

MEMORANDUM OF AGREEMENT

**IN RELATION TO THE FUNDING OF THE EPWP PROJECTS SUPPORTED BY THE
DEPARTMENT OF ECONOMIC DEVELOPMENT AND TOURISM IN THE NORTHERN
CAPE**

entered into between

THE NORTHERN CAPE DEPARTMENT OF ECONOMIC DEVELOPMENT AND TOURISM

Herein represented by Ms H. Samson in her capacity as Head of Department: Department of
Economic Development and Tourism, duly authorised hereto


[hereinafter referred to as "DEDaT"]

And

THE PIXLEY KA SEME DISTRICT MUNICIPALITY

Herein represented by **Mr. R. Pieterse** in his capacity as the Pixley ka Seme Municipal
Manager, duly authorised hereto

[hereinafter referred to as "PKS"]


R 1

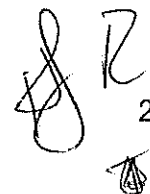
1. INTRODUCTION

- 1.1 In support of the job creation and enterprise development, the Department of Economic Development and Tourism has supported various projects, in partnership with the Pixley Ka Seme District Municipality. The Department has received R2 030 000 EPWP Incentive grant from the Department of Public Works for the 2016/17 financial year. The Department has identified a Cleaning and Greening project funded by the PKS for support according to EPWP principles in partnership with the PKS.
- 1.2 The Parties have agreed to enter into this Agreement to coordinate delivery for the benefit of the project beneficiaries of these projects.
- 1.3 The Parties hereby reduce the terms and conditions upon which their relationship will be governed in terms of this Agreement.

2. DEFINITIONS AND INTERPRETATION


In this Agreement, unless inconsistent with or otherwise indicated by the context –

- 2.1. "**Agreement**" means the/this Agreement as set out in this document, including all appendices hereto (if any);
- 2.2. "**Beneficiary**" means members of the projects supported by the Department of Economic Development and Tourism and employees of the project who received wages for their work in the project.
- 2.3. "**Business Day**" means a day which is not a Saturday, Sunday or an official public holiday in the Republic of South Africa.
- 2.4. "**Bank Account**" means the bank account identified by the PKS as their official bank account, into which the Department's Funds will be transferred and is to be utilized strictly for support of the identified project;
- 2.5. "**DEDaT**" means the Department of Economic Development and Tourism;
- 2.6. "**Effective Date**" means the date on which the MOA is signed by both the parties, in line with clause 6.1 of this agreement.



Handwritten signature and initials, including the number 2, located at the bottom right of the page.

- 2.7. "EPWP" means Extended Public Works Programme;
- 2.7. "MFMA" means Municipal Finance Management Act. Act No. 56 of 2003
- 2.9. "Government" means the Government of the Republic of South Africa;
- 2.10. "PKS" means The Pixley Ka Seme District Municipality (PKS) a local municipality, established through the Municipal Structures Act No. 117 of 1998 as amended;
- 2.11. "Parties" means the Department of Economic Development and Tourism and Pixley Ka Seme Local Municipality and the word "Party" shall mean either of them as the context may require;
- 2.12. "PFMA" means Public Finance Management Act. Act No. 1 of 1999
- 2.13. "Signature Date" means the date of signature of this Agreement by the Party signing it last in time;
- 2.14. The words "shall", "will" and "must" used in the context of any obligation or restriction imposed on a Party have the same meaning
- 2.15. The clause headings in this Agreement have been inserted for convenience only and shall not be taken into account in its interpretation.
- 2.16. Where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that the term has not been defined in this interpretation clause.
- 2.17. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to that provision as if it were a substantive clause in the body of this Agreement, notwithstanding that it is only contained in the interpretation clause.
- 2.18. If any period is referred to in this Agreement by way of a reference to a number of days or weeks or months or other intervals, the period shall be reckoned exclusively of the first day and inclusively of the last day of the relevant interval, unless the last

 3
R

day falls on a day which is not a Business Day, in which case the last day shall be the next succeeding Business Day.


