

No. 53385*

**South Africa
and
Botswana**

Agreement between the Government of the Republic of South Africa and the Government of the Republic of Botswana regarding the road and bridge infrastructure development initiative. Pretoria, 7 July 2014

Entry into force: *7 July 2014 by signature, in accordance with article 14*

Authentic text: *English*

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**Afrique du Sud
et
Botswana**

Accord entre le Gouvernement de la République sud-africaine et le Gouvernement de la République du Botswana concernant l'initiative de développement de l'infrastructure des ponts et chaussées. Pretoria, 7 juillet 2014

Entrée en vigueur : *7 juillet 2014 par signature, conformément à l'article 14*

Texte authentique : *anglais*

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[ENGLISH TEXT – TEXTE ANGLAIS]

AGREEMENT

BETWEEN

**THE GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA**

AND

**THE GOVERNMENT OF THE
REPUBLIC OF BOTSWANA**

REGARDING

THE ROAD AND BRIDGE INFRASTRUCTURE

DEVELOPMENT INITIATIVE

PREAMBLE

The Government of the Republic of South Africa and the Government of the Republic of Botswana (hereinafter jointly referred to as the "Parties" and separately as a "Party");

RECOGNISING the need to upgrade the road and bridge infrastructure at points of entry between the countries to ensure effective and efficient border control;

APPRECIATING the advantages of regional development;

ACKNOWLEDGING that co-operation between the Parties with regard to the development of mutual projects in respect of road and bridge infrastructure will significantly contribute towards their economic prosperity and the welfare of their people and that of the Southern African region in general; and

WISHING to promote the traditions of good neighbourly relations and peaceful co-operation between the Parties;

HEREBY AGREE as follows:

**ARTICLE 1
DEFINITIONS**

In this Agreement, hereinafter referred to as "Agreement" unless the context otherwise indicates—

"Competent Authorities" means the competent authorities referred to in Article 3;

"Annexure" means any Annexure contemplated in Article 4(2) that shall be added to this Agreement and which shall form an integral part of this Agreement

"Point of entry" means any official land route that crosses the border between the countries and that has been designated as a point of entry by the Parties;

"Projects" means all improvements, upgrades and related work identified by the Parties and the Task Team in order to achieve the Objectives of the Upgrade of the Road and Bridge Infrastructure Development Initiative including the design, construction, financing, rehabilitation, maintenance and, if required, the upgrading of the road network at a point of entry, as well as associated facilities; and

"Task Team" means the group established in terms of Article 5.

**ARTICLE 2
PURPOSE AND OBJECTIVES**

- (1) The purpose of this Agreement is to enable the Parties to identify the points of entry on roads and bridges at the border between their countries as a development initiative for designing, constructing, financing, rehabilitating, maintaining and upgrading those points of entry.
- (2) The objectives of the Parties with respect to the Agreement are to—
 - (a) stimulate and promote economic investment and social development within their territories;
 - (b) ensure that development occurs in an environmentally sustainable manner; and
 - (c) upgrade the existing road network and bridges at designated commercial points of entry.

**ARTICLE 3
COMPETENT AUTHORITIES**

The Competent Authorities responsible for the implementation of this Agreement shall be—

- (a) in the case of the Republic of South Africa, the Minister of Transport; and
- (b) in the case of the Republic of Botswana, the Minister of Transport and Communications.

**ARTICLE 4
IMPLEMENTATION AND PROJECT PLAN**

- (1) The Parties shall, through the Competent Authorities and Task Team, identify specific Projects for the development of the road and bridge infrastructure.
- (2) Each Project contemplated in sub-Article (1) shall be elaborated on in a detailed Project Plan which must be approved by the Parties and which shall thereafter be annexed to this Agreement.
- (3) The Project Plan contemplated in sub-Article (2) shall specify all the details necessary for the successful implementation of the Project concerned, including but not limited to the following:
 - (a) the appointment of consulting services and contractors;
 - (b) tender procedures that shall be followed;

- (c) responsibilities of the Parties and any third party who may be involved in the particular Project;
- (d) financial obligations of the Parties;
- (e) responsibilities for maintenance of a specific infrastructure Project once the construction has been completed; and
- (f) the ownership of the current and newly completed infrastructure shall be defined.

**ARTICLE 5
ESTABLISHMENT AND CONSTITUTION OF THE TASK TEAM**

- (1) The Parties shall establish a Task Team to oversee the initiative for the development of the road and bridge infrastructure.
- (2) The Task Team shall consist of representatives of the Parties in a number and proportion as may be agreed upon in writing by the Parties.
- (3) The Competent Authorities shall be responsible for appointing their respective Parties' representatives to the Task Team.
- (4) Each Party shall, within 30 days of the date of entry into force of this Agreement, appoint its representatives and alternates to the Task Team and shall within such period communicate the names of such appointments to the other Party.
- (5) A Party may at any time terminate an appointment and replace a representative or alternate whose appointment has been terminated: Provided that such termination shall only take effect 30 days after notice thereof to the other Party.

