

**AGREEMENT BETWEEN THE FARM OWNER, THE HOUSING INSTITUTION AND THE
MEMBER OF THE EXECUTIVE COMMITTEE**

HOUSING DEVELOPMENT BY A HOUSING INSTITUTION

1 PARTIES

1.1 The parties to this agreement are :

1.1.1 The Provincial Government of _____, herein represented by the Member of the Executive Council responsible for _____ (hereinafter referred to as the MEC);

1.1.2 _____ (ID number: _____); hereinafter referred to as the farm owner;

1.1.3 _____, acting in his capacity as representative of the Housing Institution namely _____ registered or incorporated in terms of _____.

1.2 The parties agree as set out below.

2 DEFINITIONS AND INTERPRETATION

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

2.1.1 “the/this agreement” means the agreement as set out in this document together with all annexure hereto by both parties;

2.1.2 “beneficiary” means a person whose housing subsidy application was attached to the project application and has been approved by the MEC;

2.1.3 “Farm owner” means the current registered owner of the farm on which the farm workers and residents reside and who is prepared to provide housing opportunities for all persons on the farm who meet the subsidy qualifying criteria (“beneficiaries”);

- 2.1.4 “Farm resident” means a person residing on land which belongs to the farm owner and who will benefit from the housing opportunities to be created by the farm owner;
- 2.1.5 “Farm workers” includes persons which are formally employed by the farm owner to work on the farm;
- 2.1.6 “Housing Institution” means a legal entity, accredited by the Social Housing Accreditation Authority as contemplated by the Social Housing Act 2008, with the objective to acquire, develop and hold immovable property stock for occupation by qualifying subsidy beneficiaries;
- 2.1.7 “Municipality” means a Local or a District or a Metropolitan Municipality as described in the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998);
- 2.1.8 “Project Application” means the approved application, submitted by the farm owner through the _____ Municipality to the MEC, a copy of which is attached hereto as Annexure “A”.
- 2.1.9 “the Project” means the farm residents housing project referred to in clause 2.1.8 above to be implemented by the Housing Institution.
- 2.1.10 “service providers” means all persons, identified in the contract documents, who will provide goods and/or services to the beneficiaries in connection with the project;

2.2 In this Agreement:

- 2.2.1 Reference to a statutory provision include any subordinate legislation made from time to time under that provision and include that provision as amended from time to time;
- 2.2.2 Reference to one gender shall be deemed to include a reference to the other gender and the singular shall include plural, and vice versa;
- 2.2.3 Any reference to natural persons includes juristic persons and vice versa;
- 2.2.4 If a definition imposes substantive obligations on or confers rights to a party, such obligations or rights shall be given effect to, notwithstanding that they are contained in a definition;

- 2.2.5 Definitions in this Agreement shall bear the same meaning and apply throughout this Agreement unless otherwise stated or inconsistent with the context in which a definition appears;
- 2.2.6 If there is any conflict between definitions in this Agreement then, for the purposes of interpreting any clause of the Agreement or paragraph of any annexure, the definition appearing in that clause or paragraph shall prevail over any other definition elsewhere in the Agreement;
- 2.2.7 If any period is referred to by way of a number of days, the days shall be reckoned exclusive of the first day and inclusive 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;
- 2.2.8 Any provision in this Agreement which may become illegal, invalid or unenforceable shall be ineffective to the extent of such illegality, invalidity or unenforceability and shall be treated as having not being written (*pro non scripto*) and be severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement;
- 2.2.9 The expiration or termination of this Agreement shall not affect the provisions of this Agreement which are expressly provided to operate after such expiration or termination; or which, due to necessity, must continue to have effect after such expiration or termination, notwithstanding that the relevant provisions do not provide for this;
- 2.2.10 In this agreement the rule of construction that the contract shall be interpreted against or to the advantage of the party responsible for the preparation and drafting of the Agreement (the *contra proferentum* rule) does not apply;
- 2.2.11 This Agreement shall be governed by and construed and interpreted in accordance with the law of the Republic of South Africa.

3 RECORDAL

- 3.1 The farm owner makes a portion of his farm, known as _____, available to the housing institution through the registration of a long term secure tenure arrangement for purposes of this development.