- 2.19. If the due date for performance of any obligation in terms of this Agreement is a day which is not a Business Day then (unless otherwise stipulated) the due date for performance of the relevant obligation shall be the succeeding Business Day.
- 2.20. The rule of construction that an agreement shall be interpreted against the party responsible for the drafting of the agreement, shall not apply to this Agreement.
- 2.21. This Agreement shall be governed, interpreted and enforced in accordance with the laws of the Republic of South Africa.

3. LEGISLATIVE FRAMEWORK

- 3.1 The Department enters into agreement to make transfer payments to the total amount of R1 092 000 towards payment of stipends for beneficiaries of the project in accordance with EPWP policy, guidelines and applicable sector procedure manuals. The transfer will be made in tranche payments of 25%, 45% and another 30% upon receipt from the National Department of Public Works on 14 May, 14 August and 14 November 2016 respectively. This will be done if compliance and reporting against funds received by the PKS is up to date.
- 3.2 The transfer payment is done in terms of section 38(1)(j) of the Public Finance Management Act, 1999, read with regulation 8.4 of the Treasury Regulations, 2005.
- 3.3 The PKS is empowered to accept the transfer payment in terms of the PFMA and MFMA and to serve as the implementation agent of the Department.

4. APPOINTMENT AND RELATIONSHIP OF THE PARTIES

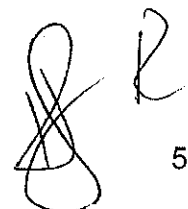
- 4.1 DEDaT hereby appoints the PKS to manage the disbursement, application, support and monitoring and evaluation of the DEDaT funds to be assigned to the project identified by the Department of Economic Development and Tourism for support in terms of EPWP principles. This project budget is shown in the table below:

 4

Pixley Ka Seme Cleaning and Greening Project Budget:

Budget Item	Cost
Number of General Workers	50
Wages per General Worker	R 100.00
Total Monthly Wages General Workers	R 105 000.00
Number of Data Capturers	0
Wages per Data Capturers	R 238.10
Total Monthly Wages Data Capturer	R 0.00
Number of Supervisors	3
Wages per Supervisor	R 120.00
Total Monthly Wages Supervisors	R 7 560.00
Number of Project Managers	2
Wages per Project Manager	R 200.00
Total Monthly Wages Project Manager	R 8 400.00
Number of Working Days per Month	21
Duration of Project in Months	8
Total Wages for the Duration of the Project	R 908 160.00
Capital Requirements @10.38% R1 092 000	R 113 349.60
Service Provider Fee @5% of R 1092 000	R 54 600.00
Project Support	R 15 890.40
Total Project Budget	R 1 092 000.00

- 4.2 These funds must be solely applied for the payment of wages for EPWP project employees and project support expenses as per clause 4.1.
- 4.3 It is further agreed that the PKS EPWP Manager, will be responsible to oversee the implementation of the project.
- 4.4 Service Level Agreement on payments for stipends:
- All stipends to be paid by the 2nd of each month based on payrolls received.
 - Submit payroll to the department on the 25th monthly to enable development of In Year Monitoring.
- 4.5 Reporting on expenditure and project budget balance:
- On a monthly basis report post procurement and stipends, by the latest the 5th of each month the project expenditure to date and balance.



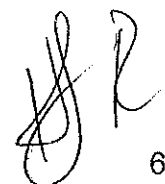
5

5. THE AREAS OF COLLABORATION

- 5.1 The Department will pay an amount of R1 092 000 ("one million and ninety two thousand rands only") to the PKS in three tranche payments as of 25% (R573 000), 45% (R311 400) and 30% (R207 600) respectively as received from National Treasury through the Department of Public Works.
- 5.2 The PKS must oversee the payment of monthly stipends to the project's beneficiaries for the project. The project will be governed by a Business Plan and Project Plan. The PKS will make direct transfer into each beneficiary's personal bank account.
- 5.3 PKS will provide monthly monitoring and expenditure reports, annual audited financial statements and project completion report reflecting progress made and utilisation of the transferred funds by the projects and after the completion of the project. PKS will provide monthly performance reports by the 5th of every month for the duration of the agreement.

