

AGREEMENT BETWEEN THE MEC AND THE COMMUNITY BASED ORGANISATION

1 PARTIES

1.1 The parties to this agreement are

1.1.1 _____ acting in his capacity as Member of Executive Council responsible for Human Settlements _____ Province (herein after referred to as the MEC);

1.1.2 _____ in his capacity as the duly authorised representative of the _____ Community Based Organisation (herein after referred to as the CBO).

1.2 The parties agree as set out below.

2 DEFINITIONS AND INTERPRETATION

2.1 In this agreement, the following words and phrases shall, unless otherwise stated or where inconsistent with the context in which they appear, bear the following meanings; and cognate terms and expressions shall bear corresponding meanings:

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 “CBO” means the Community Based Organisation that provides a community with support services in the implementation of a PHP project;

2.1.3 “CRO” means Community Resource Organisation approved by the Department of Human Settlements and qualified to work with communities in implementing PHP projects;

2.1.4 “MEC” means Member of Executive Council responsible for Human Settlements in the Province in question;

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

2.1.6 “Project application” means the approved application, a copy of which is attached hereto as Annexure A, made by the CRO on behalf of the beneficiaries through the Municipality to the MEC;

- 2.1.7 “Project” means the farm residents housing project referred to in clause 2.1.6 above to be implemented by the beneficiaries assisted by the CBO;
- 2.1.8 “EPHP” means the Enhanced People’s Housing Process;
- 2.1.9 “The parties” means the MEC and the CBO;
- 2.1.10 “This Agreement” means the agreement as set out in this document together with all annexures hereto.

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 One gender shall be deemed to include the other genders and the singular shall include plural, and vice versa;
- 2.2.3 Any reference to natural persons shall include legal 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 extend 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 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 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 and they have decided to undertake the development themselves in terms of the Enhanced People's Housing Process (EHPH).

3.3 The CBO have agreed to provide the beneficiaries with support services they require to implement the project.

3.4 The MEC have approved the application for the EPHP.

4 COMPLIANCE WITH APPROVED PROJECT AND MEC'S CONDITIONS

4.1 The CBO will provide support services to the beneficiaries according to the approved project application and the conditions imposed by the MEC.

4.2 The CRO will capacitate the CBO with the skills necessary for the daily management of the project.

5 COMPLIANCE WITH THE REQUIREMENTS OF THE ENHANCED PEOPLE'S HOUSING PROCESS

5.1 The CBO will further provide the beneficiaries with the following support services as provided for by the Enhanced People's Housing Process:

5.1.1 Inform the beneficiaries of the choices available to them and assist them to make appropriate choices;

- 5.1.2 Facilitate access to, mobilise and adhere to the applicable community contributions;
- 5.1.3 Work with the CRO to set up and manage a Housing Support Centre if required;
- 5.1.4 Fulfil the roles and responsibilities as agreed upon with the CRO;
- 5.1.5 Maintain the administrative systems that the CBO has set up with the CRO;
- 5.1.6 Work with the CRO to set up the value added components for the process.

6 DISPUTE RESOLUTION

- 6.1 In the event of a dispute arising in the execution of the project:
 - 6.1.1 The parties or their representatives will convene a meeting to resolve such a dispute;
 - 6.1.2 Should the parties fail to resolve the dispute the matter will be referred to an arbitrator appointed by the parties jointly;
 - 6.1.3 The decision of the arbitrator shall be final and binding.

7. NOTICES AND *DOMOCILA*

- 7.1 The parties choose as their *domocolia citandi et executandi* their respective addresses set out in clause 7.2 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.
- 7.2 For the purposes of this agreement the parties' respective addresses shall be:
 - 7.2.1 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);
 - 7.2.2 Any notice in terms of this agreement shall be in writing and shall:
 - 7.2.2.1 If delivered by hand, be deemed to have been duly received by the addressee on the date of the delivery;
 - 7.2.2.2 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;

7.2.2.3 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.

7.4 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.

8. WHOLE AGREEMENT

8.1 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.

9. VARIATION

9.1 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.

10. RELAXATION

10.1 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 _____ 20____
in the presence of the undersigned witnesses

AS WITNESSES:-

1. _____

2. _____

FOR AND ON BEHALF OF THE
PROVINCIAL GOVERNMENT

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

AS WITNESSES:-

1. _____

2. _____

FOR AND ON BEHALF OF THE CBO