- 3.2 The Housing Institution, in collaboration with the farm owner as well as the beneficiaries, submitted a project application to provide housing for _____ farm residents on a rental basis, on the said farm portion, to the MEC through the _____ Municipality;
- 3.3 The _____ Municipality, in whose area of jurisdiction the farm _____ is situated, has:-
- 3.3.1 evaluated the project application in terms of the feasibility thereof;
 - 3.3.2 confirmed its support of the proposed project and any services provision requirements; and
 - 3.3.3 submitted the project application, together with its recommendation, to the Provincial Department;
- 3.4 The Provincial Department has:-
- 3.4.1 Ascertained that sufficient funds are available to approve the application;
 - 3.4.2 Established that the application meets the minimum requirements and is satisfied that beneficiaries qualify for subsidies against the NHSDB and other databases;
 - 3.4.3 Submitted the application to the MEC for approval;
 - 3.4.4 Recorded the project on the Housing Subsidy System (HSS);
 - 3.4.5 Informed the Housing Institution of the decision
- 3.5 The MEC has:-
- 3.5.1 approved the project application; a copy of which is attached hereto as Annexure " A";
 - 3.5.2 Reserved housing subsidy funds for the undertaking of the approved project in respect of beneficiaries who qualify for housing subsidies.
- 3.6 The Housing Institution confirms that it will not use the value of the investment to secure credit or encumber the value of the investment in any way.

- 3.7 The Housing Institution has established a managing structure comprising representatives of the beneficiaries, the farm owner as well as representatives of the Housing Institution to represent the interests of the stakeholders. This management structure has been approved by the MEC.
- 3.8 Housing for seasonal workers will not be provided for under this programme, however, should the housing institution wish to provide this on its own accord, any and all such accommodation must comply with the municipal by-laws and regulations pertaining to safe and healthy living conditions.
- 3.9 The implementation of the project, as set out in the approved application, will commence as soon as this agreement has been signed by the relevant parties.

4 CONTRACT DOCUMENTS

- 4.1 The contract between the parties in respect of the implementation of the project is contained in the following documents (“the contract documents”):-
- 4.1.1 this agreement;
 - 4.1.2 the project application;
 - 4.1.3 the project approval;
 - 4.1.4 contract(s) with service providers;
 - 4.1.5 Rental agreement(s).
- 4.2 If there is any conflict between the provisions of any documents contained in the contract documents, those documents shall prevail over one another in the sequence set out in 4.1 above.
- 4.3 The entire agreement (including all the documents contained in the contract documents) is subject to the provisions of Volume 5 of Part 3 of the National Housing Code, 2009: Rural Interventions: Farm Residents Subsidies. If there is any conflict between any provisions contained in the contract documents and the provisions of Part 3, the provisions of Part 3 shall prevail.

5 PROJECT DETAILS

5.1 TECHNICAL NORMS AND STANDARDS

5.1.1 BASIC SERVICES

- 5.1.1.1 The Housing Institution will ensure that the farm portion allocated for the project is provided with minimum basic services that are sustainable in the long run as provided for; and in accordance with the services mentioned in the approved project application.
- 5.1.1.2 In the event that circumstances exists on the farm portion allocated for the project, which makes it not feasible or practicable to provide minimum basic services as per the approved project application, the MEC may, on request by the Housing Institution, consider approving norms and standards designed to meet the local condition requirements provided that such standards are approved by the beneficiaries and the municipality and that the local solutions for the provision of basic water and sanitation are designed by a professional expert, are environmentally acceptable and are supported by geotechnical investigations that confirm the suitability of the services options selected.
- 5.1.1.3** Where extraordinary geotechnical conditions necessitate special precautionary measures to ensure durable and quality houses, the Housing Institution may apply for additional funding in accordance with the provisions of the Variation Manual contained in Volume 2 of Part 3: The Technical and General Guidelines of the National Housing Code, 2009.

5.1.2 TOP STRUCTURES

- 5.1.2.1 The Housing Institution will register with the NHBRC and enrol all new residential dwellings as prescribed by the NHBRC before the commencement of the project.
- 5.1.2.2 The houses will comply with the following minimum norms and standards:
- 5.1.2.2.1 The gross floor area of the residential structures must not be less than 40 (forty) square meters.

5.1.2.2.2 Each house must at least include:

5.1.2.2.2.1 two bedrooms;

5.1.2.2.2.2 a separate bathroom with a toilet, a shower and a hand basin;

5.1.2.2.2.3 a combined living area and a kitchen with a wash basin; and

5.1.2.2.2.4 a ready board electrical installation where electricity supply is available and this service is provided by a service provider.¹

5.1 BUILDING PLANS

5.1.1 Even though the top structures will be in accordance with the minimum requirements as set out in the National Housing Code 2009, construction will be executed according to the approved building plans submitted by the housing institution, which comply with the technical norms and standards of the National Building Regulations.

