CITY OF CAPE TOWN MUNICIPALITY**

Represented by: Achmat EBRAHIM, in his capacity as City Manager

A handwritten signature in black ink, appearing to be 'Achmat Ebrahim', written over a horizontal line.

**AFD**

**AGENCE FRANÇAISE DE DEVELOPPEMENT**

Represented by : Jean-Michel DEBRAT in his capacity as Director of Johannesburg French Development Agency

A handwritten signature in black ink, appearing to be 'Jean-Michel Debrat', written over a horizontal line.

Mrs Elisabeth Barbier, French Ambassador to South Africa

A handwritten signature in black ink, appearing to be 'Elisabeth Barbier', written over a horizontal line.

## SCHEDULE 1

### A- DEFINITIONS

|                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|----------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Agreement</b>                 | means this financing agreement, including its recitals, schedules, and, as the case may be, any future amendments.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Authority(ies)</b>            | means any government or any body, department, commission exercising a public prerogative, administration, court, agency or state, governmental, administrative, tax or judicial entity.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>Authorization(s)</b>          | means all consents, registrations, filings, conventions, certificates, authorizations, approvals, permits and/or mandates, or any exemptions thereof, obtained from or provided by an Authority, whether granted by means of an explicit act or due to an absence of answer within a defined time limit.                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>Authorized Signatory(ies)</b> | means any of the persons listed on the certificate to be provided to AFD pursuant to Schedule 4, Part I, duly authorized to sign , on behalf of the Recipient, this Agreement, the drawdown requests and any certificate under this Agreement and to take all measures or sign all other authorized or required documents on behalf of the Recipient under this Agreement, as well as the certified form of signature of such person(s)                                                                                                                                                                                                                                                                        |
| <b>Collusion</b>                 | <p>means any concerted action, agreements, express or implied collusion or alliances, including through the intermediary of an affiliate operating in any country whatsoever, intended or likely to prevent, restrain or distort competition in a market, including by:</p> <ul style="list-style-type: none"><li>- restricting access to the market or the free play of competition by other businesses;</li><li>- impeding the determination of free market prices by artificially raising or lowering them;</li><li>- limiting or controlling production, outlets, capital expenditures or technical advances;</li><li>- allocating markets and supply sources.</li></ul>                                   |
| <b>Corruption</b>                | <p>means the following acts:</p> <ul style="list-style-type: none"><li>- the promise, offering or giving, to a Public Official, directly or indirectly, of an undue advantage of any nature, for the Public Official himself or herself or another person or entity, in order that the Public Official acts or refrains from acting in the exercise of his or her official duties;</li><li>- the solicitation or acceptance by a Public Official, directly or indirectly, of an undue advantage of any nature, for the Public Official himself or herself or another person or entity, in order that the Public Official acts or refrains from acting in the exercise of his or her official duties.</li></ul> |

|                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|----------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Euro(s) or EUR</b>            | means the single European currency of member States of the European Economic and Monetary Union, including France, and having legal tender in such States.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>Financial Sanctions Lists</b> | <p>means the list(s) of persons, groups or entities which are subject to United Nations, European Union or French financial sanctions.</p> <p>For information purposes only and for the convenience of the Borrower (who may not take advantage of or rely on) the relevant references/website addresses are set out below:</p> <ul style="list-style-type: none"> <li>- As regards the United Nations, the lists may be consulted at the following address:<br/><br/><a href="http://www.un.org/sc/committees/">http://www.un.org/sc/committees/</a></li> <li>- As regards the European Union, the lists may be consulted at the following address:<br/><br/><a href="http://eeas.europa.eu/cfsp/sanctions/consol-list_en.htm">http://eeas.europa.eu/cfsp/sanctions/consol-list_en.htm</a></li> <li>- As regards France, the lists may be consulted at the following address:<br/><br/><a href="http://www.tresor.economie.gouv.fr/4248_liste-nationale">http://www.tresor.economie.gouv.fr/4248_liste-nationale</a></li> </ul> <p>The websites listed above do not comprise an exhaustive list and are included for ease of reference only.</p> |
| <b>Financing Plan</b>            | means the financing plan of the Project, attached hereto as Schedule 3 ( <i>Financing Plan</i> ).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Grant</b>                     | means the financing granted by AFD in accordance with this Agreement in a maximum amount set forth in Clause 2.1 ( <i>Amount</i> ).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>Material Adverse Effect</b>   | means any event or circumstance adversely and durably affecting the Recipient, which is likely to affect the Recipient's ability to fulfil any of its obligations under this Agreement.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Project</b>                   | means the project as described in Schedule 2 ( <i>Project Description</i> ).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Project Authorizations</b>    | means the Authorizations required (i) by the Recipient to implement the Project and execute all Project Documents to which it is a party, exercise its rights and perform its obligations relating thereto and (ii) for the Project Documents to which the Recipient is a party to be admissible as evidence in the courts of the country where the Recipient has its registered office or before the competent arbitration boards or arbitral tribunals.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Project Documents</b>         | means all documents, including contractual documents, delivered or executed by the Recipient in connection with the Project i.e. in particular, the contracts between the Recipient and the services providers in relation with the Project .                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |

