

**PIXLEY KA SEME DM**

## **SERVICE LEVEL AGREEMENT**

**(SHARED SERVICES AGREEMENT)**

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# SHARED SERVICE AGREEMENT

## 1 PARTIES

1.1 The parties to this agreement are:

1.1.1 **PIXLEY KA SEME DISTRICT MUNICIPALITY**, a District Municipality established in terms of the Laws of the Republic of South Africa, with its main place of business at Culvert road, De Aar, herein represented and duly authorised by, Rodney E Pieterse in his capacity as Municipal Manager.

("the Service Provider")

1.1.2 Kareeberg **LOCAL MUNICIPALITY**, a Municipality established in terms of the Laws of the Republic of South Africa, with its main place of business at Carnarvon, herein represented and duly authorised by, W. de Bruin in his capacity as Municipal Manager.

("the Customer")

Herein after referred to as "the parties".

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## 2. BACKGROUND

**WHEREAS** the Service Provider is willing to provide Shared Services on behalf of the Customer.

**AND WHEREAS** the Customer intends to make use of the Shared Services offered by the Service Provider.

**NOW THEREFORE** the Parties record the terms and conditions of their agreement in the following terms:

## 2 INTERPRETATION

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

2.1.1 **"the/this agreement"** means the agreement contained in this document and the annexure hereto and includes all supporting documentation that led to the conclusion of this agreement;

2.1.2 **"business day"** means a day which is not a Saturday, Sunday or official public holiday in the Republic of South Africa;

2.1.3 **"effective date"** means the date on which the last parties signature is appended to this agreement.

2.1.4 **"including"** (or words of similar meaning) means to include without limitation, and if the expression is used with reference to specific examples the "*eiusdem generis*" rule shall not apply;

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- 2.1.5 "law" means any law of general application and includes the common law and any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment of legislative measure of government (including local and provincial government) statutory or regulatory body which has the force of law;
- 2.1.6 "parties" means the Customer and the Service Provider;
- 2.1.7 "shared services" shall be mean the services as identified on the attached schedule and payable to the Service Provider by the Customer;
- 2.1.8 "schedule" means the Schedule attached here to and which forms an integral part of this agreement;
- 2.1.9 "signature date" means (or words of similar meaning) in relation to this agreement or any other document means the date on which this agreement or other document (as the case may be) is signed by the party signing it last in time;
- 2.1.10 "termination date" means the date on which all services is rendered in full to the Customer by the Service Provider;
- 2.1.11 "writing" (or words of similar meaning) means legible writing and in English and excludes any form of electronic communication contemplated in the Electronic Communications and Transactions Act, 25 of 2002;
- 2.1.12 "the Service Provider" means Pixley Ka Seme District Municipality;
- 2.1.13 "the Customer" means the Local Municipality entering into this agreement.

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2.2 Any reference to:

2.2.1 the singular includes the plural and vice versa;

2.2.2 natural persons includes juristic persons and vice versa;

2.2.3 any one sex or gender includes the other sexes or genders, as the case may be;

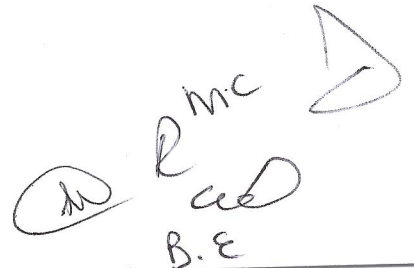
2.2.4 any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment or legislative measure of government (including local or provincial government) statutory or regulatory body which has the force of law means the relevant enactment or legislative measure as at the date of signature of this agreement and as amended or re-enacted from time to time;

2.2.5 a party includes a reference to that party's successors in title and assigns allowed at law.

2.3 The clause headings in this agreement have been inserted for convenience only and shall not be taken into account in its interpretation.

2.4 Words and expressions defined in any sub-clause shall, for the purpose of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.

2.5 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 the agreement, notwithstanding that it is only contained in the interpretation clause.