6. DURATION AND TERMINATION OF THIS AGREEMENT

- 6.1 The Effective Date for this agreement is 1 August 2016 and shall endure for a period of Eight (8) months up to the end of financial year 2016/17 i.e. end of March 2017.
- 6.2 For instances of breach of this Agreement where less notice is required, either party may terminate this agreement by giving **1 (one) month** written notice to the other.
- 6.3 Should either party give notice of termination of this Agreement, then, notwithstanding any dispute about the validity or efficacy of such notice, the PKS shall:
- 6.3.1 On demand, immediately make available to the DEDaT all records, agreements, accounts and other information generated pursuant to this Agreement;
- 6.3.2 On demand transfer back to DEDaT the un-utilised or uncommitted funds plus interest accrued in the Department's account.

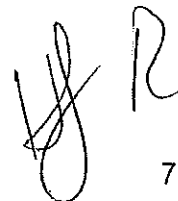


6

7. CONFIDENTIALITY

- 7.1. The Parties acknowledge that any information supplied in connection with this Agreement or in connection with each other's technical, industrial or business affairs which has or may not in any way whatsoever be transferred or come into the possession or knowledge of any other of them ("**the receiving party**") may consist of confidential or proprietary data, disclosure of which to or use by third parties might be damaging to the Party concerned.
- 7.2. The receiving party therefore agrees to hold such material and information in the strictest confidence, to prevent any copying thereof by whatever means and not to make use thereof other than for the purposes of this Agreement and to release it only to such properly authorised directors, employees or third parties requiring such information for the purposes of this Agreement and agree not to release or disclose it to any other person who has not signed an agreement expressly binding itself not to use or disclose it other than for the purposes of this Agreement.
- 7.3. The undertaking and obligations contained in this clause do not apply to information which:
- 7.3.1. is publicly available at the date of disclosure or thereafter becomes publicly available from sources other than the Parties;
 - 7.3.2. is already in possession of the receiving party prior to its receipt by or disclosure to such receiving party;
 - 7.3.3. is required by law or any regulatory authority to be disclosed;
 - 7.3.4. after being disclosed to the receiving party is disclosed by any other person to the receiving party otherwise than in breach of any obligation of confidentiality.
- 7.4. The Parties shall take such precautions as may be necessary to maintain the secrecy and confidentiality of such material and information in respect of its directors, employees, agents, and/or directors or employees or agents of any assignee, sub-contractor or distributor or any other person to whom any such confidential or proprietary data may have been or will be disclosed.

8. DISPUTE RESOLUTION



Handwritten signature and initials, possibly 'R' and '7', located at the bottom right of the page.

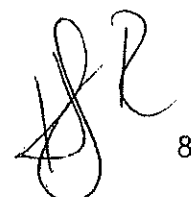
- 8.1. Any Party may refer any dispute arising from or in connection with this Agreement to the Executive Authorities of the Parties ("**the authorities**") for resolution. In the event that the authorities are unable to resolve the dispute within 14 (fourteen) Business Days after it has been referred to them, the dispute shall be referred to and be finally resolved by the Arbitration Foundation of South Africa ("**the Foundation**") in accordance with the rules of the Foundation by an arbitrator or arbitrators appointed by the Foundation. The arbitration proceedings shall be held in Kimberley and shall be conducted in the English language.
- 8.2. The decision of the arbitrator shall be final and binding on the Parties to the dispute and may be made an order of any competent Court at the instance of any of the Parties to the dispute.

9. BREACH

In the event of either Party ("**the defaulting party**") committing a breach of the material terms of this Agreement and failing to remedy such breach within a period of **14 (fourteen) Business Days** after receipt of a written notice from another Party ("**the aggrieved party**") calling upon the defaulting party so to remedy, then the aggrieved party shall be entitled, at its sole discretion and without prejudice to any of its other rights in law, either to claim specific performance of the terms of this Agreement without further notice, or cancel the Agreement and claim and recover damages from the defaulting party.