**Public Official**

means:

- any holder of legislative, executive, administrative or judicial office appointed or elected, serving on a permanent basis or otherwise, paid or unpaid, regardless of rank;
- any other person exercising a public function, including for a public agency or company, or providing a public service;
- any other person defined as a public official under the domestic law of the Recipient's jurisdiction.

**Schedule**

means a schedule or schedules to this Agreement

**Service(s)**

means the services to be provided in connection with the Project, as set forth in Schedule 2 (*Project Description*).

**Signing Date**

means the signing date of this Agreement.

**Technical Completion Date**

means the contemplated date for the technical completion of the Project, i.e. April 15<sup>th</sup>, 2016 .

## SCHEDULE 1

### B- INTERPRETATION

- (a) "assets" includes present and future properties, revenues and rights of any nature;
- (b) any reference to the "Recipient", a "Party" or the "Agency" includes its successors, assigns and beneficiaries;
- (c) any reference to this Agreement, to any other agreement or instrument is a reference to this Agreement, or to such agreement or instrument as amended, restated or supplemented and includes, if applicable, any instrument which replaces it through novation, in accordance with this Agreement;
- (d) a "guarantee" means any security or any guarantee including autonomous and irrevocable guarantee of payment;
- (e) a "person" includes any person, firm, company, corporation, government, state or state agency or any association, or group of two or more of the foregoing (whether or not having separate legal personality);
- (f) 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, direction, or any division of any other authority or organization (including any regulation issued by an industrial and commercial public entity) having an effect on this Agreement [or any of the Financing Documents] or on the rights and obligations of a Party;
- (g) any reference to a provision of law includes a reference to that provision as amended;
- (h) unless otherwise provided, any reference to a time of day is a reference to Paris time;
- (i) section, Clause and Schedule headings are for ease of reference only and shall not influence the interpretation of this Agreement;
- (j) unless otherwise provided, a term used in any other document related to this Agreement or in any notice given under or in connection with this Agreement shall have the meaning ascribed to it in this Agreement;
- (k) references to a Clause or schedule shall be a reference to a Clause or Schedule of this Agreement.

## SCHEDULE 2

### PROJECT DESCRIPTION

In the wake of the approval by AFD of a EUR 200M credit facility to finance part of the City of Cape Town 2011-2014 capital budget and support the implementation of its recently approved new Integrated Development Plan, AFD has agreed to provide the municipality with a grant of 300,000 Euros to finance a technical dialogue program to promote cooperation between France and the City of Cape Town. In agreement with the City's head, funding will focus primarily on public urban transport (EUR 280,000) and will also support the ambitious and innovative "Early Childhood Development" programme launched by the City (EUR 20,000).

#### 1- Urban Transport:

Transport for Cape Town, is in the process of integrating various modes of transport that currently and traditionally have been institutionally fragmented. A central focus and objective of the approach, is how the needs of the customer can consciously be elevated, whilst at the same time the City goes through institutional change and devolution of functions. This challenge, present a number of institutional, technical and operational management challenges and opportunities. The City requires expertise, experience and capability to build capacity and avail practical learning opportunities, in order to achieve multiple objectives. For this purpose, the City wishes, under the technical dialogue program, to engage in and finalise, specialist technical skills and experience-transfer opportunities, with French and other relevant international partners, relating to public transport network integration, operations, management and systems monitoring.

The envisaged timeframe for this Agreement is anticipated to be two years (24 months).

The general scope of work, services and areas of collaboration are as follows:

**1. Integration of suburban railway services.** In agreement with the National Land Act 2009, the City in its role as a Transport Authority intends to take over the responsibility of defining and monitoring services delivered by the national rail operator in Cape Town area, including granting of the operational subsidies from National Treasury to the national rail operator. To this purpose the City wishes to be exposed to international best practice, relevant to Cape Town, relating to institutional preconditions, programmatic, systems, management and monitoring of integration of rail services, with other modes of transport in the network, in the short (3-5 years), medium (5- 10 years) and longer term (10 – 20 years).