  
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- 2.6 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 1<sup>st</sup> (first) day and inclusively of the last day of the relevant interval, 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.
- 2.7 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 immediately preceding business day.
- 2.8 If any obligation or act is required to be performed on a particular day it shall be performed (unless otherwise stipulated) by 16h00 on that day.
- 2.9 This agreement shall be governed, interpreted and enforced in accordance with the laws of the Republic of South Africa from time to time.
- 2.10 If amounts or figures are specified in numerals and in words and if there is any discrepancy between the numerals and the words then the words shall apply.
- 2.11 The rule of construction that this agreement shall be interpreted against the party responsible for the drafting of this agreement, shall not apply.

Handwritten signature and initials: B-E, RMC, and a large stylized 'D' or 'A'.

### **3 APPOINTMENT OF SERVICE PROVIDER**

3.1 The Customer hereby appoints the Service Provider, who hereby accepts this appointment, to provide the Shared Services, as indicated on the attached schedule, to the Customer.

3.2 The Service Provider hereby acknowledge and agrees that:

3.2.1 the punctual performance of the services is a material term of this agreement and as such the Service Provider shall render the services strictly by the delivery dates;

### **4 DURATION**

4.1 This agreement shall commence on the effective date and terminate on the termination date, unless terminated earlier by either party in terms of this agreement.


4.2 This agreement shall not extent over a 3 year period.

### **5 SHARED SERVICES**

5.1 In rendering the services, the Service Provider shall deliver the Deliverable Items to the Customer as per the attached schedule.

### **6 AD HOC ASSIGNMENT**

6.1 A special Ad Hoc Committee will be created when need be to address a particular and or clearly defined situation, responsibility or need which is not contained in this agreement and that has an effect or may affect the relationship or affairs of the parties herein.

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## **7 WARRANTY OF QUALITY CONTROL**

- 7.1 The Service Provider hereby warrants to the Customer, which warrants the Customer hereby accepts and records are material representations which induced the Customer to enter into this agreement, that the Service Provider shall –
- 7.1.1 exercise reasonable skill, care and diligence in rendering the services and in the performance of all its obligations in terms of this agreement.
- 7.1.2 at all times display such proficient level of skill, care and diligence in providing the services, as is reasonably expected of a qualified, experienced and skilled Service Provider in its field of practice.
- 7.1.3 The Service Provider agrees to remedy all incomplete work that the Customer may detect.

## **8 CONTACT PERSONNEL**

Each party shall appoint and notify the other party in writing of a designated employee who shall be authorised to act as the primary contact person for each party in dealing with the other party in respect of each party's obligations in terms of this agreement and who will issue all consents or approvals and make all requests on behalf of each party. The names of the initial contact persons are set out in the Schedule.

  
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## **9 RELATIONSHIP BETWEEN THE PARTIES**

- 9.1 The parties shall for the duration of this agreement be independent contractors to each other. No provision contained herein shall be construed to confer to the Service Provider the status of being an agent, employee, partner or co-venturer of the Customer. Neither the Service Provider, nor any of its officers, directors, and employees shall have the authority to represent, bind or act on behalf of the Customer in its performance of the Service Provider's obligations in terms of this agreement without the prior written consent of the Customer.

## **10 PRICE**

- 10.1 The total contract price will be R 5 46 977.80 per annum VAT inclusive.
- 10.2 The price will escalate at 5% per annum.

## **11 PAYMENT**


- 11.1 The Customer shall make payment of the agreed price in advance of the services to be delivered by the Service Provider, in accordance with the Supply Chain regulations of the Customer.
- 11.2 The Service Provider will pay subsistence and travelling.

## **12 NON-SOLICITATION**

Neither party shall directly or indirectly solicit for employment, and/or entice away or endeavour to, any of the employees of the other party during the subsistence of this agreement and for a period of 1 (one) year thereafter.

## **13 GOOD FAITH**

In implementing this agreement and in all further dealings with each other, the parties each undertake to observe good faith in giving effect to the spirit and purpose of this agreement.

  
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## 14 ANTI-CORRUPTION

- 14.1 The Service Provider hereby undertakes that it shall not make, nor cause to be made, any offer, gift, payment, consideration or benefit of any kind whatsoever, which could be construed as an illegal or corrupt practice, either directly or indirectly to any director, official, employee or representative of the Customer or any other person, as an inducement or reward in relation to the entering into or execution of this agreement.
- 14.2 Any such practice shall constitute a ground for termination of this agreement by the Customer.

