

Ring-Fencing Agreement

Entered into by and between

The Auditor General of South Africa

duly established in terms of Section 181(1)(e) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996) (Constitution), read with the Public Audit Act, 2004 (Act No. 25 of 2004) (PAA)

(Hereinafter referred to as the "AGSA")

and

Pixley Ka Seme District Municipality

(Hereinafter referred to as the "Debtor")

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Ring-Fencing Agreement

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Ring-Fencing Agreement

1. Definitions and interpretation

1.1 In this Agreement, unless inconsistent with or otherwise indicated by the context, the following terms shall have the meanings assigned to them hereunder and cognitive expressions shall have corresponding meanings, namely:

1.1.1 **Agreement:** This written document together with all written and signed appendices, annexures, exhibits or amendments attached to it from time to time.

1.1.2 **Ring-Fenced amount:** A total amount of R4 229 424.00 (Four million; two hundred and twenty nine thousand, four hundred and twenty four rand.) (including Vat and interest) for the audit conducted.

1.1.3 **Ring-Fenced instalment:** a monthly payment in the amount of refer to addendum) to be made by the Debtor regularly to the AGSA.

1.1.4 **Ring-Fenced period:** Notwithstanding the date of signature of this document, a period of twenty four months commencing 30 April 2015 up to and including 31 March 2017 on which date the Ring-Fenced amount shall be settled.

1.1.5 **Notice:** Notice by one party to the other in writing, which shall include, without limitation, paper-based or electronically rendered and communicated text.

1.1.6 **Parties:** The AGSA and the Debtor.

1.1.7 **VAT:** Value-added tax as governed by the Value-added Tax Act, 1991 (Act No. 89 of 1991).

1.2 Any reference to:

1.2.1 the singular shall include the plural and vice versa;

1.2.2 natural persons shall include legal persons and vice versa;

1.2.3 any provision of a statute, rule or regulation shall be construed as a reference to that provision as from time to time amended or extended; and

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- 1.2.4 the parties shall include their respective members, directors, officers, employees, agents and sub-contractors.
- 1.3 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, effect shall be given to it as if it were a substantive clause in the body of this Agreement, notwithstanding that it is only contained in the interpretation and definitions clause.
- 1.4 If any period is referred to in this Agreement by way of reference to a number of days, the days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a business day, in which case the last day shall be the next succeeding business day.
- 1.5 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 1.6 Expressions defined in this Agreement shall bear the same meanings in schedules or annexures to this Agreement which do not themselves contain their own definitions.
- 1.7 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 that term has not been defined in this interpretation clause.
- 1.8 The rule of construction that the contract shall be interpreted against the party responsible for the drafting or preparation of the Agreement shall not apply.

2. Recordal

- 2.1 The financial statements; reports on performance against pre-determined objectives; and compliance with legislative requirements of the Debtor are subject to annual audits by the AGSA in terms of the provisions of section 188 of the Constitution, read with section 20 of the PAA. The AGSA conducted the audit for the 11/12; 12/13 and 13/14 financial year.

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- 2.2 Invoices were sent to the Debtor for the audit conducted. The Debtor failed to make payments to the AGSA after the invoices were sent to it. The Ring-Fenced amount is now due, owing and payable to the AGSA.
- 2.3 The AGSA has agreed to ring-fence the outstanding amounts set out in annexure A (including interest which has accrued). Ring Fencing relates to an agreement to cease the running of interest on the debt due, owing and payable from time to time by the Debtor to the AGSA. As an act of good faith the AGSA agreed to this to enable the Debtor settle the debt as efficiently as possible.
- 2.4 The Debtor is desirous of settling the Ring-Fenced amount due, owing and payable to the AGSA. The Ring-Fenced amount comprises R4 229 424.00(Four million; two hundred and twenty nine thousand, four hundred and twenty four rand) (Inclusive of Vat and Interest). Annexure "A" attached hereto are documents reflecting the indebtedness of the Debtor to the AGSA.
- 2.5 The parties therefore wish to record their Agreement on the terms set out below.

3. Obligations of the Debtor

- 3.1. The Debtor is required to make payments to the AGSA on a monthly basis commencing on 30 April 2015 for a period of twenty four months until the entire Ring-Fenced amount is settled in full.
- 3.2. After the initial payment by the Debtor as set out in 3.1 above payments of the remaining monthly Ring-Fenced instalments shall be made to the AGSA on or before the 7th day of the following month and every month thereafter. Provided the Debtor honours its monthly obligations herein, the last Ring-Fenced instalment will be paid by the Debtor on 31 March 2017.
- 3.3. The Debtor will continue to make payments for the current amounts due, owing and payable to the AGSA for current audit work carried out by the AGSA in terms of legislation.



