

# **AGREEMENT BETWEEN THE LEGAL ENTITY AND THE MUNICIPALITY REGULATING THE IMPLEMENTATION OF THE PROJECT**

## **1. PARTIES**

1.1 The parties to this agreement are:

1.1.1 \_\_\_\_\_ herein represented by \_\_\_\_\_  
in his capacity as the \_\_\_\_\_ (herein after  
referred to as the entity);

1.1.2 The \_\_\_\_\_ Municipality herein represented by  
\_\_\_\_\_ in his/her capacity as \_\_\_\_\_ under  
and by virtue of a resolution passed by the Municipality on  
\_\_\_\_\_ (herein after referred to as the Municipality).

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 "Beneficiary" means a person whose housing subsidy application was attached to the project application and has been approved by the MEC;

2.1.2 "MEC" means Member of Executive Council responsible for Human Settlements in the Province in question;

2.1.3 "Municipality" means a Local, District or Metropolitan Municipality as described in the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998);

2.1.4 "Project application" means the approved application, submitted by the \_\_\_\_\_ Municipality to the MEC, a copy of which is attached hereto as Annexure A.

2.1.5 "Project" means the farm residents housing project referred to in clause 2.1.4 above to be implemented by the Municipality;

2.1.6 "The parties" means the Entity and the Municipality;

2.1.7 "This Agreement" means the agreement as set out in this document together with all annexures hereto by the parties.

2.1.8 “The entity” means the legal entity established by the beneficiaries as described in clause 3.3 below

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 one gender shall be deemed to include reference to the other gender and the singular shall include plural, and vice versa;

2.2.3 Any reference to natural persons shall include 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 enforceable and 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 any 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 baseness 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 of 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 proferentem* 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 beneficiaries are the registered owners of the farm portions described in the diagram attached hereto as Annexure B/ are in the process of acquiring ownership of the farm portions described in the diagram attached hereto as Annexure B\*;

3.2 The beneficiaries have applied for assistance in terms of the Farm Residents Housing Assistance Programme;

3.3 The \_\_\_\_\_ is a legal entity that has been created by the beneficiaries to enable them to enter into contracts necessary for the implementation of the housing development project;

3.4. The Municipality has agreed to undertake the housing development project on behalf of the beneficiaries.

*(\*delete whichever is not applicable)*

### **4 PROJECT IMPLEMENTAION**

4.1. The Municipality will implement the project in accordance with:

4.1.1 The approved project application;

4.1.2 The MEC'S conditions as set out in the approval of the project documents;

4.1.3 All applicable laws;

4.1.4 The project agreement concluded by the MEC and the Municipality; and

4.1.5 The provisions of this Agreement.

## **5 SITE INSPECTIONS**

- 5.1 The entity will have the right to conduct regular site inspections to verify whether the Municipality is implementing the project according to the standards, methods and time frames agreed upon in terms of clause 4 above.
- 5.2 The site inspections may be attended by an official mandated by the MEC for this purpose.

## **6 MEETINGS**

- 6.1 The parties will hold regular meetings to discuss the progress of the project and other matters related to the project.
- 6.2 The meetings may be attended by an official mandated by the MEC for this purpose

## **7 COPIES OF CLAIMS FOR PROGRESS PAYMENTS**

- 7.1 The Municipality agrees to provide the legal entity with a copy of each claim for payment that the Municipality submits to the MEC.

## **8 BREACH OF CONTRACT**

- 8.1 Any breach of the obligations in terms of this agreement by either party will be reported to the MEC or his/her\* representative.
- 8.2 The MEC or his/her\* representative may stop payments until the grievance has been resolved.

*(\*delete whichever is not applicable)*

## **9 NOTICES AND DOMICILIA**

- 9.1 The parties choose as their *domicilia citandi et executandi* their respective addresses set out in clause 9.2 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.

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

9.2.1 \_\_\_\_\_

9.2.2 \_\_\_\_\_

9.2.3 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)

9.3 Any notice in terms of this agreement shall be in writing and shall:

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

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

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

9.4 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.

## 10 WHOLE AGREEMENT

10.1 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.

## 11 VARIATION

11.1 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 or their duly authorised representatives.

**RELAXATION**

12.1 No latitude, extension of time or other indulgence which may be given or allowed by either party to the other 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 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

\_\_\_\_\_

AS WITNESSES:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

FOR AND ON BEHALF OF THE ENTITY

THUS DONE AND SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of

\_\_\_\_\_

AS WITNESSES:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

FOR AND ON BEHALF OF THE  
MUNICIPALITY