The institutional and operational challenges relate to: how to properly access and manage State subsidies against performances of the national rail operator and ensure effective integration of rail services. With respect to this process the AFD grant could finance consultancy services for :

- **delivering on-the-job training on rail commuter services techniques** (suburban shuttles) to the benefit of the City transport department. Scope of works: topics to be handled can cover rolling stock technologies, rolling stock maintenance (incl. garages and workshops), track, power supply, signalling, telecommunications, intelligent transport systems (ITS) technologies, design and operation of stations (incl. coordination with other transport means), train operation planning and monitoring, operations control centre, staff management, safety and security, quality of service indicators, measurement of performance, cost analysis, pricing, ticketing, traffic analysis, market assessment... Skills required: such on-the-job training can be delivered by consultancy firms experienced in commuter rail services design, supervision and management, preferably backed by urban transport operating companies.
- **supporting the design of a service contract between the municipality and the public rail operator.** Scope of works: based on existing regulations, on the outcomes of the due diligences led by the municipality on METRORAIL services in Cape Town region, on the City department of transport guidance and on internationally recognized good practices, consultant services could be hired to provide support for the drafting of a medium-term service level agreement between the City council and the rail operator. The consultant would work in close cooperation with the City technical and financial services for designing the

contract; that entangles that the bulk of its works would be carried out on site. Skills required: specialists (economic/finance + legal) experienced in designing and managing similar contracts between a “urban transport organizing Authority” i. e. Metropolitan Transport Authority (MTA) and public transport operators (incl. railway operators).

**2. Development of a “system” approach.** The multimodal transport strategy encompasses several issues of planning, coordinating operations, pricing and revenue sharing, disseminating information to users, designing institutional arrangements and monitoring their implementation. This multi-services integration is key to effective and efficient delivery of services. The institutional challenge relates to “empowering” a unique authority to ensure proper delivery, good money channelling, equitable redistribution and perception of a unique operator when several are involved. The AFD grant could finance consultancy services for delivering precise tips and coaching municipality staff to that purpose. Scope of works: could include (i) organizing a study tour abroad to the benefit of the City department of transport and public transport operators (bus/rail services) so as to increase awareness on the advantages and prerequisites of the integrated public transport approach; (ii) supporting the institutionalization and empowerment of the newly created Transport Authority for Cape Town (ii) providing advise on specific questions such as how to evaluate and appraise municipal strategies for multimodal integration and maximum network performance and efficiency. Skills required: such services could be provided by the consulting arm of various large cities/urban communities Metropolitan Transport Authority with extensive experiences, confirmed performances and history of positive results.

## 2- Early Childhood Development

The City wishes to support the development of ECD facilities and programs as significant investment in quality ECD services is imperative to reverse the trajectory of the lives of disadvantaged children, from a path leading towards social exclusion, poor earning potential and crime to one headed towards the ability to contribute productively and meaningfully to wider society

For that purpose, the City is keen to benefit from skills and experience transfer opportunities of best practice models with regard to set up methodology that will allow the City and its ECD partners to provide ECD facilities that can be erected quickly, efficiently and cost-effectively as well as the related services in compliance with the Children’s Act and Regulations. Skills required: such services could be provided by consulting firm/individual with proven experiences and expertise in the area of ECD programs development especially working with disadvantaged communities.

### SCHEDULE 3

#### FINANCING PLAN

**FY2013/14 -2015/16 budgets:**

|                             | <b>2014/2016</b> | <b>TOTAL</b> |
|-----------------------------|------------------|--------------|
|                             | <b>€</b>         | <b>€</b>     |
| Component 1 Urban Transport | 280.000          | 280.000      |
| Component 2 ECD             | 20.000           | 20.000       |
|                             |                  |              |
| Total                       | 300.000          | 300.000      |

## **SCHEDULE 4**

### **CONDITIONS PRECEDENT**

#### **Part I – Conditions Precedent to the signing of this Agreement**

- (a) Delivery by the Recipient to AFD of a certified specimen signature of the authorised signatory(ies) of this Agreement,
- (b) Signing of the Credit Agreement by the City and AFD.

#### **Part II- Conditions Precedent to the first drawdown**

- (a) Evidence of any filing or registration, deposit or publicity requirements of this Agreement and of the payment of any stamp duty, registration fee or similar duty concerning this Agreement, if applicable.
- (b) Fulfilment of all conditions precedent to first drawdown of the Credit Agreement and effective disbursement of the first drawdown of the Credit Agreement,
- (c) Delivery by the Recipient of a certificate issued by an authorized signatory of the Recipient listing the person(s) authorized to sign, on behalf of the Recipient, the drawdown requests and any certificate under this Agreement and to take all measures or sign all other authorized or required documents on behalf of the Recipient under this Agreement, as well as the certified form of signature of such person(s).



Handwritten signatures and initials at the bottom right of the page, including a large signature, the initials 'HB', and the initials 'EB'.