

MEMORANDUM OF UNDERSTANDING

Entered into by and between

PIXLEY ka SEME DISTRICT MUNICIPALITY

("the DISTRICT")

on the first part

AND

Thembelihle Municipality

("the LOCAL MUNICIPALITY")

on the second part

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ACCREDITATION PROCESS

PREAMBLE

WHEREAS the Pixley ka Seme has been accredited for housing accreditation to perform levels 1 and 2 of the housing function by the National Department of Housing in March 2006.

WHEREAS the environmental impact assessment, town planning and surveying of each project will be completed by the local municipalities, the local Municipality shall appoint Engineers as the professional service providers for the project management of the project.

AND WHEREAS Pixley ka Seme District municipality and (local) Municipality as joint developers are desirous to implement the project in phases.

NOW THEREFORE IT IS RECORDED

1. DEFINITIONS

For purposes of clarification, the following meanings and expressions shall be interpreted as:

“the **DISTRICT MUNICIPALITY**” means the Pixley ka Seme District Municipality, a district municipality, as described in terms of the Local Government: Municipal Structures Act, Act 117 of 1998, herein represented by Mr. N.M JACK in his capacity as Municipal Manager, he having been duly authorised thereto;

“the **LOCAL MUNICIPALITY**” means Thembelihle Municipality, a local municipality, as described in terms of the Local Government: Municipal Structures Act, Act 117 of 1998, herein represented by **Municipal Manager** in his capacity as Municipal Manager, he having been duly authorised thereto;

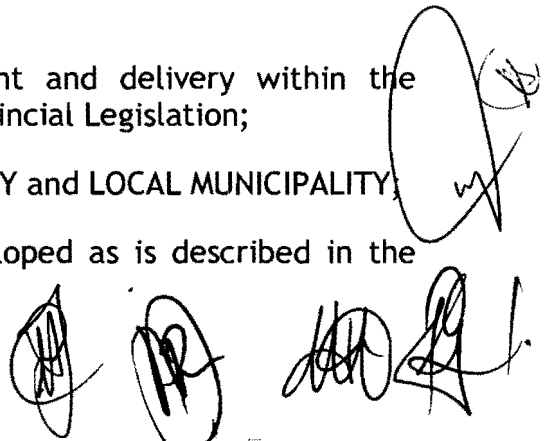
“**MOU**” means the understanding of the Parties regarding the development and construction of houses in the local municipality.

“**Final Agreement(s)**” means those legally enforceable written terms and conditions of contract to be entered into by and between the Parties, regulating and governing each party’s specific roles, functions and obligations, one towards the other, to execute the development and construction Process;

DEPARTMENT directed at housing development and delivery within the Northern Cape Province, including relevant Provincial Legislation;

“the **Parties**” means the **DISTRICT MUNICIPALITY** and **LOCAL MUNICIPALITY**;

“ **Project area**” means the area to be developed as is described in the Project Application;

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“Project period” means the period from the date of conclusion of this agreement until the completion date of the project as more fully described in the project application;

“Project programme” means the programme or details directed at expressed times of completion or achievement of the specific milestones as indicated in the project application.

2. THIS MOU

This MOU constitutes a recordal of each party’s sincerity and commitment to cooperate with one another in order to achieve the housing development and construction Project. Consequently:

- 2.1. This MOU shall and is intended to be superseded by Final Agreement(s); and
- 2.2 the nature of this MOU is limited to be an expression, as is described in clause 2 above, and does not intend to constitute a formal legally enforceable and binding contract between the Parties inter se or with a third party.

3. PRELIMINARIES, ROLES AND FUNCTIONS OF THE PARTIES

3.1. Preliminaries:

After seeking accreditation for the delivery of the housing function, the Pixley ka Seme District Municipality has formulated the following objectives which the business plan was trying to address:

- 1 To recognise the housing within the municipality and integrate its activities into the Integrated Development Plan (IDP), in order to be line with the framework as contemplated in Part 4 of the Housing Act, 1997 (HA)

To position the municipality to be able to plan, manage and deliver efficiently and effectively sustainable and affordable housing to communities within its area of jurisdiction.