4. Breach of contract

- 4.1 If the Debtor fails to pay any instalment due, owing and payable in terms of the Agreement on the due date/s, the Debtor shall be in breach of this Agreement. The



unpaid portion of the Ring-Fenced amount shall immediately become due, owing and payable. Arrear interest on the unpaid portion shall become due, owing and payable and interest shall continue to run on the amount outstanding, from the date of breach.

- 4.2 The Debtor shall be liable for any legal costs occasioned by the AGSA in any legal proceedings against the Debtor for the recovery of the Ring-Fenced amount or any portion or interest thereon. In any legal proceedings instituted by the AGSA against the Debtor arising from any aspect of this Agreement, the Debtor agrees to pay the AGSA's legal costs on a scale as between attorney and own client, which shall include interest from the date of default at the rate contemplated in Section 23 of the Public Audit Act, 2004 as well as collection charges at the maximum rate permissible in law. The Debtor also agrees to pay all tracing fees where applicable.
- 4.3 A certificate signed by any employee from the Finance Business Unit of the AGSA (whose authority, qualification and appointment need not to be established) setting out the amount of the Debtor's indebtedness to the AGSA, shall be *prima facie* proof of the amount the Debtor owes to the AGSA, and be valid as a liquid document in any court of competent jurisdiction, for the purposes of provisional Sentence, Summary Judgement, or Final Judgement against the Debtor. The Debtor acknowledges its indebtedness in respect of any amount so certified and provides its consent by executing this Agreement, for any application envisaged by the Institution of Legal Proceedings Against Certain Organs of State Act, 2002 (Act No. 40 of 2002).
- 4.4 The parties consent to the jurisdiction of a South African Magistrate Court with competent jurisdiction for the purpose of any action arising out of or based on this Agreement which either party may bring against the other.
- 4.5 Notwithstanding the above provisions relating to breach, in the event of any liquidation/sequestration/voluntary surrender or any insolvency related application/proceedings being granted by a court with competent jurisdiction to grant such an order whether interim or final, the AGSA shall have the right to cancel this agreement forthwith by written notice to the domicilium address of the Debtor, cited below and the whole of the Debtor's indebtedness shall become due

and payable to the AGSA whether or not such amounts are due, without further notice and without prejudice to any other right.

5. General provisions

- 5.1 This Agreement, together with the annexure hereto, constitutes the record of the agreement between the parties with regard to the subject matter hereof. In the event of a conflict in the interpretation of this main Agreement and the Annexures attached hereto, the content of this main Agreement shall prevail.
- 5.2 The Laws of the Republic of South Africa shall govern this Agreement.
- 5.3 No addition to or variation, waiver, consequential cancellation or novation of this Agreement, including this clause, shall be of any force unless reduced to writing and signed by the parties.
- 5.4 No latitude, extension of time or other indulgence which may be given or allowed by the AGSA to the Debtor in respect of the performance of any obligation hereunder or the enforcement of any right arising from this Agreement and no single or partial exercise of any right by the AGSA shall be construed to be an implied consent by the AGSA or operate as a waiver or a novation of, or otherwise dilute any of the AGSA's rights in terms of this Agreement or stop the AGSA from enforcing strict and punctual compliance with each and every provision or term herein.
- 5.5 Neither party shall be entitled to cede, assign or delegate any of its rights and/or obligations hereunder without the prior written approval of the other party.
- 5.6 No condonation, relaxation or indulgence afforded by any party to the other will prejudice the rights of the former and the former will not be prohibited from exercising such rights due to its actions.
- 5.7 In the implementation of this Agreement and in all dealings with each other, the parties undertake to observe the utmost good faith and to give full effect to the intent and purpose of this Agreement.

5.8 If any clause or portion of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement shall remain unaffected and shall retain full force and effect.

5.9 The person signing this Agreement in a representative capacity warrants his/her authority to do so and confirms that all the required internal approval(s) authorising him/her to enter into this Agreement have been obtained.