## 15 REPORTING

- 15.1 All reports should be submitted to the Municipal Manager of the recipient Municipality and its Council.
- 15.2 All reports shall be compiled at least once a quarter.

## 16 NOTICES AND DOMICILIA

- 16.1 The parties choose as their *domicilia citandi et executandi* their respective addresses set out in the clause 1 for all purposes arising out of or in connection with this agreement at which addresses all processes and notices arising out of or in connection with this agreement, its breach or termination may validly be served upon or delivered to the parties.
- 16.2 For purposes of this agreement the parties' respective addresses shall be as set out in the Schedule or at such other address in the Republic of South Africa of which the party concerned may notify the others in writing provided that no street address mentioned shall be changed to a post office box or *poste restante*.



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

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

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

16.4 Notwithstanding anything to the contrary contained or implied in this agreement, a written notice or communication actually received by one of the parties from another including by way of fax transmission shall be adequate written notice or communication to such party.


## 17 DISPUTE RESOLUTION AND JURISDICTION

17.1 Any disputes arising from or in connection with this agreement shall, at the sole, unfettered discretion of the Service Provider, be finally resolved in accordance with the rules of the Arbitration Foundation of Southern Africa by a single arbitrator appointed by the Foundation.


17.2 The dispute resolution procedure contained in this clause applies to any dispute, claim or difference between the parties arising out of or relating to this agreement.

17.3 A dispute may not be deemed to be a dispute until one of the parties has provided written notice conveying the nature and scope of the dispute to the other party.

17.4 All disputes must first be referred to the mediation committee consisting out of the contract managers of the parties and a representative of either party mediation committee, for resolution. An agreement reached by the mediation committee shall be reduced to writing and shall be binding on the parties.

  
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- 17.5 If the parties are unable to resolve any dispute within 10 (ten) working days of referral to the mediation committee, either party may refer the matter to arbitration.
- 17.6 The arbitration must be conducted in accordance with the provisions of the Arbitration Act, 1965 (Act 42 of 1965), as amended from time to time), provided that:
- 17.6.1 A single arbitrator is appointed;
- 17.6.2 The arbitrator must be a practicing council or attorney of not less than 10 (ten) years standing, agreed upon by the parties within 10 (ten) days after the date on which the arbitration is being called for.
- 17.7 If the parties fails to reach agreement within 10 (ten) days after arbitration has been called for on regarding the appointment of the arbitrator, such arbitrator must be appointed by the President for the time being of the Law society of the Cape Law Society.
- 17.8 The arbitration proceedings must take place in De Aar at a venue and time determined by the arbitrator.
- 17.9 The arbitration proceedings must be held informally and in a summary manner, and procedural requirements and formalities must be determined by the arbitrator. In determining such formalities and procedure the arbitrator does not need to observe the normal strict rules of evidence or usual formalities of procedure.
- 17.10 The decision of the arbitrator is final and binding on the parties.
- 17.11 The cost of the arbitration proceedings must be borne by the parties as decided by the arbitrator.

  
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17.12 The arbitration clause shall not prevent the parties from access to an appropriate court of law for:


17.12.1 Interim relief in the form of an interdict, mandamus, or an order for specific performance pending the outcome of an arbitration in terms whereof or in respect of such arbitration or expert determination, as the case may be; and

17.12.2 an order for the payment of a liquidated amount of money on the basis of the facts which are not bona fide in dispute at the commencement of the proceedings.

## 18 NEW LAWS AND INABILITY TO PERFORM

18.1 If any law comes into operation subsequent to the signature of this agreement which law affects any aspect or matter or issue contained in this agreement, the parties undertake to enter into negotiations in good faith regarding a variation of this agreement in order to ensure that neither this agreement nor its implementation constitutes a contravention of such law.

18.2 If either party is prevented from performing any of its obligations in terms of this agreement as a result of any existing or new law or as a result of any event beyond its reasonable control whether or not foreseeable, including general power failures, breakdown of telecommunication networks or computers, political intervention, imposition of sanctions, riot or insurrection, it shall not be liable for any failure to perform its obligations under this agreement while such event

  
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persists and shall have the right (unless such event has or is likely to persist for a period not exceeding 30 (thirty) days) to terminate this agreement at any time after the intervention of or becoming aware of such event.