To enhance the ability of the municipality to co-ordinate and facilitate support to local municipalities in the effective and efficient delivery of housing.

To position the municipality strategically in terms of enhancing, consolidating and strengthening service delivery.

This is a process that will accelerate not just housing delivery and move rapidly towards the eradication of the backlog in the district, but will also fast track the establishment of integrated human settlements in Pixley ka Seme

3.2. Thembelihle Municipality

3.2.1 The Local Municipality’s roles is to liaise with the local community;

3.2.2 Local Municipality will identify the beneficiaries;

3.3.3 The local Municipalities will be responsible for the filling in of all the necessary application forms;

3.3.4 The local municipality shall form part of a Project Co-ordinating Committee;

3.3.5 The local municipality shall take over any project after completion and ensure that there is an operational and maintenance plan with the necessary budget;

3.3.6 The Local Municipality will look at the impact of future projects on existing bulk services i.e. a Section 78 (of the Systems Act 32 of 2000) investigation.

4. ROLES OF PIXLEY ka SEME AS ACCREDITED MUNICIPALITY

The District Municipality shall be the overall project developer by:

4.1 Giving support to the local municipality;

4.2 Liaising with Local Municipality in soliciting more funds for the project as and when the need arise;

4.3 To strictly monitor that the terms and conditions to the main contracts are adhered to;

4.4 The Developer hereby undertakes to implement all projects strictly in accordance with all the provisions contained in the project application, and strictly in accordance with the terms and conditions contained therein.

4.5 This agreement includes as an integral part:

4.5.1 the provisions contained in Chapter 3A of Part 3 of the Housing Code provided that where there is a conflict or a difference in interpretation between the provisions of this agreement, (the text thereof) and the provisions contained in Chapter 3A of Part 3 of the Housing Code, then the provisions of the Housing Code must prevail; and provided further that where there is a conflict or a difference in the interpretation between the provisions of this agreement (the text hereof) compared to the project application, then the provisions of this agreement must prevail.

4.5.2 The District must commence with the implementation of its role as accredited municipality as different levels are granted.

4.5.3 The parties to this agreement agree that any advance payment given to the developer or contractor, directly or indirectly, shall be treated as described in above.

4.5.4 The parties to this agreement agree that after the completion of a housing project the developer will hand over the project to Local Municipality which will then be responsible for the future maintenance of the project.

5. BULK SERVICES

5.1 It is recorded that THEMBELIHLE MUNICIPALITY will undertake a Section 78 process to identify the needs requirements with regards to bulk services.

5.2 As part of the Section 78 process THEMBELIHLE MUNICIPALITY will determine the total funding requirement to implement a large-scale, integrated and sustainable, infrastructure project that will substantially fulfil its needs for the bulk services. LOCAL will:

5.2.1 Estimate the portion of the project referred to in 5.2 that can be funded through commercial finance; and

5.2.2 Estimate the impact on the tariffs;

6. ESTABLISHMENT OF THE PROJECT STEERING COMMITTEE (Regional Level)

The Parties agree to establish the PSC to oversee and manage the processes outlined in this MOU until such time as specific legal agreements are in place and the relevant management structures in terms thereof have been established. It is recorded that:

6.1. The PSC will be chaired by the Housing Manager of the District Municipality;

6.2 Each party will have the right to nominate two representatives to the PSC;

6.3 The PSC will meet on a monthly basis to monitor progress and to provide guidance.

6.4 The PSC must constitute of all sector District and Local Municipality and Community to deal with the planning.

7. PROJECT TECHNICAL STEERING COMMITTEE (On Site)

The Parties agree to establish the PTSC to deal with technical matters on sites and to hold once a month. This committee shall consist of the following:

7.1 District Municipality Engineers;

7.2 Housing Inspectors from the Department of Housing and Local Governments;

7.3 Consulting Engineers and Contractors;

Handwritten signatures of the parties involved in the agreement, including the District Municipality, the Department of Housing and Local Governments, and Consulting Engineers and Contractors.