5.1.2 The housing institution confirms that only developers with valid registration at the NHBRC will be used to build the rental housing stock and that all the new residential dwellings will be enrolled with the NHBRC.

5.2 PROCUREMENT PRESCRIPTS

5.2.1 In view of the special circumstances of the development option, this programme is not subject to the normal procurement prescripts. Therefore the acquisition of materials and the services of special service providers required for the project implementation will be acquired in terms of the acquisition strategy mentioned in the approved project application; which will prove both feasible and practicable.

5.2.2 This acquisition strategy will be formulated in terms of the Supply Chain Management Policy of the Housing Institution, a copy of which is attached hereto as Annexure “B”;

¹ If electricity is not available, clause 5.1.2.2.4 should be deleted.

- 5.2.3 The Housing Institution, however, undertakes to follow a fair, transparent and equitable procurement process in the employment of services providers to construct the dwellings.

6 THE LAND RIGHTS OF THE HOUSING INSTITUTION

- 6.1 The parties hereby agree that the Housing Institution has acquired long term secure tenure rights over the farm _____ in the form of either:-
- 6.1.1 A long term lease agreement registered against the title deed of the property; or
 - 6.1.2 Servitude registered against the title deed of the property.
- 6.2 The parties agree that the Housing Institution will only have the right to develop rental housing on the land; and therefore not possess the authority to dispose of units in any manner whatsoever.
- 6.3 Should the farm owner, however, in future decide to subdivide his/her land and sell the subdivided portion to the institution, the housing institution may approach the MEC for approval to sell the units and transfer the units to the individuals.

7 PROJECT FUNDING DETAILS INCLUDING THE RELEASE OF FUNDING

- 7.1 Funding will be made available as per the number of qualifying beneficiaries; and the subsidy quantum applicable will be equal to the Institutional Housing Subsidy Programme subsidy amount. Therefore the contractual amount will be the amount indicated in the project application, which was supported by the municipality and approved by the MEC.
- 7.2 The accredited Housing Institution will have access to facilitation and establishment funding through the Social Housing Programme and will therefore not need any additional funding for project design and preparation services.
- 7.3 The parties agree that:-
- 7.3.1 The Housing Institution is not obligated to make a capital contribution with regard to this project;
 - 7.3.2 The Housing Institution is by means to decide to accommodate persons who do not qualify for housing subsidies in the development but not in units subsidised by the Programme's grant funding;

- 7.3.3 The capital cost in respect of dwellings to be occupied by persons who do not qualify for housing subsidies, must be funded by the Housing Institution from own resources.
- 7.4 This funding will be utilised for:-
- 7.4.1 *The installation of services; and
- 7.4.2 *The upgrading of existing stock on the farm; or
- 7.4.3 *The development of stand alone, semi detached and Multi-level housing units;
(*Delete which is not applicable)
- 7.5 The housing institution will have to make use of bridging finance to construct the houses as the MEC will institute progress payments on the basis of the principle of achievement of value for money.
- 7.6 The housing institution is required to provide services to the property using its own funds and/or alternative funding, should it be available. However, should the housing institution be unable to provide services with such funds, it is entitled to approach the MEC for the approval of services provision from subsidy funding.
- 7.7 The parties agree to the following progress payments:-
- 7.7.1 with regard to the construction of new houses:
- 7.7.1.1 ___% on the completion of foundations;
- 7.7.1.2 ___% when the top structure reaches window height;
- 7.7.1.3 ___% when the top structure reaches roof height
- 7.7.1.4 ___% on completion of roofing;
- 7.7.1.5 ___% on completion of the house;
- 7.7.1.6 ___% as retention payable three (3) months after completion; OR
- 7.7.2 With regard to renovation/upgrading of existing services and/or housing stock, payments will be made according to the progress payments as set out in the project approval.

7.8 Refunding in the case of overpayments:-

- 7.8.1 The parties agree that in the event that the housing institution has received an amount in excess of what he is entitled to receive the amount overpaid will be set off against the amount payable on the attainment of the subsequent milestone(s).
- 7.8.2 If the overpayment is with regard to the last milestone or cannot be fully recovered from the subsequent claims the housing institution will refund the MEC within 14 (fourteen) days from the date of demand, instituted by the MEC.