- 18.3 If this agreement is terminated by either party in accordance with the provisions of this clause neither party shall have any claim or obligation in respect of any loss suffered or damages incurred as a result of such cancellation.

## 19 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.

## 20 ASSIGNMENT



The Service Provider may not assign, transfer, sub-contract or otherwise part with this agreement or any part thereof or any right or obligation under it, without obtaining the Customer's prior written consent thereto.

## 21 WHOLE AGREEMENT

- 21.1 This agreement 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.

  
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- 21.2 No addition to or variation, consensual cancellation or novation of this agreement and no waiver of any right arising from this agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by all the parties or their duly authorised representatives.
- 21.3 No latitude, extension of time or other indulgence which may be given or allowed by the Customer to the Service Provider in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of the Customer arising from this agreement, and no single or partial exercise of any right by the Customer under this agreement, shall in any circumstances be construed to be an implied consent or election by the Customer or operate as a waiver or a novation of or otherwise affect any of the Customer's rights in terms of or arising from this agreement or *estop* or preclude the Customer from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof.
- 21.4 This agreement is signed by the parties on the dates and at the places indicated opposite their respective names.
- 21.5 This agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument.
- 21.6 The persons signing this agreement in a representative capacity warrant their authority to do so.

  
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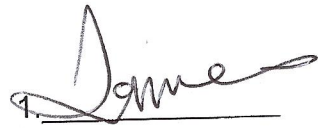
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RE PIETERSE  
SERVICE PROVIDER

Witnesses:

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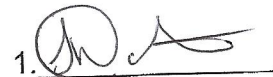
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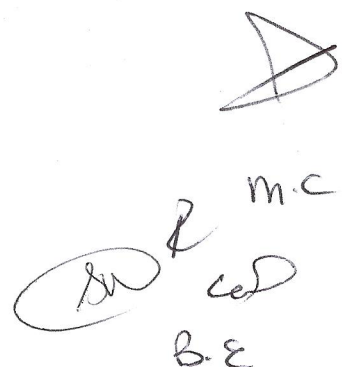
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MUNICIPAL MANAGER  
CUSTOMER

Witnesses:

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## **SCHEDULE**

### **1. SHARED SERVICES**

#### **1.1 The following Shared Services will be rendered:**

- Planning
- Legal Services
- Internal Audit
- Performance Management


#### **1.2 Description of Shared Service**

##### **1.2.1 Planning will include:**

- Preparation of Building Plans
- Building Plan Applications
- Assistance with the National Building Regulations and Building Standards Act no. 103 of 1977.

##### **1.2.2 Legal Services will include:**

- Disciplinary Hearings( Presiding & Prosecuting)
- Legal Advise
- Assistance in Bargaining Council matters(Conciliation & Arbitration)
- Contract Drafting
- Civil Litigation

  
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### **1.2.3 Internal Audit will include:**

- Rendering Internal Audit services as per Section 165 of the MFMA and delivering the following:
- Internal Audit Charter
- Audit Committee Charter
- Risk Assessment
- Three Year Strategic Plan
- Risk-based Audit Plan
- Four Quarterly Internal Audit reports
- Administrative duties to the Audit committees(Including Agendas and Minutes of Meetings

### **1.2.4 Performance Management will include:**

- PMS Contracts
- PMS Plans
- Quarterly review
- Mid Term Evaluation
- Final Annual Evaluation
- PMS Policy Frame Work

## **2. Nominated address and contact person for Pixley Ka Seme DM;**

**Rodney Eric Pieterse**

Pixley Ka Seme DM


Culvert Road

De Aar, 7000

Tel: 053 6312529

Fax No: 053 6329523

E Mail: [pixley@telcomsa.net](mailto:pixley@telcomsa.net)



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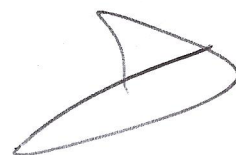
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3. Nominated address and contact person for the Local Municipality

Hanaus Street

Carnarvon

kareeberg@xsinet.co.za



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