7.4 Technical Staff from Local Municipality.

8. COOPERATION AND CONFIDENTIALITY

- 8.1 The Parties commit to cooperate with one another in good faith and to maintain the highest level of trust and good faith amongst themselves during and leading up towards the implementation and final execution of the Land Development Project.
- 8.2 The Parties shall each nominate and appoint and remain represented on whichever forums, committees or other representative bodies are to be established for purposes of the execution of the project.
- 8.3 The Parties shall disclose and contribute their expertise, willingness and ability towards the implementation of the Land Development Project.
- 8.4 The Parties shall keep and maintain reasonable confidentiality with regards the Land Development Project and not be entitled to bind or enter into any agreement or purport to conclude agreements for and on behalf of each other, without being specifically authorised to do so.
- 8.5 The relationship between the Parties, described in this MOU and/or any Final Agreement(s) shall not constitute a partnership between the Parties.
- 8.6 The Parties shall be and remain committed to disclose their relationship with one another to any third party, as may be deemed necessary and appropriate from time to time.

9. TIME FRAMES

The time frames related to the implementation of the Land Development Project and ancillary matters shall be as expressed in the final approved Implementation Framework Plan and/or as amended from time to time.

10. DOMICILIUM

The Parties choose as their domicilia citandi et executandi their respective addresses set out in this clause for all purposes arising out of or in connection with this MOU at which addresses all processes and notices arising out of or in connection with this MOU, its breach or termination may validly be served upon or delivered to the Parties.

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For purposes of this MOU the Parties' respective addresses shall be:

PIXLEY KA SEME DISTRICT MUNICIPALITY at -

The Municipal Manager
 Culvert Road
 De Aar
 7000
 Tel.No. 053 631 0891
 Fax No. 053 631 2529

THEMBELIHLE MUNICIPALITY at -

The municipal Manager
 Church street
 Hopetown
 8750

 Tel No. 053 203 0005
 Fax No. 053 203 0490

or at such other address of which the Party concerned may notify the other/s in writing provided that no street address mentioned in this sub-clause shall be changed to a post office box or poste restante.

Any notice given in terms of this MOU shall be in writing and shall -

if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;

if transmitted by facsimile be deemed to have been received by the addressee on the day following the date of despatch, unless the contrary is proved.

Notwithstanding anything to the contrary contained or implied in this MOU, a written notice or communication actually received by one of the Parties from another including by way of facsimile transmission shall be adequate written notice or communication to such Party.

11. CONTENTS OF THIS MOU

The Parties record their intention and understanding, as is described in this MOU, and nothing beyond or not contained in this MOU shall be deemed to be or form part of this MOU.

12. AUTHORITIES

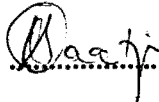
The Parties warrant their authority to conclude this MOU with one another and to conclude the Final Agreement(s) at the appropriate time and shall make full disclosure to each other with regards their respective interests and expectations regarding the execution of the Land Development Project.

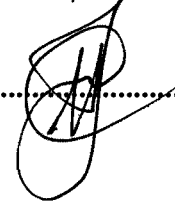
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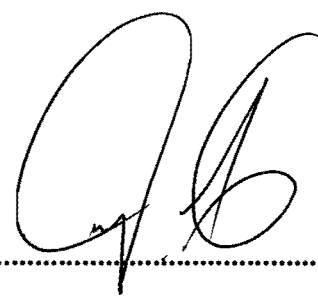
ON THIS THE DAY OF

2009.

AS WITNESSES:

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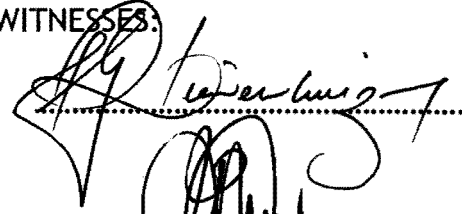
MANAGER: MR NM JACK


PIXLEY ka SEME DISTRICT MUNICIPALITY

THUS DONE AND SIGNED AT

ON THIS 23.....DAY OF JULY 2009

AS WITNESSES:

1. 

2. 


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MANAGER: MR Z MONAKALI

THEMBELIHLE MUNICIPALITY