**ARTICLE 6
RESPONSIBILITIES AND FUNCTIONS OF THE TASK TEAM**

- (1) Subject to the domestic law in force in the countries of the respective Parties, the Task Team shall have such functions and powers as would enable it to support the Competent Authorities in achieving the main objectives of this Agreement.
- (2) The Task Team shall approve, including but not limited to the following:
 - (a) the appointment of service providers;
 - (b) the Projects to be implemented;
 - (c) the terms of reference for professional services;
 - (d) tender documents for construction services;

- (e) procurement for the Projects;
 - (f) claims procedures and approvals; and
 - (g) additional work and, variation orders: Provided that the approved project budget is not exceeded.
- (3) The Task Team shall have the power to appoint technical teams to perform such functions as is necessary to assist the Task Team in the performance of its functions.
 - (4) The Task Team shall have the power, whenever appropriate, to appoint experts or advisors to assist it in the gathering and processing of information on any matter on which the Task Team deems necessary.
 - (5) The Task Team shall identify and adopt the measures referred to in this Article and decide on the subsequent action to be taken.
 - (6) The Task Team shall comply with the requests of the Competent Authorities on all matters pertaining to the implementation of this Agreement.
 - (7) The functions referred to in sub-Article (2) shall be performed subject to the domestic law in force in the territories of the Parties.
 - (8) The Task Team shall ensure that there is sufficient funding to execute the Projects.

ARTICLE 7
MEETINGS OF THE TASK TEAM

- (1) The first meeting of the Task Team shall take place within 90 days of the entry into force of this Agreement.
- (2) All subsequent meetings of the Task Team shall be held at such times as may be determined by the Task Team members.
- (3) The meeting referred to in sub-Article (2) shall be held alternately in the Republic of South Africa and the Republic of Botswana, unless otherwise decided upon by the Task Team.
- (4) The Task Team shall establish its own rules of procedure in so far as its meetings are concerned.
- (5) The host Party shall be responsible for—
 - (a) chairing the meeting;
 - (b) the preparation and timeous distribution of the proposed agenda;
 - (c) the recording and timeous distribution of the minutes; and
 - (d) the venue for the meeting.

- (6) All decisions of the Task Team shall be taken on the basis of consensus between the delegations but in the event of it failing to reach consensus, the Task Team shall refer the matter under discussion to the Competent Authorities, who shall resolve the matter.

**ARTICLE 8
FINANCIAL ARRANGEMENTS**

- (1) Each Party shall, in respect of all meetings of the Task Team, be responsible for all costs incurred in connection with the attendance and participation of its delegations and of any person who may be co-opted as adviser to its delegations.
- (2) The Party hosting a meeting of the Task Team shall be responsible for all costs incurred in connection with the venue, the preparation and distribution of the proposed agenda and the recording and distribution of the minutes.
- (3) Subject to the domestic law in force in the territories of the respective Parties, the tender procedures as agreed upon by the Parties shall be followed in cases where public funds are to be expended for Projects undertaken in terms of this Agreement and awarded on a contract basis.
- (4) The detailing of the financial liability for each Project shall be clearly specified in each Project Plan contemplated in Article 4(2).

**ARTICLE 9
CONFIDENTIALITY**

- (1) A Party shall not use any information supplied to it by the other Party for any purpose other than that intended in terms of this Agreement
- (2) Each Party shall have the option of designating information which it provides to the other Party as confidential and such information shall be dealt with by the other Party in the strictest confidence and in accordance with the domestic law in force in the territory of that Party.
- (3) A Party shall not disclose any information to any third party without the express written consent of the other Party.

**ARTICLE 10
EXCLUSIVITY AND GOOD FAITH**

- (1) Unless otherwise agreed upon by the Parties, no Party shall engage in any activity related to the Project, other than as a Party to this Agreement and in accordance with the terms and conditions of this Agreement.

- (2) Each Party undertakes to ensure that its departments, subsidiaries and other firms or individuals over whom it has control shall comply with the requirement specified in sub-Article (1) above.
- (3) Should any matter of material importance to the performance of this Agreement be omitted, the Parties shall in good faith consider amending this Agreement to provide for such omission.

**ARTICLE 11
DUTY TO INFORM**

The Parties shall undertake to notify each other in writing at the earliest opportunity of any future events or circumstances that may adversely affect the quality or execution of a Project or which may affect the association between the Parties or the administration of this Agreement.

**ARTICLE 12
SETTLEMENT OF DISPUTES**

- (1) Any dispute between the Parties arising out of the interpretation, application or implementation of the provisions of this Agreement shall be settled amicably through consultation or negotiations between the Parties.
- (2) If a dispute cannot be resolved in accordance with sub-Article (1), either Party may refer the dispute, within three (3) months of the failure to resolve the dispute, for final and binding arbitration in accordance with the Permanent Court of Arbitration Optional Rules for Arbitrating Disputes between Two States.
- (3) The Parties shall agree on the constitution of the arbitration panel.

**ARTICLE 13
AMENDMENT**

This Agreement may be amended by mutual consent of the Parties through an Exchange of Notes between the Parties through the diplomatic channel.

**ARTICLE 14
ENTRY INTO FORCE, DURATION AND TERMINATION**

- (1) This Agreement shall enter into force on the date of signature thereof by the Parties.
- (2) This Agreement shall remain in force until terminated in accordance with sub-Article (3).

- (3) This Agreement may be terminated by either Party giving six (6) months written notice in advance, through the diplomatic channel to the other Party of its intention to terminate it.
- (4) The termination of this Agreement shall not affect the completion of any Project undertaken by the Parties prior to the termination thereof, or the full execution of any co-operative activity that has been executed at the time of termination, unless otherwise agreed upon in writing by the Parties.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed and sealed this Agreement in duplicate in the English language, both texts being equally authentic.

DONE at PRETORIA on this 7th day of JULY in this Year Two Thousand and 14.



FOR THE GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA
MINISTER OF TRANSPORT



FOR THE GOVERNMENT OF THE
REPUBLIC OF BOTSWANA
MINISTER OF TRANSPORT AND
COMMUNICATIONS