8 MANAGEMENT STRUCTURE

- 8.1 The Housing Institution undertakes to ensure that the farm owner as well as the beneficiaries will be adequately represented in the management structure of the housing stock that will be developed and administered by it;
- 8.2 The parties confirm that the management structure has been approved by the MEC
- 8.3 All allocations by the Housing Institution will be in collaboration with the management structure. This entails that the parties must agree on the allocation of each unit before any contractual arrangements are concluded.
- 8.4 Should the parties fail to agree on a specific allocation, the matter will be referred to the MEC for a ruling; which ruling will be regarded as final.
- 8.5 The Housing Institution hereby undertakes to annually confirm the details of all the persons renting units in its housing stock to the MEC. The details will, *inter alia*, consist of: names, income, particulars of dependents etc.

9 RENTAL DETERMINATIONS

- 9.1 The parties agree that the Housing Institution is allowed to determine the rentals based on the operating and maintenance cost of the institution and the housing stock in consultation with the MEC;
- 9.2 The Housing Institution confirms that the rentals charged, will not be utilised to recover any portion of the housing subsidy capital funding accessed under the programme.

- 9.3 Rentals received by the housing institution will be used only to recover the cost of operational expenses incurred, if any, to deliver services and in respect of any maintenance.

10 EXIT MECHANISMS

- 10.1 The parties agree that in the case where the housing institution, for whatever reason, fails to sustain the housing project on the land of the farm owner or the housing institution is liquidated:-

- 10.1.1 The investment through this programme on the land of the farm owner will be regarded as an improvement in the value of the farm. The farm owner may decide:-

- 10.1.1.1 To assume the role of the institution and continue to sustain rental housing options on the farm:

- 10.1.1.1.1 A new agreement will be concluded between the farm owner and the MEC, as contemplated under the option for on-farm housing development by the farm owner; or

- 10.1.1.2 To not take over the housing project from the housing institution, which will entail:-

- 10.1.1.2.1 The termination of the contractual agreement(s) with the housing institution;

- 10.1.1.2.2 The termination of the individual rental agreements with the beneficiaries; and

- 10.1.1.2.3 The farm owner will be liable to refund the provincial government an amount equal to the depreciated replacement cost of the housing stock created through the programme.

- 10.1.2 The MEC undertakes to ensure that the investment on the farm by the housing institution is not compromised by the institution in any way.

- 10.1.3 The MEC undertakes to monitor the financial viability of the institution on a continuous basis to mitigate the risk of failure of the institution.

11 OBLIGATION REGARDING THE MAINTENANCE OF THE STOCK

11.1 The Housing Institution:-

11.1.1 Undertakes to maintain the housing stock created on the farm, on a regular and continuous basis from its own resources.

11.1.2 Undertakes to ensure that housing stock provides decent living conditions;

11.1.3 Undertakes to ensure that the value of the stock is upheld.

11.2 The rental levied by the housing institution will be calculated on costs involved for operational expenses, maintenance fees and services to the unit.

12 TERMINATION OF RENTAL AGREEMENTS AND REALLOCATION OF UNITS

12.1 All issues pertaining to the termination of rental agreements should be dealt in consideration with the provisions of the Rental Housing Act (which provides for the regulation of the relationships between landlords and tenants).

12.2 In the case where the Housing Institution is required to terminate the rental agreement – for whatever reason – and allocate the relevant housing unit to another tenant, the institution must (without prejudice to any other rights which may exist) give the tenant two (2) months written notice of the termination of the rental agreement and confirm the date on which the unit must be vacated.

12.3 The termination of the rental agreement will not affect any occupational rights to the farm land that a person may hold in terms of any land rights or other relevant legislation. Thus, the termination of a rental agreement will not have the effect of the tenant's eviction from the farm, whose occupation rights to the farm is secured in terms of any legislation.

12.4 The farm owner is not empowered to require the institution to cancel a rental agreement (for whatever reason), without the written consent of all the affected parties.

12.5 In the case where the farm resident and/or tenant wish to terminate his/her employment contract and leave the farm, he or she may cancel the rental agreement on one (1) month's written notice.