6. Domicilia citandi et executandi and notices

6.1 All notices or correspondence in terms of this Agreement shall be delivered by hand or sent by certified mail or faxed and shall be addressed as below which the parties hereto choose as *domicilium citandi et executandi*:

AGSA

The Chief Financial Officer
300 Middel Street
Nieuw Muckleneuk
Pretoria
0001

Tel. no.: (012) 426 8030

Fax no.: (012) 426 8012

Debtor:

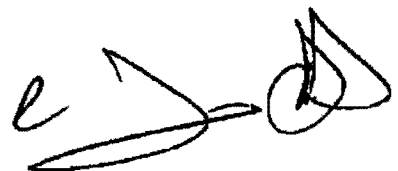
Customer id: 21362
Pixley Ka Seme District Municipality
Private Bag X1012
De Aar
7000

Tel. no. : (053) 631 0891

Fax no.: (053) 631 2529

6.2 Notice of change of address stated may be given by either party in writing and shall be delivered or sent by prepaid registered post by one party to the other.

Any notice to a party contained in a correctly addressed envelope and sent by prepaid registered post to it at its chosen address, or delivered by hand by a responsible person during ordinary business hours at its chosen address, shall be deemed to have been received, in cases where it is sent by prepaid registered post, on the 14th (fourteenth) business day after



posting (unless the contrary is proved) and, in the case it is delivered by hand, on the day of delivery.

THUS DONE AND SIGNED AT PRETORIA ON THIS 6 DAY OF MAY 2015.

FOR THE AUDITOR-GENERAL OF SOUTH AFRICA:

N. MASANHI
Full name of signatory

Acting BF
Designation of signatory

[Signature]
Witness 1

[Signature]
Signature

[Signature]
Witness 2

THUS DONE AND SIGNED AT DE AAR ON THIS 29 DAY OF APRIL 2016.

FOR THE DEBTOR:

PETERSE, R.E.
Full name of signatory

Accounting Officer
Designation of signatory

[Signature]
Witness 1

[Signature]
Signature

[Signature]
Witness 2

Annexure A



PIXLEY ka SEME

DISTRIKSMUNISIPALITEIT
DISTRICT MUNICIPALITY
U-MASIPALA WENGINQI

Colerberg
Private Bag X1012
DE AAR
7600
Telephone (053) 431-0891/2-6
Fax (053) 431-2529
e-mail: pixley@u-masipala.net

Colerberg Road
Private Bag X1012
DE AAR
7600
Telephone (053) 431-0891/2-6
Fax (053) 431-2529
e-mail: pixley@u-masipala.net

Verwys:
Refr: 5.13.1.1

Navas:
Enquiries: BF James

Detum:
Date: 16 March 2015

Office of the Auditor General
Po Box 446
PRETORIA
0001
South Africa

Attention: Shakera Joseph
Email: shakeraM@agsa.co.za

Subject: Proposed Payment Plan: Ring Fencing.

In response to the proposed payment plan for the outstanding Audit fees do we hereby request the following payment plan:

Due date of payment	Amount
30.04.2015	R 176 226
31.05.2015	R 176 226
30.06.2015	R 176 226
31.07.2015	R 176 226
31.08.2015	R 176 226
30.09.2015	R 176 226
31.10.2015	R 176 226
30.11.2015	R 176 226
31.12.2015	R 176 226
30.01.2016	R 176 226
29.02.2016	R 176 226
31.03.2016	R 176 226
30.04.2016	R 176 226
31.05.2016	R 176 226
30.06.2016	R 176 226
31.07.2016	R 176 226
31.08.2016	R 176 226

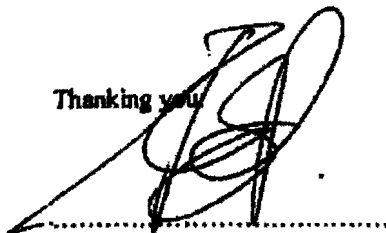
(Paid)
Reviewed by:
[Signature]

It is the policy of the Pixley Ka Seme District Municipality to respond to all correspondence and enquiries within seven days from date of receipt. This is the policy of the Pixley Ka Seme District Municipality and is not to be construed as a guarantee of service to receive same due to the municipality.

30.09.2016	R 176 226
31.10.2016	R 176 226
30.11.2016	R 176 226
31.12.2016	R 176 226
31.01.2017	R 176 226
29.02.2017	R 176 226
31.03.2017	R 176 226

Hope that you find this in order

Thanking you



**RE PIETERSE
MUNICIPAL MANAGER**

*It is the policy of the Puzley Ka Seve District Municipality to respond to all correspondence and enquiries within seven days from date of receipt.
Dit is die beleid van die Puzley Ka Seve Distrikmunisipaliteit om op alle korrespondensie of navraag te reageer binne sewen dae na die ontvangsdatum.*