10. GENERAL

- 10.1. No failure or delay on the part of either Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof, or the exercise of any other right, power or privilege. The rights and remedies herein expressly provided are cumulative and not exclusive of any rights or remedies which the Parties would otherwise have.
- 10.2. No indulgence, leniency or extension of time which either Party ("the Grantor") may grant or show to the other shall in any way prejudice the Grantor or preclude the Grantor from exercising any of its rights in the future.



8

10.3 Both parties shall pay their own costs relating to the preparation and settlement of this MOA.

10.4 This MOA shall be for the benefit of each of the Parties and may not be assigned in whole or in part by either Party without the prior consent of the other Party, except that a Party's interest shall be assignable without the consent of the others in pursuance of any merger, consolidation or reorganization or voluntary sale or transfer of all or substantially all the assigning Party's assets where the merged, consolidated or reorganized corporation or entity resulting there from or the transferee of such sale or transfer has the authority and power effectively to perform that Party's obligations to the other under this MOA.

10.5 The Parties choose their addresses mentioned in this MOA for the purpose of any notices or legal process that may be served in terms of this MOA.

11. **DOMICILIUM CITANDI ET EXECUTANDI**

11.1 The DEDaT chooses as its *domicilium citandi et executandi* for the services of all documents and notices at:-

13TH Floor,

Metlife Building

Kimberley, 8301


11.2 The PKS chooses its *domicilium citandi et executandi* for the service of all documents and notices at:-

Pixley Ka Seme District Municipality

Colvert Road

DE AAR

7000



11.3 Either Party may change its *domicilium citandi et executandi* by means of a written notice to the other Party, provided that such *domicilium* must be a physical address within the Republic.

11.4 All notices contemplated under this Agreement must be delivered by hand or sent by prepaid registered post, in which latter event a notice will be deemed to have been received by the addressee 7 (seven) Business Days after the proven date of posting.

12. SEVERABILITY

Each and every provision of this Agreement (excluding only those provisions which are essential at law for a valid and binding agreement to be constituted) shall be deemed to be separate and severable from the remaining provisions of this Agreement. If any of the provisions of this Agreement (excluding only those provisions which are essential at law for a valid and binding agreement to be constituted) is found by any court of competent jurisdiction to be invalid and/or unenforceable then, notwithstanding such invalidity and/or unenforceability, the remaining provisions of this Agreement shall be and remain of full force and effect.

13. WHOLE AGREEMENT

This Agreement (including an introduction) constitutes the whole agreement between the Parties as to the subject matter hereof and no agreements, representations or warranties between the Parties regarding the subject matter hereof other than those set out herein are binding on the Parties.

14. VARIATION

No addition to or variation, consensual cancellation or innovation of this Agreement and no waiver of any right arising from this Agreement shall be of any force or effect unless reduced to writing and signed by all the Parties or their duly authorised representatives.

15. RELAXATION

No latitude, extension of time or other indulgence which may be given or allowed by one Party to the other in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of any Party arising from this Agreement, and no single or partial exercise of any right by any Party under this Agreement, shall in any circumstances be construed to be an implied consent or election by such Party or operate as

 10

a waiver or a novation of or otherwise affect any of the Party's rights in terms of or arising from this Agreement or stop or preclude any such Party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

THUS DONE AND SIGNED AT:.....

ON THIS 25 DAY OF July.....2016


FOR AND ON BEHALF OF THE PIXLEY KA SEME DISTRICT MUNICIPALITY
MR R Pieterse IN HIS CAPACITY
AS THE MUNICIPAL MANAGER

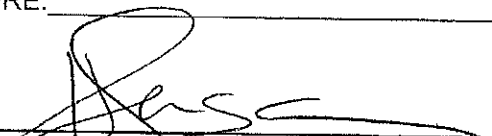
AS WITNESSES:



NAME: HJE SAMSON

DESIGNATION: ACTING HOD

SIGNATURE: _____



FOR AND ON BEHALF OF THE DEPARTMENT Ms H. Samson
IN HER CAPACITY AS ACTING HEAD OF DEPARTMENT: DEPARTMENT OF
ECONOMIC DEVELOPMENT AND TOURISM

AS WITNESSES:

NAME: TANIA BOOISEN

DESIGNATION: EXECUTIVE ASSISTANT

SIGNATURE: _____