- 12.6 However, should the farm worker decide to cancel the rental agreement, but not terminate his/her employment, the farm worker will be allowed to:-
- 12.6.1 Occupy the unit for six (6) months after giving written notice to the farm owner of his/her intention to (during which time the farm worker will still be obliged to pay the rental amount as agreed upon between the parties) vacate the housing unit in the case where the farm worker was in the employment of the farm owner for a period of five (5) years or more; or
 - 12.6.2 Occupy the unit for sixty (60) days after giving written notice to the farm owner of his/her intention to (during which time the farm worker will still be obliged to pay the rental amount as agreed upon between the parties) vacate the housing unit in the case where the farm worker was in the employment of the farm owner for a period less than five (5) years.
- 12.7 The farm owner hereby confirms that the termination of any rental agreement/occupation right of the unit(s) financed from the National Housing Programme will not affect any occupation rights to the farm land vested in the farm resident by prevailing land rights legislation. This implies that (and the farm owner agrees) the farm owner may not utilise the termination of the rental agreement/occupation right agreement by the institution to evict an employee from the farm whose occupation rights to the farm are secured in terms of legislation.
- 12.8 Any eviction of a person from his/her house must be undertaken in terms of the provisions of the Constitution, 1996 and any other applicable legislation. This condition of the contract is contained in each individual contract between the farm owner and the beneficiary.

14 BREACH OF CONTRACT

- 14.1 Should either of the parties fail to timeously or fully perform any obligation arising from this agreement, the other party (aggrieved party) may call upon the defaulting party in writing to remedy such default within a reasonable period, appropriate under the circumstances.
- 14.2 In the event of the defaulting party failing to do so within the stipulated period, the aggrieved party shall be entitled without prejudice for any other rights which the party may have in law to either:-
- 14.2.1 Cancel this Agreement forthwith;
 - 14.2.2 and claim damages for expenses incurred as a result of this project; or

14.2.3 Claim specific performance of all the terms and conditions of this Agreement.

15 NOTICES AND DOMICILIA

15.1 The parties choose as their *domicilia citandi et executandi* their respective addresses set out in clause 15.2 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;

15.2 For the purposes of this agreement the parties' respective addresses shall be:

15.2.1 _____

15.2.2 _____

15.2.3 _____

15.2.4 Or at such other address which one party may give the other in writing, provided that the new address is not a post office box or *poste restante* ('mail to be collected by the recipient' arrangement);

15.3 Any notice in terms of this Agreement shall be in writing and shall:

15.3.1 If delivered by hand, deemed to have been duly received by the addressee on the date of delivery;

15.3.2 If posted by prepaid registered post, be deemed to have been received by the addressee on the 8th (eighth) day following the date of such posting;

15.3.3 If transmitted by facsimile be deemed to have been received by the addressee on the day following the day of the dispatch, unless the contrary is proved;

15.4 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 facsimile transmission, shall be adequate written notice or communication to such party.

16 WHOLE AGREEMENT

16.1 This agreement constitutes the whole agreement between the parties and no agreements, representations or warranties between the parties regarding the subject matter of this agreement, other than those set out herein, are binding on the parties.

17 VARIATION

17.1 No additions to or variation, consensual cancellation or novation of this agreement and no waiver of any right arising from this agreement or its termination, shall be of any force or effect unless reduced to writing and signed by both parties and their duly authorised representatives.

18 RELAXATION

18.1 No latitude, extension of time or other indulgence which may be given or allowed by either party to the party in respect of the performance of any obligation hereunder; and no delay or forbearance in the enforcement of any right by either party arising from this agreement; and no partial exercise of a right by either party shall, in any circumstances, be construed as an implied consent by such a party or operate as a waiver or a novation of, or otherwise affect any of such party's rights in terms of, or arising from this agreement and the said party shall be entitled at any time to require strict and punctual compliance with each and every provision or term of this agreement by the other party.

THUS DONE AND SIGNED at _____ on this _____ day
of _____ 20 ____ in the presence of the undersigned witnesses.

AS WITNESSES:

_____ For:

(NAME OF WITNESS IN BLOCK LETTERS)

MEMBER OF THE EXECUTIVE COUNCIL
REPRESENTING THE PROVINCIAL
GOVERNMENT OF _____

THUS DONE AND SIGNED at _____ on this _____ day
of _____ 20 ____ in the presence of the undersigned witnesses.

AS WITNESSES:

(NAME OF WITNESS IN BLOCK LETTERS)

FARM OWNER

THUS DONE AND SIGNED at _____ on this _____ day
of _____ 20 ____ in the presence of the undersigned witnesses.

AS WITNESSES:

(NAME OF WITNESS IN BLOCK LETTERS)

REPRESENTATIVE OF THE HOUSING
INSTITUTION